Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Universal Service Contribution Methodology	)	WC Docket No. 06-122

COMMENTS OF FREE PRESS

Free Press respectfully submits these comments in the above-captioned proceeding regarding the Commission's Notice of Proposed Rulemaking[1] to establish an overall cap for the Universal Service Fund's ("USF") four programs: Lifeline, High-Cost, E-Rate, and Rural Health Care. An overall cap on USF would be ill-conceived and arbitrary for at least three reasons: it would run contrary to the goals of achieving universal service; leave the contribution factor constant, contrary to what the Commission suggests; and harm low-income consumers and people of color across the nation who rely on Lifeline for their vital communications needs.

I. The Commission's Reasons for an Overall Cap on USF Are Not Justified, Given the Different Scope and Purpose of Each Program, and Run Contrary to the Goals of Achieving Universal Service.

The USF NPRM overlooks the fact that the four programs serve fundamentally different roles. The Congressional mandate for the Commission is to provide universal service to "[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas," with telecommunications, advanced telecommunications, and information services "reasonably comparable to those services provided in urban areas and . . . at rates . . . reasonably comparable to rates charged for similar services in urban areas."[2]

[1] *See Universal Service Contribution Methodology,* WC Docket No. 06-122, Notice of Proposed Rulemaking (rel. May 31, 2019) ("USF NPRM").
[2] 47 U.S.C. § 254(b)(3).

The Commission itself notes Lifeline, High-Cost, E-Rate, and Rural Health Care achieve different aspects of that mandate,[3] yet claims capping USF would provide a way to examine "the programs holistically to determine the most efficient and responsible use of these federal funds"[4] and that "[b]y explicitly linking [ ] expenditures in multiple USF programs through the overall cap . . . promote a robust debate on the relative effectiveness of the programs."[5]

The Commission seeks to compare the effectiveness of programs using a wholly undefined "holistic" metric to determine program efficiency and the proper cost-benefit analysis.[6] The seemingly innocuous framing and open-ended question within the USF NPRM cannot obscure the major shift in the Commission's longtime approach to implementing each of the four statutory directives — under both Republican and Democratic Commissions. And this major shift creates unacceptable uncertainty for vital programs, particularly Lifeline, as it sweeps aside the significant reliance interests of so many stakeholders.[7]

Commissioner O'Rielly, this proceeding's self-styled architect, described this inquiry as requiring "the Commission to examine the USF at a macro level and encourage debate about priorities for the fund as a whole before additional spending is authorized."[8] This begs the question and departs from the thoughtful, focused analysis and extensive record developed for each program. And it forces the untenable circumstance in which commenters and stakeholders

[3] *See* USF NPRM ¶¶ 5-8.
[4] *Id*. ¶ 1.
[5] *Id*. ¶ 9.
[6] *Id*. ¶ 22.
[7] *See, e.g.*, Letter from John Windhausen, Jr., Executive Director, Schools, Health & Libraries Broadband Coalition, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Universal Service Contribution Methodology*, WC Docket No. 06-122 (filed June 11, 2019) (representing more than 50 stakeholder organizations).
[8] Michael O'Rielly, Commissioner, Federal Communications Commission, Remarks Before the Hudson Institute (June 20, 2019) ("O'Reilly Remarks").

would need to both defend the standalone efficacy of each respective program while arguing for their relative importance as compared to other programs against future changes. That same "architect" notes that the Commission isn't precluded from "voting to raise the budget, should it someday see a need to do so,"[9] but this obviously is an underhanded effort to arbitrarily lower the budget now after having failed to do so for individual USF funds.

Incredibly, the USF NPRM asks whether to combine the budgets for E-rate and the Rural Health Care programs. While we do not comment here on the prudence of such a proposal, it does provide an example of the sweeping changes posed by this proceeding. Incongruously, Commissioner O'Reilly voted to approve a $100 million general fund pilot program, even over his own supposed concerns over its funding sources, during the pendency of this proceeding.[10] Then even before examining its results the same Commission has now proposed that pilot be folded into a single fund and then subsequently set to compete against several existing programs.

II. An Overall Cap is a Solution in Search of a Problem: Federal USF Has Not Grown Since the End of the Last U.S. Economic Recession, and a Cap Would Not Alone Keep the Contribution Factor Constant.

As advocates for telecommunications users, we fully understand that the burden of supporting universal service is largely borne by ratepayers.[11] That burden disproportionately falls on the poor and near-poor due to the regressive nature of the below-the-line fee system the Commission utilizes to fund USF. We strongly believe that Congress should revisit how USF is funded, and that a much larger share of the burden should come from general Treasury revenues – monies that are raised via progressive taxes.

[9] *Id.*

[10] *See* Press Release, Federal Communications Commission, "FCC Seeks Comment on Proposed $100 Million Connected Care Pilot Program" (July 10, 2019).

[11] *See* USF NPRM ¶1.

While it may have made sense in 1996 to fund USF via an assessment on end-user interstate and international telecommunications revenues, this approach simply doesn't work for today's communications market for several reasons. Implicit subsidies funded universal service before the 1996 Act. After 1996, businesses carried more of the contribution burden due to their high usage of interstate and international telecom services. That has changed in the era of email.

The change in how people and businesses communicate is shrinking the revenue base from which USF draws support. In the past 15 years, total end-user interstate and international telecom service revenues declined by nearly 50 percent, from $92 billion in 2003 to $51 billion in 2018 (see Figure 1). During this time, the annual USF outlay increased by a much smaller amount of 6 percent (see Figure 2). The declining revenue base is what led to a marked increase in the contribution burden, from 6.8 percent in 2001 to 19 percent in 2018 (see Figure 3).

However, it is critical to note that the total size of USF is almost flat since 2010 (the first full year after the most recent recession). In 2010, USF disbursed $8 billion. The unaudited disbursement value for 2018 was $8.5 billion, less than 6 percent total growth over this 8-year period. Therefore, an overall cap would not, as the Commission suggests, "strike the appropriate balance between ensuring adequate funding for the universal service programs while minimizing the financial burden on ratepayers and providing predictability for program participants."[12]

In other words, the contribution factor has broken the 20 percent barrier almost entirely due to the shrinking base of interstate and international telecommunications revenues. While the annual USF disbursement increased 5.9 percent from 2010 to 2018 (a $522 million total increase), the contribution revenue based declined by nearly 26 percent (a $17.873 billion total decrease). This means that nearly all of the increase in the contribution factor since 2010 is due

[12] *Id.* ¶ 9.

to the declining interstate and international revenue base, with only a tiny fraction of the increase caused by the small growth in USF disbursements.[13]

And this relatively unchanged total USF outlay is mostly reflective of consistent spending in each of the four USF programs (High Cost, Schools and Libraries, Rural Health Care, and Low-Income), with periodic movement up by some programs and down by others (see Figure 4). That the total size of USF is largely unchanged in the past decade should be reason enough to question the need for an overall cap and its draconian "Hunger Games"[14] battle between programs. If USF's total outlay is largely a constant, with each program subject to its own budget, then the proposed fund-wide cap is a solution in search of a problem.

The USF NPRM rightly recognizes that the pool of USF monies is not unlimited, and that it is funded via a regressive fee system. Anytime policymakers are spending money they have a duty to disburse it in a manner that achieves the policy purposes laid out by Congress in the most-efficient way possible. This duty and need to maximize every dollar spent is heightened when the funds are raised via regressive and distortionary taxes, as they are with the USF.

But though the USF NPRM dresses up the global cap proposal in rhetoric about protecting the interests of the ratepayers who fund USF, capping a fund that has not grown in size in the past decade (and one that is already subject to program-specific budgets) will do nothing to help ratepayers or bring the contribution factor down.

However, we strongly caution against the typical reflexive response to the information above about the rising contribution factor due to the declining interstate and international telecom revenue base. This long-term trend is usually met with calls to "broaden the base" by

[13] In 2010, USF disbursed $7.951 billion while Form 499-Q revenues totaled $68.91 billion. In 2018, USF disbursed $8.473 billion while Form 499-Q revenues totaled $51.036 billion.
[14] USF NPRM (Dissenting Statement of Commissioner Jessica Rosenworcel).

taxing consumer broadband internet access services.[15] However, as Free Press has documented, any move to raise the price of broadband would further shift the contribution burden onto consumers and away from enterprises, and would reduce the level of broadband adoption (and use), hitting low- and lower-income communities the hardest.[16] This is in part because consumer demand (particularly for low-income consumers) is far more price sensitive for broadband than for telephony.[17] Though the deadweight loss and potential impact of contribution fees on low-income telephone adoption were important concerns before the turn of the century, the likely disproportionate impact of a broadband tax today is an even greater concern.

To be sure, a rising contribution burden is itself worthy of policy intervention, as it represents a greater burden shifted largely onto wireless consumers (away from large enterprise businesses). But the current system, even in the face of a declining revenue base, is less distortionary and harmful to our national policy priorities than a tax on broadband would be. We believe that Congress must act to reform how we fund our nation's universal service needs. In the meantime, the Commission's best course of action is to continue its efforts to maximize the efficiencies of all USF programs, particularly the High Cost and Schools and Libraries programs, which continue to receive the lion's share of USF monies.

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[15] *See, e.g.*, Comments of State Members of Universal Service Joint Board, WC Docket No. 10-90, at 119 (filed May 2, 2011).

[16] *See* Comments of Free Press, WC Docket No. 11-42 (filed Aug. 31, 2015) ("Free Press 2015 Lifeline Comments").

[17] *See id.* Though the price elasticity of demand for long distance minutes is higher than it is for the connection itself (a reality that created more deadweight loss but less distributional effects during USF's early years), most consumers no longer purchase interstate telecom separately from their landline or wireless connections (*i.e.*, unlimited voice is the dominant product, and those plans do not differentiate between intra- and interstate calls). And most wireless carriers utilize the Commission's safe harbor in lieu of traffic studies.

FIGURE 1

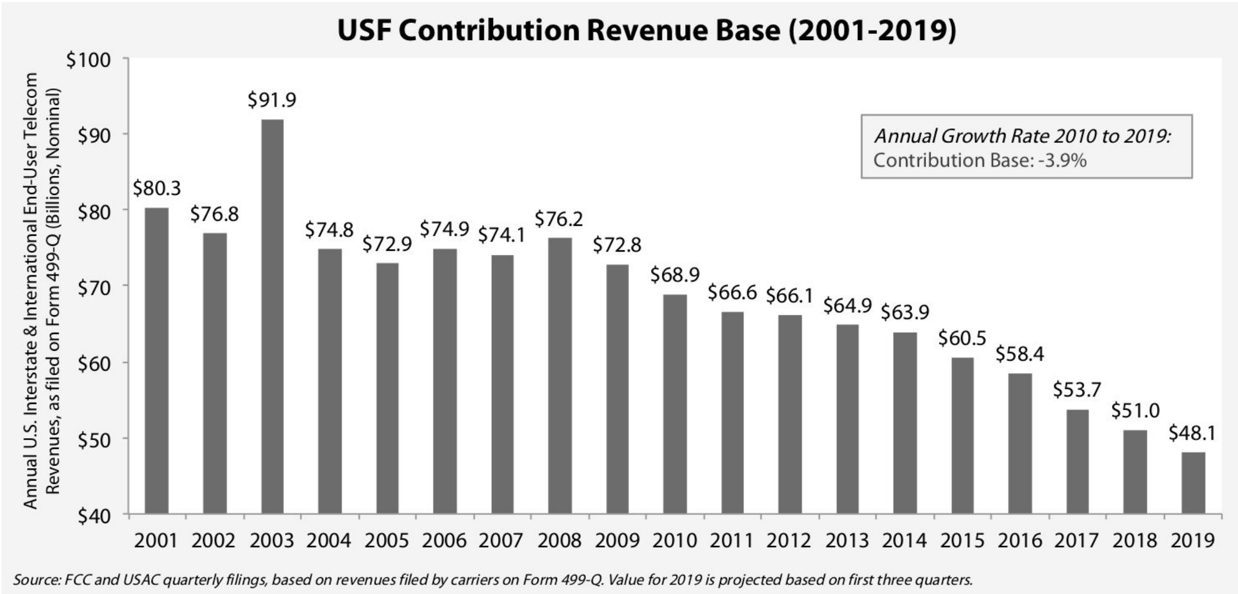


FIGURE 2

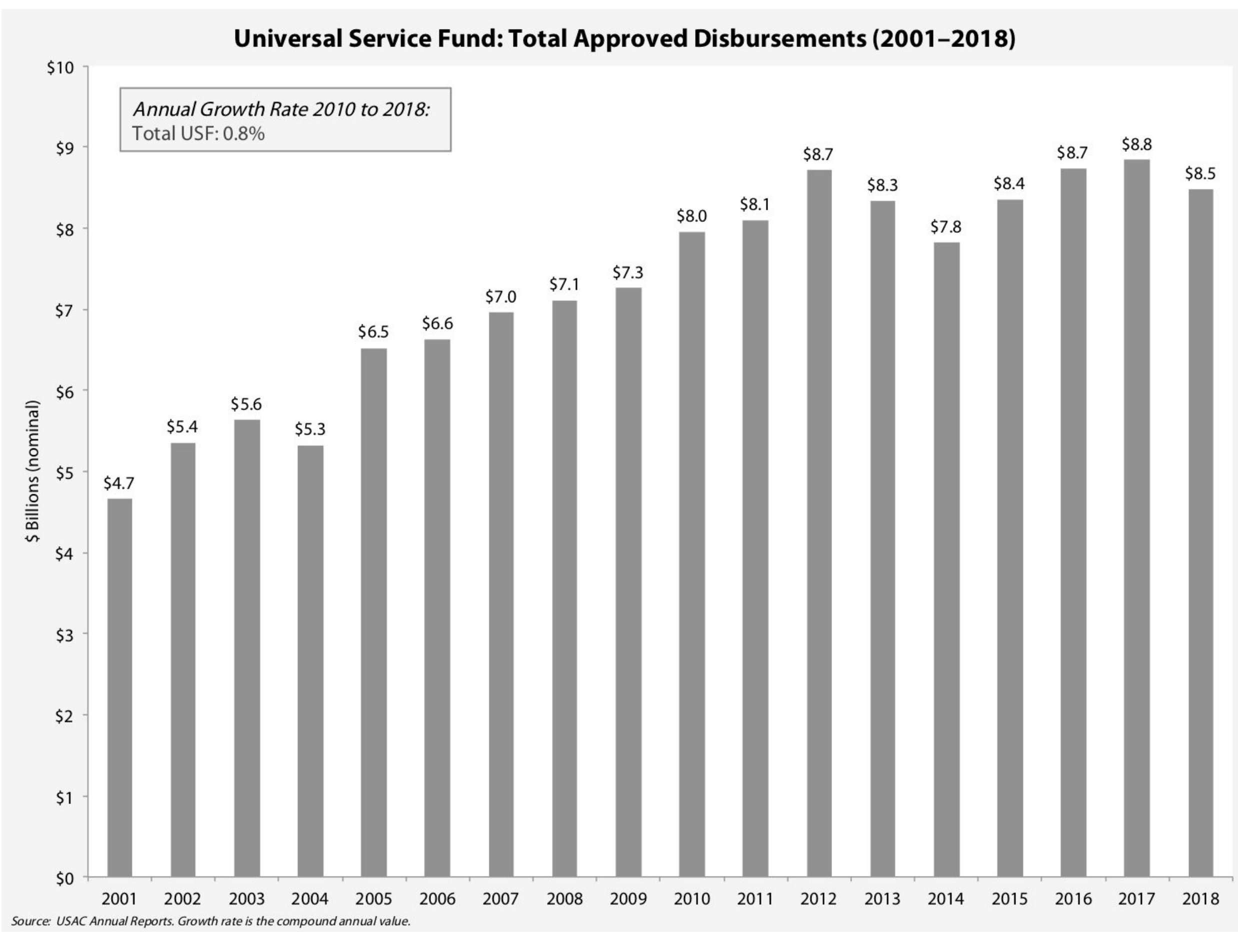
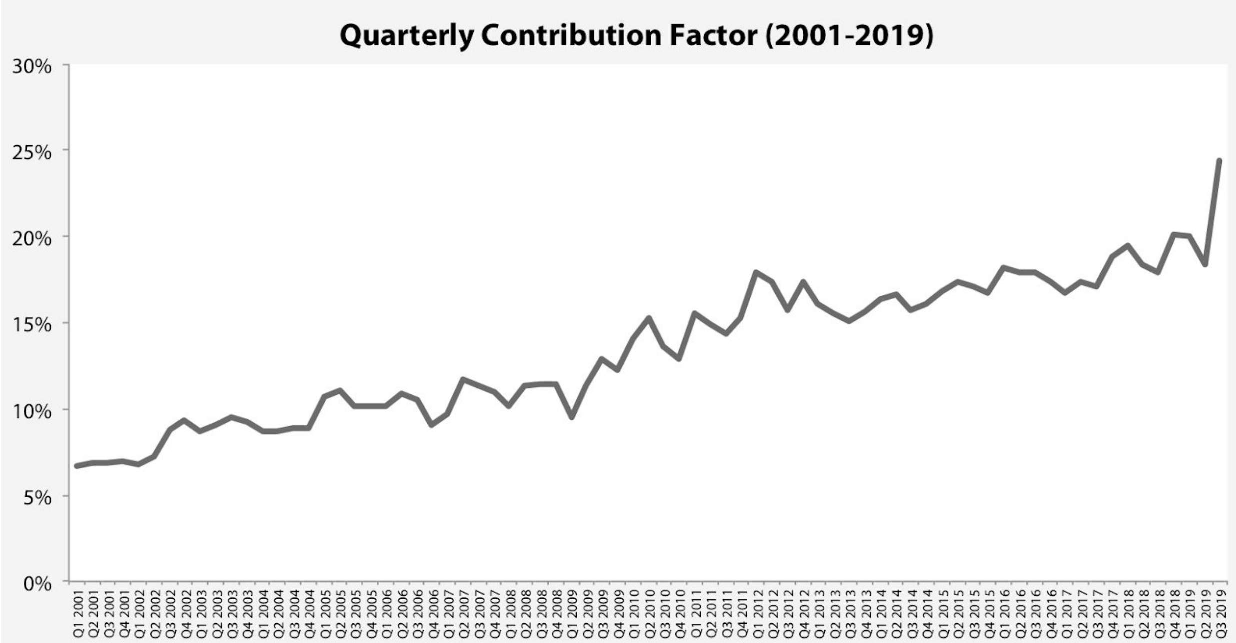
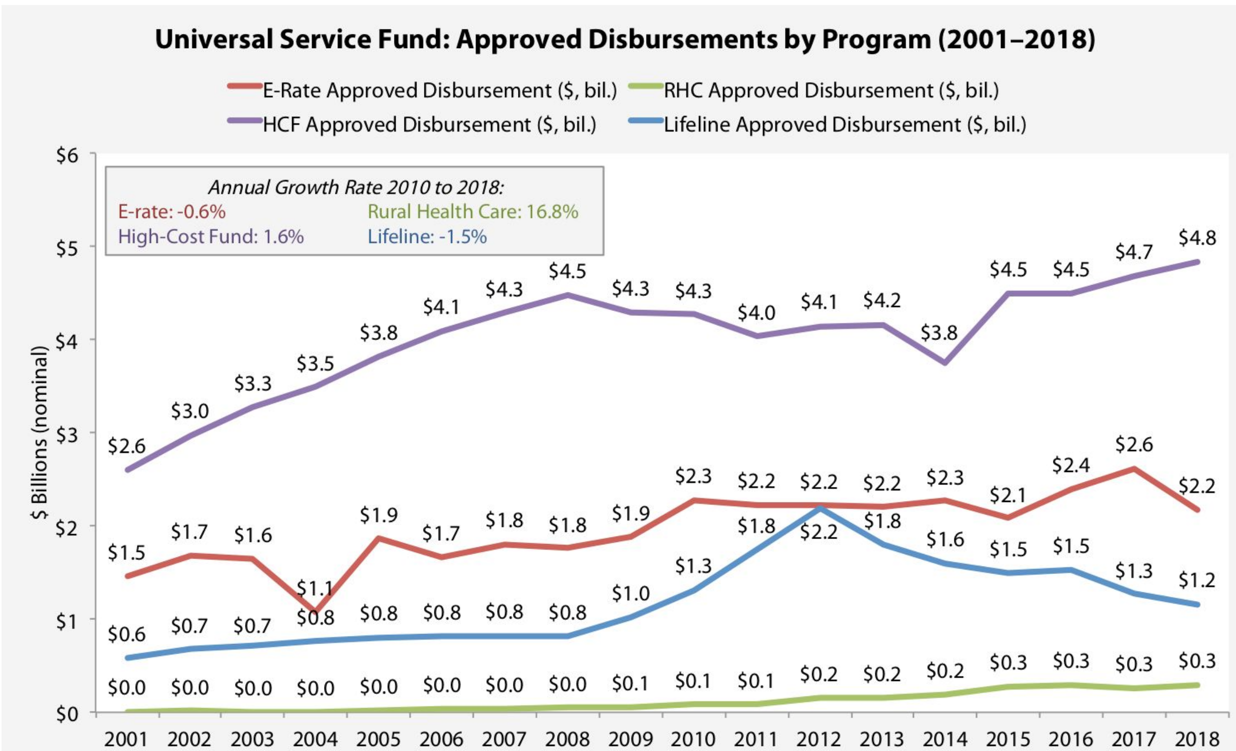


FIGURE 3



Source: FCC and USAC quarterly filings, based on revenues filed by carriers on Form 499-Q.

FIGURE 4



Source: USAC Annual Reports. Growth rates are compound annual values

III. The Commission Must Abandon Its Prior Lifeline Proposals Harming Low-Income People and People of Color Who Rely on Lifeline for Vital Communications Services

A USF cap would only sow greater uncertainty and further destabilize the Lifeline program. We remain[18] extremely concerned about the looming, harmful changes the Commission proposed to Lifeline in 2017.[19] Without a resolution and hopefully termination of that proceeding, it is premature for the Commission to consider "prioritizing reductions of one program against reduction in another"[20] or "the best methods for prioritizing funding when faced with projected disbursements exceeding the overall cap."[21]

The Commission's current Lifeline proposals would cut off hundreds of thousands of individuals across the United States, and especially in places like Puerto Rico, where Lifeline subscribership is among the highest in the country and people are still recovering from back-to-back hurricanes. For example, the proposed ban on non-facilities-based providers could disconnect up to 70 percent of current Lifeline recipients.[22] We cannot stress enough how critical Lifeline has been for low-income communities, even as the program continues to hover at a 30 percent participation rate based on eligible population. Instead of destabilizing Lifeline through the 2017 proposals and now proposing an unnecessary cap on USF, the Commission should refocus on resolving remaining implementation issues with the National Verifier and other parts

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[18] *See generally* Comments of Free Press, WC Docket No. 11-42 (filed Feb. 21, 2018) ("Free Press 2018 Lifeline Comments").

[19] *See generally Bridging the Digital Divide for Low-Income Consumers* et al., WC Docket Nos. 17-287 *et al.*, Notice of Proposed Rulemaking, 32 FCC Rcd 10475 (2017).

[20] USF NPRM ¶ 17.

[21] *Id*. ¶ 19. The Commission asks further questions that if considered would lead not only to destabilization of the Lifeline program, but other universal service programs too, by presuming incorrectly that there is a means of evaluating fundamentally different programs against one another.

[22] *See* Free Press 2018 Lifeline Comments at 20.

of the *2016 Lifeline Modernization Order.*[23] Certainly, the Commission should not work to siphon funds from one program to another in a way that would cut off individuals from access to vital communications.

CONCLUSION

This hamfisted effort to implement an overall cap on USF is unjustified on its face given the very different scope and purpose of each program, and thus runs contrary to the goals of achieving universal service. It is a solution that doesn't even address the problem it purportedly seeks to remedy. It would needlessly harm low-income people who rely on Lifeline to connect to vital communications services, and disproportionately affect people of color. Accordingly, the Commission must immediately abandon this proceeding as well as its harmful 2017 proposals.

Respectfully Submitted,

___/s/______________________

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[23] *See, e.g.,* Letter from Carmen Scurato, Senior Policy Counsel, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, *Lifeline and Link Up Reform* et al., WC Docket Nos. 17-287, 11-42 & 09-19 (filed April 22, 2019) (expressing "the need for the Commission to abandon the harmful Lifeline proceeding initiated in 2017").