

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF CTIA

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February 21, 2018

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CTIA¹ respectfully submits these comments in response to the Federal Communications Commission’s (Commission or FCC) *Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry (2017 Lifeline NPRM/NOI or NPRM/NOI)* seeking input on reforms to the Commission’s Lifeline universal service program for low-income consumers.²

¹ CTIA® (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st-century connected life. The association’s members include wireless carriers, device manufacturers, suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry’s voluntary best practices, hosts educational events that promote the wireless industry, and co-produces the industry’s leading wireless tradeshow. CTIA was founded in 1984.

² *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475 (2017) (2017 Lifeline NPRM/NOI).*

I. INTRODUCTION AND SUMMARY

CTIA shares the Commission's objective of closing the digital divide, particularly through the use of mobile wireless technologies. Over thirty years since its creation, Lifeline remains the only federal program dedicated to making essential communications services more affordable for millions of low-income Americans, as required by Sections 254(b)(1) and (3) of the Communications Act.³ As described in these comments, wireless has brought robust innovation and effective competition to the Lifeline program, while simultaneously increasing the efficiency and value of Lifeline-supported services available to low-income consumers.

Consistent with the goals described in the Commission's *2017 Lifeline NPRM/NOI*,⁴ CTIA and our member companies have long supported the Commission's efforts to make the Lifeline program more efficient, accountable, and effective.⁵ In fact, CTIA has supported various program integrity measures adopted by the Commission that have reduced Lifeline spending by 40% since 2012.⁶ CTIA therefore also supports the Commission's strong focus in the *2017 Lifeline NPRM/NOI* on ensuring the integrity of the Lifeline program by curtailing

³ 47 U.S.C. §§ 254(b)(1), (b)(3).

⁴ *2017 Lifeline NPRM/NOI* at ¶ 1.

⁵ Letter from Meredith Atwell Baker, President & CEO, CTIA, to the Honorable Ajit Pai, Chairman, FCC *et al.*, WC Docket No. 17-287, at 2 (filed Nov. 8, 2017); Letter from Meredith Atwell Baker, President & CEO, CTIA, to the Honorable Tom Wheeler, Chairman, FCC *et al.*, WC Docket No. 11-42, at 2 (filed June 11, 2015); Reply Comments of CTIA–The Wireless Association®, WC Docket No. 11-42 *et al.*, at 12 n.45 (filed May 10, 2011).

⁶ Lifeline demand has declined from its peak of over \$2.1 billion in 2012 to about \$1.5 billion in 2016, and month-to-date figures for 2017 suggest that this year's total will be under \$1.25 billion. *See Universal Service Monitoring Report*, CC Docket No. 96-45 *et al.*, at 26, Table 2.4 (WCB 2016); USAC 2016 Annual Report at 21 (summing Lifeline quarterly totals); USAC First Quarter 2018 FCC Filing at Table LI-06.

waste, fraud, and abuse.⁷ For example, CTIA supports the proposal in the *NPRM/NOI* to make the Lifeline audit program more effective and efficient. As the Commission itself, CTIA, and a range of parties all have emphasized, however, expeditious implementation of the National Lifeline Eligibility Verifier (National Verifier or Verifier) is the most important thing the Commission can do to limit waste, fraud, and abuse in the Lifeline program. Accordingly, the Commission should remain focused on implementing the National Verifier before considering any further large-scale program reforms.

CTIA also supports the Commission’s goal of promoting incentives for broadband deployment, but the *NPRM/NOI*’s proposal to limit Lifeline support to facilities-based carriers would be counterproductive to this goal.⁸ As detailed in these comments and in the attached Declaration of Professor John Mayo of Georgetown University’s McDonough School of Business,⁹ Mobile Virtual Network Operators (“MVNOs”) presence in the market *increases* incentives for network investment and effectively supports the strong economic foundation for Lifeline’s role as an affordability program to meet the unique needs of low-income consumers.

⁷ See, e.g., *2017 Lifeline NPRM/NOI*, 32 FCC Rcd at 10476 ¶ 1 (noting that the Commission’s *NPRM/NOI* looks to address ongoing waste, fraud, and abuse that undermines the integrity of the Lifeline program and limits its effectiveness); *id.* at 10497 ¶ 60 (noting that the National Verifier is a critical part of improving the integrity of the Lifeline program); *id.* at 10505 ¶ 83 (noting that the Commission must consider ways to continue to fight and prevent waste, fraud, and abuse in the Lifeline program); *id.* at 10506-509 ¶¶ 90-101 (seeking comment on improving program integrity in the eligibility verification).

⁸ As the Commission has noted, “[r]esellers and mobile virtual network operators (MVNOs) do not own any network facilities, but instead purchase mobile wireless services wholesale from facilities-based service providers and resell these services to consumers.” *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act et al.*, Twentieth Report, 32 FCC Rcd 8968, 8976 ¶ 15 (2017) (“*Twentieth CMRS Competition Report*”). In these comments and the attached Declaration, we refer to these providers as non-facilities-based carriers or MVNOs, as contrasted with facilities-based carriers or mobile network operators (MNOs).

⁹ Declaration of John Mayo, (Feb. 19, 2018), *attached at Exh. A* (Mayo Decl.).

Further, the Commission need not limit Lifeline support to facilities-based carriers in order to retain authority to continue Lifeline support for broadband after the Commission's recent efforts to appropriately restore a light-touch regulatory framework to broadband internet access services.¹⁰ As explained below, the Commission has authority to continue requiring the provision of broadband in Lifeline by applying the same legal theory underlying the Commission's *Universal Service Transformation Order*.¹¹ Thus, CTIA strongly encourages the Commission not to adopt the proposal in the *NPRM/NOI* to exclude non-facilities-based providers from the Lifeline program.

Finally, the Commission's Lifeline reform efforts also should continue to facilitate the participation of low-income consumers. To this end, the Commission should eschew limits on Lifeline benefits – such as maximum discount levels or a time limit on Lifeline support – which would undermine the effectiveness of the program. Similarly, the Commission should not adopt a self-enforcing budget mechanism without first assessing how the budget will affect low-income consumers that rely on the program.

Overall, as the Commission moves forward with an agenda intended to close the digital divide, CTIA urges the Commission to recognize that Lifeline, especially wireless Lifeline, remains a critical tool that enables low-income consumers to access 21st Century occupational, educational, health, and public safety benefits.

¹⁰ *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, FCC 17-166, WC Docket No. 17-108, ¶ 193 (rel. Jan. 4, 2018) (*RIF Order*).

¹¹ *See generally Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*Transformation Order*).

II. CTIA SHARES THE COMMISSION’S COMMITMENT TO AN EFFECTIVE AND EFFICIENT LIFELINE PROGRAM, FREE OF WASTE, FRAUD, AND ABUSE

CTIA shares the Commission’s commitment to rooting out waste, fraud, and abuse in the Lifeline program.¹² For this reason, CTIA strongly supports the Commission’s recent efforts to shine a light on program participants who may not adhere to program integrity rules and to adopt significant reforms that greatly enhance the Commission’s ability to limit waste, fraud, and abuse in Lifeline. As Chairman Pai has observed, failure to curb waste, fraud, and abuse causes more than just fiscal detriment; the “American people los[e] confidence in the program” if such problems are not curtailed.¹³ If there are specific providers that are in material violation of the rules, the Commission should continue taking steps to curb those specific entities from program participation. By so doing, the Commission can avoid the unnecessary and counterproductive step of excluding an entire category of providers who are focused on delivering service to low-income.

A. Implementation of the National Verifier Is Essential to the Commission’s Efforts to Ensure Lifeline Program Integrity

Deploying the National Verifier as soon as possible is the most effective way for the Commission to improve Lifeline’s integrity. The Commission and other stakeholders have repeatedly acknowledged that the National Verifier will provide robust protection against waste,

¹² See generally *2017 Lifeline NPRM/NOI*, 32 FCC Rcd at 10505 ¶ 83 (explaining that “it is incumbent on the Commission to consider ways we can continue to fight and prevent waste, fraud, and abuse in the program”).

¹³ *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7954 (2015) (Dissenting Statement of Commissioner Pai).

fraud, and abuse in the Lifeline program.¹⁴ As Chairman Pai recently noted to Representative Matsui, “I remain confident that the launch of the National Verifier will be a major step in rooting out waste, fraud, and abuse in the program.”¹⁵ And as the Government Accountability Office (“GAO”) explained, “the transition to a National Verifier ... should help data quality concerns in the future and mitigate potential fraud,”¹⁶ including by “address[ing] weaknesses in the eligibility-determination process.”¹⁷ Unfortunately, deployment of the Verifier was recently delayed due to shortcomings in the software’s ability to protect consumer data.¹⁸ Getting the deployment timeline back on track is the surest way for the Commission to advance the common goal of ensuring Lifeline program integrity.

B. The Commission Should Positively Encourage States to Participate in the National Verifier

As the *NPRM/NOI* notes, given that the “National Verifier is a critical part of improving the integrity of the Lifeline program” it is “important all states join the National Verifier in a

¹⁴ See, e.g., *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4007 ¶ 128 (2016) (*2016 Lifeline Order*) (“The Commission’s key objectives for the National Verifier are to protect against and reduce waste, fraud, and abuse; to lower costs to the Fund and Lifeline providers through administrative efficiencies; and to better serve eligible beneficiaries by facilitating choice and improving the enrollment experience.”).

¹⁵ Letter from Chairman Ajit V. Pai, FCC, to Hon. Doris Matsui, U.S. House of Reps., at 2 (Jan. 31, 2018), https://apps.fcc.gov/edocs_public/attachmatch/DOC-349106A1.pdf.

¹⁶ U.S. GOV’T ACCOUNTABILITY OFF., GAO 17-538, TELECOMMUNICATIONS: ADDITIONAL ACTION NEEDED TO ADDRESS SIGNIFICANT RISKS IN FCC’S LIFELINE PROGRAM 47 (2017).

¹⁷ *Id.* at 63.

¹⁸ *Wireline Competition Bureau Announces Postponement of Initial Launch Date of the National Lifeline Eligibility Verifier*, Public Notice, DA 17-1167, WC Docket No. 11-42, at 1 (WCB rel. Dec. 1, 2017) (“the launch of the National Lifeline Eligibility Verifier ... originally scheduled for six initial states in December 2017, will be postponed”).

timely manner.”¹⁹ Encouraging states to work cooperatively with the Commission and the Universal Service Administrative Company (USAC) to integrate their state databases into the National Verifier without delay is essential to its success, and therefore to the Commission’s efforts to ensure the Lifeline program’s integrity. Thus, the Commission is right to find ways to encourage states to integrate their databases with the Verifier.

This encouragement can and should proceed along as many lines as the Commission can identify. For example, the Commission should encourage state participation in the Verifier by positively highlighting the states that participate, and the best practices that improve the Lifeline program’s effectiveness. Further, the Commission should educate state leaders and policymakers about how the Verifier will help enhance Lifeline program integrity. The *NPRM/NOI*’s contemplated benchmarks and timelines may provide a useful starting point for such dialogues, especially around the process of integrating state databases with the Verifier.²⁰ By positively highlighting state participation in the Verifier, the Commission can best ensure that consumers and policymakers understand how the Verifier ensures contributions to the federal Universal Service Fund are used appropriately to support low-income consumers’ access to essential communication services.

C. Risk-Based Auditing and NLAD Oversight Are More Likely to Improve Lifeline Program Integrity Than Excluding Non-Facilities Based Providers

In addition to ensuring prompt deployment of the National Verifier, the Commission should pursue the *NPRM/NOI*’s proposals to create a more efficient and effective auditing system, and to enhance oversight of the National Lifeline Accountability Database (NLAD). Specifically, CTIA supports the proposal for a risk-based approach to auditing Lifeline

¹⁹ *2017 Lifeline NPRM/NOI*, 32 FCC Rcd at 10497 ¶ 60.

²⁰ *Id.* at 10497 ¶ 61.

participants, as opposed to the current mandatory auditing process.²¹ A risk-based approach would be more effective and efficient than the current system, targeting the Commission, USAC and provider auditing resources towards providers with a higher risk profile (such as experience complying with the Lifeline program rules and previous history of non-compliance). The current mandatory auditing process subjects participating providers with clean compliance histories to unnecessary audits, which divert limited USAC and Commission resources from shining a light on truly bad actors. Given that audits are generally a strong element of enhancing program integrity, CTIA appreciates the Commission's efforts to make the Lifeline audit program as effective as possible.

Further, CTIA supports consideration of steps to enhance the oversight of the eligibility verification process in the NLAD.²² As CTIA has noted regarding Lifeline databases, it is important that participating providers have the capability to enroll customers in as close to real-time as possible. Thus, the Commission's explorations of this topic should ensure that Lifeline customers can continue to obtain service in a timely fashion, while enhancing program integrity.

Other proposals in the *NPRM/NOI* are less likely to effectively enhance program integrity than those discussed above. In particular, the fact that MVNOs have attracted the most oversight attention within the Lifeline program does not *ipso facto* support the proposal to entirely exclude non-facilities-based carriers from participating in Lifeline.²³ Rather, the increased attention is

²¹ See generally *id.* at 10505-06 ¶¶ 84-89.

²² See, e.g., *id.* at 10507-08 ¶¶ 95-96 (seeking comment on NLAD dispute resolution).

²³ The *NPRM/NOI* observes “the vast majority of the Commission actions revealing waste, fraud, and abuse in the Lifeline program over the past five years have been against resellers, not facilities-based providers. And the proliferation of Lifeline resellers in 2009 corresponded with a tremendous increase in households receiving multiple subsidies under the Lifeline program.” *Id.* at 10499 ¶ 68.

consistent with MVNOs' role in serving a majority of low-income consumers, including Lifeline subscribers, through service offerings that are designed to meet unique needs.²⁴ Further, recent GAO reports have not found that non-facilities-based providers are the cause of waste, fraud, or abuse in the Lifeline program – rather, GAO's 2015 report noted that, when the Commission allowed non-facilities based providers to enter the market, the Lifeline program lacked robust internal controls.²⁵

Moreover, as CTIA and others previously noted, the Commission did not adopt a prohibition on multiple Lifeline subsidies to a single Lifeline customer until 2011 and to a household until 2012.²⁶ Even after the rule's adoption and before implementation of the NLAD, Lifeline providers were not able to ensure compliance because they were not able to determine whether another provider was providing Lifeline support to the same household.²⁷ With the implementation of the NLAD, participating providers, including MVNOs, were provided the tools and resources to comply with the Commission's one-per-household rule.²⁸

²⁴ During the peak month of 2015 (the last year for which FCC data are available), 13,277,102 subscribers took part in the Lifeline program; the average total subscribership for the same year across *all months* served by non-facilities based providers totaled 12,509,000. *See Universal Service Monitoring Report*, CC Docket No. 96-45 et al., at 28 Table 2.6, 30 Table 2.8 (WCB 2016).

²⁵ U.S. GOV'T ACCOUNTABILITY OFF., GAO-15-751, TELECOMMUNICATIONS: FCC SHOULD EVALUATE THE EFFICIENCY AND EFFECTIVENESS OF THE LIFELINE PROGRAM 8 (2015).

²⁶ *Lifeline and Link Up Reform and Modernization et al.*, Report and Order, 26 FCC Rcd 9022, 9026-7 ¶ 8 (2011) (limiting Lifeline to one connection per customer); *Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6687-89 ¶¶ 69-74 (2012) (*2012 Lifeline Reform Order*).

²⁷ *See, e.g.*, Comments of CTIA–The Wireless Association®, WC Docket No. 11-42 et al., at 13-14 (filed Apr. 11, 2011) (explaining that the Commission had not to that time “actually adopt[ed]” a “‘one-per-household’ rule,” and explaining that the “adoption of a ‘one-per-residence’ rule would [also] create a new substantive requirement”).

²⁸ *2012 Lifeline Reform Order*, 27 FCC Rcd at 6734 ¶ 179.

For these reasons, CTIA supports the Commission’s efforts to enhance Lifeline program integrity through targeted and discrete improvements to auditing and to NLAD oversight, rather than through a more sweeping limitation on support to non-facilities-based providers as proposed in the *NPRM/NOI*.

III. A LIFELINE PROGRAM THAT INCLUDES NON-FACILITIES BASED PROVIDERS INCENTS BROADBAND DEPLOYMENT

As noted above, CTIA supports the Commission’s goal of closing the digital divide by incenting broadband deployment, but the *NPRM/NOI*’s proposal to limit Lifeline support to facilities-based carriers will likely prove counterproductive to this goal. As Dr. Mayo explains, the presence of MVNOs in the market creates greater incentives for broadband deployment.²⁹ And Lifeline’s role as an affordability program, rather than a deployment program, possesses a strong economic foundation – one grounded in the need to meet the unique needs of low-income consumers, which MVNOs have effectively served.³⁰

Further, the Commission need not limit Lifeline support to facilities-based carriers in order to retain authority to continue Lifeline support for broadband after the Commission’s recent efforts to appropriately restore a light-touch regulatory framework to the broadband internet access services.³¹ Specifically, the same legal grounds that underlay the agency’s pre-reclassification *Universal Service Transformation Order*³² – which, as noted *supra*, was affirmed by the Tenth Circuit³³ – supports the Commission’s authority to continue requiring the provision

²⁹ Mayo Decl. at 13.

³⁰ *Id.* at 9.

³¹ *See generally RIF Order.*

³² *See generally Transformation Order.*

³³ *See generally In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

of broadband in Lifeline, regardless of whether those broadband services are offered by facilities based or non-facilities based carriers. Thus, CTIA strongly encourages the Commission not to adopt the proposal in the *NPRM/NOI* to exclude non-facilities-based providers from the Lifeline program.

A. Non-Facilities Based Mobile Wireless Providers Increase Competition in Lifeline and Lower Prices for Consumers

As detailed below, low-income consumers disproportionately value mobile wireless access, and non-facilities-based providers have been particularly effective at meeting low-income consumers' needs. As a result, the Commission proposal to remove non-facilities-based carriers from Lifeline would more likely have negative impacts on competition and harm low-income consumers.

As wireless services have increased in importance to all Americans, they have become even more beneficial to low-income Americans – especially for diverse and/or underserved communities. According to the U.S. Government's most recent data, adults living in poverty (67.5 percent) and near poverty (61.6 percent) were significantly more likely than higher income adults (48.5 percent) to be living in households with only wireless telephones.³⁴ Similarly, the critical dependence among vulnerable populations on wireless connectivity was demonstrated by the Pew Research Center's finding that last year, one-fifth of adults living in households earning less than \$30,000 a year were "smartphone-only" internet users – a 12 percent increase from

³⁴ Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2017*, NAT'L CENT. FOR HEALTH STATS. (Dec. 2017), <https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf>.

2013.³⁵ Pew also noted that “lower-income smartphone owners were especially likely to use their mobile device when seeking out and applying for jobs.”³⁶

The Commission’s Lifeline program has appropriately evolved to reflect these marketplace and technological shifts.³⁷ Wireless has brought robust innovation and effective competition to the Lifeline program, while simultaneously increasing the efficiency and value of Lifeline-supported services available to low-income consumers. By participating in Lifeline, non-facilities-based wireless providers have focused offerings on low-income consumers’ needs, including developing marketing and outreach targeted to the needs of low-income communities. Since non-facilities-based providers began providing Lifeline services, program awareness and participation by low-income participants has increased, making the program more effective at achieving its goals. In only one year following the Commission’s *2016 Lifeline Order*,³⁸ almost 70 percent of nine million eligible low-income subscribers were receiving Lifeline-supported broadband services, including mobile wireless broadband, that met the FCC’s minimum service standards.³⁹

³⁵ Monica Anderson, *Digital Divide Persists Even as Lower-Income Americans Make Gains in Tech Adoption*, PEW RESEARCH CTR. (Mar. 22, 2017), <http://www.pewresearch.org/fact-tank/2017/03/22/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>.

³⁶ *Id.*

³⁷ The services supported by universal service reflect an “evolving level of service” which today encompasses mobile wireless service. 47 U.S.C. § 254(c)(1).

³⁸ *See generally Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (*2016 Lifeline Order*).

³⁹ UNIV. SERVICE ADMIN. Co., HIGH COST & LOW INCOME COMMITTEE BRIEFING BOOK 137 (2017), available at <http://www.usac.org/res/documents/about/pdf/bod/materials/2017-07-24-hcli-briefing-book.pdf>.

Indeed, the Commission’s Universal Service Monitoring Report shows that, for the decade from 2007-2016, telephone subscribership in lower income tiers increased by a significantly higher percentage than did overall subscribership or subscribership in higher-income tiers. Specifically, overall subscribership increased from 94.6 percent to 96.4 percent (1.8 percentage points), and subscribership among households with incomes above \$40,000 only increased from 97.9 percent to 98 percent (one tenth of a percentage point). Meanwhile, subscribership among households with incomes below \$10,000 increased from 88.4 percent to 93.2 percent (4.8 percentage points), and in households in the \$10,000-19,000 income range, from 94.1 percent to 96.4 percent (2.3 percentage points).⁴⁰ Notably, this time period correlates with the entry of non-facilities based wireless providers into the Lifeline marketplace.

Given these demonstrable benefits to low-income consumers and the competition that has resulted from the entry of non-facilities-based carriers in the Lifeline marketplace, the Commission’s proposal to exclude non-facilities-based carriers is unlikely to further competition among “multiple competing facilities-based networks” in the Lifeline market that could “help to lower prices for consumers.”⁴¹ As Dr. Mayo notes in the attached declaration, “MVNOs and other resellers throughout the economy have been shown to promote economic efficiency, invigorate competition, drive price reductions and satisfy the nuanced need of consumers that would otherwise go unfulfilled.”⁴² Dr. Mayo also notes that the NPRM/NOI’s proposal to exclude non-facilities-based carriers from Lifeline runs counter to the “widely agreed-to

⁴⁰ See Universal Service Monitoring Report, CC Docket No. 96-45 *et al.*, at 48 Table 6.2 (2016).

⁴¹ 2017 Lifeline NPRM/NOI, 32 FCC Rcd at 10498 ¶ 65.

⁴² Mayo Decl. at 4 ¶ 12.

economic principles” that “an efficient Lifeline program requires that both the collection and distribution of the subsidy be competitively neutral.”⁴³

Thus, it is clear that those Americans most in need of Lifeline’s support for connectivity rely predominantly on and benefit from innovative and competitive mobile wireless services – and non-facilities based wireless providers have played, and continue to play, a critical role in offering such services to those low-income Americans most in need.

B. Low Income Consumers Ability to Choose MVNO Services to Meet their Needs Incent Network Deployment by Connecting More Consumers to Facilities-Based Providers’ Networks

CTIA supports the Commission’s goal of closing the digital divide by incentivizing broadband deployment, but the *NPRM/NOI*’s proposal to limit Lifeline support to facilities-based carriers will likely work against this goal. As Dr. Mayo’s attached declaration makes clear, increased subscribership among low-income consumers via MVNOs actually increases investment by facilities-based providers, particularly in rural areas.

Dr. Mayo notes that “MVNO customers are likely to cause greater utilization of the facilities-based carriers’ networks than if the facilities-based carriers were to solely provide the services themselves”⁴⁴ In particular, Dr. Mayo’s analysis shows that MVNOs have targeted value-oriented consumers such as low-income consumers⁴⁵ and that “MVNOs enjoy their largest market presence in lower per-capita income, rural states.”⁴⁶ Most significantly, Dr. Mayo’s econometric analysis shows that, “[a]cross seven different models that I estimated, and after

⁴³ *Id.* at 11 ¶ 25.

⁴⁴ Mayo Decl. at 10 ¶ 12.

⁴⁵ *See, e.g., id.* at 6 ¶¶ 15-16.

⁴⁶ *Id.* at 6 ¶ 15.

controlling for other determinants of investment (e.g., GDP growth), the impact in each case is that greater MVNO activity (as measured by MVNO subscribers) is to increase investment.”⁴⁷

As a result, Dr. Mayo concludes that “the proposal’s plan to eliminate MVNOs’ ability to collect Lifeline support and the consequent harm to their subscriber bases will cause results that are precisely the opposite of those intended in the NPRM.”⁴⁸

The *NPRM/NOI* suggests that Lifeline can create deployment incentives by making service more affordable, thereby creating incentives for deployment,⁴⁹ but facilities-based providers receive revenue whenever Lifeline customers take service, including via non-facilities based providers. The *NPRM/NOI*’s suggestion that “ensuring that facilities-based carriers receive 100 percent of the support” will provide a better incentive for investment is not supported by Dr. Mayo’s analysis of the relevant data.⁵⁰ Specifically, Dr. Mayo’s economic analysis demonstrates that MVNO subscribership is more consistently seen to have a statistically significant positive correlation to network investment.⁵¹

Further, the *NPRM/NOI*’s suggestions that limiting Lifeline support to facilities-based providers will “improve the business case for deploying facilities to serve low-income households” is also not supported by Dr. Mayo’s analysis. Rather, the analysis in the attached declaration demonstrates that non-facilities based providers are effectively targeting the low-income market segment and that the revenue from non-facilities-based provider business

⁴⁷ *Id.* at 12 ¶ 27.

⁴⁸ *Id.*

⁴⁹ *2017 Lifeline NPRM/NOI*, 32 FCC Rcd at 10498 ¶ 65.

⁵⁰ *Id.* at 10486 ¶ 28; *but see*, Mayo Decl. at 12 ¶¶ 26-27.

⁵¹ Mayo Decl. at 16-18, Appendix, Table A3: Regression Results.

increases investment by facilities-based providers. As Dr. Mayo states, all seven different econometric models showed that the impact of “greater MVNO activity (as measured by MVNO subscribers) is to increase investment.”⁵²

Notably, Dr. Mayo’s analysis also shows that the non-facilities based providers actually serve the highest share of low-income mobile wireless subscribers per state in predominately rural states – Arkansas, Maine, West Virginia, Kansas, Vermont, Montana, Kentucky and South Dakota.⁵³ Moreover, Lifeline supported services offered by non-facilities-based providers drives investment by facilities-based providers in the rural areas of these states.⁵⁴

Ultimately, Dr. Mayo’s analysis shows that the data on network investment do not support limiting subsidies to facilities-based providers and excluding non-facilities based providers in order to further incent deployment. In light of the economic evidence, the Commission should conclude that, in order to avoid undermining investment in broadband networks, it must continue to allow non-facilities based providers to participate in Lifeline.

C. MVNO Participation Enables Lifeline to Fulfill Its Role as an Affordability Program

The *NPRM/NOI* suggests that “Lifeline support will best promote access to advanced communications services if it is focused to encourage investment in broadband-capable networks.”⁵⁵ Yet, there are solid economic and legal reasons to retain Lifeline’s role as an affordability program.

⁵² *Id.* at 12 ¶ 27.

⁵³ *Id.* at 13, Table A1: MVNO Presence, by State (Mid-Year 2016).

⁵⁴ *Id.* at 14, Table A2: Economic and Demographic Characteristics of MVNO-Intensive States.

⁵⁵ *2017 Lifeline NPRM/NOI*, 32 FCC Rcd at 24 10498 ¶ 65.

From an economic perspective, as Dr. Mayo notes: “[W]hile encouraging investment in broadband network deployment also serves as a legitimate economic goal, the Commission’s proposal to shoehorn investment-promotion into the Lifeline program is inconsistent with Lifeline’s economic role as an affordability program and ignores the fact that a variety of other policy tools apart from Lifeline are both available to, and better-suited for, the Commission to advance broadband investment.”⁵⁶ Among other programs, the Commission’s Connect America Fund (CAF) and the Mobility Fund have been specifically designed to defray the cost of deploying networks in areas where the costs of deployment are high, or where market forces have otherwise not encouraged deployment. In contrast, as Dr. Mayo notes, “[t]he roots of the Lifeline program spring from the economic observation that absent a subsidy, some individuals will not subscribe to the communications network even though the value to society of their subscription exceeds the costs associated with their subscription.”⁵⁷ Thus, the economic theories that complement the Commission’s use of specifically-tailored tools for the legitimate goal of communications network deployment also supports the Commission maintaining Lifeline as a specifically-tailored tool to address the separate and critical aim of making essential communications services more affordable to low-income Americans.

From a legal perspective, the Commission’s precedent bears out Lifeline’s emphasis on affordability. The Commission created the Lifeline program during President Reagan’s tenure as a response to the implementation of the Subscriber Line Charge (SLC), in order to ensure the new federal charge did not undermine low-income consumers’ ability to afford service.⁵⁸ The

⁵⁶ Mayo decl. at 9 ¶ 19.

⁵⁷ *Id.* at 6 ¶ 17.

⁵⁸ *See, e.g., MTS and WATS Market Structure*, Recommended Decision and Order, 59 Rad. Reg. 2d 551 (1985).

Commission has subsequently affirmed the program’s focus on affordability on a number of occasions.⁵⁹ Indeed, it was the legal importance of providing affordability-based support that underlay in part the Commission’s 2005 bipartisan conclusion to forbear, for non-facilities based providers seeking to provide Lifeline, from the general requirement that universal service recipients must provide service “at least in part” using their own facilities.⁶⁰ The Commission

⁵⁹ See, e.g., *Federal-State Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8993 ¶ 406 (1997) (*First USF Order*) (“the “Federal Lifeline and Link Up programs ... were designed to make residential service more affordable for low-income consumers”); *Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Further Notice of Proposed Rulemaking, 14 FCC Rcd 21177, 21228 ¶ 125 (1999) (the Lifeline is “intended to make service more affordable”); *Access Charge Reform et al.*, Sixth Report and Order, Report and Order, Eleventh Report and Order 15 FCC Rcd 12962, 13056 ¶ 216 (2000) (Adopting corresponding increases to Lifeline support after increasing the SLC as part of the Coalition for Affordable Local and Long Distance Service (CALLS) and Multi-Association Group (MAG) Plans, because “[w]ithout such an increase in Lifeline support, the CALLS Proposal would negatively and disproportionately affect low-income subscribers by increasing the cost of basic telephone service”); *Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305 ¶¶ 1-2 (2004) (Lifeline “ensures that quality telecommunications services are available to low-income consumers at just, reasonable, and affordable rates”; modifying the program “to make telephone service affordable for more low-income households,” “consistent with the statutory goals of maintaining affordability and access of low-income consumers to supported services, while ensuring that support is used for its intended purpose.”); *Sacred Wind Communications and Qwest Corporation et al.*, Order, 21 FCC Rcd 9227, 9240 ¶ 27 (WCB 2006) (“The Commission’s Lifeline and Link-Up programs are designed to ensure that telephone service is affordable to low-income consumers by providing universal service funds to reduce the price consumers pay for basic telephone service and initial telephone installation.”); Press Release, FCC Reforms Lifeline Program to Eliminate Waste & Ensure Fiscal Responsibility, News Release (June 21, 2011) (“the “purpose of the Lifeline program is to help low-income Americans access affordable phone service”); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion et al.*, Eighth Broadband Progress Report, 27 FCC Rcd 10342, 10408 ¶ 148 (2012) (Lifeline is “a universal service program that seeks to fulfill Congress’s mandate to ensure the availability of communications to all Americans” that has “helped tens of millions of low-income Americans afford basic phone service.”).

⁶⁰ *Petition of TracFone Wireless, Inc. for Forbearance et al.*, Order, 20 FCC Rcd 15095, 15102 ¶ 14 (2005) (emphasis added). It is notable that, in forbearing from the facilities requirement, the Commission under Chairman Martin specifically rejected the argument that a non-facilities-based provider cannot use Lifeline support for the facilities and services for which it was

under then-Chairman Martin concluded forbearance was warranted in part because where “the wireless reseller is forgoing all universal service support but Lifeline ... the facilities requirement is unnecessary to preserve the integrity of the universal service program or the fund.”⁶¹ Given the state of the record and the data discussed in these comments, the Commission should not reverse past findings that the public interest is served by forbearance from the facilities requirement in order to permit MVNOs to participate in the Lifeline program.

In sum, the Lifeline program’s important role in ensuring that essential communications services are affordable for low-income consumers rests on solid economic and precedential footing, and the public interest would not be served by reconstituting Lifeline as a deployment program.

D. Excluding MVNOs from the Program is Unnecessary to Enable Lifeline to Continue Support for Broadband

The Commission need not limit Lifeline support to facilities-based carriers as proposed in the *NPRM/NOI* in order to safeguard the Commission’s authority to continue Lifeline support for broadband following the Commission’s recent efforts to appropriately restore a light-touch regulatory framework to broadband internet access services.⁶² In expanding Lifeline to include broadband service in 2016, the Commission relied in part upon its then-recent decision to reclassify broadband as a telecommunications service.⁶³ However, this reliance is not necessary; judicial and Commission precedent alike demonstrate that the FCC has ample authority to move

intended, as long as it is used to reduce the price for a qualifying low-income consumer. *Id.* at 15105-106 ¶ 26.

⁶¹ *Id.*

⁶² *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, FCC 17-166, WC Docket No. 17-108, ¶ 193 (rel. Jan. 4, 2018) (*RIF Order*).

⁶³ *2016 Lifeline Order*, 31 FCC Rcd at 3975-76 ¶ 39.

forward with requirements that advance low-income consumers’ access to affordable broadband services. This is particularly true in light of the Commission’s correct recognition in 2017’s *Restoring Internet Freedom Order* that broadband service is an information service.⁶⁴

In the 2011 *Transformation Order*, when broadband was treated as an information service, the Commission created the CAF program – which included as a central feature rules requiring recipients to provide broadband service.⁶⁵ Voice remained the supported service, but broadband deployment obligations were imposed as a condition of receiving support.⁶⁶ In upholding this approach, the Tenth Circuit held that:

[N]othing in subsection (c)(1) expressly or implicitly deprives the FCC of authority to direct that a USF recipient, which necessarily provides some form of “universal service” and has been deemed by a state commission or the FCC to be an eligible telecommunications carrier under 47 U.S.C. § 214(e), use some of its USF funds to *provide services* or build facilities related to services that fall outside of the FCC’s current definition of “universal service.”⁶⁷

This is also the approach that the Commission took in 2012, when it concluded that “voice telephony” was the service supported for Lifeline.⁶⁸ In that item, the Commission also concluded that all eligible telecommunications carriers (ETCs), including resellers, could apply

⁶⁴ See generally *RIF Order* at 8-42 ¶¶ 21-64 (rel. 2018).

⁶⁵ *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17709-848 ¶¶ 115-567 (2011) (*Transformation Order*).

⁶⁶ See generally *id.* at 17709 ¶¶ 115-20.

⁶⁷ *In re FCC 11-161*, 753 F.3d at 1047 (10th Cir. 2014) (emphasis added).

⁶⁸ *2012 Lifeline Reform Order*, 27 FCC Rcd at 6678-80 ¶¶ 47-50. At that time, the Commission also noted that, consistent with its conclusion in the *Transformation Order*, “voice telephony may be provisioned over broadband (IP-enabled) networks.” *Id.* at 6678 ¶ 47.

the Lifeline discount to any service plan that included supported voice telephony service, including bundled packages with broadband.⁶⁹

Thus, the Commission need not restrict Lifeline support to facilities-based providers in order to align the Lifeline rules with the *RIF Order*. Rather, the Commission can and should simply retain its 2012 definition of “voice telephony service” as the Lifeline-supported service, and its 2016 rules requiring all Lifeline providers to offer broadband. In doing so, the Commission need not adopt the proposal in the *NPRM/NOI* to exclude non-facilities-based providers from the Lifeline program in order to retain Lifeline support for broadband services.

IV. THE LIFELINE PROGRAM SHOULD BE DESIGNED TO MAXIMIZE ELIGIBLE LOW-INCOME CONSUMER PARTICIPATION

A. Any Lifeline Budget Mechanism Should Be Designed to Ensure Eligible Low-Income Consumers Can Receive Lifeline Support

The *2017 Lifeline NPRM/NOI*'s approach to a potential Lifeline budget focuses solely on operational questions from the perspective of the fund.⁷⁰ However, as the Commission has recognized, the most important and challenging aspect of formulating a Lifeline budget cap is how to do so without significantly undermining the program's availability to low-income consumers when they need it most.⁷¹

⁶⁹ *Id.* at 6792 ¶ 315.

⁷⁰ *See, e.g., 2017 Lifeline NPRM/NOI*, 32 FCC Rcd at 10511 ¶¶ 106-07 (seeking comment on a six-month time horizon for operation of the budget and proposing to reduce payments to carriers under two potential scenarios if the budget is reached); *id.* at 10512 ¶ 109 (seeking comment “on the appropriate initial amount for the cap”).

⁷¹ *See, e.g., Lifeline and Link Up Reform and Modernization et al.*, Notice of Proposed Rulemaking, 26 FCC Rcd 2770, 2817-18 ¶ 144 (2011) (“We recognize that demand for low-income support fluctuates based on a number of factors, including changes in qualifying assistance programs and macroeconomic conditions. We also note that the program has an ultimate cap in that only a defined population of eligible low-income households may participate in the program.... We seek comment generally on how to balance these principles, while retaining our commitment to enabling households in economic distress to obtain access to

It is unclear from the *NPRM/NOI* whether the Commission expects that the impact of the cap, if triggered, would be to reduce benefits to all Lifeline beneficiaries (i.e., lower the Lifeline support amount), to preclude the enrollment of new Lifeline subscribers, or both. Either approach, however, raises concerns. Reducing benefits could put essential communications services out of reach for millions of eligible low-income consumers and create uncertainty for low-income families trying to live on very tight budgets. Limiting enrollment once the program nears the cap level would unfairly preclude eligible low-income consumers from harnessing Lifeline to access essential communications services to meet their health, occupational or educational needs. In addition, the Commission should ensure that a budget does not deter providers from participating and competing in the Lifeline program due to the uncertainty of whether support will be available to continue serving eligible low-income consumers.

For these reasons, the Commission should not adopt a self-enforcing budget mechanism for Lifeline without first grappling with the impact of such a cap on Lifeline consumers and providers.

B. Adopting a “Maximum Discount Level” Could Negatively Affect Low-Income Consumers Who Rely on Lifeline

Similarly, the proposal to adopt a “maximum discount level” would make Lifeline less accessible to the lowest-income consumers.⁷² The Commission has previously concluded that requiring low-income consumers to pay a minimum charge for service creates difficulties for particularly hard-hit communities such as the un-banked. As the Commission noted, “[e]ven a

essential communications services.” (internal citations omitted)); *see also id.* at 2818 ¶ 145 (seeking comment on “whether and how a capped fund could continue to ensure telephone access for low-income households and support potential expansion for broadband” (internal citations omitted)); *id.* at 2818-19 ¶¶ 146-149 (seeking comment on other possible consumer impacts from a cap).

⁷² 2017 *Lifeline NPRM/NOI*, 32 FCC Rcd at 10512-14 ¶¶ 112-16.

minimal one-time fee could be a significant barrier for many of the intended recipients of the program.”⁷³ The *NPRM/NOI*’s suggestion that some Lifeline customers “do not value or may not ever realize they are purportedly receiving a Lifeline-support service”⁷⁴ is inconsistent with the program’s minimum usage requirements – if customers do not use the service, they will be de-enrolled from Lifeline.⁷⁵ For these reasons, the Commission should not adopt a “maximum discount level” without first considering the impact such rules would have on Lifeline consumers.

C. Time Limits on Lifeline Benefits Would Reduce Lifeline’s Utility to Beneficiaries

Finally, the *NPRM/NOI*’s proposal to consider limits on the amount of time that consumers can receive Lifeline benefits⁷⁶ would not serve the program’s goals, and is inconsistent with the program’s re-certification requirements. Consumers’ participation in the program already is limited by their ability to qualify as a low-income consumer – if consumers no longer meet the low-income eligibility criteria, they must be de-enrolled. Thus, when they no longer need the support, they no longer will qualify for it. An arbitrary time limit on Lifeline benefits appears inconsistent with the goal of making service more affordable for eligible low-income Americans.

⁷³ 2012 *Lifeline Reform Order*, 27 FCC Rcd at 6773-74 ¶ 268.

⁷⁴ 2017 *Lifeline NPRM/NOI*, 32 FCC Rcd at 10513-14 ¶ 114.

⁷⁵ 47 C.F.R. § 54.405(e)(3).

⁷⁶ 2017 *Lifeline NPRM/NOI*, 32 FCC Rcd at 10519 ¶¶ 130-31.

V. CONCLUSION

CTIA supports the Commission's efforts to close the digital divide, particularly through the use of mobile wireless technologies in the Lifeline program, while also eliminating waste, fraud, and abuse by fully and swiftly implementing the National Verifier. At the same time, CTIA encourages the Commission to (1) decline proposals to eliminate non-facilities-based mobile wireless providers from the Lifeline program, and (2) seek administrative reforms that maximize eligible low-income consumers' participation in the Lifeline program, in keeping with the above comments.

Respectfully submitted,

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February 21, 2018