Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197

REPLY COMMENTS OF
VOICES FOR INTERNET FREEDOM MEMBERS

Voices for Internet Freedom Members ("Voices")[1] respectfully submit these reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice[2] in the above-captioned dockets. In its initial comments, Voices requested that the FCC take two integral steps to bridge the digital divide: (1) reverse the Wireline Competition Bureau's order ("*Revocation Order*");[3] and (2) commit to immediately implementing the *Lifeline Modernization Order*[4] while refraining from future efforts to undermine the Lifeline program.[5]

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[1] Voices for Internet Freedom is a national organizing project led by the Center for Media
[2] *See Wireline Competition Bureau Seeks Comment on Request for Reconsideration Concerning Lifeline Broadband Providers*, WC Docket Nos. 09-197, 11-42, DA 17-213 (rel. Mar. 2, 2017). That Notice was issued pursuant to a letter from 37 organizations, requesting reversal of the *Revocation Order* that rescinded the designations of nine LBPs. *See* Letter from Jessica J. González, Free Press, *et al*., to Chairman Pai, Commissioner Clyburn, Commissioner O'Rielly, FCC, WC Docket No. 11-42 (filed Feb. 23, 2017).
[3] *See Telecommunications Carriers Eligible for Universal Service Support, Lifeline and LinkUp Reform and Modernization*, WC Docket Nos. 09-197, 11-42, Order on Reconsideration, DA 17-128 (rel. Feb. 3, 2017) ("*Revocation Order*").
[4] *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) ("*Lifeline Modernization Order*").
[5] *See* Voices for Internet Freedom Members, Comments, WC Docket Nos. 11-42 and 09-197, at 1 (Mar. 16, 2017) ("Voices Comments").

Notably, every single commenter in this round endorses the broad conclusion that Lifeline should support broadband. Dozens of entities in the docket and more than 13,000 individuals also agree with Voices that the *Revocation Order* erodes Lifeline's promise to bring affordable broadband to low-income consumers. Two of the mere three *Revocation Order* supporters in the docket base their positions on a misread of states' jurisdiction over interstate broadband services.[6] The other[7] raises an important issue of Tribal sovereignty that can – and should – be dealt with immediately, but through a less drastic remedy than the Commission adopted in its *Revocation Order*. The record indicates widespread support, from both public interest groups and providers, for the FCC to implement the Lifeline Broadband Provider ("LBP") designation process established in the *Lifeline Modernization Order*.[8] Therefore, Voices again requests that the Commission reinstate the designations of the nine LBPs and commit to implementing the *Lifeline Modernization Order.*

I. THE VAST MAJORITY OF COMMENTERS AGREE THAT THE COMMISSION SHOULD REVERSE THE *REVOCATION ORDER* AND REINSTATE THE DESIGNATIONS OF THE NINE LBPs

Comments filed in this proceeding demonstrate that the overwhelming majority of public interest groups, civil rights organizations, cities, and providers agree that the *Revocation Order* harmed existing and potential Lifeline subscribers,[9] created unnecessary

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[6] *See* National Association of Regulatory Utility Commissioners, Comments, WC Docket Nos. 09-197 and 11-42 (Mar. 16, 2017) ("NARUC Comments"); Public Utility Division of the Oklahoma Corporation Commission, Comments, WC Docket Nos. 09-197 and 11-42 (Mar. 16, 2017) ("PUD Comments"); *see also infra* note 12.

[7] *See* National Tribal Telecommunications Association, Comments, WC Docket Nos. 09-197 and 11-42 (Mar. 16, 2017) ("NTTA Comments").

[8] *See infra* notes 15, 18.

[9] *See* Consortium for School Networking, *et al.*, Comments, WC Docket Nos. 09-197 and 11-42, at 4 (Mar. 16, 2017) ("CoSN Comments") (The *Revocation Order* created "unnecessary uncertainty for consumers themselves"); *see also* EveryoneOn, Comments, WC Docket Nos. 09-197 and 11-42, at 3 (Mar. 16, 2017) ("EveryoneOn Comments") (The *Revocation Order* "roll[ed] back progress in making affordable internet available across the nation," negatively

uncertainty in the LBP marketplace,[10] and relied on outdated and unsupported "waste, fraud, and abuse" claims.[11] The Greenlining Institute explains that the *Revocation Order* runs contrary to the Commission's efforts to bridge the digital divide, and makes it far less likely that people in marginalized communities and school-aged children will have access to affordable broadband.[12] Many commenters explain how the *Revocation Order* has created a high level of uncertainty in the LBP designation process and has chilled participation from providers interested in entering the LBP marketplace in the future.[13] To remedy this, commenters agree that the Commission must reinstate the nine LBPs, provide "regulatory certainty,"[14] and commit to following the process reforms outlined in the *Lifeline Modernization Order* moving forward.[15] Additionally, there is near consensus that recent

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impacting potential Lifeline subscribers in all 50 states, Washington, D.C, Puerto Rico, and the U.S. Virgin Islands).

[10] *See infra* note 13.

[11] *See infra* note 16.

[12] *See* The Greenlining Institute, Comments, WC Docket Nos. 09-197 and 11-42, at 6 (Mar. 16, 2017) ("Greenlining Comments") ("[A]llowing these nine carriers to provide affordable broadband serves the public interest because families will not have to forego other essentials in order to be able to apply for a job online or do homework at home.").

[13] *See, e.g.*, City of Portland, Comments, WC Docket No. 09-197 and 11-42, at 1 (Mar. 16, 2017) (The *Revocation Order* "has a chilling effect on other potential Lifeline broadband entrants"); CoSN Comments at 4 (The *Revocation Order* "dampens the interests of other companies who seek to enter the Lifeline broadband market, chilling future competition"); EveryoneOn Comments at 4 (The *Revocation Order* "negatively affects the pioneer providers ironing out the petitions process"); Greenlining Comments at 3 ("[I]t seems likely that the Commission's Order will chill carrier participation in the Lifeline program, especially for smaller carriers"); Leadership Conference on Civil and Human Rights, Comments, WC Docket Nos. 09-197 and 11-42, at 1 (Mar. 16, 2017) ("Leadership Conference Comments") (The *Revocation Order* "has a chilling effect on other potential Lifeline broadband entrants"); Northland Cable Television, Inc., Comments, WC Docket Nos. 09-197 and 11-42, at 11 (Mar. 16, 2017) ("Northland Comments") ("The Bureau's hurried decision to revoke its previously issued LBP ETC designations without any reasoned rational basis, however, has left Northland and several other providers without a clear path forward.").

[14] Lifeline Connects Coalition, Comments, WC Docket Nos. 09-197 and 11-42, at 5 (Mar. 16, 2017) ("Lifeline Connects Comments").

[15] *See* City of Chicago, Comments, WC Docket Nos. 09-197 and 11-42, at 2 (Mar. 16, 2017) ("We encourage the Commission to implement policies consistent with 2016 Modernization Order and resist advice to scale back Lifeline in general."); City of Portland, Comments, WC

claims of "waste, fraud, and abuse" raised in the *Revocation Order* are unfounded, and do not support the decision to revoke the designations of the nine LBPs.[16] To this end, several comments filed by revoked and potential LBPs also push back on claims made in the *Revocation Order* that Lifeline is a program plagued with waste, fraud, and abuse.[17] Simply

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Docket No. 09-197 and 11-42, at 1 (Mar. 16, 2017) ("Portland Comments") ("The new LBP designation process is critical for increasing competition and facilitating competition and innovation in the Lifeline broadband program, and we urge the Federal Communications Commission to resume the designation process immediately"); Leadership Conference Comments at 2 ("We urge the Commission to act quickly on this matter as uncertainty regarding the process for broadband providers to participate in the Lifeline program delays access to affordable broadband to low-income households.").

[16] *See* Portland Comments at 2 ("Delaying Lifeline funding forces far too many deserving families go without the assistance that could be available now. Their punishment should not be the result of others who committed waste, fraud, and abuse. Instead, we encourage the FCC to continue addressing the misuse of Lifeline funds while actively assisting poor families in accessing broadband internet."); CoSN Comments at 4 ("Corporate fraud and abuse concerns continue to be addressed by the Enforcement Bureau and by the comprehensive steps taken in the Modernization Order, such as a national eligibility verifier. Moreover, there is no indication in the Order that concerns of fraud and abuse relate to any of the pending LBPs."); EveryoneOn Comments at 4 ("[T]he actions taken by the FCC in rescinding the approvals of the aforementioned LBPs have no link to making the program more secure, and reports of Lifeline waste, fraud, and abuse have been proven to be overstated."); Greenlining Comments at 5-6 ("Given the strength of current protections against waste, fraud, and abuse, the Commission should allow these carriers to provide Lifeline broadband access while concurrently assessing the effectiveness of these new reforms through increased auditing and enforcement – not by suspending the LBP designation process for an indefinite amount of time."); Public Knowledge and Benton Foundation, Comments, WC Docket Nos. 09-197 and 11-42, at 7 (Mar. 16, 2017) ("The WCB's decision to revoke the LBP designations is inconsistent with the Commission's practices, and its reliance on the potential of waste, fraud, and abuse in the Lifeline program is unsupported by the record."); Writers Guild of America, East, AFL-CIO, Comments, WC Docket Nos. 09-197 and 11-42, at 2 (Mar. 16, 2017) ("There is no evidence of widespread abuse in the Lifeline program, the Bureau must uphold its obligation to ensure that low-income Americans can access critical information or reach emergency contacts.").

[17] *See, e.g.,* Applied Research Designs, Inc., Comments, WC Docket Nos. 09-197 and 11-42, at 7 (Mar. 16, 2017) (arguing that it is unfair for the Commission to rescind AR Design's designation "based on sheer conjecture regarding imagined future violations of Lifeline program rules, citing past abuses by different service providers"); STS Media, Inc. d/b/a FreedomPop, Comments, WC Docket Nos. 09-197 and 11-42, at 4 (Mar. 16, 2017) ("[R]espectfully urges the Commission not to scrutinize the entire Lifeline program based on the transgressions of a few, but rather to make informed decisions about how best to oversee and administer the program based on a more complete picture."); Lifeline Connects Comments at 6 ("With its low improper payment rate and the recent reductions in Lifeline

put, stalling all LBP designations to prevent unproven waste, fraud, and abuse is misplaced energy based on a false narrative. Finally, there is also broad agreement in the docket for the Commission to swiftly implement the process reforms in the *Lifeline Modernization Order*.[18]

Indeed, widespread support for the *Lifeline Modernization Order* extends beyond the Beltway. To date, Free Press has received over 13,000 comments and personal stories that illustrate the urgent need for Lifeline broadband.[19] As one individual shared, "[o]ur young-adult daughter, who is struggling to get through school and keep up with health challenges, greatly needs access to broadband. Please stop blocking this important resource for low-income folks."[20] Another individual urged the Chairman not to "discriminate against the less fortunate…[because] everyone benefits from free or affordable access to the Internet," and continued to explain that "[as] a disabled individual myself, I do not know what I would do

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program outlays, there is room for additional competition without risking material increases in waste, fraud and abuse."); LocalTel Communications, Comments, WC Docket Nos. 09-197 and 11-42, at 3 (Mar. 16, 2017) ("The Bureau's overarching explanation for the revocations was to prevent waste, fraud, and abuse…based on generalized concerns with the Lifeline program overall rather than with the applicants themselves."); Northland Comments at 4 ("The Bureau's broad allegations of widespread waste, fraud and abuse in the Lifeline program appears to be based on prior issues that have since been resolved or a misunderstanding of program procedures.").

[18] *See, e.g.*, City of Philadelphia, Comments, WC Docket No. 11-42 (Mar. 16, 2017) (Passing a Resolution calling on the FCC "to reinstate the Lifeline Broadband Provider designations granted to nine companies which created a one-stop application process that significantly reduced the time, burden and expense of receiving a license and make available broadband internet service to millions of people in poverty."); CoSN Comments at 4-5 (The current streamlined federal LBP process "will best serve the public interest by helping to ensure all students have access to the broadband capacity required to support learning inside and outside the classroom."); Consumer Action, Comments, WC Docket Nos. 09-197 and 11-42, at 1 (Mar. 16, 2017) ("We respectfully urge the Commission to reject any further efforts to undermine the Lifeline program and to fully implement the March 2016 Lifeline Modernization order."); Media Alliance, Comments, WC Docket Nos. 09-197 and 11-42, at 2 (Mar. 16, 2017) ("We write today in full support of the Lifeline modernization reforms adopted in March of 2016 and ask you to set aside the Order for Reconsideration and fully implement the Commission's previous order, which was well-considered and wise.").

[19] *See* Collette Watson, *Dear Ajit Pai: The People Have Spoken*, FREE PRESS BLOG (Mar. 22, 2017), https://www.freepress.net/blog/2017/03/22/dear-ajit-pai-people-have-spoken.

[20] *See* attached App. A at 1 (Connie, Portland, OR).

without my access, and I live on a very low income now…. Please don't interfere with my access to everything I now need to pay bills and contact others."[21]

II. SUPPORT FOR THE *REVOCATION ORDER* IS LIMITED, AND RESTS PRIMARILY ON A MISREAD OF STATE JURISDICTION OVER INTERSTATE BROADBAND

Only three commenters support the *Revocation Order*: Two of them are the National Association of Regulatory Utility Commissioners ("NARUC") and the Public Utility Division of the Oklahoma Corporation Commission ("PUD"). Their chief argument relates to their objection to the FCC's preemption of a narrow portion of states' involvement in the Eligible Telecommunications Carrier ("ETC") designation process.[22] They assert that this preemption has defied a Congressional mandate under Section 214(e)(2) of the Act, which directs the states to designate ETCs.[23] Voices recognizes that states play a critical role in protecting consumers and ensuring that ETCs serve local needs. Yet the Commission's narrow decision – to preempt states from designating carriers that offer only broadband internet access service – is supported by statute, properly respects the separation of powers, and serves a compelling public policy interest.

In the *Lifeline Modernization Order*, the Commission rightly decided that states should maintain their traditional, congressionally mandated role in ETC designation decisions for common carriers under their jurisdiction. That order then established an additional LBP designation process for broadband-only providers.[24] The Commission deliberated, and properly preserved an appropriate role for states.[25] It concluded that broadband internet access

[21] *See* attached App. A at 3 (Deborah, San Diego, CA).
[22] NARUC Comments at 3-4.
[23] *See id.* at 3; PUD Comments at 3.
[24] *See, e.g.*, *Lifeline Modernization Order* at 3965, 4039-40 & 4053-54.
[25] *See id.* at 4067-68.

service is inherently an interstate service for regulatory purposes,[26] and thus a broadband-only Lifeline provider likely would not be subject to state jurisdiction. Therefore, it is left to the FCC to designate any such broadband-only providers as eligible for support, pursuant to Section 214(e)(6) of the Act. That subsection stipulates FCC designation decisions on ETC status for carriers "not subject to the jurisdiction of a State commission."[27] Indeed, the *Lifeline Modernization Order* addressed and systematically dismissed NARUC's line of argument to the contrary.[28]

The *Lifeline Modernization Order* also convincingly describes the important public policy reasons behind its decision to preempt states from the Lifeline Broadband Provider portion of the ETC certification process.

> We take certain steps to streamline the LBP designation process to encourage broader provider participation in the Lifeline program with the expectation that increased participation will create competition in the Lifeline market that will ultimately redound to the benefit of Lifeline-eligible consumers.[29]

Support for this decision from providers was widespread in the docket leading to adoption of the *Lifeline Modernization Order*.

> The Commission received a variety of responses on the topic of streamlining the ETC designation process. Many commenters supported streamlining the ETC designation process, indicating that the current ETC designation process is unnecessarily burdensome and hinders competition in the Lifeline market. The American Cable Association, for example, argued that "[t]he ETC designation process is so burdensome that it presents a substantial barrier to participation." Axiom Technologies argued that it "would be pleased to offer low-cost Lifeline services to our citizens" but "[a]cquiring [an ETC] designation creates a huge barrier for small carriers like us." Even from a larger provider's standpoint, Comcast agrees that "requiring providers to undertake the regulatory burdens of full-blown ETC designation proceedings may be 'an impediment to broader [provider] participation in the Lifeline

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[26] *See, e.g.*, *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, 30 FCC Rcd 5601, para. 431 (2015).
[27] *Lifeline Modernization Order* at 4044-46.
[28] *Id.* at 4048-49, paras. 238-241.
[29] *Id.* at 4044, para. 221.

> program.'" The Competitive Carriers Association Reply noted that the Commission could balance the goals of facilitating market entry and curbing waste, fraud, and abuse by "eliminating overlapping state and federal requirements, minimizing additional certification reporting requirements, and streamlining deenrollment procedures—while retaining existing substantive standards for ETC designation."[30]

NARUC also asserts that the letter[31] from 37 public interest and civil rights organizations urging the FCC to reconsider the *Revocation Order* fails to discuss or rebut "the rationale provided by the Bureau as the basis for its action."[32] This is inaccurate. Voices disputed at length in its initial comments[33] the overblown and unsupported nature of the Bureau's primary justification for the *Revocation Order*: claimed waste, fraud and abuse.[34] Indeed, the Bureau failed to point to any waste, fraud, and abuse by these nine providers in the Lifeline program, and it admits as much in the *Revocation Order* when it characterizes these threats as hypothetical, or, in its own words, "potential."[35] NARUC wrongly reiterates these harmful claims despite the FCC's numerous, diligent, fruitful and necessarily ongoing efforts to eliminate these vices.[36]

Finally, Voices agrees with National Tribal Telecommunications Association that companies seeking LBP designations should comply with the *Lifeline Modernization Order*'s requirement to notify any affected Tribal governments when they plan to offer service on Tribal lands.[37] Certainly, however, the FCC can – and should – swiftly and thoroughly address any LBP that has fallen short on this requirement through a process less drastic than

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[30] *Id.* at 4046-47, para. 235 (internal citations omitted).
[31] *See* Letter from Jessica J. González, Free Press, *et al*., *supra* note 2.
[32] NARUC Comments at 7.
[33] *See* Voices for Internet Freedom Members, Comments, WC Docket Nos. 09-197 and 11-42, at 5-7 (Mar. 16, 2017).
[34] *See Revocation Order* at 3-4.
[35] *Id.* at 3.
[36] *See, e.g., Lifeline Modernization Order* at 3970, 3975, 4023 & 4028-29.
[37] *See* NTTA Comments at 2.

revoking LBP designations outright, which has left Lifeline subscribers in limbo and undermined Lifeline's promise to deliver broadband to poor people across the country.

CONCLUSION

For the above stated reasons, Voices respectfully request that the Commission reverse the Wireline Competition Bureau's *Revocation Order*, and that the Commission commit to unequivocally implementing the *Lifeline Modernization Order* swiftly while avoiding any future efforts to undermine it.

Respectfully Submitted,

___/s/_____

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Appendix A

Free Press Lifeline Modernization Order
Sample Public Comments

LIFELINE MODERNIZATION ORDER
PUBLIC COMMENTS

freepress

"I fully expect our family to lose its internet access if the Lifeline program is not continued. Our access is based on the permanent (and very expensive) disability of my daughter."
– LJ, Fort Worth, TX

"I am a paraplegic living in a nursing home. The Lifeline is the only affordable way I can communicate to manage my doctors appointments and prescriptions. It is vital to my livelihood. The FCC must implement the Lifeline Modernization Order now. Thank you."
– Bob, Richmond, VA

"Our young adult daughter, who is struggling to get through school and keep up with health challenges, greatly needs access to broadband. Please stop blocking this important resource for low-income folks."
– Connie, Portland, OR

"Pai's actions also disproportionately affect Native Americans. In this rural county of California and neighboring counties, one-third of the population is below the poverty level. Additionally there is the digital divide here where some of our communities and those off the main corridor have NO internet or even television broadcasts unless they can afford satellite. Needless to say wages, are averaging minimum to $12 per hour with the state Employment Division saying they never see anything above $16 per hour yet cost of living is high and inflation keeps getting worse."
– Dwight, Aracata, CA

"I never received a university education for three primary reasons: #1 was my learning disability (ADD); #2 was the fact that I had to serve 4 years in the military during Vietnam; and #3 was my own family's low-income status. Moving ahead to the 21st century, after a lifetime of manual labor jobs, I discovered renewed opportunity via the internet, opportunity which was both affordable and not that difficult to learn. I was able to transfer past real-life experiences into entrepreneurial enterprise and a successful small online business. I believe many poor families who otherwise stand little chance of educating themselves or improving their lot in life can benefit greatly from having affordable or free access to high speed (broadband) internet service. It is a travesty for government bureaucracies to deny people equal opportunities to better themselves simply because of the color of their skin and their low economic station in life. I say SHAME on governments and companies who would do this."
– Gene, North Plains, OR

"Everyone benefits from free or affordable access to the Internet. It is a necessary part of everyday life now and without it, people will be limited to what information they can obtain via telephone or physical visits to locations only. A a disabled individual myself, I do not know what I would do without my access, and I live on a very low income since having to rely on my social security disability income only. Please don't interfere with my access to everything I now need to pay bills and contact others."
– Deborah, San Diego, CA

freepress

"Do NOT take away our LIFELINE. I already lost my Lifeline because I disconnected my landline when I could not afford a cell phone (necessary in case of emergency because I transport my grandchildren in my car) AND internet access AND my landline. Only afterwards did I find out that I can't have my Lifeline discount without a landline! And I do not have the income on a small Social Security check to pay to have my landline reconnected. This is an outrageous and discriminatory proposal. You are betraying a promise you made to millions of Americans. You should be ashamed of yourselves."
– Judith, Walla Walla, WA

"I know personally many people here in Lee County who could not survive without Lifeline. They are persons who are unemployed or who try to survive on $735 from Supplemental Security Income (SSI). How could they afford internet service? Also, the schools expect students to use their school laptops at home to do assignments. They need internet access which the family cannot afford."
– Judith, Fort Myers, FL

"I work with the deaf and blind as an advocate. I see firsthand how the FCC's Lifeline Program has assisted my clients in communication access and first alerts for their safety. I strongly urge the new chairman, Ajit Pai to continue the Lifeline broadband options as it is now and for future users. Please heed the call for help and assistance on this very important matter. Use your position to assist disabled and struggling families, not to make life even more challenging. Think of your impact, integrity, and legacy. Thank you."
– Dorothy, Albuquerque, NM