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November 9, 2017

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

Re: Notice of Oral *Ex Parte* Communication In the Matters of
WC Docket Nos. 17-287 (Bridging the Digital Divide for Low-Income
Consumers) 11-42 (Lifeline and Link Up Reform and Modernization), and 09-197
(Telecommunications Carriers Eligible to Receive Universal Service Support)

Dear Ms. Dortch:

On November 9, 2017, Maurita Coley Flippin, for the Multicultural Media, Telecom and Internet Council (MMTC); Joycelyn Tate, for the Black Women's Roundtable; James M. Smith of Davis Wright Tremaine LLP; and Matthew Sneed, Law Clerk, Syracuse University School of Law and MMTC's Earle Moore Fellow, met with Commissioner Rosenworcel and Travis Litman, her Chief of Staff, followed by Commissioner O'Rielly and Amy Bender, his Legal Advisor for Wireline, to discuss the Draft Lifeline Order/NPRM in the above-referenced dockets, released by the Commission on October 26, 2017.¹ We expressed grave concern with respect to several elements of the Draft Lifeline Order/NPRM that we believe will immediately diminish or destroy the program. In order to preserve low-income households' ability to continue obtaining critically-needed broadband and voice services under the Lifeline program, we recommended several critical changes to the Draft Order before the Commission votes upon it at its upcoming Agenda Meeting. We highlighted, in particular, the following elements of and deficiencies in the Draft:

1. Facilities Based Restriction: Draft ¶ 64 proposes "[l]imiting Lifeline support to broadband service provided over facilities-based broadband networks that also support voice service. Under this proposal, Lifeline providers that are partially facilities-based may obtain designation as an ETC, but would only receive Lifeline support for service provided over the facilities they own." We pointed out that limiting Lifeline support to facilities-based providers would tremendously threaten the viability of the Lifeline program, given that approximately 75% of low-income Lifeline subscribers currently receive service from Lifeline ETCs that provide service at least partially via resale. Given that the national, fully facilities-based carriers often have no incentive to provide Lifeline and some are

¹ 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 Order/NPRM" or "Draft").

relinquishing their state Lifeline ETC designations, this facilities-based requirement would disrupt current Lifeline service, leave deserving and eligible low-income households with few if any choices, and may even deprive them of *any* available Lifeline broadband and/or voice service option if no facilities-based provider is willing to serve their area.

- a. Indeed, the Draft's proposed fully-facilities-based restriction is contrary to the plain language of section 214(e)(1) of the Communications Act, which directs that a state-designated ETC "*shall be eligible to receive universal service support in accordance with section 254 of this title and shall . . . offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, *either using its own facilities or a combination of its own facilities and resale of another carrier's services.*" (Emphasis added). For this reason alone, the language of the Draft must be modified before any such proposal is released in an NPRM.*
 - b. Insofar as the fully-facilities-based providers restriction is grounded in concerns regarding waste, fraud, and abuse, the combination of the fully operational NLAD and the National Verifier, which will be fully operational within a year, will largely obviate the Commission's concerns in this regard.
2. Annual Cap: We urged the Commission not to propose a "hard" self-enforcing budget or annual cap on the Lifeline program, because such a hard, inflexible cap would be arbitrary, and would only serve to deprive eligible, worthy low-income households of support under the program. Rather, we urged that, at the least, any budget be flexible enough to accommodate eligible Lifeline subscribers irrespective of when they apply for Lifeline service during a funding year, and that any budget be set at no less than the disbursement levels experienced in recent years.
 3. Minimum Co-Pay/Maximum Discount: We urged the Commission not to propose any "maximum discount" or "minimum payment" requirement, because such a requirement would greatly increase the administrative, billing, and collection costs of providing Lifeline services, which could only diminish the level and quality of services provided to Lifeline subscribers; and it would make it far more difficult or even impossible for many eligible but "unbanked" or otherwise financially challenged low-income households to obtain Lifeline service. For similar reasons, we expressed strong opposition to any "benefit limit" on eligible Lifeline households.

Pursuant to section 1.206(b) of the Commission's rules, this letter is being filed electronically.

Respectfully submitted,



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Matthew Sneed, MMTC Earle Moore Legal Fellow;
Law Clerk, Syracuse University School of Law

cc: Jessica Rosenworcel, FCC Commissioner; Travis Litman, Chief of Staff; Michael O'Rielly, FCC Commissioner; Amy Bender, Legal Advisor, Wireline