



March 24, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St, SW  
Washington, D.C. 20554

**Re: Notice of *Ex Parte* presentation  
WC Docket No. 11-42, 09-197 and 10-90**

Dear Ms. Dortch:

The Schools, Health & Libraries Broadband (SHLB) Coalition writes in support of the letter filed yesterday by the Education and Libraries Network Coalition (EdLiNC) regarding Wi-Fi, tethering and the Lifeline program. As we have previously stated, the SHLB Coalition strongly supports modernizing the Lifeline program to include broadband services, and anchor institutions can play a supportive role in making this program successful and addressing the “homework gap.”

Most Lifeline consumers are likely to access broadband services via a mobile, rather than from a landline, connection. Therefore, the mobile phones used by Lifeline consumers should have access to the full range of Internet-based services so that these users can complete their schoolwork, look for jobs, conduct research and engage in other critical activities. Lifeline consumers will often need the full range of functionality offered from a large screen device such as a tablet or laptop computer to be able to conduct these activities. To put it simply, typing school essays or creating a resume on a small smartphone keyboard and tiny screen is not going to fully address the accessibility and equity needs of low-income consumers.<sup>1</sup>

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<sup>1</sup> We note that the National Digital Inclusion Alliance (NDIA) identified the importance of Wi-Fi access and tethering in its comments in this proceeding filed on August 31, 2015 (“Household Internet access via a wireless provider is most supportive of all members of the household if the service is distributed beyond a singular mobile phone. We agree with the Commission that broadband access via a mobile device is not enough to participate fully in today’s digital society. Lifeline broadband service via a cellular connection is most useful to all the residents of the household if it is a hotspot device or a mobile phone that easily allows for tethering by other devices.”)

The Commission can ensure that Lifeline consumers have full Internet functionality by designing the program so that Lifeline providers offer low-cost smartphones include Wi-Fi access and tethering capability. Tethering will allow the phone's Internet connection to be shared with other devices, such as laptop computers. Because tethering to a cellular signal may cause additional expense to consumers (if the data traffic exceeds a data cap), including Wi-Fi capability can help reduce the cost to consumers (because data sent over a Wi-Fi connection does not count against a data cap). Both Wi-Fi access and tethering capability should be included in the Lifeline program as a condition of receiving financial support from the program. In other words, Lifeline program providers would voluntarily agree to abide by these terms and conditions in order to receive Lifeline funding.

This approach is legally sustainable under the 10<sup>th</sup> Circuit Court of Appeals decision in 2014 upholding the FCC's Connect America Fund reform decisions. In that case, the court upheld the FCC's decision to condition the receipt of Universal Service Funding on the recipients' agreement to provide broadband service. The court found that "nothing in the statute limits the FCC's authority to place conditions, such as the broadband requirement, on the use of USF funds." Including Wi-Fi access and tethering capability as part of the Lifeline-supported service is a reasonable condition on the use of USF funds, because these services will improve the functionality and quality of the supported service.

As was true in the 10<sup>th</sup> Circuit case concerning the Connect America Fund, including both Wi-Fi access and tethering capability in the Lifeline program is consistent with the universal service principles in Section 254(b).<sup>2</sup> Subsection 254(b)(1) encourages the Commission to base its universal service policies on the provision of "quality services" at just and reasonable rates. Section 254(b)(2) establishes the principle that the federal universal service program focus on providing "advanced services" to all regions of the Nation. Tethering and Wi-Fi are extensions of data "services" provided via a smartphone; they increase the quality, value, and reach of the mobile broadband Lifeline "service" that will be supported and thus accomplish the purposes of both (b)(1) and (b)(2).<sup>3</sup>

We recognize that equipping smartphones with Wi-Fi access and tethering capability may involve some cost to providers, at least at first. We encourage the Commission to recognize the marketplace realities and costs to providers of including such capability. EdLiNC suggests that the Commission consider a phase-in period of no more than two years, and we agree that the Commission should show some flexibility in implementing this condition so that it benefits low-income consumers, students and library patrons without imposing excessive costs on the providers. For instance, in addition to a phase-in, the Commission could establish that, as a

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<sup>2</sup> See, *In re FCC 11-161*, 753 F.3d 1015 (10<sup>th</sup> Cir. 2014) at <http://www.ca10.uscourts.gov/opinions/11/11-9900.pdf>.

<sup>3</sup> This paragraph focuses on the "services" provided via a smartphone. An additional question is whether the FCC also has jurisdiction over the device itself. The 10<sup>th</sup> Circuit also suggested that the Commission had jurisdiction over services and "facilities". The court found that "the FCC also, in our view, reasonably concluded that Congress's use of the terms 'facilities' and 'service' in the second sentence of § 254(e) afforded the FCC 'the flexibility not only to designate the types of telecommunications services for which support would be provided, but also to encourage the deployment of the types of facilities that will best achieve the principles set forth in section 254(b).'"

condition of participating in the Lifeline program, a lifeline provider must equip at least some of its phones offered to Lifeline-eligible consumers with Wi-Fi access and tethering capability. This would allow consumers to have a choice of phones and services and would not force any Lifeline consumer to upgrade his/her phone or risk losing use of his/her existing service.

Finally, we also would like to amplify EdLiNC's call to require that Lifeline providers offer Lifeline beneficiaries clear instructional materials, in print and digital form, that show how to operate tethering. Because tethering can be costly to users whose data usage exceeds a data cap, it is important that Lifeline beneficiaries be aware of the impact that tethering will have on data usage. Ensuring that they are multi-lingual, accessible and easy to understand is critical.

Sincerely,

A handwritten signature in black ink that reads "John Windhausen, Jr." with a stylized flourish at the end.

John Windhausen, Jr.

Executive Director

SHLB Coalition

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