

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Bridging the Digital Divide)	WC Docket No. 17-287
for Low-Income Consumers)	
)	

**COMMENTS OF
NEW AMERICA’S OPEN TECHNOLOGY INSTITUTE**

Sarah Morris
Joshua Stager
Eric Null
Amir Nasr
Becky Chao

Open Technology Institute | New America
740 15th St NW Suite 900
Washington, D.C. 20005

February 21, 2018

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I. Introduction and Summary

In the instant proceeding, the Commission advances a sweeping Notice of Proposed Rulemaking and Notice of Inquiry¹ (“Lifeline Item” or “Item”) that would hobble the Lifeline program—the only federal program currently designed to subsidize broadband access for the nation’s most vulnerable populations. This Item proposes a series of damaging reforms that would exacerbate the digital divide and mark an unprecedented reversal in the Commission’s progress toward ensuring universal service. New America’s Open Technology Institute (“OTI”) strongly urges the Commission to abandon this Item and refocus its energy on building upon past successes.

In 2016, the Commission modernized the Lifeline program in its *2016 Lifeline Modernization Order*² (“2016 Order”) that was supported by sound legal reasoning and a consistent adherence to Congressional intent. The 2016 Order extended the program to standalone broadband, helping ensure that low-income Americans have access to 21st Century communications capabilities. The 2016 Order also created a National Verifier that removed carriers from the process of determining consumer eligibility and strengthened program integrity.

Now, a mere two years later, the Commission proposes to abandon these changes. The Item proposes to cut standalone broadband support, cut resellers from the program, cut total

¹ *Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, WC Docket No. 17-287 (Nov. 16, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db1201/FCC-17-155A1.pdf (“2017 Lifeline Item”).

² *Third Report and Order, Further Report and Order, and Order on Reconsideration, Lifeline Linkup Reform and Modernization*, 31 FCC Rcd 3962, ¶ 49 (Mar. 31, 2016), https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-38A1.pdf (“2016 Order”).

benefits, and otherwise harm low-income Americans, communities of color, Americans with disabilities, Puerto Ricans, and rural households. The item ignores affordability—the lodestar principle of the Lifeline program—and as a result the proposals will reduce competition and increase prices for Lifeline subscribers.

In these comments, OTI makes several arguments. First, the Commission should build upon the 2016 Order rather than repeal it. Standalone broadband should remain part of the Lifeline program because Congress envisioned it would be, cord-cutting shows that consumers want standalone broadband, and standalone broadband will help close the homework gap. OTI further argues that the Commission should preserve its equipment rule that requires Wi-Fi- and hotspot-enabled devices because those capabilities help subscribers to make the most of their Lifeline service. The Commission should also retain the Lifeline Broadband Provider (LBP) designation because it makes the program more efficient and effective.

Second, the Commission should maintain support for non-facilities-based services. Limiting the number of Lifeline providers runs counter to Congressional directives, and the Commission’s interpretations of the relevant statutes are exceedingly narrow. Resellers meet the statutory requirements for being Eligible Telecommunications Carriers (ETCs) and fully removing them from the program would have dramatic effects on consumers that rely on resellers for their Lifeline service.

Third, the Commission should reject its proposed lifetime benefit limits. These limitations would substantially complicate the program through increased administrative complexity, jeopardize consumer privacy by requiring extensive data collection and retention, deter consumer and provider participation, and destabilize the Lifeline marketplace. The Item fails to provide any justification for the proposed limits.

Fourth, the Commission should reject the proposed budget cap. The Commission should instead pause and address whether the program's current budget process has any problems. Once it makes that assessment, the Commission will see that fiscal austerity measures are not needed. The budget cap will only serve to add administrative costs and keep deserving low-income Americans from getting the benefits they desperately need.

Fifth, the Commission should not force Lifeline providers to collect co-pays. Eliminating these services would destroy the most popular plans in the Lifeline marketplace and abandon the highly vulnerable populations that rely on them. Mandatory co-pays would also create significant administrative costs, as the FCC would have to create a process to ensure that providers actually collect the required customer share. This process would necessarily generate new compliance costs for providers, USAC, and the Commission.

Sixth, the Commission's proposals would significantly harm Puerto Ricans. Puerto Ricans disproportionately lack access to broadband. Meanwhile, the island is still recovering from the catastrophic effects of Hurricane Maria that led to the destruction of infrastructure and entire towns. The Commission's proposals, such as removing resellers, would harm Puerto Ricans in particular. The Commission's lifetime benefit cap and budget cap would also deeply weaken Puerto Ricans' ability to use the Lifeline program.

II. The Commission Should Preserve Important Aspects of the 2016 Order To Improve Broadband Access

To ensure Lifeline recipients receive a service plan that enables the most efficient use of their subsidy and provides the best communications services, the Commission should build upon, rather than repeal, the 2016 Order's reforms. The Commission should continue to provide Lifeline support for standalone broadband service. The Commission should also continue to mandate support for mobile devices that are Wi-Fi and hotspot enabled, while prohibiting providers from imposing tethering charges. And the Commission should not remove the Lifeline Broadband Provider (LBP) designation, which was designed to streamline the process for designating standalone broadband providers in the Lifeline program.

A. The Lifeline Program Should Support Standalone Broadband

The Commission should not eliminate standalone broadband from Lifeline.³ Two years ago, the FCC updated the program to support standalone broadband with a reasonable timeline for implementation. The Item contemplates removing standalone broadband while continuing to wind down standalone voice as a supported service. This approach leaves Lifeline support for only bundled voice and broadband services and dramatically limits options for subscribers. The Commission should continue supporting standalone broadband service because (1) the statute and Congressional intent show that universal service was meant to be a moving target, (2) the prevalence of cord-cutters shows that consumers want standalone broadband service, and (3) supporting standalone broadband will help close the homework gap.

³ 2017 Lifeline Item ¶¶ 41-43.

i. Supporting Standalone Broadband is Consistent with the Statute and Legislative Intent

Achieving universal access to necessary communications services is a naturally evolving goal that the Commission correctly decided in 2016 should include standalone broadband. The statute explicitly requires the Commission to update its definition to accommodate changes in technology: “[u]niversal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services.”⁴ Moreover, years of recent reforms within the Commission’s universal service programs have made clear that broadband is a core component of that goal.⁵ Broadband is the next evolution of service that the Commission should support through Lifeline. The Commission should understand that, much like consumers needed affordable telephone access to participate in society in 1985,⁶ Americans need affordable broadband access to participate in society in 2018. To conclude otherwise would contravene the very core of the Commission’s mission and statutory authorization.⁷

Including standalone broadband in Lifeline is consistent with Congressional intent. The Senate Commerce Committee Report on the 1996 Telecommunications Act stated that the universal service definition should include the level of service “that is used by a substantial majority of residential consumers to access advanced telecommunications services,

⁴ 47 U.S.C. § 254

⁵ *Second Report and Order and Order on Reconsideration*, WC Docket No. 13-184 (Dec. 11, 2014), https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-189A1.pdf; *Third Report and Order, Further Report and Order, and Order on Reconsideration*, WC Docket No. 11-42 (March 31, 2016), https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-38A1.pdf; *Report and Order*, WC Docket No. 10-90 (Dec. 11, 2014), https://apps.fcc.gov/edocs_public/attachmatch/FCC-14-190A1.pdf.

⁶ MTS and WATS Market Structure; and Establishment of a Joint Board; Amendment, 50 FR 939-01 (at 941), 1985 WL 82930 (“Access to telephone service has become crucial to full participation in our society and economy which are increasingly dependent upon the rapid exchange of information.”).

⁷ 47 USC § 151 (“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”).

information services, and cable services.”⁸ As an example, the Committee pointed to then-widely-available touch tone telephone service, a service used by a substantial majority of residential customers to access services such as voicemail, telephone banking, and mail-order shopping services.⁹ The Committee also noted that if the substantial majority of residential consumers in the year 2010 use “two-way interactive full motion video service as the primary means of communicating,” then touch tone service might not satisfy the evolving definition of universal service (and by implication two-way video communication would).¹⁰

Standalone broadband clearly meets the “substantial majority” and “used to access information services” requirements from the report. According to the Commission, subscriptions to fixed broadband services reached an all-time high of 73% of Americans in 2016.¹¹ The number is even higher for mobile broadband, as roughly 80% of American mobile subscribers used smartphones in 2016, according to the Commission.¹² Further, broadband services are used by consumers across America to access information and cable services, which require advanced telecommunications service capability. In fact, it would likely be easier for an individual to access banking and shopping services using broadband than using a telephone given the ease with which Americans can access and download different websites and applications for online banking and other information. The 2016 Commission faithfully followed Congress’ directive when it updated the program to include standalone broadband as a

⁸ S. Rep.104-23, 104th Cong., 1995 WL 142161 (Leg.Hist.), P.L. 104-104.

⁹ *Id.*

¹⁰ *Id.*

¹¹ 2018 Broadband Progress report ¶ 17.

¹² *Thirteenth Section 706 Report Notice of Inquiry*, GN Docket No. 17-199 (Aug. 8, 2017), ¶ 6 (“Many Americans use mobile broadband to enjoy advanced telecommunications capability. As of the beginning of 2016, approximately 80 percent of American mobile subscribers used smartphones, up from approximately 50 percent in 2012.”).

separate service supported by the Lifeline program. And broadband is very much like the two-way video communications system predicted by Congress, meaning it should have standalone Lifeline support.

Not only did Congress predict the growth of two-way communications technologies, they expressly included conduit technologies in the growing definition of universal service. The Senate committee report stated the following: “[p]ut another way, the Committee intends the definition of universal service to ensure that the conduit, whether it is a twisted pair wire, coaxial cable, fiber optic cable, wireless, or satellite system, has sufficient capacity and technological capability to enable consumers to use whatever consumer goods that they have purchased, such as a telephone, personal computer, video player, or television, to interconnect to services that are available over the telecommunications network.”¹³ Congress envisioned that universal service would support essentially any type of conduit that supports transmission, which includes, explicitly, broadband conduits like coaxial and fiber optic cable. Those conduits also have to be “sufficient” to enable consumers to access the services they purchase, which supports inclusion of minimum standards.

ii. Americans Want Standalone Broadband Plans

Increasing numbers of Americans are “cutting the cord” and paying for broadband-only packages, which shows that Americans increasingly prefer standalone broadband plans over bundled subscriptions. One report estimated that 22.2 million Americans cut the cord in 2017, marking a 33% increase from the estimated 16.7 million Americans who cut the cord the

¹³ S. Rep.104-23, 104th Cong., 1995 WL 142161 (Leg.Hist.), P.L. 104-104.

previous year.¹⁴ This increased demand for standalone broadband reflects the fact that a large number of Americans prefer to access information, education, healthcare, government, employment-related, and entertainment services solely through their broadband connection. The 2016 Order was a commonsense reflection of this marketplace reality.

The current proposal, on the other hand, could force Lifeline customers to pay for voice services they likely do not want or need. Broadband service supports calling and texting, but it also supports every other service available online, making standalone broadband access a versatile service and efficient use of Lifeline support. In 2016, the Commission stated “[i]n many areas, as the communications market evolves, broadband is replacing traditional telephone service and providing subscribers with voice and texting options in addition to internet access.”¹⁵ Thus, without a standalone broadband option, Lifeline subscribers would have to apply their benefit to a bundled voice-and-broadband service¹⁶ even if (1) those consumers do not want separate voice service and (2) the bundle is more expensive than standalone broadband. Lifeline subscribers should be able to choose which type of service is best for them.

iii. Standalone Broadband Plans Help Close the Homework Gap

Standalone broadband should remain a supported program to help school children achieve success and to close the homework gap. A broadband connection at home is crucial for

¹⁴ Todd Spangler, *Cord-Cutting Explodes: 22 Million U.S. Adults Will Have Canceled Cable, Satellite TV by End of 2017*, Variety (Sept. 13, 2017), <http://variety.com/2017/biz/news/cord-cutting-2017-estimates-cancel-cable-satellite-tv-1202556594/>.

¹⁵ 2016 Order ¶ 49.

¹⁶ The FCC is proposing to continue the phase-down of voice-only service. 2017 Lifeline Item ¶ 74-76. Combined with removing broadband-only from the program, that will leave only bundled voice-and-broadband plans eligible for Lifeline subsidy.

children’s ability to adequately complete their assigned homework, and to generally explore, understand new topics, and grow as learners. Broadband access enables teachers to better communicate with students and parents about due dates and projects, school events, grades, student behavior in the classroom, and other important information through a class website or portal, email, and through services such as Google Classroom.¹⁷ It should therefore be obvious that without access to broadband, students are unable to complete assignments, research, and apply to scholarships, and their parents are less informed about the students’ progress.¹⁸

Increasingly, teachers are assigning homework that requires an internet connection to complete. A recent survey showed 70% of teachers assign their students homework that requires the internet.¹⁹ However, the Pew Research Center found that 5 million households with school-age children lack high-speed internet service at home, with low-income households making up a disproportionately large percentage of that figure.²⁰ The Universal Service Administrative Company found that overall, there are 3.85 million households with children under age 18 that lack internet access and are eligible for Lifeline.²¹ This divide breaks down on a race level too. According to Pew, more low-income black and Hispanic households with children lack high-speed internet access at home than low-income white households by about

¹⁷ 2016 Order ¶ 49.

¹⁸ Benton Foundation Comments, WC Docket No. 11-42 (Aug. 31, 2015), at 7-8, <https://ecfsapi.fcc.gov/file/60001223361.pdf>.

¹⁹ Sean Cavanagh, *Students’ Lack of Home Internet Access Becomes Priority for District Tech Leaders*, Edweek Market Brief (Feb. 19, 2016), <https://marketbrief.edweek.org/marketplace-k-12/lack-of-out-of-school-web-connections-major-focus-of-district-tech-leaders/>.

²⁰ John B. Horrigan, *The numbers behind the broadband ‘homework gap*, Pew Research Center (Apr. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/>.

²¹ Universal Service Administrative Company Eligible Lifeline Population Statistics, <http://www.usac.org/li/about/process-overview/program-stats.aspx> (“USAC Eligible Lifeline Population Statistics”).

10 percentage points.²² More must be done to connect these households. Unfortunately, the proposed changes will do little to increase home access for these students and parents.

Overall, the Commission should continue to support standalone broadband through Lifeline to enable consumer choice and efficient use of the subsidy program. The inclusion of standalone broadband in the program is consistent with the goal of universal service and the program and would provide Lifeline recipients with an efficient means of purchasing broadband capability that would support the communication needed for work, personal needs, and education.

B. The Commission Should Preserve the Equipment Rule That Requires Wi-Fi and Hotspot-Enabled Devices

The Commission should reject the Item’s proposal to eliminate a rule requiring Lifeline providers to provide Wi-Fi and hotspot-enabled devices (the “equipment rule”). In suggesting the elimination of the equipment rule, the Commission states, without much explanation, “[a]lthough well-intentioned, the equipment mandate appears unnecessary if not affirmatively harmful.”²³ The Commission further argues there was insufficient evidence for the equipment rule as a way to address the homework gap,²⁴ even though it has been clearly articulated, both in the 2016 Order and elsewhere, that the homework gap cannot be closed with devices that lack Wi-Fi and hotspot capabilities. Requiring devices to have Wi-Fi and hotspot capabilities would ensure that Lifeline subscribers can use both on mobile networks *and* fixed networks that have Wi-Fi routers.

²² *Id.*

²³ 2017 Lifeline Item ¶ 81.

²⁴ *Id.*

Wi-Fi and tethering each address particular problems with ensuring robust broadband connectivity. Wi-Fi allows Lifeline consumers to reduce data overages and costs of wireless plans. Tethering allows a household to share the single point of connectivity among different household members. Both of these functions has clear benefits for Lifeline subscribers.

i. Wi-Fi Enabled Devices Reduce Consumer Costs and Cellular Network Loads

In a program where the goal is to reduce the cost of communications services for low-income Americans, requiring Wi-Fi enabled devices is common sense. Using cellular data is costly. When subscribing to mobile broadband services, consumers typically have two choices: unlimited plans and tiered plans. Unlimited plans tend to be more expensive, and low-income consumers are less likely to subscribe to them. Moreover, the “unlimited” plans offered by the two largest mobile carriers have a ‘soft’ data cap of 22 gigabits, after which a user can be slowed to 2G speeds. This reduction is significant, since the average household consumes roughly 10 times as much data on fixed broadband networks at home (190 gigabits as of Dec. 2016).²⁵ Tiered plans are cheaper but come with data caps. Exceeding those caps can result in overage charges or slow the user’s connection to a crawl, rendering it essentially useless.²⁶

Wi-Fi enabled devices help Lifeline subscribers avoid the problems associated with data caps. Wi-Fi connectivity does not generally incur a charge from the subscriber’s wireless provider. Wi-Fi is frequently available for free in publicly accessible places such as restaurants,

²⁵ Comments of New America’s Open Technology Institute, GN Docket No. 17-199 (Sep. 21, 2017), at 5-9.

²⁶ *Id.*, at 7 (“Once the customer hits their provider’s ‘soft’ data cap, they either must endure their service slowing to a crawl, thus making it difficult to use various online applications or services, or they must absorb a far more expensive bill. Many families and individuals are forced to ration their use of mobile apps during the waning days of a billing cycle (potentially only being able to use their service for email, but not video streaming), but at least most can achieve that functionality when they get home if they subscribe to a fixed BIAS connection.”).

malls, schools, coffee shops, and libraries. Additionally, more than 50 cities offer free Wi-Fi.²⁷ Eliminating the Wi-Fi requirement could force Lifeline subscribers onto wireless connections, which is costly for the subscriber and an inefficient use of scarce spectrum resources.²⁸ Lifeline recipients should have the option to purchase a lower tier plan with a Wi-Fi enabled device so they can make more efficient use of their Lifeline support.

The Wi-Fi requirement also better reflects how consumers continue to rely on fixed networks. Consumers sometimes use fixed networks with mobile devices even when they do not realize they are doing so, and continue to depend on fixed networks. Without the capability to connect to Wi-Fi networks, Lifeline recipients would be at a particular disadvantage and would be forced to use slower and costlier mobile data networks exclusively. Ensuring Wi-Fi capability in Lifeline devices could also have industry-wide benefits, as it would encourage efficient use of spectrum by offloading data onto fixed networks. A substantial percentage of mobile data traffic gets offloaded onto fixed networks through Wi-Fi, and the majority of mobile device data traffic in homes and workplaces occurs over Wi-Fi, not through cellular networks.²⁹ According to Cisco, the share of total mobile device data traffic offloaded onto fixed networks in 2016 was significantly higher than the share transported over cellular networks.³⁰

²⁷ Michael Springer, *57 Cities Now Have Free Wi-Fi, But They're Not Thinking Big Enough*, Mic (Oct. 9, 2013), <https://mic.com/articles/66891/57-cities-now-have-free-wi-fi-but-they-re-not-thinking-big-enough#.gJI3S87KJ>

²⁸ Open Technology Institute Comments, GN Docket No. 17-199 (Sep. 21, 2017), at 5-22; Incompas Comments, GN Docket No. 17-199 (Sep. 21, 2017); Microsoft Comments, GN Docket No. 17-199 (Sep. 21, 2017).

²⁹ INCOMPAS Comments, GN Docket No. 17-199, Appendix A, David S. Evans, Economic Findings Concerning the State of Competition For Wired Broadband Provision To U.S. Households and Edge Providers (Aug. 29, 2017), at 16.

³⁰ *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2016–2021 White Paper*, Cisco (Mar. 28, 2017), <https://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.html> (“Of all IP traffic (fixed and mobile) in 2021, 50% will be WiFi, 30% will be wired, and 20% will be mobile.”).

As OTI has previously argued, and with which the Commission has agreed, fixed broadband provides higher throughput levels than mobile broadband, partially because fixed services process data in a manner that mobile broadband services cannot.³¹ Consequently, the Commission would severely undermine the program if it restricted Lifeline recipients to cellular networks and inferior devices.

ii. Hotspot-Enabled Devices Allow Lifeline Subscribers to take Full Advantage of their Broadband Access

The Commission should also retain its requirements that Lifeline-supported devices be hotspot-enabled and that providers be prohibited from imposing tethering charges. Lifeline is a household benefit and therefore entire households should be able to actually benefit from the connection, whether it is unlimited or even if it is capped. Hotspot capability could allow entire households to use the connection. The Commission explained the need for the requirement in the 2016 Order: “[i]n a household with Wi-Fi enabled devices and no fixed Internet connection, a tethered connection can help to ensure Internet access for multiple family members... A hotspot enabled device also helps bridge the digital divide, and efficiently maximizes the value of a single mobile broadband connection.”³²

The hotspot requirement will be even more important if the Commission follows through on its proposal to remove standalone broadband service from the Lifeline program. Many low-income Americans rely on smartphones for internet access in lieu of a fixed broadband connection at home due to cost.³³ For the 21 percent of Americans earning less than \$20,000 annually who rely on smartphones for internet access but cannot afford standalone

³¹ OTI Comments, GN Docket No. 17-199; 2018 Broadband Progress Report.

³² 2016 Order ¶ 377.

³³ 2016 Broadband Progress Report ¶ 39 (“Moreover, the data suggest that those Americans that do rely on mobile broadband exclusively often lack the means to purchase both services.”).

broadband at home, a Lifeline-supported device with hotspot capability would serve as the only avenue for a family to share their subsidized internet on several devices.³⁴ Particularly without the inclusion of standalone broadband in the Lifeline program, a hotspot-enabled device could be the last remaining avenue for many low-income Americans to access broadband service at home.

Relatedly, the Commission should retain its requirement to prohibit providers from charging customers for tethering. Tethering charges would discourage recipients from using their devices as hotspots, further increase the cost of broadband access, and would again be counter to the affordability mandate in the Telecommunications Act.

The hotspot requirement also would not be burdensome to providers. The Commission adopted a reasonable, incremental hotspot requirement transition so providers would not have to update all their devices at once.³⁵ In fact, Lifeline providers are currently only required to make 15% of the broadband supported devices it sells to program recipients hotspot-enabled. This number will gradually increase, reaching 75% in December 2024.³⁶ This gradual transition allows providers plenty of time to adjust to the new policy.

iii. The Equipment Rule Helps Close the Homework Gap

The hotspot and Wi-Fi capability requirements in the 2016 Order are also vital to the Commission's effort to close the homework gap. OTI disagrees with the Item's claim that the

³⁴ Monica Anderson & John B. Horrigan, *Smartphones help those without broadband get online, but don't necessarily bridge the digital divide*, Pew Research Center (Oct. 3, 2016), <http://www.pewresearch.org/fact-tank/2016/10/03/smartphones-help-those-without-broadband-get-online-but-dont-necessarily-bridge-the-digital-divide/> (59% of both all non-broadband users and non-broadband users who have a smartphone replied that home broadband service is too expensive).

³⁵ 2016 Order ¶ 378

³⁶ *Id.*

2016 Order lacked sufficient evidence that the equipment rule would help combat the homework gap.³⁷ On the contrary, the Commission extensively documented why children need tethering and Wi-Fi capabilities to complete their homework.³⁸

The homework gap affects millions of children and is central to many families who qualify for Lifeline. Of the 39.7 million households that qualify for a Lifeline subsidy, 11.8 million—or roughly 30%—have children 17 years or younger.³⁹ Almost a third of all households that are eligible for Lifeline are experiencing the harms of the homework gap today—making issues related to children being able to complete homework absolutely crucial when examining any potential changes to this program. The Commission should be focusing resources to fix this significant problem.

Students require Wi-Fi enabled devices to do homework, as reflected by the many rural students and students of color across the country who continue to rely on free Wi-Fi to complete homework. While it is an unfortunate reality, many students use free Wi-Fi provided in places including their school buses,⁴⁰ McDonald’s locations,⁴¹ and Starbucks locations⁴² to complete homework because they do not have sufficient broadband access at home.⁴³ However,

³⁷ 2017 Lifeline Item ¶ 81.

³⁸ 2016 Order ¶ 367-378.

³⁹ USAC Eligible Lifeline Population Statistics.

⁴⁰ Cecilia Kang, *Bridging a Digital Divide That Leaves Schoolchildren Behind*, N.Y. Times (Feb. 22, 2016), <https://www.nytimes.com/2016/02/23/technology/fcc-internet-access-school.html>; Selena Randhawa, *WiFi-equipped school buses help students get online*, CNN (Oct. 31, 2017), <https://www.cnn.com/2017/10/31/tech/homework-gap/index.html>.

⁴¹ Anton Troianovski, *The Web-Deprived Study at McDonald's*, Wall St. J. (Jan. 28, 2013), <https://www.wsj.com/articles/SB10001424127887324731304578189794161056954>.

⁴² *Id.*

⁴³ Between just McDonald’s and Starbucks, there are 19,000 locations nationwide that provide free Wi-Fi, which combined with the 15,000 public libraries across the country that also offer free Wi-Fi (along with the numerous other public and private institutions that do so as well) provides students with Lifeline-supported devices several options for places to do homework with fast, reliable, and free service; Anton

this benefit only exists if the student's Lifeline-supported device is enabled to connect to Wi-Fi networks. A student with a Lifeline-enabled device might require a significant amount of data to complete one homework assignment, let alone all the homework assignments assigned to that student over one billing cycle—in addition to all the other uses the device would get by other family members. Many American children rely on stores with free Wi-Fi to complete their homework.⁴⁴ As the magazine *Colorlines* put it, “[f]or many black, Latino and rural children [McDonald's is] where their connection to the Web lives.”⁴⁵ The Wi-Fi enabled equipment rule plays an important role in ensuring that Lifeline meets these students' needs.

The equipment rule is also important because households are restricted to one Lifeline-supported device, which means that one device may serve the purpose of connecting an entire family to the internet. Sharing one device's connection without tethering is akin to asking multiple children to share the same pencil, notebook, and textbook to complete homework. It is an unworkable and untenable solution. Requiring Lifeline-supported devices to be hotspot-enabled empowers families to share their mobile connection over multiple devices, without the family needing to purchase another data plan for another smartphone or tablet (which would not qualify for Lifeline support).

Troianovski, *The Web-Deprived Study at McDonald's*, Wall St. J. (Jan. 28, 2013), <https://www.wsj.com/articles/SB10001424127887324731304578189794161056954>.

⁴⁴ There are 12,000 McDonald's restaurants in the United States that provide free Wi-Fi, and most people in the country live close to one location (it is impossible to be farther than 107 miles from a McDonald's in the U.S., with most people living considerably closer). McDonald's also boasts the fastest Wi-Fi of any other large open public network, according to OpenSignal; Joshua Bleiberg, *How McDonald's and Corporate America are Bringing Internet Access to Rural America*, Brookings Inst. (Aug. 21, 2014), <https://www.brookings.edu/blog/techtank/2014/08/21/how-mcdonalds-and-corporate-america-are-bringing-internet-access-to-rural-america/>.

⁴⁵ Jorge Rivas, *Not Loving It: Young Students Forced to Go to McDonalds for WiFi After Libraries Close*, *Colorlines* (Feb. 12, 2013), <https://www.colorlines.com/articles/not-loving-it-young-students-forced-go-mcdonalds-wifi-after-libraries-close>.

C. The Commission Should Preserve the Lifeline Broadband Provider Designation

The Commission should not eliminate the Lifeline Broadband Provider (LBP) designation and its valuable role in the program. As discussed above, inclusion of standalone broadband in Lifeline is vital. The current system for ETC designation for telephone Lifeline providers is not workable for the broadband context. Thus, to continue supporting standalone broadband as a Lifeline service, the Commission must also retain the LBP designation.

The LBP designation created a mechanism for the Commission to clearly identify national broadband providers that would be eligible for standalone broadband support.⁴⁶ The streamlined process for broadband-only Lifeline support was designed to incentivize more carrier participation in the program.⁴⁷ Many broadband providers offer service across state lines, and as such, could become bogged down in state designation processes before ever being able to offer a broadband Lifeline service.⁴⁸ Specifically, the Commission found that “potential Lifeline providers would be deterred by a requirement to undergo ETC designation proceedings before dozens of state commissions and the Commission in order to launch a nationwide Lifeline broadband offering.”⁴⁹ With a centralized process for broadband-only Lifeline, those costs were reduced, thereby incentivizing more investment and build-out of infrastructure, and increased broadband access and competition, all to the benefit of consumers.

Rather than grapple with the analysis from the 2016 Order, the Commission instead proposes, in one paragraph, to “eliminat[e]” the LBP designation with almost no explanation.

The Item merely states that it proposes to eliminate the LBP designation “to better reflect the

⁴⁶ 2016 Order ¶ 277.

⁴⁷ *Id.* ¶ 236.

⁴⁸ *Id.* ¶ 235-236.

⁴⁹ *Id.* ¶ 251 (citing comments from NCTA); *see also id.* ¶ 251 n.669 (citing TracFone about how procedurally unpredictable and lengthy ETA designations across states can be).

structure, operation, and goals of the Lifeline program, as set forth in the Communications Act, as well as related state programs.”⁵⁰ The argument that removing the LBP designation somehow furthers the structure, operation, or goals of the Lifeline program is illogical for the reasons below.

The goal of the Lifeline program has been, since the beginning, to defray the costs of communications service to ensure increased subscriber costs do not undermine universal service goals:

Access to telephone service has become crucial to full participation in our society and economy which are increasingly dependent upon the rapid exchange of information. In many cases, particularly for the elderly, poor, and disabled, the telephone is truly a lifeline to the outside world. Significant increases in the price of basic telephone service could isolate many of the elderly and poor by depriving them of the ability to obtain medical and police assistance or communicate with family and friends. Our responsibilities under the Communications Act require us to take steps, consistent with our authority under the Act and the other Commission goals in this proceeding, to prevent degradation of universal service and the division of our society into information “haves” and “have nots.”⁵¹

Lifeline has long been a consumer-focused affordability program. Congress reaffirmed this concept in 1996 in section 254(b), which states that universal service should ensure that all Americans, in every part of the nation, including low-income and rural areas, have access to quality, “affordable” services.⁵² These concepts are foundational to universal service. The Commission should be primarily concerned with ensuring that it is not allowing the development of communications systems that lead to information “haves” and “have nots.”

⁵⁰ 2017 Lifeline Item ¶ 48.

⁵¹ 50 Fed. Reg. 939, FCC 84-637, ¶ 9 (1985).

⁵² 47 USC § 254(b)(1)-(3).

Creating the LBP designation furthers the statute’s goals because it promotes affordable access to communications services, namely, broadband. Taking away the LBP designation would eliminate standalone broadband support, perpetuate cost barriers for low-income consumers, and further expand the divide between the information “haves” and “have-nots.” With such negative effects on the Lifeline program, removing the LBP designation would explicitly countermand the Congressional directive to ensure quality, affordable services are available in all regions of the U.S.

Eliminating the LBP designation would not improve program structure or operations. The LBP designation was layered on top of the other aspects of Lifeline, ETCs, and universal service in general. It changed no other part of any universal service mechanism; it merely created a new avenue for broadband-only service providers to join the program. At base, the subsidies still go to the providers, and consumers can still reap the benefits of the program by taking reductions in their subscription costs.

To the extent the LBP designation changed the structure or operation of Lifeline, it was for the better. For instance, rather than apply for ETC status in several states (which increases regulatory friction and the time and cost of rolling out Lifeline services), the Commission provided a one-stop shop for those providers. The 2016 Order also tailored Lifeline service requirements for broadband-only providers to better align to broadband technology.

III. The Commission Should Maintain Support for Non-Facilities-Based Service

The Item proposes limiting Lifeline support to facilities-based broadband providers and discontinue Lifeline support for non-facilities-based service.⁵³ The Commission should reject this approach as it would be harmful to Lifeline and the Americans who rely on the program.

Limiting the number of Lifeline providers runs counter to Congressional directives. Congress stated in 1996 that the goal of the universal service program was to ensure quality, affordable rates for communications services to all Americans, including in rural and low-income areas.⁵⁴ To accomplish this task, the Commission should allow and encourage as many providers as possible to join the program. And indeed, the Lifeline program should be open to as many providers as possible to encourage more competition, allow for different business models, and ensure all Lifeline-eligible households can access communications services. This logic prevailed for the past 13 years, as the Commission allowed resellers into the program and forbore from the facilities requirement.⁵⁵ With reselling as an option, facilities-based broadband providers themselves have different business models to choose from: provide Lifeline service directly, sell wholesale access to the network to a reseller Lifeline provider, or both. Large incumbent providers like AT&T and T-Mobile have previously withdrawn from providing Lifeline service in some areas.⁵⁶ Having a wholesale reseller option will help keep Americans with a Lifeline service connected.

⁵³ 2017 Lifeline Item ¶¶ 63-73.

⁵⁴ 47 USC § 254(b)(1)-(3).

⁵⁵ 2016 Order ¶ 54.

⁵⁶ Phil Goldstein, *With just 400 Lifeline customers, T-Mobile to drop support for federal Lifeline program*, FierceWireless (Sep. 24, 2014), www.fiercewireless.com/wireless/just-400-lifeline-customers-t-mobile-to-drop-support-for-federal-lifeline-program; Brian Kaberline, *AT&T will drop Lifeline program in Kansas, Missouri*, BizJournals (May 1, 2017), www.bizjournals.com/kansascity/news/2017/05/01/at-t-will-drop-lifeline-program-in-kansas-missouri.html.

Further, the Commission’s reading of section 254(e), a driving force behind the current proposal,⁵⁷ is exceedingly narrow and does not comport with the language of the statute. Section 254(e), which the Commission quotes in relevant portion, states “[a] carrier that receives [universal service] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” The Commission then implies that it interprets that section as requiring Lifeline ETCs to invest their Lifeline revenues in facilities only.⁵⁸ The statute is not so strict. It allows Lifeline ETCs to invest their Lifeline revenues in facilities *and services* associated with Lifeline. Given the statutory interpretation canon that different terms should be given different meanings, the statute allows providers to use the Lifeline support to invest in more than just facilities.

Resellers meet section 254(e)’s requirements. Resellers typically use their Lifeline revenues by investing it back in their own services, including tech support, equipment support, other similar consumer-facing services, and staff and training to allow those resellers to offer Lifeline-supported services.⁵⁹ Under the Commission’s interpretation of the statute, a reseller simply could not exist. All revenues would have to be sent back to the owner of the facilities, with little or nothing leftover for the reseller to support the service, despite Congress allowing resale services to receive support.⁶⁰

⁵⁷ 2017 Lifeline Item ¶ 72.

⁵⁸ *Id.* ¶ 72 (“Have Lifeline resellers passed through all Lifeline funding to their underlying carriers...?”).

⁵⁹ TracFone Wireless Ex Parte, WC Docket No. 17-287 (Nov. 9, 2017).

⁶⁰ 47 USC § 214(e)(1)(A); 2017 Lifeline Item ¶ 70 (Congress expected “some amount of resale should be permissible.”).

Removing resellers would severely limit participation in the program.⁶¹ According to the most recent Universal Service Monitoring Report (with data going through 2015), the vast majority, approximately 70%, of Lifeline subscribers receive their service from a non-facilities-based provider.⁶² Of the 56 states and territories measured, 51 have customers that subscribe to resellers.⁶³ Forty-two have equal or more non-facilities-based subscribers compared to facilities-based subscribers, including Pennsylvania (331,000 to 122,000), Florida (603,000 to 249,000), and Texas (495,000 to 245,000).⁶⁴ The change in policy would be particularly pronounced in states with significantly more reseller subscribers than facilities-based subscribers, such as Arizona (203,000 to 90,000), Illinois (472,000 to 13,000), Louisiana (197,000 to 32,000), and Puerto Rico (417,000 to 137,000). The Indiana Utility Regulatory Commission reports that the majority of Lifeline recipients in the state are served by resellers, and cautioned against the Commission prohibiting resellers from participating in the program.⁶⁵ Removing resellers would cause a scramble for Lifeline consumers as they frantically search for a new provider. It is also possible that consumers will be left stranded if there is no other Lifeline provider in that area.

⁶¹ The National Consumer Law Center has done extensive work analyzing how the Commission's proposal to exclude resellers from the program would leave millions of Americans without a provider for service. See National Consumer Law Center, *50-State and D.C. & Puerto Rico Fact Sheets*, <https://www.nclc.org/issues/50-state-dc-pr-lifeline-fact-sheets.html>.

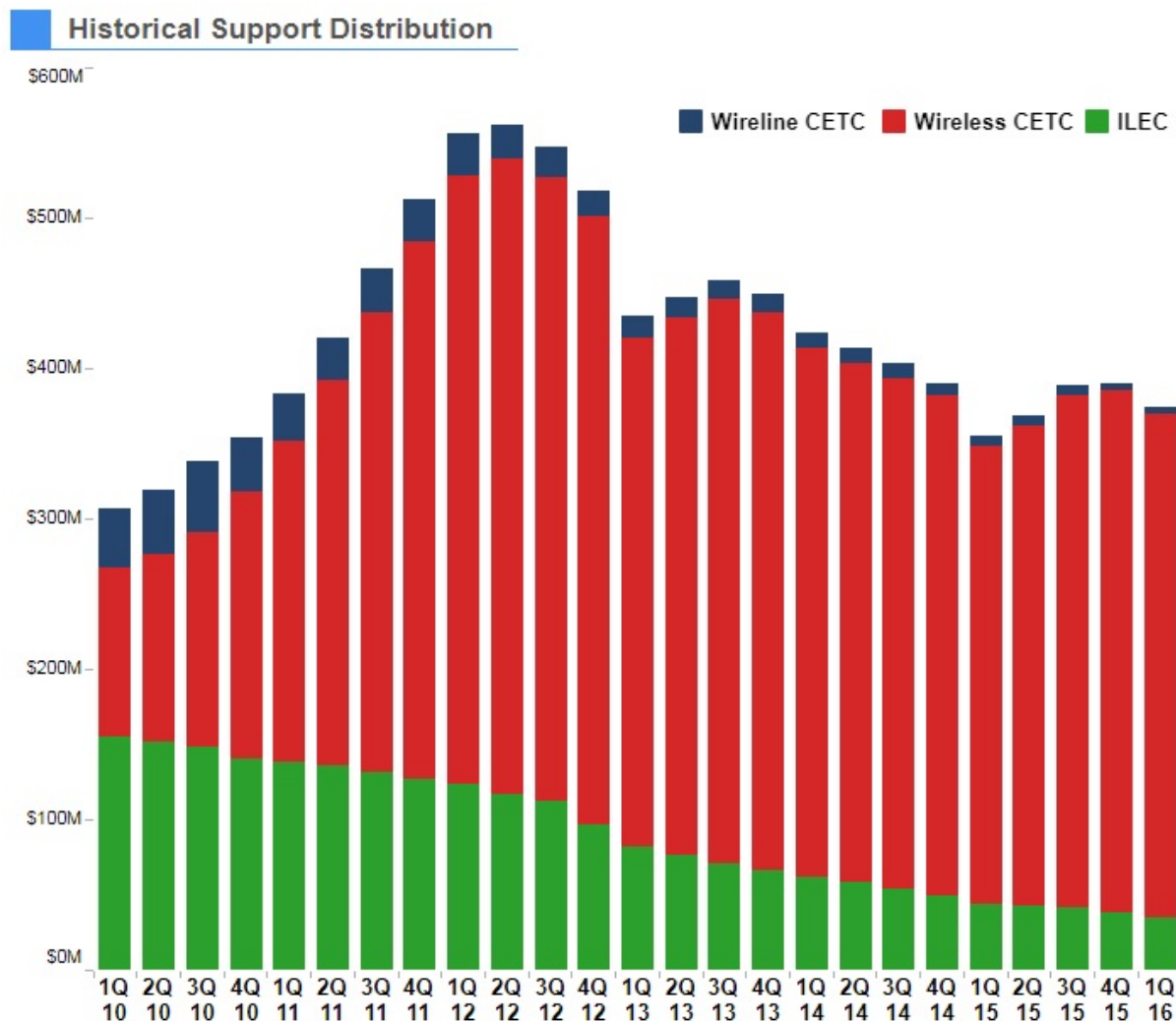
⁶² Federal Communications Commission, Universal Service Monitoring Report (2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf at 30 ("Monitoring Report").

⁶³ Only five states and territories would be unaffected (directly) by the change because they have no reseller subscribers: Alaska, American Samoa, Guam, Montana, and Northern Mariana Islands.

⁶⁴ Monitoring report at 30.

⁶⁵ Comments of the Indiana Utility Regulatory Commission, WC Docket No. 17-287 (Jan. 24, 2018), <https://ecfsapi.fcc.gov/file/101242034523045/Indiana%20Commission%20Comments%20NPRM%20FCC%2017-155.pdf>.

USAC data further illustrates the importance of resellers to the Lifeline program. Below is a chart from USAC showing how ILEC distributions have decreased and wireless competitive ETC distributions have increased between 2010 and 2016⁶⁶:



This chart makes clear the growing importance of wireless resellers, as they make up a significant and increasing portion of Lifeline support.

The Commission also emphasizes that “the vast majority of Commission actions revealing waste, fraud, and abuse in the Lifeline program over the past five years have been

⁶⁶ Universal Service Administrative Company, Historical Support Distribution, <http://www.usac.org/li/about/process-overview/stats/historical-support-distribution.aspx>.

against resellers.”⁶⁷ This fact in isolation does not compel the conclusion that the Commission should remove resellers entirely. Given that 70% of Lifeline participants receive their service from a reseller, it is likely that resellers vastly outnumber facilities-based providers. In the Universal Service Report, the USAC identifies the top 30 Lifeline providers.⁶⁸ By OTI’s count, at least 24 of them are resellers or have a reselling component, and those 24 receive the vast majority of Lifeline support.⁶⁹ In addition, the share of CETC over ILEC funding has increased dramatically every year since 1998, through 2015 where CETCs accounted for 89% of Lifeline funding. It is simple math: given sheer volume and number of subscribers, one would expect more Commission actions against resellers.⁷⁰

IV. The Commission Should Not Impose Lifetime Benefit Limits

The Item’s Notice of Inquiry proposes the creation of two time-based limits on Lifeline benefits—(1) a lifetime limit on benefits, and (2) a limit on the amount of time an individual can participate in the program regardless of income status.⁷¹ OTI strongly opposes these limitations, as they would substantially complicate the program, jeopardize consumer privacy, deter consumer and provider participation, and destabilize the Lifeline marketplace.

The administrative complexity of tracking and cataloguing every participant’s total benefits and enrollment duration is something that no telecommunications provider—nor the Commission—has ever undertaken. The administrative costs alone could offset any fiscal

⁶⁷ 2017 Lifeline Item ¶ 68.

⁶⁸ Monitoring Report at 26.

⁶⁹ OTI posits that Softbank (Sprint and Virgin Mobile), AT&T, Verizon, CenturyLink, Cox, and Frontier are primarily facilities-based providers.

⁷⁰ OTI does not intend to dismiss concerns over waste, fraud, and abuse. We support the Commission’s longstanding efforts to address these concerns, including the creation of the National Verifier. *See 2012 Lifeline Order*, FCC 12-11, graf 181 n.473 (citing the National Broadband Plan from 2009).

⁷¹ 2017 Lifeline Item ¶ 130.

savings that might result from reduced expenditures. Furthermore, the complexity would likely deter many providers from entering the Lifeline marketplace altogether. The Commission should be *simplifying* the Lifeline marketplace, not adding complexity that makes it even more difficult for providers and users to navigate.

Tracking such information also raises serious privacy concerns. The Commission would have to develop a way to track individuals and follow them over their entire lives. This tracking regime would likely collect many types of sensitive data, including a lifetime of home addresses, phone numbers, and income histories. Social Security Numbers may also need to be collected and stored. Such data would then have to be stored in perpetuity. This extensive data collection would likely deter participation in the program. Moreover, the tracking system could collect extensive data about communities of color that are already disproportionately surveilled and particularly sensitive to such privacy intrusions.⁷² Unfortunately, nothing in the Item indicates that the Commission has contemplated the risks associated with this data collection or any mechanisms to protect the privacy of Lifeline participants.⁷³

Moreover, a benefits cap utterly ignores the reality of life in 21st Century America, in which many households struggle to move up income brackets despite full-time employment.⁷⁴ Lifeline can serve as a ladder out of poverty by connecting people to vital educational and economic opportunities. But this potential has little hope of fulfillment if the Commission

⁷² See *Color of Surveillance: Government Monitoring of American Immigrants Combines Lessons of History, Technology of Today*, Georgetown University Law Center (June 26, 2017), <https://www.law.georgetown.edu/news/web-stories/color-of-surveillance-immigrants.cfm>

⁷³ OTI recognizes that some data collection is necessary for the program to function. However, it is particularly ill-advised to impose reforms that would standardize extensive data collection and retention for no discernible public benefit.

⁷⁴ See, e.g., Raj Chetty et al., *The Fading American Dream: Trends in Absolute Income Mobility Since 1940*, National Bureau of Economic Research, Working Paper 22910 (Dec. 2016), http://www.equality-of-opportunity.org/papers/abs_mobility_paper.pdf

hobbles the program as proposed. If the Commission enacts the changes proposed in the Item, many households will face even longer odds of escaping poverty and therefore be more likely to need long-term Lifeline support.

By essentially kicking people out after the benefit cap has been reached, the Commission would harm many vulnerable communities. Older Americans in particular have acute telecommunications needs, including emergency services and telemedicine, access to which Lifeline was designed to facilitate. Their communications needs do not end after a certain period of time. A lifetime cap would cut off support for many low-income Americans just as they reach an age when their need for communications service might be strongest. Preventing elderly Americans from being able to make a 911 call because they have been in the Lifeline program for more than an arbitrary number of years undermines the core purpose of universal service.

The benefit limits would also disproportionately harm low-income households with multiple children. For example, a family that enrolls in Lifeline when the oldest child enters school could hit the cap and lose service well before the younger children enter school. The pernicious effect of the homework gap on such families has been well documented⁷⁵ and the Commission should avoid any actions that would exacerbate this problem.

The proposed limits would also harm the estimated 1.4 million military veterans who live below the poverty line.⁷⁶ The internet is a literal lifeline for the Veterans Administration's

⁷⁵ See, e.g., John Horrigan, *The numbers behind the broadband 'homework gap'*, Pew Research Center (Apr. 20, 2015), <http://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/>; Cecilia Kang, *Bridging a Digital Divide That Leaves Schoolchildren Behind*, New York Times (Feb. 22, 2016), <https://www.nytimes.com/2016/02/23/technology/fcc-internet-access-school.html>

⁷⁶ See Comments of the National Association of American Veterans, WC Docket No. 11-42 (Nov. 9, 2017); *Broken Promise: The Need to Improve Economic Security for Veterans*, United States Congress, Report by

pioneering telemedicine programs, as well as the Veterans Crisis Line, an anonymous chat tool that connects veterans to lifesaving conversations and mental health services.⁷⁷ The Commission should not put an expiration date on its support for our nation’s veterans.

Furthermore, the Item fails to provide any justification for limiting benefits. The NOI does ask for a justification to create “exceptions” to the limits,⁷⁸ but this question is the wrong one to ask. The Commission should be asking commenters to justify the benefits limits in the first place. The NOI offers no such justification. There is no evidence that long-term Lifeline support harms people; no evidence that the absence of a cap violates any statutory obligation; and no evidence that a cap would strengthen program integrity. A benefits cap is not intrinsically justified simply because it might reduce expenditures. In reality, there is no justification for the proposed benefits limits.

Imposing these limits would fundamentally destabilize the program and abandon many low-income Americans at times of urgent need. Given these serious impacts, it is difficult to see whose interests are served by the NOI’s proposed changes—and even more difficult to see how they uphold the Commission’s universal service mandate. We urge the Commission to close the NOI and abandon this capricious idea.

the Joint Economic Committee (Nov. 2011), http://www.jec.senate.gov/public/_cache/files/628ca26b-7433-4fca-8f53-aa713eb3e756/broken-promise--the-need-to-improve-economic-security-for-veterans.pdf.

⁷⁷ See “VA Telehealth Services Served Over 690,000 Veterans in Fiscal Year 2014,” U.S. Department of Veterans Affairs (Oct. 10, 2014), *available at* <http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2646>; “About the Veterans Crisis Line,” Veterans Crisis Line, *available at* <https://www.veteranscrisisline.net/About/AboutVeteransCrisisLine.aspx>.

⁷⁸ 2017 Lifeline Item ¶ 131.

V. The Commission Should Reject the Proposed Budget Cap

OTI strongly opposes the proposal to cap the size of the program with what the Item calls a “self-enforcing budget.”⁷⁹ The Item suggests an annual cap for Lifeline disbursements that is more excessively punitive than any fiscal measure in the program’s history. This budget cap could result in rationing that leaves Lifeline unable to meet the needs of low-income Americans.

The Commission should first step back and address whether the program’s current budget process has any inherent problems. The Item fails to make any such assessment, offering no evaluation of current expenditures, no evidence that the current mechanism has failed to protect ratepayers, and, ultimately, no justification for the proposed changes. Instead, the Item devotes many pages to examining the myriad ways a new budget mechanism could theoretically operate.⁸⁰ These questions are difficult for any commenter to answer without guidance from the Commission about what, if any, problem this new mechanism is intended to solve.

Fiscal reality indicates that austerity measures are simply not needed. Between 2012 and 2015, Lifeline expenditures plummeted from \$2.1 billion to \$1.5 billion.⁸¹ Lifeline has never had a budget cap and, with expenditures falling, there is no apparent justification for a cap now. In 2015, OTI told the Commission that “a budget cap would be an unwarranted intrusion into a program that is successfully connecting Americans to vital services at an increasingly

⁷⁹ 2017 Lifeline Item ¶ 104.

⁸⁰ 2017 Lifeline Item ¶ 104-110.

⁸¹ *Universal Service Monitoring Report*, CC Docket No. 96-45 et al., at 26, Table 2.4 (WCB 2016), https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf.

efficient cost,”⁸² and that remains true today. This budget proposal is the quintessential solution in a search of a problem.

Although the Item does not propose a specific amount for the budget cap, the numerous questions about prioritization and rationing suggest that the Commission may be considering a cap that is well below the current \$2.25 billion budget. This is highly inadvisable. Under such an austere cap, Lifeline could run out of money well before the end of a fiscal year. This would inflict enormous uncertainty on providers and consumers while severely destabilizing the Lifeline marketplace.⁸³ Without reliable funding, many providers would likely exit the market altogether. Many consumers would be unwilling to sign up for services—especially plans that include monthly co-pays for which the consumer would be entirely responsible if their Lifeline subsidy ran out before year’s end. A budget cap would also add significant administrative costs, thereby undermining the austerity goals that seem to undergird this proposal.

OTI also strongly opposes the Item’s suggestion that Lifeline funds should be rationed in a manner that prioritizes rural areas over “all other areas.”⁸⁴ This prioritization scheme would needlessly pit rural communities against urban ones, both of which include low-income and unserved households that need Lifeline support. The Commission should not be engaging in judgments about which low-income Americans are most worthy of support. Such determinations are inherently capricious and would likely violate the Commission’s universal service mandate. The Item’s proposed rationing devalues military veterans, children, senior

⁸² Comments of New America’s Open Technology Institute, *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42 (Aug. 31, 2015).

⁸³ See Comments of Missouri Public Service Commission Comments, WC Docket No. 17-287 at 10 (“How a budget cap will work remains unclear. Presumably federal Lifeline support disbursements will be reduced or stopped if disbursements start to exceed a budget cap. This prospect will undoubtedly complicate any existing ETC’s participation in the Lifeline program and may also discourage other companies from participating”).

⁸⁴ 2017 Lifeline Item ¶ 108.

citizens, communities of color, and other Americans who find themselves on the wrong side of the digital divide. The Commission must not abandon these people to rationing and arbitrary budget caps.

VI. The Commission Should Not Force Lifeline Providers to Collect Co-Pays

The Item proposes creating a mandatory co-pay, or “maximum discount level,” which would effectively eliminate the “free” prepaid wireless services that do not carry risks of late fees, credit checks, or deposits.⁸⁵ Eliminating these services would destroy the most popular plans in the Lifeline marketplace and abandon the highly vulnerable populations that rely on them. Mandatory co-pays would also create significant administrative costs, as the FCC would have to create a process to ensure that providers actually collect the required customer share. This process would necessarily generate new compliance costs for providers, USAC, and the Commission.

Furthermore, mandatory co-pays do not justify elimination of the program’s minimum service standards, as the Item suggests.⁸⁶ The Item implies that consumers would be more “sensitive” to plan quality if they had a co-pay, thereby making minimum service standards “unnecessary.” This reasoning is not supported by any evidence of actual consumer behavior and indicates a flawed perception of who Lifeline beneficiaries are and what considerations influence their decisions. The terms and conditions of broadband service plans are notoriously opaque, making it difficult for consumers to comparison shop. To the extent Lifeline beneficiaries are not “sensitive” to plan quality, it is not because they aren’t paying a share of

⁸⁵ *Id.* ¶ 112.

⁸⁶ *Id.* ¶ 116.

the plan—it is because providers do not offer the information necessary to thoroughly evaluate plan quality. The minimum service standards were created to ensure that the Lifeline program does not relegate low-income Americans to an inferior, second-class version of the internet. The existence of a mandatory co-pay does nothing to change that consideration. The Commission should preserve the minimum service standards.

Moreover, mandatory co-pays are not justified by anything in the funding models of the E-Rate or High Cost programs.⁸⁷ The fact that those programs involve a kind of “co-pay” has little bearing on Lifeline. Lifeline’s beneficiaries are individual consumers with low incomes, whereas E-Rate and High Cost subsidize schools, libraries, and telecommunications providers. Moreover, the implication that a school or library wouldn’t “value” the internet as much if their broadband service was fully covered by a federal subsidy makes little sense. Nothing about the E-Rate or High Cost service structures justifies forcing Lifeline providers to charge co-pays.

The Item also suggests that Lifeline funds could be refocused on low-income consumers who have not yet adopted broadband rather than “those who would have bought internet access anyway.”⁸⁸ The fact that some low-income Americans purchased broadband service in the absence of a Lifeline subsidy does not mean that they are immune to the digital divide. Study after study confirms that cost remains the biggest barrier to broadband adoption, and that the U.S. broadband market is less competitive and more expensive than in comparable developed countries.⁸⁹ As a result, even Americans with incomes well above the poverty line

⁸⁷ *Id.* ¶ 112 (asking whether financial contributions in E-Rate and High Cost make “users of the supported service value that service more[.]”).

⁸⁸ *Id.* ¶ 117.

⁸⁹ *The Cost of Connectivity*, New America’s Open Technology Institute (Oct. 2014), https://static.newamerica.org/attachments/229-the-cost-of-connectivity-2014/OTI_The_Cost_of_Connectivity_2014.pdf.

struggle to pay for broadband service. Low-income Americans are especially burdened by the high cost of broadband service and vulnerable to price hikes. For many households, budgeting for even a \$9.25 monthly expense is difficult. Moreover, the prevalence of jobs with inconsistent and unpredictable hours weakens the kind of income stability that a monthly payment plan requires. The notion that low-income Americans can be neatly divided into two categories—those who truly need the Lifeline subsidy and those who would still purchase broadband service without it—is unrealistic and unsupported in the record. The Commission should not engage in arbitrary and cruel determinations about which types of low-income people are more deserving of Lifeline support. Such an endeavor would be unworkable, administratively costly, and run afoul of the Commission's universal service mandate. The Commission should focus its energy on encouraging more eligible Americans to participate in Lifeline rather than interrogating those who already do.

VII. The Commission's Proposals Would Disproportionately Harm Puerto Ricans

The Commission's proposals disproportionately harm Puerto Ricans, who are American citizens, too. Broadband adoption rates in the commonwealth already lag behind those in the mainland, and the need for broadband access among Puerto Ricans is particularly acute. In the wake of Hurricane Maria—which had initially damaged 95.2% of cell sites on the island, severely hindering communications services—the Lifeline program is vitally important to the island's residents and its recovery. With these circumstances already negatively affecting Puerto Ricans' access to communications services, the Commission's Lifeline proposals compound these difficulties and will make it even tougher to bridge the digital divide in the U.S. territory. The proposals to implement an annual benefits cap and lifetime benefits cap for

Lifeline disbursements as well as the proposal to remove resellers from the Lifeline Program would in particular harm Puerto Ricans.

A. Broadband Adoption Rates Are Disproportionately Low In Puerto Rico

Recent statistics demonstrate that Puerto Ricans disproportionately lack access to broadband. According to the FCC 2016 Broadband Progress Report, 62% of Puerto Ricans lack access to fixed advanced telecommunications capability, compared to just 10% of the population in the U.S. and the District of Columbia.⁹⁰ As the most populated of the U.S. territories, that number translates to about 1,400,640 Puerto Ricans who lacked access to fixed advanced telecommunications capability in 2015.⁹¹ The gap was even larger when broken down along rural and urban lines: 50% of Puerto Ricans in urban communities lacked access, but almost twice that proportion—98%—of those in rural communities did.⁹² To emphasize the gravity of the problem, even before Hurricane Maria, nearly all Puerto Ricans in rural areas lacked access to high-speed broadband services.

U.S. Census data provide a fuller picture of how access to internet services among households in Puerto Rico is fractured. In its 2016 American Community Survey, the U.S. Census estimated that 480,177 Puerto Rican households, or 39.7%, were without any internet subscription. An estimated 716,292 households, or 59.3%, had access to broadband of any type. Of those that had access to broadband, 603,582 households had cellular data plans—with

⁹⁰ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 15-191, 31 FCC Rcd 699, 701 (Jan. 29, 2016) (“2016 Broadband Progress Report”), Appendix D.

⁹¹ *Id.*, Table 3.

⁹² *Id.*, Table 3.

240,582 households relying exclusively on their cellular data plans with no other type of internet subscription for broadband access—428,609 households had broadband such as cable, fiber optic, or DSL, and 57,249 households had satellite internet service. The remaining 11,969 households relied on dial-up with no other type of internet subscription.⁹³

These statistics make clear that access to broadband is a serious problem for Puerto Ricans. That 240,582 households rely exclusively on cellular data plans for broadband services is concerning, as consumers require access to both fixed and mobile broadband services. While mobile broadband services enable consumers to navigate, communicate with family and friends, and receive timely news updates while away from home, they are not a substitute for fixed broadband services for high capacity home use that allow for streaming high definition video, uploading large files, and other web services.⁹⁴

The need for broadband access is particularly acute among households with annual incomes under \$20,000: of the 602,603 households that fall under this threshold, 339,419, or 56.3%, are without internet subscriptions. Among those with internet subscriptions, an estimated 3,599 households have dial-up internet alone and 259,585 households have broadband internet.⁹⁵ As a household of two making \$21,924 or less annually earns 135% of the federal poverty guidelines, most—if not all—of these households would qualify for Lifeline

⁹³ U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, S2801, Types of Computers and Internet Subscriptions.

⁹⁴ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 15-191, 31 FCC Rcd 699, 701 (Jan. 29, 2016) (“2016 Broadband Progress Report”), ¶¶ 2, 20.

⁹⁵ U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, S2801, Types of Computers and Internet Subscriptions.

subsidy benefits, making the significance of the program for residents of Puerto Rico especially salient.⁹⁶

The Lifeline program is crucial for education in Puerto Rico, as poverty disproportionately affects families and children in Puerto Rico, where an estimated 39.4% of families and 56.4% of children under 18 years old lived below the poverty level in 2016.⁹⁷ These statistics emphasize Puerto Rico's K-12 education system's need for broadband connectivity. The Puerto Rico Department of Education was the third largest school district in the U.S. by enrollment in 2014-2015 with 437,744 students.⁹⁸ Though the 2012 Puerto Rico Broadband Strategic Plan had set a broadband connectivity goal of 100 Mbps across its K-12 education system by 2015, in the 2014-2015 school year, only 166 of its approximate 1,380 public schools met that goal, with just one of these schools at 150 Mbps connected bandwidth.⁹⁹

B. Hurricane Maria Has Devastated Broadband Deployment and Wireless Connectivity in Puerto Rico

Hurricane Maria devastated Puerto Rico in September 2017, and the U.S. territory is still suffering from its impact to this day. In its immediate aftermath, Hurricane Maria left 95.2% of cell sites out of service, with over 75% of each county's cell sites dysfunctional. In 48 out of 78 counties, 100% of their cell sites were out of service.¹⁰⁰ With widespread power outages, large

⁹⁶ Puerto Rico Lifeline Program, EnTouch Wireless, <https://www.entouchwireless.com/states/puerto-rico-lifeline-free-phone-service>.

⁹⁷ U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, CP03, Comparative Economic Characteristics.

⁹⁸ The Gigabit Island Plan, Puerto Rico Broadband Strategic Assessment (Feb. 2015), http://www.connectpr.org/sites/default/files/connected-nation/pr_gigabit_plan_020915_final.pdf.

⁹⁹ *Id.*

¹⁰⁰ Federal Communications Commission, Communications Status Report for Areas Impacted by Hurricane Maria, Sept. 21, 2017, https://apps.fcc.gov/edocs_public/attachmatch/DOC-346840A1.pdf.

percentages of consumers were without cable or wireline services.¹⁰¹ In late September, *The Verge* reported that telecom infrastructure in Puerto Rico had suffered damage to cell towers, internet cables, and even submarine cables to the mainland.¹⁰² By early February, just 5.9% of cell sites remain out of service, but some counties still have a significant percentage of cell sites out: half of cell sites in Vieques are still not functional, as are one-third of cell sites in Villalba. In total, 22 counties are still experiencing outages of 10% or more.¹⁰³ There remain widespread power outages, with large percentages of consumers without cable or wireline service. The majority of cable and wireline service customers who have service restored live in areas where commercial power has become available.¹⁰⁴

Further, as Puerto Ricans incur costs to replace other possessions lost or destroyed in the storm, it will be more important than ever for a strong Lifeline program to assist in bringing communications capability to the island. In December, an estimated 60,000 houses were still roofless.¹⁰⁵ Heavy rains and floods damaged housing and collapsed bridges on the island where less than 1% of homeowners have flood insurance.¹⁰⁶ Given the severity of the damage to the island, Puerto Ricans who already lacked adequate access to broadband will have even fewer resources to commit toward securing reliable communications infrastructure.

¹⁰¹ *Id.*

¹⁰² Rachel Becker, *Trying to communicate after the hurricane: 'It's as if Puerto Rico doesn't exist.'*, *Verge* (Sept. 29, 2017), <https://www.theverge.com/2017/9/29/16372048/puerto-rico-hurricane-maria-2017-electricity-water-food-communications-phone-internet-recovery>.

¹⁰³ Federal Communications Commission, *Communications Status Report for Areas Impacted by Hurricane Maria*, Feb. 5, 2018, https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0205/DOC-349026A1.pdf.

¹⁰⁴ *Id.*

¹⁰⁵ Emma Schwartz, *Quick Facts: Hurricane Maria's Effect on Puerto Rico*, *Mercy Corps* (Jan. 19, 2018); <https://www.mercycorps.org/articles/united-states/quick-facts-hurricane-marias-effect-puerto-rico>.

¹⁰⁶ *Id.*

Hurricane Maria has exacerbated the inequities between urban and rural areas on the island. In Ponce, Puerto Rico's second largest city with 166,000 residents, 92% of urban areas have electricity restored as of early February whereas no rural area has yet to recover electricity.¹⁰⁷ Optico Fiber, the first Gigabit broadband provider in Puerto Rico, was mostly intact after the storm's impact. Based in San Juan, Puerto Rico's capital and the most populous municipality, the broadband provider was able to open up a Wi-Fi hotspot at its corporate headquarters two days after the hurricane hit.¹⁰⁸

C. The Item Would Harm the Recovering Puerto Rican Community

In the wake of Hurricane Maria's destruction, the Lifeline components instated in the 2016 Order are especially relevant to the Puerto Rican community. The Item's proposals to implement a lifetime benefits cap or an annual benefits cap and remove resellers from the Lifeline program would put Puerto Rico and its residents at a distinct disadvantage, especially as the territory struggles to rebuild communities across the island.

While Lifeline has enabled significant investment in broadband infrastructure in Puerto Rico, investing in infrastructure buildout alone insufficiently addresses other notable barriers to broadband access for low-income consumers. In 2015, providers in Puerto Rico received \$114,776,000 for high-cost support, \$60,601,000 for low-income support, and \$21,912,000 for

¹⁰⁷ Martín Echenique, *How the Urban-Rural Divide Plays Out in Puerto Rico's Second-Largest City*, City Lab (Feb. 1, 2018), <https://www.citylab.com/equity/2018/02/how-the-urban-rural-divide-plays-out-in-puerto-ricos-second-largest-city/552119/>.

¹⁰⁸ Rachel Becker, *Trying to communicate after the hurricane: 'It's as if Puerto Rico doesn't exist.'*, Verge (Sept. 29, 2017), <https://www.theverge.com/2017/9/29/16372048/puerto-rico-hurricane-maria-2017-electricity-water-food-communications-phone-internet-recovery>.

schools and libraries from the Universal Service Fund.¹⁰⁹ Lifeline’s role as the only federal program currently designed to reduce the cost of broadband service for low-income communities is of particular importance, as cost remains generally the most frequently cited barrier to broadband adoption.¹¹⁰ About 1,400,640 Puerto Ricans lacked access to fixed advanced telecommunications capability in 2015,¹¹¹ and 20% of adults who did not subscribe to broadband cited cost as the main barrier to broadband adoption in 2014.¹¹² As discussed above, the proposal to limit the lifetime benefits and duration of participation of an individual in the Lifeline program deters consumer and provider participation, and particularly harms low-income consumers who are elderly or veterans. Puerto Ricans, too, would be harmed by the proposal to implement an annual benefits cap and lifetime benefits cap for disbursements as well as the proposal to remove resellers from the program. Removing resellers would cut off the estimated 417,000 Puerto Ricans who subscribe to non-facilities-based service; this constitutes the overwhelming majority of Puerto Rico’s 554,000 Lifeline participants.¹¹³ Implementing benefits caps and removing resellers thus risks stagnating the island’s broadband adoption rate and exacerbating the digital divide.

¹⁰⁹ Federal Communications Commission, 2016 Universal Service Monitoring Report, https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf, Table 1.9, “Universal Service Support Mechanisms by State: 2015.”

¹¹⁰ Monica Anderson and John B. Horrigan, *Smartphones help those without broadband get online, but don’t necessarily bridge the digital divide*, Pew Research Center (Oct. 3, 2016), <http://www.pewresearch.org/fact-tank/2016/10/03/smartphones-help-those-without-broadband-get-online-but-dont-necessarily-bridge-the-digital-divide/>; *See also* 2016 Broadband Progress Report ¶ 39.

¹¹¹ Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act, GN Docket No. 15-191, 31 FCC Rcd 699, 701 (Jan. 29, 2016) (“2016 Broadband Progress Report”), Table 3.

¹¹² Connect Puerto Rico. “Broadband Adoption and Usage in Puerto Rico.” http://www.connectpr.org/sites/default/files/connected-nation/pr_data_trends_111414_v2.pdf.

¹¹³ Federal Communications Commission. Universal Service Monitoring Report. 2016. https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf. Table 2.8, “Non-Facilities Based Low-Income Subscribers by State in 2015.”

The Commission’s suggestion to eliminate rules that require Lifeline providers that support broadband services to sell devices that are both Wi-Fi enabled and can be used as a hotspot on the basis that a “substantial majority” of Americans currently own Wi-Fi enabled smartphones overlooks the disparate impact such a proposal would have on the Puerto Rican community.¹¹⁴ In 2016, only a little over half of the island’s residents, an estimated 704,559 Puerto Ricans, owned a smartphone, and the U.S. Census Bureau did not specify whether these smartphones were Wi-Fi enabled.¹¹⁵ With such a high percentage of Puerto Ricans lacking smartphones, there is a tremendous opportunity to connect these Americans with the ability to more effectively and efficiently take advantage of the internet’s benefits.

The Commission should consider the damage its proposed cuts to Lifeline would have on Puerto Ricans, a territory that was already significantly behind the mainland United States in broadband adoption, and now needs assistance more than ever to bridge the digital divide following a devastating hurricane. The Commission should not adopt the proposed budget caps or lifetime benefits cap, and it should continue to support non-facilities based providers to ensure the highest number of low-income Americans can continue to use Lifeline support to access vital communications services in Puerto Rico.

VIII. Conclusion

The Commission should embrace and build upon the 2016 Order rather than repealing it. The Item’s proposals would radically undercut the Lifeline program and contradict Congress’ mandate in the 1996 Telecommunications Act. These cuts would perpetuate the vicious cycle

¹¹⁴ 2017 Lifeline Item ¶ 81.

¹¹⁵ U.S. Census Bureau, 2016 American Community Survey 1-Year Estimates, B28001, “Types of Computers in Household.”

that ensures low-income Americans will only get poorer, and communities of color will continue to struggle to gain access to communications services. OTI urges the Commission to reconsider and reject its proposals.