

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

In the Matter of

Protecting and Promoting the Open Internet

Bridging the Digital Divide for Low-  
Income Consumers

Lifeline and Link Up Reform and  
Modernization

WC Docket No. 17-108

WC Docket No. 17-287

WC Docket No. 11-42

**OPENING COMMENTS OF THE GREENLINING INSTITUTE ON FEBRUARY 19,  
2020 PUBLIC NOTICE**

In accordance with the Federal Communications Commission’s (“Commission”) February 19, 2020 Public Notice, the Greenlining Institute respectfully submits the following Opening Comments.

**I. INTRODUCTION**

Regardless of the Commission’s current beliefs regarding the merits of ending “utility-style regulation of the Internet” and returning to a regulatory “light-touch framework,”<sup>1</sup> the fact remains that roughly five million households with school-age children in the United States do not have internet access at home.<sup>2</sup> One of the more shameful and pernicious effects of this “broadband gap” is that many school-age children go to fast-food restaurants, coffee shops, or public libraries—all places typically full of people and foot traffic—to do their homework. This

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<sup>1</sup> Feb. 19, 2020 Public Notice at p. 1.

<sup>2</sup> Pew Research Center, The numbers behind the broadband ‘homework gap,’ (Apr. 15, 2015), available at <https://www.pewresearch.org/fact-tank/2015/04/20/the-numbers-behind-the-broadband-homework-gap/> (last accessed April 20, 2020).

has been the case for years, and was the case in January and February of 2020, when COVID-19, a relatively easily transmittable and high-risk disease with an incubation period of as much as fourteen days,<sup>3</sup> was spreading throughout the country.

The COVID-19 pandemic did not create a new understanding of the importance of ubiquitous affordable broadband service. Rather, it highlighted the Commission’s long-standing neglect of its duty to ensure that everyone in the United States has access to advanced telecommunications and information services. Tragically, when it is more important than ever that the Commission address the broadband needs of low-income households, it eliminated its authority to do so.<sup>4</sup> The Commission must take immediate action to restore its ability to include broadband services in the Lifeline program, and must immediately abandon its efforts to eviscerate state programs that provide low-cost broadband services for low-income households.

## **II. THE COVID-19 PANDEMIC HAS HIGHLIGHTED THE FAILURES OF THE COMMISSION’S BROADBAND POLICY.**

As Greenlining and others have repeatedly noted in this proceeding, net neutrality is a racial equity issue, and the universal service support is no different--the administration of the Lifeline program has racial equity impacts.<sup>5</sup> The reduction of access to the internet, whether it is due to discrimination, blocking or throttling content, or a lack of affordability, unduly harms people of color. For example, people of color spend a disproportionately larger amount of their income on telecommunications services. According to U.S. Census data, for every dollar of wealth a white household has, a Hispanic household has about 10 cents and a black household

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<sup>3</sup> CDC, Clinical Questions about COVID-19: Questions and Answers (April 16, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html> (last accessed April 20, 2020).

“Incubation period” refers to the time a person infected with a disease displays no symptoms but can transmit the disease to others (known as “pre-symptomatic infections”). *Id.*

<sup>4</sup> *Mozilla Corp. v. Fed. Comm. Comm’n*, 940 F.3d 1, 69 (D.C. Circuit Oct. 1, 2019) (hereafter, *Mozilla*).

<sup>5</sup> See Greenlining Opening Comments at p. 3.

has less than as little as a nickel. This racial wealth gap means that when the Commission abdicates its authority (as it has done here) to include broadband services in the Lifeline program, communities of color feel the impacts most.

The recent COVID-19 pandemic has emphasized how vital it is for households to have access to essential utilities including energy service and broadband access. Internet service has allowed us to respond quickly to the crisis, making it easier for us to work from home, continue educating our children, and get vital health and safety information. However, many households—disproportionately households of color--lack access to affordable internet services robust enough to allow family members to work from home or access online education and telehealth services.

These problems have been exponentially magnified by the current COVID-19 pandemic. COVID-19 has left households that are already on the wrong side of the digital divide disconnected to healthcare, education, true and accurate information, and access to job related necessities. Additionally, these households are going to bear most of the impact of a very severe economic downturn—California alone has seen the number of unemployment insurance claims rise from 285,000 to over two million in only three weeks. Not only are these families most at risk for layoffs or for risking their health as essential workers, their lack of online access makes it much harder for them to apply for unemployment benefits, apply for low-income programs, or go to school. Lifeline support for broadband services is critical to the recovery and resiliency of not only families, but also the public health and economic recovery of this country.

### **III. THE COMMISSION SHOULD REVISIT ITS ANALYSIS OF 47 U.S.C. SECTION 254.**

Greenlining overwhelmingly supports any Commission efforts to provide broadband service through the Lifeline program. Unfortunately, the Restoring Internet Freedom Order

appears to have created an irreconcilable conflict between the Commission’s abandonment of its regulatory authority over broadband and its desire to include broadband services in the Lifeline program. Unlike California, which does not require that providers be “telephone corporations” to participate in the California LifeLine program,<sup>6</sup> the federal Lifeline statutes limit provider participation in Lifeline to common carriers.<sup>7</sup> Accordingly, it appears that unlike California, the Commission lacks the authority to allow providers to voluntarily provide broadband service and be reimbursed by the Lifeline program. Unfortunately, Greenlining does not see a path forward for the Commission to provide Lifeline subsidies for broadband while still leaving the Order intact.

In fact, it appears that the Commission may have no choice but to revisit the Order. The Commission argued that section 254 gave the Commission jurisdiction over broadband providers for the purposes of participation in Lifeline, an argument the Mozilla court roundly rejected.<sup>8</sup> However, section 254 itself directs the Commission to ensure that low-income households have access to information services:

(2) Access to advanced services. Access to advanced telecommunications and information services should be provided in all regions of the Nation.

(3) Access in rural and high cost areas. Consumers in all regions of the Nation, **including low-income consumers** and those in rural, insular, and high cost areas, should have access to telecommunications and information services....<sup>9</sup>

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<sup>6</sup> Cal. Pub. Util. Code § 270. Additionally, the California Legislature made it clear that “class of lifeline service” could include “two-way voice, video, and data service as components of basic service.” Cal. Pub. Util. Code § 871.7, subd. (c).

<sup>7</sup> *Mozilla*, 940 F.3d at 68.

<sup>8</sup> *Id.* at 69.

<sup>9</sup> 47 U.S.C. § 254, subd. (b) (emphasis added). See also, 47 U.S.C. § 254, subd. (h) (“The Commission shall establish competitively neutral rules...to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and nonprofit elementary and secondary school classrooms, health care providers, and libraries”).

If the Commission lacks another statutory source of authority to include broadband providers in the Lifeline program, its current classification of broadband contradicts the legislative directive that the Commission set forth in section 254. If anything, the directive in section 254 **requires** that the Commission classify broadband under Title II in order to fulfil its mandate to ensure that all consumers in the nation, including low-income consumers, have access to broadband services. In light of the *Mozilla* decision, the Commission's reclassification of broadband in the Order essentially ignores its statutory directive to provide ubiquitous and affordable connectivity to all Americans.

**IV. IN THE ABSENCE OF THE AUTHORITY TO INCLUDE BROADBAND SERVICES IN THE LIFELINE PROGRAM, THE COMMISSION SHOULD NOT INTERFERE WITH BROADBAND PROVIDERS' PARTICIPATION IN STATE UNIVERSAL SERVICE PROGRAMS.**

The Public Notice does not ask commenters to directly address Mozilla court's rejection of the Order's broad preemption of state regulation of broadband, and Greenlining does not intend to do so here. However, as noted above, some state universal service statutes, including California's, are expansive enough to allow broadband providers to participate.<sup>10</sup> If the Commission is serious about making broadband services available to low-income households, it should not interfere with broadband providers' participation in state universal service programs. Accordingly, the Commission should make it clear that it will not preempt the ability of states to include broadband service as part of their universal service programs, including terms and conditions of service.

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<sup>10</sup> See page 3, above.

## V. CONCLUSION

As Chairman Pai noted on April 17, 2020, it would behoove the Commission to approach its duties with humility.<sup>11</sup> In doing so, the Commission must acknowledge the lessons of the COVID-19 pandemic and the importance of low-income households' access to affordable broadband service. Affordable broadband service is absolutely necessary for communities of color to recover from the COVID-19 pandemic and build the resiliency necessary to thrive.

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Respectfully submitted,

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<sup>11</sup> Remarks Of FCC Chairman Ajit Pai At The Interamerican Development Bank And The International Institute Of Communications Online Workshop “Regulation In Times Of Pandemics: Lessons For The Future” (April 17, 2020), available at <https://docs.fcc.gov/public/attachments/DOC-363797A1.pdf> (last accessed April 20, 2020).