**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| In the Matter of | ) | |
| | ) | |
| Bridging the Digital Divide for Low-Income Consumers | ) | WC Docket No. 17-287 |
| | ) | |
| Lifeline and Link Up Reform and Modernization | ) | WC Docket No. 11-42 |
| | ) | |
| Telecommunications Carriers Eligible for Universal Service Support | ) | WC Docket No. 09-197 |

# COMMENTS OF THE NATIONAL HISPANIC MEDIA COALTION

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February 21, 2018

## SUMMARY

The millions of Americans who rely on Lifeline cannot afford to be disconnected from vital communications services. The digital divide that continues to exist in this country is stark, persistent, and disproportionately impacts low-income people and communities of color. For these marginalized communities, the importance of the Lifeline program cannot be overstated. Proposals to alter the fundamental purpose of Lifeline and artificially cap or limit the availability of the modest subsidy to individuals who are eligible would only make this reality worse. Such proposals would compromise the Lifeline program and hurt Americans with a demonstrable need for assistance.

Lifeline is the only federal program that provides critical access to communications services, allowing low-income Americans to complete routine tasks that many take for granted such as receiving important messages from childcare providers, staying in touch with current or prospective employers, and being able to call 911 during an emergency. The program, designed to help ease the burden for individuals and families living on the margins, also provides Lifeline recipients with an opportunity to participate our increasingly digital society.

In the *2016 Lifeline Modernization Order*, the Federal Communications Commission ("FCC" or "Commission") implemented several process reforms to improve program efficiency and expanded the program to include stand-alone broadband offerings. In doing so, the Commission recognized that affordability was the main barrier to broadband adoption for low-income families and identified several ways to ensure that Lifeline was an effective tool in bridging the digital divide. However, before many of the process reforms had been fully implemented, the Commission put forward proposals in a Notice of Proposed Rulemaking ("NPRM") and Notice of Inquiry ("NOI") that would destabilize the program and erode Lifeline's promise to bring affordable communications to low-income households. The National

Hispanic Media Coalition ("NHMC") strongly urges the Commission to abandon these proposals and cease further efforts to undermine the Lifeline program.

In sum, the Commission's proposals would thwart Lifeline's promise by (1) altering the fundamental purpose of Lifeline from a program that provides subsidies to low-income families to one that supports the buildout of broadband networks; (2) eliminating the Lifeline Broadband Provider designation process for stand-alone broadband providers; (3) removing non-facilities based providers from the program that currently serve 70 percent of the Lifeline population; (4) imposing an unnecessary self-enforcing budget cap on the program; (5) requiring a co-pay for Lifeline recipients thus eliminating free options; (6) cutting off service for residents in Puerto Rico and in the U.S. Virgin Islands still reeling from the aftermath of the devastating 2017 hurricane season; and (7) suggesting that there should be a lifetime benefit limit to the program, limiting the subsidy based on a monetary or temporal basis. None of these proposals will help bridge the digital divide. They appear to be designed to "focus" the Lifeline program out of existence.

Less than one year ago, Chairman Ajit Pai stated that as long as he "had the privilege of serving as the Chairman of the FCC [he would do] everything within the FCC's power to close the digital divide."[1] For the low-income consumers who will lose access to a Lifeline provider, seniors who will lose access to emergency communications, and other Americans who will watch their access to jobs, education, and civic engagement opportunities slip out of reach, the Lifeline proposals fall woefully short of the Chairman's pledge.

NHMC respectfully requests that the Commission accept its recommendation herein to abandon these proposals that run contrary to the Commission's goals of bridging the digital

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[1] Ajit Pai, *Setting the Record Straight on the Digital Divide* (Feb. 7, 2017), https://www.fcc.gov/news-events/blog/2017/02/07/setting-record-straight-digital-divide.

divide. The Commission should instead redirect its efforts to implementing the *2016 Lifeline Modernization Order* and ensuring that poor, marginalized, and vulnerable populations are able to connect and stay connected to vital communication services in the 21st century.

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**NATIONAL HISPANIC MEDIA COALITION**

The National Hispanic Media Coalition ("NHMC") respectfully submits these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry[2] ("Lifeline Item"). This Lifeline Item is a clear departure from the direction of the FCC's *2016 Lifeline Modernization Order*,[3] and a direct assault on the program and the many individuals who rely on it as their only means to secure vital communication services. The proposals set forth in the Notice of Proposed Rulemaking ("NPRM")[4] and the further suggestions in the Notice of Inquiry ("NOI")[5] would destabilize the

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[2] *See Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support*, WC Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (Dec. 1, 2017).
[3] *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, 31 FCC Rcd 3962 (2016) (*2016 Lifeline Modernization Order*).
[4] *See Bridging the Digital Divide for Low-Income Consumers et al.,* WC Docket Nos. 17-287 et al., Notice of Proposed Rulemaking, FCC 17-155 (Dec. 1, 2017) (*Lifeline NPRM*).

program and erode Lifeline's promise to bring affordable communications to low-income households. As Commissioner Mignon Clyburn stated, "this proposal does nothing to make the lives of those who qualify [for Lifeline] better….[m]ake no mistake: this is the *Widen the Digital and Opportunity Divide* item."[6] NHMC urges the Commission to abandon the proposals set forth in the NPRM and NOI and cease any further efforts to undermine the Lifeline program. Instead, the Commission should focus on implementing the *2016 Lifeline Modernization Order* and ensuring that the poor, marginalized, and vulnerable populations are able to connect and stay connected to vital communications services in the 21st century.

## INTRODUCTION

NHMC has long recognized Lifeline for its unique ability to deliver important communications services to help our nation's poor achieve prosperity.[7] Lifeline opens doors that would otherwise be closed to education, employment, affordable healthcare, civic participation and advocacy, public safety, and much more. A modest $9.25 subsidy helps fill in the gaps for millions of people across the country that do not have or lose access to the broadband services that they need to work, learn, communicate, and recover when they need it the most.

Lifeline was originally developed in 1985 during the Reagan Administration to provide a discount on phone services to low-income consumers.[8] As telecommunication services evolved

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[5] *See Bridging the Digital Divide for Low-Income Consumers et al.,* WC Docket Nos. 17-287 et al., Notice of Inquiry, FCC 17-155 (Dec. 1, 2017) (*Lifeline NOI*).

[6] Dissenting Statement of Commissioner Mignon Clyburn, *Bridging the Digital Divide for Low-Income Consumers et al.,* WC Docket Nos. 17-287 et al., FCC 17-155 (Dec. 1, 2017).

[7] *See generally* National Hispanic Media Coalition, Comments, WC Docket Nos. 11-42, 09-197, and 10-90, (Aug. 31, 2015) (*NHMC Comments*).

[8] *See generally* Federal Communications Commission, *Lifeline Program for Low-Income Consumers*, https://www.fcc.gov/general/lifeline-program-low-income-consumers (last visited Feb. 21, 2018).

from landlines to mobile devices, in 2005, the program expanded to include wireless offerings.[9] Then, by 2016, the FCC concluded that "[a]ccessing the Internet has become a prerequisite to full and meaningful participation in society."[10] Accordingly, the *2016 Lifeline Modernization Order* expanded from voice-only and bundled programs to include stand-alone broadband offerings.[11]

The *2016 Lifeline Modernization Order* also recognized that affordability was the main barrier in bridging the digital divide for low-income consumers.[12] Currently, only half of the low-income households in the lowest economic tier are subscribed to broadband service, "and 43 percent say that the biggest reason for not subscribing is the cost of service."[13] Of those who have subscribed to broadband service, "over 40 percent have to cancel or suspend the service due to financial constraints."[14] As Commissioner Jessica Rosenworcel noted, "[t]he future belongs to the connected. No matter who you are or where you live you need access to modern communications to have a fair shot in the 21st century success. But the fact of the matter is that today, too many Americans lack access to broadband."[15] Additionally, in his first speech as Chairman, Ajit Pai stated that one of the Commission's "core priorities going forward should be

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[9] *See* Q Link Wireless, *The Lifeline Program Through the Years: From Origins to the Present*, (Jan. 19, 2015), http://miami.cbslocal.com/2015/01/19/the-lifeline-program-through-the-years-from-origins-to-the-present/.
[10] *2016 Lifeline Modernization Order* 31 FCC Rcd at 3963, para. 1.
[11] *See id.* at 3979-80, para. 49 (noting that "[b]y allowing support for standalone broadband services with Lifeline, we add an additional measure of consumer choice as well as the opportunity for innovative providers to serve low-income consumers in new ways. Supporting standalone broadband offerings will not only allow consumers to subscribe to offerings that work best for their needs, but Lifeline providers will also seek to find solutions that work best for their customers.").
[12] *See id.* at 3963, para. 2 ("[t]he biggest reason these Americans don't sign up for broadband today is cost.").
[13] *Id*.
[14] *Id*.
[15] Dissenting Statement of Commissioner Jessica Rosenworcel, *Bridging the Digital Divide for Low-Income Consumers et al.,* WC Docket Nos. 17-287 et al., FCC 17-155 (rel. Dec. 1, 2017).

to bridge the digital divide" in order "to bring the benefits of the digital age to all Americans."[16] Lifeline plays a critical role in bridging the digital divide for low income and marginalized communities as it is perfectly situated to mitigate the main barrier to broadband adoption in this country – affordability.

Unfortunately, the digital divide that continues to exist in this country is stark, persistent, and disproportionately impacts low-income people and communities of color. As Free Press's report *Digital Denied* report shows, 81 percent of non-Hispanic Whites are connected to home broadband compared to only 70 percent of Hispanics and 68 percent of Blacks.[17] Only 49 percent of households with annual family incomes below $20,000 have Internet at home compared to nearly 90 percent of households with incomes above $100,000.[18] *Digital Denied* also notes that "racial and ethnic adoption gap persists [even] among the poorest households,"[19] suggesting that "structural racial discrimination or other structural factors beyond simple income differences" are to blame for the disparity in home broadband adoption.[20] For example, "58 percent of [ ] low-income Whites have home internet access versus just 51 percent of Hispanics and 50 percent of Black people in the same income bracket."[21]

For many people of color who have been historically underserved and marginalized, the importance of maintaining an affordable and reliable connection cannot be overstated. Internet access is critical to ensure full participation in today's economy, and can mean the difference between paving a pathway out of poverty, or missing yet another employment or educational

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[16] Remarks of Ajit Pai, Chairman, Federal Communications Commission, (Jan. 24, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/ 2017/db0124/DOC-343184A1.pdf.
[17] *See* S. Derek Turner, Free Press, *Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption* at 27 (Dec. 2016) (*Digital Denied*).
[18] *See id.* at 4.
[19] *Id.* at 63.
[20] *Id.*
[21] *Id.* at 4, 53.

opportunity. In 2011, the FCC's Broadband Adoption Taskforce defined the digital divide that exists between those the broadband haves and have-nots as an "opportunity divide."[22] The opportunity divide manifests itself in a number of ways. For example, more than 80 percent of Fortune 500 companies, including huge employers like Wal-Mart and Target, accept only online job applications.[23] In the next decade, nearly 80 percent of jobs will require some digital literacy skills.[24] Additionally, students with broadband at home graduate at a higher rate than students who lack such access.[25]

For these and other reasons the Commission must abandon proposals to alter the fundamental purpose of the Lifeline program and to artificially cap or limit the availability of the subsidy to individuals who are eligible and in dire need of vital communication services. Anything less than a full commitment to the implementation of the *2016 Lifeline Modernization Order* would fly in the face of the FCC's Congressional mandate to ensure that "[c]onsumers in all regions of the Nation, including low-income consumers...access to telecommunications and information services."[26] Yet, just as Lifeline was set to catch up with the 21st century, the Commission put forth several proposals in the NPRM and NOI that are counter-productive and would only serve to widen the digital divide.

[22] FCC Broadband Adoption Taskforce, *Broadband Adoption Presentation to FCC Open Meeting*, at slide 4-5 (Nov. 30. 2011), http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311281A1.pdf.
[23] *Id.* at slide 10.
[24] *Id.* at slide 11.
[25] *Id.* at slide 14.
[26] 47 U.S.C. § 254(b)(3).

## DISCUSSION

### I. LIFELINE'S PRIMARY FOCUS SHOULD REMAIN ON BRIDGING THE DIGITAL DIVIDE BY CONNECTING LOW-INCOME CONSUMERS AND SHOULD NOT SHIFT TO ENCOURAGING INVESTMENT IN NETWORKS

NHMC opposes the proposed monumental shift in the core purpose of Lifeline – from a program intended to connect low-income consumers to affordable voice and broadband – to one with a primary purpose of encouraging deployment of networks. Chairman Pai was right, Lifeline has a "noble purpose,"[27] but that purpose has been and still remains to help low-income individuals. The noble purpose relies on a simple premise – that all people in the United States, including these who cannot provide for themselves, should have access to quality, affordable telecommunications.[28] Lifeline has helped the Commission "advance the principle of universal service–a principle that is enshrined in the very first section of the Communications Act."[29] For those who would otherwise become even more isolated in a digital age, Lifeline has been essential in ensuring that they get and stay connected to affordable communications services.

Notably, Lifeline was never intended to be a program that encouraged investment.[30] It is the only Universal Service Fund ("USF") program devoted to helping the nation's poor.[31] The Commission's proposals would destabilize Lifeline, and run contrary to the Congressional mandate to ensure that low-income consumers have access to advanced telecommunications and information services.[32] Appropriately, Lifeline should remain a program devoted to providing

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[27] *See* Remarks of Ajit Pai, Commissioner, Federal Communications Commission at 2 (July 28, 2014), https://apps.fcc.gov/edocs_public/attachmatch/DOC-328469A1.pdf (*2014 Pai Remarks*).
[28] *See* Universal Service Administrative Co., *Delivering Universal Service*, http://www.usac.org/default.aspx (last visited Feb. 21, 2018) (*USAC Website*).
[29] *2014 Pai Remarks* at 2.
[30] *See Lifeline NPRM* at para. 65.
[31] *See USAC Website*.
[32] *See* 47 U.S.C. § 254(b)(3).

direct subsidies to low-income consumers, and not shift in purpose to a program intended to stimulate investment in networks.

### A. Lifeline Evolved in the *2016 Lifeline Modernization Order* to Become an Effective Tool for Bridging the Digital Divide

The *2016 Lifeline Modernization Order* helped strengthen and restore Lifeline's promise and recognized that broadband access should be treated as a 21st century right.[33] The *Order* explained how Lifeline could complement the Commission's efforts to bridge the digital divide:

> In order to narrow the digital divide and provide broadband access to all consumers . . . the Commission needs to ensure that such consumers have access to robust service offerings. Given that broadband is an essential tool for completing homework, searching and applying for jobs, and interacting with healthcare providers, it is imperative that everyone has access to sufficient service. To narrow the digital divide, low-income consumers should have access to services that are reasonably comparable to those which are available to a majority of Americans.[34]

Two years later, before those reforms had an opportunity to bear fruit, the Commission has put forth proposals that would transform Lifeline from a program that helps those in need to a program used to generate investment.[35] Under the proposals advanced in the NPRM, many of the Americans who rely on Lifeline to stay connected will, once again, be left behind.

Lifeline is the only USF program with the primary purpose of making telecommunications more affordable for low-income consumers. Affordability is the main barrier to home Internet adoption for low-income families, who are also commonly forced to drop service in the face of financial stress.[36] Recognizing its importance in addressing the digital

[33] *See 2016 Lifeline Modernization Order* 31 FCC Rcd at 3963, para. 1.
[34] *Id*. at 3969, para. 22.
[35] *Lifeline NPRM* at para. 65.
[36] *See Digital Denied* at 104 ("Some people with severe budget constraints may see a maze of expensive, bundled wired Internet and pay-TV offerings, and simply choose to stick with their mobile data connection. Others may go for a promotional bundle deal, only to drop the service after the bill shock hits when the discount expires.").

divide, and directly tackling the affordability barrier through a modesty subsidy – Lifeline has helped ensure that low-income consumers can afford broadband[37] in order to participate in a 21st century economy. While there are several other Commission programs to encourage investment in networks,[38] Lifeline is one of the only federal programs positioned to provide a "pathway out of poverty for millions of people, opening doors that would otherwise be closed to economic and educational opportunities."[39] In essence, Lifeline offers a digital gateway to the modern economy.[40]

### B. Lifeline Was Always Intended to Help Low-Income Families, Not Stimulate Investment

The Commission uses flawed logic in its proposal to shift the fundamental purpose of the Lifeline program to help individuals to a program that prioritizes networks over people. The Commission states that, "Lifeline support will best promote access to advanced communications services if it is focused to encourage investment in broadband-capable networks."[41] It further suggests that "[i]f Lifeline can help promote more facilities, it can then *indirectly* also serve to reduce prices for customers."[42] This is not a proposal to better the program,[43] but instead one to

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[37] Federal Communications Commission, *Lifeline Support for Affordable Communications*, https://www.fcc.gov/consumers/guides/lifeline-support-affordable-communications (last visited Feb. 21, 2018).
[38] *See generally* FCC Connect American Fund Phase II Auction, https://www.fcc.gov/connect-america-fund-phase-ii-auction (last visited Feb. 21, 2018).
[39] *See, e.g.*, *NHMC Comments*; *see also* Jessica González, National Hispanic Media Coalition, Written Testimony, Senate Committee on Commerce, Science, and Transportation, 114th Congress, *Improving Accountability and Effectiveness Hearing Before the Subcommittee on Communications, Technology, Innovation and the Internet* (2015).
[40] *See generally* Adie Tomer and Ranjtha Shivaram, *Rollback of the FCC Lifeline Program Can Hurt Households That Need Broadband the Most* (Nov. 27, 2017), https://www.brookings.edu/blog/the-avenue/2017/11/27/rollback-of-the-fccs-lifeline-program-can-hurt-households-that-need-broadband-the-most/.
[41] *Lifeline NPRM* at para. 65.
[42] *Id.* (emphasis added).

alter Lifeline at its core. It is based on the underlying and unproven assumption that this shift would encourage companies to participate in Lifeline. Yet, companies like AT&T have relinquished their Lifeline Eligible Telecommunications Carrier ("ETC") obligations in several states,[44] and other companies have also pulled out of the Lifeline marketplace.[45]

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[43] *See id.* at para 63 (the Commission seeks comment on "focusing Lifeline support to encourage investment in broadband-capable networks.").

[44] *See, e.g.*, Order Confirming AT&T Missouri's Relinquishment of its Eligible Telecommunications Carrier Designation, In the Matter of Southwestern Bell Telephone Company, d/b/a AT&T Missouri's Notice of Relinquishment of its Eligible Telecommunications Carrier Designation Pursuant to 47 U.S.C. § 214(e)(4) and Notice of Withdrawal from State Lifeline and Disabled Programs, Public Service Commission of the State of Missouri, File No. IO-2017-0132 (Issued Jan. 11, 2017); AT&T Missouri's Notice of Relinquishment of its Eligible Telecommunications Carrier Designation Pursuant to 47 U.S.C. §214(e)(4) and Notice of Withdrawal From State Lifeline and Disabled Programs, filed with the Public Service Commission of the State of Missouri (Jan. 13, 2017); Application of Southwestern Bell Telephone Co. d/b/a AT&T Okla. for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation, Okla. Corp. Comm., Cause No. PUD 201600455 (Feb. 22, 2017); Implementation Of The Universal Service Requirements Of Section 254 Of The Telecommunications Act Of 1996, Alabama Public Service Comm., Dkt No. 25980 (Mar. 9, 2017); Request by Wis. Bell, Inc., d/b/a AT&T Wis., to Relinquish its Status as an Eligible Telecommunications Carrier in Certain Parts of its Service Territory, Wis. Public Service Comm., File 6720-TI-225 (Mar. 13, 2017); Order Confirming AT&T Tenn. Relinquishment Of Its Eligible Telecommunications Carrier Designation In Specified Areas, Tenn. Public Service Comm., Docket No. 16-00123 (Mar. 24, 2017); Verified Petition Of AT&T Miss. For An Order Confirming Relinquishment Of Its Eligible Telecommunications Carrier Designation In Specified Areas, Miss. Public Service Comm., 2017 WL 1425348 (Apr. 13, 2017); Application of Southwestern Bell Telephone Co. d/b/a AT&T Kansas for an Order Confirming Relinquishment of its Eligible Telecommunications Carrier Designation in Specified Areas, and Notice Pursuant to K.S.A. 2015 Supp. 66-2006(d) of Intent to Cease Participation in the Kan. Lifeline Service Program, Kan. Corp. Comm., Docket No. 17-SWBT-158-MIS, (Apr. 27, 2017); In the Matter of Petition of AT&T N.C. for Order Confirming Relinquishment of Eligible Telecommunications Carrier Designation in Specified Areas, N.C. Utilities Comm., Docket No. P-100, SUB 133C (Jun. 14, 2017); Request For Relinquishment Of Partial Eligible Telecommunications Carrier Status, By Bellsouth Telecommunications, LLC d/b/a AT&T Fla., Fla. Public Service Comm., Order No. PSC-2017-0290-PAA-TP (Jul. 24, 2017); Bellsouth Telecommunications, Llc D/B/A At&T La., Ex Parte, La. Public Service Comm., File No. S-34632 (Nov. 3, 2017).

[45] *See, e.g.,* Daniel Fuller, T-Mobile's CFO Wants to Get Rid of the Lifeline Program, (June 9, 2017) https://www.androidheadlines.com/2017/06/t-mobiles-cfo-wants-to-get-rid-of-lifeline-program.html.

Although the Commission couches this proposal as a way of expanding Lifeline support, it also proposes "limiting Lifeline support to facilities-based broadband service provided to a qualifying low-income consumer over the ETC's voice- and broadband-capable last-mile network."[46] This would severely limit the number of eligible providers in the program and impact over 70 percent of the current Lifeline subscribers.[47] For Lifeline to even have a chance of succeeding under these proposals, the Commission is betting that giving companies capable of building networks more money or market share will translate into their voluntary commitment to develop Lifeline affordable voice and broadband services for low-income consumers.[48] This type of supposition is doomed from the outset.

Moreover, providing a modest federal subsidy directly to consumers to make broadband more affordable for low-income Americans are popular and have bipartisan support. This further underscores the need to abandon the proposal to shift the fundamental purpose of Lifeline to a program that promotes investment in networks. According to a recent poll, a strong majority of Americans who financially support subsidies for broadband – agree that "Internet access is essential and everyone needs it in the 21st century economy."[49] It also found that "this view is shared across party lines – 84 percent of Democrats, 67 percent of Republicans, and 68 percent of Independents agree."[50] In total, 70 percent of Americans support a policy to help low-income Americans afford Internet access, with 86 percent of Democrats, and 52 percent of Republicans

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[46] *Lifeline NPRM* at para. 65.
[47] *See infra* section III-A.
[48] *See generally* Jacob Kastrenakes, *FCC Begins Scaling Back Internet Subsidies For Low-Income Homes* (Nov. 17, 2017), https://www.theverge.com/2017/11/17/16669716/fcc-lifeline-scaled-back-tribal-lands-broadband-discount-limits.
[49] Freedman Consulting, LLC, *New Poll: Americans Overwhelmingly Support Existing Net Neutrality Rules, Affordable Access, and Competition Among ISPs* at 2 (July 10, 2017), http://tfreedmanconsulting.com.routing.wpmanagedhost.com/wp-content/uploads/2017/07/Tech-Policy-Poll-Summary_Final_20170710.pdf.
[50] *Id.*

supporting such policies.[51] This poll demonstrates bipartisan support for the principle that everyone benefits when all people – including low-income students, elderly, veterans, and people with disabilities – have an opportunity to participate, engage, and contribute in a digital society.

## II. THE COMMISSION MUST PRESERVE THE LIFELINE BROADBAND PROVIDER DESIGNATION PROCESS OR RISK FURTHER WIDENING THE DIGITAL DIVIDE

Removing the Lifeline Broadband Provider ("LBP") category of ETC would erode Lifeline's promise in the *2016 Lifeline Modernization Order* to bring subsidized broadband opportunities to eligible Lifeline recipients. NHMC urges the Commission to (1) abandon its proposal to eliminate LBP designations from the Lifeline program, and (2) immediately implement the LBP designation process as contemplated in the *2016 Lifeline Modernization Order*.

### A. Eliminating Stand-Alone LBP Designations Is Contrary to the Commission's Goal of Bridging the Digital Divide

The Commission's proposal to eliminate the stand-alone LBP designations[52] runs contrary to the goal of bridging the digital divide for Lifeline. The *2016 Lifeline Modernization Order* created the LBP designation process in order to encourage competition in the Lifeline broadband marketplace,[53] and stated, "[w]e expect that our actions today will encourage market entry and increase competition among Lifeline providers, which will result in better services for

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[51] *See id.*
[52] *See Lifeline NPRM* at para. 58. In the NPRM the Commission proposes, "eliminating stand-alone LBP designations to better reflect the structure, operation, and goals of the Lifeline program, as set forth in the Communications Act, as well as related state programs. For example, the existence of an LBP designation enables entities to participate in the Lifeline program without assuming any obligations with respect to voice service. We seek comment on this proposal." *Id*.
[53] *See 2016 Lifeline Modernization Order* at 4040-4044, paras. 217-228

eligible consumers to choose from and more efficient usage of universal service funds."[54] On December 1, 2016[55] and January 18, 2017[56] the Commission granted a total of nine LBP designations to carriers providing stand-alone broadband offerings. Instead of providing those nine LBPs an opportunity to implement the innovative offerings and inject competition into the program, on February 3, 2017 the Commission released the *LBP Revocation Order* revoking all nine designations.[57] The *LBP Revocation Order* was grounded in outdated claims of waste, fraud, and abuse. Even worse, it needlessly harmed existing and potential Lifeline subscribers and injected uncertainty into the LPB designation process. In the current NPRM the Commission proposes to "eliminate the Lifeline Broadband Provider category for ETCs and the state preemption on which it is based."[58] The Commission should withdraw this proposal and instead encourage provider participation and promote competition in the Lifeline program.

### B. The Commission Should Promote Robust Options for Lifeline Subscribers and Approve Innovating Broadband Offerings Instead of Chilling the Robust Competition Contemplated in the *2016 Lifeline Modernization Order*

The FCC's *LBP Revocation Order* and now the proposal in the NPRM to permanently eliminate the LBP designation process would reduce Lifeline options in all fifty states and in

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[54] *Id*. at 4040, para. 217.
[55] *See Telecommunications Carriers Eligible for Universal Service Support, Petitions for Designations as a Lifeline Broadband Provider*, WC Docket Nos. 09-197, 11-42, Order, DA 16-1325 (Dec. 1, 2016). The December Order designated Spot On Networks, LLC, Boomerang Wireless LLC, KonaTel Inc., and STS Media, Inc. (d/b/a FreedomPop) as Lifeline Broadband Providers. *Id.*
[56] *See Telecommunications Carriers Eligible for Universal Service Support, Petitions for Designations as a Lifeline Broadband Provider*, WC Docket Nos. 09-197, 11-42, Order, DA 17-87 (Jan. 18, 2017). The January order designated Applied Research Designs, Inc., Kajeet Inc., Liberty Cablevision of Puerto Rico, LLC, Northland Cable Television, Inc., and Wabash Independent Networks, Inc. as Lifeline Broadband Providers. *Id.*
[57] *See Telecommunications Carriers Eligible for Universal Service Support, Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 09-197, 11-42, Order on Reconsideration, DA 17-128 (Feb. 3, 2017).
[58] *Lifeline NPRM* at para. 54.

Puerto Rico and the U.S. Virgin Islands, diminishing service options for all the eligible Lifeline recipients. The *LBP Revocation Order* jeopardized service for 17,538 Boomerang subscribers who were already receiving service.[59] Eight other companies were also ramping up Lifeline service offerings in 2017,[60] not to mention the forty LBP petitioners waiting since 2016 and early 2017 to have their applications approved.[61] Permanently removing the LBP designation process would severely harm Lifeline participants because it would reduce competition and choice in the Lifeline broadband marketplace that was intended to keep service within a free and affordable range.

The *2016 Lifeline Modernization Order* explained the public policy reason and connection between state preemption and injecting competition in the Lifeline program:

> We take certain steps to streamline the LBP designation process to encourage broader provider participation in the Lifeline program with the expectation that increased participation will create competition in the Lifeline market that will ultimately redound to the benefit of Lifeline-eligible consumers.[62]

If the Commission is earnestly committed to bridging the digital divide and promoting competition to increase the value of the subsidy, it should preserve the LBP process and immediately decide pending LBP petitions, as the *2016 Lifeline Modernization Order* process

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[59] *See* Letter from John J. Heitmann and Joshua Guyan, Kelley Drye & Warren LLP, Counsel to Boomerang Wireless, LLC d/b/a enTouch Wireless, to Marlene Dortch, Secretary, FCC, WC Docket Nos. 09-197, 11-42 (filed Feb. 15, 2017).

[60] *See* Comments of Voices for Internet Freedom Members, WC Docket Nos. 11-42, 09-197 at 4 (Mar. 16, 2017) (*Voices LBP Comments*). "For instance, AR Designs, a Certified Minority Business Enterprise that had received an LBP designation for Illinois, planned to offer 300 Mbps download/150 Mbps upload speeds for free with the Lifeline subsidy, with no data caps and no contract, with a Wi-Fi enabled device. The company planned to serve a low-income community in south Chicago, and also intended to partner with EveryoneOn/ConnectHome to provide digital literacy training." *Id.* at 4 (internal citations omitted).

[61] *See Lifeline Broadband Provider Designations and Public Comment Periods*, https://www.fcc.gov/lifeline-broadband-provider-petitions-public-comment-periods (last visited Feb. 21, 2018).

[62] *2016 Lifeline Modernization Order* at 4041 at para. 221.

reforms require.[63] Approving LBP applications would counter the negative impacts of the *LBP Revocation Order* and would help bridge the digital divide and assist in connecting more people in marginalized communities.

### C. The Commission Has the Legal Authority to Retain the Federal Lifeline Broadband Provider Designation Process

NHMC recognizes that the states play a critical role in protecting consumers and ensuring that ETCs are meeting the needs of the local community, but that should not alter the Commission's narrow decision to preempt the states in the *2016 Lifeline Modernization Order*. In the NPRM, the Commission explains that it is proposing revoking the LBP designation process due to an error in "preempting state commissions from their primary responsibility to designate ETCs under section 214(e) of the Act and seek comment on this issue,"[64] and that the "legal challenge to the LBP designation process question[s] the Commission's legal authority to create an LBP designation process and designate providers under that process."[65] Yet the "Commission's narrow decision to preempt states from designating carriers that offer only broadband internet access service – is supported by statute, properly respects the separation of powers, and serves a compelling public policy interest."[66] The Commission should consider that its proposals would stifle the robust competition that was contemplated in the *2016 Lifeline Modernization Order*. It must also directly address the over 80 telecommunications providers that opted out of providing Lifeline broadband service to its consumers,[67] and encourage

[63] *See Voices LBP Comments* at 5.
[64] *Lifeline NPRM* at para. 55.
[65] *Id*. at para. 56.
[66] Voices for Internet Freedom, Reply Comments, WC Docket Nos. 11-42, 09-197 at 6 (Mar. 23, 2017) (*Voices LBP Reply Comments*).
[67] *See 80 Telecommunications Providers Opt-Out of Helping Low-Income Americans with Broadband Access Through Lifeline Program,* National Hispanic Media Coalition (Dec. 16,

participation in the program. The Commission has a responsibility to expand choice and competition in Lifeline program, and must abandon efforts that will inevitably reduce competition and shrink the group of eligible providers in the program.

NHMC also understands that the "[s]tates continue to play an important role in ensuring affordability of voice, and also supporting broadband," but disagrees with the premise that "reversing the preemption in the 2016 Lifeline Order may resolve inconsistencies between state and federal efforts and provide benefits to the operation of state and federal programs."[68] In the *2016 Lifeline Modernization Order*, the Commission "rightly decided that the states should maintain traditional, congressionally mandated role in ETC designation decisions,"[69] and therefore established the additional process for broadband-only LBP designations.[70] The Commission should retain its authority to designate broadband-only providers[71] pursuant to Section 214(e)(6) of the Act, which states:

> In the case of a common carrier . . . that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph [214(e)(1)] as an eligible telecommunications carrier for a service area designated by the Commission.[72]

As it looks to alter the structure of the Lifeline broadband-only options, the Commission must consider the "longstanding conclusion that broadband Internet access service is

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2016), http://www.nhmc.org/80-telecommunications-providers-opt-out-of-helping-low-income-americans-with-broadband-access-through-lifeline-program/.
[68] *Lifeline NPRM* at para. 57.
[69] *See Voices LBP Reply Comments* at 6.
[70] *See 2016 Lifeline Modernization Order* at 3965, 4049-40 & 4053.
[71] *But see* National Association of Regulatory Utility Commissioners, Comments, WC Docket Nos. 09-197 and 11-42 at 3 (Mar. 16, 2017) (Asserting that state preemption defies the FCC's Congressional mandate under Section 214(e)(2) of the Act, which directs the states to designate ETCs).
[72] 47 U.S.C. § 214(e)(6).

jurisdictionally interstate for regulatory purposes."[73] The Commission stated just recently, that "it is well-settled that Internet access is jurisdictionally interstate because 'a substantial portion of Internet traffic involves accessing interstate or foreign websites.'"[74] The Commission further noted that "broadband Internet access service is predominantly interstate because a substantial amount of Internet traffic begins and ends across state lines."[75] Following the Commission's own logic, broadband-only Lifeline providers should not be subject to state jurisdiction. The LPB designation process established in the *2016 Lifeline Modernization Order* already recognized the best way to "accommodate the important and lawful role of the states in the Lifeline program."[76] Accordingly, the Commission must abandon its proposal to eliminate the LBP designation process.

## III. REMOVING NON-FACILITIES BASED PROVIDERS FROM LIFELINE AND IMPOSING ARTIFICIAL AND ARBITRARY LIMITS TO ACCESS RUNS CONTRARY TO THE COMMISSION'S CONGRESSIONAL MANDATE AND STATED GOAL OF BRIDGNING THE DIGITAL DIVIDE

The proposals set forth in the NPRM directly contradict the Commission's stated goals to bridge the digital divide. The Commission rightfully acknowledges that the "Lifeline program has an important role in bringing digital opportunity to low-income Americans,"[77] and that it was intended to help "low-income households obtain the benefits that come from access to modern communications networks."[78] But then despite making this strong statement in support of

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[73] *See Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, GN Docket No. 14-28, 30 FCC Rcd 5601, para. 431 (2015) (*2015 Open Internet Order*).
[74] *Restoring Internet Freedom*, Declaratory Ruling, Report and Order, and Order, FCC 17-166 at para. 199 (Jan. 4, 2018) (*RIF Order*).
[75] *Id*. at para. 199.
[76] *Lifeline NPRM* at para. 54.
[77] *Id*. at para. 62.
[78] *Id*.

Lifeline, the NPRM advances policy changes that would (1) discontinue Lifeline support for non-facilities based providers; (2) impose a self-enforcing budget cap; (3) require a co-pay for Lifeline; and (4) cut off service for residents in Puerto Rico and in the U.S. Virgin Islands still reeling from the aftermath of the devastating 2017 hurricane season. All such proposals would serve to erect barriers for providers and limit the population of eligible Lifeline recipients. If adopted, the program would be gutted, destabilized, and left simply unsustainable, leading to disruption of communications services to our most vulnerable communities.

### A. Non-Facilities Based Providers Should Remain in the Lifeline Program

The Commission's proposal to eliminate non-facilities based providers is premature and would have a profound and immediate impact on Lifeline recipients served by non-facilities based providers. In the NPRM, the Commission proposes "limiting Lifeline support to broadband service provided over facilities-based broadband networks that also support voice service."[79] The Commission also asks how would "this proposal impact the number of Lifeline providers participating in the program and the availability of quality, affordable Lifeline broadband services?"[80] Non-facilities based providers serve Lifeline consumers in markets where facilities-based companies that own network infrastructure, have little incentive to participate or interest in Lifeline.[81] This proposal is a drastic change to Lifeline and completely ignores the individuals who would ultimately be cut off from access to vital communications services.

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[79] *Id*. at para. 67.
[80] *Id*. at para. 68.
[81] *See* Jonathan Shieber, *Net Neutrality Isn't the Only Thing the Current FCC is Screwing Up* (Dec. 9, 2017), https://techcrunch.com/2017/12/09/net-neutrality-isnt-the-only-thing-the-current-fcc-is-screwing-up/.

### 1. Non-Facilities Based Providers Serve the Majority of the Lifeline Population and Removing Non-Facilities Based Providers Will Unfairly Cut-Off Eligible Lifeline Recipients

The proposal in the NPRM to eliminate non-facilities based providers would have far-reaching consequences for the close to 70 percent of current Lifeline recipients who rely on service from non-facilities based providers.[82] Just as with the proposal to eliminate the LBP designation process,[83] removing non-facilities based providers from the program is at odds with the Commission's stated goal to bridge the digital divide. Non-facilities based providers serve recipients in all fifty states, Tribal lands, Puerto Rico and the U.S. Virgin Islands. Removing non-facilities based providers from Lifeline will have a wide-spread and negative impact for those individuals who are eligible and rely on Lifeline for vital communications services.

Remarkably, there is no mandate for facilities-based providers to offer Lifeline programs in areas where non-facilities based-providers would be eliminated. If the Commission adopts this radical proposal, Lifeline consumers would have to search for new service providers in a marketplace where both choice and competition have been decimated if not eliminated. Lifeline consumers in markets with only one provider may be left without an alternative and, once again, face the daily struggles that accompany being disconnected. Lifeline consumers already have to meet eligibility requirements based on the numerous qualifying criteria.[84] Current and potential

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[82] *See* Letter from John J. Heitmann, Joshua Guyan, Kelley Drye & Warren LLP, Counsel to the Lifeline Connects Coalition, Boomerang Wireless, LLC and Easy Wireless, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 17-287 et al., at 2 (filed Nov. 2, 2017).

[83] *See supra* Section II.

[84] *2016 Lifeline Modernization Order* at 4022, para. 169. "Currently, Commission rules requires low-income consumers to have household income at or below 135 percent of the Federal Poverty Guidelines or receive benefits from at least one of a number of federal assistant programs." *Id.* citing 47 CFR § 54.409(a)(2). The federal assistance programs include: Medicaid; Supplemental Nutrition Assistance Program (SNAP); Supplemental Security Income (SSI); Federal Public Housing Assistance; Low-Income Home Energy Assistance Program (LIHEAP); National School Lunch Program's (NSLP) free lunch program; and Temporary Assistance for Needy Families (TANF). Low-income households living on Tribal lands may also qualify by

Lifeline consumers should not be impeded from securing Lifeline because of a shortage of Lifeline providers caused by the Commission's ill-thought proposal to eliminate non-facilities based providers.

### 2. The Commission Has Legal Authority to Retain Non-Facilities Based Providers in the Program

It is premature for the Commission to remove non-facilities based providers from the program relying on an unsettled question of the classification of broadband under the Communications Act. The Commission further proposes to restrict broadband providers to only ETCs able to "support voice service."[85] In the NPRM the Commission states that the legal authority to make this change would "not depend on the regulatory classification of broadband Internet access service and, thus, ensures the Lifeline program has a role in closing the digital divide regardless of the regulatory classification of broadband service."[86] This refers to the Commission's *Restoring Internet Freedom Order* released on January 4, 2018[87] that reclassified broadband Internet access service as an information service under Title I of the Act, reversing the decision made by the Commission in 2015 to classify broadband Internet access service as a telecommunications service under Title II of the Act.[88] The Commission recently acknowledged

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participation in one of several additional assistance programs: Bureau of Indian Affairs (BIA) general assistance; Tribally-administered TANF (TTANF); Head Start (only those meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR). *See id.* at n. 434. "Additionally, consumers may also gain entry to the Lifeline program if they are able to meet eligibility criteria established by a state." *Id.*

[85] *Lifeline NPRM* at para. 77; *see also* supra Section II opposing the Commission proposal to rescind the Lifeline Broadband Provider designation process.

[86] *See Lifeline NPRM* at para. 77; *see also id.* at para. 78 ("Relying on the Commission's authority under Section 254(e) for the proposed changes to Lifeline support would also better reconcile the Commission's authority to leverage the Lifeline program to encourage access to broadband with the Commission's efforts to promote access to broadband through high-cost support.").

[87] *See RIF Order*.

[88] *See generally 2015 Open Internet Order*.

that the "reinstatement of the information service classification for broadband Internet access service does not require us to address here our legal authority…as such concerns are more appropriately addressed in the ongoing Lifeline proceeding."[89] To the extent that the Commission's proposed changes to Lifeline rely on the classification of broadband Internet access service, the Commission should delay the proposed changes until all legal challenges to the *Restoring Internet Freedom Order* are resolved. Anything less would risk unnecessarily implementing changes to Lifeline, removing providers from the program, and disconnecting the vast majority of current Lifeline recipients – each causing irreparable harm to the program.

#### 3. Overblown Claims of Waste, Fraud, and Abuse in the Lifeline Program Should Not Be Used to Justify a Drastic Shift in the Lifeline Program Structure and To Punish Low-Income Consumers in Need

Lingering narratives of rampant waste, fraud, and abuse in the Lifeline program have been dispelled numerous times. Specifically, the narratives also ignore the fact that FCC enforcement processes are in place to address abuse and that the Commission has successfully implemented several process reforms to ensure the health and integrity of the Lifeline program in the *2016 Lifeline Modernization Order*. In 2015, prior to the *2016 Lifeline Modernization Order*, Commissioner Clyburn noted:

> One little-known Lifeline fact: Of all the Federal beneficiary programs from Medicaid, to Supplemental Nutrition Assistance Program (SNAP), to the National School Lunch Program, to public housing, Lifeline has the smallest level of annual expenditures. At $9.25 a month, it reaches the greatest number of households of any program except Medicaid. [90]

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[89] *RIF Order* at para. 193.
[90] Statement of Commissioner Mignon Clyburn, Committee on Commerce, Science, and Transportation, U.S. Senate, 114th Congress, *Oversight of the Federal Communications Commission Hearing* (2015), https://www.gpo.gov/fdsys/pkg/CHRG-114shrg98498/pdf/CHRG-114shrg98498.pdf.

Clyburn further stated that, "if properly reformed, this program could once and for all enable consumers to have true robust broadband and prove to be one of the greatest investments this government could make."[91] This is exactly what the *2016 Lifeline Modernization Order* accomplished and what the FCC proposes to undo through its proposals in the NPRM. Additionally, in July 2016, an Energy & Commerce Democratic Staff Report concluded that the FCC had already implemented process reforms that were successful in reining in "a billion dollars in waste, fraud, and abuse."[92] Nonetheless, the Commission's stale waste, fraud, and abuse talking points continue to be used as a justification for drastic proposals that could lead to the program's demise.

NHMC agrees that providers that prey on our most vulnerable populations should face enforcement actions or banned from the program – but this should be determined on a case-by-case basis. NHMC supports reforms suggested in the NPRM that would reduce incentives to enroll non-eligible individuals in the program.[93] However, the waste, fraud, and abuse rhetoric echoed throughout the *Lifeline Item* should not distract from the need to ensure that Lifeline lives up to its promise of keeping low-income families connected.

The May 2017 report entitled "Additional Action Needed to Address Significant Risk in FCC's Lifeline Program" ("*Lifeline GAO Report"*) prepared by the GAO Forensic Audits and

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[91] *Id*.
[92] *See* U.S. House of Representatives Committee on Energy and Commerce, Ranking Member Frank Pallone, Jr., Democratic Staff Report, *The Lifeline Program: Examining Recent Allegations of Waste, Fraud, and Abuse* (July 2016), https://democrats-energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/Lifeline%20Oversight%20Report%20(7.12.2016).pdf.
[93] *See Lifeline NPRM* at para. 84 (the Commission suggests moving "toward identifying companies to be audited based on established risk factors and taking into consideration the potential amount of harm to the Fund."); *see also Lifeline NPRM* at para. 91 (the Commission seeks comment on "prohibiting agent commissions related to enrolling subscribers in the Lifeline program and on codifying a requirement that ETC representatives who participate in customer enrollment register with USAC.").

Investigative Service team helped opponents of Lifeline fuel the overblown claims of waste, fraud, and abuse. [94] Many opponents of Lifeline used this report to further demonize the program and its recipients. However, upon close examination of the methodology used to draw its conclusion, the *Lifeline GAO Report* reveals that is used 2012 to 2014 data related to eligibility criteria[95] – data predating the reforms in the *2016 Lifeline Modernization Order*. The report "fails to demonstrate system fraud"[96] and is simply a "snapshot of a program since [it was] modernized and improved several times over."[97] Additionally, the *Lifeline GAO Report* discusses undercover investigations that took place between June 2014 and May 2017[98] that submitted 21 Lifeline applications using false information and falsified supporting documents.[99] Despite the GAO procuring service from 12 of the 19 Lifeline providers – the report itself states that the "undercover tests were for illustrative purposes and are not generalizable,"[100] and that this result "doesn't prove that this essential program is plagued by fraud."[101] These facts contradict the Commission's statement that the *Lifeline GAO Report* identified "significant fraud and absence of internal controls"[102] in the Lifeline program. The *Lifeline GAO Report* should be viewed at face value as merely a snapshot of a program prior to the reforms in the *2016 Lifeline*

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[94] *See generally* GAO, Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program, GAO-17-538 at 69, 71 (2017), https://www.gao.gov/assets/690/684974.pdf (*Lifeline GAO Report*).
[95] *See Lifeline GAO Report* at 70.
[96] Jessica González, Deputy Director & Senior Counsel for Free Press and Free Press Action Fund, Written Testimony, United States Senate Committee on Commerce, Science and Transportation, *Addressing the Risk of Waste, Fraud and Abuse in the FCC's Lifeline Program* at 8 (Sept. 6, 2017) (*González Testimony*).
[97] *González Testimony* at 9 (Sept. 6, 2017).
[98] *See Lifeline GAO Report* at 73.
[99] *See id*. at 72-73.
[100] *See id*. at 73.
[101] *González Testimony* at 10.
[102] *Lifeline NPRM* at para. 88.

*Modernization Order*. It should not be used by the Commission as the impetus to fundamentally alter the program.

### B. The Self-Enforcing Budget Cap Creates Unnecessary Limitations that Would Drive Providers and Recipients Away From the Lifeline Program

NHMC strongly objects to the Commission's proposal to adopt a self-enforcing budget cap that would potentially exclude millions of eligible families from receiving a much-needed Lifeline subsidy. In the NPRM the Commission proposes adopting a "self-enforcing budget mechanism to ensure that Lifeline disbursements are kept at a responsible level and to prevent undue burdens on the ratepayers who contribute to the program."[103] It further justifies the proposal by stating that "a self-enforcing budget is appropriate to ensure the efficient use of limited funds"[104] and "intend[s] for the program to automatically make adjustments in order to maintain the cap in the event the budget is exceeded."[105]

The Universal Service Administrative Co. ("USAC")[106] provides "Eligible Lifeline Population Statistics"[107] showing that as of late 2015, there were 39,721,000 households eligible for Lifeline across the United States and in Puerto Rico, yet overall, only one-third of the eligible population participated in the program. The lack of participation does not alter the Commission's obligation to achieve universal service, which means providing communications access to all people. A self-enforcing budget cap, especially one set on "historical disbursement levels"[108] would thwart Lifeline's purpose by placing an artificial threshold and would prevent Lifeline

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[103] *Id.* at para. 105.
[104] *Id*.
[105] *Id*.
[106] *See* Universal Service Administrative Co., *About USAC*, http://www.usac.org/about/default.aspx (last visited Feb. 21, 2018).
[107] *See* USAC Eligible Lifeline Population Statistics, http://www.usac.org/li/about/process-overview/program-stats.aspx (last visited Feb. 21, 2018).
[108] *Lifeline NPRM* at para. 109.

from reaching less than 100 percent of the eligible population. If the Commission were to cap Lifeline at current participation levels, it would ensure that over two-thirds of the eligible Lifeline recipients would not receive service. It would be especially disastrous to cut off individuals and families that are in need of vital communication services.

This proposal, if adopted, would be a significant deterrent for current Lifeline providers and companies seeking to enter the program. For example, the Commission proposes that if projected disbursements are on track to exceed half of annual cap after six months, then USAC should proportionately reduce support amounts during the remaining six months.[109] The proposed fluctuation in the disbursements would drive out providers, cut off consumers, and add unnecessary administrative burdens and costs to the program. This is in sharp contrast with the goal of this proposal to "ensure the efficient use of limited funds."[110] Further, this proposal would limit the ability of Lifeline to connect the poor and marginalized communities.

The self-enforcing budget cap also purports to prioritize Lifeline spending in the event a cap is reached based on geographic locations, and lists these in regions order of priority: (1) rural Tribal lands; (2) rural areas; and (3) all other areas.[111] Again, this is another example of a proposed change to Lifeline that is in sharp contrast to the FCC's congressional mandate to provide universal service. The ability to attain Lifeline service should be solely based on eligibility criteria[112] and the benefit should not be restricted by the individual's geographic

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[109] *Id*. at para. 106.
[110] *Id*. at para. 105.
[111] *Id*. at para. 108.
[112] *2016 Lifeline Modernization Order* at 4022, para. 169. "Currently, Commission rules requires low-income consumers to have household income at or below 135 percent of the Federal Poverty Guidelines or receive benefits from at least one of a number of federal assistant programs." *Id.* citing 47 CFR § 54.409(a)(2). The federal assistance programs include: Medicaid; Supplemental Nutrition Assistance Program (SNAP); Supplemental Security Income (SSI); Federal Public Housing Assistance; Low-Income Home Energy Assistance Program (LIHEAP); National

location. NHMC reiterates “the best way to constrain the size of the Lifeline benefit is to allow consumers to utilize it as a pathway out of poverty.”[113] Additionally, “given that eligibility is linked directly to income and participation in other governmental benefit programs, as the number of families in poverty or utilizing these services decreases, so too does the size of the eligible population for the program.”[114] Low-income families across the United States and in the territories require Lifeline assistance to connect to communication services, which are necessary to fully participating in the 21st century.

### C. Requiring a Maximum Discount Level for Lifeline Recipients Will Disproportionately Impact Low-Income Consumers

The Commission’s proposal to require a “maximum discount level,” more appropriately described as a co-pay for Lifeline service, could be a cost increase to low-income families that means the difference between getting online or remaining on the wrong side of the digital divide. The NPRM notes that “many service providers use the monthly Lifeline support amount to offer free-to-the-end-user Lifeline service, for which the Lifeline customer has no personal financial obligation.”[115] Takouie Daglian, a current Lifeline recipient, shared how vital Lifeline has been for her since she lives on a very limited SSI income and has many health-related issues.[116] Takouie said that her phone is the only way she can connect with health and emergency services,

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School Lunch Program’s (NSLP) free lunch program; and Temporary Assistance for Needy Families (TANF). Low-income households living on Tribal lands may also qualify by participation in one of several additional assistance programs: Bureau of Indian Affairs (BIA) general assistance; Tribally-administered TANF (TTANF); Head Start (only those meeting its income qualifying standard); or the Food Distribution Program on Indian Reservations (FDPIR). *See id.* at n. 434. “Additionally, consumers may also gain entry to the Lifeline program if they are able to meet eligibility criteria established by a state.” *Id.*

[113] National Hispanic Media Coalition, Reply Comments, WC Docket Nos. 11-42, 09-197, and 10-90 at 18 (Sept. 30, 2015).

[114] *Id*.

[115] *Lifeline NPRM* at para. 112.

[116] *See* Takouie Daglian, Skid Row Forum, at 1:04:45 (May 10, 2017), https://youtu.be/PiR7kXOoqh0?t=1h18m52s.

as well as her family members.[117] She also stressed that she would not be able to afford a phone without Lifeline.[118] In its NPRM the Commission asks, "Do the users of the supported service value that service more if they contribute financially? Are such users more sensitive to the price and quality of the service?"[119] Suggesting that people like Takouie and other families struggling to make ends meet to do not already have sufficient "skin in the game" when it comes to their communications services is offensive – an implication that demonizes the poor.

The impact of adding a co-pay requirement for Lifeline participants at or below 135 percent of the poverty line would have devastating effects. Adding a vindictive eligibility requirement for consumers who could benefit the most from Lifeline does not serve to "improve the Lifeline program's efficiency and further reduce waste, fraud, and abuse."[120] For families that would otherwise qualify for Lifeline, taking on a bill for communications services necessarily comes at the expense of other important needs such as food, healthcare costs, clothing, or school supplies. Providing these types of households with a modest subsidy to stay connected is, in any light, a good and efficient use of funds. Access to communications services is a necessity and should be treated as such by the Commission.

### D. The Commission Must Abandon Changes to Lifeline Or Risk Cutting Off Eligible Recipients and Exacerbating the Devastating Impact of the 2017 Hurricane Season

As stated in NHMC's Motion for Extension of Time[121] and further outlined in a letter sent to Chairman Ajit Pai on October 6, 2017,[122] NHMC is concerned with the devastating

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[117] *Id*.
[118] *Id*.
[119] *Lifeline NPRM* at para. 112.
[120] *Id*. at para. 114
[121] *See* Motion of National Hispanic Media Coalition for Extension of Time, WC Docket Nos. 17-287 et al., (filed Jan. 17, 2018) (*NHMC Motion for Extension of Time*).

impact that the 2017 hurricane season had on the communications infrastructure in Puerto Rico and the U.S. Virgin Islands. Given the enormous impact that this proceeding could have on Lifeline and the individuals who rely on the program for their vital communications needs. However, five months after the last major hurricane hit the islands, millions of Americans are still struggling to connect. Additionally, nearly half a million people are still without power in Puerto Rico,[123] and some reports indicate that areas will not have power until next spring.[124] The FCC's most recent Hurricane Maria communications status report show that cell towers are still out of service on the islands.[125] Even for those individuals within the range of an operational cell site, they still struggle to connect since they cannot charge their communications devices.[126]

The proposals set forth in the NPRM and NOI are also "particularly cruel given the unprecedented devastation and disruption"[127] that the 2017 hurricane season left in its wake.

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[122] *See* Letter from National Hispanic Media Coalition, Center for Media Justice, Color of Change, Free Press, and Public Knowledge to Chairman Ajit Pai, (Oct. 6, 2017), http://www.nhmc.org/fcc- must-aid-puerto-rico.

[123] Ray Sanchez, *Nearly half a million in Puerto Rico still in the dark 4 months after Hurricane Maria* , CNN (Jan. 25, 2018), https://www.cnn.com/2018/01/25/us/puerto-rico-hurricane-maria-power/index.html.

[124] Frances Robles and Jess Bidgood, *Three Months After Maria, Roughly Half of Puerto Ricans Still Without Power*, New York Times (Dec. 29, 2017), https://www.nytimes.com/2017/12/29/us/puerto-rico-power-outage.html.

[125] *See* Federal Communications Commission, Communications Status Report for Areas Impacted by Hurricane Maria (Feb. 16, 2018) https://transition.fcc.gov/Daily_Releases/Daily_Business/2018/db0216/DOC-349289A1.pdf.

[126] *See NHMC Motion for Extension of Time* at 2.

[127] Letter from 18MillionRising.org, Access Humboldt, American Library Association, Appalshop, Inc., Asian Americans Advancing Justice – AAJC, Benton Foundation, Center for Media Justice, Center for Rural Strategies, Color Of Change, Common Cause, Common Sense Kids Action, Communications Workers of America, CREDO, Ellis Jacobs, Attorney for the Greater Edgemont Community Coalition of Dayton Ohio, EveryoneOne, Free Press, Janice Meyers Educational Consulting, LLC, NAACP, National Association of Broadcast Employees and Technicians – CWA, National Congress of America Indians, National Consumer Law Center, on behalf of its low-income clients, National Hispanic Media Coalition, New America's Open Technology Institute, OCA – Asian Pacific American Advocates, Public Knowledge, The Greenlining Institute, United Church of Christ, OC Inc., X-Lab to The Honorable Ajit Pai,

Notably, the impact of the hurricanes and urgent need for the Lifeline program in those areas devastated is neither mentioned nor discussed in the entirety of the *Lifeline Item*. Lifeline is the only way for many individuals to access emergency services and is indeed one of the primary reasons that the FCC created the Lifeline program over three decades ago.[128] In Puerto Rico, 60 percent of the eligible Lifeline population participates in the program – by far the highest rate of participation per eligible household in any state or territory.[129] However, the proposal to remove non-facilities based providers, create a self-enforcing budget cap, and require a co-pay, would result in far-reaching consequences for Lifeline recipients living in these devastated territories and hamper disaster recovery efforts. As Commissioner Rosenworcel accurately notes in her dissent, "[i]nstead of recognizing that there are Lifeline enrollees in Texas, Florida, and Puerto Rico who are using the program to pull their lives back together after devastating storms, we seek to *cut off* their Internet and phone service."[130]

In other proceedings, the Commission explicitly recognized the devastating impact of the 2017 hurricane season and issued waivers of rules related to Lifeline and several other Universal Service Fund programs.[131] In one instance it explained that it "may take into account considerations of hardship, equity, or more effective implementation of overall policy on an

Chairman, et al., *Bridging the Digital Divide for Low-Income Consumers, et al.*, WC Docket Nos. 17-287, et al. at 2 (Nov. 8, 2017).

[128] *See 2016 Lifeline Modernization Order* at 3970, para. 24 (stating that after the passage of the Telecommunications Act of 1996 the dominant role of landline telephone service, and therefore Lifeline, was to connect individuals to emergency services and information).

[129] *See* USAC Eligible Lifeline Population Statistics, http://www.usac.org/li/about/process-overview/program-stats.aspx (last visited Feb. 21, 2018).

[130] Dissenting Statement of Commissioner Jessica Rosenworcel, *Bridging the Digital Divide for Low-Income Consumers et al.,* WC Docket Nos. 17-287 et al., FCC 17-155 (rel. Dec. 1, 2017) (emphasis added).

[131] *See Schools and Libraries Universal Service Support Mechanism*, et al., Order, DA 17-984 (Wireline Comp. Bur. 2017).

overall basis,"[132] giving it the discretion to waive Commission rules. The Commission further found that "extraordinary property damage, personal injury, and disruptions in services caused by the Hurricanes...constitutes extremely unusual circumstances warranting the temporary waiver of the rules and procedures."[133] USAC provides a clear overview of the Commission's Lifeline Program Hurricane Relief Orders on its website.[134] The Commission granted "temporary relief for affected disaster areas in Florida, Georgia, Puerto Rico, and the U.S. Virgin Islands suspended the non-usage rules and granted temporary recertification waivers for affected subscribers, which impacts how Lifeline service providers should report their recertification results on FCC Form 555."[135] This illustrates that, at some levels, the Commission understood the devastating impact of the 2017 hurricane season on the Lifeline program. Additionally, just as the FCC is focused on aiding broadcasters post-hurricane season,[136] it too should focus on ensuring that individuals eligible for Lifeline are connected to the program and cease efforts to narrow the eligible population.

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[132] *Id*. at 2 (internal citations omitted).
[133] *Id.* at 3.
[134] *See* Hurricane Relief, Lifeline Program Hurricane Relief Efforts, USAC, https://usac.org/hr/li-hurricane-relief.aspx (last visited Feb. 21, 2018).
[135] *Id.*
[136] *See* Remarks of FCC Chairman Ajit Pai, "Eye of the Storm: Broadcaster's Role in Emergencies" at the National Association of Broadcasters, Washington, DC (Jan. 18, 2018) ("I should also note that some of our recovery efforts, particularly in Puerto Rico and the U.S. Virgin Islands, are still quite active. We continue to monitor and support communications service restoration where possible through our Hurricane Recovery Task Force. Just last week, the FCC came to the aid of 20 hurricane-affected broadcasters in Puerto Rico and the U.S. Virgin Islands by granting their request to construct post-incentive auction facilities ahead of schedule…. And perhaps most important, this relief will enable residents of Puerto Rico and the U.S. Virgin Islands to access emergency communications and other valuable broadcast content sooner than they would have otherwise.").

## IV. THE NOTICE OF INQUIRY PROPOSES ADDITIONAL LIMITATIONS TO LIFELINE THAT WILL DISPROPORTIONATELY IMPACT LOW-INCOME CONSUMERS IN NEED OF THE PROGRAM AND ARE INTENDED TO FURTHER DESTABILIZE THE LIFELINE PROGRAM

The Commission states in the NOI that it is seeking to find "potential ways to sharpen the focus of the Lifeline program to further promote digital opportunity for all Americans,"[137] yet the NOI proposals as outlined would result in further constricting the program and limiting opportunities for eligible Lifeline recipients. Although the Commission states that the "Lifeline program is an important means of achieving *universal service*"[138] this statement is juxtaposed with the immediately following suggestion that "*[s]harpening the focus* of the Lifeline program would further promote digital opportunity for low-income individuals, and in particular for low-income Americans who have not adopted broadband, or who reside in rural Tribal or rural areas."[139] Clearly, the Commission intends to "sharpen the focus of Lifeline" by sharply narrowing the population of eligible participants, thereby subverting the goal of universal service.

### A. A "Sharpening" of the Lifeline Program Will Unnecessarily Limit the Program and Disproportionately Impact Individuals Who Need It the Most

Altering the Lifeline program in a way that would "help the Lifeline program more efficiently target funds to areas and households most in need of help obtaining digital opportunity"[140] would unnecessarily narrow eligibility requirements, making it harder for deserving low-income families and individuals to subscribe. It is one thing to provide means to

[137] *Lifeline NOI* at para. 132.
[138] *Id*. at para. 119 (emphasis added).
[139] *Id*. at para. 120 (emphasis added).
[140] *Id*. at para. 121.

target Lifeline nonadopters,[141] but quite another, as the Commission suggests, to target Lifeline support at the exclusion of other eligible Lifeline recipients. Some families also subscribe to service one month, but disconnect in another because the service is no longer affordable. The idea of simply targeting "nonadopters" would not help to ensure that all low-income families eligible for Lifeline get and stay connected. The proposed exclusion of eligible low-income families who have already adopted service is problematic and unnecessary. Nevertheless, it is implicit in the Commission's suggestion to "adjust the Lifeline support amount to encourage affordable broadband access for low-income consumers in rural areas,"[142] and to "target Lifeline support to bring digital opportunity to low-income areas where service providers have less incentive to invest in facilities or offer robust broadband offerings compared to other areas."[143] Eligibility requirements for the Lifeline program are well-reasoned and should remain as-is. Any targeting of the program should not narrow the eligibility criteria, but instead look to connect the nearly two-thirds of the eligible population that could benefit from Lifeline.

### B. A Lifetime Benefit Limit Is a Dangerous Approach to a Program Intended to Provide Vital Communications Services

Proposing a lifetime benefit limit to Lifeline support demonstrates the lack of understanding or appreciation for the critical role that the Lifeline program plays in low-income households. The NOI proposal asks whether "the Commission should implement a benefit limit that restricts the amount of support a household may receive or the length of time a household may participate in the program."[144] The question stems from objectives to restrict the program and also to encourage "broadband adoption without reliance on the Lifeline subsidy and

[141] *Id*. at para. 124.
[142] *Id*. at para. 125.
[143] *Id*. at para. 127.
[144] *Id*. at para. 130.

controlling the disbursement of scarce program funds."[145] This implies that the Commission believes there are eligible low-income households that for one reason or another do not deserve or "need" the Lifeline subsidy. Additionally, the Commission rationalizes that this "limit would provide low-income households incentives to *not take the subsidy unless it is needed*, since taking the subsidy in a given month will forfeit the opportunity to use it in a future month."[146] Again, this is a completely unfounded, blanket mischaracterization that demonizes poor and low-income families.

The Commission should immediately abandon the idea of adopting a lifetime benefit limit for Lifeline. If an individual meets the eligibility criteria either through low-income status or by participating in a number of federal programs, the FCC should not impose either a monetary or temporal limit to the support.[147] As the eligibility criteria for the Lifeline program suggests, the program is not meant to serve a specific subset of the population, but rather *all* vulnerable and marginalized communities across our nation. Further, to implement such an unnecessary limitation to the program benefit would require that any Lifeline recipients be tracked for life, triggering an exponential increase in the administrative burdens of the program.[148] Like many stories of overcoming poverty, it may happen in various chapters of life, not necessarily in a continuum. Nonetheless, under the current proposals, being poverty-stricken by natural disaster at one point in life may prevent getting the help required as a senior citizen decades later.

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[145] *Id*.
[146] *Id*. (emphasis added).
[147] *Id*. at para. 131.
[148] *Id*. The Commissions asks, "How could the Commission implement a benefit limit or a time limit with minimal increases in the costs or administrative burdens for Lifeline service providers?" *Id.* Thus recognizing that such a change would lead to administrative burdens.

Lifeline was established to help all those in need of vital communication services without any time limitations as long as the individual meets the eligibility criteria. The Commission does not object to universal benefits being available in perpetuity for corporations,[149] and a different standard should not be applied to the poor and the most vulnerable populations. Since its inception, Lifeline was intended to be a program that offers relief when Americans are in need, and should remain that way.

### C. The Commission Should Measure Success by the Number of Individuals and Households Connected to Lifeline from the Eligible Population

Following the logic and purpose of the Lifeline "program's goals and metrics" [150] that would allow the Commission to "better determine if Lifeline support is truly achieving the purpose of closing the digital divide"[151] would be to ensure that a greater percentage of the eligible Lifeline population gets and stays connected. Although Lifeline helps low-income households afford voice and broadband service in every state and territory, USAC data confirms that not every eligible household is receiving the benefit. The history and purpose of Lifeline also illustrate that it was intended to assist with the "fundamental goal for Congress and the Commission"[152] to achieve universal service since the passage of the Communications Act of 1934.

In the NOI the Commission recognizes that, "outcome-based performance goals and measures have an important role ensuring Lifeline support in achieving Congress's universal

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[149] *See* Dissenting Statement of Commissioner Mignon Clyburn, *Bridging the Digital Divide for Low-Income Consumers et al.,* WC Docket Nos. 17-287 et al., FCC 17-155 at 2 (Dec. 1, 2017) (noting that "this Administration allows universal service benefits to flow in perpetuity for companies.").
[150] *Lifeline NOI* at para. 132.
[151] *Id*.
[152] *2016 Lifeline Modernization Order* at 3969, para. 23.

service goals."[153] Yet, it is wrong in determining that these goals and metrics should "inform the Commission's efforts to sharpen the focus of the Lifeline program."[154] If the Commission is truly committed to achieving universal service it must abandon the NPRM's and NOI's myriad of ill thought and short-sighted proposals. If implemented, they would ultimately reduce access for low-income Americans who are already struggling to stay connected and, in turn, stifle opportunities for them to fully participate in the digital economy.[155]

## CONCLUSION

NHMC respectfully requests that the Commission accept its recommendation to abandon proposals in the NPRM and NOI that would further widen the digital divide. Instead, the Commission should focus on implementing the *2016 Modernization Order*, working to ensure that all eligible Lifeline recipients get and stay connected to vital communication services.

Respectfully Submitted,

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February 21, 2018

[153] *Lifeline NOI* at para. 132.
[154] *Id*.
[155] *See* Adie Tomer and Ranjitha Shivaram, *Rollback of the FCC's Lifeline Program Can Hurt Households that Need Broadband the Most* (Nov. 27, 2017), https://www.brookings.edu/blog/the-avenue/2017/11/27/rollback-of-the-fccs-lifeline-program-can-hurt-households-that-need-broadband-the-most/.