



Written Testimony of

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Regarding

Addressing the Risk of Waste, Fraud and Abuse in the FCC's Lifeline Program

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Chairman Thune, Ranking Member Nelson, and esteemed members of the committee, thank you for inviting me to testify.

A little over thirty years ago, a bipartisan group of visionary leaders came together to create the Lifeline program, to connect poor people to the essential communications service of the day – the telephone. Over the past three decades, this program has created opportunity for millions of Americans, including me. I was a Lifeline subscriber for a short while in 2004, after being laid off from my job as a teacher. When times were tough, my Lifeline phone connection ensured that I had a reliable phone number on my resume, and it let me communicate with the admissions and financial aid offices at the law school that I ultimately attended.

The FCC’s 2016 Lifeline Modernization Order Directly Addresses the Digital Divide

Last year, the FCC, with support from many on this committee, modernized Lifeline for the digital age, recognizing that Americans need broadband to meet their basic needs and to participate in our society.¹ Its 2016 order adopted an additional set of reforms beyond those it had already adopted in 2012² to curb waste, fraud and abuse.

¹ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (“*2016 Lifeline Modernization Order*”).

² *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 Modernization Order* at 3970.

I cannot overstate how critical this Lifeline modernization is 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.³

The digital divide disproportionately affects low-income people and people of color. As of mid-2015, 81 percent of non-Hispanic Whites were connected to home broadband, compared to only 70 percent of Hispanics and 68 percent of Blacks.⁴ 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 \$100,000.⁵ But income inequality and other socio-economic factors alone do not explain the disparity in home broadband adoption. Free Press’s report *Digital Denied* found that the “racial and ethnic adoption gap persists [even] among the poorest households”⁶ suggesting that “structural racial discrimination or other structural factors beyond simple income differences” are to blame for the disparity in home broadband adoption.⁷ *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.”⁸

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.⁹ Thus “all efforts that reduce the price of home internet access and increase its affordability will help overcome the impacts of income inequality and

³ See, generally, S. Derek Turner, Free Press, *Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption* (Dec. 2016) (“*Digital Denied*”).

⁴ *Id.* at 27.

⁵ *Id.* at 25; see also *id.* at 26, Fig. 3.

⁶ *Id.* at 63.

⁷ *Id.*

⁸ *Id.* at 4.

⁹ See *id.* at 6, 8, 12, 15.

systemic discrimination in other areas of American society.”¹⁰ As the federal program that most directly addresses the affordability barrier to home broadband adoption, Lifeline is positioned to increase adoption and provide a pathway out of poverty for millions of people, opening doors that otherwise would remain closed to economic and educational opportunities.

Stories from Around the Nation Demonstrate That We All Benefit When Everyone Is Connected to Essential Communications Services

In May, the Voices for Internet Freedom Coalition hosted a public forum with FCC Commissioner Clyburn in the Skid Row neighborhood of Los Angeles, to hear from members of the community about why internet access matters.¹¹ I promised to bring their stories to Washington.

Susan explained that when she was unhoused, she had to track down an internet connection first to find a homeless shelter.

Marco, who’s currently unhoused, shared that he couldn’t find a culturally-competent therapist in his area, but that the internet has allowed him to access a good therapist who lives far away from him, to address his mental-health issues.

Lourdes, a senior citizen, told us that she struggles to afford a mobile internet connection, but she needs one so that she can find work as a caregiver.

¹⁰ *Id.* at 76.

¹¹ See Letter from Joseph Torres and Jessica J. González, Free Press, and Carmen Scurato, National Hispanic Media Coalition, to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 17-108, 16-106, 13-184, 12-375 (filed May 12, 2017). This testimony contains a non-exhaustive summary of the issues discussed at that Forum. The *ex parte* letter cited above and the corresponding video of that event provide much greater detail.

Takouie said that without the FCC’s Lifeline program she wouldn’t be able to afford even telephone service, which she has used to access emergency medical assistance and other healthcare services.

Fifth-grade teacher Melissa said the families of many of her students cannot afford home internet access, which places their children at an educational disadvantage. She explained that all testing has moved online, which has greatly increased barriers for poor students to succeed. As she rightly noted, “Parents shouldn’t have to choose between internet access and food for their families.”

And finally, a writer, poet and Skid Row resident said she lives off of \$221 a month, and relies solely on her Lifeline connection for phone and internet access. She said that she wants to blog, write poetry and access mental health services online, but she does not have adequate access.

Los Angeles residents are not alone in needing these supports to thrive and survive. I can’t help but wonder how many Houstonians have used their Lifeline connections to call for help and access vital emergency information as the city faced Hurricane Harvey and continues its recovery. Indeed, the evidence is clear: poor people are disproportionately impacted by natural disasters.¹² We must protect Lifeline – the primary federal program that addresses the communications affordability gap faced by

¹² See, e.g., David W. Moore, Gallup, *Katrina Hurt Blacks and Poor Victims Most* (Oct. 2005); Charles D. Ellison, *Race and Class Are the Biggest Issues Around Hurricane Harvey and We Need to Start Talking About Them*, THE ROOT (Aug. 29, 2017, 1:10 PM), <http://www.theroot.com/race-and-class-are-the-biggest-issues-around-hurricane-1798536183>; Daniel J. Weiss, Jackie Weidman, & Mackenzie Bronso, Center for American Progress, *Heavy Weather: How Climate Destruction Harms Middle- and Lower-Income Americans* (Nov. 2012).

tens of millions of people – to ensure that everyone has access to communications and emergency services in times like these.

Outside of the emergency services context too, universal adoption of telecommunications services has positive economic and social externalities that extend beyond the transaction to purchase the service.¹³ So as we honestly assess and analyze the successes of the Lifeline program and the policy changes made to modernize it, that discussion must focus first and foremost on these facts: our collective well-being, our public safety, and our economy as well, are all improved by giving a hand-up to others.

The Waste, Fraud and Abuse Narrative Is Overblown and Offensive, and the GAO Report Cited to Support It Relies on Outdated Data

I have long been troubled by the tenor of the Lifeline debate: there's a tendency to wage war on the poor, to demonize and make assumptions about Lifeline recipients. And I cannot sit here today, especially in this moment of rising white supremacy around the country and in the Oval Office, without directly confronting that these assumptions often have racist undertones.

This narrative dehumanizes people to undermine a program that we should all be proud of, and working together to improve. But the narrative predominant in so many critiques of the program excuses policymakers now at the FCC for stalling implementation of the agency's *2016 Lifeline Modernization Order*. For instance, that 2016 decision created a streamlined federal process for broadband providers to participate in the Lifeline program. The goal was to facilitate innovative business models

¹³ See, e.g., "The Impact of Broadband on the Economy: Research to Date and Policy Issues," International Telecommunications Union, pp. 104-109 (Apr. 2012), https://www.itu.int/ITU-D/treg/broadband/ITU-BB-Reports_Impact-of-Broadband-on-the-Economy.pdf.

providing low-cost, high quality services for low-income people, and to increase carrier participation in the program, thereby spurring competition. Starting in December of last year, the FCC approved nine Lifeline Broadband Providers (or “LBPs”) to begin providing service. In February however, shortly after Chairman Pai took over, the Commission revoked those approvals,¹⁴ stranding over 17,000 subscribers who had already started receiving service from one of the providers¹⁵ and denying potential service to countless others. Until the Commission addresses these issues and then restarts this LBP approval process, providers are on hold and Lifeline broadband competition will remain limited.¹⁶

¹⁴ 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*”).

¹⁵ 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).

¹⁶ In February, I 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 the driving force behind an ongoing digital divide that disproportionately harms poor people and people of color. Contrary to that goal of closing the digital divide, the *Revocation Order* erodes Lifeline’s promise by eliminating subsidized broadband opportunities and introducing uncertainty into the program – chilling the type of robust competition contemplated in the *2016 Lifeline Modernization Order*. We requested that the FCC immediately take two integral steps to bridge the digital divide: (1) rescind the *Revocation Order*, reinstating the nine LBPs that it had previously approved; and (2) commit, unequivocally, to immediately implementing the *2016 Lifeline Modernization Order* and rejecting any future attempts to undermine it. 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).

In response, the FCC sought comment on that letter. See *Wireline Competition Bureau Seeks Comment on Request for Reconsideration Concerning Lifeline Broadband Providers*, WC Docket Nos. 09-197, 11-42, 32 FCC Rcd 1533 (2017). The Voices for Internet Freedom Coalition filed a comment responding to that request, explaining that “the *Revocation Order* had an immediate negative impact: it harmed existing and potential Lifeline subscribers, generated uncertainty in the LBP marketplace, and relied on outdated and unsupported ‘waste, fraud, and abuse’ claims.” We also explained that

I am frustrated, too, with the sensationalized narrative surrounding the May 2017 report “Additional Action Needed to Address Significant Risks in FCC’s Lifeline Program” prepared by GAO’s Forensic Audits and Investigative Service team. In short, while the report highlights the importance of Lifeline and does not change the fact that millions of people rely on the program to access essential communications services, it fails to demonstrate systemic fraud. The investigation period also predated the FCC’s 2016 Lifeline reforms, calling into question the current validity of some of its findings, which do not account for the “Additional Action” that the FCC has already taken.

Unfortunately, some staunch opponents of any program that helps the poor have exploited this report to escalate their attacks on Lifeline and malign users. These critics will continue to disdain the tremendous opportunities Lifeline has provided for millions of people — and the millions more whose lives can improve with the Commission’s newly minted broadband Lifeline offerings — so long as it serves their agenda.

the “*Revocation Order* has undermined Lifeline’s promise and directly abridged opportunities for poor people to connect to broadband. The *Revocation Order* has reduced Lifeline options in all fifty states and Puerto Rico, diminishing service options for the nearly 45 million households and over 126 million people eligible for Lifeline. In his first speech as Chairman, Ajit Pai stated that one of the Commission’s ‘core priorities going forward should be to bridge the digital divide’ in order ‘to bring the benefits of the digital age to all Americans.’ Yet the *Revocation Order* frustrates efforts to bridge the digital divide, making it more likely for people in marginalized communities and school-aged children to remain disconnected.” Comments of Voices for Internet Freedom Members, WC Docket Nos. 11-42 & 09-197, at 2-3 (filed Mar. 16, 2017) (internal citations omitted). The vast majority of commenters in those dockets agreed that the FCC should reverse the *Revocation Order* and swiftly move to implement the *2016 Lifeline Modernization Order*. See Reply Comments of Voices for Internet Freedom Members, WC Docket Nos. 11-42 & 09-197, at 2-6 (filed Mar. 23, 2017). Support for the *Revocation Order* was limited, and rested primarily on a misreading of state jurisdiction over interstate broadband. See *id.* at 6-8. To date, the FCC has not acted to address our request, reversed the *Revocation Order*, nor granted any still-pending LBP applications.

But let's review the facts about this report.

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.¹⁷ But the data gathered during this time period was compiled before and during implementation of the FCC's 2012 reforms to reduce waste, fraud and abuse of these signup processes. GAO's work also was done long before the FCC had even adopted its 2016 reforms, which made internet services part of the subsidy program.¹⁸ The 2016 reforms also initiated additional efforts to make the program more prudent.

So the report's findings are a snapshot of a program since modernized and improved several times over. But is there anything to learn from its findings, even putting aside this historical context? While the GAO was unable to confirm the eligibility of 30 percent of Lifeline users it examined, 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 describes as a "nongeneralizable selection of states,"¹⁹ but in fact there are many other ways to qualify for Lifeline besides participation in those three programs.²⁰ In addition, the *GAO Report* explains that states collect and maintain their own Medicaid

¹⁷ USAC, GAO-17-538, ADDITIONAL ACTION NEEDED TO ADDRESS SIGNIFICANT RISKS IN FCC'S LIFELINE PROGRAM at 69, 71 (2017) ("*GAO Report*").

¹⁸ See generally *2016 Lifeline Modernization Order*.

¹⁹ *GAO Report* at 69-71.

²⁰ *Lifeline: Do I Qualify?*, USAC (Sept. 4, 2017, 7:10 AM), <http://www.usac.org/ls/do-i-qualify/default.aspx#programs>. One 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% of the federal poverty guidelines. In addition, during the time period of GAO's investigation, one could also qualify for Lifeline if they were on the Low Income Home Energy Assistance Program ("LIHEAP"), Temporary Assistance for Needy Families ("TANF"), or the National School Lunch Program ("NSLP").

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,”²¹ and “the consistency, quality and completeness of the data can vary from state to state.”²² 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.²³

The GAO also conducted undercover investigations from June 2014 through May 2017,²⁴ a period that predates implementation of the most critical *2016 Lifeline Modernization Order* reforms.²⁵ 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 leverage its expertise to deceive certain Lifeline providers, by its own admission GAO’s result doesn’t prove that this essential program is plagued by fraud.

²¹ *GAO Report* at 71.

²² *Id.*

²³ *Id.* at 72.

²⁴ *Id.* at 73.

²⁵ *See, e.g., infra* nn. 30-39 and accompanying text.

²⁶ *GAO Report* 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.

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

The National Verifier System Adopted in the 2016 Lifeline Modernization Order and other Program Integrity Measures Will Significantly Reduce Waste, Fraud and Abuse

The FCC established this National Lifeline Eligibility Verifier (“National Verifier”), to which the *GAO Report* refers, in the *2016 Lifeline Modernization Order*. It did so to make eligibility determinations and perform a variety of other functions necessary to enroll subscribers in the Lifeline program.³⁰ The National Verifier will verify subscriber eligibility, conduct checks to prevent duplicate benefits, recertify subscriber eligibility, and calculate support payments to eligible telecommunications carriers (“ETCs”).³¹ The National Verifier service provider portal will track activities down to the level of individual sales agents, and ETCs will be held liable for the actions of their agents.³² During the transition period, for carriers in states not yet in the National Verifier, USAC will monitor and track the activity of individual sales agents.³³

²⁹ *Id.* at 57-58 (emphasis added).

³⁰ See *2016 Lifeline Modernization Order* at 4006-4021, ¶¶ 126-166 (comprehensively detailing the National Verifier, including performance management tools, and a reporting and internal controls component).

³¹ See *Wireline Competition Bureau Announces Initial Launch of the National Lifeline Eligibility Verifier*, Public Notice, WC Docket No. 11-42, DA 17-816, at 1 (rel. Aug. 31, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0831/DA-17-816A1.pdf (“*National Verifier Launch Notice*”); see also *2016 Lifeline Modernization Order* at 4006, 4009-10, ¶¶ 126, 132-134; see also USAC, *Lifeline National Verifier* (last visited Sept. 4, 2017), <https://usac.org/li/tools/national-verifier/default.aspx>.

³² Letter from Chairman Ajit Pai, FCC, to Senator Debbie Stabenow, at 2 (Aug. 21, 2017), http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0830/DOC-346443A1.pdf (“*Pai Letter*”).

³³ *Id.*

Last week, the FCC announced a controlled roll out of the National Verifier in six states to begin in December,³⁴ with at least 25 states migrated to the National Verifier by the end of 2018 and the rest of the states and territories by the end of 2019.³⁵ To the extent there has been fraud in enrollments due to sales agents' bad actions, this monitoring and tracking will help flag problems early and create better accountability.

In addition, the following Program Integrity Measures have been put in place:

- ETC reimbursements will be based on a snapshot report of participants using the National Lifeline Accountability Database (“NLAD”) to weed out duplicates.³⁶
- As existing Lifeline recipients are migrated into the National Verifier, there will be an eligibility check performed by the National Verifier.³⁷ Lifeline advocates have explained that this process may actually be too stringent and result in eligible households being de-enrolled if eligible households do not realize that they must respond to requests for documentation to certify eligibility yet again.
- During the transition enrollment being handled by the National Verifier, ETCs must keep copies of eligibility and identity verification.³⁸
- USAC, under FCC oversight, is developing a comprehensive list of available state and federal eligibility databases that ETCs will need to check until that particular state is migrated to the National Verifier.³⁹

Conclusion

Comparatively speaking, Lifeline is an incredibly lean Universal Service Fund program. And the FCC's 2016 reforms, most notably the National Verifier, are still in early implementation stages. I only hope that the current FCC leadership will continue to implement them rather than stall them.

³⁴ The first six are Colorado, Mississippi, Montana, New Mexico, Utah and Wyoming.

³⁵ *National Verifier Launch Notice* at 1.

³⁶ USAC, Lifeline National Verifier Plan, WC Docket Nos. 11-42, 09-197 and 10-90, at 19 (filed July 31, 2017), https://usac.org/_res/documents/li/pdf/nv/Draft-National-Verifier-Plan.pdf.

³⁷ *Id.* at 57-58.

³⁸ *See Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, 7891-7897, ¶¶ 224-237 (2015); *GAO Report* at 52.

³⁹ *Pai Letter* at 5.

Everyone is against fraud in government programs, and certainly the GAO report illuminates a few problems that the FCC has already endeavored to work out; but the time period for the GAO investigation predates the 2016 reforms—as the *GAO Report* itself makes clear—making its analysis less relevant as we look to Lifeline’s future.

We must put politics aside and devote ourselves to expedient implementation of the FCC’s *2016 Lifeline Modernization Order*. We shouldn’t use this report to yet again concoct and inflate stories of waste, fraud and abuse at the expense of poor people, many of whom are people of color, and who rely on Lifeline to meet their basic needs.

Nor should we frantically resort to radical measures such as moving USF funds to the U.S. Treasury to potentially not even cover communications, but rather “to offset other national debts,” as indicated in correspondence that GAO received from the “FCC Chairman’s Senior Legal Counsel.”⁴⁰ Connecting people to communications services is an important government priority, and we should not take USF funds away from their intended purpose and intended beneficiaries.

As I read stories about how people stranded in Houston are using their cellphones and smartphones as literal lifelines, I am reminded that yes, that we should ensure the program works as well as it can; but we must remain absolutely committed in those efforts to ensuring that the poorest amongst us have access.

Thank you for this opportunity to testify, and I look forward to your questions.

⁴⁰ *GAO Report* at 23. The FCC has not formally introduced this proposal to the public, and I first learned of the idea from the *GAO Report*. I would expect the FCC to pursue a transparent process that includes public comment for an extreme change like this that could undermine not only Lifeline but also other important Universal Service Fund programs such as E-rate (which subsidizes essential communications services in schools and libraries) and the High Cost Fund (which subsidizes access to essential communications services in rural areas).