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November 9, 2017

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Telrite Corporation d/b/a Life Wireless Notice of *Ex Parte***
Presentation; WC Docket Nos. 09-197, 10-90, 11-42, 17-287

Dear Ms. Dortch:

This letter responds to the Commission's draft Memorandum Opinion and Order "clarifying" that "Premium Wi-Fi" does not qualify as mobile broadband under the Lifeline program rules.¹ Telrite urges the Commission to abandon this approach because it misconstrues the text and intent of the 2016 Lifeline Order, misrepresents Telrite's Premium Wi-Fi service, and would harm low-income consumers.

First, the Draft Order essentially ignores the plain text and intent of the 2016 Lifeline Order to reach its result. The 2016 Lifeline Order sets forth a speed standard, not a technology standard, stating that the "minimum service standard for mobile broadband *speed* will be 3G."² The Commission knows how to define technology standards tied to specific generations of cellular technology—e.g., as it did in the context of the Mobility Fund—but did not do so in the 2016 Lifeline Order. Instead, the purpose of the reference to 3G technology in the 2016 Lifeline Order is only reasonably read as a reference point to a particular speed, rather than a requirement

¹ See *Draft Bridging the Digital Divide for Low-Income Consumers et al.*, 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, ¶ 45 (Oct. 26, 2017) (Draft Order).

² *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, ¶ 96 (rel. Apr. 27, 2016) (2016 Lifeline Order); 47 C.F.R. § 54.408(b)(2)(i).

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of licensed, cellular mobile broadband technology.³ Moreover, the fact that the Commission established a standard of “at least” 3G “or better” indicates that faster technologies (i.e., higher speed mobile BIAS) such as Telrite’s Premium Wi-Fi service could meet the standard. Further, the Draft Order’s narrow reading of the minimum service standard to permit only licensed, cellular technologies (i.e., 3G, 4G) cuts against the intent of the 2016 Lifeline Order to encourage ETCs to offer “new, innovative” broadband solutions that “push the envelope” and provide greater consumer choice.⁴ Here, as Telrite explained in its submissions to the record, its Premium Wi-Fi service meets the definition of mobile BIAS, exceeds the mobile broadband minimum service standards (offering faster-than-3G speeds and unlimited data at no cost to the consumer), and provides an innovative solution that gives greater consumer choice in the Lifeline program.⁵ And yet, the Draft Order ignores Telrite’s evidence and fails to adequately explain why the 2016 Lifeline Order—which focuses on innovation and consumer choice—would undercut its own objectives, depart from past speed/technology distinctions, and foreclose innovative service offerings.

Second, the Draft Order misconstrues Telrite’s Premium Wi-Fi service. In the Draft Order, the Commission defines Premium Wi-Fi as a service that only operates “through Wi-Fi hotspots at a number of public venues”⁶ and does not provide access to a “mobile network.”⁷ However, as Telrite made clear in its submissions, its Premium Wi-Fi service offers more than just access to isolated public Wi-Fi hotspots.⁸ Instead, Telrite’s Premium Wi-Fi service offers a secure, nationwide network of fifteen million access points, including both residential access points from well-known national cable broadband providers and business establishment access points based on commercial arrangements between Telrite’s underlying Premium Wi-Fi provider (iPass) and the networks it aggregates into its service.⁹ Further, as Telrite explained in its

³ See 2016 Lifeline Order ¶¶ 96, 105. While the Draft Order is correct that the mobile broadband minimum speed standard “incorporates” Form 477 data and “industry mobile technology generation,” the 2016 Lifeline Order does not require a specific technology, and does not exclude services like Telrite’s Premium Wi-Fi or mobile satellite broadband.

⁴ See *id.* ¶ 373.

⁵ See Comments of Telrite Corporation d/b/a Life Wireless in Response to TracFone’s Request for Clarification, WC Docket No. 11-42, 13-16 (Mar. 2, 2017) (Telrite Comments).

⁶ See Draft Order ¶ 49.

⁷ See *id.* ¶¶ 46 n.106, 48.

⁸ See Telrite Comments at 2.

⁹ For this reason, the Commission’s argument that Telrite’s position would allow an ETC to “offer any fixed service with an arguably fast-enough speed” and “limit it to serve end users primarily using mobile devices” ignores the fact that Telrite’s Premium Wi-Fi service utilizes a

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submissions on the record, not only is its Premium Wi-Fi service widely available, it also provides a seamless experience that automatically connects to the strongest broadband signal in a manner akin to traditional licensed, cellular BIAS.¹⁰ In this way, Telrite's Premium Wi-Fi service is distinguishable from both isolated free, public Wi-Fi hotspots and limited fixed BIAS networks like the one the Commission identifies in the Draft Order.¹¹ Telrite's service provides consumers with an additional choice in the marketplace—they can select traditional 3G cellular data plans with limited data or they can chose Telrite's hybrid service that includes both its unlimited Premium Wi-Fi service and cellular data. Consumers that select Premium Wi-Fi service have demonstrated that the service is more “meaningful” to them, a subjective determination based on their own unique needs. For example, a parent that needs a service they can take on the go while also providing a way for their children to do homework might prefer Telrite's Premium Wi-Fi service, which permits tethering of laptops, tablets, and other peripheral devices and includes unlimited higher-speed data.¹²

Third, limiting Lifeline-supported broadband to licensed, cellular technologies, as the Commission proposes, would harm consumer choice and innovation in the Lifeline program. Specifically, the Commission relies on a faulty definition of Premium Wi-Fi service to reach a result that completely forecloses Wi-Fi-enabled services from Lifeline support now or in the future, even as the services grow in reach and popularity. As the record and recent news reports have demonstrated, Premium Wi-Fi and similar services are incredibly popular among consumers, and will only grow in popularity with the proliferation of Wi-Fi First and hybrid licensed/unlicensed services. For example, Comcast's XFINITY mobile, which like Life Wireless' service offers 4G service and access to millions of Wi-Fi hotspots, has enrolled 250,000 subscribers in just five months.¹³ Further, in all markets consumers may choose from a

nationwide network of hotspots and provides mobility with technology that offers seamless hand-offs between hotspots.

¹⁰ See, e.g., Letter from John J. Heitmann to Marlene H. Dortch, WC Docket No. 11-42 (March 29, 2017) at 2-4. Troublingly, the Commission relies on TracFone's single example of a Florida ZIP code—where Telrite doesn't offer Premium Wi-Fi service—for the sweeping generalization that “Premium Wi-Fi services would be functionally inaccessible to many Lifeline consumers.” See Draft Order ¶ 49.

¹¹ See *id.* ¶ 48.

¹² See Letter from John J. Heitmann to Marlene H. Dortch, WC Docket Nos. 09-197, 10-90, 11-42, Enclosure at 4 (Feb. 27, 2017) (Premium Wi-Fi helps to close the homework gap).

¹³ See Colin Gibbs, *Comcast's Xfinity Mobile surpasses 250K subscribers*, FierceWireless (Oct. 27, 2017), <https://www.fiercewireless.com/wireless/comcast-s-xfinity-mobile-surpasses-250-000-subs>.

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variety of wireless Lifeline service offerings, including Telrite's Premium Wi-Fi service offerings and traditional wireless cellular offerings. To prematurely cut off consumers—particularly low-income consumers—from these leading-edge technologies will only serve to expand the digital divide and limit consumer choice in contravention of core goals of the 2016 Lifeline Order.¹⁴

For these reasons, the Commission should abandon the approach set forth in the Draft Order and clarify that Telrite's Premium Wi-Fi service—a nationwide network of secure,¹⁵ Wi-Fi-powered broadband access points that enables handoff between access points and primarily uses mobile stations—is mobile BIAS that qualifies for the 12-month benefit port freeze. In the alternative, the Commission should clarify that a mobile broadband offering that includes both 3G-or-better licensed, cellular mobile broadband and Premium Wi-Fi service (as defined above) in a single service offering can meet the mobile broadband minimum service standard even if the cellular data component of the offering alone does not meet the data usage allowance standard.

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

¹⁴ See 2016 Lifeline Order ¶ 373.

¹⁵ Telrite's Premium Wi-Fi service enables users to access the Internet through a secure, last-mile VPN, differentiating the service from less secure public Wi-Fi access points.

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Respectfully submitted,



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