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November 13, 2017

By ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th 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 9, 2017, John Heitmann and Joshua Guyan of Kelley Drye & Warren LLP, Andrew Hong, Paul Greene, and Brandt Mensh of Prepaid Wireless Group, and Susan Berlin of Telrite Corporation, met 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 Commissioner Michael O'Rielly and his Wireline Advisor, Amy Bender, to discuss the Draft Lifeline Item released by the Commission on October 26, 2017.¹ The discussion was consistent with the enclosed Exhibit A describing the parties' positions.

We also discussed the desirability of trying to seek consensus on a Lifeline item that raises fundamental questions about the Lifeline program, including those in the current Fourth Report and Order, Order on Reconsideration and Memorandum Opinion and Order, in the Notice of Proposed Rulemaking (NPRM) or in the Notice of Inquiry (NOI). We noted that

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 (Oct. 26, 2017) (Draft Lifeline Item).

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Commissioner O’Rielly has supported bipartisan reform of the Lifeline program.² We also noted that Chairman Pai was rightly critical of his predecessor’s penchant for 3-2 decision making³ and we offered our suggestions for how a 5-0 approach to considering Lifeline reform might be achieved. While such an approach will take considerable consultation and good faith compromise, we expressed optimism that it could be achieved – at least at the opening phase of the new proceeding – because all Commissioners appear to share the Chairman’s goal of closing the digital divide and agree that the Lifeline program is best suited to address the affordability aspect of that divide.

We also emphasized the need to start with questions rather than answers – and to make good use of available data from the Universal Service Administrative Company and other resources. Based in part on this conversation, we prepared the enclosed alternative consensus Fact Sheet (Exhibit B) as a potential starting point for efforts this week to find consensus on how to go about considering further reforms for the Lifeline program. For example, questions regarding targeting Lifeline funds to facilities-based providers and excluding resellers from the program should be considered in the NOI. Changes that could end service for more than 7 million subscribers require a careful and complete inquiry before a rulemaking.

Further, the decision whether to target enhanced Lifeline support to residents of rural areas or direct support to facilities-based providers only and the impacts of eliminating resellers from offering enhanced Lifeline support should be considered in the NRPM, so that comment can be sought and a Tribal consultation can be initiated and completed.

Likewise, the Commission should consider in the context of the NPRM the potential impact on the three-quarters of Lifeline subscribers who currently subscribe to Lifeline-

² See *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 Michael O’Rielly, 1 (“For over a year, I argued that there is a viable path to reform the Lifeline program in a way that garners bipartisan support at the Commission.”).

³ See Lifeline Modernization Order, Dissenting Statement of Commissioner Ajit Pai, 16 (“The common thread of my work for many years has been to find common ground—because I believe common ground exists and it just takes work to find it.”). Indeed, then-Commissioner Pai observed during an interview in 2016 that “[t]he commission is much stronger when it speaks with a unified voice” and “[i]t gets a lot more congressional support, it’s more likely to be held up in the courts and ultimately accepted by the American people.” See Amir Nasr, “Ajit Pai: Frustrated, Yet Hopeful,” Morning Consult (Feb. 3, 2016) available at <https://morningconsult.com/2016/02/03/ajit-pai-frustrated-yet-hopeful/>.

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supported broadband bundles⁴ of (a) removing the 12 month port freeze, and (b) declaring that premium Wi-Fi does not qualify as mobile or fixed broadband. So that the Commission and the public may have the benefit of further notice and comment rulemaking, the Commission also should consider in the NPRM the impacts on program integrity and program administration costs that could be caused by removal of the 60 day port freeze for voice supported Lifeline service.

We suggest the following questions for the NPRM and NOI from the point of view of wireless reseller Lifeline providers, but recognize that other stakeholders may fairly raise different questions.

With respect to enhanced Lifeline service on Tribal lands, has a Tribal consultation been conducted pursuant to the Commission's 2000 Policy Statement⁵ and do the Tribes believe one has been conducted? Would the majority of Tribal subscribers (and 62 percent of wireless Tribal Lifeline subscribers) who are currently served by wireless resellers have any wireless Lifeline service options, or in some cases even any wireline options, if resellers were eliminated from the enhanced Lifeline program? If so, would they be comparable and affordable? Would consumers be forced to purchase new equipment?

In addition, what impact would the elimination of the 12 month broadband service port freeze have on the 75 percent of Lifeline subscribers (i.e., more than 7 million) who have broadband because of the Lifeline program today? Are Lifeline providers permitted to require subscribers to sign a contract? What remedies are available to Lifeline providers if a low-income subscriber breaks the contract and switches to another Lifeline service provider? What impact would removal of the 60 day voice service port freeze have on program integrity and on program administration costs? Should Lifeline subscribers be able to choose for themselves whether they prefer service offerings that include services delivered via alternative technologies such as unlimited premium Wi-Fi offered over unlicensed spectrum?

Most importantly, there are fundamental programmatic questions regarding eliminating resellers from the Lifeline program, which should be considered in the NOI. For example, why is it that 69 percent of Lifeline subscribers (and 76 percent of wireless Lifeline subscribers) are currently served by wireless resellers? What roles do resellers and wholesalers play in providing Lifeline services and why? Why does Sprint, which owns the only nearly nationwide facilities-

⁴ According to the USAC Lifeline Disbursement Tool, available at <http://www.usac.org/li/tools/disbursements/default.aspx> (last visited Nov. 7, 2017).

⁵ See *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207 (June 23, 2000).

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based wireless Lifeline provider (Virgin Mobile/Assurance), oppose eliminating resellers from the Lifeline program?⁶

Further, if 7 million Lifeline subscribers can no longer be served by their chosen reseller service provider, are there any facilities-based wireless Lifeline service providers to serve them? In how many areas is there only one facilities-based wireless Lifeline provider, such that competition is eliminated in a program that is currently competitive? Are there any wireline options? If so, are there more than one or is Lifeline service intended to be provided by carriers with no competition that would push them to improve service offerings or provide good customer service? How can eliminating resellers be squared with a decade of Commission precedents culminating in blanket forbearance from the facilities requirement? Why should voice support be retained for rural areas only? Do low-income people in urban areas need to rely on voice services in times of emergency, including natural or manmade disasters?⁷ Does the Commission have the necessary legal authority under applicable court precedent to support Lifeline broadband service provided by resellers regardless of whether subscribers receive voice service in addition to broadband, even if broadband is no longer a Title II supported service?

The Draft Lifeline Item already asks many important questions about a self-enforcing budget mechanism.⁸ The Commission should also ask how Lifeline service providers and investors make decisions about their service offerings and investment in enrollment. What would be the impact on investment in Lifeline service providers and enrollments if a self-enforcing budget cap reduced the Lifeline reimbursement for currently-enrolled subscribers, as opposed to making changes only annually and on a prospective basis for new enrollments?

We also suggested a need to ask questions about National Verifier implementation, especially given the widespread consensus that, if successfully implemented, it could effectively

⁶ See Sprint Notice of Oral Ex Parte Presentation, WC Docket Nos. 17-287, 11-42, 09-197 (filed Nov. 8, 2017) (“In these meetings, Sprint stated that it did not support the elimination of non-facilities-based service providers from the Lifeline program because of the disruption such a policy would cause for all program participants.”).

⁷ See Lifeline Modernization Order, Dissenting Statement of Commissioner Michael O’Rielly, 7 (“Finally, I find it remarkable that the Commission claims to be looking out for low-income consumers, but is perfectly content to take away the true Lifeline service that has served so many when emergencies have arisen... Here again, the agency takes a paternalistic approach, telling recipients what they need rather than letting consumers decide whether a more affordable option would be sufficient. Some recipients might want a broadband connection to fill out a job application. But other might just want a simple voice service to use in case of an emergency—the original purpose of the program.”).

⁸ See Draft Lifeline Item, ¶¶ 99-105.

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address much of the concern raised in the recent GAO Report on the Lifeline program (analyzing the Lifeline program of three years ago). For example, would the lack of an API inhibit service providers' ability to reach and enroll Lifeline-eligible subscribers in rural America?

Again, we raise these questions from the point of view of wireless reseller Lifeline providers, but recognize that other stakeholders may fairly raise different questions. A consensus proposal consistent with these principles would allow all sides to comment on the drastic changes that are contemplated in the Draft Lifeline Item. 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 rather than exacerbate it.

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

Respectfully submitted,



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Wireless, LLC and Easy Telephone Services
Company dba Easy Wireless*

Exhibits

cc: Commissioner Michael O'Rielly
Amy Bender
Nicholas Degani
Jay Schwarz

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EXHIBIT A

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.

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.

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.

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.

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.

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.

EXHIBIT B

FCC FACT SHEET *

Bridging the Digital Divide for Low-Income Consumers

Fourth Report and Order, Order on Reconsideration, Notice of Proposed Rulemaking and Notice of Inquiry – WC Docket Numbers 17-287, 11-42, and 09-197

Background: The Lifeline program helps bring affordable voice telephony and high-speed broadband to low-income households. In this item, the Commission takes a fresh look at the program to focus on how the program can most effectively and efficiently help close the digital divide by directing Lifeline funds to the low-income households where they are most needed. The item also seeks to ensure that the Lifeline program operates consistent with the authority granted to us by Congress in the Communications Act, provides greater certainty to providers and consumers alike, and addresses ongoing or potential opportunities for waste, fraud, and abuse that undermines the integrity of the program and limits its effectiveness.

What the Fourth Report and Order and Order on Reconsideration Would Do:

- Establish mapping resources to identify “Tribal lands” for enhanced Lifeline support and require independent certification of a consumer’s claim of residency on Tribal lands.

What the Notice of Proposed Rulemaking (NPRM) Would Do:

- Seek comment and initiate a consultation with Tribal Nations on targeting enhanced Lifeline support to residents of rural areas on Tribal lands and directing support to facilities-based providers only, as well as on the impacts of eliminating resellers from offering enhanced Lifeline support.
- Seek comment on the purpose and effectiveness of the port freezes for voice and broadband Internet access services and the potential impacts of removing them.
- Seek comment on whether the qualitative and quantitative Lifeline minimum service standards should be retained, adjusted or eliminated, whether “premium Wi-Fi” and other similar networks of Wi-Fi-delivered broadband Internet access service qualify as mobile or fixed broadband under the Lifeline program rules, and whether the Lifeline program’s “equipment requirement” narrows or widens the digital divide and the homework gap.
- Seek comment on eliminating the phase down of support for voice services, and whether restoration of full support for voice should be limited in any way to certain geographic areas or households.
- Seek comment on ending the preemption of states’ role in designating certain eligible telecommunications carrier (ETC) designations, removing the Lifeline Broadband Provider designation and how the FCC and states can efficiently authorize new entrants and increase competition in the Lifeline program.
- Seek comment on a self-enforcing budget mechanism for the program.

* This document is a proposed alternative to the Fact Sheet and related Draft Lifeline Item released on October 26, 2017. It is designed as a potential bi-partisan proposal that contemplates an NPRM and NOI that asks all questions without tentative conclusions or suggested outcomes, while allowing time for a proper Tribal consultation and for all stakeholders to comment and participate meaningfully in the required notice and comment rulemaking process.

- Seek comment on improvements to the eligibility verification and recertification processes to combat remaining or potential waste, fraud, and abuse in the program.
- Seek comment on various proposals related to implementation of the National Verifier.

What the Notice of Inquiry (NOI) Would Do:

- Seek comment on targeting Lifeline funds to facilities-based broadband-capable networks offering both voice and broadband services and on Commission precedent granting forbearance from the facilities requirement.
- Seek comment on potential changes to the Lifeline program funding paradigm to efficiently target funds to areas and households most in need of help in obtaining digital opportunity.