Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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 FREE PRESS

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I. Executive Summary

In this proceeding, the Commission tees up a series of draconian changes to Lifeline that, if adopted, would abandon the majority of current Lifeline recipients and leave millions of poor people without affordable communications options. This contravenes Lifeline's main purpose: to ensure that low-income consumers have the opportunities and security that broadband and telephone telecommunications services enable, including the ability to connect to jobs, family, education, and emergency services.

The Commission's proposals will do little, if anything, to curb the alleged waste, fraud, and abuse that the Commission majority has exploited and overstated to justify this blatant war on the poor. In reality, Lifeline is an increasingly small portion of the Universal Service Fund[1] and, as Free Press explained in recent testimony before the Senate Commerce Committee, the waste, fraud and abuse narrative is overblown, offensive, and based on stale data.[2]

The proposals in this *Notice* of course do not purport to be biased towards any particular group, but they are patently discriminatory, both in isolation and when combined with a communications market structure itself littered with structural barriers preventing people of color from equitable participation. Far from bridging the digital divide, the Commission's proposals would further cement systemic racism and inequality in this country. As Free Press's report *Digital Denied* revealed, systemic racism in the credit industry and the telecommunications

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[1] USAC projections for the first quarter of 2018 indicate that the Lifeline and Link Up programs will collectively account for just 15 percent of the overall Universal Service Fund. The High Cost program accounts for 54 percent and the Schools and Libraries program 26 percent. *See* Universal Service Administrative Company, "Federal Universal Service Support Mechanisms Fund Size Projections for First Quarter 2018" (Nov. 2, 2017).

[2] *Addressing the Risk of Waste, Fraud and Abuse in the FCC's Lifeline Program: Hearing Before the S. Comm. on Commerce, Sci., and Transp.*, 115th Cong. (2017) (statement of Jessica J. González, Deputy Director and Senior Counsel, Free Press Action Fund).

sector (including lack of affordability) has significantly contributed to the digital divide and resulted in inferior broadband access for Black, Latinx and Native American people.[3] The *Notice*'s proposals would exacerbate, not improve, this bleak reality.

For instance, eliminating LBPs from the program or forcing a state-by-state designation process for them would significantly reduce Lifeline options across the country. It would leave large swaths of the country underserved or underserved, and reduce competition in the broader wireless market. Stunningly, on this point (and many others), the Commission never asks if the reversal of the *2016 Lifeline Reform Order*'s LBP designation process is good policy. It's not.

The radical proposal to remove resellers from Lifeline departs from three decades of Commission efforts to better serve the poor, and it would snatch away service from more than 70 percent of current Lifeline participants. The Commission's *2016 Lifeline Reform Order* correctly concluded that "forbearance from the facilities requirement will enhance competition among retail providers that service low-income subscribers." The instant *Notice* does not refute prior findings on resellers' importance to the Lifeline program's core goal of making telecommunications services more affordable to low-income households, because any such attempted refutation would be balderdash, not to mention in direct conflict with years of Commission precedent. Here's the truth: under the *Notice*'s proposals, Lifeline subscribers' options for affordable broadband and telephone services would be slim to none.

Moreover, the Commission's purported rationale for removing non-facilities based carriers from Lifeline is to expand deployment, which is as dubious as it is out of sync with Lifeline's long-standing purpose: to make indispensable telecommunications services more

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[3] S. Derek Turner, Free Press, *Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption*, 71-76 (Dec. 2016) ("*Digital Denied*").

affordable for the poor. Lifeline is not an infrastructure program. And even assuming, *arguendo*, that it were, a $9.25 subsidy solely available to LECs and a handful of facilities-based CMRS carriers would not result in LECs more quickly upgrading their DSL facilities to fiber in poor areas. In short, the economic realities of the telecommunications market demonstrate that reducing the pool of Lifeline carriers is unlikely to create even a marginal positive impact on facilities-based carrier revenues and deployment. Nor would any such marginal change in deployment (if any) offset the harm to low-income consumers who use the existing subsidy to subscribe to MVNO carriers that will be removed from the program.

Proposals in the *Notice* to cap the program are similarly cruel, unjustified, and likely to produce discriminatory impacts. For instance, the self-enforcing budget proposal could arbitrarily deny service to Lifeline-eligible families, and the lifetime benefits limit is unwarranted and would disproportionately harm seniors, people with disabilities, and others who necessarily rely on the social safety net for longer periods of time.

Finally, although Free Press agrees with the Commission's purported goal of bringing non-adopting households online, the Commission should not lose sight of the fact that Lifeline's primary purpose and value is not to increase adoption but to provide income support and stability for families struggling in poverty.

In light of the foregoing, Free Press[4] respectfully requests that the Commission terminate this proceeding.

II. Background

In 2016, the Commission modernized Lifeline for the digital age, recognizing that Americans need broadband to meet their basic needs and to participate in society.[5] The *2016 Lifeline Reform Order* adopted an additional set of reforms beyond those the Commission had already adopted in 2012[6] to curb waste, fraud and abuse. The Commission created a streamlined federal process for broadband providers to participate in Lifeline to facilitate innovative business models providing low-cost, high quality services for low-income people, and to increase carrier participation in the program, thereby spurring competition. In December 2016, the Commission approved nine Lifeline Broadband Providers (or "LBPs") to begin providing service. In February 2017 however, shortly after Chairman Pai took the helm at the agency, the Commission revoked

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[4] Free Press is a national, nonpartisan organization working to reform the media, to increase public participation in crucial media and telecommunications policy debates, and to foster policies that will produce a more competitive, equitable and public-interest-oriented media and communications ecosystem. Free Press is the largest media reform organization in the United States, with more than 1.4 million activists and members nationwide. Over 25,000 of Free Press' members (and counting) have signed a petition calling on the FCC to stop this proceeding, with over 6,500 of them sharing personal stories about how this proposal would negatively harm them.

[5] *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 Reform Order*").

[6] *Lifeline and Link Up Reform and Modernization* et al., WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("*2012 Lifeline Reform Order*"). "In 2011 and 2012 the Commission, with the help of the Federal-State Joint Board on Universal Service, comprehensively reformed the program to address waste and abuse." *2016 Lifeline Reform Order* ¶ 25.

those approvals,[7] stranding over 17,000 subscribers who had already started receiving service from one of the providers[8] and denying potential service to countless others. Now, over a year later, these LBP applications, along with several dozen others that the Commission has failed to act upon, remain on hold, limiting greater Lifeline broadband competition.[9]

Lifeline modernization is critical for poor people and people of color, who are more likely to be on the wrong side of the digital divide, and who cite the high cost of broadband as a major adoption barrier.[10]

The digital divide disproportionately affects low-income people and people of color. As of mid-2015, 81 percent of Census identified non-Hispanic Whites were connected to home broadband, compared to only 70 percent of Hispanics and 68 percent of Blacks.[11] Only 49 percent of households with annual family incomes below $20,000 have internet in the home, compared to nearly 90 percent of households with incomes above $100,000.[12] But income inequality and other socio-economic factors alone do not explain the disparity in home

[7] *See Telecommunications Carriers Eligible for Universal Service Support, Lifeline and LinkUp Reform and Modernization*, WC Docket Nos. 09-197, 11-42, Order on Reconsideration, 32 FCC Rcd 1095 (2017) ("*Revocation Order*").

[8] *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).

[9] In February 2017, Free Press sent a letter to the FCC on behalf of 37 organizations requesting reversal of the *Revocation Order*. The letter explained that, if properly and expediently executed, modernization of the Lifeline program to support broadband would help to close the affordability gap. The lack of affordable options is a driving force behind an ongoing digital divide that disproportionately harms poor people and people of color. *See* Letter from Jessica J. González, Free Press *et al.*, to Chairman Pai, Commissioner Clyburn, Commissioner O'Rielly, WC Docket No. 11-42 (filed Feb. 23, 2017).

[10] *See generally* Turner, *supra* note 3.

[11] *Id.* at 27.

[12] *Id.* at 25; *see also id.* at 26 fig. 3.

broadband adoption. Free Press's report *Digital Denied* found that the "racial and ethnic adoption gap persists [even] among the poorest households"[13] suggesting that "structural racial discrimination or other structural factors beyond simple income differences" are to blame for the disparity in home broadband adoption.[14] *Digital Denied* found that, "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."[15]

Furthermore, the data indicates that increasing the availability and affordability of pre-paid broadband services would have a substantial impact on adoption in low-income communities of color.[16] Thus "all efforts that reduce the price of home internet access and increase its affordability will help overcome the impacts of income inequality and systemic discrimination in other areas of American society."[17]

In May of 2017 the Government Accountability Office's ("GAO") Forensic Audits and Investigative Service team released a report, "Additional Action Needed to Address Significant Risks in FCC's Lifeline Program." In short, the report highlights the importance of Lifeline but fails to demonstrate systemic fraud in the program. The investigation period predates the Commission's *2016 Lifeline Reform Order*, and therefore does not account for the many reforms instituted therein.

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[13] *Id.* at 63.

[14] *Id.*

[15] *Id.* at 4.

[16] *See id*. at 6, 8, 12, 15.

[17] *Id*. at 76.

The Commission majority has seized upon this report to legitimize present attacks on the program, but the facts in this report do not merit the extreme actions proposed in this proceeding. The GAO analyzed data from 2012 through 2014 in its attempt to confirm participant eligibility and examine the processes that carriers use to confirm such eligibility.[18] But the data gathered during this time period was compiled before and during implementation of the Commission's 2012 reforms to reduce waste, fraud and abuse of these signup processes. The GAO completed its work long before the Commission had even adopted its 2016 reforms, which made internet services part of the subsidy program.[19] The 2016 order also initiated additional eligibility determination reforms beyond those adopted in 2012.

In other words, the report's findings are a snapshot of a program since modernized and improved several times over. If there is anything to glean from this report, it is that the GAO was unable to confirm the eligibility of 30 percent of Lifeline users it examined, but it did not determine that these individuals were in fact ineligible. Indeed, GAO only examined three of the programs people can use to prove their eligibility (SNAP, Supplemental Security Income and Medicaid) from what the GAO described as a "nongeneralizable selection of states,"[20] but in fact there are many other ways to qualify for Lifeline besides participation in those three programs.[21]

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[18] USAC, GAO-17-538, *Additional Action Needed to Address Significant Risks in FCC's Lifeline Program* at 69, 71 (2017) ("*GAO Report*").

[19] *See generally 2016 Lifeline Reform Order*.

[20] *GAO Report* at 69-71.

[21] *Lifeline: Do I Qualify?*, USAC (last visited Feb. 20, 2018), http://www.usac.org/ls/do-i-qualify/default.aspx#programs. People may qualify for Lifeline if they or someone in their household uses SNAP, SSI, Medicaid, Federal Public Housing Assistance, Veterans Pension and Survivors Benefit, Tribal Programs, or if their income level is at or below 135 percent of the federal poverty guidelines. In addition, during the time period of GAO's investigation, one could also qualify for Lifeline by being on the Low Income Home

In addition, the *GAO Report* explains that states collect and maintain their own Medicaid data, that they "can take up to 3 years to update their Medicaid data, and as a result beneficiaries can be excluded or included retroactively,"[22] and "the consistency, quality and completeness of the data can vary from state to state."[23] The *GAO Report* clarifies:

> [t]he results of our data matching are not generalizable to any other state or qualifying Lifeline program. It is not possible to determine from data matching alone whether these matches definitively identify recipients who were not eligible for Lifeline benefits without reviewing the facts and circumstances of each case. For example, we could not identify based on the data alone whether there were data-entry errors at the time of enrollment incorrectly stating the qualifying Lifeline program presented by the subscriber at the time of enrollment.[24]

The GAO also conducted undercover investigations from June 2014 through May 2017,[25] a period that predates implementation of the most critical *2016 Lifeline Reform Order* reforms. It submitted 21 Lifeline applications using false information and falsified supporting documents.[26] According to the GAO, it procured service from 12 of the 19 Lifeline providers to whom it submitted under these false pretenses.[27] Yet the GAO itself underscored that the "undercover tests were for illustrative purposes and are not generalizable."[28] And although it was able to

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Energy Assistance Program ("LIHEAP"), Temporary Assistance for Needy Families ("TANF"), or the National School Lunch Program ("NSL").

[22] *GAO Report* at 71.

[23] *Id.*

[24] *Id*. at 72.

[25] *Id.* at 73.

[26] *Id.* at 72-73.

[27] *Id.* at 44. The GAO does not explain the distribution of the 21 applications it submitted, as described on page 73 of the *GAO Report*, between the 19 providers it reported about on page 44. We presume that GAO submitted multiple applications to certain of these providers.

[28] *Id.* at 73.

leverage its expertise to deceive certain Lifeline providers, by its own admission GAO's result does not prove that this essential program is plagued by fraud.

Indeed, as GAO plainly states, the "FCC's planned National Verifier may address many of the issues we identified with the FCC's and USAC's oversight of the Lifeline provider operations if it is fully implemented by the current planned date of 2019."[29]

III. The Commission's Proposed Policy Changes Will Not Achieve Its Stated Goals, And Instead Will Harm The Poor And Reduce Competition.

The Commission claims the *Notice* is aimed at closing the income-related broadband adoption gap, but none of its proposed policy changes would make a positive step towards that goal. Chairman Pai's proposed "reforms" risk widening the digital divide instead, not bridging it, while unnecessarily imposing cruel hardships on our nation's most vulnerable people. That the Commission fails to understand this is not surprising, given that the *Notice* contains very little data or policy analysis to back its implausible rationales. Instead of dispassionate data analysis and reasoned consideration of alternatives and their likely outcomes, the *Notice* determines that its conclusions are the correct policies, simply because they align with the Commission majority's radical ideology. Chairman Pai and his colleagues in the majority embrace the backwards notion that assistance to the poor is the problem to be solved in this proceeding, not the condition of poverty itself. They suggest – whether facetiously or ignorantly, it is hard to say – that by eliminating Lifeline assistance, the Commission will somehow better connect poor people to broadband.

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[29] *Id.* at 57-58; *see also* González Testimony (explaining, in detail, how the National Verifier and other program integrity measures adopted in 2016, and not reflected in the GAO report, will curtail waste, fraud and abuse).

The Commission has failed to undertake the rigorous analysis required to answer the central question about that extraordinary claim: are the proposals in the *Notice* better public policy than the status quo? Were the Commission to undertake such an analysis, the answer would be plain: no. Specifically, the Commission's proposals to purge Lifeline Broadband Providers ("LBPs") from the list of Eligible Telecommunications Carriers ("ETCs"); to eliminate telecommunications resellers from the program; and to create a self-imposing budget for the entire program, a maximum discount level for individual recipients, and a lifetime limit for individual recipients would frustrate the stated purpose of this proceeding and harm millions of people. These proposals would harm poor individuals and families that do rely or could rely on Lifeline, and disproportionately harm people of color, veterans, people with disabilities and the elderly – as each of these groups are overrepresented among the low-income population. The Commission should not adopt the harmful proposals put forward in this proceeding.

A. Adopting A State-By-State LBP Designation Process Or Eliminating The LBP Category Outright Would Reduce Lifeline Options For People Across The Country.

The *Notice's* proposed changes to the LBP policies the Commission adopted in 2016 would harm current and potential Lifeline subscribers and likely reduce competition in the Lifeline market in a significant way. This subset of carriers that should be eligible to provide Lifeline service includes those who do not offer "telephone exchange service and exchange access."[30] Broadband-only carriers, such as wireless internet service providers ("WISPs"), may

[30] *2016 Lifeline Reform Order* ¶ 267 ("As a result, pursuant to our authority under section 10 of the Act, we grant certain forbearance from applying the provision of section 214(e)(6) requiring carriers to be providing telephone exchange service and exchange access. In particular, we forbear from applying that provision to carriers seeking designation from the Commission as an LBP that do not otherwise provide a service or services already classified by the Commission as telephone exchange service and exchange access. We conclude that doing so will help

be the best option to serve qualifying households that either have little or no need for traditional voice services, or that would rather apply their Lifeline subsidy to home broadband services instead using that support for the limited plans offered by cellular carriers.

i. The Commission Should Not Adopt A State-By-State LBP Designation Process for Broadband-Only Carriers.

The *Notice* proposes to reverse the legally sound policy of allowing providers of broadband interstate telecommunications services to apply for a single, nationwide ETC designation from the FCC, in lieu of applying with each individual state.[31] That proposal seems however to be a sideshow, given that the *Notice* also concludes that the LBP category must be completely eliminated.[32] Yet even on its own terms, this suggestion – that FCC cannot certify eligible providers , and that states might exercise jurisdiction over carriers that solely provide interstate service – makes no sense. A broadband-only Lifeline provider would not be subject to state jurisdiction, pursuant to Section 214(e)(6) of the Act, which stipulates FCC designation decisions on eligibility status for carriers "not subject to the jurisdiction of a State commission."

maximize the potential for the widest possible participation by broadband Internet access service providers in a manner targeted to our policy objectives in this proceeding.") (internal citations omitted).

[31] The *Notice* concludes that the Commission "erred" in its preemption of states making LBP ETC designations, *Notice* ¶ 55, and notes pending legal challenges to this aspect of the *2016 Lifeline Reform Order*. However, nothing in the *Notice* addresses the *2016 Lifeline Reform Order's* legal arguments on its preemption authority in this instance for broadband-only carriers, which offer services that are not purely intrastate telecommunications services. *See 2016 Lifeline Reform Order* at 4052 n.667 (citing *NARUC v. FCC*, 880 F.2d 422, 429 (D.C. Cir. 1989), which stated in part "the only limit that the Supreme Court has recognized on a state's authority over intrastate telephone service occurs when the state's exercise of that authority negates the exercise by the FCC of its own lawful authority over interstate communication") (emphasis in original).

[32] *Notice* ¶ 58.

In the process of this elaborate charade to eliminate first any federal designation process for such providers, and then any broadband-only carriers that might have made use of it, the *Notice* doesn't even ask if requiring all Lifeline carriers to offer traditional telephone exchange services is good policy. It simply asks "[h]ow would reversing the preemption in the *2016 Lifeline Reform Order* impact the future of LBPs in the Lifeline program?" And even this is a cynical question, as the *Notice* clearly indicates the Commission majority's minds are completely made up on this point.[33] Indeed, the *Notice* goes much further and pre-concludes – without any policy analysis – that Lifeline carriers must all be telephone exchange access carriers (and facilities-based; *see* discussion below), because this would "better reflect the structure, operation, and goals of the Lifeline program, as set forth in the Communications Act, as well as related state programs."[34] This conclusion is not only unsupported by any formal policy and data analysis, it is a wild misreading of the Act's language on the Lifeline Program, and of the broad authority Congress granted the Commission to administer the program in an evolving telecommunications market.[35] The emphasis on traditional voice services and the states' role in

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[33] Though the *Notice* asks this question, it is clear that the majority has decided the answer, including from other questions the *Notice* poses such as "[w]hat rule changes would be needed to restore the traditional state and federal roles for ETC designations?" It is puzzling why the Commission asks such questions, given the *Notice* concludes that eliminating the LBP category is the right path (*see id.*).

[34] *Notice* ¶ 58.

[35] The Lifeline program was not originally a creation of the Communications Act, but of the Commission, to reflect its general mission in Section 1, as well as its authority under Sections 4(i), 201, and 205. The only mention of the Lifeline program in the 1996 Amendments to the Communications Act is contained in Section 254(j). This section merely states that nothing about the amendments made in the 1996 Telecom Act should be construed to affect the then already existing Lifeline program. When interpreting this Section the Federal-State Joint Board concluded, and the Commission affirmed, that "Congress did not intend for section 254(j) to codify the existing Lifeline program, but that it intended to give the Joint Board and the Commission permission to leave the Lifeline program in place without modification, despite

regulating intrastate voice carriers is also highly hypocritical and short-sighted of the Commission, given its longstanding silence on the regulatory status of interconnected VoIP services that are rapidly supplanting such traditional switched voice offerings. It is also a perplexing focus for an agency that itself recognizes that broadband is the present and future of the telecom services market.

The facts strongly demonstrate that both the existence of LBPs and the *2016 Lifeline Reform Order*'s process for the Commission granting these carriers ETC status is in fact good public policy, consistent with the Act as well as the Commission's long-stated goals for the program. The *2016 Lifeline Reform Order'*s justifications on these matters are based in reasoned policy analysis, while the instant *Notice*'s justifications for eliminating LBPs and their designation process are incoherent and circular.

Consider the following irrefutable facts:

- Non-telephone exchange carriers (such as some Mobile Virtual Network Operators ("MVNOs") and WISPs) wish to provide Lifeline broadband-only services to needy customers.
- Many Lifeline-eligible households would strongly prefer an uncapped home broadband service that all members of the household could use simultaneously, which no current smartphone Lifeline plan allows.
- Non-telephone exchange broadband carriers are willing to offer Lifeline customers some discounted broadband services that are far and away more robust than mobile cellular broadband options, and that are far more equivalent to the wired broadband connections used by the substantial majority of broadband-adopting households.[36]

Lifeline's inconsistency with other portions of the 1996 Act." The Joint Board further concluded that "it had the authority to recommend, and that the Commission has the authority to adopt, changes to the Lifeline program to make it more consistent with the 1996 Act." *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, ¶¶ 331-35 (1997) ("*1997 Universal Service Order*").

[36] For example consider the services that would have been available from Spot On Networks, one of the LBPs that received conditional LBP ETC designation from the Commission in

- Such carriers are uniformly smaller in size than established incumbent local exchange carriers ("ILECs") and national CMRS carriers, and have fewer resources compared to these incumbents.

Requiring such smaller carriers to obtain ETC status on a state-by-state basis to offer broadband-only services would raise very high (if not insurmountable) entry barriers. Moreover, some of these LBPs offer neither telephone exchange services nor intrastate services. In other words, some providers offer only broadband services, and thus they are broadband-only carriers, not just carriers that could offer traditional voice service to Lifeline recipients but that also happen to make a standalone broadband offer. These broadband-only carriers couldn't qualify for ETC status under the framework of this *Notice*, depriving Lifeline-eligible households of the same "reasonably comparable" competition and choice enjoyed by all other households. Indeed, (although it's not addressed in the *Notice*), it is undeniable that having a greater number of telecommunications marketplace competitors generally results in lower prices and better services. This is not simply a matter of fact in the general telecom market (or really any market), but untested for Lifeline itself. It was actually the observed outcome in the Lifeline program once the Commission granted Lifeline-only status to additional wireless MVNOs.[37]

December 2016. Spot On Networks petitioned for LBP status to serve public housing units in New York Housing Authority buildings in a single ZIP code in the Borough of Queens. Before Chairman Pai ripped away their ETC status, they were poised to offer qualifying residents in these buildings a Lifeline service that delivered users a symmetrical 20 megabits per second (Mbps) unlimited data connection using fixed wireless technology. Such a service would have enabled all members of a single family to go online at the same time. For many families this service would provide much more utility than do typical current CMRS Lifeline services, which generally consist of a single, low-end smartphone with less than one gigabyte of monthly data.

[37] For example, in 2005, the Commission changed course from its prior policy and granted MVNO provider Tracfone the first ever Lifeline-Only ETC waiver. In 2008, TracFone, began to draw Lifeline funds, and became a state-designated ETC in 10 states and the District of Columbia. Tracfone's initial MVNO Lifeline monopoly came to an end in 2009 when the Commission granted Virgin Mobile a similar waiver, followed by iWireless, Allied, Consumer Cellular and others in 2010. TracFone initially offered Lifeline subscribers 68 free monthly

These facts point to the correct decisions in previous Lifeline reform proceedings, that this new proceeding seems bent on undoing: the LBP category is critical to maximizing the efficiency and utility of the Lifeline subsidy in the broadband era. The *2016 Lifeline Reform Order's* decision to preempt state designation of LBPs (while not altering carriers' ability to apply for ETC status with the states, nor altering in any way the state's own subsidy programs)[38] is likewise critical to the program's success, and necessary for carriers who only offer interstate broadband telecommunications access services. While parties like NARUC raise reasonable concerns about the possible negative outcomes of this narrow preemption (*e.g.*, creating inconsistencies between state-run programs and the federal program), these concerns seem exaggerated in reality. A state-only ETC designation process would likely result in less choice and competition for millions of low-income users residing in states whose political actors disfavor programs that assist the poor.[39] The instant *Notice* simply does not offer any reasoned

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minutes, increasing this to 250 minutes once Virgin Mobile entered the program with a 200 minute per month offering. *See* Comments of Free Press, *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, WC Docket No. 11-42 (filed Aug. 31, 2015) ("Free Press 2015 Lifeline Comments").

[38] *See, e.g.*, *2016 Lifeline Reform Order* ¶¶ 286-87 ("Nothing in this Order preempts states' ability to develop and manage their own state Lifeline programs. Nor does the creation of the LBP designation disturb states' current processes for designating non-LBP ETCs, where they retain jurisdiction. In these ways, states will continue to play an important role in the administration of state Lifeline programs and traditional non-LBP ETC designations, where state law grants them authority to do so. . . . Nothing in this Order preempts states' ability to create or administer such state-based Lifeline programs that include state funding for Lifeline support to support voice service, BIAS, or both.").

[39] *See, e.g.*, *id.* ¶ 236 n.634 (citing Tracfone's comments indicating that some state ETC designation petitions have remained pending "for several years."). While some such delays may have resulted from typically slow administrative processes, it is also possible that anti-welfare ideology and systemic biases could have resulted in some states refusing to act on ETC petitions, and this could occur in the future too if Lifeline support even for interstate services must always run through a state designation process. That certain states declined to accept additional Medicaid funding offered under the Affordable Care Act for purely political reasons illustrates

explanation for the Commission to overturn the *2016 Lifeline Reform Order*'s conclusion that a federal LBP ETC designation process is necessary in part "to prevent petitions from pending longer than is necessary to ensure the continued integrity of the program and protection of consumers."[40]

ii. The Commission Should Retain the LBP Category.

Any discussion concerning the state or federal designation process for LBPs may not even be relevant in light of the *Notice's* plan to eliminate this category of ETC altogether. The Commission's rationale for this radical policy shift is paper-thin. It's a vague, circularly-reasoned conclusion that is not backed by substantive policy analysis or data.[41] The *Notice* proposes to eliminate LBPs, yet fails to explore the trade-offs, costs, or impacts of such a drastic action on Lifeline users and the broader telecom market. Any good-faith proceeding to improve Lifeline and allegedly bridge the digital divide should explore these analytical questions in depth.

The Commission should not eject LBPs from the program, and instead should move forward with the federal LBP designation process that it put on ice in February 2017. Allowing individual users freedom to choose which services best suit their needs will maximize program

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the very real possibility that the *Notice*'s policy reversal could result in ideologically-driven state policymakers letting ETC applications languish. *See, e.g.,* Alison Kodjak, "States That Declined To Expand Medicaid Face Higher Costs," *National Public Radio* (Oct. 15, 2015).

[40] *2016 Lifeline Reform Order* ¶ 258.

[41] *Notice* ¶ 58 ("We also propose 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.").

effectiveness and efficiency, a foundational pillar of economic theory.[42] In an era when a person of limited means could make "phone" calls and send "text" messages using an internet access telecom service that connects to an over-the-top communications application (such as WhatsApp, Facetime/iMessage, Signal, Skype, Google Voice, etc.), and when all people are making fewer voice calls,[43] it is both paternalistic and inefficient for the Commission to require that Lifeline recipients spend their subsidies on a plan that includes (or a carrier that is required to offer) traditional voice and SMS. (As we have explained in prior Lifeline proceedings, it is also paternalistic and inefficient to eliminate all support for traditional voice services, since some Lifeline users might find greater utility in retaining traditional wireless or wireline offerings. But supporting an offer of traditional voice services, and leaving the choice to the program's intended beneficiaries, is a very different proposition than requiring all Lifeline providers to offer traditional voice.)

In the end, eliminating choices for Lifeline recipients that would choose a data-only option from a broadband-only carrier is particularly unfortunate when the presence of voice and SMS in the service plan reduces the already-paltry amount of data the $9.25 monthly subsidy can

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[42] *See, e.g.*, Leon Walras, *Elements d'Economic politique pure* (William Jaffe trans., Allen & Unwin 1954) (1874).

[43] *See, e.g.*, "You Used To Call Me On My Cell Phone: Trends In The U.S. Telecom Industry," *Nielsen* (Oct. 29, 2015) ("According to Nielsen Mobile Insights, 31% of U.S. wireless subscribers describe their voice calling usage as 'low,' but that percentage is actually up 3% from 28% at the end of 2014."); *see also* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, Twentieth Report, 32 FCC Rcd 8968, 9040 tbl.II.B.i (2017) ("*Twentieth Report*") (providing data from CTIA on annual total number of wireless voice minutes, text messages, and megabytes of data, which indicates a 5 percent decline in voice minutes from 2015 to 2016, a 12 percent decline in text messages, and a 42 percent increase in wireless data).

buy. Furthermore, the *Notice's* requirement that Lifeline carriers be telephone exchange carriers reduces program efficiency by vastly limiting competition for the subsidies, as the requirement drives away the innovative and more affordable offerings from non-voice carriers such as WISPs. In sum, there is no evidence to support the Commission's conclusion that elimination of LBPs will "better reflect the goals of the Lifeline program." It would accomplish the exact opposite.

B. Removing Resellers From Lifeline Will Leave Many People Unserved Or Underserved, Reduce Competition In The Broader Wireless Market, And Take Away Service From More Than 70 Percent Of Current Lifeline Participants.

The *Notice's* most baffling and harmful proposal is its call for the removal of telecommunications resellers from the Lifeline program. The most prominent of this class of carriers are MVNOs, such as Tracfone or Mint, that purchase wholesale network access from facilities-based carriers and then sell retail access to these networks at rates that are almost always lower than the facilities owner's own retail rates. The *Notice's* rationale for restricting MVNOs from offering Lifeline services is unsupported by common sense and evidence. This abrupt about-face from a decade of successful policy will negatively impact Lifeline customers and quell competition in the broader wireless market.

i. The Radical Proposal To Remove Resellers From Lifeline Departs From Three Decades Of Commission Efforts To Better Serve The Poor.

For more than thirty years the Commission, under both Republican and Democratic control, has strived towards better serving poor people through the Lifeline program. This extreme proposal to eliminate resellers sharply departs from that tradition, offering little explanation as to why. Indeed, the agency has regularly modernized Lifeline to meet the needs of poor people as the broader telecommunications market has undergone massive technical and regulatory changes. Removing providers that serve such a large percentage of the current subscriber bases would do just the opposite – leaving needs unmet with no viable plan to replace lost service.

When first established in 1985, the Lifeline program consisted of a 50 percent reduction in the Subscriber Line Charge (or "SLC," a direct, non-traffic-sensitive charge that local carriers levy on their customers to recover a portion of the cost of the local loop)[44] for qualifying households in states that matched this discount (thereby zeroing out the entire SLC for those households).[45] The program subsequently expanded, first to subsidize initial connection fees,[46] and later to make support available to consumers in all states whether or not the state matched the federal subsidy.[47] Following this 1998 expansion of Lifeline eligibility to low-income Americans in every state, the fund's annual disbursements nearly tripled, as did the monthly per-subscriber disbursements. However, the number of participants did not. From 1998 on, the total number of beneficiaries grew at slow and steady rate until the Commission began to allow wireless-only MVNOs to be certified as ETCs. Between 2008 and 2012 program participation spiked, in part because of the program's expansion to the higher user-utility MVNO services, but also because of

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[44] *MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Recommended Decision and Order, 49 Fed. Reg. 48325 (rel. Nov. 23, 1984).

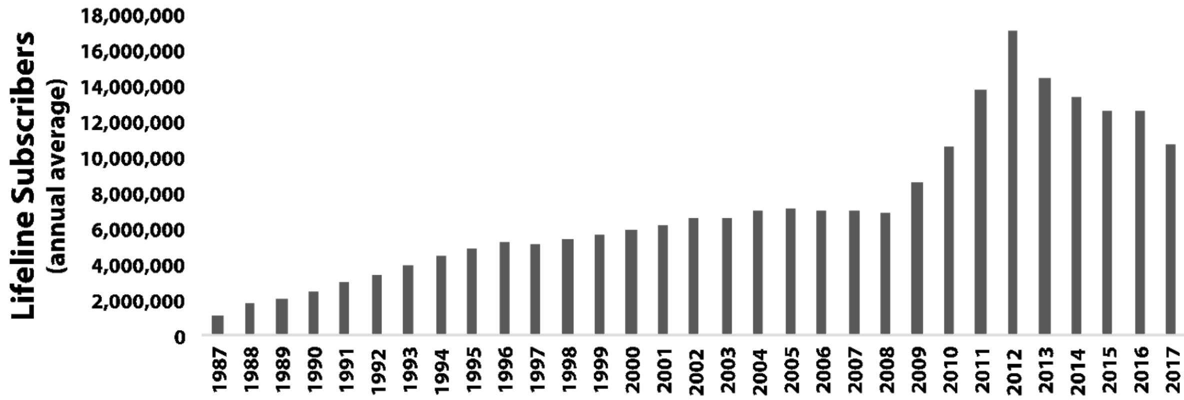
[45] *MTS and WATS Market Structure; Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board*, CC Docket Nos. 78-72, 80-286, Decision and Order, 50 Fed. Reg. 939, 945 (rel. Jan. 8, 1985) ("*1985 Lifeline Order*").

[46] This became known as the "Link Up" program, which offset half of the initial connection fee for landline telephone service, up to $30.

[47] *See* Figure 1; *see also 1997 Universal Service Order* ¶ 346. The federal Lifeline program was initially funded via charges on interexchange carriers, collected by NECA (the National Exchange Carrier Association) and routed back to the local exchange carriers who were required to waive the SLCs for their qualifying low-income consumers.

the so-called "Great Recession." Post-2012, participation dropped sharply, in part due to the recovering economy, but also due to the Commission's actions to reduce participation.[48]

Figure 1: Lifeline Program Participants (1987–2017)



Source: FCC, USAC. Values represent the average for each year's total Lifeline subscribers as of the end of each calendar quarter. Value for 2017 is the average for the first three quarters, as USAC has not yet published the fourth quarter 2017 total.

It is notable that following the Commission's expansion of Lifeline to all consumers in all states in 1998, program participation did not increase substantially. From 1998 to 2005, the number of Lifeline subscribers grew at a Compound Annual Growth Rate ("CAGR") of 4.1 percent, rising from 5.4 million to 7.1 million. Over the following three years, from 2005 to 2008, program participation actually declined. Some of this decline may have been due to the Commission's reforms on eligibility verification and record keeping (adopted in 2004 and in effect as of June 2005) – reforms that also took place as the economy recovered from the 2001 recession.[49]

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[48] *See 2012 Lifeline Reform Order*.

[49] *See In the Matter of Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302 (2004). This 2004 order actually expanded the eligibility guidelines to include qualification based on income alone, as well as qualification via Temporary Assistance for Needy Families ("TANF") or the National School Lunch's free lunch program ("NSL") (in addition to other then-existing program-based qualifications). However, the Commission also added new verification and record keeping

But there's also ample reason to suspect that during this same time, consumers (including low-income consumers) increasingly found less value in local landline service compared to mobile telephony. Companies like Boost Mobile already were offering pay-as-you-go services targeted at consumers with credit history issues (which disproportionately impact the poor, and especially persons of color), charging between 10 and 20 cents per minute for mobile services, and 10 cents per outgoing text with free incoming texts.[50] It is likely that many low-income consumers found greater value in these pre-paid mobile services than they found in a subsidized local phone line, which would still require the user to spend $10, $20, or more each month even after the subsidy, for a service tied to a single location.[51]

In 2005, the Commission changed course from its prior policy and granted the MVNO Tracfone the first ever Lifeline-Only ETC waiver.[52] This waiver of the Commission's rules and forbearance from a portion of the Act was necessary because Section 214(e)(1)(A) stipulates that for a carrier to be eligible for universal service support, it must offer the supported services "either using its own facilities or a combination of its own facilities and resale of another

requirements, which may have combined with an improving economy to produce a slight net decline in program participation.

[50] *See, e.g.*, Press Release, Boost Mobile, "Say Cheese! Boost Gives Customers Something to Smile About with Boost Snaps" (Nov. 28, 2005).

[51] The nominal average monthly rate for a residential access line was $27.16 in 2005. The average per sub monthly support from the low-income program was $9.39, but this included Link Up support as well as Tribal support (the latter of which provided up to $25 per month per subscriber). Therefore, for many program participants, the actual monthly discount at this time was likely well below the program's $9.39 average level.

[52] *Petition of Tracfone Wireless, Inc. for Forbearance from 47 U.S.C. Section 214(e)(1)(A) and 47 C.F.R. Section 54.201(i), Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) (conditionally granting TracFone's petition for forbearance from the facilities requirement of Section 214(e)(1)(A)) ("*2005 Tracfone Conditional Waiver*").

carrier's services."[53] The Commission's decision to forbear from Section 214's facilities-based requirement specifically for Lifeline participation (and not receipt of other USF support) was made in part because the agency determined "that a facilities requirement for ETC designation is not necessary to ensure that a pure wireless reseller's charges, practices, classifications or regulations are just and reasonable when that carrier seeks such status solely for the purpose of providing Lifeline-supported services."[54] And of particular relevance to the instant proceeding, the Commission found that "the facilities requirement impedes greater utilization of Lifeline-supported services provided by a pure wireless reseller."[55] The Commission noted that the addition of Tracfone to the pool of available Lifeline offerings (which at the time were largely limited to ILEC ETCs, and a few locations where facilities-based CMRS carriers had opted to offer Lifeline) would introduce much-needed competition, which the agency rightly predicted would "spur innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers."[56] This prediction was prescient, as the subsequent wealth of data on Lifeline service offerings and capabilities demonstrates.

Although the Commission granted Tracfone this conditional waiver and forbearance in 2005, it wasn't until 2008 that the company began to draw Lifeline funds, and it became a state-designated ETC in 10 states and the District of Columbia.[57] More wireless-only ETC

[53] 47 U.S.C. § 214(e)(1)(A).

[54] *2005 Tracfone Conditional Waiver* ¶ 9.

[55] *Id.*

[56] *Id.* ¶ 13.

[57] *See Federal-State Joint Board on Universal Service, TracFone Wireless, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (designating TracFone as an ETC for Lifeline-only support in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia,

designations followed: Virgin Mobile in 2009,[58] and iWireless, Allied, Consumer Cellular and others in 2010.[59] In the *2012 Lifeline Reform Order* the Commission granted blanket conditional forbearance from 214(e)(1)(A)'s facilities requirement for all Lifeline-only carriers.[60] With this blanket forbearance the Commission concluded that all three prongs of the Section 10 test were clearly met.[61] The Commission also concluded that "forbearance from the facilities requirement will enhance competition among retail providers that service low-income subscribers. Lifeline-only ETCs offer eligible consumers an additional choice of providers for telecommunications services."[62] The Commission noted that "[t]he prepaid feature that many Lifeline-only ETCs offer is an attractive alternative for subscribers who need the mobility,

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but denying ETC designation in Florida as that state's PUC asserted its ETC-designation authority).

[58] *See Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petition for Designation as an Eligible Telecommunications Carrier in the State of New York; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania; Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of North Carolina; Petition for Limited Designation as an Eligible Telecommunications Carrier in the State of Tennessee*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009).

[59] *See, e.g.*, *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, CC Docket No. 96-45, WC Docket No. 09-197, Order, 25 FCC Rcd 8784 (2010); *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; Allied Wireless Communications Corporation Petition for Eligible Telecommunications Carrier Designations in the State of North Carolina*, CC Docket No. 96-45, WC Docket No. 09-197, Order, 25 FCC Rcd 12577 (2010); *Federal-State Joint Board on Universal Service; Telecommunications Carriers Eligible for Universal Service Support; Head Start Petition for Forbearance; Consumer Cellular Petition for Forbearance; Midwestern Telecommunications Inc. Petition for Forbearance; Line Up, LLC Petition for Forbearance*, CC Docket No. 96-45, WC Docket No. 09-197, Order, 25 FCC Rcd 10510 (2010).

[60] *See 2012 Lifeline Reform Order* ¶ 368.

[61] *Id.*

[62] *Id.* ¶ 378 (emphasis added).

security, and convenience of a wireless phone, but who are concerned about usage charges or long-term contracts."[63]

The instant *Notice* does not refute that competition among a larger number of participating carriers has resulted in Lifeline service innovation and better quality offerings. Nor does the *Notice* offer any reasoned explanation for departure from this policy, which has been a catalyst for competition and the resultant improvement in Lifeline service options. It fails to examine whether the reversal of conditional forbearance from 214(e)(1)(A)'s facilities-based requirement would impede utilization of Lifeline-supported services. In fact, nowhere in the instant *Notice* do we see the Commission offer any reasoned explanation as to why reversal of the *2012 Lifeline Reform Order*'s conditional blanket forbearance is merited by any change in the Section 10 analysis undertaken in 2012. Indeed, the instant *Notice* bizarrely states that it does not expect that its approach of "limiting Lifeline support to broadband service provided over facilities-based broadband networks that also support voice service" would even "impact the forbearance relief from section 214(e)(1)(A)'s facilities requirement."[64] The *Notice* merely offers the understated observation that "not reversing this forbearance relief may create a tension that could be relieved by making the requirements for obtaining a Lifeline-only ETC designation under section 214(e)(1)(A) match the facilities requirement for receiving Lifeline reimbursement."[65]

This kind of results-oriented, hand-waving analysis of the relevant law is all done in service of an untenable proposition for this Commission. The *Notice* does not refute prior

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[63] *Id.*

[64] *Id.* ¶ 69.

[65] *Id.*

findings of resellers' importance to the Lifeline program's core goal of making telecommunications services more affordable to low-income households, because attempting to disprove resellers' positive impact is an absurd proposition in direct conflict with years of Commission precedent. The *Notice*'s tentative conclusion to remove resellers from Lifeline without reversing the prior forbearance, and its failure to offer any rationale as to how the prior forbearance now fails Section 10's three prongs, runs counter to the Commission's statutory burdens and make a mockery of the agency's duty to promote the public interest.

All of this, it seems, can only be understood as the Commission majority's cruel and inexplicable attempt to reduce Lifeline service options and curtail program participation. Yet Lifeline enrollment is already steadily declining at a far faster rate than the overall financial plight of the poor in this country is improving.[66] With an average of 10.7 million participating households in 2017, the program's participation rate now hovers near one-quarter of eligible households.[67] The removal of resellers from Lifeline will eliminate the carriers that are currently

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[66] The number of people living in poverty in the U.S. peaked in 2012 (as did the number of Lifeline subscribers) and declined thereafter. From 2012 to 2016, the number of persons living in poverty declined by 12.6 percent, while during this time the number of average annual Lifeline subscribers decreased by 26 percent (with an even greater total decline in Lifeline subscribers of 37 percent from 2012 through 2017 using the average number of subscribers for the first three quarters of 2017). *See* U.S. Census Bureau, "People in Poverty by Selected Characteristics," tbl.3, 2012-2013 and 2015-2016 editions.

[67] As shown in Figure 1, USAC data for the first three quarters indicates an average of 10.7 million Lifeline subscribers in 2017 (with 10.47 million as of the end of September 2017). Given an estimated population of 40 million eligible households, this equates to a participation rate of approximately 26 percent. This low participation rate should be in and of itself a worrying data point for the Commission, but it instead appears to be a cause for celebration for the majority. *See* "Eligible Lifeline Population Statistics," Universal Service Administration Company, http://www.usac.org/li/about/process-overview/program-stats.aspx (last visited Jan. 22, 2018) ("*USAC Eligible Lifeline Population Statistics*").

responsible for serving approximately three-quarters of Lifeline-subscribing households.[68] As discussed below, the remaining service options for poor people are bleak. The facilities-based CMRS carriers only offer Lifeline in small portions of their service footprints, and do not universally offer Lifeline data services. Plus their prices are far higher than those of the resellers, for less robust service packages. The ILEC ETCs' Lifeline offerings are even worse. There's no dispute that booting MVNOs and LBPs from the program will decimate Lifeline participation and dramatically reduce the affordability of telecommunications services.

ii. Elimination of Resellers Will Leave Lifeline Subscribers With Almost No Affordable Options for Modern-Day Telecommunications Services.

The evidence strongly indicates that expanding Lifeline to reseller wireless services greatly benefitted users, as it allowed them to use the Lifeline subsidy for a service they undoubtedly found more useful than either the Plain Old Telephone Services ("POTS") offered by ILEC ETCs, or the facilities-based CMRS carriers' Lifeline services that always have been and remain sparsely available at best. The lesson here is that the Lifeline program can only maximize its utility to users, and thus its effectiveness, if it is designed to be flexible and if it enables users to decide which telecommunications services are best suited to their individual needs. For some people, this might be a bare-bones wireless voice service, used only occasionally and in case of emergency. Others may find greater utility if the subsidy can be used to make the monthly cost of a smartphone voice/SMS/data plan more affordable. Still others

[68] Even if we charitably assume that half of current program subscribers would re-enroll with a facilities-based carrier, this would result in a program participation rate of approximately 13 percent, below the level that existed when the Commission expanded eligibility nationwide in 1998, and about half of what it was when the program was expanded to MVNOs in 2008. *See* Free Press 2015 Lifeline Comments at 31 fig.16. In reality, it is more likely that the removal of Lifeline MVNOs would result in the overall low-income telecom adoption rate stagnating or even declining, and the Lifeline participation rate plummeting to single digits.

might find the most utility in a plan that makes the cost of fixed broadband service more affordable, so that their children have the internet access needed to complete their homework.

People generally view telecom services as essential, but of course some people may find greater utility in particular services. And even among one type of service, people will perceive different utilities for different plans. Because the overarching goal of the program is to make all telecommunications services more affordable to low-income Americans, and affordability is directly related to an individual consumer's perceived utility of a service, the Commission should structure Lifeline to respond to individual preferences. The best way to accomplish this is through a fully portable subsidy that recipients can apply to the service of their choosing.

But regardless of what mode of telecom a household might prefer, the most important variable determining a service's affordability is its price (or more specifically, its quality-adjusted price, where quality is judged by individual users' utility functions and their financial resources). Thus, if this Commission maintains that it is still committed to administering the Lifeline program to make telecom more affordable to the poor, then it must examine what services will be available once it no longer allows MVNOs to offer Lifeline service.

The Commission offered no such analysis in the *Notice*. In the absence of Commission analysis, Free Press examined the current Lifeline offerings of facilities-based providers, and also analyzed USAC ZIP code-level data to assess the likely landscape for a post-MVNO Lifeline marketplace. The results of this analysis demonstrate that the *Notice*'s proposed policy changes would radically reduce the average number of available Lifeline alternatives, and would dramatically increase the price of telecom services for Lifeline-participating households. What's more, even though the Federal-State Joint Board, prior Commissions, and Chairman Pai have all emphasized the importance of affordable broadband services for low-income households, the *Notice*'s reversal of the conditional blanket forbearance for MVNOs would result in few Lifeline carriers actually offering broadband, and those that did largely offering only far more expensive services than are currently available.

a. Nationwide CMRS Carriers' Lifeline Offerings Pale In Comparison To MVNO Offerings.

The nationwide CMRS carriers, including AT&T Mobility, Verizon, T-Mobile, and Sprint, have largely refused to participate in the Lifeline program. To the extent they have, their Lifeline offerings are vastly inferior to those of the MVNOs. With the exception of Sprint, none of these carriers even offer Lifeline broadband service, and Sprint's Lifeline broadband services run over 3G.

AT&T Mobility (a division of AT&T and owner of Cricket) only offers wireless Lifeline services in 14 states and Puerto Rico, despite the fact that AT&T offers wireless service to more than 99 percent of the U.S. population.[69] In fact, according to USAC data, AT&T only offers wireless Lifeline services in 512 of the nearly 42,000 five-digit U.S. ZIP codes.[70] And even in these 14 states, AT&T is not offering anything comparable to what the MVNO Lifeline

[69] *See* "Lifeline for wireless service," AT&T, https://www.att.com/esupport/article.html#!/wireless/KM1008768 (last visited Jan. 22, 2018) ("AT&T Mobility Lifeline Services Description"); "3Q 2017 AT&T by the numbers," AT&T (2017), https://www.att.com/Common/about_us/pdf/att_btn.pdf.

[70] AT&T Mobility's Lifeline ZIP code coverage determined by Free Press utilizing USAC's "Companies Near Me" tool, available at http://www.usac.org/li/tools/default.aspx. According to the commercial vendor ZIP-Codes.com, as of January 2018 there were 41,666 U.S. ZIP codes, with 29,788 of these being "general" ZIP codes (*i.e.*, not P.O. Box, Military, or unique business ZIP codes).

providers make available. For example, AT&T Mobility's service in eleven of these states (Alabama, Alaska, Arkansas, Idaho, Kentucky, Louisiana, Michigan, Mississippi, North Dakota (non-tribal), Texas, and Washington) and in Puerto Rico is typically a $24.99 monthly package ($15.74 after discount) for 1,000 Anytime voice minutes and 1,000 night and weekend minutes.[71] These plans do not even include SMS, and most importantly, they do not include internet access.

Verizon Wireless bills itself as "the nation's best network, 15-years and counting."[72] But its Lifeline offerings are almost non-existent. According to the company, "Verizon Wireless, as an Eligible Telecommunications Carrier (ETC), is authorized to provide Lifeline-supported services in parts of Iowa, North Dakota, New York and Wisconsin. Lifeline service is not available in all areas of these states."[73] Remarkably, even that tepid claim to offer service in parts of four states wildly overstates Verizon's participation. According to USAC, Verizon currently offers wireless Lifeline service to a total of just eleven ZIP codes: nine in North Dakota and two in New York state. That's right! Even though Verizon Wireless covers "more than 98 percent of the U.S. population,"[74] it cannot be bothered to offer Lifeline service in even a dozen ZIP codes.

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[71] AT&T's wireless Lifeline offering's rates and quality vary by state. In Alaska, it is a $24.99 monthly plan discounted to just $1 for 1,200 anytime minutes. In Oregon AT&T's non-tribal Lifeline offering is $12.75 per month after discount for 1,000 anytime/1,000 night and weekend minutes. AT&T only offers tribal wireless Lifeline service in the Pine Ridge reservation area of South Dakota, which includes free unlimited talk and SMS. In West Virginia, AT&T offers a $21 per month service ($7.50 after discount) for 1,000 anytime minutes. *See* AT&T Mobility Lifeline Services Description.

[72] *See* "Better Matters," Verizon Wireless, https://www.verizonwireless.com/featured/better-matters/ (last visited Jan. 22, 2018) ("Verizon Wireless Better Matters").

[73] *See* "Discounted Wireless Lifeline program phone service," Verizon Wireless, https://www.verizonwireless.com/solutions-and-services/lifeline/ (last visited Jan. 22, 2018) ("Verizon Wireless Lifeline Services").

[74] *See* Verizon Wireless Better Matters.

However bad that seems at first glance, it gets even worse. Like AT&T's wireless offering, made in just a smattering of the vast geographic territory that company covers, Verizon Wireless' Lifeline offering is also for mobile voice only. It is a $25 monthly plan ($15.75 after discount) which includes 750 anytime minutes and unlimited local mobile-to-mobile minutes, but it also comes with a huge barrier in the form of a one-time $35 activation fee.[75] Like AT&T once again, Verizon Wireless does not offer a Lifeline package that includes data.

T-Mobile's Lifeline offerings are more widely available than those of both Verizon Wireless and AT&T Mobility, but not by much. According to USAC data, T-Mobile offers non-tribal Lifeline in 1,222 total ZIP codes, in seven states and Puerto Rico.[76] For the seven states, T-Mobile's Lifeline plan pre-discount costs $19.99 for unlimited voice (before taxes and fees, and a high $25 one-time charge for a SIM card purchase).[77] Data is not included in these Lifeline plans, unfortunately mirroring the no-data Lifeline options from AT&T and Verizon.

In Puerto Rico, however, T-Mobile's Lifeline plans include unlimited voice for $7.74 after the Lifeline discount. Puerto Rico Lifeline users that want mobile data can opt for a plan with unlimited voice and SMS plus 1GB LTE data for $17.49 after discount, or choose a plan that offers unlimited voice, SMS and 6GB LTE data for $29.75 after discount. All of these Puerto Rico plans (like T-Mobile's mainland Lifeline plans) require the purchase of a $25 SIM

[75] *See* Verizon Wireless Lifeline Services.

[76] These seven states are: Florida, Kentucky, Minnesota, Mississippi, Pennsylvania, Virginia, and West Virginia. T-Mobile's Lifeline page indicates it also offers Lifeline service in New Mexico and Texas, though no subscribers were associated with T-Mobile in these states in USAC's "Companies Near Me" database. Regardless, T-Mobile offers coverage over its own facilities in 49 U.S. states and Puerto Rico.

[77] *See, e.g.,* T-Mobile, "Lifeline Notice" (2017), https://www.t-mobile.com/Promotions/pdf/2017%20Lifeline%20Brochure.pdf.

starter kit. What's more, T-Mobile's fine print indicates that applicants will also face a credit check, setting up another hurdle and severely reducing the utility of the program.[78] And none of these discounted plans cover taxes and fees, which further raises the price of these discounted services and creates uncertainty about people's ability to afford them month-to-month. In sum, although the "un-carrier" lately has had a positive impact on wireless market competition overall (since the Commission rightly moved to block the AT&T/T-Mobile merger in 2011 and the deal collapsed), T-Mobile has shown little interest in serving low-income customers through the Lifeline program. Like Verizon Wireless and AT&T Mobility, the company's offerings are far more expensive than the Lifeline services marketed by MVNOs, and they do not include internet access anywhere but Puerto Rico.

Sprint offers wireless Lifeline via its subsidiary Virgin Mobile's "Assurance Wireless" brand. This Lifeline service is offered in 29,087 ZIP codes, according to USAC data, across 35 states and the District of Columbia. Assurance's base Lifeline plan is free to the user and includes a free Android smartphone, 1GB of monthly 3G data, unlimited SMS, and 750 voice minutes.[79] Users can pay more for higher levels of services, with unlimited SMS and voice along with a total of 1.5GB 3G data for $15/month after discount. Users can also purchase additional packs of just 3G data, starting at $1 per 100MB, up to $30 for 5GB of 3G data.[80] Although Sprint's Lifeline offerings are much more widely available than those of the other three national

[78] *Id.*

[79] Assurance's website indicates that its base service offers 350 monthly voice minutes. However, this appears to be an error due to the company's failure to update its website to indicate the changes in minimum service levels as prompted by the *2016 Lifeline Reform Order*.

[80] *See* "Frequently Asked Questions," Assurance Wireless (2017), http://www.assurancewireless.com/Public/FAQs.aspx (last visited Jan. 23, 2018).

carriers described above, Sprint's still are not nearly as robust as those sold by MVNOs, particularly because they only include the decade-old 3G data transmission standard despite the fact that Sprint's LTE network covers more than 300 million Americans.[81] With the elimination of MVNOs from Lifeline, Sprint's offerings would for the majority of Lifeline customers become the sole available wireless option. And because a substantial portion of Sprint's wireless business is the reselling of its network capacity to MVNOs, the financial impact and harm that the *Notice* would cause to this important market segment could spill over and impact Sprint's own business, potentially causing it to pull further back from the Lifeline market and from the general market segment focused on price-conscious customers.

b. Regional Facilities-Based CMRS Carriers Do Not Have The Geographic Reach, Quality, Or Affordability Of Lifeline MVNOs.

The regional facilities-based CMRS carriers are not much better than the national carriers when it comes to the geographic breadth, quality, and affordability of their Lifeline offerings. For example, C-Spire's Lifeline service is only available in 252 ZIP codes (in Alabama and Mississippi). Neither the company's more affordable pre-paid plans nor its entry-level post-paid plans are Lifeline-eligible (because plans now must come with more than 750 voice minutes). C-Spire's Lifeline customers thus have to pay $40 a month (pre-discount, and before taxes and fees) for unlimited voice and SMS along with 3 gigabytes of data.

Cellular One's offerings are less expensive but even more limited. It sells Lifeline service to customers in 204 ZIP codes (in Arizona, New Mexico, Montana and Utah), which – while free

[81] *See* Press Release, Sprint, "Sprint LTE Plus Posts Strong Gains in Network Reliability, Beats T-Mobile and Pulls Within 1% of Verizon and AT&T" (June 2, 2016), http://newsroom.sprint.com/sprint-lte-plus-posts-strong-gains-in-network-reliability-beats-t-mobile-and-pulls-within-1-of-verizon-and-att.htm.

to the end-user – only includes 500 voice minutes, 1,000 texts, and just 500 megabytes of monthly data. US Cellular's Lifeline services are currently sold to customers in 1,095 ZIP codes in 8 states.[82] The only non-tribal plan US Cellular offers (outside of Missouri)[83] is a post-paid plan consisting of unlimited voice and SMS and 1 gigabyte of data for $25 per month even after the Lifeline discount is applied.

Thus it is clear that once Chairman Pai and the Commission majority sweep MVNOs out of Lifeline, the remaining wireless options will be insufficient to put it charitably. For example, according to Free Press analysis of USAC data, Chairman Pai's proposal would mean that in his home state of Kansas there would be no wireless Lifeline service available in 38 percent of the state's ZIP codes, and wireless Lifeline service available from just one carrier in 54 percent of the state's ZIP codes. This would be a dramatic decline in competition among carriers, and in the resulting choices available to poor families in Kansas.[84] Currently, the average Kansas ZIP code is served by four wireless Lifeline carriers. If the Commission approves the radical changes proposed in this *Notice*, the sole remaining wireless Lifeline carrier for the majority of Kansas will be Sprint's Assurance Wireless, which only offers a minimal quality 3G data service over a single carrier's network. This is certainly a worse outcome for Kansas Lifeline customers, whose

[82] These states are Iowa, Maine, Missouri, Nebraska, Oklahoma, Oregon, Washington, and Wisconsin.

[83] In Missouri, US Cellular offers a $15.70 per month (post-discount) Lifeline plan that includes 1,000 anytime minutes and unlimited night and weekend minutes, but no SMS and no internet data.

[84] According to USAC, approximately 362,000 of Kansas' 1.2 million households are eligible to subscribe to Lifeline service, though only 54,641 of these were enrolled at the end of September 2017.

current options include services provided by MVNOs that offer 4G LTE data services over multiple national carrier networks.

And the decimation that Chairman Pai's proposal would cause is, of course, not limited to Kansas but national in scope. According to USAC data, the median number of available wireless Lifeline carriers in a United States ZIP code is five, and the median number of facilities-based wireless Lifeline carriers is just one. The millions of people whose service would be disrupted by this sweeping proposal would not be able to simply move to a wireline Lifeline carrier. Indeed, the median number of available wireline Lifeline carriers in a ZIP code is also just one.[85]

c. Wireline ILEC Lifeline Services Are Poor Substitutes For MVNO Lifeline Plans.

No ILEC Lifeline service plan is in the ballpark of affordability offered by the current MVNO wireless Lifeline carriers. Nor does any ILEC Lifeline plan offer the affordability and utility of the plans that the new LBPs were prepared to offer Lifeline users before Chairman Pai cruelly took them away.

Eight years ago, wireline ILECs accounted for more than half of Lifeline disbursements. Today they take in less than one-tenth of all Lifeline funds. This shift happened because the Commission opened up Lifeline to MVNOs, which were eager to offer discounted (or free) services that better served the needs of low-income users. ILEC Lifeline services are not only far more expensive than those of the wireless MVNOs, they primarily provide a product to which less than half of the country subscribes (wired voice). Indeed, many ILECs do not offer a

[85] There are 39,071 unique ZIP codes in the USAC "Companies Near Me" database. Wireless Lifeline services are available in 37,148 ZIP codes. Wireline Lifeline services are available in 27,859 ZIP codes. There are 11,212 ZIP codes where only wireless Lifeline services are available, and 1,923 ZIP codes where only wireline Lifeline services are available. The balance of 25,936 ZIP codes have both types of carrier.

Lifeline-specific service that includes internet access, while others only allow Lifeline recipients to apply their subsidy to the carriers' expensive retail plans. For these reasons, ILECs are not a realistic alternative to wireless MVNOs for Lifeline users.

For instance, consider the nation's largest ILEC, AT&T. In part because of Lifeline's minimum service standards for fixed broadband carriers[86] AT&T Wireline's Lifeline plans are only available to "current AT&T Internet customer[s] on a plan with a speed of 12 [megabits per second] or greater at an eligible location."[87] This is a major practical limitation, as AT&T (like many ILECs) does not offer this level of service on a substantial portion of its national network. [88] Moreover, because the wireline market is a weak duopoly, AT&T's available wired Lifeline offering can in no way be deemed "affordable." For example, in the heart of Eureka, Missouri, AT&T's lowest-cost bundled service above this data transmission speed threshold is an unlimited wired voice plus 25 Mbps package for a promotional rate of $60 per month (or if 25 Mbps is not available, the package includes 12 Mbps). Standalone 12 Mbps internet starts at $40 per month. These rates do not include taxes or fees, and the fine print indicates these rates could change at anytime. Customers must also pass a credit check, which poses an insurmountable barrier for a significant portion of the Lifeline-qualifying population.

Verizon's wireline Lifeline offerings are more widely available than its wireless options, but they too come with major restrictions that limit the availability and utility of the service to

[86] 47 C.F.R. § 54.408.

[87] "Lifeline," AT&T, https://www.att.com/home-phone/lifeline.html (last visited Jan. 23, 2018).

[88] *See* Free Press Comments, WC Docket No. 17-108, at 105 fig. 8 (filed July 17, 2017) ("Free Press 2017 Net Neutrality Comments") (showing that, according to FCC Form 477 deployment data, AT&T's wireline offerings exceeded 10Mbps downstream in just 55.8 percent of its Census Blocks as of mid-2016).

poor households. Although Verizon sells DSL, its Lifeline broadband discount plan is limited to the company's more expensive FiOS internet service.[89] And the voice portion of this offering is significantly inferior to the current wireless reseller offerings. For example, in Virginia, Lifeline users choose between a $6 per month (after discount) plan that includes only 50 outgoing voice calls; or a $13.12 per month (after discount) plan that offers unlimited local calling.That is a severe restriction in a mobility era when Local Access and Transport Areas ("LATAs") are an anachronism. The internet offering, limited to FiOS tiers, is unsurprisingly quite expensive. For example, in many FiOS areas the entry-tier is a 100Mbps package, currently offered for $39.99 before taxes and equipment charges and other fees. The introductory rate increases after one year. If users cannot order online, they also face a "standard setup charge" of $99.99.[90]

CenturyLink, like AT&T and Verizon, only offers Lifeline discounts on relatively expensive home internet services in the company's faster speed tiers.[91] CenturyLink does at least make it clear that the Lifeline discount can be used for standalone broadband or for voice/internet bundles (while AT&T's and Verizon's pages are far less transparent on this point; users may need intimate knowledge of the Code of Federal Regulations to know the services to which they can apply the discount). Although CenturyLink's prices vary by market, their

[89] This is likely because Verizon's DSL lines are largely first-generation ADSL loops that max out below 10 megabits per second downstream. *See* "Lifeline," Verizon (2017), https://www.verizon.com/support/residential/account/manage-account/lifeline-discount (last visited Jan. 23, 2018).

[90] *See* "Fios Internet Plans," Verizon (2018), https://www.verizon.com/home/fios-fastest-internet/ (last visited Jan. 23, 2018).

[91] "Lifeline discounts on broadband services are available to participants of federally-recognized aid programs and is limited to certain broadband services. Broadband speeds must be 15 Mbps download and 2 Mbps upload or faster to qualify." *See* "Lifeline," CenturyLink, (2018) http://www.centurylink.com/aboutus/community/community-development/lifeline.html (last visited Jan. 23, 2018).

qualifying standalone broadband speed tiers start at $45 per month before applying the Lifeline support amount discount and before accounting for taxes and fees. Adding unlimited home phone increases this price to $85 per month, pre-discount and pre-taxes and fees.

The evidence presented above demonstrates that Chairman Pai's plan to evict MVNOs from Lifeline would have a dramatic and harmful impact on the program. So the question is, why would he propose such a draconian change to a program that is already shrinking, and decreasing in terms of the percentage it makes up of the total Universal Service Fund?[92]

Sadly, the true answer to this question is that it serves Pai's radical and ideological war on the poor, so the more apt question perhaps pertains to how the *Notice* attempts to justify this draconian change. Will its explanations stand up to scrutiny? The answer is a resounding no, as shown below.

d. The Commission's Justifications For Its Harmful Proposal To Expel Resellers and LBPs From Lifeline Are Nonsense.

The *Notice* justifies expelling MVNOs based on the mistaken hypothesis that this would somehow encourage "service provider investment in networks that offer quality, affordable broadband service."[93] The Commission suggests that kicking out MVNOs and retaining only facilities-based carriers – which historically and currently have shown little desire to participate in Lifeline in any meaningful way – "would do more than the current reimbursement structure to encourage access to quality, affordable broadband service for low-income Americans."[94] The

[92] USAC projections for the first quarter of 2018 indicate that the Lifeline and Link Up programs will collectively account for just 15 percent of the overall Universal Service Fund. The High Cost program accounts for 54 percent and the Schools and Libraries program for 26 percent. *See* Universal Service Administrative Company, *supra* note 1.

[93] *Notice* ¶ 62.

[94] *Id.* ¶ 65.

Notice then implausibly concludes that because "Lifeline support can serve to increase the ability to pay for services of low-income households," somehow limiting support to a small fraction of the market would still "thereby improve the business case for deploying facilities to serve low-income households. In this way, Lifeline can serve to help encourage the deployment of facilities-based networks by making deployment of the networks more economically viable."[95] And without any hint of self-awareness or irony, the *Notice* goes on to say that "the competitive impacts of having multiple competing facilities-based networks can also help to lower prices for consumers."[96]

It is frankly stunning that this FCC believes the competitive impacts of having <u>multiple competing facilities-based networks</u> can help to lower prices, <u>but doesn't believe</u> the competitive impacts of having <u>multiple competing carriers (whether facilities-based or resellers)</u> can also help to lower prices for consumers – and are thus worth preserving. Logically, the Commission cannot hold the former belief without holding the latter; that is, unless for some reason the Commission believes that the presence of more resale carriers creates higher prices. Alas for Chairman Pai's faulty reasoning, that's demonstrably not the case: MVNOs universally offer lower prices than the carriers whose networks they utilize.

The *Notice*'s reliance on this justification also ignores the law, policy, and precedent undergirding Lifeline, as well as basic network industry economics and history. <u>The Lifeline program exists to make indispensable telecom services more affordable for the poor. It is not an infrastructure or deployment program.</u> When Lifeline was created in 1984, the public switched

[95] *Id.*

[96] *Id.*

telephone network already reached nearly every single household, but not everyone could afford basic service. When Lifeline was expanded to MVNOs in 2008, wireless services were deployed by multiple carriers to nearly every single household.[97] When the Commission created the LBP category, non-dial-up internet access services were available to nearly every single household.[98] Lifeline's purpose, it should go without saying, is to make widely-available services more affordable to the poor.

The *Notice* fails to offer a shred of evidence to support its flawed theory that removing LBPs and MVNOs from the program would encourage even any marginal improvement in facilities investment. Cable MSOs do not participate in Lifeline, and have nearly universally deployed DOCSIS 3.0 technology across the entire country's cable footprint. ILECs, although they lag behind cable, have made tremendous advances in the past three years.[99] But importantly for present purposes, the reason ILECs are behind cable in terms of upgrading has little or nothing to do with a lack of low-income customers demanding their services. It stems from the natural monopoly economics of broadband, particularly wired local exchange carriers broadband. The Commission need look no further than its own National Broadband Plan, as well as its

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[97] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Thirteenth Report, 24 FCC Rcd 6185, 6190 (2009) (showing 99.6 percent of the U.S. population residing in Census Blocks served by one or more CMRS carriers, and 95.5 percent residing in blocks served by three or more such carriers).

[98] *See Twentieth Report* at 9023 tbl.III.D.4 (showing in 2016 that 99.8 percent of the population lived in an area served by one LTE carrier, with 96.6 percent of the population living in an area where 3 carriers offered LTE services). Furthermore, as of mid-2016, non-dial-up wired internet services were available to approximately 97 percent of the U.S. population, with a population-weighted average of two such carriers available. *See* Free Press 2017 Net Neutrality Comments at 99, 101 figs. 5 & 6.

[99] *See* Free Press 2017 Net Neutrality Comments at 94–123.

associated technical reports and outside analyst firm research, to understand this theory of change embodied in the instant *Notice* is completely wrong.[100]

The vast majority of low-income broadband users and potential users reside in areas served by two or more wired ISPs, and four or more CMRS carriers, as well as dozens of MVNOs.[101] The current market structure is such that the facilities-based carriers actually have negative incentives to lower prices to a level that would meaningfully reduce the digital divide

[100] *See, e.g.*, "The Broadband Availability Gap," OBI Technical Paper No. 1, Federal Communications Commission, at 107-08 (Apr. 2010) ("[L]arge investments have been made in cable systems already, principally funded by the video business. Further, as shown in Exhibit 4-BL, the incremental expense for upgrades – each aspect of which has been discussed previously – is low given the significant sunk investment already in the cable plant As a consequence, cable systems are relatively well positioned to meet future growth in bandwidth demand."); *see also id.* at 105 ("As discussed above, going from DOCSIS 2.0 to DOCSIS 3.0 allows the cable system to devote more frequency, assuming it can be made available, to data while keeping the plant total unchanged. Cablevision estimated the cost of its DOCSIS 3.0 rollout at about $70 per home passed (there may be additional success-based expense, *e.g.*, CPE). Scale economies may bring that number 10-20% lower for larger MSOs.") (internal citations omitted). By comparison, *see also id.* at 96, with experts mathematically estimating the cost of fiber-to-the-premise upgrades as a function of area density at a minimum of $701.59 per home passed, some ten-times the cost estimated for cable's DOCSIS 3.0 upgrades. For a contemporaneous cost comparison for fiber-to-the-node ("FTTN," *i.e.* short-loop higher-capacity DSL service), *see, e.g.*, Mari Rondeli, "CenturyLink, Qwest deal carries commitments for network upgrades," *SNL Kagan*, Jan. 18, 2011 ("According to AT&T Inc., the infrastructure cost to pass a home with FTTN has remained in the low $300 range for the past several years.").

[101] *See, e.g.*, *Digital Denied* at 115 fig. 95. Our report showed that as of year-end 2014, in urban Census tracts, the lowest income quintile tracts had a population-weighted average of 1.17 wired ISPs at the 25 Mbps downstream threshold, virtually identical to the average of 1.25 such ISPs available in the middle quintile income tracts. The results are similar for the magnitude of difference for rural tracts at different income levels. Though we've not updated this income-related deployment analysis with the most recent Form 477 data, it is clear from the relative explosion in LEC upgrades since then that there is likely little gap in basic availability between middle and low-income tracts. To be clear, some differences remain, and this is a major public policy concern. But it's absurd to think that kicking out MVNOs from Lifeline would somehow create enough incentive for LECs to deploy more in areas they have determined are low-priority. This is especially inane because LECs already can receive Lifeline subsidies, so that eliminating MVNOs will not create some new opportunity or support mechanism that is unavailable to facilities-based wireline carriers today.

beyond what has already occurred in the wireless market since the Commission signaled its proper decision to reject the AT&T/T-Mobile merger. This Commission's notion that removing MVNOs and LBPs from Lifeline would somehow benefit the poor by encouraging LECs to invest more, and then for some reason to lower prices even while facing even less competition than they do today, is patently absurd. LECs can already receive Lifeline subsidies. Yet almost universally, they do not offer specific Lifeline services, choosing instead to let customers apply the Lifeline discount to their existing mass market plans. Some LECs, such as AT&T, had to be forced through merger conditions to offer low-cost, low-income broadband services, and they still did so begrudgingly.[102]

If this Commission earnestly wishes to design a Lifeline program aimed at reducing the broadband adoption gap roughly within the confines of the current law and current market structure, the main thing it should aim to encourage is more resale by facilities-based owners – to MVNOs, WISPS, and other resellers. Such companies' business models differ in critical ways from those of the facilities-based carriers, particularly wired ISPs, which have profit maximization incentives that result in suboptimal output today. These wired carriers have determined that they earn higher profits from explicitly keeping the market at the "mass" market level rather than marketing affordable service to low-income segments too, and keeping prices higher by emphasizing product bundles and upselling to premium services.

The differences between the more competitive wireless market and the weak-duopoly wired ISP market are instructive here. There are almost no resellers of wired home Internet access services, but the reseller segment of the wireless industry is robust. This difference is

[102] *See, e.g.,* Karl Bode, "Under Pressure, AT&T May Fix its Low Income Broadband Offer," *DSL Reports* (Sept. 14, 2016).

directly due to the far greater level of competition in the wireless market. Resale developed in the cellular market, in part, because there are more facilities-based carriers competing for the same pool of customers. This creates incentives to sell wholesale capacity instead of letting it lie fallow because restricting output does not work. Customers can more readily turn to another carrier if any one carrier's prices are too high. But in the duopoly wired market, cable and LEC ISPs do not have the same incentives to resell. Because these wired ISPs face very little competitive pressure in their specific market segment, they are able to maximize profits by reducing output and charging higher prices, the classic monopolist behavior.

By contrast, wireless carriers' desire to maximize profits in the face of competition means they have to employ other methods, such as market segmentation, while operating at maximum output. The ability of the facilities-based wireless carriers to "slice" the market into "low income" and "mass" markets is how they achieve this equilibrium, and it is responsible for the presence of MVNOs. Facilities-based wireless carriers cannot risk marketing to the "low end" of the market without cannibalizing their profits from customers with higher willingness to pay. These carriers are also reluctant to market to a customer base that they deem "risky," because higher churn reduces profits. To counter these risks, the facilities-based carriers market to the middle and high ends of the market by emphasizing their post-paid offerings. They also require credit checks that they seem to believe reduce the likelihood a particular customer will churn.

But this behavior by facilities-based wireless carriers alone – in the absence of resale incentives and viable resellers – still would leave the more price-sensitive portion of the market unserved, even if competitive pressures still would induce these carriers to compete away some of their elevated profits earned from the post-paid segment. At present, facilities-based carriers have both the incentive and ability to resell capacity on a wholesale basis to non-facilities-based carriers, which then serve the price-sensitive portion of the market in a manner that does' not disrupt to any major degree the profit-maximization in the mass-market segment. Resellers in the wireless market have been more than willing to shoulder the perceived risks of serving the price-sensitive portion of the market, and more than willing to earn lower profit margins. This seller-reseller relationship has resulted in higher earnings for the facilities-based providers as well as more equitable adoption opportunities for people that might otherwise be shut out of the market entirely due to poor credit.[103]

To the extent there is under-investment in this ecosystem, it is under-deployment by LECs in certain areas (although, as stated above, the data indicates even this gap is narrowing). LECs' upgrade costs are very high relative to other carriers (such as cable or wireless carriers), and LECs thus target initial deployments of new technologies to areas where they can earn the highest return on capital. <u>A $9.25 subsidy, solely available to LECs and a handful of facilities-based CMRS carriers, is not going to result in LECs more quickly upgrading their DSL facilities to fiber in poor areas.</u> Standalone next-generation DSL and fiber services typically retail for $40 to $60 (or more) even in the promotional or introductory period, with equipment fees and taxes added on top of that.

There is no reason at all for Chairman Pai to believe the ridiculous notion that LECs subject to <u>less</u> competition for the total pool of Lifeline funds, which currently amounts to just

[103] *See* Turner, *supra* note 3 (providing empirical econometric evidence of how the existence of credit check policies and the availability of MVNO services has created a "third-wave" digital divide where low-income households of color, in particular, are more reliant on wireless broadband as their sole form of access, in magnitude beyond what income and other demographic factors would suggest).

$1.5 billion and approximately $1 billion of that going to resellers, would move the needle on deployment. In 2016, publicly-traded ILECs and publicly traded CMRS carriers brought in nearly $200 billion in revenues.[104] The facilities-based ETCs simply would not make enough profit from Lifeline funds alone to offset the perceived risk of higher churn. And the pittance of additional Lifeline funds that LECs <u>might</u> gain[105] is certainly not going to change their investment calculus.[106] Facilities-based wireless carriers have already fully deployed LTE, and they are expected to deploy 5G as fast as local citing ordinances will allow. It is farcical to suggest they would somehow accelerate deployment at all, particularly in poorer areas, due just to the marginal increase in revenues that might come to them from less competition for Lifeline customers. Indeed, Sprint is already the largest facilities-based CMRS carrier recipient of Lifeline funds, yet has consistently trailed behind the other carriers in network upgrades.

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[104] *See, e.g.*, S. Derek Turner, Free Press, *It's Working: How the Internet Access and Online Video Markes Are Thriving in the Title II Era*, at 33 fig. 4 (May 2017).

[105] Assuming for the sake of argument that removing MVNOs from Lifeline would not cause a ripple effect that would in turn cause Sprint (the largest facilities-based Lifeline carrier) to scale back its own Lifeline offerings due to the damage done to its wholesale business, Sprint's Assurance Lifeline plans would certainly be the next best option for current Lifeline subscribers. Thus, Sprint might absorb much of the funding currently going to MVNOs, with LECs seeing little to no change in their gross revenues (and of course, with nothing changing their perception that their net revenues from serving this segment would be lower due to the risk of churn).

[106] It is highly unlikely that demand would increase enough to ensure LECs sign up enough customers to meet their minimum monthly revenue requirements (set to equate to cost-of-capital recovery). This is especially true because their Lifeline product tends to be nothing more than their standards offering at a slight discount, on a service that competes against cable ISPs that in many low-income areas already sell similarly priced standalone broadband. These carriers also compete against the myriad of MVNOs that, at present at least, sell much cheaper services in the mass market to non-Lifeline subscribers. For example, Mint SIM offers a plan that includes unlimited voice and text, and 10 gigabytes of data for $25 per month, with no credit check required. *See* "Plans," Mint SIM (2016), https://www.mintsim.com/plans/ (last visited Jan. 23, 2018).

In short, the economic realities of the telecom market demonstrate that reducing the pool of Lifeline carriers is unlikely to cause even a marginal positive impact on facilities-based carrier revenues. Any marginal change in revenues is unlikely at best to spur additional deployment, or even accelerate current deployment plans. And most importantly, even if there were any marginal impact on deployment, <u>it would not offset the harm to low-income consumers using the current subsidy to subscribe to more affordable MVNO carrier offerings once such carriers are removed from the program.</u>

Thus, if the Commission's goals really were (1) to encourage any laggard LECs to upgrade and (2) to increase low-income adoption via lower prices, it could best achieve them (under current conditions and market structures) by <u>encouraging resale</u> rather than deterring it. Doing so would lower LEC's uncertainty about demand in these areas, and encourage them to offset risk, as possible, by selling excess capacity to other companies. In sum, both of these two goals would be best achieved by a Lifeline policy that creates greater wholesale demand for the LEC networks in these areas. The best way for the Commission to encourage LECs to voluntarily resell broadband capacity is to make the Lifeline subsidy as portable as possible, and available to all carriers. This is something that even the 2016 order did not do, though numerous parties including AT&T (the nation's largest LEC and CMRS carrier) explicitly encouraged the Commission to do so.[107]

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[107] *See, e.g.*, Letter from Anisa Latif, AT&T, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 11-42 *et al.* at 4 (filed Dec. 21, 2015) (arguing that "the Commission could, in the alternative, forbear from requiring that Lifeline participating carriers become ETCs and the three elements for Section 10 forbearance are clearly met in this case. . . . Lifeline customers deserve to have more control over how they use <u>their</u> Lifeline benefit, just as they are in control of how they use benefits from other government assistance programs.") (emphasis in original).

If a household could take the $9.25 benefit and apply that to the service of its choosing, several things would happen that would lead to greater LEC certainty and willingness to engage in wholesale. First, Lifeline use would increase (though we recognize that such an outcome is something the majority of the current Commission finds abhorrent). Lifeline users could sign up for the best available service, and in many areas that might be cable ISP service that isn't a part of the current Lifeline program. Or it might be a plan from a CMRS carrier that does not participate in Lifeline today in their area. Or it might be an LBP that specifically offers a Lifeline-only "free" plan, or simply a low-cost WISP offering. Second, as use increased in these low-income neighborhoods, resellers would observe a large enough customer base to justify their lower-margin business models, and this in turn would increase overall demand for wholesale and of LEC networks. The undeniable truth in all of this is that the way to increase deployment, increase competition, and spur lower prices is the promotion of resale options rather than their elimination. The LECs, faced with a need to grow their revenues in an increasingly saturated market but benefiting from customers empowered with a more fully portable Lifeline subsidy, would be more willing than ever before to voluntarily wholesale, just as CMRS carriers began to do more than two decades ago.

This theory of change is proven. It is exactly what happened in the mobile market after the Commission granted conditional waivers for wireless-only MVNOs seeking to offer Lifeline. The *Notice*'s theory of change is the exact opposite: completely unsupported by economic reality and historical evidence. The law demands that the Commission conduct actual analysis and offer reasoned explanations for this sort of radical change in policy. On the matter of removing MVNOs from Lifeline, the Commission has failed to meet this basic burden.

C. The Self-Enforcing Budget Proposal Is Unjustified And Could Arbitrarily Deny Service To Lifeline-Eligible Families.

There is no justification for the Commission to establish a self-enforcing Lifeline budget. The program's allocations are in continual decline, and the budget mechanism adopted in 2016 will protect the fiscal integrity of the overall Universal Service Fund while ensuring that aid to needy families is available in the event of an economic downturn.

Since peaking in 2012, the average annual Lifeline enrollment has declined by 37 percent, from 17.1 million subscribing households to 10.7 million.[108] Because of this subscriber decline (and because the per-subscriber disbursement is a fixed value), the Lifeline program's annual disbursements also declined sharply, from $2.184 billion (nominal) in 2012 to a projected $1.271 billion in 2017, a 42 percent decrease.[109] On an inflation-adjusted basis, the Lifeline program declined 46 percent over this 5-year period, from $2.34 billion in 2012 (December 2017 dollar-value) to $1.271 billion in 2017.[110]

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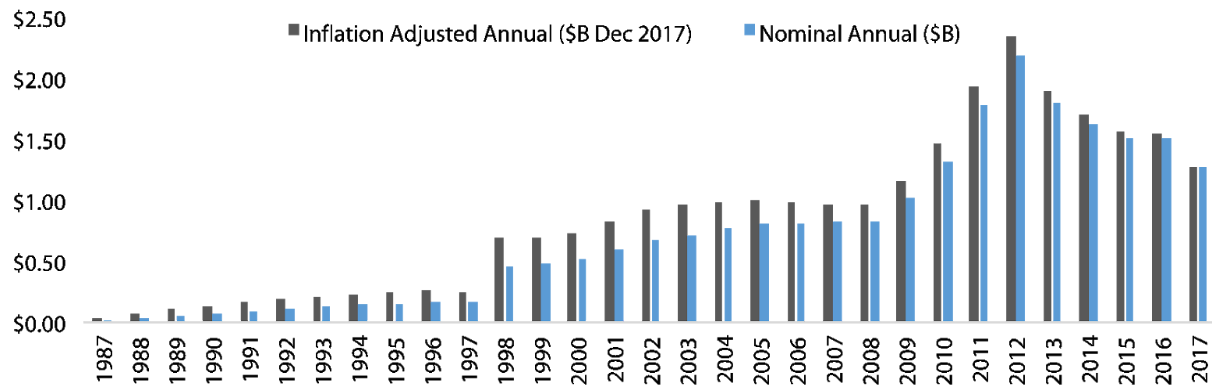
[108] *See* Figure 1 *supra* p. 22.

[109] USAC has not yet released an audited total for 2017. We calculated this amount based on USAC's reported (unaudited) total for the first three quarters of 2017, as well as its estimate for fourth quarter 2017. *See* Universal Service Administrative Company, "LI01 Low Income Support Projected by State by Study Area – 4Q2017," Fourth Quarter 2017 Filing (2017); *see also* Universal Service Administrative Company, "LI05 Annual Low Income Support Claimed by State," First Quarter 2018 Filing (2018).

[110] *See* Figure 2.

Figure 2: Lifeline Program Disbursements (1987–2017)



Source: FCC, USAC, BLS. Value for 2017 is based on USAC's unaudited total for the first 9 months of 2017, and its estimated disbursement for the fourth quarter of 2017. Inflation-adjusted values determined using CPI-U with December 2017 as the baseline.

The rapid increase in program enrollment and disbursements following the 2008 expansion of eligibility to Lifeline-only wireless carriers inarguably caused some legitimate concerns, but those have been properly addressed through several rounds of Commission reforms. Although the Universal Service Fund is supported by an assessment on carriers' interstate telecommunications revenues, thanks to pass throughs it functions in reality as a tax that falls completely on end-users. Approximately half of Universal Service funding comes from the pockets of residential telecommunications service users, and the other half comes from business telecommunications service customers.[111] And because USF funds are raised through a percentage assessment on the interstate portion of end-user bills, it functions as a moderately regressive tax.[112] Thus, the missions of USF and the Lifeline fund (universal availability of

[111] *See, e.g.,* Universal Service Joint Board, "Universal Service Monitoring Report 2016," at 21, tbl.1.12 (2016) (noting "FCC staff believe that the residential portion of the total contribution is between 45% (low estimate) and 55% (high estimate).") ("*2016 Monitoring Report*").

[112] We characterize the USF contribution as "moderately regressive" because the overall relative tax burden falls more heavily on households with lower incomes. The percentage assessment is essentially fixed with no regard to the user's income. Although wealthier households may purchase more expensive telecom services, there remains a relative inelasticity

reasonably comparable services at reasonably comparable prices, and affordability of services) are impacted by the overall size of USF. This is a balancing act that the Commission must perform, one that is the consequence of Congress's unfortunate decision to delegate to end-users and ratepayers the responsibility to fund our collective national priorities rather than funding them out of general revenues.

There are several methods to ensure that the contribution burdens on households do not actually harm the goals of universal service and affordability. These include awareness of demand elasticity,[113] reduction or elimination of unnecessary spending,[114] rooting out any actual waste, fraud and abuse, and a budget. In the *2012 Lifeline Reform Order* and the *2016 Lifeline Reform Order*, the Commission employed each of these methods,[115] and by all accounts the size

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of demand for these services, and the absolute magnitude in the difference between telecom expenditures of high-income and low-income purchasers is not substantial.

[113] *See, e.g.*, Free Press 2015 Lifeline Comments at 63-68 (discussing the potential net losses in broadband adoption among the poor and near poor if the contribution were expanded to include the more elastic broadband access services).

[114] *See generally Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, GN Docket No. 09-51, CC Docket No. 01-92 *et al.*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 ("*USF/ICC Transformation Order*") (taking steps to eliminate several unnecessary elements of High Cost Fund spending, such as the identical support rule, High Cost Model Support and Interstate Access Support for price cap companies, Safety Net Additive Support, support in areas with unsubsidized carriers operating, as well as freezing and phasing down support for a number of outdated sub-funds such as "frozen high cost support").

[115] *See, e.g.*, *2012 Lifeline Reform Order* ¶¶ 179-300 (various policies to reduce waste, fraud and abuse); ¶ 367 (elimination of Toll Limitation Service support); ¶ 245 (elimination of Link Up support on non-tribal lands); *see also 2016 Lifeline Reform Order* ¶¶ 126-217, 395-434 (various policies to reduce waste, fraud and abuse); ¶ 395-403 (establishment of a $2.25 billion annual budget). Neither order implemented the Joint Board's recommendation to expand the contribution base to include broadband revenues. *See* Comments of State Members of Universal Service Joint Board, WC Docket No. 10-90, at 119 (filed May 2, 2011).

of the Lifeline fund is a diminishing concern as it pertains to ratepayer impact.[116] Although the Commission expected its 2016 expansions of Lifeline for broadband to cause "program participation to increase,"[117] the program's 10.4 million subscribers in the third quarter of 2017 represent a 7-year low, and the 15 percent drop in average annual subscribers from 2016 to 2017 is equal to the percentage drop from 2012 to 2013 when those major reforms in the *2012 Lifeline Reform Order* were implemented.

Yet despite all of these declines, and the complete absence of any realistic reason to be concerned with the Lifeline fund's size or the adequacy of the 2016 budget mechanism, the Commission majority wants to adopt a draconian "self-enforcing" budget. In the *Notice* the Commission asks several questions about how such a budget should work and what the appropriate amount should be, but it fails to ask if the 2016 budget process is working, and once again fails to offer any reasoned explanation of why this radical shift in policy is warranted.[118]

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[116] The Commission never asks about Lifeline's low participation rate in this *Notice*, and the majority is clearly unconcerned with the reality that millions of families living in extreme poverty are not signing up for Lifeline benefits. But while increasing disbursements could be a sign of a poorly managed program plagued by waste, they can also be a sign of a properly managed fund that is better achieving its goals by reaching more households that need help. This is why the change in direction of the fund's expenditures from year to year is a meaningless metric in a vacuum to assess the program's performance against its true goals, andalso why a self-enforcing budget is harmful to the program's stated mission.

[117] *2016 Lifeline Reform Order* ¶ 401.

[118] The singular focus on the size of Lifeline is curious, given the large amounts of questionable spending in other parts of USF. For example, for the first quarter of 2018, USAC projects that "frozen CETC" support alone will amount to $122.64 million, compared to a total of $313 million in the quarter for all of Lifeline – even though the FCC long ago decided this class of carriers does not need high cost funding for rural residents to maintain access to reasonably comparable services. *See USF/ICC Transformation Order*, 26 FCC Rcd 17831, ¶ 512 (noting that frozen CETC support was supposed to be completely eliminated by mid-2017).

Although we agree generally that a sensible budget is one of several important tools to ensure that ratepayer dollars are not squandered, a rigid self-enforcing program budget is not necessary or appropriate, particularly when there already is a per-subscriber limit on monthly Lifeline support.

Indeed, due to the easily calculable and finite number of qualifying households,[119] the per-subscriber limit itself constrains the size of the fund. According to USAC, the total size of the qualifying universe was nearly 40 million households in 2015.[120] If every single one of those households took the subsidy, the program would allocate $4.44 billion annually.[121] While this is far in excess of the $1.5 billion allocated in 2016 when the current budget mechanism was enacted, there is no reason to expect program participation levels would ever climb this high. We estimate that the program participation ratio reached an all-time peak of 42 percent of eligible households in 2012, and declined to approximately 26 percent by 2017.[122] Even if the participation rate spiked to a new high of 50 percent and doubled the enrollee base to 20 million households, or if the participation rate spiked less while the qualifying population spiked due to recession, this could increase the annual Lifeline disbursement to $2.22 billion – just under the

[119] Of course the number of qualifying households can decrease or increase from year to year, due to economic conditions and population growth. However, the susceptibility to changes in the eligible population is a reason not to adopt a self-enforcing budget for what amounts to a welfare benefit. Population growth is of no concern, because if the eligible population grows in proportion, then overall population growth does not impact the per capita contribution burden.

[120] *See USAC Eligible Lifeline Population Statistics*.

[121] This is a somewhat simplistic estimate that does not account for the higher support for Tribal Lifeline, although given that Tribal support currently accounts for approximately 1 percent of the total USF expenditures, the overall impact of this on the hypothetical increase in the contribution burden is minimal.

[122] We say participation "ratio" in this context because it is unclear what proportion of the 2012 Lifeline subscriber pool may have been duplicate households.

current $2.25 billion budget. The effect on an individual household's monthly contribution from this unlikely increase still would amount to approximately 23 cents (relative to 2016), or 31 cents (relative to 2017).[123]

In the highly unlikely scenario of such a dramatic spike, the existing budget mechanism is specifically designed to sound a blaring red siren and force the Commission to investigate why it occurred. Such an increase could indicate some sort of undiscovered fraud. More realistically, however, a spike to the 90 percent budget threshold would result from a major economic downturn, and thus be exactly the sort of temporary event to which welfare programs should respond. If, on the other hand, such growth was due to a genuine and unprecedented increase in program participation by eligible households, then the existing budget mechanism would uncover that as the cause, and it would be appropriate at that time for the Commission to explore how to proceed.

Wild hypotheticals notwithstanding, there is absolutely no need to change the existing budget mechanism to a "self-enforcing" process. The fund is in historic decline, and nearly $1 billion below the budget set in 2016. The *Notice's* "self-enforcing" budget proposal gravely endangers the goals of universal service. Lifeline is not an infrastructure program like the High Cost Fund. It is also not an institutional support program like E-rate. It is a welfare program for the most needy households, designed to lower the cost of essential telecommunications service so that struggling families do not have to make dire choices between staying connected and

[123] The most recent year that the Commission has produced per-household estimates of the monthly contribution burden is 2016. *See 2016 Monitoring Report*. We assume the per-household monthly contribution burden for Lifeline was $0.51 in 2016 (50 percent of the total Lifeline fund, spread across all U.S. households). If we choose 2017's estimated $1.271 billion as the baseline, then an increase to $2.22 billion would amount to a per-household increase of approximately $0.31 per month.

obtaining other necessities. By definition, welfare programs must be flexible enough to provide aid during times of major economic downturns in order to be effective. And although such downturns are usually felt across the entire country, localized events such as natural disasters can create massive hardships to a smaller population that will require an influx of temporary aid. For instance, in the aftermath of Hurricane Maria, large portions of people in Puerto Rico were without power (shamefully, this continues today, more than five months after the storm hit) and unemployment claims doubled.[124]

This illustrates why the mechanism for a "self-enforcing" budget proposed in the *Notice* is so abjectly cruel. The Commission majority has proposed that if disbursements exceed the yet-to-be-determined annual program cap, then disbursements for the next period would be reduced by the prior amount exceeded.[125] And in an act of transparent pandering to the GOP's rural base, and a giant middle finger to the urban poor – who are more likely to be people of color and Democrats – the majority has also proposed to prioritize Lifeline funding to rural areas in the event the program exceeds its budget. This, of course, despite the fact that the cost of living in urban areas is vastly higher.[126] Have Chairman Pai, and Commissioners O'Rielly and Carr considered the practical implications of this proposal on the poor families they claim to care about? Are they really ready to tell families pushed to the edge of existence, like those in Puerto Rico, "sorry, no more basic connectivity for you during your time of immense need, we've got CPAC attendees watching us and they don't like it when we help the likes of you"?

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[124] *See, e.g.,* Kyra Gurney, "Unemployment claims soar as Puerto Rico's economy reels from a 'Category 5' hit," *Miami Herald* (Oct. 31, 2017).

[125] *Notice* ¶ 106.

[126] *Id.* ¶ 108.

Furthermore, that this discussion of budgets and budget prioritization is wrapped in emphasis on carrier deployment once again demonstrates that the majority is willfully ignoring the realities of the marketplace and the needs of the poor. Of course this *Notice* is not just detached from basic humanity, but also reality, given that the Lifeline fund is in rapid decline. So why is the majority doing this? And why now? Based on the facts presented to support this rule change, or rather the lack thereof, it seems clear that the majority is driven by disdain for the poor – all in service to their radical ideology rather than their congressional mandate to serve the public.

In sum, the Commission has failed to articulate any reasoned rationale for its 180 degree turn and decision to discard the existing budget mechanism. Lifeline is shrinking, and if it ever returns to growth the Commission has the expertise to uncover why that might be the case, and the authority to address the impacts of such an unlikely increase on the overall goals of universal service. The "self-enforcing" budget proposed in the *Notice* will harm the goals of universal service and affordability, and will do so in a manner that inflicts unwarranted pain on struggling families.

D. The Commission's Rationale For A Maximum Discount Level Is Unfounded And Adopting One Will Harm Struggling Families.

The *Notice* also proposes to implement a "Maximum Discount Level," which would effectively eliminate Lifeline offerings that do not require customers to pay a portion of the monthly cost. This will not further the Act's goals, nor meaningfully work to control the fund size. The Commission should reject this proposal.

This proposal, presented in the *Notice*'s "Improving Provider Incentives for Lifeline Service" section,[127] is woefully out of sync with its purported goal. Had the Commission bothered to consult with its own economists, it undoubtedly would have learned that poor people are far less likely to be able to pay a given bill in a given month than are people who do not struggle financially to survive, and that requiring households that struggle to pay even a nominal amount will result in higher churn rates. <u>This potential for higher churn actually decreases provider incentives to offer Lifeline services.</u>

The *Notice* attempts to justify this proposal with a series of apples-to-oranges comparisons between the Lifeline program and other subsidy programs, willfully ignoring that the goals of these programs are wildly different. Apparently the Commission majority sees no practical difference between an individual poor household and a low-income school district, the latter of which is required to have some "skin in the game" due to E-Rate's maximum 90 percent support band.[128] Setting aside whether or not the 90 percent policy is warranted, the Commission must recognize that the incentives, abilities, and behavior of political entities like school districts are vastly different than those of individuals.[129] Further, the Commission strictly regulates the minimum standards for "free" to the user Lifeline services, while there is far less control over the purchasing decisions of E-rate-receiving institutions, and zero price regulation of the enterprises that sell telecom services to these educational institutions.

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[127] *Notice*, pt. V. E., ¶ 38.

[128] *Id.* ¶ 112.

[129] *Cf.* 47 U.S.C. § 254(j) ("Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.").

Although the *Notice's* examples of other welfare programs that require recipients to pay some nominal amount, such as HUD rental assistance and HHS energy assistance, may at first glance seem instructive, these comparisons are also overly-simplistic. Energy is a service that is metered down to the penny, one where the product's underlying marginal cost of production is substantial. Lifeline telecom is not metered down to the penny, because the marginal cost of production of an additional SMS message or byte of data is essentially zero. Furthermore, telecom services are essential services that are powered by electricity, and there are a host of immediate and cascading dire consequences when the power is shut off. Energy rates also vary based on external factors, as does use. There are therefore far different benefits and costs of encouraging conservation of these respective services. With energy, it is much more critical for users to be aware of their use. Also, unlike broadband telecommunications (even under Title II!), energy is actually regulated like a utility, meaning the electric company can not easily boot a customer off of its network. This means there is a greater moral hazard problem if energy companies do not require subsidized users to make some kind of payment and encourage them thereby to use energy efficiently.

Rent is also different in ways that impact this issue. The property rented is a tangible, depreciable asset unlike cellular service, which makes use of an asset with very low-marginal cost upon which no single user creates any meaningful depreciation. A nominal co-payment of some sort for rental subsidies may reduce property destruction and other things that would increase costs for the property owners.

The *Notice* asks a series of questions about how a maximum discount level would impact the Lifeline program, such as how it would impact the quality of available services, user decision-making, churn, and (of course) waste, fraud and abuse. But the *Notice* fails to ask directly how this policy change would impact adoption. In yet another example of the Commission substituting radical ideology for cost-benefit analysis in its policymaking, the *Notice* is squarely focused on reducing Lifeline payments, not helping the poor. And even if the imposition of a maximum discount level could further reduce waste/fraud/abuse beyond the dozens of other safeguards implemented since 2012, there is no reason to expect that the size of this reduction (measured in dollars) would be of any significance. In other words, the reduction in waste/fraud/abuse from this policy (perceived as the "benefit") would likely not offset the decline in adoption, or more likely the overall harmful impact on the quality of life of the program participants (the "cost").

Moreover, if the purpose of the maximum discount is to improve efficiency, in part by forcing users to think about the quality of services for which they use Lifeline, then the Commission's proposal to kick out LBPs and MVNOs from the program will completely counter any benefit from a maximum discount policy. People's ability to choose between a half dozen or more carriers and dozens of plans is already accomplishing this goal of making them think about the value-proposition. Reducing their available choices and then admonishing them to choose wisely is not just offensive, it is ineffective.

If the purpose of the maximum discount is to reduce waste, fraud and abuse, then a far better approach would be to take the carriers out of the calculus completely, as Free Press, AT&T and others suggested before the 2016 reforms were voted. That is, if the Commission is going to require minimum service standards, direct the subsidy to companies that enroll users, and not let the voucher be portable to all plans, then there will always be incentives for carrier abuse (though we expect the National Verifier database policy will work to negate carriers' ability to act on these incentives). The better approach to maximize efficiency and reduce carrier-related waste/fraud/abuse would be to make the subsidy into a fully portable voucher while also retaining a requirement that eligible carriers offer a free minimum-service plan.

Optimal policy aside, if the Commission is to evaluate the benefits and costs of this proposal, it must acknowledge that the impact of a less-than-100-percent discount on program efficiency would be *de minimis*. And for a significant number of the unhoused and extremely poor, any requirement to go through the motions of making a monthly payment will likely lead to disconnections and churn, which would increase long-term costs to carriers and reduce program effectiveness. Approximately one-quarter of very-low income families are unbanked, and unbanked households are overall disproportionately poor and more likely to have high income volatility.[130] Has the Commission considered the impact of its proposal on the unbanked population, and what impacts the resulting increase in churn would have on Lifeline carriers? Clearly not.

Apparently, in the eyes of the powerful and insular Chairman, the prospect of maybe reducing the size of the USF by one percent[131] is so appealing that he has failed to properly consider if that is worth the harms this proposal would cause to actual people. Such a consideration must occur prior to adopting this proposal; otherwise this approach threatens to

[130] *See* "FDIC National Survey of Unbanked and Underbanked Households," Federal Deposit Insurance Corporation (2015).

[131] For example, if the Commission required a $1 co-payment from the estimated 85 percent of Lifeline recipients that pay nothing, and all did so, this would reduce the program by about $100 million annually, or about 1 percent of the overall USF.

undermine the very purpose of Lifeline, which is to connect poor people to communications services.

E. The Proposed Lifetime Benefit Limit Is Unwarranted And Cruel.

The *Notice* also proposes to kick families off of Lifeline once they have used "too much" of the benefit.[132] This proposal fails those whose incomes are fixed permanently, such as some people with disabilities and seniors, and moreover it is completely unnecessary to Lifeline's fiscal integrity. The Commission's misguided belief that users would be more discerning about signing up for Lifeline if only they knew that the benefit would eventually run out is unsupported by the evidence. One would have to assume that Lifeline users have enough information (and powers to see into the future) such that they are able to reasonably identify whether they are currently at the most dire point in their lives or not. This is, of course, impossible. As the Commission majority would know had they bothered to talk to any poor or formerly poor people (which Commissioner Clyburn has done consistently),[133] people rely on Lifeline to meet their basic needs. This unnecessary proposal punishes them for being poor.

Ultimately, this draconian idea is a solution in search of a problem, like so many of the misguided proposals set forth in the *Notice*. Not only is Lifeline spending in decline, but as the *Notice* itself points out, the average user is on the program less than two years total.[134] What

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[132] *Notice* ¶ 131.

[133] *See, e.g.*, Letter from Joseph Torres & Jessica J. González, Free Press, & Carmen Scurato, National Hispanic Media Coalition, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42 *et al.* (filed May 12, 2017). This letter contains a non-exhaustive summary of the issues discussed at a public forum on Lifeline and other issues held in the Skid Row neighborhood in Los Angeles, and attended by Commissioner Clyburn. The corresponding video of that event provides much greater detail.

[134] *Notice* ¶ 131.

problem is a lifetime Lifeline limit meant to solve? What is the benefit to this proposal that offsets the obvious cost to people with disabilities, elderly people, transient and marginalized folks, and other poor households that will be unable to pull themselves out of abject poverty after a defined period of time? These are the very sorts of questions the Commission is obligated to consider before it plows ahead with this and the other drastic policies offered in the *Notice*. It has failed to do so, and must not entertain this proposal.

F. The Commission Should Strive To Bring Non-Adopting Households Online, But The Primary Purpose Of Lifeline Is To Provide Support And Stability To Families Struggling In Poverty.

The *Notice* seeks "comment on changes the Commission could make to target consumers who have not yet adopted broadband."[135] We agree that the Lifeline program can be a tool to further narrow the digital divide that exists between the poor and non-poor. But what we hope the Commission understands after years of asking similar questions is that there are fundamental differences in operation and goals between welfare benefit programs like Lifeline and other government incentive policies, such as tax incentives. Voice telecommunications have long been a highly inelastic service, and broadband access is increasingly an essential service that budget constrained users will prioritize over other goods and services. Lifeline's purpose may have originally been couched in concerns about further increasing telephone adoption, but the reality is that then as now, the main purpose is to increase telecom service affordability so that poor families do not have to make impossible choices about what to give up and what to keep.

Broadband telecommunications services and other telecommunications services are essential. It is very difficult for a household to function without the ability to communicate with

[135] *Id.* ¶ 117.

the outside world, both near and far. Access to telecommunications services can literally be a matter of life and death; hence the existence of myriad public policies that emphasize universally available,[136] reliable,[137] affordable,[138] interconnected,[139] quality services[140] that Americans can use

[136] *See, e.g.*, 47 U.S.C. § 254(b)(3) (finding "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services").

[137] *See, e.g.*, *Ensuring Continuity of 911 Communications*, PS Docket No. 14-174, Report and Order, 30 FCC Rcd 8677 (2015) (requiring facilities-based carriers offering fixed residential voice services that are not line-powered to offer subscribers the option to purchase backup power).

[138] *See, e.g.*, 47 U.S.C. § 254(b)(1) ("Quality services should be available at just, reasonable, and affordable rates."); 47 U.S.C. § 254(i) ("The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable."); *2012 Lifeline Reform Order* ¶ 27 (identifying affordability as a component of the Commission's statutory availability mandate and adopting as the Commission's "first goal . . . the availability of voice service for low income Americans" to "effectuate Congress's universal service directives in sections 254(b)(1) and 254(b)(3) of the 1996 Act that quality services should be available at affordable rates and to consumers throughout the nation"); 47 U.S.C. § 1305(k)(2)(B) ("The national broadband plan . . . shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. The plan shall also include . . . a detailed strategy for achieving <u>affordability</u> of such service and maximum utilization of broadband infrastructure . . . .") (emphasis added).

[139] *See, e.g.*, 47 U.S.C. § 251(a)(1) ("Each telecommunications carrier has the duty . . . to interconnect directly or indirectly with the facilities and equipment of other [ ] carriers . . . .").

[140] *See, e.g.*, 47 U.S.C. § 254(b)(1); *see also* 47 U.S.C. § 153(37) ("The term 'number portability' means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."); 47 U.S.C. § 253(b) ("Nothing in this section shall affect the ability of a State to impose, on a competitively neutral basis and consistent with section 254, requirements necessary to preserve and advance universal service, . . . ensure the continued quality of telecommunications services, and safeguard the rights of consumers."); Telecommunications Act of 1996, Pub. L. No. 104-104 (1996) ("An Act to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."); 47 U.S.C. § 1302(d)(1) ("The term 'advanced telecommunications capability' is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.").

to communicate with each other, their government, and emergency responders,[141] all without undue interference by their carriers.[142]

As individuals not living in poverty, it may be difficult for the Commissioners to imagine what it is like to live in poverty in a nation of great wealth. So it may be far too easy for them to view telecommunications services that they can easily afford – ones that have enriched their lives in numerous ways – as something other than necessities for basic living for <u>other people</u>. They may see these services as luxuries for whittling away the hours, not required tools for life, liberty and the pursuit of happiness.[143]

The public has made it clear, through their actions in the marketplace, that they place an immensely higher value on telecommunications services than they do on many other goods also

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[141] *See, e.g.*, *Facilitating the Deployment of Text-to-911 and Other Next Generation 911 Applications; Framework for Next Generation 911 Deployment,* PS Docket Nos. 11-153 & 10-255, Second Report and Order and Third Further Notice of Proposed Rulemaking, 29 FCC Rcd 9846 (2014) (requiring CMRS providers and other providers of interconnected text messaging applications to be capable of supporting text-to-911 service by December 31, 2014).

[142] *See, e.g.*, 47 U.S.C. § 201(b) ("All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, [or else hereby] declared to be unlawful . . . ."); *see also* § 202(a) ("It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage."); § 253(b) ("Nothing in this section shall affect the ability of a State to . . . safeguard the rights of consumers.").

[143] *See, e.g.*, Remarks of Commissioner Michael O'Rielly Before the Internet Innovation Alliance, "What is the Appropriate Role for Regulators in an Expanding Broadband Economy?" (June 25, 2015) ("[T]he constant advancements and ever-changing marketplace have provided a profession and steady income but, more importantly, <u>technology has expanded **my** capabilities beyond measure. I have taken advantage of Internet broadband to expand **my** horizons</u> both as a consumer and a professional. . . . It is important to note that Internet access is not a necessity in the day-to-day lives of Americans . . . . People can and do live without Internet access, and many lead very successful lives. Instead, the term 'necessity' should be reserved to those items that humans cannot live without, such as food, shelter, and water.") (emphasis added).

viewed as indispensable.[144] This is why the price elasticities of demand for telecommunications services and for telephony in particular are so low, suggesting that Americans at all income strata will prioritize purchase of telephony over almost all other goods, including even such necessities as gasoline and electricity.[145]

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[144] *See, e.g.*, Cisco, "2011 Cisco Connected World Technology Report" (2011) (reporting a survey in which 73 percent of U.S. respondents agreed with the statement "I could not live without the Internet, it is an integral part of my daily life" and indicated that the Internet is, or "was pretty close" to being "as important to them as water, food, air and shelter," with 32 percent of U.S. college students saying that Internet access is as important to them as water, food, air and shelter); *see also* Pew Research Center, "The Web at 25 in the U.S." (Feb. 27, 2014) (showing 46 percent of adults responding that the Internet would be "very hard or impossible to give up," (the highest value in the survey), with 44 percent saying the same thing about cell phone service, compared to 35 percent of adults saying this for television, 34 percent for email, and 17 percent for a landline phone); Mark Wilson, "What Americans Would Give Up For the Internet: Alcohol, Exercise, Showers, Sex," *Fast Code Design* (Mar. 20, 2012) (showing survey results indicating that Americans value Internet access at $3,000 per year, amounting to a massive 536 percent consumer surplus); Micheline Maynard, "Millennials in 2014: Take My Car, Not My Phone," *Forbes* (Jan. 24, 2014) (reporting that 40 percent of millennials "believe that losing their phone would be a bigger hardship than losing their automobile").

[145] Price elasticity of demand is a formal measure of how the change in a good's price impacts consumer demand for that good. It is defined as the percentage change in quantity demanded resulting from a one percent change in price, *ceteris paribus*. Thus, the lower the value of price elasticity of demand, the less sensitive consumers are to a change in price. For a good with low price elasticity, consumer demand will not change much in response to a price increase or decrease, whereas a price increase (or decrease) for a highly elastic good will lead to a substantial decline (or increase) in demand. Recent studies have placed the price elasticity of demand for broadband Internet access at approximately -0.6 (constant elasticity), meaning a 10 percent price increase would be expected to produce about a 6 percent decrease in quantity demanded, while a 10 percent price decrease would produce a 6 percent increase in quantity demanded. *See, e.g.*, Octavian Carare *et al.*, "The Willingness to Pay for Broadband of Non-Adopters in the U.S.: Estimates from a Multi-State Survey," *Info. Econ. & Pol'y* (Nov. 18, 2014). Past studies on telephone service have shown it to be extremely inelastic, with values as low as -0.001, meaning that doubling the price would only cause a drop in demand of one-tenth of one percent. *See, e.g.*, Christopher Garbacz & Herbert G. Thompson Jr., "Assessing the Impact of FCC Lifeline and Link-Up Programs on Telephone Penetration," 11 *J. of Reg. Econ.* 67 (1997). Thus, demand for telephony is far less sensitive to price increases than even gasoline or electricity, which themselves are widely recognized as highly inelastic goods. *See, e.g.*, Tomas Havranek *et al.*, "Demand for gasoline is more price-inelastic than commonly thought," 34 *Energy Econ.* 201 (2012) (showing an average short run elasticity of -0.09); *see also* M.A. Bernstein & J. Griffin, Rand Corp., "Regional Differences in the Price-Elasticity of Demand for

Thus, against this backdrop of telecommunications as essential services, it is simply wrong to measure the Lifeline program's effectiveness solely in terms of how many consumers would drop their service in the absence of the subsidy. We do not measure other social services for essential goods in this manner, nor should we. Certainly many SNAP recipients would find some way to feed their families if this important subsidy program did not exist. While homelessness would increase in the absence of rental subsidies, many would find some form of shelter, though for many it would be substandard.

These programs exist so the poor can preserve their basic human dignity, and minimize difficult choices that they face on a daily basis about how to allocate scarce resources. Lifeline is, in effect, for most of its participants, an income subsidy. And although it would be far more efficient to fund this income subsidy through general treasury revenues and not through the labyrinth that is USF, this does not make a program operating as an income subsidy (and not strictly as a tool to increase adoption) into a bad policy.

Indeed, it is remarkable how often we hear that even in the absence of Lifeline people would continue to subscribe,[146] but almost never hear such complaints about the High Cost Fund. It is certainly likely that in many areas where wired and wireless carriers receive billions of dollars in annual high-cost subsidies, service would be available in the absence of these funds, either through wireless or higher-priced wireline networks. Yet the Commission has never once viewed the effectiveness of the High Cost Fund through this lens, choosing simply to measure

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Energy," (2006); Severin Borenstein, "To What Electricity Price Do Consumers Respond?" Paper Presented at NBER Summer Institute (July 10, 2009).

[146] *See, e.g.*, Mike O'Rielly & Rep. Marsha Blackburn, "FCC's Lifeline Program Ripe for Fraud, Abuse," *Politico* (July 12, 2015) ("[C]onsumers are supporting service for people that would have signed up and paid in full without a subsidy.").

the program's effectiveness by whether or not a service is available for inhabitants of these areas to purchase.[147] And when the Commission created Lifeline in 1985, it recognized that demand for telephony was inelastic, and that the impending SLC-related price increases would not lead to substantial subscribership declines. It rightly concluded nonetheless that "such an increase could place an undue burden on low income subscribers, who may be forced to sacrifice other necessities in order to continue telephone service."[148]

Thus, we strongly urge the Commission to affirmatively recognize that the proper metric for measuring Lifeline's effectiveness is not just adoption but (1) affordability, measured by user utility; and (2) efficiency of the subsidy, measured by how many users and how much service can be supported at the lowest possible cost.

IV. Conclusion

We therefore respectfully request that the Commission reject all of its proposals discussed above in the *Notice*, and swiftly implement the *2016 Lifeline Reform Order* to encourage robust Lifeline options while limiting any actual occurrences of waste, fraud and abuse. Moreover, we request once more that the Commission grant the pending LBP certification applications to expedite provision of robust Lifeline service to the people who need it most.

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[147] *See 1985 Lifeline Order* ¶ 15 ("Rate increases and the discontinuation of service by significant numbers of subscribers are not required to trigger the effectiveness of these measures. <u>Lifeline rates should be available to protect low income subscribers, just as high cost assistance is available without a requirement that rate increases in rural areas cause subscribers to discontinue telephone service</u>.") (emphasis added).

[148] *Id.* ("We realize that due to the inelasticity of demand for local telephone service, even a substantial increase in the charge for telephone exchange service may not, by itself, cause a significant number of subscribers to discontinue service. Nonetheless, such an increase could place an undue burden on low income subscribers, who may be forced to sacrifice other necessities in order to continue telephone service.").

Respectfully Submitted,

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