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November 7, 2017

**By ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **Lifeline Connects Coalition, National Lifeline Association (NaLA),  
Boomerang Wireless, LLC and Easy Telephone Services Company  
dba Easy Wireless Notice of Oral *Ex Parte* Presentation; WC Docket  
Nos. 17-287, 11-42, 09-197**

Dear Ms. Dortch:

On November 6, 2017, John Heitmann of Kelley Drye & Warren LLP participated on a telephone call on behalf of the Lifeline Connects Coalition (Coalition) (Telrite Corporation, Prepaid Wireless Group, Global Connection Inc. of America and Assist Wireless, LLC), the National Lifeline Association (NaLA), Boomerang Wireless, LLC (Boomerang) and Easy Telephone Services Company dba Easy Wireless (Easy Wireless) with Travis Litman, Chief of Staff and Senior Legal Advisor, Wireline and Public Safety to Commissioner Jessica Rosenworcel to discuss the Draft Lifeline Item released by the Commission on October 26, 2017.<sup>1</sup> The discussion was consistent with the enclosed exhibit describing the parties' positions.

Mr. Heitmann described the Draft Lifeline Item as a drastic departure from the Chairman's claims to support affordable broadband for low-income consumers suffering from the digital divide.<sup>2</sup> In addition to eliminating resellers from the Tribal Lifeline program and

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<sup>1</sup> See *Draft Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287 et al., Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC-CIRC1711-05 (Oct. 26, 2017) (Draft Lifeline Item).

<sup>2</sup> In a recent statement, Chairman Pai confirmed "I support including broadband in the Lifeline program to help provide affordable, high-speed Internet access for our nation's poorest families." FCC News Release, Statement of FCC Chairman Ajit Pai On the Future of Broadband in the

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proposing to eliminate resellers from the entire Lifeline program, despite the fact that 69 percent of all Lifeline subscribers (and 76 percent of wireless subscribers)<sup>3</sup> are currently served by resellers, the Notice of Proposed Rulemaking (NPRM) also seeks comment on eliminating the equipment requirements adopted in the Lifeline Modernization Order, which were designed to help close the homework gap.<sup>4</sup> With no evidence or analysis, the draft NPRM argues that the Wi-Fi and hotspot capability requirements “are more likely to widen the digital divide than close it.”<sup>5</sup> To the contrary, the combination of the equipment requirements, the 12 month port freeze and innovations like premium Wi-Fi have resulted in a transformation in the Lifeline program from all voice to 75 percent broadband,<sup>6</sup> which means that the Lifeline program today helps millions of low-income Americans close the digital divide and the homework gap. It defies reason how the Draft Lifeline Item could assume that providing low-income American families with school-age children with hotspot-capable handsets and mobile broadband, often at no cost due to the service stability provided by the 12 month port freeze, could widen rather than close the digital divide.

We look forward to working with the full Commission and all stakeholders on ways to modify the Draft Lifeline Item so that it works to build a thoughtful and pragmatic consensus that enables Lifeline to realize its full potential to help remedy the digital divide and the homework gap rather than exacerbate them.

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Lifeline Program, Mar 29, 2017. Even in his dissent to the Lifeline Modernization Order, then Commissioner Pai noted his view that “modernizing the Lifeline program to support affordable, high-speed Internet access for our nation’s poorest families is a worthy goal.” *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, FCC 16-38 (2016) (Lifeline Modernization Order), Dissenting Statement of Commissioner Ajit Pai, 1.

<sup>3</sup> According to the USAC Lifeline Disbursement Tool, available at <http://www.usac.org/li/tools/disbursements/default.aspx>.

<sup>4</sup> See Draft Lifeline Item, ¶ 76. The equipment section of the Lifeline Modernization Order was entitled “Bridging the ‘Homework Gap’ and ‘Digital Divide’ with Wi-Fi and Hotspot-Enabled Devices.” See Lifeline Modernization Order, ¶¶ 367-378.

<sup>5</sup> Draft Lifeline Item, ¶ 76.

<sup>6</sup> Includes broadband and voice and broadband bundles according to the USAC Lifeline Disbursement Tool, available at <http://www.usac.org/li/tools/disbursements/default.aspx>.

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Pursuant to Section 1.1206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



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*Counsel to the Lifeline Connects Coalition,  
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Wireless, LLC and Easy Telephone Services  
Company dba Easy Wireless*

**Exhibit**

cc: Travis Litman  
Nicholas Degani  
Jay Schwarz  
Claude Aiken  
Amy Bender  
Jamie Susskind  
Trent Harkrader  
Ryan Palmer  
Jodie Griffin

# EXHIBIT

The Draft Lifeline Item released on October 26, 2017 is a drastic departure from the Chairman's claims to support affordable broadband for low-income consumers suffering from the digital divide. The item eliminates resellers from the Tribal Lifeline program and proposes to eliminate resellers from the entire Lifeline program, despite the fact that – according to the USAC disbursement tool – 69 percent of all Lifeline subscribers (and 76 percent of wireless subscribers) are currently served by resellers. Therefore, the Commission should change the item so that it does not threaten to suddenly and dramatically widen the affordability gap that places tens of millions of low-income Americans on the wrong side of the digital divide.

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### Notice of Proposed Rulemaking – Radically Reducing the Lifeline Program by Eliminating Resellers

- ***The proposal to eliminate resellers from the Lifeline program should be removed or moved to the Notice of Inquiry (NOI).*** Because of its potential to massively disrupt essential communications services for Lifeline-eligible consumers – including Veterans, single mothers, the elderly, and those reeling in the wake of recent hurricanes and other natural disasters, this program shattering proposal should be removed from the item or at least moved to the NOI. According to the USAC disbursement tool, the vast majority (69 percent) of Lifeline subscribers currently receive Lifeline-discounted voice or broadband services from resellers and 76 percent of wireless Lifeline subscribers receive their service from a reseller.
- ***The proposal to eliminate resellers breaks with a decade of precedent granting forbearance from the facilities requirement.*** The proposal would unlawfully reinstate by rule the statutory requirement to forbear from the facilities requirement where the three-part test is met.
- ***The Commission has the legal authority to support Lifeline broadband provided by resellers even if broadband is no longer a Title II service.*** The Court of Appeals for the Tenth Circuit has interpreted the provisions of section 254 of the Communications Act to give the Commission broad authority to direct that USF recipients use some of the USF funds “to provide services or build facilities related to services that fall outside of the FCC’s current definition of ‘universal service.’” Although it is not necessary for the Commission’s legal authority to support broadband, the Commission should retain Lifeline support for voice services in all areas – not just in rural America. As just one example, in the wake of a tragic hurricane season, residents of San Juan, Houston and Miami might want to continue to use their Lifeline subsidy to support voice services.
- ***A self-enforcing budget mechanism should operate on an annual basis and have prospective impact only.*** Neither ETCs nor Lifeline subscribers can adequately plan for or effectively administer a mid-year cut in subsidies.
- ***The proposal is so skewed and disruptive that it is almost certain to threaten the very fabric of bipartisan support that has underpinned the Universal Service Fund for decades.*** Turning the Lifeline program into yet another rural facilities deployment program flies in the face of the statutory purpose of the program to support affordable communications for all low-income Americans.

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### Draft Fourth Report and Order – Gutting Tribal Enhanced Lifeline

- ***The Commission once again failed to conduct the required Tribal consultation.*** In its 2000 Policy Statement, the Commission committed to “consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their land and resources.” The Draft Lifeline Item makes no mention of having conducted this consultation.

- ***The Commission has failed to consider the impact of eliminating wireless resellers on Tribal Lifeline recipients.*** The Draft Lifeline Item has no serious analysis of the impact of the proposed decision which will leave 55% of Tribal Lifeline beneficiaries (and 62% of wireless Tribal Lifeline subscribers) – those who are now served by wireless resellers – looking for a new service provider and a comparable service plan. In many cases, these consumers will have no facilities-based wireless alternative because Virgin Mobile/Assurance Wireless does not serve Tribal lands and Verizon Wireless, T-Mobile and AT&T Wireless have demonstrated little if any interest in providing Lifeline on a retail basis. If there is a facilities-based wireline alternative (however, they are only required to provide Lifeline where they receive high-cost funds), subscribers likely need to have credit and should be ready to pay substantially more for a service they don't want.
- ***These issues should be raised in the Notice of Proposed Rulemaking (NPRM).*** Because the changes the Draft Lifeline Item would adopt could result in massive consumer harm, confusion and service disconnection, they should be raised and considered in the context of the NPRM while the Commission conducts the proper and necessary Tribal consultation.

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### **Order on Reconsideration – Eliminating Incentives for Carriers to Offer Broadband**

- ***The 12-month port freeze is the primary driver of the increase in Lifeline broadband subscribership.*** The 12-month port freeze was adopted primarily to incentivize greater up front investments, including Wi-Fi and hotspot-capable smartphones, and was the primary driver of the dramatic increase in Lifeline broadband subscribership that Chairman Pai has proclaimed as an accomplishment. The Draft Lifeline Item feigns concern about restricting consumer choice, but the Commission's failure to act on pending compliance plans and federal ETC petitions restricts the new competitors that would offer more consumer choice. At the very least, the change should be prospective only because subscribers in a 12-month port freeze were provided enhanced service and equipment in reliance on the rule that was effective at the time of enrollment.
- ***The 60-day port freeze is needed to protect program integrity and combat waste.*** The 60-day port freeze was originally implemented by USAC to protect program integrity, minimize waste in the program from "flippers" and combat the perception of fraud in the media from the collection of multiple phones and phone services in a month, even if only one reimbursement is paid. Eliminating this rule will result in significant unanticipated costs for the National Verifier.

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### **Memorandum Opinion and Order – Eliminating Consumers' Ability to Choose Between Limited 3G Cellular Data and Unlimited Premium Wi-Fi**

- ***The clarification eliminating premium Wi-Fi as an option for Lifeline broadband is discriminatory and anti-consumer.*** The Draft Lifeline Item indicates that the Commission's traditional technology neutral and pro-innovation policy priorities are reserved for the benefit only of those who do not qualify for Lifeline support.
- ***The clarification eliminates one of Lifeline's most innovative solutions for addressing the homework gap.*** Coupled with a Wi-Fi and hotspot capable device, unlimited Premium Wi-Fi can offer a subscriber a homework gap solution that cannot be matched by a limited allotment of typically much slower 3G cellular data.

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## Notice of Inquiry – A Minimum Charge Remains an Excessive Financial Burden for Low-Income Americans

- A *“maximum discount level” is a minimum charge that would still be an excessive financial burden on Lifeline subscribers.* The Commission correctly determined in 2012 that a minimum charge would be an excessive financial burden on the truly neediest of the population in the direst economic circumstances and that remains true today.