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

In the Matter of	)	
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Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

REPLY COMMENTS OF NEW AMERICA'S OPEN TECHNOLOGY INSTITUTE

I. Introduction

Thirty years after its creation under the Reagan Administration, Lifeline remains the only federal program explicitly focused on extending vital communications services to those in need. The program's mandate of connecting low-income Americans to vital voice telephone services was first modernized a decade ago, under the George W. Bush Administration, when it was expanded to include mobile voice services. New America's Open Technology Institute ("OTI") shares the Commission's belief that it is time to modernize the program once again. Reflecting the evolution of modern communications needs, Lifeline should be expanded to include broadband Internet access service.

Broadband has become an essential utility that confers myriad benefits. These benefits are increasingly central to American life, as the Internet has become a key gateway to economic opportunity, education, social connection, and political participation. In a matter of decades,

broadband access has become a precondition for exercising one's full rights of citizenship in modern America — and yet, broadband access remains elusive for millions of Americans. While the causes of the digital divide are complex, cost remains one of the most significant barriers to broadband access and adoption. Lifeline is well positioned legally, technically, and administratively to help bridge this divide.

To that end, OTI files reply comments supporting the Commission's proposal to make Lifeline a broadband-inclusive program. These comments expand upon OTI's initial comments already filed in the docket.[1] Importantly, this program should not create a separate tier of inferior service for Lifeline participants; such an outcome would likely exacerbate the digital divide rather than close it. This equity principle should inform any Lifeline reforms the Commission adopts. In these reply comments, we address arguments made by several commenters in the initial round and urge the Commission to (1) establish robust standards for minimum service, (2) protect the privacy and security of applicant data, and (3) consider flexible subsidy structures.

II. The Commission Should Establish Robust Minimum Service Standards

Many commenters agree with OTI's recommendation that the Commission establish robust minimum service standards for Lifeline-eligible broadband service.[2] Such standards would protect consumers and program integrity. However, several industry commenters have

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[1] *See* Comments of New America's Open Technology Institute, *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-157, 10-90 (filed Aug. 31, 2015).

[2] *See* Comments of Consumers Union, Comments of American Library Association, Comments of Free Press, Comments of Communications Workers of America and the American Federation of Labor-Congress of Industrial Organizations, Comments of Benton Foundation, Comments of National Hispanic Media Coalition, *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90 (filed Aug. 31, 2015).

opposed any baseline standards the Commission may establish, a position we urge the Commission to reject.

Sprint argues that service providers should be "free to determine the parameters" of Lifeline-eligible broadband plans and that "competitive market forces" should dictate what level of service Lifeline customers can expect.[3] AT&T argues that consumer choice will serve as a check on the adequacy of Lifeline offerings, rendering minimum service standards unnecessary because "if a participating provider's services or prices are not attractive to Lifeline consumers, they will switch providers."[4]

These flawed arguments ignore the realities of the telecommunications market that American consumers face: the costs associated with switching providers are high, customer churn is low, and meaningful consumer choice is often nonexistent. Consumers' ability, or lack thereof, to easily switch providers is precisely why the Commission must adopt robust minimum service standards. Lifeline customers should be able to rely on a provider's eligibility to participate in Lifeline as an indicator of quality. Minimum service standards would help provide such assurance to consumers, as well as ensure that Lifeline doesn't perpetuate the digital divide by offering a second-class tier of broadband service.

Importantly, OTI reiterates the need for the Commission to closely examine usage-based pricing practices — particularly by wireless providers. As explained in our initial comments, data caps can suppress broadband usage and discourage software updates, a leading cause of data breaches. The harms of data caps fall disproportionately on low-income consumers, who are

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[3] *See* Comments of Sprint Corporation, *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-157, 10-90 (filed Aug. 31, 2015), at p. 33.
[4] *See* Comments of AT&T, *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-157, 10-90 (filed Aug. 31, 2015), at p. 9. ("Comments of AT&T")

more likely to choose cheaper plans with lower data allowances.[5] Data caps that exceed legitimate network management needs should have no place in the Lifeline marketplace, and could leave Lifeline customers vulnerable to onerous fees they did not anticipate and cannot afford.

Moreover, compliance with minimum service standards must be assessed regularly. Lifeline modernization is unlikely to succeed without vigorous data collection and compliance reporting. OTI has recommended a standardized disclosure form that broadband providers can use to comply with the enhanced transparency rules promulgated earlier this year under the Open Internet Order.[6] OTI's standardized "truth-in-labeling" format emulates the food nutrition labels that are widely familiar to the public to help consumers understand their broadband service options. This disclosure format could easily be leveraged for use in the context of the Lifeline program. The Commission's Consumer Advisory Committee is also developing a recommended optional standardized disclosure form for broadband providers. The Commission should consider integrating whatever format is ultimately endorsed into Lifeline's compliance reporting regime.

Comcast has argued against any form of data collection or compliance reporting, stating that the Commission "should not subject providers to burdensome reporting to verify that their services meet these standards. Providers already report extensively on their offerings on FCC Form 477, and this information should be sufficient to determine that a given provider meets

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[5] *See* Danielle Kehl and Patrick Lucey, "Artificial Scarcity: How Data Caps Harm Consumers and Innovation," New America's Open Technology Institute (Jun. 2015), *available at* https://static.newamerica.org/attachments/3556-artificial-scarcity/DataCaps_Layout_Final.a7ef6b9029da4dd29324757e5710b903.pdf.

[6] *See* Emily Hong, Laura Moy, and Isabelle Styslinger, "Broadband Truth-in-Labeling," New America's Open Technology Institute (Jul. 2015), *available at* https://static.newamerica.org/attachments/4508-broadband-truth-in-labeling-2/Broadband%20Truth-in-Labeling%202015.c9ecf56cc29149488ad3263779be60b0.pdf.

Lifeline standards."[7] However, Comcast's concerns about onerous and duplicative reporting simply underscore the need for a streamlined disclosure format for use in this context. By adopting a uniform, easy-to-understand reporting form and thereby streamlining the disclosure regime, the Commission could both verify compliance with minimum service standards and ease the burden on providers. Further, such a form would enable the Commission to conduct the rigorous data collection needed to adequately monitor for potential waste, fraud, and abuse.

III. Applicant Information Needs Strong Privacy and Security Protections

Although many broadband providers support the creation of a third-party entity to determine eligibility and verify enrollment, it is unlikely that the Commission's reforms will completely unburden ETCs of administrative obligations. To that end, it is imperative that the Commission establish the strongest possible privacy and security protections for *all* parties that handle applicant data. While one of the best ways to minimize privacy and security threats is to limit the number of hands through which sensitive information passes, the Commission should not assume that the creation of a third-party verifier would eliminate the possibility that ETCs will have access to an applicant's income data, Social Security Numbers, status in public assistance programs, and other sensitive information.

As such, the creation of a third-party verifier should not absolve ETCs of their data privacy obligations. In our initial comments, we emphasized that these obligations should include training personnel on the proper handling of applications and best practices for data minimization. It is worrisome that Sprint, Verizon, and AT&T filed comments arguing that

[7] *See* Comments of Comcast Corporation, *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-157, 10-90 (filed Aug. 31, 2015), p. 12.

certification of such training is "not necessary," "unduly burdensome,"[8] and "administrative overkill."[9] The certification process to which the carriers object is reasonable and straightforward: ETCs certify that personnel have received training on Lifeline program rules by obtaining the signatures of the covered individuals. It is difficult to characterize such a minimal requirement as "unduly burdensome." Verizon laments that "this requirement potentially covers several thousand employees. It is very difficult to track and monitor a process to collect signatures from such a huge number of employees."[10] But the fact that a single ETC could have *thousands* of employees handling sensitive applicant data in no way supports a regulatory scheme that excludes critical protections to prevent unauthorized access of that data. On the contrary, by highlighting the vast number of potential avenues for security breach, Verizon's point underscores the urgent need to establish the very training and signature requirement that OTI recommends.

A national third-party verifier could also employ thousands of people who would necessarily have access to sensitive data. As Georgetown University Law Center Professor David A. Super explains in his comments, other public assistance programs have increased their reliance on telephone interviews and call center personnel in recent years, routing "most or all eligibility determination functions through call centers in which whoever answers the telephone has access to the records for the applicant or recipient and can make changes as indicated."[11]

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[8] *See* Comments of Sprint Corporation, *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-157, 10-90 (filed Aug. 31, 2015), at p. 33.
[9] Comments of AT&T, at p. 38.
[10] *See* Comments of Verizon, *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-157, 10-90 (filed Aug. 31, 2015), at p. 6.
[11] *See* Comments of David A. Super, Georgetown University Law Center, *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for*

This is particularly relevant to the Commission's interest in administrative models from the U.S. Department of Agriculture. As Professor Super points out,

> USDA has promoted reliance on these call centers in SNAP and has funded state exchanges to share ideas about best practices for expanding their roles in program administration. Both to avoid making applicants and recipients miss time from their jobs and to more efficiently use agency staff, many states now are relying almost entirely upon telephone interviews to establish the eligibility of applicants and recipients.

A national verifier modeled on SNAP could employ a vast number of individuals in call centers, making data minimization a formidable challenge. Rigorous and individually-certified personnel training is necessary in a program that involves so many actors. It should not be swept under the rug or regarded as little more than an irksome burden.

At a time of increasingly high-profile data breaches, basic standards of training and certification are vitally important. If anything, the Commission should strengthen the process by which it verifies that personnel have been adequately trained in how to protect the data of an applicant pool that includes some of the nation's most vulnerable groups. Such protections are a precondition for successful Lifeline modernization.

IV. The Commission Should Consider Flexible Subsidy Structures

There is widespread support among commenters for making the Lifeline subsidy a portable benefit that is not subject to any sort of budgetary cap. The Commission should also consider innovative ways to structure the subsidy that would encourage wider adoption and

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Universal Service Support, Connect America Fund, WC Docket Nos. 11-42, 09-157, 10-90 (filed Aug. 31, 2015), at p. 6.

participation—including the elimination of the one-per-household rule. OTI supports the National Housing Conference's recommendation to allow household subsidies to be aggregated within an apartment property. As NHC astutely noted, such a structure would allow property owners to "pool the ongoing monthly subsidy to cover operating costs for property-wide broadband service, allowing them to leverage other sources for up front capital, digital literacy training and households' computing equipment."[12] Many eligible Lifeline participants live in multifamily buildings that could benefit from this flexible structure. Aggregation at the property level could be especially appealing to affordable housing developments that serve families below the median income.

The Commission should also contemplate flexible structures that encourage or require the Commission to periodically reassess whether the subsidy amount remains adequate. Some eligible households may decline to enroll for Lifeline benefits since $9.25 is insufficient to cover the full cost of most broadband service plans on the market today. The Commission should consider built-in mechanisms that proactively address this concern, such as inflation adjustments or sunsets of the current subsidy authorization, rather than rely on Congress or a future Commission to act.

V. Conclusion

We are encouraged by the steps the Commission has taken to expand broadband access and adoption, both in the context of the Lifeline program and other proceedings. Effective Lifeline modernization has the potential to bring the program into the 21st Century and connect

[12] *See* Comments of The National Housing Conference, *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-157, 10-90 (filed Aug. 31, 2015), at p. 5.

many more Americans to the Internet. We appreciate the careful thought and consideration that the Commission has put into this proceeding and look forward to continuing to work with the Commissioners and staff to successfully transition Lifeline into a broadband-inclusive program that helps close the digital divide.

Respectfully Submitted,

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