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
	)	WC Docket No. 09-197
Telecommunications Carriers Eligible for Universal Service Support	)	

REPLY COMMENTS OF Q LINK WIRELESS, LLC

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INTRODUCTION AND EXECUTIVE SUMMARY

Q Link Wireless, LLC ("Q Link"), along with many others in the wireless industry, have heard and join the Commission's call to action to take further steps to eliminate waste, fraud and abuse from Lifeline service.

Lifeline is too critical a service for low-income Americans who struggle paycheck to paycheck across the country, including in rural areas, to have it subject to continual attacks due to the unscrupulous practices of some bad actors. Because of this proceeding, mobile network operators ("MNOs"), mobile virtual network operators ("MVNOs"), taxpayer and ratepayer advocates, and advocates for vulnerable populations alike have united behind a blueprint that would promote the integrity of the Lifeline program—without also eviscerating its affordability mandate. If adopted by the Commission, the reforms that enjoy widespread support on this record would continue to upgrade Lifeline into a better, more efficient, and more capable program that is far more secure than the versions that existed in 2012, 2014, or even 2016. Accordingly, Q Link urges the Commission to take these steps as soon as possible, and to do so before it considers drastic actions that would compromise the program's ability to serve low-income Americans and risk deepening the digital divide.

Specifically, the Commission should follow the record in this proceeding and take the following actions to combat waste, fraud, and abuse:

- Implement the National Verifier as soon as possible, completing a development process adopted in the *2016 Lifeline Order* and already incorporated into the FCC's rules.
- Require all providers to submit an applicant's identity information, and any supplemental documentation, to USAC so that USAC can review the information to determine and have the final say in whether the applicant's identity is confirmed.
- Require, for any applicant whose eligibility cannot be confirmed by USAC through a state eligibility database, that all providers submit the applicant's eligibility documentation to USAC, so that USAC can review the information to determine and have the final say in whether the applicant's eligibility is confirmed.

- Require USAC to implement a screen for deceased identities as part of identity verification and recertification. This will prevent use of deceased identities as part of identity fraud, and flag instances in which an eligible Lifeline subscriber dies prior to a usage check.
- To prevent backlogs from accumulating, the Commission should permit—but not require—providers to make a preliminary determination of valid identity and eligibility as a basis to begin to provide service and obtain initial reimbursement, subject to true-up to eliminate any support provided for any Lifeline subscriber determined to be ineligible once USAC reaches its final determination. This procedure will lower the cost to USAC by eliminating the review of consumers who may be deemed ineligible by the provider. It also will avoid delaying service for eligible consumers if USAC cannot complete its review quickly, while fully safeguarding the Universal Service Fund ("USF") against erroneous preliminary determinations made by providers.
- Equip the National Verifier with Application Programming Interfaces ("APIs"), like the ones NLAD already is equipped with today, that facilitate voluntary electronic machine-to-machine communications between carriers and USAC. This step will facilitate the verification of identity and eligibility by USAC, while reducing what would otherwise be an impossible administrative burden on USAC by allowing those providers that wish to do so to assist customers in assembling any necessary identity and eligibility documentation for submission to USAC. Significantly, it should not be a requirement that carriers use these APIs; to the extent that some providers would rather have their Lifeline subscribers interact directly with USAC, they should be able to do so. A provider should not *have to* assume a role in assisting a customer with the identity and eligibility verification process.
- Require registration and identity verification for all agents involved in direct contact with consumers who are completing Lifeline service applications.
- Require all applications transmitted to the National Verifier to contain the agent's identity, IP address, and geolocation (when available). This information will allow USAC to monitor for irregularities affecting specific agents, and also prevent code-sharing with unregistered individuals.
- Prohibit commissions for personnel who review identity or eligibility of applicants or recertifying consumers to ensure that incentives are not misaligned.
- Require USAC to compile lists of locations likely to have multiple, financially independent users without distinctive addresses, such as shelters and long-term care facilities. This will allow USAC better to identify and investigate other addresses that have a suspicious number of purportedly independent economic households in buildings in which that number would be unlikely.
- Implement risk-based auditing to shine a light on corners of the industry where instances of waste, fraud and abuse are most prevalent.

The record shows more than just a strong consensus behind these proposals. It also shows that these proposals, if adopted, actually will work. As the analysis submitted by Susan Gately and Helen Golding demonstrates,[1] the vast majority of subscribers for whom the Government Accountability Office ("GAO") could not confirm eligibility in its May 2017 report[2] likely were de-enrolled as a result of third-party verification. Expanding third-party verification, and building on it with targeted reforms addressed to known causes of fraud like commissions and lack of street agent accountability, will bring rates of abuse in the program down even further.

The clear direction of the record is thus that the Commission should focus its efforts on the practical and effective reforms outlined above before it considers the more drastic measures raised in the *NPRM*.[3] Those more drastic measures would depart from market-economic principles necessary for the program's successful operation, and cut off service to low-income Americans at a time when they need it most. The record is clear that the proposal to prohibit Lifeline support to MVNOs would not eliminate waste, fraud, and abuse, but rather deprive many low-income Americans, especially those living in rural areas, of access to wireless Lifeline service altogether. The record, which includes an extensive examination of the issue by Dr. John

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1 Susan M. Gately and Helen E. Golding, *An Analysis of the "Unconfirmed" and "Deceased" Subscriber Findings in the 2017 GAO Lifeline Report* (Feb. 2018) ("Gately-Golding Report"), attached to Comments of TracFone Wireless, Inc., WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("Tracfone Comments").

2 Government Accountability Office, *Additional Action Needed to Address Significant Risks in FCC's Lifeline Program*, GAO 17-538 (May 30, 2017) ("GAO May 2017 Report").

3 *See Bridging the Digital Divide for Low-Income Consumers et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (rel. Dec. 1, 2017) ("*NPRM*").

Mayo,[4] also shows that banning MVNOs as Lifeline providers would reduce competition, reduce efficient specialization that has expanded service availability to truly needy—and rural—eligible populations, and depress, not increase, facilities-based investment in wireless networks.

For similar reasons, the Commission should not pursue maximum discount limitations that would ban Lifeline service offerings with no end-user charge. The record is consistent with Q Link's observation that Lifeline customers frequently have difficulty coming up with even an additional $5 or $10 to add minutes or data on top of their Lifeline plans. Drawing on research on low-income household budgets, other organizations report that co-payments would erect large barriers to service due to income volatility and a lack of access to banking services. As TracFone observes, Lifeline broadband pilot projects, as well as TracFone's own surveys, show that even a modest copay drastically would decrease Lifeline participation by as much as 85%. Deterring legitimate enrollment for those in need is not the same as deterring fraud.

The Commission also should decline to adopt new regulations that would limit MVNOs to Lifeline support only for the amount paid to underlying MNOs, or that would otherwise micromanage how providers spend their earnings instead of allowing providers to respond as appropriate to competitive market pressures. If adopted, these measures irrationally would ignore marketing, customer service, common corporate operations and other costs of providing Lifeline service that have been recognized as legitimate with respect to high-cost support, and would conflict with the fixed-support nature of the Lifeline subsidy regime in violation of the Tenth Circuit's decision in *Sorenson v. FCC*, 567 F.3d 1215 (10th Cir. 2009).

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4 *See* Declaration of Dr. John Mayo (Feb. 19, 2018) ("Mayo Decl."), attached as Exhibit A to Comments of CTIA, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("CTIA Comments").

Finally, to the extent that the Commission proceeds to establish a hard-capped budget for Lifeline, the record contains widespread support for a budget that allows Lifeline to narrow the digital divide. The data show that Lifeline remains essential to ensuring that low-income Americans can access telecommunications services and information services, and that Lifeline-eligible consumers, who face volatile, meager incomes and are often unbanked, are very likely to remain disconnected in the absence of a subsidy. The data also show that Lifeline, despite its effectiveness, remains severely under-enrolled, and that income continues to drive outcomes in terms of technology adoption. For that gap to narrow, any budget adjustment mechanism, and any budget levels set by the Commission, must allow room for the program to reach more eligible subscribers.

I. THE RECORD PROVIDES A BLUEPRINT FOR COMBATTING WASTE, FRAUD, AND ABUSE WITHOUT UNDERMINING THE LIFELINE PROGRAM'S AFFORDABILITY OBJECTIVES.

In its comments, Q Link urged the Commission to reduce waste, fraud, and abuse in the Lifeline program by ensuring the prompt implementation of the National Verifier, and to build on that milestone achievement by directing USAC to equip the Verifier with APIs, reforming Lifeline audits, requiring street agents to register with USAC and to report geolocation at the time of enrollment, and adopting other targeted fraud-prevention measures.[5] Commenters from all corners of the industry and civil society have coalesced around similar reform proposals with firm resolve to improve the integrity of the Lifeline program. Critically, the record also demonstrates that these proposals have not been made in the abstract, but address the specific types of waste, fraud and abuse that the program in the past has experienced. Thus, the Commission should follow the record, and usher the Lifeline program into the new era of efficiency that these reforms promise.

A. The Commission Can Prevent Waste, Fraud, and Abuse by Accelerating Implementation of the National Verifier With Carrier APIs.

As Q Link explained in its comments, the National Verifier, appropriately implemented, presents a powerful opportunity for the Commission to eliminate waste, fraud and abuse from the Lifeline program. Commenters overwhelmingly agree. Verizon identified "complet[ing] the implementation of the National Verifier" as "[t]he best way for the Commission to prevent waste and fraud in the Lifeline program."[6] Mobile Future similarly explained that the "best way to

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[5] Corrected Comments of Q Link Wireless, LLC at 13-14, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("Q Link Comments").

[6] Comments of Verizon at 2-3, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("Verizon Comments")

address the Commission's concerns about the ongoing integrity of the [Lifeline] program" would be to "complet[e] work on the National Verifier."[7] For that reason, USTelecom urged the Commission to "focus its efforts on ensuring the successful implementation of the National Verifier, which will cure the clear majority of the issues raised in the [*NPRM*]."[8]

Organizations representing a broad array of interests outside the telecommunications industry—including those of taxpayers and free market advocates—likewise reached the same conclusion. For example, Citizens Against Government Waste ("CAGW") "emphasized the important role the National Verifier System will play in providing improved verification of eligible subscribers."[9] The Free State Foundation similarly observed that the National Verifier, "[o]nce deployed, . . . should be an effective tool for rooting out fraud and abuse," and urged the Commission to ensure that the "National Verifier program . . . [is] implemented as soon as possible."[10] The Information Technology & Innovation Foundation explained that the "National Verifier System" would be a "great assistance" in stopping "waste fraud and abuse."[11] AARP expressed its confidence that "the National Verifier will shortly solve" problems with verifying

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7 Comments of Mobile Future at 3, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018).

8 Comments of The United States Telecom Association at 2, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("USTelecom Comments").

9 Comments of Thomas A. Schatz, President, Citizens Against Government Waste at 5, WC Docket Nos. 17-287 et al. (filed Jan. 24, 2018) ("CAGW Comments").

10 Comments of Randolph J. May, President, The Free State Foundation Free State Foundation at 5, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("Free State Foundation Comments").

11 Comments of ITIF at 6, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018); *see also* Comments of Asian Americans Advancing Justice et al. at 4, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("implementation of the National Verifier would curtail waste, fraud, and abuse in the program").

eligibility, as did NARUC, which explained that "the process of bringing up the national verifier" would "reduce incidents of fraud further."[12]

The Commission thus should implement the National Verifier as soon as possible, and without further delay. As USTelecom explained, "[t]he Commission should not let delayed access to state databases or unresolved administrative issues hinder or interrupt the full transition to the National Verifier."[13] Indeed, as Q Link emphasized in its comments, roughly 62 percent of the U.S. population already lives in a state that operates an eligibility database that could be used by the Verifier.[14] Moreover, as CTIA and others explained, the Commission can take a number of simple steps to "encourage" increased "state participation in the Verifier" even further.[15]

Importantly, however, the Commission must ensure that the Verifier is implemented in a way that does not impose administrative burdens that will cause USAC to fail. To that end, Q Link urged the Commission to direct USAC to make National Verifier APIs accessible to carriers, so that those carriers that elect to do so can collect enrollment information and identification and eligibility documentation from the customer and communicate that data

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[12] Comments of AARP at 12, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018); Initial Comments of The National Association of Regulatory Utility Commissioners at 22, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("NARUC Comments").

[13] USTelecom Comments at 6.

[14] *See* Q Link Comments at 11-12.

[15] Comments of CTIA at 7, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("CTIA Comments") (urging the Commission to "positively highlight[] the states that participate, and the best practices that improve the Lifeline program's effectiveness," and to "educate state leaders and policymakers about how the Verifier will help enhance Lifeline program integrity"); *see also* USTelecom Comments at 6-7 (the FCC should "engage in dialogue with the states" to "mak[e] the Lifeline program more efficient"); *see also* Verizon Comments at 5-6.

electronically with the National Verifier to verify eligibility.[16] As Q Link explained, these machine-to-machine interactions would preserve the critical support and infrastructure that ETCs provide by helping consumers assemble and submit the information and documents necessary to verify identity, residence, and eligibility, even as USAC makes the ultimate decision on eligibility to prevent waste, fraud, and abuse.[17] Critically, there would be no mandate on carriers to do this. If a carrier decided that it preferred to have USAC handle all identity and eligibility verification interactions with the potential Lifeline subscriber, it could do so, and be relieved of these administrative burdens from the current system.

The record supports Q Link's proposal. Observing that "ETCs . . . provide applicants with personalized and immediate assistance during the lengthy Lifeline application process," NaLA urged the Commission to ensure that "the National Verifier eligibility determination . . . take[s] place during the ETC enrollment environment through API 'calls' after the applicant has completed the ETC checks and screens."[18] TracFone likewise urged the Commission to ensure that USAC "provide[s] an Application Programming Interface . . . to service providers."[19] As TracFone explained, this "seemingly technical decision has enormous public policy implications," because "access to an API would be absolutely essential in enabling service

[16] *See* Q Link Comments at 9-11.

[17] *See id*.

[18] Comments of The National Lifeline Association at 77, 79, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("NaLA Comments").

[19] TracFone Comments at 68; *see also id*. at 69 (noting that the Verifier must make sure that "consumers [can] apply through a service provider's own website, a service provider's own toll-free number, or through faxing.").

providers to interface with the National Verifier directly for the purposes of submitting subscribers' personal information and supporting documentation."[20]

The alternative would be to transform USAC into a customer service agency on an overwhelming scale – or to condemn it to hopeless backlogs that deny eligible low-income Americans access to Lifeline service. As Q Link previously explained, USAC would have to field an enormous volume of questions from consumers, and liaise with applicants that enter data with errors, fail to supply a missing apartment number, or supply addresses in the wrong format, use nicknames, or supply the wrong or illegible document.[21] USAC also would have to develop systems to facilitate the submission of eligibility documents, and to return originals of sensitive documents like a driver's license or social security card, which applicants often provide in lieu of copies. In addition, USAC would have to account for the fact that consumers routinely start and stop, and then resume the enrollment process as they retrieve necessary documents. The result would be a staggering number of interactions with applicants, and continued inquiries post-enrollment on matters that likely should be directed to the carrier instead.

Indeed, Q Link currently receives an average of four to five documents per applicant, processes more than 7,000 Lifeline applications daily, and fields approximately 50,000 phone calls, 4,000 emails and 24,000 documents from applicants or prospective applicants (as distinguished from existing customers).[22] TracFone likewise explained that it "processes more

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[20] *Id*. at 68; *see also* Letter from Mitchell F. Brecher, Counsel, TracFone Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, at 2, WC Docket Nos. 17-287 et al. (filed Feb. 20, 2018) ("TracFone February 2018 Ex Parte").

[21] Q Link Comments at 9.

[22] *Id*. at 8.

than 20,000 Lifeline applications *daily*."[23] It is far from clear how USAC, an organization with "inadequate operational capacity to effectively manage new processes and high volumes of eligibility verifications," will prove capable of bearing these burdens successfully.[24]

It is not clear why USAC decided against carrier APIs in the first place. As TracFone explained, because "USAC currently relies on using National Verifier's API to interface with state and federal eligibility databases, there simply isn't any reason why the same API couldn't be provided to service providers, especially since service providers are already given access to NLAD's API to check against duplicate applications . . . [.]"[25] Moreover, USAC would remain tasked with reaching a final determination on eligibility even under an API approach, thereby ensuring that ETC involvement does not undermine the integrity of the Lifeline program. In fact, by facilitating customer enrollments that do not rely on in-person, street-agent interactions, APIs would promote efforts to curb waste, fraud, and abuse. Indeed, it would be irrational for USAC to "plac[e] even greater importance on the use of such agents as means for Lifeline enrollment" even as "the Commission is looking at proposals that could greatly curtail the efficacy of deploying field agents to sign up eligible Lifeline participants."[26]

No commenter opposed implementing carrier APIs into the National Verifier. US Telecom advanced a narrow proposal to remove ETCs from any manual dispute resolution procedure triggered in select cases where the National Verifier cannot determine eligibility,

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[23] TracFone Comments at 68 (emphasis added); *see also* TracFone February 2018 Ex Parte at 2 (noting that TracFone "processes approximately 20,000 applications each day, seven days a week").

[24] GAO May 2017 Report at 51.

[25] TracFone Comments at 68-69.

[26] *Id*. at 69.

which it believed would relieve ETCs from the burden of "process[ing] paperwork associated with [such] disputes."[27] Q Link is mindful of the concerns of other carriers, but also urges the Commission to acknowledge that the burden may simply shift back to USAC in these cases. Voluntary use of an API is consistent with US Telecom's concern, as no ETC would be required to undertake the burden of processing consumer paperwork. Thus, to balance these interests, the Commission should clarify that there is no *mandatory* requirement that USAC rather than the ETC interface with the subscriber directly to resolve NLAD disputes. If carriers wish to relieve USAC of that collection burden, they should be able to do so, and to convey information to USAC using APIs.

B. The Record Shows That the Verifier Will Reduce Rates of Waste, Fraud, and Abuse Dramatically.

In its June 2017 report, the GAO concluded that the Lifeline program remains vulnerable waste, fraud, and abuse based on a snapshot of data on Lifeline subscribers taken in November 2014.[28] Reviewing that data, the GAO concluded that it was not able to confirm eligibility for 1.2 million subscribers to Lifeline service, or roughly one-third of the subscriber base that it sampled. As economists and telecommunications experts Susan Gately and Helen Golding recently explained, however, "problems inherent in GAO's analysis . . . predisposed it from the start to a high 'unconfirmed' result," and GAO's findings were mischaracterized by "mistaken assumption[s]" about the outcomes of the study.[29] This is because the snapshot reviewed by GAO occurred shortly before the annual cut-off data for recertification, because USAC "was still

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[27] USTelecom Comments at 7.

[28] *See* GAO May 2017 Report.

[29] Gately-Golding Report at 1, 5.

in the process of 'scrubbing'" entries into the new NLAD dataset as of November 2014, and because the GAO failed to account for population mobility, which is a non-fraud-related explanation of mismatches between address data.[30]

But perhaps most importantly, the GAO's findings *did not account for changes in the Lifeline program since 2014*, including increasing adoption of third-party verification, better address verification, and improved duplicate subscriber detection—the primary benefits offered by a more mature NLAD system today and that will be offered by the National Verifier once it is implemented. As Mss. Gately and Golding's report indicates, those changes unquestionably reduced rates of waste, fraud, and abuse substantially. Indeed, within months of the November 2014 snapshot, 1.5 million subscribers were de-enrolled from the Lifeline program, a figure that exceeds even the highly inflated number of subscribers for whom GAO could not confirm eligibility. Moreover, "[d]e-enrollment of subscribers was much higher in the sample states where GAO (matching against state verification databases) was unable to confirm 935,000 subscribers: by the end of March 2015, those states had 700,000 fewer subscribers (even accounting for new subscribers)."[31] Thus, as Gately and Golding conclude, "within a few months of the GAO's snapshot of Lifeline eligibility, the reforms already underway in November 2014 were showing impressive results."[32]

The salience of the Gately-Golding Report is not to minimize the importance of preventing waste, fraud, and abuse. It is to demonstrate that the problem largely can be solved with the common-sense, consensus proposals on the record, including critically implementation of the National Verifier. For that reason, proceeding participants overwhelmingly support

30 *Id*. at 7.

31 *Id.* at 6.

32 *Id.*

implementing the National Verifier *first* before undertaking extreme reforms that, while intended to reduce rates of waste, fraud, and abuse, may accomplish no such result and instead cut off low-income Americans from U.S. telecommunication networks.

For example, according to USTelecom, the "Commission should focus its efforts on ensuring the successful implementation of the National Verifier" instead of radically—and ineffectively—redesigning Lifeline to serve goals other than affordability.[33] CAGW likewise "urge[d] the [C] ommission to reconsider the proposal to ban non-facilities based providers until after the National Verifier system has become fully tested and operational."[34] AARP cautioned that the "*NPRM* . . . proposes dramatic revisions to the nature of Lifeline service that purport to address problems that the National Verifier will shorty solve."[35] CTIA also urged the Commission to "remain focused on implementing the National Verifier before considering any further large-scale program reforms."[36]

Thus, the Commission should remain confident that continued progress on the National Verifier—especially if it is equipped with carrier APIs—will root out waste, fraud, and abuse on an impressive scale. And it should rely on those efforts, rather than on a radical revamping of the Lifeline program, to promote the integrity of the program without undermining its very purpose.

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33 USTelecom Comments at 2.

34 CAGW Comments at 9.

35 AARP Comments at 12.

36 CTIA Comments at 3.

C. The Record Supports Additional Action on Street Agent Registration, Risk-Based Auditing, and Other Steps to Combat Waste, Fraud, and Abuse.

As explained, implementing the Verifier, with carrier APIs, is the single most effective step that the Commission can take to reduce rates of waste, fraud, and abuse. The record also supports a number of targeted reforms to protect the integrity of Lifeline even further at no cost to the effectiveness of the program.

First, the record supports action that would follow through on the Chairman's July 11, 2017 directive to USAC[37] and require registration of all Lifeline street agents. As TracFone explained, "agents are integral to the marketing of Lifeline services," and "should be subject to Commission rules governing their conduct and should be accountable for violation of such rules."[38] Moreover, "an agent registration program . . . would empower the Commission to take enforcement actions directly against those agents who defraud the program," which "would be an important step in the effort to prevent fraud" given that agents "frequently move from one agency to another."[39] CAGW likewise supported "registration of sales agents to help reduce fraudulent activities, such as inappropriate data manipulation."[40] This can be further strengthened by requiring agents to undergo the same identity verification procedures as Lifeline applicants, which will prevent the use of false identities.

Importantly, as the Commission considers this proposal, it should remain mindful that carrier APIs can reinforce street-agent registration requirements. Using APIs, the Commission

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[37] Letter from Ajit V. Pai, Chairman, FCC, to Vickie Robinson, Acting CEO and General Counsel, USAC, at 4 (filed July 11, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-345729A1.pdf.

[38] Tracfone Comments at 48.

[39] *Id.*

[40] CAGW Comments at 11.

can facilitate the collection of geolocation data for agents assisting with enrollment, a step that will prevent code-sharing with unregistered individuals, as Q Link previously explained.[41] A single, registered agent cannot submit applications from multiple locations at the same time.

The record also supports the Commission's proposal to implement risk-based auditing. As USTelecom explained, "a correctly designed risk-based approach would use meaningful data points (such as results from previous USAC audits) to determine whether a new audit may be appropriate," thereby "economiz[ing] limited Commission and USAC resources by directing them towards audits where instances of waste, fraud and abuse may be more prevalent."[42] Moreover, as NaLA explained, an ETC member survey of USAC audits showed "an improper payment rate of less than one tenth of one percent," a result that calls out for more targeted measures than an across-the-board biannual audit requirement.[43] While Q Link still believes biennial audits are important, it understands that a targeted, risk-based approach may accelerate

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[41] *See* Q Link Comments at 13-14; *see also* Letter from John T. Nakahata, Counsel, Q Link Wireless, Inc., to Marlene H. Dortch, Secretary, FCC, at 4 & p.3 of Attachment A, WC Docket No. 11-42 (filed Sept. 8, 2017).

[42] USTelecom Comments at 4.

[43] NaLA Comments at 27; *see also* CTIA Comments at 8 ("A risk-based approach would be more effective and efficient than the current system, targeting the Commission, USAC and provider auditing resources towards providers with a higher risk profile (such as experience complying with the Lifeline program rules and previous history of non-compliance)"); Comments of Cox Communications, Inc. at 8, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018); Opening Comments on the Notice Of Proposed Rulemaking and Notice of Inquiry by Low-Income Consumer Advocates at 20, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("Low-Income Consumer Advocate Comments"); Comments of Missouri Public Service Commission at 8, WC Docket Nos. 17-287 et al. (filed Jan. 23, 2018) ("Missouri PSC Comments"); Joint Comments of the Minnesota Public Utilities Commission and Minnesota Department of Commerce at 8, WC Docket Nos. 17-287 et al. (filed Jan. 24, 2018) ("Minnesota PUC/DoC Comments").

the detection of fraud in the program. Accordingly, the Commission should adopt risk-based audits whether or not it maintains the biennial audit requirement.

In addition, the Commission should direct USAC to screen for deceased subscriber enrollments through the use of the National Verifier—a step that USAC may be conducting already in NLAD[44] and that Q Link performs on its own in any event.[45] By making checks against the Social Security Master Death Index (and other relevant data sources) a "routine USAC function," the Commission can ensure that it resolves the problem of deceased enrollees industry-wide.[46] Importantly, USAC should apply the screen after performing identity checks against state databases, which may contain entries for deceased individuals, as Q Link has explained.[47]

Finally, the Commission should bar commissions for individuals involved in reviewing or verifying subscriber eligibility. As Q Link explained, this step will ensure that individual making preliminary identity and eligibility verifications have the right incentives, and remains an important measure even though any incorrect determination at the carrier-level would be subject

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[44] *See* NaLA Comments at 23.

[45] *See* Q Link Comments at 15.

[46] *See* Minnesota PUC/DoC Comments at 9. As Mss. Gately and Golding point out, the number of NLAD enrollees that GAO determined were reported as deceased in the Master Death Index "represent less than 6/100ths of 1% of the more than 10-million subscribers in the NLAD database," a rate so low that it may not reflect "anything more" than systemic "data entry errors" in "either [NLAD] or [the] Social Security Death Index, or both." Gately-Golding Report at Executive Summary, 5. Thus, USAC should employ a screen that leverages data sources in addition to the Master Death Index, and may also need to apply an error correction mechanism, in order to minimize error rates and address the narrow set of cases in which an error might occur.

[47] *See* Q Link Comments at 15.

to true-up based on USAC's final determinations.[48] Several other commenters, including GCI, NASUCA, and several state public utility commissions, agreed.[49]

II. MARKET-BASED PRINCIPLES SHOULD CONTINUE TO GUIDE THE LIFELINE PROGRAM, AND LIFELINE SHOULD NOT MICROMANAGE COSTS OF USES OF EARNINGS.

Market-driven forces unleashed by the basic design of the Lifeline subsidy are essential to the long-term success of the Lifeline program. By permitting Lifeline providers to take advantage of the same wholesale arrangements that have emerged in the mobile wireless marketplace at large, the Lifeline program has leveraged market-driven specialization to promote competition, increase network capacity utilization, and expand service availability within low-income segments that often are overlooked by carriers accustomed to very high revenues per user. In addition, by providing a fixed amount of support to carriers, the Lifeline program has incentivized price competition and efficiencies in service delivery, which has led to each USF dollar working much harder to reduce the affordability gap in access to telecommunications and information services.

In the *NPRM*, however, the Commission proposed to dampen these market dynamics by eliminating support for MVNOs, and by adopting service-related rules that go well beyond ensuring that consumers receive qualifying service, attempt to exclude legitimate service costs

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[48] *Id.* at 18.

[49] *See* Comments of General Communications, Inc. at 12, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) (explaining that "Lifeline sales staff—particularly those receiving commissions—should not perform final review and verification of a subscriber's eligibility to participate in the Lifeline program."); Comments of the National Association of State Utility Consumer Advocates on the Notice of Proposed Rulemaking and Notice of Inquiry at 24, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018); Comments of the Public Utility Division of the Oklahoma Corporation Commission at 11-12, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018); Comments of the Florida Public Service Commission at 5, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018).

from being a permissible user of support, and micromanage how a provider re-invests its earnings. As explained below, the record shows virtually no support for these extreme proposals. To the contrary, it demonstrates that these steps would be economically irrational, would reduce investment in wireless networks, and would work to the detriment of millions of low-income Americans, including those living in rural areas. Thus, rather than adopt artificial and economically invalid constraints on the program, the Commission should rely on the proposals outlined above to reform the Lifeline program.

A. The Proposal to Ban MVNOs Defies Market Economics.

Commenters were nearly uniform in their opposition to the Commission's proposal to discontinue support for services offered by MVNOs. As the record demonstrates, a ban on MVNOs would have disastrous consequences for low-income Americans, and would deprive the Lifeline program of the benefits of efficient competition and specialization while reducing investment in our Nation's wireless infrastructure.

1. Banning MVNOs Would Result in the Mass Disconnection of Low-Income Americans and Undermine the Commission's Universal Service Mandate.

First, the record is clear that eliminating MVNOs would disrupt service to many low-income Americans and contravene the Commission's universal service mandate. As Q Link and many other proceeding participants have explained, approximately 70 percent of Lifeline subscribers obtain Lifeline service from an MVNO.[50] As NaLA reported, that number is even

[50] Q Link Comments at 24; *see also* Comments of the Multicultural Media, Telecom and Internet Council and the "Lifeline Supporters" at 6, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("Multicultural Media Comments"); Comments of INCOMPAS at 5, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("INCOMPAS Comments").

higher in some parts of country, reaching 85 percent in the state of Pennsylvania.[51] Thus, as Citizens Against Government Waste explained, the Commission's proposal, if adopted, would "leav[e] many Lifeline subscribers in search of a new provider,"[52] creating an enormous disturbance in the lives of millions of low-income Americans.

Depriving millions of low-income Americans of their choice of provider would be bad enough. But for many subscribers, a ban on MVNOs would eliminate the availability of Lifeline wireless service *altogether*. As INCOMPAS explained, "[i]ncumbents and other large carriers have abandoned the Lifeline program in recent years, shedding their eligible telecommunications carrier authorizations in states across the country."[53] As a result, among nationwide facilities-based providers, "only Sprint (under its Assurance Wireless brand) actively markets and provides service to low-income Americans."[54] But Sprint "does not provide service in eight states, Puerto Rico, the U.S. Virgin Islands, or on Tribal lands," and does not reach areas served by other facilities-based operators in terms of network coverage.[55] And it has fallen to MVNOs like Q Link to specialize in offering and providing Lifeline service in rural areas where MNOs are unlikely to have stores, and that are not generally reached by street agents. Thus, as Sprint itself explained, "in some areas, there may remain only a single facilities-based wireless Lifeline service provider" if the Commission proceeds with its proposal, while "in other areas, there may

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[51] NaLA Comments 7 n. 18; *see also* Joint Comments of Pennsylvania's Low Income Consumers, Service Providers, Organizations, and Consumer Rights Groups at 1, WC Docket Nos. 17-287 et al. (filed Jan. 24, 2018).

[52] CAGW Comments at 8.

[53] INCOMPAS Comments at 6; *see also* Comments of Sprint Corporation at 5, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("Sprint Comments"); NaLA Comments at 9.

[54] NaLA Comments at 9.

[55] *Id.*; *see also* Q Link Comments at 27.

be no facilities-based wireless Lifeline service provider at all."[56] ITTA and many others likewise concluded that "Lifeline consumers may not have a carrier to turn to if the Commission discontinues Lifeline support for service provided over non-facilities-based networks."[57] Indeed, as Common Sense Kids Action warned, the Commission's proposal, if adopted, could "disconnect millions of kids and families" from phone and Internet service.[58]

Rural areas are particularly vulnerable to being shut out from the Lifeline program as a result of a ban on MVNOs, because they are much less likely to be served by a facilities-based Lifeline provider. Thus, perhaps unsurprisingly, public utility commissions in states with large rural populations urged the Commission not to adopt its proposal. For example, the Indiana Utility Regulatory Commission expressed its concern that a reseller ban would leave significant areas of Indiana without a Lifeline provider (or *any* ETC), and urged the Commission to consider that the "citizens of those areas of Indiana deserve to have the opportunity for Lifeline support if they otherwise qualify[.]"[59] The Michigan Public Service Commission likewise explained that eliminating a reseller ban would "harm a significant portion of the Lifeline customers in Michigan, by potentially causing them to lose their Lifeline service benefits."[60] The Missouri

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56 Sprint Comments at 17.

57 Comments of ITTA – The Voice of America's Broadband Providers at 2, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018); *see also, e.g.*, AARP Comments at 13-15; Comments of The Black Women's Roundtable at 2-3, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("Black Women's Roundtable Comments").

58 Comments of Common Sense Kids Action at 12, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018).

59 Comments of the Indiana Utility Regulatory Commission at 4, WC Docket Nos. 17-287 et al. (filed Jan. 24, 2018).

60 Comments of the Michigan Public Service Commission at 5, WC Docket Nos. 17-287 et al. (filed Jan. 23, 2018).

Public Service Commission noted that T-Mobile, AT&T, and five other carriers had all "relinquish[ed] ETC status" in the state over the past five years, and that a reseller ban therefore would leave "large geographic areas in Missouri" with "limited, if any, Lifeline service."[61] The Nebraska Public Service Commission also warned that "wireless resellers may be the *only* wireless Lifeline option" in some areas of the state because of the exit of "our major market carriers" from the Lifeline program in the state.[62] Observing that "78 percent of Ohio Lifeline customers obtained their service from a non-facilities based wireless . . . ETC," the Ohio Public Utilities Commission cautioned that the Commission's proposal would leave Lifeline subscribers "tethered to their homes when needing to communicate."[63] As Minnesota's Department of Commerce concluded, a reseller ban would undermine the public interest because "many Lifeline subscribers would not have a viable alternative if the last mile facilities are required of the ETC."[64] The Commission cannot and should not adopt a proposal that would leave states with rural areas behind.

The record also is clear that the Commission cannot proceed based on the incorrect assumption "that the $9.25 subsidy will be enough to draw facilities-based providers back to the Lifeline program."[65] As NaLA explained, MVNOs have accepted low margins, developed outreach efforts to market to low-income communities, and streamlined service delivery to the

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61 Missouri PSC Comments at 3, 6.

62 Comments of the Nebraska Public Service Commission at 6, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018).

63 Comments Submitted On Behalf of the Public Utilities Commission of Ohio at 3, 5, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018).

64 Minnesota PUC/DoC Comments at 5.

65 INCOMPAS Comments at 6.

point that they are willing to offer free service based on the support amount of $9.25 per month.[66] Nationwide facilities-based carriers, on the other hand, command average monthly revenues per user of $43 to $57 for postpaid customers, and $37 to $39 for prepaid accounts.[67] The comparatively "high rates of churn and high touch subscribers" make the business case for re-entering the Lifeline market even less realistic for nationwide MNOs.[68] As T-Mobile's Chief Financial Officer explained, most facilities-based carriers "don't think Lifeline is a valuable or sustainable product" for their high-dollar base of consumers.[69]

Thus, a ban on MVNOs would not simply inconvenience existing subscribers. It would leave truly needy individuals, especially low-income Americans in rural areas, "stranded" in their search "for affordable communications services."[70] As Verizon concluded, the mass disconnection of low-income Americans that would result from the elimination of support to MVNOs would "undercut the main purpose of the Lifeline program, which is to address

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66 NaLA Comments at 7-8, 13-14, 45; *see also* Sprint Comments at 21.

67 Q Link Comments at 33-34.

68 NaLA Comments at 9; *see also* Sprint Comments at 21 ("Margins on federal Lifeline service are very thin, sharply affected by high churn rates (much due to de-enrollment for failure to re-certify and for sporadic non-usage over the mandated timeframe), the increasing minimum service standards, the elimination of the port freeze rule (which will hamper efforts to recoup acquisition costs, including the costs of providing a broadband-capable device, and will result in higher costs from reviewing multiple enrollment attempts by a customer seeking to switch service providers), and the ever-increasing resources necessary to comply with regulatory requirements and scrutiny.").

69 Joan Engebretson, *CFO: 'Non-sustainable' T-Mobile Lifeline Business to be Phased Out*, TELECOMPETITOR (June 8, 2017), http://www.telecompetitor.com/cfo-non-sustainable-t-mobile-lifeline-business-to-be-phased-out/ (last visited Mar. 22, 2018); *see also* NaLA Comments at 9.

70 INCOMPAS Comments at 5.

affordability."[71] It also would contradict the Commission's universal service mandate, which requires the Commission to ensure access to telecommunications and advanced information service for "[c]onsumers in all regions of the Nation, including low-income consumers."[72]

2. Banning MVNOs Would Reduce Competition.

The record is clear that a ban on MVNOs also would be irrational from a purely economic perspective, because artificially prohibiting wholesale arrangements would reduce competition, efficient specialization, and ultimately investment in the Nation's wireless networks.

First, as explained above, a reseller ban would cause a "sharp reduction in the number of wireless service providers offering Lifeline service,"[73] because most Lifeline providers are MVNOs. Thus, as CTIA explained, "the Commission proposal to remove non-facilities-based carriers from Lifeline would . . . have negative impacts on competition and harm low-income consumers."[74] Indeed, without MVNOs, the Commission "would effectively grant Sprint a wireless Lifeline monopoly in 42 states (which Sprint does not want), leaving consumers with only one option to meet their needs," as NaLA explained. [75] AHIP raised similar concerns

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[71] Verizon Comments at 9; *see also* USTelecom Comments at 2 (a reseller ban would "harm customers that currently rely on resellers' services.").

[72] 47 U.S.C. § 254(b)(3).

[73] Sprint Comments at 17.

[74] CTIA Comments at 11.

[75] NaLA Comments at 10. This assumes, of course, that Sprint's Lifeline subsidiary offers coverage and is an ETC in the subscriber's area; again, the many subscribers who do not have access to coverage through Assurance would have no access to Lifeline wireless service at all.

"regarding the competitive impact of excluding re-sellers," as did the Benton Foundation and many other proceeding participants.[76]

This reduction in competition would be harmful to low-income Americans and to the efficiency of the Lifeline program. Indeed, in recent years, vibrant competition spurred by regulatory forbearance has been the driving force behind the industry's evolution to providing qualifying service at little to no cost to the customer, thereby making the $9.25 subsidy amount travel further in terms of meeting the program's affordability goals.[77] Thus, as NaLA continued, "the lack of competitive pressure could drive prices up and innovation down, making Lifeline service less affordable and less helpful for the very low-income Americans served by the program."[78]

Moreover, given the differences between the Lifeline program and other universal service subsidies, there is no good reason for the Commission to "[a]bandon[] the competitive principles inherent in the Telecommunications Act of 1996."[79] As the Commission has recognized, competition in the Lifeline program promotes consumer choice and incentivizes quality service without duplicating public expenditures for constructing high-cost networks, unlike other subsidy programs.[80] Thus, the Commission should follow the path dictated by textbook

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76 Comments of America's Health Insurance Plans (AHIP) at 3, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) ("AHIP Comments"); *see also, e.g.*, Comments of the Benton Foundation at 6-8, WC Docket Nos. 17-287 et al. (filed Jan. 21, 2018) ("Benton Foundation Comments"); Multicultural Media Comments at 5-6; Comments of the National Urban League et al. at 2, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018); INCOMPAS Comments at 4.

77 *See* NaLA Comments at 66.

78 *Id*. at 10.

79 INCOMPAS Comments at 4.

80 *See Federal-State Joint Board on Universal Service*, *Petition of TracFone Wireless, Inc. for Forbearance*, Order, 20 FCC Rcd 15095, 15100 ¶ 12 (2005).

principles of Economics 101, and permit pro-consumer, pro-market MVNO arrangements that increase competition.

3. Banning MVNOs Would Prevent Efficient Market Specialization.

Banning MVNOs from the Lifeline market would be economically irrational for the additional reason that MVNO arrangements permit efficient market specialization. As Q Link explained in its comments, "[t]he growth of MVNOs as the predominant way of delivering Lifeline services is the result of market-driven specialization," by allowing large nationwide facilities-based carriers to "focus their marketing on high value customers, and to leave the low-margin Lifeline business to MVNOs."[81] As Q Link also explained, this specialization has allowed providers like Q Link to develop a comparative advantage in rural and suburban outreach, and will be necessary to ensure that *all* low-income communities are brought into the fold of the program.[82] As an example, Q Link has a substantial number of customers in rural Kentucky, Indiana, Georgia, Louisiana, Michigan, Ohio, Texas and West Virginia, among others states. Indeed, more than 62 percent of zip codes in which Q Link has Lifeline customers are classified as rural, and more than 67 percent of Q Link subscribers live in rural or suburban areas.[83] As Dr. Mayo explains, given the predominant focus of MVNOs on value-oriented customers, "MVNOs enjoy their largest market presence in lower per-capita income states," including "Arkansas, Maine, West Virginia, Kansas, Vermont, Kentucky and South Dakota."[84]

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[81] Q Link Comments at iv-v, 2-3, 25-34.

[82] *Id.* at 2, 27.

[83] *Id.*

[84] Mayo Decl. at 6, ¶ 15.

Other commenters share these views. CTIA observed that "non-facilities-based wireless providers have focused offerings on low-income consumers' needs, including developing marketing and outreach targeted to the needs of low-income communities," and urged the Commission to consider how MVNOs have "ma[de] the program more effective at achieving its goals."[85] AHIP likewise noted that "[m]any resellers specialize in working with the Lifeline program," and, for example, "devot[e] much-needed resources to reach and engage Medicaid enrollees to ensure the success of the program."[86] Thus, "[i]f resellers are excluded from participation in the program as proposed . . . the resulting gap may go unfilled by larger facility-based providers, which could undermine the viability of the program."[87] The Benton Foundation also noted that "[r]esellers offer innovative technology, marketing, distribution, and customer service offerings," and even "specialized hardware."[88] Even the Commission has recognized the importance of MVNOs in serving different market segments.[89]

Indeed, as Dr. Mayo explained, the benefits of improving competition and "satisfy[ing] the nuanced need of consumers that would otherwise go unfulfilled" are drivers of value for

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[85] CTIA Comments at 12.

[86] AHIP Comments at 3.

[87] *Id.*

[88] Benton Foundation Comments at 7-8.

[89] *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 et al.*, Twentieth Report, FCC 17-126, ¶ 15 (rel. Sept. 27, 2017) (observing that "[a]greements between an MVNO and a facilities-based service provider" tend to "occur when the MVNO has better access to some market segments than the host facilities-based service provider," or when the MVNO "can better target specific market segments, such as low-income consumers").

resale arrangements "throughout the economy."[90] There is no reason for the Commission to exclude them artificially from the Lifeline program.

4. Banning MVNOs Would Decrease Incentives for Network Investment.

Finally, the record demonstrates that to the extent a ban on MVNOs will affect investment in network facilities, the impact will be negative, not positive. As Dr. Mayo explains, MVNOs create "additional demand" that not only narrows the digital divide—especially for rural Americans[91]—but also "expands the capacity utilization of the underlying facilities-based network provider," thereby increasing the incentive for facilities-based providers to invest in their networks.[92] Thus, it is not the case that by forcing MVNOs to exit the Lifeline market, the Commission somehow will encourage network buildout by facilities-based carriers.

As an initial matter, there is no reason to believe that facilities-based providers that voluntarily exited the Lifeline market will absorb meaningful amounts of Lifeline demand, let alone at the low rates accepted by Lifeline MVNOs. As a result, the Commission's proposal would amount to nothing more than a "regulatory-induced price increase" that "leave[s] a set of vulnerable customers with higher bills and with a heightened sense that their most salient option is simply to not subscribe."[93] Moreover, "to the extent that MVNO customers *do* switch to facilities-based firms as a consequence of the proposal, capacity utilization" still would "fall

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[90] Mayo Decl. at 4, ¶ 12; *see also id*. at 4, ¶ 11 (explaining that resale "is a common phenomenon throughout the U.S. economy" and "economically equivalent to any other process in which firms combine inputs to produce a good or service," and that resellers "add value to the product through various retail stage activities such as marketing, servicing, providing product-specific information, and so on.").

[91] *Id*. at 6, ¶ 14; *see also id*. at 6, ¶ 15 (noting that "data reveal that MVNOs enjoy their largest market presence in lower per-capita income, rural states.").

[92] *Id.* at 6, ¶ 14.

[93] *Id.* at 10, ¶ 22.

rather than increase," because "MVNO customers are likely to cause greater utilization of the facilities-based carriers' networks than if the facilities-based carriers were to solely provide the services themselves."[94]

Thus, as Dr. Mayo concludes, "some customers will simply not switch (though they will be harmed) and will provide no extra business for facilities-based firms, while other customers who do switch from MVNOs to facilities-based carriers will decrease, not increase, facilities-based carriers' capacity utilization."[95] Importantly, hard data from the wireless industry support Dr. Mayo's view that MVNOs result in more network investment, not less. According to Dr. Mayo's analysis, "greater MVNO activity (as measured by MVNO subscribers)" increased wireless investment from 2001 to 2016, "after controlling for other determinants of investment."[96]

Facilities-based carriers confirmed Dr. Mayo's analysis, and likewise concluded that the Commission's effort to repurpose Lifeline into an infrastructure program would be fundamentally misguided. As USTelecom explained, "the proposed elimination of resellers from the Lifeline program would not materially further the deployment of broadband infrastructure, because revenue from resellers already contributes to facilities-based carriers' deployment of broadband facilities, but could harm customers that currently rely on resellers' services."[97] On that basis, USTelecom concluded that "the Commission should not utilize the Lifeline program

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94 *Id*. (emphasis added).

95 *Id*.

96 *Id*. at 12, ¶ 27.

97 USTelecom Comments at 2.

to achieve a goal for which it is not designed."[98] Moreover, as Sprint explained, "[m]odest per person subsidies, whose receipt is not guaranteed, are not a basis on which to make capital-intensive network deployment decisions" in any event.[99] Thus, instead of rendering Lifeline ineffective as *both* an affordability program *and* an ineffective infrastructure program, the Commission should continue to allow MVNOs to serve low-income populations.

B. So Long as Minimum Qualifying Service Is Provided, the Commission Should Let the Market Decide How Fixed Support Is Spent.

In the *NPRM*, the Commission seeks comment on several related proposals that would undermine the market-economic design of the Lifeline program's fixed subsidy regime with minimum performance requirements. In paragraph 72, the Commission suggests that Section 254(e)'s directive that universal service support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended" requires limiting Lifeline support to MVNOs solely to the amount paid to MNOs—or eliminating MVNOs from Lifeline altogether.[100] The Commission also suggests that 254(e) bars any expenditures by Lifeline providers on discounted or free handsets provided to Lifeline customers.[101] As Q Link and other commenters such as TracFone have pointed out, neither step is mandated by Section 254(e), and both would be arbitrary and capricious in light of the Commission's correct decision to structure Lifeline as a fixed level of support for providing service meeting mandatory minimum requirements.

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[98] *Id*.

[99] Sprint Comments at 20.

[100] *NPRM* ¶ 72.

[101] *Id.*

1. The Commission Should Not—and Cannot—Deviate From its Decades-Long Transition Toward Incentive-Based Regulation By Micromanaging Costs and Earnings Reinvestment.

Structuring universal service support as a fixed amount with minimum performance requirements is economically efficient and not unique to Lifeline. A fixed support amount with minimum performance requirements is akin to price cap regulation, which limits prices rather than costs and profits, and which the Commission and the courts long have recognized is superior to cost-of-service regulation based on a permitted rate-of-return.[102] For that reason, the Commission largely has migrated its universal service mechanisms into this incentive-based structure. For example, the Commission's high-cost support mechanisms, including Connect America Fund Phase I, Connect America Fund Phase II, Connect America Fund Model-based Support, Mobility Fund Phase I, Mobility Fund Phase II, and the Alaska Plan, all utilize the

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[102] *See, e.g., Policy & Rules Concerning Rates for Dominant Carriers*, Second Report and Order, 5 FCC Rcd 6786, 6789-91 ¶¶ 21, 31 (1990) (a "properly-designed system of incentive regulation will be an improved form of regulation" in light of the "[o]pportunities presented by incentive regulation for enhancing efficiency," including through "innovation" in "new services or offerings[,] . . . management systems, administration, and in the multitude of what economists term 'inputs' that are used to produce a firm's 'output.'"); *Price Cap Performance Review for Local Exch. Carriers,* First Report and Order, 10 FCC Rcd 8961, 8973 ¶¶ 27, 28 (1995) (noting that "[t]raditional rate-of-return regulation provides few incentives for carriers to become more innovative and efficient," while "[p]rice cap regulation, in contrast, can create profit incentives similar to those in fully competitive markets and generates positive motivations for efficient rates, innovation, productivity growth and accurate cost allocation, which reducing regulatory burdens."); *Surewest Tel. Petition for Conversion from Rate-of-Return to Price Cap Regulation & for Ltd. Waiver Relief*, Order, 28 FCC Rcd 8016, 8020 ¶ 10 (2013) (permitting rate-of-return carrier to convert to price cap regulation because of "the public interest benefits generally attributed to incentive regulation — specifically, the . . . incentives for [the regulated carrier] to become more efficient, innovative, and productive."); *Windstream Petition for Conversion to Price Cap Regulation & for Ltd. Waiver Relief,* Order, 23 FCC Rcd 5294, 5299 ¶ 9 (2008) (same)*; see also National Rural Telecom Ass'n v. FCC*, 988 F.2d 174, 178 (D.C. Cir. 1993) (noting the benefits of incentive-based regulation); *U.S. Telephone Ass'n v. FCC*, 188 F.3d 521, 524 (D.C. Cir. 1999) (same).

structure of fixed payments with performance objectives.[103] In none of these mechanisms does the FCC examine specific cost items – nor should it.[104]

The benefits of this fixed support, non-cost-based approach are numerous. But perhaps most importantly, the Commission's chosen structure provides sufficient flexibility for the market to determine how funds are spent in providing service, thereby incenting providers to economize, innovate, and make the most of each USF dollar. That flexibility, and that constant

[103] *Connect Am. Fund A Nat'l Broadband Plan for Our Future Establishing Just & Reasonable Rates for Local Exch. Carriers High-Cost Universal Serv. Support Developing an Unified Intercarrier Comp. Regime Fed.-State Joint Bd. on Universal Serv. Lifeline & Link-Up Universal Serv. Reform -- Mobility Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶¶ 20-28 (2011) ("*USF/ICC Transformation Order*") (creating the "Connect America Fund, which will ultimately replace all existing high-cost support mechanisms" and which "will rely on incentive-based, market-driven policies . .. to distribute universal service funds as efficiently and effectively as possible"); *Connect Am. Fund*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087, 3090-91 ¶ 4 (2016) (providing a voluntary path for rate-of-return carriers to obtain model-based support, noting that model-based support "will advance the Commission's longstanding objective of adopting fiscally responsible, accountable and incentive-based policies to replace outdated rules and programs."); *Connect Am. Fund*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139, 10140 ¶ 1 (2016) ("find[ing] that it is in the public interest to provide Alaskan [rate-of-return] carriers with the option of receiving fixed amounts of support over the next ten years to deploy and maintain their fixed and mobile networks."); *Connect Am. Fund*, Report and Order and Further Notice of Proposed Rulemaking, 32 FCC Rcd 2152, 2157 ¶ 15 (2017) (implementing Phase II of the Mobility Fund, and "reaffirm[ing]" the Commissions "commit[ment] to minimizing the overall burden of universal service contributions on consumers and businesses by expending the finite funds we have available in the most efficient and cost effective manner.").

[104] While the Commission has adopted certification requirements for these mechanisms, it has issued specific guidance on impermissible expenses directed at rate-of-return carriers that report investments and expenses for revenue requirement calculations. *See All Universal Service High-Cost Support Recipients Are Reminded that Support Must Be Used for its Intended Purpose*, Public Notice, FCC 15-133 (Oct. 19, 2015) ("*High-Cost Support Expenditure Public Notice*"); *see also Promoting Telehealth in Rural Am.*, Notice of Proposed Rulemaking and Order, WC Docket No. 17-310, FCC 17-164, ¶ 50 (rel. Dec. 18, 2017) (noting that the "non-exhaustive list of expenses" in the *High-Cost Support Expenditure Public Notice* refers to items "that should not be included in the cost base for rate-of-return carriers").

competitive pressure, has allowed the industry to deliver low-income consumers with more value, and to expand access to telecommunications among low-income populations at a rate that far outpaces the economy as a whole.[105]

The Commission's "pass through" and handset proposals, however, would introduce command-and-control elements into a market-based approach, and misalign incentives to the detriment of consumers. A "pass through" requirement would reward high rather than low costs of service by linking the amount of support available to the amount paid for wholesale network access. And if the Commission disallows the offering of discounted handsets, even as the Lifeline subsidy goes to the provision of service only, the result would be a regulation-mandated increase in rates that deprives low-income Americans of access to devices they need to make use of Lifeline service. Thus, both proposals would be inconsistent with the Commission's strong preference for incentive-based universal service, would undermine the Lifeline program's affordability goals, and would result in waste and inefficiency generated entirely by misguided regulatory action.

Indeed, precisely because the Lifeline program does not regulate earnings, the Commission's proposal to prohibit any expenditure by a Lifeline provider on subscriber handsets, or to require pass-through to the underlying MNO, would be unlawful. As the Tenth Circuit explained in *Sorenson v. FCC*, the Commission cannot micromanage how funds are spent when it chooses to deploy a fixed-support rather than a cost-based subsidy regime. At issue in *Sorenson* is the Commission's 2008 declaratory ruling prohibiting providers of VRS from using revenues received from the Telecommunications Relay Services Fund ("TRS Fund") for

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[105] *See* Q Link Comments at iv; CTIA Comments at 13; Mayo Decl. at 6, ¶¶ 15-16.

lobbying and advocacy expenditures.[106] The FCC claimed that "lobbying end users was not an activity the TRS Fund was intended to compensate."[107] The court nevertheless vacated the prohibition, explaining that the "FCC's justification is inconsistent with the logic of [the] price cap based compensation system" used to deliver TRS subsidies, which "does not reimburse VRS providers for actual costs" but instead compensates providers at a fixed rate per minute of service.[108]

Here, too, the subsidy program at issue provides ETCs with a fixed amount of support per subscriber, and thereby "reward[s] efficient providers by allowing them to retain the savings generat[ed] by providing" Lifeline service "at a low cost."[109] And here, too, the Commission's proposals would undermine that "reward mechanism" by interfering with how providers "decide how to spend those savings."[110] The pass-through requirement would actually flip the reward mechanism in reverse by tying higher support amounts to higher costs of service. In addition, it would discourage necessary service-related expenditures like retail, marketing, and customer support by forcing MVNOs to spend the entire support amount on wholesale access. The prohibition on handset discounts likewise would prevent providers from using efficiency gains to meet the needs of the low-income market. In addition to facilitating one-stop shopping, handset discounts allow Lifeline providers to overcome barriers unique to low-income communities, who often cannot afford large upfront payments and do not have access to financing device purchases.

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[106] *Sorenson*, 567 F.3d at 1220.

[107] *Id*. at 1221.

[108] *Id*.

[109] *Id*. at 1222.

[110] *Id*.

Thus, instead of proceeding with the unlawful proposals raised in the *NPRM*, the Commission should maintain the market-based approach of the Lifeline program, which pushes providers to ensure that their input costs are as low as possible, and to build service offerings that respond to market needs.

2. Section 254(e) Does Not Support Limiting MVNOs Only to Compensation Equaling Their Payments to MNOs, Nor Banning Handset Discounts.

In paragraph 72, the *NPRM* asks "[w]ould eliminating resellers from the [Lifeline] program address any concerns about the appropriate use of federal funds by Lifeline providers?" The *NPRM* also asks if "limiting payments to resellers to what they pay their wholesale carriers [would] fully effectuate the congressional intent of section 254(e)?"[111] The answer to both questions is no.

In these questions, the *NPRM* ignores the fact that Section 254(e) permits the use of universal service funds for both "facilities" and "services." As TracFone, NASUCA, and NaLA point out, the Commission has previously—and correctly—read this as disjunctive, and as thereby permitting expenditure on both facilities and other aspects of providing Lifeline service.[112] Accordingly, banning MVNOs from Lifeline participation does not rationally address concerns about the appropriate use of universal service funds.

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[111] *NPRM* ¶ 72.

[112] *See* TracFone Comments at 55, citing *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, 20 FCC Rcd 15095 ¶ 26 (2005) ("*2005 Forbearance Order*") (determining that Section 254(e) does not limit support to expenditures on facilities); *see also USF/ICC Transformation Order* ¶ 64 (noting that Section 254(e) "refer[s] to 'facilities' and 'services' as distinct items for which federal universal service funds may be used.")); *see also* NASUCA Comments at 8-10 (explaining why paragraph 72's "reading of the second sentence of Section 254(e) is in conflict with the FCC's prior, detailed statutory analysis and identification of Congressional intent"); NaLA Comments at 50 (noting that "section 254(e) provides that . . . 'a carrier that receives . . .

As TracFone also observes, "[l]imiting payments to resellers to the amounts . . . they pay wholesale carriers therefore would not effectuate, but would directly contradict, the intent of the statute."[113] Had Congress sought to limit universal service support only to use for facilities investment, it would not have included "and services" in Section 254(e). The words "and services" have to mean something.[114]

In fact, the Commission's implementation of high-cost support shows that permissible expenses extend beyond facilities investment, and include items such as marketing, customer service and general corporate overhead.[115] Lifeline MVNOs incur these types of costs as well. These costs rationally cannot be considered supportable for high-cost mechanisms, but prohibited by Section 254(e) when expended by Lifeline MVNOs. Thus, any attempt to limit MVNOs' use of Lifeline support only for costs paid to MNOs, and not for other costs of providing Lifeline services, cannot be sustained by relying on Section 254(e).

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support shall use that support only for the provision, maintenance, and upgrading of facilities *and* services' . . .") (emphasis in original) (alteration omitted).

[113] TracFone Comments at 55; *see also* NASUCA Comments at 10.

[114] *2005 Forbearance Order* ¶ 26 (noting that a conjunctive "reading of section 254(e) would require us to interpret the term 'service' as surplusage -- a result that must be avoided when the statute admits to other interpretations.").

[115] *See, e.g.*, *Connect Am. Fund High-Cost Universal Serv. Support*, Report and Order, 29 FCC Rcd 3964 ¶ 121 (2014) (including "[c]ustomer operations marketing and service operating expenses," such as "produc[t] management and sales, advertising, operator services, and costs incurred in establishing and servicing customer accounts," as inputs into the Connect America Fund cost model); 47 C.F.R. § 54.1308 (rate-of-return carriers may include corporate operations expenses for the purpose of calculating high-cost loop support payments); *USF/ICC Transformation Order* ¶ 227 (noting that "corporate operations expenses are general and administrative expenses, sometimes referred to as overhead expense," and include "expenses for overall administration and management, accounting and financial services, legal services, and public relations.").

The Commission also is wrong to suggest that a prohibition on handset discounts is necessary to comply with Section 254(e).[116] Whether an MVNO or facilities-based, *every* Lifeline provider must be allowed the reasonable opportunity to turn a profit. By offering discounted handsets, Lifeline providers have not misdirected funds to non-Lifeline ends, but foregone what would otherwise be profits in response to competition in order to provide customers with a much-needed device necessary to access the supported service. Moreover, if Section 254(e) were read to authorize the Commission to regulate the reinvestment of earnings, there would be no limiting principle on the extent to which the Commission could intrude on business decisions. Such a reading would, for example, bar charitable contributions by a Lifeline provider.[117]

III. THE RECORD FAILS TO SUPPORT ANY CONNECTION BETWEEN MANDATORY MINIMUM CHARGES AND THE PREVENTION OF WASTE, FRAUD AND ABUSE OR PROMOTION OF BROADBAND ADOPTION.

In paragraph 112, the Commission sought comment on whether a maximum discount – i.e., minimum end-user charge – would encourage broadband adoption or minimize wasteful spending. But the record provides no support for the conclusion that a mandatory minimum end-user charge would increase broadband adoption or reduce waste, fraud or abuse. Instead, the record conclusively establishes what should be obvious: even small end-user charges will deter legitimate enrollment and undermine adoption, and copayments would have no impact on excessive consumption because households are only eligible for one Lifeline account.

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[116] *NPRM* ¶ 72 (internal quotations omitted).

[117] *See High-Cost Support Expenditure Public Notice* (excluding charitable contributions from the list of expenses that may be included in the cost base for rate-of-return carriers).

The record demonstrates that Lifeline consumers are highly price sensitive, to the extent that even modest copayments would deter subscriptions drastically. As Q Link explained, its customers are often unable to pay even $5 or $10 for additional minutes or data, and 56 percent of its Lifeline customers are "unbanked."[118] TracFone reported that 44 percent of its Lifeline subscribers are "unbanked."[119] Sprint similarly described its average Lifeline subscriber as having an annual income of just $14,000, with half having at least one person under 18 in their household.[120] Analyzing the results of "[r]esearch by the Federal Reserve, Pew, and the JP Morgan Chase Institute," a group of low-income consumer advocates echoed these concerns, concluding that "[l]ow-income households often face untenable choices due to income volatility combined with lack of savings."[121] As a result, it can be "difficult for a low-income consumer to . . . pay" even "$1.00 or $3.00 for . . . a useful and indeed essential service."[122]

Thus, the Commission's previous conclusion that a minimum payment requirement would be "an excessive financial burden" remains correct.[123] As AARP explained, "requiring co-payments" would be "disruptive to the objectives of low-income programs," and "has a long history of depressing the participation of low-income individuals in programs designed to assist the poor."[124] Indeed, in the Lifeline context in particular, the "'no-bill' business model that has

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118 Q Link Comments at 2.

119 TracFone Comments at 62.

120 Sprint Comments at 9.

121 Low-Income Consumer Advocate Comments at 9.

122 INCOMPAS Comments at 8.

123 Sprint Comments at 9, quoting *Lifeline and Link Up Reform and Modernization, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6672 ¶ 267 (2012).

124 AARP Comments at 21.

been adopted by many wireless Lifeline ETCs" has broken down financial barriers erected by not only volatile low-income budgets, but also a lack of access to banking services, which dramatically raises the costs of making an actual payment.[125] As CWA concluded, "[f]ree-to-the-end-user services are critical for providing communications services to the most vulnerable populations," and "mandating co-payment would reduce the number of participants in the program and add unnecessary complication to what is already a minimal $9.[2]5 per month subsidy for broadband service."[126]

Under these circumstances, a minimum charge would lead to less, rather than more, broadband adoption, especially because low-income consumers are more likely to receive broadband through mobile devices rather than fixed broadband.[127] Indeed, 85 percent of respondents to TracFone's survey on the issue stated they would discontinue Lifeline services if subject to a modest copay, due to inability to pay.[128] It would be irrational and contrary to basic economics to believe that by increasing end user price, broadband adoption among low income Americans would increase.

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[125] INCOMPAS Comments at 8; *see also* Comments of the Cities of Boston, Massachusetts, Los Angeles, California, and Portland, Oregon, and the Texas Coalition of Cities for Utility Issues at 26, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018) (discussing the barriers of being unbanked).

[126] Comments of Communications Workers of America at 3-4, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018).

[127] *See* Stephen J. Blumberg, Ph.D., and Julian V. Luke, *Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January-June 2017*, at 2 (Dec. 2017), https://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201712.pdf (noting that 67.5 percent of adults living in poverty and 61.6 percent of adults living in households with income between 100 and 200 percent of the Federal Poverty Guidelines now only receive mobile wireless service).

[128] TracFone Comments at 62.

In addition, the record establishes no connection between a mandatory minimum charge and prevention of waste, fraud and abuse, especially once the National Verifier is implemented and USAC becomes the final arbiter of identity verification and eligibility. As Q Link observed in its comments, because of the structure of Lifeline, there is no reason to believe that a mandatory copayment will control excessive purchasing because unlike beneficiaries of universal service programs with minimum copayment requirements (i.e., E-rate and Rural Health Care), and unlike beneficiaries of programs like Medicare that mandate copayment, a Lifeline consumer cannot increase consumption of Lifeline services beyond her single subscription in that month.[129] Support does not increase as more or less service is consumed, and thus a copayment is not necessary to prevent overconsumption.

IV. TO THE EXTENT THE COMMISSION ADOPTS A HARD BUDGET, THE RECORD SUPPORTS A LIFELINE BUDGET THAT NARROWS THE DIGITAL DIVIDE.

The record demonstrates that participation in the Lifeline program remains critical to expanding connectivity to low-income Americans, but that the Lifeline program nevertheless remains substantially under-enrolled. Thus, to narrow the digital divide and meet the Commission's universal service mandate, any reform to the Lifeline budget must provide room for the program to reach more, not less, low-income households.

First, although Lifeline subscribers may be "diverse geographically, racially and by gender,"[130] the record demonstrates that they overwhelmingly share the common trait of being truly needy. Based on NaLA's analysis, more than half live in a household earning less than $10,000 per year, 18 percent share a household with veterans, and more than 36 percent are

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[129] *See* Q Link Comments at 42-43.

[130] NaLA Comments at 7-8.

disabled.[131] Many Lifeline subscribers—a majority (56 percent) in Q Link's case—also are "unbanked."[132] Moreover, as AARP noted, many Lifeline subscribers are "elderly and disabled," and thus their "reliance on Lifeline is not the result of transitory economic conditions," but rather a permanent state of affairs that would leave them on the wrong side of the digital divide for many years absent the availability of Lifeline service.[133]

The record also confirms that without Lifeline, these low-income Americans would not have access to telecommunications services and advanced information services. As Q Link explained, BLS data and FCC subscribership statistics clearly demonstrate that "the need to pay for other critical household expenditures suppresses telecommunications purchases for lower income Americans,"[134] which should come as no surprise when one compares the going rates for services like broadband[135] to the pressing needs that face low-income consumers on a day-to-day basis. As INCOMPAS explains, the "budgets of many low-income consumers have no margin for error," and the "last available dollar literally can disappear into bus fare to get to an

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[131] *Id.* at 8.

[132] Q Link Comments at 2.

[133] AARP Comments at 26.

[134] *See* Q Link Comments at 3; U.S. Bureau of Labor Statistics, *Table 1101. Quintiles of income before taxes: Annual expenditure means, shares, standard errors, and coefficients of variation, Consumer Expenditure Survey, 2016,* (Aug. 2017), https://www.bls.gov/cex/2016/combined/quintile.pdf (showing that as incomes increase, households purchase more telecommunications); FCC, *Universal Service Monitoring Report, 2016,* at Table 6.2 (rel. Jan. 13, 2017), https://apps.fcc.gov/edocs_public/attachmatch/DOC-343025A1.pdf (showing a 98 percent voice penetration rate for households with incomes at or above $92,839, in contrast to 93.2 percent and 96.4 percent for households below $23,211 and between $23,211 and $46,419, respectively).

[135] *See* AARP Comments at 5-6 ("a household that purchases the 'BLS average' of telephone services, and a low-end broadband plan can expect to pay a total of about $167 per month for those services.").

unexpected medical appointment for a child (or a co-pay for that medical appointment), or the need to buy a shirt to wear to a new job, or simply into food, rent, or utility bills."[136] As a group of consumer advocates reported, the high volatility of these already low budgets further constrains the ability of low-income Americans to set aside funds even for essential needs.[137]

Additional data support this conclusion. In Q Link's experience, many subscribers that enroll in Lifeline do not appear to have a reliable internet access connection; indeed, 71 percent of Q Link's customers sign up from a business or public internet address, while many of the remaining 29 percent sign up at community centers or using a friend's internet service.[138] Moreover, as CTIA explained, since the Commission permitted MVNOs to provide Lifeline service in 2007, the rate of increase in telephone subscribership among households with incomes below $10,000 (in 1984 dollars, which converts to $23,210 in 2016 dollars) far outpaced the rate for all households across all incomes,[139] demonstrating not only the critical role that MVNOs serve, but also the vital importance of Lifeline service availability, especially wireless Lifeline service, more generally.

In light of these statistics, the Commission cannot proceed on the assumption that a large number of qualified subscribers would purchase Lifeline service in the absence of a subsidy or with the sharply reduced subsidy amounts that would result if a hard-capped budget resulted in reductions in per capita support. Indeed, the record demonstrates only that current needs far

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136 INCOMPAS Comments at 8.

137 Low-Income Consumer Advocate Comments at 10-11. *See also* INCOMPAS Comments at 8 (noting that low-income consumer struggle to pay even "$1.00 or $3.00" for "useful and indeed essential service[s]").

138 Q Link Comments at 3.

139 CTIA Comments at 13; *see also* Q Link Comments at iv.

exceed the reach of the Lifeline program today. As AARP explained, "even with the Lifeline program, a substantial digital divide has developed, with lower income households much less likely to have essential telecommunications services."[140] Presenting data from a 2017 Pew Research study, AARP and CAGW also showed that income continues to drive rates of adoption of technologies used to access telecommunications and information services.[141]

These statistics are unsurprising given the severe under-enrollment in the Lifeline program. As National Grange explained, "[t]he Lifeline program has about 12.5 million subscribers, but only about one-third of eligible households are receiving Lifeline-supported service."[142] With a participation rate of just 33 percent, "Lifeline enrollment continues to lag far behind other low-income support programs, including the programs used to establish Lifeline eligibility."[143] Indeed, as Q Link explained, "the vast majority (76 percent) of Lifeline subscribers establish eligibility based on their qualification for Medicaid or SNAP, which have much higher participation rates of 80 percent and 83 percent respectively."[144]

Commenters therefore urged the Commission to proceed with budget levels that are sufficient to allow all eligible consumers to receive support. For example, CTIA encouraged the Commission to "maximize eligible low-income consumers' participation in the Lifeline program," and to avoid budgetary reforms that would "undermin[e] the program's availability to

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140 AARP Comments at 6; CAGW Comments at 4.

141 *Id.*

142 Comments of the National Grange at 2-3, WC Docket Nos. 17-287 et al. (filed Feb. 21, 2018); s*ee also* NARUC Comments at 27 ("According to 2014/2015 census data, only 33 percent of all eligible households subscribe to Lifeline services.").

143 Q Link Comments at 20.

144 *Id.* at 20-21.

low-income consumers when they need it most."[145] NARUC likewise urged the Commission to ensure that "qualified households that are current subscribers do not lose their eligible Lifeline benefit," and that "there is reasonable and rational growth in the Lifeline fund to serve subscribers in an amount that does not exceed the current soft budget notification amount."[146] AARP "strongly opposed" establishing a budget set at 2008 distribution levels given the need for continued growth in Lifeline penetration.[147] Even strong proponents of "prevent[ing] undue burdens on [USF] ratepayers" urged the Commission to, at a minimum, defer budgetary reforms until after the National Verifier is in place, and after the Commission collects more data about the impact the availability of Lifeline broadband service has had on "the Commission's goal of closing the digital divide."[148]

CONCLUSION

The record is clear. The Commission can and should take steps to promote the integrity of the Lifeline program, but it need not dismantle the program altogether in order to do so. Accordingly, the Commission should proceed with implementation of the National Verifier—with carrier APIs—and adopt common-sense reforms aimed directly at fraud prevention. The Commission should not, however, deny Lifeline subscribers of the benefits that market forces

145 CTIA Comments at 21, 24.

146 NARUC Comments at 30; *see also* Black Women's Roundtable Comments at 5 ("Implementation of the proposed 'hard' budget cap would only serve to widen the divide for consumers who can least afford access to telecommunications services. This is particularly troubling considering the fact that not all eligible consumers participate in the Lifeline program.").

147 AARP Comments at 5, 22 (criticizing the *NPRM* for "envision[ing] a world where all low-income individuals can move into the workforce and earn incomes sufficient to support the purchase of unsubsidized voice and broadband services.").

148 Verizon Comments at 10-11 (internal quotations omitted)*; see also* USTelecom Comments at 9.

have brought to the program in the name of preventing waste, fraud, and abuse. It should allow MVNOs to continue to participate in the Lifeline program to promote competition, specialization, and network investment. And it should decline to adopt regulations that would ignore legitimate Lifeline costs of service, or micromanage a provider's reinvestment of its earnings.

The Commission also should decline to adopt a regime of mandatory minimum charges, which will erect barriers to Lifeline enrollment that are unrelated to preventing waste, fraud, and abuse. With respect to budget reforms, the Commission must ensure that any changes to budget adjustment mechanisms, or to budget levels, allow the Lifeline program to serve additional eligible subscribers and thereby narrow the digital divide.

Respectfully submitted,

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