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

Opening Comments On the Notice of Proposed Rulemaking and Notice of Inquiry by Low-Income Consumer Advocates:

Advocates for Basic Legal Equality
Benton Foundation
Center for Accessible Technology
Center for Rural Strategies
Common Cause
Community Legal Services of Philadelphia
Consumers Union
East Bay Community Law Center
Georgia Watch
Low Income Utility Advocacy Project
Media Alliance
NAACP
National Consumer Law Center, on behalf of its low-income clients
New Jersey SHARES, Inc.
Open Access Connections
Pennsylvania Utility Law Project, on behalf of our low-income clients
Pro Seniors
Public Citizen
Public Knowledge
Public Utility Law Project of New York, Inc.
Texas Legal Services Center
United Church of Christ, Office of Communication, Inc.

Olivia Wein
Telecom Project Lead Attorney
National Consumer Law Center
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036-5528
(202)452-6252, x 103
owein@nclc.org

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I. Introduction

Lifeline is a well-established federal low-income assistance program that has been around since 1985. Lifeline originally started as a low-income subsidy to help consumers afford local voice service, but was expanded to include wireless service soon after Hurricane Katrina. In recent years, the Lifeline program has undergone rigorous overhauls to improve program integrity as well as modernization to cover broadband internet. Lifeline helps low-income households afford voice and broadband service in every state and territory. Lifeline is designed to give consumers a choice between approved voice-only service, broadband-only service, or a bundled voice and data service from approved wireline (e.g., copper or fiber line to the home) or wireless companies. In order for a service to qualify as a Lifeline product, the service must meet approved minimum standards that become more robust over time. The service providers must also be approved by the State Public Utility Commission or the Federal Communications Commission ("Commission") to participate in Lifeline as an Eligible Telecommunications Carrier ("ETC").

On November 16, 2017, the Federal Communications Commission ("Commission") adopted a multi-part Lifeline item that included a Notice of Proposed Rulemaking and Notice of Inquiry[1] ("NPRM" and "NOI") as part of its "fresh look at how the . . . Lifeline program can effectively and efficiently help close the digital divide for low-income consumers."[2] The closing of the digital divide is a priority for the Low-Income Consumer Advocates who have joined together in responding to issues raised in this NPRM and NOI. Affordable broadband is critical for equal opportunity and engagement in modern society. At the same time, access to voice service is essential for reaching emergency service, and it also remains an important means of staying connected to friends, family, work, healthcare, schools, and services.

The Low-Income Consumer Advocates are organizations that are committed to a strong Lifeline program and the descriptions of the Low-Income Consumer Advocates are provided in Appendix A.

II. Executive Summary

Lifeline voice service, alone or as a part of a voice/data bundle, remains a crucial and popular Lifeline option for consumers. Over 8.5 million Lifeline households have chosen Lifeline service where voice is included as part of a bundle or as a stand-alone product.[3] Consumers rely on voice service to contact emergency services. This is life-saving for victims of domestic violence. Voice service is important for job seekers, as it provides the ability to be reached by a prospective employer. The advent of modern just-in-time scheduling practices makes voice and data access essential for workers and their employers; it enables real-time notice of changes in shift times as well as the availability to earn additional money by picking up additional shifts.

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[1] In the Matter of Bridging the Digital Divide, *et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 17-287, 11-42, 09-197, FCC 17-155 (Rel. Dec.1, 2017)("NPRM" and "NOI").
[2] NPRM at ¶1.
[3] USAC, Lifeline Business Update, *Lifeline Subscribership by Service Type (Broadband Uptake)*, p. 4 (Oct. 23, 2017) (data as of August 2017).

Voice service is important for parents and educators, as it enables the school to reach parents if a child is sick, facilitates parent-teacher communications, and provides notices of school closings or events. Having voice and texting capability is also important for ad hoc childcare arrangements, particularly when job shifts and school schedules can change suddenly with extreme weather events. Localities rely on emergency notifications to cell phones to push out important, lifesaving alerts. Having a reliable and unchanging phone number allows case workers and doctors to reach families and individuals to access care. Access to affordable voice service facilitates important services like suicide-prevention, domestic violence, sexual assault, and other crisis and intervention hotlines. These communication capabilities are vital for all low-income households and communities and the economy, regardless of whether poor consumers live in urban or rural areas.

Access to broadband, along with voice, is as essential for access to opportunity as electricity was in the last century. For those with the resources to afford broadband service, broadband integration in modern life has been nearly ubiquitous. Broadband has transformed how children are taught in schools and do homework, how students apply to college though the common application,[4] and how they apply for financial aid[5]. Broadband also opens the doors to continuing educations (online reference materials, e-books, distance learning, video conferencing study groups, webinar trainings). Broadband has transformed the delivery of healthcare, has had a profound impact on how we engage in commerce, and has radically changed daily life. As more aspects of modern life move online, the harmful effects of digital exclusion increase.

The Low-Income Consumer Advocates were pleased with the adoption of the Lifeline Modernization Order in March 2016[6], which balanced the inclusion of quality voice and broadband service with rigorous program integrity measures. The 2016 Order was transformative regarding program design, and kept the disruption to the Lifeline program administration to a minimum while achieving improved efficiency, accountability, and transparency, and improving consumer protections and consumer control of their Lifeline service. However, the Low-Income Consumer Advocates are deeply concerned about the introduction of potentially destabilizing program changes in this current NPRM and NOI, particularly since they are offered before measures like the National Verifier have had a chance to rollout to all the states.

Summary of Low-Income Consumer Advocates' Recommendations:

The NPRM and NOI cover a broad area of issues, and our comments focus on a core set of interrelated recommendations. Our recommendations focus on ensuring quality Lifeline voice and broadband service for low-income households, with minimal disruption to the program integrity reforms in the 2016 Modernization Order. The intent of these recommendations is to ensure that Lifeline addresses the affordability barrier to service for the poor, regardless of where they live in this country. These comments do not address all the issues raised in the NPRM and NOI, and we reserve the ability to comment on additional issues raised by other commenters in our reply. Below is a summary of our main recommendations:

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[4] *See* https://www.commonapp.org/

[5] *See* https://fafsa.ed.gov/

[6] 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 Modernization Order").

1. **Keep the focus of Lifeline on people, not networks.** The NPRM proposes the elimination of Lifeline carriers that serve over 70% of the current Lifeline households by removing companies that do not own or operate their own facilities ("non-facilities based providers") from Lifeline. The Lifeline program was designed to help low-income households afford modern communications service by addressing the major barrier posed by the unaffordability of service. Lifeline helps lower this barrier by providing low-income households a monthly discount off the cost of service. There is already another much larger program focused on network buildout to rural, remote regions of the country, so the focus of Lifeline should remain on helping low-income households afford service so that they can maintain connectivity. Furthermore, the elimination of non-facilities-based providers will leave large portions of the country without a choice in Lifeline provider and could result in no Lifeline coverage for some parts of the country.

2. **Save Lifeline Voice Service for All Consumers, Not Just For Those in Rural America.** The 2016 Lifeline Modernization Order established a gradual phase-out of support for voice service in the Lifeline program. Low-income advocates had argued against the loss of voice service and, while not successful, did secure a longer time-frame for the ramp-down of voice support. The 2017 Lifeline NPRM brings back the issue of preserving voice service, but only in rural areas. Voice remains a popular service. Over 8.5 million Lifeline households have chosen Lifeline service where voice is part of a bundle or a stand-alone product. Low-income households struggle with income volatility combined with a lack of savings for hard times. The ability to regularly budget for even a $15.00/month voice plan can still be out of the reach for many low-income households who are likely to encounter periods of economic hardship that would result in loss of service.

3. **Rationing Lifeline Hurts the Poor and Hurts the Country.** The Lifeline NPRM and NOI have two proposals to limit the reach of Lifeline service. The first proposal is to place a cap on the Lifeline *program* and asks about how to prioritize who should be served. The second proposal asks if there should be an *individual* Lifeline lifetime cap. The self-adjusting budget cap in the prior proposal could reset the Lifeline benefit amount mid-year or in the following year, which adds uncertainty for Lifeline households as well as Lifeline service providers. These proposals threaten to be incredibly disruptive to the Lifeline marketplace, as it would deter company participation and lead to loss of service for customers. The administration of these caps will ration Lifeline, will add a lot of complexity to a simple program, increase the cost of administration of a modest benefit and lead to serious consumer confusion. These proposals would profoundly limit the ability of Lifeline to focus on helping connect the poor to communications service.

4. **Mandating a Co-Pay for Lifeline Will Eliminate the Most Popular Lifeline Service that Helps Some of the Most Vulnerable Low-Income Consumers.** The current Lifeline program is technology neutral, and companies can compete by developing Lifeline service packages as long as they meet minimum standards. The NPRM proposes to take a heavy hand to the marketplace to eliminate the "free" Lifeline services that are the most popular Lifeline products in the marketplace. These are the prepaid wireless

Lifeline services that do not have a deposit requirement, do not require a credit check, do not require a checking account or some other means to make a monthly payment, and do not have late fees. These prepaid Lifeline services provide either a monthly allotment of minutes (at least 750 minutes a month) or a bundle of voice and data for the month. These products serve some of the most economically fragile low-income households: those without bank accounts, domestic violence survivors, households that frequently experience homelessness, and other vulnerable populations. The proposal to require a mandatory co-pay will increase household financial stress and add cost to some carriers' business designs.

5. **Additional recommendations** include: preserving the National Broadband Provider Designation; retaining the requirements regarding Wi-Fi, tethering, and hotspots; support for various program integrity measures concerning audits, eligibility verification, more efficient use of the independent economic household worksheets, and support for a pilot program to encourage the leveraging of Lifeline to close the digital divide.

III. Low-Income Consumer Advocates' Reponses to Questions Raised in the NPRM/NOI

A. Keep the focus of Lifeline on people not networks.

The NPRM asks a series of questions reflecting a major policy shift from Lifeline's goal to help low-income households afford modern communications service to incentivizing broadband build-out, particularly in rural parts of the country.

The Commission states, "we believe Lifeline support will best promote access to advanced communications services if it is focused to encourage investment in broadband-capable networks. We therefore propose limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC's voice- and broadband-capable last-mile network. . . .If Lifeline can help promote more facilities, it can then indirectly also serve to reduce prices for consumers."[7] The Commission proposes discontinuing support for non-facilities-based service and proposes to limit Lifeline to broadband service provided over facilities-based networks that also support voice.[8]

We preface our comments on this proposal by stating that we are in support of affordable broadband service for low-income households in every state and territory -- in both rural and non-rural areas. We also underscore the much bigger tools the Commission has through the other universal service programs, particularly the much larger High Cost program, to address challenges to network buildout in rural regions of the country. Lifeline is a complementary program to the other universal service programs. Once there are broadband capable networks in place, low-income households will still need help with the monthly bills in order to connect to

[7] NPRM at ¶65.
[8] NPRM at ¶67.

these networks. Lifeline exists to help poor people afford modern communications service. This proposal by the Commission demonstrates the elevation of networks over people and would result in direct and immediate harm to over 8 million Lifeline households[9] as well as the millions of Lifeline-eligible households who desire service from Lifeline carriers who do not own network facilities.

1. Lifeline Addresses the Affordability Barrier to Service for the Poor

Lifeline was created to help low-income households afford connection to the modern communication network. The technology for modern communication has evolved, and so has Lifeline. Lifeline started out supporting copper line voice service to the home and has evolved to include broadband internet service. Lifeline provides poor households with a monthly benefit that is directly targeted to affordable phone and internet service; Lifeline does not subsidize equipment like handsets or laptops.

The proposal to remove Lifeline's focus on low-income people and to focus only on infrastructure deployment would ignore the Communications Act. Specifically, the Commission's mandate under the Act is to "make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property…."[10] This purpose includes reasonable prices and does not focus only on deployment of infrastructure. Even more on point, Congress in the 1996 Telecommunications Act clearly articulated that the Commission should serve the needs of low-income people. The 1996 Act articulated universal service principles, which include the goal of "just, reasonable, and affordable rates" in two provisions.[11] The principles specifically articulate low-income consumers as a separate class of consumers needing assistance, in addition to consumers in rural areas.[12] Furthermore, section 254(j) of the Act specifically continues authorization for the Lifeline program.[13]

2. The Commission's Proposal Will Remove the Lifeline Service Providers Serving the Vast Majority of Lifeline Households

The Commission proposes the elimination of Lifeline carriers that serve over 70%[14] of the current Lifeline households by removing companies that do not own or operate their own

[9] Federal-State Joint Board, Universal Service Monitoring Report, Table 2.8 Non-Facilities Based Low-Income Subscribers by State in 2015, p.30 (2016).
[10] 47 U.S.C. §151.
[11] 47 U.S.C. §§254(b)(1),254(b)(3), 254(i).
[12] *Id*. at §254(b)(3).
[13] *Id*. at §254(j).
[14] Federal-State Joint Board, Universal Service Monitoring Report, Table 2.8 Non-Facilities Based Low-Income Subscribers by State in 2015, p.30 (2016); *See also* Lifeline Connects Coalition, Boomerang Wireless, LLC and Easy Wireless Notice of Oral *Ex Parte* Presentation; WC Docket Nos. 17-287, 11-42, 09-197, p.2 (Nov.2, 2017)(states 69 percent of all Lifeline subscribers and 76 percent of wireless subscribers are currently served by resellers).

facilities ("facilities based providers").[15] These are the wireless companies that resell voice and data services from companies that own the underlying communication facilities.

The elimination of non-facilities-based providers will leave large portions of the country without consumer choice in Lifeline providers and could result in no Lifeline coverage for some parts of the country. For example, in 2017, AT&T (a facilities-based provider) withdrew its Lifeline service in the state of Missouri.[16] The Missouri Public Service Commission staff, in preparing a recommendation for the state utility commission, analyzed the companies in Missouri participating in the federal Lifeline program. Staff noted that all of the remaining Lifeline providers were wireless companies. Only three of those companies owned or operated their own facilities ("facilities-based providers") and they served only small portions of AT&T's service area.[17] The FCC's proposed removal of the non-facilities based resellers would leave the majority of low-income consumers in states like Missouri with no Lifeline service. In other states where AT&T has withdrawn from Lifeline, the company cites its dramatic loss of Lifeline customers over the years, particularly to wireless providers.[18] In states where AT&T has withdrawn from the Lifeline program, customers wishing to obtain service from AT&T must now pay for more expensive service. AT&T described the impact of relinquishment on their consumers as follows, "The only change for AT&T Florida customers in the relinquishment area is that the Lifeline discount will no longer be available from AT&T Florida. All customers in the relinquishment area, including former AT&T Florida Lifeline customers who choose to keep their AT&T Florida service, will have access to AT&T Florida services at standard AT&T prices, including applicable surcharges, fees and taxes."[19]

We incorporate by reference the analysis performed by the coalition of Pennsylvania's Low Income Consumers, Service Providers, Organizations, and Consumer Rights Advocates[20] as well

[15] NPRM at ¶67.
[16] Order Confirming AT&T Missouri's Relinquishment of its Eligible Telecommunications Carrier Designation, In the Matter of Southwestern Bell Telephone Company, d/b/a AT&T Missouri's Notice of Relinquishment of its Eligible Telecommunications Carrier Designation Pursuant to 47 U.S.C. § 214(e)(4) and Notice of Withdrawal from State Lifeline and Disabled Programs, Public Service Commission of the State of Missouri, File No. IO-2017-0132 (Issued Jan. 11, 2017).
[17] Staff Recommendation, In the Matter of Southwestern Bell Telephone Company, d/b/a AT&T Missouri's Notice of Relinquishment of its Eligible Telecommunications Carrier Designation Pursuant to 47 U.S.C. § 214(e)(4) and Notice of Withdrawal from State Lifeline and Disabled Programs, Public Service Commission of the State of Missouri, File No. IO-2017-0132, p.3 (Filed Dec. 9, 2016). MO PSC staff also notes that "AT&T intends to file similar notices [to withdraw from Lifeline] in all states". *Id.* at p.1.
[18] *See e.g.*, Implementation Of The Universal Service Requirements Of Section 254 Of The Telecommunications Act Of 1996, Alabama Public Service Comm., Docket No. 25980, at p. 6 (Issued Mar. 9, 2017) (PSC staff estimate that Lifeline subscribers of top 4 wireless resellers outnumber AT&T's Lifeline subscribership by 80 to 1); Peter Hancock, *AT&T dropping out of Kansas 'Lifeline' phone program for the poor*, LAWRENCE JOURNAL-WORLD.COM, (Apr. 28, 2017) http://www2.ljworld.com/news/2017/apr/28/t-dropping-out-kansas-lifeline-phone-program-poor/ (Lifeline customers in Kansas have left AT&T for other providers, particularly wireless, leaving AT&T with only 6% of the Lifeline subscribers in the state).
[19] Petition of Bellsouth Telecommunications, LLC d/b/a AT&T Florida for Partial Relinquishment of Eligible Telecommunications Carrier Status, Before the Florida Public Service Commission, Docket No. 170082-TP, p.9 (April 7, 2017).
[20] Joint Comments of Pennsylvania's Low Income Consumers, Service Providers, Organizations, and Consumer Rights Advocates, In the Matter of Bridging the Digital Divide for Low-Income Consumers, *et al*, WC Docket Nos. 17-287, 11-42, 09-197, pp. 1-3 (January 24, 2018).

as the National Digital Inclusion Alliance (NDIA)[21], showing that the loss of facilities-based resellers would leave low-income consumers in large parts of Pennsylvania and Ohio without any Lifeline service provider or an option of just one provider, thus eviscerating the potential of competition to accelerate enhancements in Lifeline service offerings.

3. The Commission's Alternative Proposal of Conduct-Based Requirements for Carriers is Less Harmful

The Commission posits an alternative proposal to the very damaging and disruptive proposal regarding the removal of all non-facilities-based providers (the popular wireless Lifeline resellers). The Commission asks, "Alternatively, we seek comment on TracFone's suggestions that we minimize waste, fraud and abuse in the Lifeline program through 'conduct-based requirements.'"[22] The Commission asks if these conduct-based requirements should apply to all Lifeline providers or only wireless resellers and "[w]ould any of the conduct-based requirements minimize waste, fraud, and abuse in the Lifeline program to the same extent as the proposed facilities based requirement?"[23] Low-Income Consumer Advocates would be supportive of the concept of conduct-based requirements that are tied to suspensions and disbarments of any Lifeline providers found to regularly engage in fraud-related conduct instead of the proposal to remove all non-facilities-based carriers. The thresholds should factor in risk to the Lifeline fund and risk to the Lifeline consumers. This conduct-based requirements approach is far more targeted and appropriate than the wholesale elimination of Lifeline service providers serving over 8 million Lifeline households.[24]

B. Save Lifeline Voice Service for All Consumers, Not Just For Those in Rural America

The 2016 Lifeline Modernization Order establishes a gradual phase-out of support for voice service in the Lifeline program.[25] Low-income consumer advocates had argued against the loss of voice service and, while not successful, did obtain a longer time-frame for the ramp-down of voice support.[26] The 2017 Lifeline NPRM brings back the issue of preserving voice service, but only in rural areas.[27] The Commission seeks comment on "eliminating the phase down of Lifeline support for voice-only service in rural areas."[28]

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[21] Comments of National Digital Inclusion Alliance, In the Matter of Bridging the Digital Divide for Low-Income Consumers, *et al*, WC Docket Nos. 17-287, 11-42, 09-197, pp. 3-4 (February 19, 2018).
[22] NPRM at ¶73.
[23] NPRM at¶73.
[24] Federal-State Joint Board, Universal Service Monitoring Report, Table 2.8 Non-Facilities Based Low-Income Subscribers by State in 2015, p.30 (2016).
[25] 2016 Modernization Lifeline Order, 31 FCC Rcd at 3981, 3982-83, ¶¶52-64,117-120. *See also* 47 C.F.R. §§ 54.403(a)(2)(i)-(iv).
[26] *See* Low-Income Consumer Groups, Opening Comments on the Second Notice of Proposed Rulemaking, WC Docket Nos. 11-42, 09-197, 10-90, pp.4-5 (Aug. 31,2015).
[27] NPRM at ¶¶74-79.
[28] NPRM at ¶76.

1. Voice Service is an Essential Service Regardless of Where Consumers Live

Lifeline voice service, alone or as a part of a voice/data bundle, remains a crucial and popular Lifeline option for consumers. Over 8.5 million Lifeline households have chosen Lifeline service where voice is included as part of a bundle or as a stand-alone product.[29] Consumers rely on voice service to contact emergency services. This is life-saving for victims of domestic violence. Voice service is important for job seekers, as it provides the ability to be reached by a prospective employer. The advent of modern just-in-time scheduling practices makes voice and data access essential for workers and their employers; it enables real-time notice of changes in shift times as well as the availability to earn additional money by picking up additional shifts. Voice service is important for parents and educators, as it enables the school to reach parents if a child is sick, facilitates parent-teacher communications, and provides notices of school closings or events. Having voice and texting capability is also important for ad hoc childcare arrangements, particularly when job shifts and school schedules can change suddenly with extreme weather events. Localities rely on emergency notifications to cell phones to push out important, lifesaving alerts. Having a reliable and unchanging phone number allows case workers and doctors to reach families and families to access care. Access to affordable voice service facilitates important services like suicide-prevention hotlines. These communication capabilities are vital for all low-income households and communities and the economy, regardless of whether poor consumers live in urban or rural areas.

2. Affordability is a Barrier to Service

In proposing to preserve Lifeline voice service in rural areas, but not urban areas, the FCC argues that consumers can "obtain quality affordable voice service in urban areas" and points to finding several $15.00/month plans.[30] What this proposal overlooks is that $15.00/month plans can still be out of the reach of many low-income households. Furthermore, there is no assurance of the continued availability of basic voice plans at $15/month, particularly with the rapid decline of state regulation of local offerings and the move to IP-based services which are often also deregulated.

The true test of whether Lifeline service achieves the goals of universal service is whether a low-income Lifeline household is able to maintain service each month and throughout the year, while not having to forego other basic necessities. Unfortunately, stable monthly budgets are beyond the reach of many low-income households, and that poses a major affordability barrier for low-income households. A better mechanism to drive down costs for low-income people is to rely on the 2016 Lifeline Order's mechanisms to promote entry of many competing companies into the Lifeline program. The 2016 decisions to promote competition through the national Lifeline Broadband Provider designation mechanism[31] and the national eligibility verifier promote entry of new companies into the program. Through this market-based competition, more offerings would be brought into the Lifeline program, bringing down prices with less heavy-handed regulation.

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[29] USAC Lifeline Business Update, *Lifeline Subscribership by Service Type (Broadband Uptake)*, p.4 (Oct. 23, 2017).
[30] NPRM at ¶75.
[31] *See* section E.1., *infra*.

3. Barriers to Access With Traditional Post-Paid Communications Service

Obtaining traditional post-paid phone service poses several barriers for low-income households, particularly the most economically fragile. Barriers to starting service include past debt with the company that would have to be paid off in full before the start of new service, having enough cash set aside for a deposit, or having an acceptable credit score. Even where a household is able to start post-paid service, maintaining service can be a challenge.

As discussed below, there is a growing body of research into income volatility (the sudden decrease in income and/or increase in expenditures) and the impact on low-income households. Research by the Federal Reserve, Pew, and the JP Morgan Chase Institute shows that many Americans across the income scale do not have enough in savings to weather a sudden decrease in income, a sudden emergency expense (e.g., medical expense or car repair), or a situation where income has dropped and expenses have increased. For low-income households, this volatility is particularly devastating. Low-income households often face untenable choices due to income volatility combined with lack of savings. Households often redirect funds for another essential service or to forgo a necessary expense such as food or medical care. Some households turn to alternative financial products which are higher cost and lead to higher debt. Households can take can take years to recover from the harm, if at all. Changes in the modern work environment have also contributed to income volatility and make budgeting extremely challenging. The advent of optimization software used by businesses to better align staffing with demand, has led to increased unpredictability with take home pay. This quickly changing scheduling also highlights the critical need to continue to preserve voice as a supported Lifeline service, particularly the wireless voice/data bundled service for Lifeline households. We briefly summarize some of the research below.

4. Income volatility is acute for the Lifeline population, and Lifeline should not exacerbate an already fragile economic existence

Working families need affordable Lifeline service to survive and have a shot at economic opportunity. It is particularly difficult for struggling households to regularly afford voice and voice/data service each month. Now is not the time to pull voice out of the Lifeline program for low-income households, rural or urban. Research by Pew Charitable Trusts found that income volatility, the sudden loss of income or sudden increase in expenses, is particularly acute for certain demographic groups:

> "In the years studied, at least 4 in 10 respondents who identified as Hispanic, millennial, having a high school diploma or less, or having incomes below $25,000 experienced income volatility. Households with these demographic characteristics tend to be overrepresented in lower-income groups generally. . . .

[a] lower-income household also tends to have few assets and little to no savings, it often has no financial cushion, making income volatility especially acute."[32]

While having adequate savings is a major protection from income volatility, studies into household budgets have found that less than half of American households have enough in savings to weather one month's loss of income.[33] This is consistent with the findings of JP Morgan Chase & Co. in an analysis of income volatility in its customer base. They estimate that households in the bottom quintile need a financial cushion of $800 to handle a "consumption shock" (e.g., medical bill) and $1,600 to handle a sudden drop in income and consumption shock.[34] They also conclude that low-income households do not have the financial cushion to weather income volatility without taking on debt or liquidating assets.[35] Pew analyzed household financial reserves for emergencies and found:

> "Not surprisingly, low-income households have lower levels of savings and overall financial assets than their middle- and upper-income counterparts do. The typical household with less than $25,000 in income only has enough liquid savings to replace six days of household income, and one-quarter of these households have no liquid savings at all."[36]

Pew also found that the typical days of liquid savings varies by race, with Black families having 5 days of liquid savings; Hispanic families having 12 days and White families having 31 days. Pew also found that 35 percent of black families have less than 1 day of income in liquid savings; 25 percent of Hispanic families have less than 1 day of income in liquid savings compared to 11 percent of white families.[37]

5. Affordability of Communications Service Means Not Having to Sacrifice Other Basic Necessities

[32] Pew Charitable Trusts, How Income Volatility Interacts With American Families' Financial Security, p.4 (Mar.2017).
[33] Pew Charitable Trusts, The Precarious State of Family Balance Sheets, p.1 (Jan.2015)("The majority of American households (55 percent) are savings-limited, meaning they can replace less than one month of their income through liquid savings.). *See also* Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2015, pp. 21, 24 (May 2016) (most common hardships reported were heath emergency (36%), job loss(25%), reduced hours or pay(18%), spouse lost job (13%) or lost hours or pay(12%). "Among those who report that they had a major unexpected medical expense, the median out-of-pocket cost was $1,200 and the mean was $2,782.")
[34] JP Morgan Chase & Co. Institute, Weathering Volatility: Big Data on the Financial Ups and Downs of U.S. Individuals, p.15 (May 2015).
[35] JP Morgan Chase & Co. Institute , Weathering Volatility: Big Data on the Financial Ups and Downs of U.S. Individuals, p.16 (May 2015) (JP Morgan Chase analyzed proprietary data from transaction information of its nearly 30 million customers to come up with a sample of 2.5 million. They selected customers that are better off than many vulnerable low-income households (customers had checking accounts, at least $500 in deposits every month, at least 5 transactions, and a credit card).
[36] Pew Charitable Trusts, What Resources Do Families Have for Financial Emergencies? p.6 (Nov.2015).
[37] Pew Charitable Trusts, What Resources Do Families Have for Financial Emergencies? p. 9, Figure 3 (Nov.2015).

There is a danger in assuming that just because a household manages to make a monthly payment that the bill is affordable. As the research into household financial stability reveals, modern households are living in a time of great income volatility, and low-income households face dire choices in making timely payments for necessities. The Federal Reserve observes that:

> "The potential for hardship from volatile incomes and expenses appears to be greatest among lower-income respondents and among credit-constrained respondents. Among those with volatile incomes or expenses whose family income is under $40,000 per year, 54 percent report that they struggled to pay their bills due to volatility. Among lower-income respondents who are not confident that they would be approved for a credit card if they were to apply for one, an even higher 72 percent report that they struggled to pay their bills due to income or expense fluctuations."[38]

Pew also found that "Low-income families are particularly unprepared for emergencies: The typical household at the bottom of the income ladder has the equivalent of less than two weeks' worth of income in checking and savings accounts and cash at home."[39] Pew also notes, however, those funds tend to be earmarked for other necessities such as food or housing.[40] So when there is a loss in income or a sudden emergency, low-income households must often make untenable choices. Survey data of recipients of the Low Income Home Energy Assistance Program reveal that when low-income households are faced with paying home heating bills in the frigid wintertime and cooling bills in the sweltering summers, they sacrifice food, postpone medical care, cut back on medications, and/or skip rent payments to keep their homes at safe temperatures (hardly an ideal model for the mandatory co-pay proposal discussed below in section D.4).[41] There is hardship data that captures some of this struggle to show that low-income households experience disconnection and threats of disconnection of essential utility service, miss housing payments, turn to high-cost, asset-depleting financial products to pay for essentials, and juggle paying basic necessities to make it from one month to another.[42] These findings are also consistent with those of the Federal Reserve:

> Among those whose family income is under $40,000, 39 percent have gone without some form of medical treatment in the preceding 12 months. This fraction

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[38] Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2015, p.19 (May 2016).
[39] Pew Charitable Trusts, The Precarious State of Family Balance Sheets, p.1 (Jan.2015).
[40] Pew Charitable Trusts, The Precarious State of Family Balance Sheets, p.10(Jan.2015) ("It is important to note, however, that some or all of those funds may be earmarked for upcoming regular expenses such as food or housing.").
[41] National Energy Assistance Directors' Association, *2011 National Energy Assistance Survey*, Final Report (November 2011). Available at http://www.appriseinc.org/reports/Final%20NEADA%202011%20Report.pdf.
[42] *Id*.; *See also*, National Poverty Center Policy Brief, Material Hardships During the Great Recession: Findings from the Michigan Recession and Recovery Study#35, Fig, 2 (July 2012) available at http://www.npc.umich.edu/publications/policy_briefs/brief35/policybrief35.pdf.

> is 23 percent among respondents with incomes between $40,000 and $100,000, and just 10 percent among respondents making over $100,000."[43]

Income volatility for typical households can be devastating and have long-term repercussions. As observed by Pew:

> "Previous Pew research indicated that the cost of the typical family's most expensive shock – an unanticipated expense such as a car or house repairs, illness, or pay cut – is $2,000, meaning that, at the median, just one such event could wipe out most or all of the savings of a household with a volatile income."[44]

> "Further, income volatility can not only disrupt a household's financial reality in the short term, but can also create lasting strain. Households that experience volatility have no assurance that their income will become less erratic or that they will recover from the large swings on their balance sheet. Research shows that among families that lost income year after year, half regained it within four years, but a third (34 percent) were still grappling with their losses a decade later,"[45]

For low-income families, these effects are magnified as they are working with a lower amount of financial resources to recover (lower income, less savings, less ability to liquidate funds). Amplifying the challenges for low-income households is the modern workplace environment, with the advent of "just-in-time" scheduling software. Analysis by the Federal Reserve System, found that the most common reason for monthly income volatility cited was "irregular work schedule."[46] "Overall, 42 percent of those with volatile incomes or expenses report that they struggled to pay their bills at least once in the last year due to this kind of volatility."[47] Modern just-in-time "optimization" scheduling software, popular in retail and service industries to match staffing with demand, results in unpredictable income for workers.[48] Low-income households are least able to weather income volatility and the workplace scheduling software in the low-wage sectors such as retail and hospitality has worsened the ability for a stable stream of income from month-to-month. Working families need affordable Lifeline service to

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[43] Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2015, p.25 (May 2016).
[44] Pew Charitable Trusts, How Income Volatility Interacts With American Families' Financial Security, p.10 (Mar.2017) Available at *http://www.pewtrusts.org/-/media/assets/2015/10/emergency-savings-report-1_artfinal.pdf.]*
[45] Pew Charitable Trusts, How Income Volatility Interacts With American Families' Financial Security, p.12 (Mar.2017).
[46] Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2015, p.18, Figure 8 (May 2016).
[47] *Id* at 19.
[48] Heather Boushey and Bridget Ansel, "Working by the Hour: The Economic Consequences of Unpredictable Scheduling Practices," Washington Center for Equitable Growth (September 2016).

survive and have a shot at economic opportunity. Now is not the time to pull voice out of the Lifeline program for low-income households, rural or urban.

C. Rationing Lifeline Hurts the Poor and Hurts the Country

The Lifeline NPRM and NOI have two proposals to limit the reach of Lifeline service. The first proposal is to place a cap on the Lifeline program and asks about how to prioritize who should be served. The second proposal is whether to place an individual lifetime cap on Lifeline service.

1. Capping Lifeline Will Ration Lifeline Service and Result in Increased Administrative Cost and Complexity

While Low-Income Consumer Advocates understand the role of a budget for the purposes of program planning, we have been strenuously opposed to the imposition of a cap on the Lifeline program. The Lifeline program has a natural cap, as it is income-limited. This is a program that has not increased in size with the addition of broadband as a covered service and it is a program that is serving less than 33 percent of the eligible households.[49] If the concern behind a cap is program integrity, there are stronger mechanisms that have been adopted and are being implemented. The 2012 Lifeline Reform Order resulted in the creation of the National Lifeline Accountability Database. The 2016 Lifeline Modernization and Reform Order established the creation of a National Verifier. These are two fundamental structural changes to the way Lifeline enrollment is handled to improve program integrity. Moreover, a cap will not improve program integrity. The Commission should manage the program efficiently and carefully with full integrity regardless of whether the program is constrained by a budget cap. There are additional proposals in the NPRM that better address additional program integrity measures (see Section E, *infra*). The imposition of a cap will result in loss of Lifeline providers, loss of Lifeline consumers, and increase Lifeline administration costs.

The NPRM proposes a self-adjusting cap that could reset benefit amounts mid-year, or adjust benefits in the following year.[50] This proposal could jeopardize the very stability of the Lifeline program. First, the uncertainty in the benefit amount will act as a deterrent to Lifeline companies that will not be able to accurately prepare a budget or determine the appropriate level of investment in product enhancements or even the ability to meet the ever increasing minimum standards. Second, businesses would either need to absorb the loss of Lifeline reimbursement amounts to compensate for the lower benefit levels or carriers would need to collect this difference in support from Lifeline consumers. Third, such a proposal is inconsistent with the statutory universal principle that that universal service support mechanisms should be "specific, predictable and sufficient …."[51] As described above in these comments, Lifeline-eligible households are economically fragile and the sudden charge to compensate for a decrease in

[49] USAC, Eligible Lifeline Population Statistics. Available at http://www.usac.org/li/about/process-overview/program-stats.aspx.
[50] NPRM at ¶¶106-109.
[51] 47 U.S.C. §254(b)(5).

Lifeline support would likely result in loss of service. A self-adjusting cap would be incredibly disruptive to the Lifeline marketplace as it will drive out carriers and consumers.

Finally, the imposition of a self-adjusting cap will add administrative cost and complexity to the Lifeline program. Should the capped amount be reached, USAC would need to recalculate benefit amounts and notify millions of households as well as Lifeline service providers. This will be costly and generate consumer confusion. It will also make outreach and education about the Lifeline program more complicated, as the benefit amount could fluctuate over time.

If the Commission imposes a Lifeline cap that is so low that eligible households will be turned away or put on waiting lists, it will need to develop rules to administer waiting lists. These rules would need to address issues such as how long people stay on waiting lists, and how the waiting lists interact with the rules regarding de-enrollment and re-certification, and the regular porting of the Lifeline benefit. Furthermore, the Commission proposes prioritizing Lifeline for tribal rural and rural areas, but the administration of that prioritization will need to mesh with the waiting list rules above. Further adding to the complexity is that there will need to be a way to update the waiting lists, as it is foreseeable that low-income households will be highly mobile, which could affect the prioritization. If the benefit amount were also to readjust, that would also add another layer of complexity and add cost and consumer confusion to the administration of the Lifeline benefit, currently set at a modest $9.25 a month per household. These proposals have the serious potential to destabilize the Lifeline program by making it very difficult for consumers, providers, and the administrators.

Rationing Lifeline is contrary to the intent of Universal Service and limits the ability of Lifeline to help connect the poor to communications service. This proposal overlooks the purpose of the Lifeline program, which is to address the barrier to connectivity caused by poverty. Lifeline helps the poor afford modern communications service.

2. A Lifetime Cap on Lifeline Service is Contrary to Public Policy

The NOI asks about imposing a lifeline cap on Lifeline benefits as an incentive for consumers not to take the benefit if they do not need it and to limit Lifeline to households that need it most.[52] The very question demonstrates a lack of appreciation for the importance of Lifeline to low-income households, as it implies there are Lifeline households who do not need the benefit. The imposition of a Lifeline cap would add administrative cost and complexity. In order to implement a lifetime cap on a recipients' Lifeline support, USAC would need to have a database that tracks each recipient of Lifeline until they die. This is an expensive program design and is unnecessary to ensure that Lifeline recipients appreciate the value of the Lifeline benefit. Lifeline was established to address the affordability barrier to connectivity. Lifeline households value this connectivity already as it is the lifeblood of modern interaction. As individuals age, the need for affordable communications service does not diminish. For seniors, affordable

[52] NOI ¶¶130-131

communications service is vital for aging in place and avoiding isolation. Low-income seniors, as people who have likely spent many years on Lifeline, are highly likely to bear the brunt of a lifetime income cap. As discussed above in sections A and B, income volatility is particularly challenging for low-income households. Creating an arbitrary lifetime cap on Lifeline benefits could hurt the economically-fragile elderly.

There is a value of connectivity to the individual household as well as to society at large. For example, businesses, institutions, and society function better if there is universal phone and broadband connectivity. The ability to reach emergency services can benefit the individual Lifeline household, and it can also benefit non-Lifeline individuals in distress or a neighborhood or community facing a fire. The ability of healthcare providers to reach patients benefits society as a whole, not just the individual. The ability of a small business to communicate work-shift information to staff helps that business run more efficiently. School children need broadband to learn and thrive in the modern workforce. Applying to college and for financial aid as well as applying for jobs requires internet access. We urge the Commission not to ration Lifeline service through a self-adjusting cap or through a cap on individual lifeline benefits.

D. Mandating a Co-Pay for Lifeline Will Eliminate the Most Popular Lifeline Service that Helps Some of the Most Vulnerable Low-Income Consumers

The current Lifeline program is technology neutral, and companies can develop new Lifeline service packages as long as they meet minimum standards. The NPRM proposes to take a heavy hand to the marketplace to eliminate the "free" Lifeline services that are the most popular Lifeline products in the marketplace. These are the prepaid wireless Lifeline services that do not have a deposit requirement, do not require a credit check, do not require a checking account or some other means to make a monthly payment, and do not have late fees. These prepaid Lifeline services provide either a monthly allotment of minutes (at least 750 minutes a month) or a bundle of voice and data for the month. Consumers have the option to purchase additional minutes or data before the next month. While Lifeline only subsidizes the cost of the service, these prepaid carriers often provide a free handset (smartphone if there is a voice/data bundle).

1. Lifeline should keep its focus on addressing the affordability barrier and not add to household financial stress

The NPRM asks if consumers will value Lifeline more if they are required to contribute financially.[53] This question overlooks the essential aspect of voice and broadband connectivity for modern existence. For example, for anyone looking for work or in the workforce, voice and broadband is not optional. In addition, the popularity of the free-to-end user Lifeline products reflects the precarious financial situation in many low-income households. This free Lifeline voice/data phone service helps consumers without checking accounts (the unbanked and the underbanked) because having to find a way to make a monthly payment requires additional steps along with additional fees.

[53] NPRM at ¶112.

The Commission should retain the diversity in Lifeline products, particularly those options that can help low-income households with unpredictable budgets due to income volatility, as described above. The Federal Reserve notes that almost half of households with incomes under $40,000 are unbanked or underbanked (defined as using an alternative financial service product at least once in the past year).[54] Credit cards can be a very expensive form of credit and are often used for online payments. The Federal Reserve found that around 40% of households with incomes less than $40,000 had a credit card, but it noted that "[l]ower-income respondents with a credit card are also less likely to pay their bill in full each month and are more likely to indicate that they made only the minimum payment at least once."[55]

Forcing households to take on debt to afford communications service by limiting households to post-paid services will be harmful, as debt is expensive. Many low-income households turn to expensive credit alternatives to pay for expenses when cash-constrained, thus exacerbating their financial difficulties. The Federal Reserve found that lower-income households experiencing a hardship were more likely to borrow funds using expensive alternative financial service products:

> "[L]ower-income and younger respondents as well as those of color were significantly more likely than other groups to say they would use alternative financial products and services, such as payday, auto title, or pawnshop loans. Some African-American and Hispanic households and those with lower incomes cannot access traditional credit products such as credit cards and loans and, when faced with emergencies, may have few options other than alternative financial products."[56]

2. The "free" Lifeline service products help some of the most vulnerable low-income populations

The free prepaid voice and data Lifeline service helps survivors of domestic violence access emergency services as well as rebuild their lives These free-to-end-user phones also help those who experience homelessness and are critical for helping them access services such as shelter, veteran's suicide-prevention hotlines, and benefits. These households may not have the credit history to start a post-paid service and may not have access to the family's bank account, or may be more mobile than other households.

3. The proposal to require mandatory co-pays interferes with a fully competitive Lifeline marketplace

[54] Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2015, p. 27 (May 2016) .
[55] Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2015p.31 (May 2016).
[56] Pew Charitable Trusts, What Emergency Resources Do Families Have for Financial Emergencies? p.5 (Nov.2015).

The current Lifeline program allows Lifeline service providers to design products that serve the Lifeline population without picking winners and losers by limits on technologies or products. The rules require minimum service standards to ensure a baseline of quality, and those minimum standards are reviewed annually. The proposals in this NPRM take a more intrusive approach to the Lifeline marketplace by eliminating the most popular wireless Lifeline companies (the non-facilities-based providers), by proposing a self-adjusting budget cap which makes it hard for companies to budget and plan for product or service enhancements, and by dictating certain rate designs (the mandatory co-pay). These proposals act to deter companies from entering the Lifeline marketplace and will result in the loss of service providers. An estimated 11 million Lifeline households have chosen the free prepaid Lifeline service options, and given the income volatility experienced by low-income households described above, this is a rational choice for obtaining voice or voice and data service throughout the year. Furthermore, carriers have expressed their concerns that requiring a co-pay is not feasible for their business model.[57] There would be an increased business cost for setting up and maintaining billing systems, hiring billing and collections staff, and handling partial and late payments as well as negotiating payment plans. These are carrier resources that are better spent in offering competitive service and product offerings.

This proposal for a mandatory co-pay emerged back before there were Lifeline minimum standards and before the current slate of program integrity measures, including the duplicates database and the creation of the National Verifier. We urge the Commission to focus instead on balancing the ever-improving minimum standards with the needs of the Lifeline consumers. We urge the Commission not to look to a mandatory co-pay as a rational, targeted, or effective means of achieving additional program integrity measures. The mandatory co-pay would throw the baby out with the bathwater as estimated 85% of Lifeline consumers have chosen these products.[58]

4. LIHEAP Does Not Mandate a Co-Pay

Low-Income Consumer Advocates also note that the NPRM is mistaken in characterizing the Low Income Home Energy Assistance Program as requiring a mandatory co-pay. There is no federal requirement for a mandatory co-pay with LIHEAP. Rather, the limited LIHEAP assistance is a result of dramatic underfunding. LIHEAP is a state block grant and is not an entitlement program. LIHEAP covers only a portion of low-income home energy bills because these bills tend to far larger than the amount appropriated. This is not a harmless program design, and it is one that is fraught with health and safety implications every year. As described earlier, LIHEAP households make extreme choices to survive. Another distinction between LIHEAP and Lifeline is that the bill payment assistance provided by LIHEAP tends to be a one-time payment as there is a seasonality to heating and cooling needs. Communications connectivity is not seasonal; it is all day, every day, every month, all year. Lifeline, with its current suite of service options, is in a better position to help low-income consumers maintain year-round connectivity.

[57] *See e.g.*, Sprint, *Ex Parte*, WC Docket Nos. 17-287, 11-42, 09-197 (November 8, 2017).
[58] NPRM at ¶112.

E. Additional Issues Raised in the NPRM

1. Do Not Eliminate the National Broadband Provider Designation Program

The Commission proposes to eliminate the National Lifeline Broadband Provider program (LBP).[59] The new NPRM contests the validity of the previous Commission order, drawing the opposite conclusions from the same set of law and facts without any basis or explanation. This action continues an earlier, disturbing decision to inexplicably revoke existing LBP designations and leave the regulatory mechanism in limbo.[60]

Barely more than a year ago, the Commission created the LBP program to facilitate competition and ease regulatory burdens in the Lifeline program. In the *2016 Lifeline Order*, the Commission recognized the importance of competition and choice in the Lifeline program, as well as the importance of advanced technologies, and developed the federal LBP designation program to facilitate entry into Lifeline by carriers that sought to offer solely broadband services.[61] In response to widespread industry support for a less burdensome mechanism for participation in the Lifeline program, the Commission developed the LBP designation, which applies only to broadband internet access service (BIAS) providers because the Commission had previously found that broadband internet access was inherently interstate. Adopting an approach that carefully targeted regulatory prescriptions to the relevant service, the Commission concluded that the Commission could, and had previously, designated carriers as eligible for particular elements of universal service funding depending on the service provided.[62] Since the Commission had also previously determined that BIAS is inherently interstate, a position affirmed confirmed by this Commission's attempt to preempt state and local efforts to adopt open internet rules,[63] the 2016 Lifeline Order concluded that the Commission could designate broadband-only providers because it was authorized to do so pursuant to 47 USC 214(e)(6).[64] Section 214(e)(6) provides the Commission jurisdiction over eligible telecommunications carrier designations when a state lacks jurisdiction.[65] The Commission found that facilitating easier entry into the Lifeline program by broadband providers would improve access to high quality services and help ensure just and reasonable rates through increased competition.[66]

The 2016 decision to adopt a national LBP program was correct. The 2016 Lifeline Order undertook a detailed analysis to verify the authority of the Commission to act in this regard. The

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[59] NPRM at ¶54.
[60] Letter from the Leadership Conference on Civil and Human Rights to FCC Chairman Pai, WC Docket Nos. 09-197, 11-42 (March 16, 2017).
[61] 2016 Lifeline Modernization Order at ¶¶221-228.
[62] *Id*. at ¶¶242 - 248.
[63] Internet Freedom Order at ¶431.
[64] 2016 Lifeline Modernization Order at ¶255.
[65] *Id.* at ¶240.
[66] *Id*. at ¶272.

end of the LBP program has undermined a number of creative small companies' proposals to offer broadband to low-income populations.[67] Once the national verifier is in place, a number of national broadband providers may decide to enter the Lifeline program, but not if they must seek ETC status on a state-by-state basis. Given that the Commission is proposing to remove non-facilities based providers from the Lifeline program, pulling the plug on approximately 70 percent of the program's participants, the proposal to eliminate a streamlined entry point into the program for facilities-based providers is particularly counterproductive.

A national LBP designation does not infringe upon states' rights and traditional areas of authority. The Commission appears to be anxious to utilize its preemption authority in a number of areas—reversing course on this one program, to the detriment of low-income households—in a manner seemingly designed more to harm low-income communities than it is designed to respect states' rights.[68] As of 2013, twenty-one states administer their own Lifeline program.[69] Any state that conducts its own state-level, Lifeline program will retain the right to designate the carriers who receive funding from the state. In fact, the ability to exercise control over carriers in their state might be a welcome incentive to encourage states to supplement the federal $9.25 monthly subsidy with their own subsidies. The relatively high subsidy in the state of California likely draws a large number of potential providers to that state. Moreover, a significant number of states have elected not to designate wireless providers in the Lifeline program at all. According to a 2013 analysis by the National Regulatory Research Institute, at least 12 states do not designate Lifeline-only wireless providers within the program.[70] The trend of reducing state-level authority is likely to continue, thus reducing the number of states who exercise any jurisdiction over carriers that participate in the Lifeline program at all. States can well play an important role in affordable broadband adoption through many mechanisms. Revocation of the LBP program is not necessary to work collaboratively with state and local governments in their areas of expertise.

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[67] Letter from the Leadership Conference on Civil and Human rights to FCC Chairman Pai, WC Docket Nos. 09-197, 11-42 (March 16, 2017) (describing an LBP offering by a Minority Business Enterprise that offers 300 Mbps download and 150 Mbps upload, as well as unlimited Wi-Fi data with no out-of-pocket charges, caps or overage charges to Lifeline-eligible residents of low-income, senior and mixed-housing developed and managed by a non-profit community developer in Chicago; an LBP that had partnered with a public housing authority in New York to provide residents with a fixed wireless broadband offering with speeds of 20 Mbps down and 20 Mbps up and no data caps; and an LBP Lifeline broadband offering to target the homework gap with 4G LTE hotspots with up to 6 GB per month).

[68] *See, e.g.*, Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment, Notice of Proposed Rulemaking and Notice of Inquiry, WT Docket No. 17-79 (April 21, 2017); Jenna Ebersole, Law360, *New FCC Looks Poised To Overrule Local Barriers To 5G* (Feb. 9, 2017).

[69] Sherry Lichtenberg, Lifeline and the States: Designating and Monitoring Eligible Telecommunications Carriers, p. v (National Regulatory Research Institute: 2013).

[70] Sherry Lichtenberg, Lifeline and the States: Designating and Monitoring Eligible Telecommunications Carriers, p. iv (National Regulatory Research Institute: 2013).

The Commission's allegation that the 2016 Order was "wholly inconsistent with Section 214 of the Communications Act, which gives primary responsibility for designation of eligible telecommunications carriers to the states," ignores Section 214(e)(6), which authorizes the Commission to act where states are not authorized. Whereas the Commission claims to "reconsider" its previous conclusion, it does not critique or reanalyze the previous Commission decision at all. Instead it merely refers to suits that have been put on hold on the D.C. Circuit, and upon which no court has ruled.[71]

The Commission should reverse course, retain and act upon applications for LBP status.

2. The Commission Should Retain the Requirements for Wi-Fi, Tethering and Hotspots

The Commission revisits the requirement that to the extent carriers are providing Lifeline consumers equipment on which to access Lifeline service, the devices are to be Wi-Fi enabled, tethering charges are prohibited, and an increasing percent of devices must be capable of functioning as a hot-spot.[72] These requirements should remain, as they serve to stretch the value of the Lifeline service benefit to consumers. These rules help to close the digital divide by ensuring that Lifeline households are able to maximize their access to broadband in a manner similar to non-Lifeline households. The Lifeline minimum standards increase gradually over time and are reviewed annually. It is important to preserve these requirements as the broadband service offering is expected to become more robust and these equipment functionalities will become more useful.

3. The Commission Should Adopt the Program Integrity Proposals Regarding the Switch to Risk-Based Audits

Low-Income Consumer Advocates support the shift to a risk-based approach to determining Lifeline companies selected for audits as described in NPRM ¶¶ 83-86. The Wireline Competition Bureau and Office of Managing Director, in coordination with USAC, would determine the risk factors and would use risk factors to determine which companies would be subject to the biennial independent audits, noting that there should be consideration given to small companies, as these independent audits may be expensive.

4. The Commission Should Adopt Program Integrity Measures Regarding Eligibility Verification

The implementation of the National Verifier will take the eligibility determinations out of the hand of carriers, so these proposals are designed to ensure program integrity during this transition period until there has been the switch to the National Verifier. Low-Income Consumer Advocates support Commission proposals to require ETC's customer enrollment representatives to register with USAC in order to submit information to the National Lifeline Accountability

[71] NPRM at ¶56.
[72] NPRM at ¶81.

Database or the National Verifier.[73] This should help ensure ETC accountability for accurate data, deter improper tactics, and help USAC and the FCC identify suspicious activity. Low-Income Consumer Advocates are also supportive of the proposal to prohibit commission-based agents from performing eligibility verifications.[74] This would provide another check in the enrollment process and additional program integrity assurance.

Low-Income Consumer Advocates have some reservations about having USAC directly review supporting documents for all manual NLAD resolutions[75] if this manual review cannot be performed in a timely manner (3 days or less). The National Verifier will soon be taking these functions out of the hands of the carriers, so this proposal only makes sense if it is efficient to switch this review over to USAC ahead of the natural transition to the National Verifier. The administration of this review should not hamper the roll-out of the National Verifier.

The Commission asks if Lifeline subscribers should have to submit documentation in certain circumstances during their annual re-certification. For example, if the consumer is asserting continued eligibility for Lifeline due to participation in a different qualifying program. Low-Income Consumer Advocates are concerned that additional documentation requirements will result in consumers dropping off Lifeline. Low-income consumers are living on the margins, and we have described the instability and stress caused by income volatility earlier in these comments. We urge the Commission to design ways to minimize the number of households that might be otherwise subject to providing additional documentation. For example, Lifeline application forms could ask consumers to indicate the primary program used to establish eligibility and can ask the consumer to voluntarily indicate all other qualifying programs the consumer participates in or intends to apply for so that at time of annual re-certification, all those databases could be checked for enrollment. This could cut down on the number of consumers that would need to be contacted for additional documentation and, in turn, would minimize additional and potentially burdensome requirements on vulnerable households.

5. The proposals regarding the Independent Economic Household Worksheet should take into account domestic violence survivors

The NPRM has some sound proposals regarding the use of the independent economic household worksheet. For example, it makes sense to limit use of the form to times where there is actually a duplicate address issue.[76] While it also makes sense for USAC to know if particular addresses are group housing situations[77] so that USAC can better determine if there is an abuse in the enrollment process from normal situations, we urge the Commission and USAC to work with the domestic violence community regarding the sensitive nature of domestic violence shelters. The mishandling of that information could jeopardize health and safety and property.

[73] NPRM at ¶92.
[74] NPRM at ¶94.
[75] NPRM at ¶¶95-96
[76] NPRM at ¶98.
[77] NPRM at ¶99.

6. The Commission Should Not Limit Lifeline to Non-Adopters

The NOI asks about limiting the Lifeline benefit to non-adopters. [78] As we discussed above in our comments to the NPRM, the precarious economic state of low-income households makes it difficult for households that may have funds for a month or a few months for voice and/or broadband, to be able to afford service throughout the year. Income volatility coupled with lack of adequate savings would mean that many low-income households would be denied service for the perverse reasons that they were able to afford service at one point in time. This limitation could harm those very households that are making sacrifices to obtain connectivity, but are having a hard time succeeding without assistance.

The NOI also asks questions about how to target Lifeline support to close the digital divide.[79] We urge the Commission to consider pilot programs on ways to leverage Lifeline through aggregation and the provision of service by non-traditional broadband-only service providers. The Commission's very brief Lifeline Broadband Provider designation applications demonstrated the energy and desire to develop affordable broadband products that can leverage the Lifeline benefit to serve communities of low-income households. Low-Income Consumers recommend that the Commission set aside a modest amount of Lifeline funds for public-private solutions that can use Lifeline as part of a community solution to bridging the digital divide.

IV. Conclusion

The Low-Income Consumer Advocates appreciate the opportunity to comment on the NPRM and NOI and stand ready to collaborate with the Commission and other stakeholders to ensure low-income people have affordable access to voice and broadband services through a robust Lifeline program.

Respectfully submitted,

Olivia Wein

Olivia Wein, on behalf of the Low-Income Consumer Advocates

Telecom Project Lead Attorney
National Consumer Law Center
1001 Connecticut Avenue, NW, Suite 510
Washington, DC 20036-5528
(202)452-6252, x 103
owein@nclc.org

February 21, 2018

[78] NOI at ¶120.
[79] NOI at ¶121 *et seq.*

Appendix A

<u>Low-Income Consumer Advocates</u>:

Advocates for Basic Legal Equality is a non-profit public interest law firm in Ohio with offices in Toledo and Dayton. Its attorneys represent low income groups and individuals. Since the passage of the Telecommunications Act in 1996 it has worked to ensure that low income families have access to and are able to afford phone and internet service.

The **Benton Foundation** is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

The **Center for Accessible Technology (CforAT)** is a nonprofit based in Berkeley, California that supports technology access for people with disabilities in order to support their ability to live independently. CforAT provides information and training to ensure that people with disabilities are fully integrated into their community, runs the Accessible Technology Coalition (https://atcoalition.org/), an online effort to disseminate appropriate information about technology accommodations, and works with various entities to support web accessibility. CforAT also works before the California Public Utilities Commission, representing the disability community in proceedings on telecommunications, energy and water, particularly as they address affordability and access to utility services.

The **Center for Rural Strategies** works to support policies and programs that connect rural America and other marginalized communities in ways that create cultural inclusion, racial justice, and economic opportunity, especially for low-income families. Rural Strategies coordinates the National Rural Assembly and publishes the Daily Yonder, an online news platform.

Common Cause is a nonpartisan, nationwide grassroots network of more than one million members and supporters that has advocated for an open, honest, and accountable government for over 45 years. Because a vibrant informational ecosystem is critical to self-governance, Common Cause promotes public interest communications policies that connect all Americans to fast, reliable, and affordable broadband.

Founded in 1966 by the Philadelphia Bar Association, **Community Legal Services (CLS)** has provided free civil legal assistance to more than one million low-income Philadelphians. As the City's oldest and largest legal services program, CLS represented approximately 9,500 clients in the past year. CLS assists clients when they face the threat of losing their homes, incomes, health care, and even their families. CLS attorneys and other staff provide a full range of legal services, from individual representation to administrative advocacy to class action litigation, as well as

community education and social work. CLS is nationally recognized as a model legal services program. For more information, contact 215-981-3700 or visit www.clsphila.org.

Consumers Union is the advocacy division of **Consumer Reports** (CR). CR is the world's largest independent product-testing organization. It conducts its advocacy work in the areas of privacy, telecommunications, financial services, food and product safety, health care, and other areas. Using its dozens of labs, auto test center, and survey research department, the nonprofit organization rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 7 million members of its magazine, website, and other publications.

The mission of the **East Bay Community Law Center** is to promote justice and build a community that is more healthy, secure, productive and hopeful. EBCLC provides legal services and policy advocacy that are responsive to the needs of low-income communities, and law training that prepares future attorneys to be skilled and principled advocates that are committed to finding innovative solutions to the cause and conditions of poverty.

Founded in 2002, **Georgia Watch** is the state's leading consumer advocacy organization. Georgia Watch serves as a champion for Georgia's consumers through education and advocacy. We work to influence public policies to positively impact consumers, safeguard consumer protections in the area of personal finance, promote access to safe and affordable healthcare, encourage fair utility rates and renewable energy options, and protect consumers' right to seek redress in a civil court of law when they've been harmed in the marketplace.

The **Low Income Utility Advocacy Project (LIUAP)** engages in administrative and legislative advocacy in Illinois in the utility/energy area on behalf of low income households and not-for-profits. It is a project of the Shriver Poverty Law Center, Voices for Illinois Children and Heartland Alliance for Human Needs and Human Justice.

Media Alliance is a Bay Area democratic communications advocate. We work for a communications system that serves the interests of peace, justice and social responsibility and preserves the rights of all to freedom of expression. We represent professional and citizen journalists, media makers and members of the community who practice civic engagement via affordable, open and ubiquitous digital platforms.

Founded in 1909, the **NAACP** is our nation's oldest, largest and most widely-recognized grassroots-based civil rights organization. We currently have membership units in every state in our nation, as well as on U.S. military bases in Asia, Europe, and the Caribbean.

Since 1969, the nonprofit **National Consumer Law Center**® (NCLC®) has used its expertise in consumer law and telecommunications and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness. NCLC is committed to bridging the digital divide and ensuring a strong

Lifeline program that provides universal, affordable voice and broadband internet service for low-income households.

New Jersey SHARES, Inc. is a statewide non-profit corporation primarily providing assistance to individuals and families in need of help meeting their energy and utility burden. Through assistance, advocacy, community outreach, education, information and referral, we connect low and moderate income households with available resources. NJS serves working poor, moderate and fixed income households. NJS provides a safety-net for our neighbors in crisis across New Jersey. NJS is active in our communities providing education, referrals and advocacy. In 2017, we participated in 300 events across our state. In addition to the traditional NJS energy assistance program, we administer the Atlantic City Electric Helping Hands program, a water assistance program for SUEZ Water Company customers. We administer two low-income programs for NJ American Water. NJS also partners with Verizon NJ to provide a unique, comprehensive and compassionate solution for Verizon low-income customers eligible for the Communications Lifeline program (Landline and Broadband}. NJS provides community outreach and enrollment services as well as providing direct services utilizing our Client Service Center staff.

Since 1994 **Open Access Connections** has been providing free communication tools to homeless and low-income Minnesotans. By facilitating free communication services, we encourage self-determination and stronger community connections for people in need.

The **Pennsylvania Utility Law Project (PULP)** is a specialized legal aid program of the Pennsylvania Legal Aid Network, and provides information, assistance, and advice about residential utility and energy matters affecting low-income consumers. PULP’s mission is to assist Pennsylvania low income residential utility and energy consumers to connect and maintain affordable energy and utility services within their home. PULP serves all of Pennsylvania, and acts in coordination with the Pennsylvania Legal Aid Network of Programs and other nonprofit agencies and community groups to achieve its mission.

Pro Seniors, located in Cincinnati, Ohio, is a legal service organization for the state of Ohio whose mission is to enhance the independence and quality of life of older adults by empowering them, by protecting their interests and by facilitating their access to resources. In addition to many other programs to assist seniors, we operate a no-cost statewide legal hotline, as well as provide long term care ombudsman assistance and legal representation to seniors in southwest Ohio.

Public Citizen is a nonpartisan, not-for-profit organization representing the interests of our more than 400,000 members and supporters across the country. We conduct research and advocacy to support those policies that benefit and protect the interests of household consumers.

Public Knowledge is a non-profit public interest advocacy organization that focuses on competition and consumer protection issues in the telecommunications, media, technology, and intellectual property sectors. Public Knowledge promotes freedom of expression, an open internet, and access to affordable communications tools and creative works.

The **Public Utility Law Project of New York, Inc**. ("PULP") is a nonprofit organization formed in 1981 to promote and defend the interests of low and fixed income utility consumers in matters affecting affordability, universal service, and consumer protection. PULP educates the public about utility rates and charges, conducts research, intervenes in administrative agency proceedings, and provides legal representation to enforce and defend the rights of residential utility consumers. In the 1980's, we pioneered the development of Lifeline rates in New York for low-income customers. In 2013, we built on these efforts by participating in a proceeding that for the first time extended Lifeline to low-income telephone customers of a large New York cable provider. When technology and de-regulation change the way people communicate, we work to ensure that low- and fixed-income consumers can obtain necessary communication services at affordable costs. We have participated in industry-wide initiatives considering the future of telephone service. We actively support Lifeline assistance for customers with phone service from cable companies and wireless providers; as well as expanded internet access for low income customers.

Texas Legal Services Center is a statewide Legal Aid program that assists approximately 10,000 low-income Texans each year. TLSC's public utility law project assists persons with enrollment problems for electricity and telephone lifeline programs. TLSC worked with Texas public officials to design the automatic enrollment program that now helps over 700,000 Texans access federal and state subsidies for telecommunications.

The **United Church of Christ, Office of Communication, Inc. (UCC OC Inc.)** is the media justice ministry of the United Church of Christ, a faith community rooted in justice that recognizes the unique power of the media to shape public understanding and thus society. Established in 1959, UCC OC Inc. established the right of all citizens to participate at the Federal Communications Commission as part of its efforts to ensure a television broadcaster in Jackson, MS served its African-American viewers during the civil rights movement and continues to press for media justice and communications rights in the present day. The Cleveland-based United Church of Christ has almost 5,000 local congregations across the United States, formed in 1957 through union of the Congregational Christian Churches and the Evangelical and Reformed Church.