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February 16, 2016

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20054

***Via Electronic Filing***

**Re: WC Docket No. 11-42, *Lifeline and Link Up Reform and Modernization*  
WC Docket No. 09-197, *Telecom Carriers Eligible for Universal Service Support***

Dear Ms. Dortch,

On Thursday, February 11, 2016, Sarah Morris of New America's Open Technology Institute ("OTI"), and Matt Wood and Dana Floberg of Free Press, met with Travis Litman, Senior Legal Advisor to Commissioner Jessica Rosenworcel, to discuss matters in the above-captioned dockets.

We began by expressing our appreciation for the Commission's work in this proceeding to modernize the Lifeline program and support low-income broadband adoption. Our presentations focused primarily on the possibility of making Lifeline support available to entities other than Eligible Telecommunications Carriers ("ETCs"), as suggested by some commenters in these dockets.<sup>1</sup>

Those commenters suggest that the Commission has ample "legal authority to allow non-ETCs to participate in Lifeline."<sup>2</sup> They cite Commission statements from as early as 1997 indicating that the Commission retained such authority pursuant to 47 U.S.C. § 254(j) and other statutes.<sup>3</sup> Yet they acknowledge as they must that the Commission's 1997 statement on this topic suggests only that it could "extend Lifeline to include carriers other than" ETCs, and that the Commission declined to so extend support to non-ETCs at that time.<sup>4</sup> Since then, the Commission has routinely held that only carriers designated as ETCs may receive Lifeline.

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<sup>1</sup> See, e.g., Comments of AT&T, WC Docket Nos. 11-42, 09-197, 10-90, at 32 (filed August 31, 2015) ("AT&T Comments"); Letter from Phillip Berenbroick, Public Knowledge, to Marlene H. Dortch, WC Docket Nos. 11-42, 09-197, 10-90, at 2-3 (filed Dec. 21, 2015) ("Public Knowledge *Ex Parte*"); Letter from Phillip Berenbroick, Public Knowledge, to Marlene H. Dortch, WC Docket Nos. 11-42, 09-197, 10-90, at 1-2 (filed Jan. 20, 2016) "Public Knowledge/NCLC/SHLB/Benton Foundation/UCC OC Inc. *Ex Parte*").

<sup>2</sup> See, e.g., Public Knowledge *Ex Parte* at 2.

<sup>3</sup> See *id*; see also Public Knowledge/NCLC/SHLB/Benton Foundation/UCC OC Inc. *Ex Parte* at 1.

<sup>4</sup> See AT&T Comments at 32-33 (quoting *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, ¶ 369 (1997) (emphasis added)).

As such, OTI and Free Press noted that the Commission could soundly foster broad participation in the Lifeline program with an inclusive definition of ETC rather than a theory that departs from the ETC designation process. Without necessarily disputing the arguments put forward by other commenters, and while recognizing that multiple theories for expanding participation in Lifeline may exist, OTI and Free Press explained that the Commission also has ample legal authority to hew more closely to the statutory framework of Sections 214 and 254 as well as longstanding Commission precedent and practice regarding ETCs. The Commission can open up the Lifeline program to additional broadband providers with the existing ETC framework by changing the eligibility requirements and service obligations necessary to achieve and maintain ETC status, forbearing from or waiving certain provisions as it previously has done for “Lifeline-only” ETCs. (And to the extent there are concerns regarding the expansion of the fund to support broadband or such “Lifeline-only” providers, those concerns clearly do not depend on whether the Commission uses the ETC designation or some new label instead.)

In sum, the Commission need not lean solely or even primarily on the argument that providers of broadband telecommunications are not “carriers,” nor for the first time suggest that non-carriers (as opposed to non-ETCs) are eligible for support in order to spur entry and competition from new types of providers. It can simply adapt the existing ETC framework, modifying and modernizing the eligibility requirements under the existing structure while remaining on the strong legal footing of the Communications Act. This would obviate the need for a new category that purports to keep sufficient safeguards in place for Lifeline users and ratepayers alike while changing the name for participating providers.

OTI and Free Press also noted the importance of implementing minimum standards to ensure that Lifeline users have access to functional broadband offerings, as well as maximizing such users’ choice of how to apply support. Ensuring that these users have the power to choose among different service offerings and tiers would do more to increase competition among Lifeline providers than simply moving away from the ETC designation.

Finally, both OTI and Free Press expressed serious concerns about the implementation of a cap or budget that would prevent otherwise eligible individuals from receiving support, as well as any new requirement that individual recipients be required to pay some amount for service. Lifeline recipients who choose a faster or more robust plan may indeed decide to pay out of pocket for such service plans, and they should have that option; but they should not be obligated to make a payment for service when the subsidy amount fully compensates the carrier offering the service. Such “co-pay” schemes penalize and discourage the neediest individuals from participating and obtaining a connection, with no off-setting benefits to program integrity.

Respectfully submitted,

/s/ Matthew F. Wood

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cc: Travis Litman