

November 8, 2017

The Honorable Ajit Pai, Chairman
The Honorable Mignon Clyburn, Commissioner
The Honorable Michael O’Rielly, Commissioner
The Honorable Brendan Carr, Commissioner
The Honorable Jessica Rosenworcel, Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Bridging the Digital Divide for Low-Income Consumers, WC Docket No. 17-287; Lifeline Link Up Reform and Modernization, WC Docket No. 11-42; Telecommunications Carriers Eligible for Universal Service, WC Docket No. 09-197*

Dear Chairman Pai, Commissioner Clyburn, Commissioner O’Rielly, Commissioner Carr, and Commissioner Rosenworcel:

We, the undersigned organizations, a diverse group of civil rights, racial justice, media, technology, library, arts, labor, Tribal Nations, and consumer advocates, are deeply troubled by the recent *Draft Lifeline Item*¹ released by the Federal Communications Commission (FCC or Commission) in advance of the November 16, 2017 Open Meeting. This item is an assault on Lifeline. It will severely destabilize the program and erode Lifeline’s promise to bring affordable communications services to low-income households, Tribal households, veterans, the elderly, and people with disabilities. For the reasons stated below, we urge the Commission to immediately reverse course and reject the Lifeline item as currently drafted.

Just as Lifeline was set to catch up with the 21st century, this *Draft Lifeline Item* will put access to affordable broadband further out of the reach for low-income households. Lifeline is the only Universal Service Fund (USF) program that provides targeted assistance to low-income households so that poor families across the country can connect to jobs, complete homework assignments, communicate with healthcare providers, and access emergency services. Limiting provider as well as recipient participation in the program, as the Commission proposes, and turning Lifeline into a program that reaches few and shuts out many, runs counter to the Commission’s stated goal of bridging the digital divide.

¹ See *Bridging the Digital Divide for Low-Income Consumers, et al.*, WC Docket Nos. 17-287 et al., Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC-CIRC1711-05 (draft rel. Oct. 26, 2017) (*Draft Lifeline Item*).

Congress charged the Commission with providing “[c]onsumers in *all regions* of the Nation, including low-income consumers...access to telecommunications and information services.”² This *Draft Lifeline Item* is in direct contravention of that clearly-stated mandate. The plan, as currently drafted, prioritizes networks over people and fails to consider the immediate and negative impact its proposals would have on Lifeline recipients. For example, the *Draft Lifeline Item* is set to exclude non-facilities based providers from the program.³ By focusing on facilities and investment in “broadband-capable networks,”⁴ and eliminating the participation of carriers currently serving the vast majority of present Lifeline recipients, the Commission’s proposal loses sight of Lifeline’s purpose to support the poor, in all parts of the country, and to ensure that they can access modern and essential advanced telecommunications services.

Currently, three-quarters of USF support is directed towards building broadband infrastructure for schools and libraries, rural health care facilities, and rural and remote regions of the country. The Lifeline program is the only universal service program designed to address the affordability barrier to obtaining service at home. Here, the Commission’s proposed actions will have direct and far-reaching consequences for the almost 70 percent of current Lifeline recipients who rely on service from non-facilities based providers.⁵ Removing non-facilities based providers will stifle both competition and choice in the program and severely reduce Lifeline options in all fifty states, Tribal lands, Puerto Rico, and the United States Virgin Islands, for the nearly 45 million households and over 126 million people eligible for Lifeline.⁶ The impact on Puerto Rican Lifeline customers alone would be particularly cruel given the unprecedented devastation and disruption Hurricane Maria inflicted on the island’s telecommunications networks and infrastructure.

The *Draft Lifeline Item* also seeks to eliminate the Lifeline Broadband Provider (LBP) designation process⁷ which was intended to bring new and innovative broadband-only providers into the program. On February 3, 2017, the Commission paralyzed the LBP designation process by revoking the designations of nine LBPs, which curtailed opportunities for poor people to connect to broadband.⁸ The proposal to eliminate altogether the LBP designation process would undermine efforts to improve the Lifeline broadband program and permanently stifle the robust competition contemplated in the 2016 *Lifeline Modernization Order*. Moreover, the proposal fails to address that over 80 telecommunications providers, including many facilities-based providers such as AT&T, Cox Communications, Charter and Verizon, opted out of providing Lifeline broadband service late

² 47 U.S.C. § 254(b)(3) (emphasis added).

³ See *Draft Lifeline Item* at para. 64.

⁴ *Id.* at para. 64.

⁵ 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).

⁶ Free Press analysis of U.S. Census Bureau March 2016 Current Population Survey.

⁷ See *Draft Lifeline Item* at para. 55.

⁸ See generally *Telecommunications Carriers Eligible for Universal Service Support, Lifeline and LinkUp Reform and Modernization*, WC Docket Nos. 09-197, 11-42, Order on Reconsideration, DA 17-128 (Feb. 3, 2017).

last year.⁹ Considering that facilities-based providers have explicitly told the Commission on multiple occasions that they do not want to serve the Lifeline population, it is unrealistic to assume that these providers will fill the void without being mandated to do so if non-facilities based providers are eliminated from the program.

These proposed changes to the Lifeline program are contrary to the fundamental principle of universal service that all Americans should have access to communications. The “sharpening” of the Lifeline program to systematically exclude entire communities and sub-demographics of poor people is a clear failure on the Commission’s part to recognize and address the main factor driving the digital divide: affordability of broadband service. Bridging the digital divide requires that Commission retain reducing the cost of broadband for all Americans as a top priority. As Free Press’ report *Digital Denied* explains, affordability is the most important factor to low-income families when considering whether to adopt broadband.¹⁰ Affordability is also 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.¹¹ And, unfortunately, too many low-income families still lack access to home broadband, which was illustrated in a recent Common Sense Media report finding that one in four young kids in lower-income homes do not have high-speed access.¹²

The *Draft Lifeline Item*’s proposals make the erroneous and dangerous assumption that the Lifeline benefit must be even further constrained in order for individuals to “value” the benefit. The item proposes a misguided and unnecessary self-enforcing budget cap,¹³ a maximum discount level,¹⁴

⁹ See *80 Telecommunications Providers Opt-Out of Helping Low-Income Americans with Broadband Access Through Lifeline Program*, National Hispanic Media Coalition (Dec. 16, 2016), <http://www.nhmc.org/80-telecommunications-providers-opt-out-of-helping-low-income-americans-with-broadband-access-through-lifeline-program/>.

¹⁰ See S. Derek Turner, Free Press, *Digital Denied: Systemic Racial Discrimination in Home-Internet Adoption* (Dec. 2016), https://www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf.

¹¹ *Id.* 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.”). https://www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf.

¹² See Common Sense Media, *The Common Sense Census: Media Use by Kids Age Zero to Eight* (2017), <https://www.commonsensemedia.org/research/the-common-sense-census-media-use-by-kids-age-zero-to-eight-2017>.

¹³ See *Draft Lifeline Item* at para. 100 (“We propose to adopt 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.”).

¹⁴ See *id.* at para. 111 (stating that “Lifeline customers ha[ve] no personal financial obligation” and asking if “users of the supported service value that service more if they contribute financially?”).

and a lifetime benefits limit that would deprive otherwise eligible individuals of continued and necessary support.¹⁵ These proposals fail to recognize that for most poor people, paying a bill for an essential communications service may well mean forgoing food, healthcare, clothing, school supplies, and other basic necessities. Additionally, continuity of access is a challenge for the poor who, because of limited cash flow, are too often a medical emergency or car repair away from losing connectivity. The increase in service cost could be the difference between getting or staying online, or staying instead on the wrong side of the digital divide. Suggesting that families struggling to make ends meet do not have sufficient “skin in the game” is an offensive mischaracterization of the situation faced by the most vulnerable people in America. Access to communications is as much a necessity for them as for anyone. Constraining the program in the proposed manner would not only harm those individuals, it would further discourage providers from participating in the program.

Finally, Tribal lands will be immediately impacted by this *Draft Lifeline Item*, which runs counter to the Commission's 2000 Policy Statement and to its commitment to work closely and in consultation with all Tribal Nations on a government-to-government basis.¹⁶ The *Draft Lifeline Item* includes significant actions, including new mapping provisions, the program budget cap, and a Lifeline customer cap, that will further disadvantage Tribal Lifeline customers. Additionally, close to 60 percent of Tribal Lifeline customers are served by non-facilities based providers. Eliminating these resellers immediately, as the Order proposes, would have dire repercussions on keeping Tribal customers connected to essential telecommunications.

More importantly, it does not appear that the Commission has engaged in meaningful Tribal consultation as contemplated by the Commission's 2000 Policy Statement, which includes a commitment and goal to "consult with Tribal governments prior to implementing any regulatory action or policy that will significantly or uniquely affect Tribal governments, their lands and resources."¹⁷ The National Congress of American Indians (NCAI), in its Resolution #MSP-15-036, specifically urged “the FCC to have meaningful government-to-government consultation with sovereign tribal nations consistent with Executive Order 13175 and the FCC’s 2000 Statement of Policy.”¹⁸ In reply comments filed in the Lifeline Modernization dockets in 2015, NCAI also asked the Commission to “be proactive with tribal engagement and consultation to ensure that tribal

¹⁵ See *id.* at para. 117 (“We...ask about implementing 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.”).

¹⁶ *Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes*, Policy Statement, FCC 00-207 (Media & CBO 2000).

¹⁷ *Id.* at 4.

¹⁸ The National Congress of American Indians, Resolution #MSP-15-036, Preserve the Universal Service Fund Lifeline & Link Up Programs for All Tribal Lands and All Native Peoples (2015), http://www.ncai.org/attachments/Resolution_ylGEdzzoQfAXfWjTAyAqbAuHyXiTEbhOrUfJIJyXpGMXMjHwNjx_MSP-15-036.pdf.

matters and concerns are addressed prior to adoption of rules.”¹⁹ The Commission must do so here and meaningfully engage with Tribal governments before it takes any further action on any portion of this *Draft Lifeline Item*.

For these reasons, we respectfully request that the Commission retract this *Draft Lifeline Item*, halt any further efforts to undermine the Lifeline program, and focus instead on ensuring that poor and vulnerable populations are able to connect and stay connected to our modern telecommunications system.

Sincerely,

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
EveryoneOn
Free Press
Janice Meyers Educational Consulting, LLC
NAACP
National Association of Broadcast Employees and Technicians - CWA
National Congress of American 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

¹⁹ National Congress of American Indians Reply, WC Docket Nos. 11-42, 09-197, 10-90, 4 (Sep. 30, 2015).