

**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

Leo Fitzpatrick, Policy Counsel
Dana Floberg, Policy Manager
S. Derek Turner, Research Director
Free Press
1025 Connecticut Avenue, NW
Suite 1110
Washington, DC 20036
202-265-1490

January 27, 2020

EXECUTIVE SUMMARY

The proposals in this proceeding represent the opening of yet another front by the Commission majority and Chairman Pai in their ongoing war on the poor. The Further Notice of Proposed Rulemaking (“FNPRM”) is merely a feint. While claiming to improve program integrity, it would instead significantly constrain the Lifeline program by placing arbitrary burdens on low-income people. In particular, Free Press is especially concerned with two proposals to be foisted on Lifeline applicants and subscribers: retooling the program to preference those who would not adopt broadband but for Lifeline support, and requiring a counterproductive fee on handsets received at the time of enrollment.

At best, both proposals are unnecessary and represent an arbitrarily burdensome administrative bloat imposed on poor people. At worst, both proposals are a wanton abdication of the Commission’s foundational purpose and its statutory directive to promote the universal availability, affordability, and adoption of communications services.

To prop up the first proposal and its other various musings, the Commission proposes an additional goal for the Lifeline program: to increase broadband adoption for non-adopters. But this purpose is already implied within the existing program goals. By preferencing one group of eligible Lifeline subscribers above others, this proposal fails to uphold the Commission’s universal service mandate. And the means by which it proposes to target support to this subset of people through a “but for” condition presents an unworkable and unknowable problem, which would subject poor people to the indignity of justifying their request for support and add to their administrative burdens.

The instant proceeding also proposes a fee on handsets as a measure to aid in program integrity. This shoddy proposal fails to abide by the principles of universal service by prompting disparate treatment of Lifeline applicants, producing barriers to the program's stated goals, and preventing eligible low-income people from taking advantage of the program. It also relies on seriously deficient information. The Commission produces insufficient data to support the need for these particular changes or to explain how they might address the feigned objectives. Moreover, the Commission appears content to ignore what data is available, including early indications of the promising results of implementing the 2016 Lifeline reforms, because that contrary evidence would undercut the supposed need for these further proposals in this new item.

As adopting these proposals contravenes Commission precedent and its authorizing statutes, the Commission must reject these proposals. Further, as this is a thinly-veiled effort to continue the terrible proposals the current Commission leadership made in 2017, we also request that the Commission terminate that proceeding.

TABLE OF CONTENTS

Executive Summary 2

Introduction..... 5

 I. Measuring the Lifeline Program Against An Additional Goal of Increasing
 Broadband Adoption That Would Not Occur “But For” Lifeline
 Support Is Inappropriate. 15

 A. Adding a “but for” broadband adoption goal serves no
 beneficial purpose. 15

 B. Implementing a “but for” broadband adoption goal would be
 burdensome and cruel. 21

 II. Eliminating Free Devices Is Inappropriate. 26

 A. The Commission’s consideration of a mandatory fee on handsets is
 contrary to the central purpose of universal service. 26

 B. The Commission’s proposed fee on handsets is ill-suited for its stated purpose
 and produces absurd results which are antithetical to universal service 29

 C. The Commission’s consideration of a fee on handsets is premature,
 as significant reforms which potentially address the harms identified are
 in the process of being implemented 32

Conclusion..... 37

Introduction

The Commission's foundational purpose is promoting the universal availability and adoption of communications services.¹ Congress granted the Commission broad powers to fulfill this mission, and recognized the need for communications services to be not just universally available but affordable.² Using its broad authority under the Communications Act of 1934,³ the Commission created the Lifeline program in 1985 to help those in need gain or maintain basic local telephone service.⁴ The Commission felt an acute need to act, as the average cost of a residential line had jumped 80 percent in the prior five years,⁵ and local line costs were poised to rise even further with the expansion of the Subscriber Line Charge ("SLC"), a fee imposed

¹ See 47 U.S.C. § 151 ("For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges . . . there is hereby created a commission to be known as the 'Federal Communications Commission,' which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this Act.").

² See *id.* (mandating "reasonable charges"); see also, e.g., *id.* § 254(b)(1) ("Quality services should be available at just, reasonable, and affordable rates"); *id.* § 254(i) ("The Commission and the States should ensure that universal service is available at rates that are just, reasonable, and affordable.").

³ See, e.g., 47 U.S.C. §§ 151, 154(i), 201, 205.

⁴ See *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 & Order, 50 Fed. Reg. 939 (1985) ("1985 Lifeline Order").

⁵ See Comments of Free Press, WC Docket No. 11-42, Fig. 1 (filed Aug. 31, 2015) ("Free Press 2015 Lifeline Comments").

during the period when the telephone system was beginning to transition away from implicit cross-subsidies to explicit charges and long-distance competition.⁶

Lifeline saw steady growth during the years following its creation up until 1998, when the Commission expanded the program to all states, regardless of whether or not a state contributed matching funds. Prior to that, from 1987 through 1997, the number of participants increased from 1.1 million to 5.1 million, a compound annual growth rate (“CAGR”) of 17 percent. Following this expansion, from 1997 through 2005 (the peak year before the later expansion to wireless-only Eligible Telecommunications Carriers, or “ETCs”), the number of participants increased from 5.1 million to 7.1 million, a much slower CAGR of 4.2 percent (see Figure 1 below).

⁶ Acting on a recommendation from the Federal-State Joint Board (“Joint Board”), the Commission expanded the SLC, a direct, non-traffic-sensitive charge for local carriers to levy on their customers to recover a portion of the cost of the local loop. This newly expanded portion of the SLC was initially set at \$1 per month for residential lines, increasing to a frozen level of \$2 per month after one year (\$2 in late-1984 dollars equates to approximately \$4.88 in early-2020 dollars). The impact of the SLC was meant to be offset by a corresponding decrease in the price of long distance service. However, use of long distance was not uniform across all consumer populations, with those of limited means less likely to use long distance than wealthier consumers. That meant lower income consumers were more likely to see a net price increase as a result of the new SLC, because these customers would realize little to no offsetting savings on long distance services they did not use in the first place. Therefore, the Joint Board and the Commission were concerned that even this \$2 monthly increase in the price of local service could cause hardship for low-income users and potentially decrease telephone subscribership. Thus, the Joint Board recommended, and the Commission adopted, a subsidy system for low-income users that became known as the Lifeline program. The initial form of the program was a 50 percent reduction in the SLC for qualifying households in states that matched this discount (thereby zeroing out the entire SLC for those households).

Between 2005 and 2008, program participation declined, as the economy improved for many yet the U.S. population living below 125 percent of the poverty line actually grew.⁷ Some of this decline may have been due to the new rules concerning Lifeline subscriber eligibility verification and carrier record-keeping (program changes that took effect as of June 2005).⁸ Yet 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. It is likely that many low-income consumers found greater value in these pre-paid mobile services than they found in a subsidized but still not free 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.⁹

The entire U.S. telecommunications market was undergoing substantial change during this time when Lifeline program participation was declining. Cell phone adoption was becoming

⁷ See U.S. Census Bureau, "Historical Poverty Tables, Table 6: People Below 125 Percent of Poverty Level and the Near Poor," <https://www.census.gov/data/tables/time-series/demo/income-poverty/historical-poverty-people.html> (last visited Jan. 17, 2020), ("U.S. Census Historical Poverty Tables"). According to the U.S. Census Bureau, there were 49.3 million U.S. persons living below the 125 percent poverty threshold in 2005, which increased to 53.8 million in 2008. Further, we note that the income requirement threshold for Lifeline program participation is 135 percent, not 125 percent.

⁸ *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). That 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 then-existing program-based qualifications).

⁹ The nominal average monthly rate for a residential access line was \$27.16 in 2005. The average per-subscriber monthly support from the low-income program at that time was \$9.39.

near-universal,¹⁰ with increasing numbers of households dropping landlines completely.¹¹ Home-internet adoption levels were high, with more than half of all U.S. homes subscribing to high-speed internet services by mid-2007.¹² And the dawn of the smartphone era was upon us, with the potential to usher in better services at prices that were far more affordable than those seen during the landline era. Recognizing this change, and understanding that the need for the Lifeline program to modernize is as important as the need for the program to be efficient, the Bush-era Commission under the leadership of Chairman Martin changed course from its prior policy and unanimously granted the Mobile Virtual Network Operator (or “MVNO”) Tracfone the first ever Lifeline-Only ETC waiver.¹³ In 2008, TracFone began to draw Lifeline funds, and

¹⁰ Ongoing Pew Research surveys reflect that as of year-end 2005, two-thirds of U.S. adults owned a cell phone, increasing to 84 percent by the end of 2008. *See* Pew Research Center, “Mobile Fact Sheet,” Data from 2002–2019 (2019).

¹¹ According to the Centers for Disease Control (“CDC”), 7 percent of U.S. households were wireless-only at mid-2005, increasing to 20 percent by year-end 2008. *See* “Wireless Substitution: Early Release of Estimates From the National Health Interview Survey, January–June 2018,” Division of Health Interview Statistics, National Center for Health Statistics, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (Dec. 2008).

¹² As of October 2007, 62 percent of U.S. households subscribed to home internet service, with 50.8 percent of all U.S. households subscribing to a high-speed (non-dial up) service. *See* U.S. Bureau of the Census, “Households using the Internet in and outside the home, by selected characteristics: Total, Urban, Rural, Principal City, 2007,” Current Population Survey, October 2007, School Enrollment and Internet Use Supplement File: Technical Documentation, CPS-07, (2008).

¹³ *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 requirement in Section 214(e)(1) that eligible carriers must use their own facilities at least in part).

became a state-designated ETC in 10 states and the District of Columbia.¹⁴ More wireless-only ETC designations followed: Virgin Mobile in 2009,¹⁵ and iWireless, Allied, Consumer Cellular and others in 2010.¹⁶

The expansion of Lifeline to wireless – a mode of telephony service in which consumers found greater utility, and ultimately received at no cost under Lifeline – had a profound impact on program participation and the program itself. In 2008, wireless lines accounted for just 11

¹⁴ *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 support only in New York, Virginia, Connecticut, Massachusetts, Alabama, North Carolina, Tennessee, Delaware, New Hampshire, Pennsylvania, and the District of Columbia, but denying ETC designation in Florida as that state’s PUC asserted its ETC-designation authority).

¹⁵ *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 et al.*, CC Docket No. 96-45, Order, 24 FCC Rcd 3381 (2009).

¹⁶ *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).

percent of Lifeline spending; by the third quarter of 2019, this had increased to 91 percent.¹⁷ This expansion of the Lifeline program to higher-utility and more highly-demanded wireless services, and the lowering of participation barriers¹⁸ also came at a time when the economy plunged into the Great Recession. While it is difficult for most members of the public (and the Commission) to understand, millions of poor people do rationally perceive a cost of several dollars a month as a high burden.

These factors (along with the expansion of matchingsubsidies in certain states like California) all combined to push program participation substantially higher. The number of Lifeline enrollees increased from 6.85 million in 2008 to 17 million in 2012, before declining again to 13.35 million in 2014 (due to the *2012 Lifeline Reform Order*).¹⁹ The further program

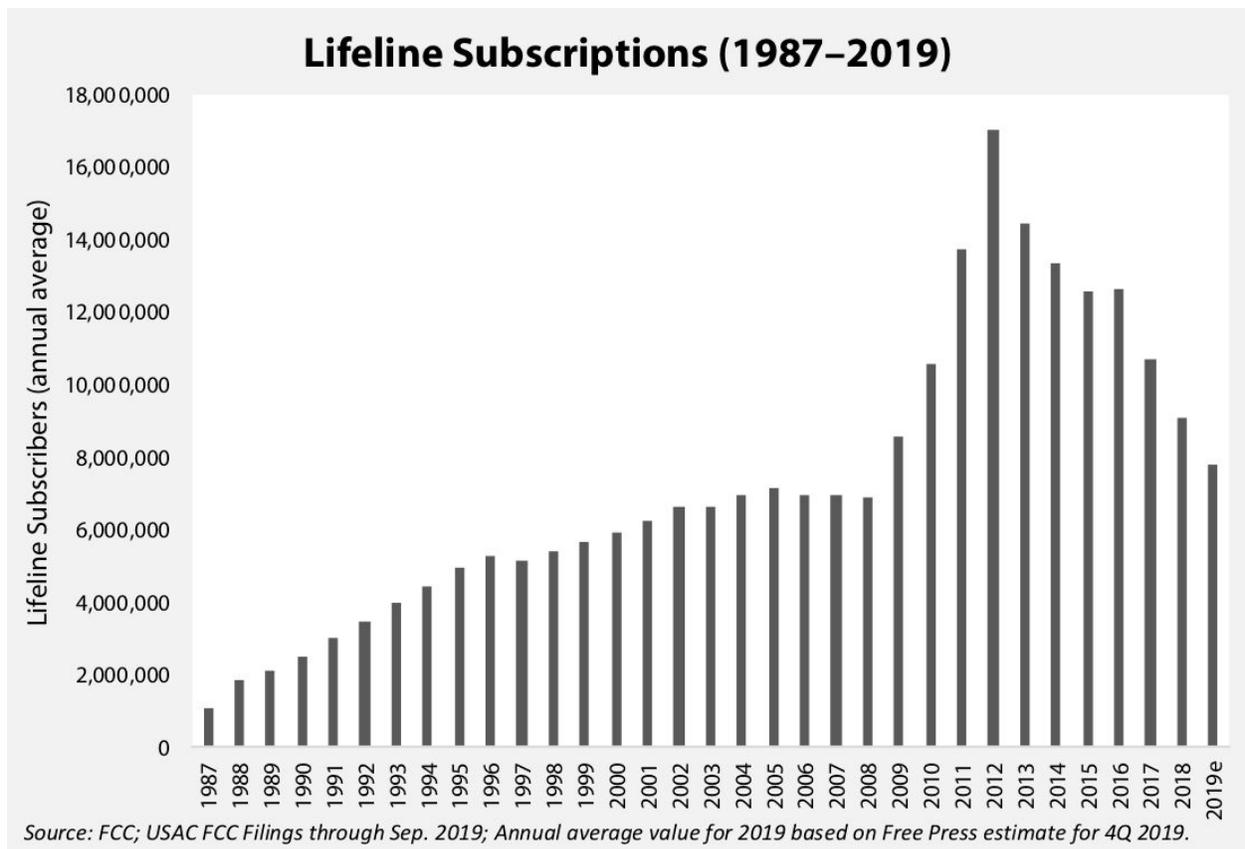
¹⁷ Free Press estimates based on Universal Service Administrative Company (“USAC”) FCC Filings. According to the CDC, landlines were present in approximately 40 percent of U.S. households by year-end 2018. These data also indicate that the reliance on wireless is disproportionate amongst poor and near-poor households, with 67 percent of households below the poverty-line and 65 percent of those between 100 percent and 200 percent of the poverty line wireless-only, compared to 56 percent of all other households. Thus, wireless services accounting for some 91 percent of Lifeline disbursements reflects the overall adoption pattern amongst low-income households, and indicates the strong preference for wireless services over landline ETC services amongst these households generally. As discussed herein, these preferences likely reflect the essential nature of connectivity generally, combined with the higher utility and lower cost of wireless services.

¹⁸ The Commission during this time lowered participation barriers both for carriers and subscribers. Carriers were no longer required to be “full” ETCs, which meant that for the first time subsidies were available to a far greater number of carriers, and these included companies that were willing to market their services to qualifying households – unlike incumbent local exchange carriers with little or no incentive to promote the availability of Lifeline subsidies, as they faced greater legal barriers (and thus costs) before disconnecting late or non-paying customers. And subscribers of course faced lower participation barriers by not having services tied to a static location, as well as having services available at zero-monthly cost. This is of course something the Commission rightly recognized both at the creation of the Lifeline program in 1984, and through its expansion to its current form in recent years.

¹⁹ *Lifeline and Link Up Reform and Modernization*, 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*”).

changes adopted in 2016 have driven enrollment down sharply, from a steady 12.6 million during 2015–16, to approximately 9 million subscriptions at the end of 2018. During 2019, further erosions from a combination of factors, along with the removal of 850,000 Assurance Wireless subscribers (due to irregular usage) resulted in another precipitous drop and an enrollment level just under 7 million (see Figure 1). Thus, since 2008 the Lifeline program has seen its participation rate (the percentage of eligible households taking the subsidy) go from just 21 percent in 2008 up to a peak of 32 percent in 2016, but now down to approximately 18 percent near the end of 2019.²⁰

Figure 1



²⁰ Free Press estimates based on USAC FCC filings and data from the U.S. Census Bureau’s American Community Survey.

That the Lifeline participation rate has sharply declined since 2016 is not mentioned in the instant FNPRM, or any of the current Commission’s Lifeline policy proposals. Indeed, the Commission majority and Chairman Pai in particular seem dead-set on making Lifeline support even more difficult to obtain for our nation’s low-income people.²¹ And the Commission’s efforts since the start of Chairman Pai’s tenure reflect a desire to make Lifeline less useful to those who unquestionably qualify for the program.²² Chairman Pai’s gleeful attempts to shrink the Lifeline program come even as he continues to claim that closing the digital divide is his top priority. We of course understand and agree with the Commission’s long-standing and ongoing efforts to ensure the Lifeline program is devoid of waste, fraud and abuse by carriers. But faithful administration of the program requires leadership that also views the program as a vital piece of the overall suite of policy solutions that help the Commission fulfill its mission: ensuring that everyone has access to high-quality, affordable advanced telecommunications services, and maximal use of these services.²³

To this end, if the Commission’s goal is to help keep the poor connected while also guarding against any harmful shift in the contribution burden towards consumers (as that burden is regressive and falls upon millions of families who are poor or near-poor), then there are plenty of lessons to be drawn from the ebb-and-flow of Lifeline program participation, particularly during the wireless-only ETC era.

²¹ See, e.g., Comments of Free Press, WC Docket No. 17-287 (filed Feb. 21, 2018) (“Free Press 2018 Lifeline Comments”).

²² 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*”).

²³ See 47 U.S.C. § 151; see also, e.g., American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009).

First, we note that the 1998 expansion of eligibility for federal subsidies to all consumers in all states did not produce substantial growth in program participation, but the post-2008 expansion to wireless-only ETCs offering services at zero cost to users did. These differences are instructive to how this program should be structured to reach maximum efficiency and effectiveness.²⁴ These data suggest that a user's perceived utility of a service (in this case, how they value mobility vs. simple fixed connectivity) is a very important factor to account for when optimizing program design. That is, a subsidy alone will not be effective if it is not subsidizing a service that people find very useful. In this regard, a program offering portable subsidies that enable users to express their preferences will be far more effective than a rigid, one-size fits all approach.²⁵

Second, if the Commission's goal is to ensure that low-income people in the U.S. have access to affordable services while minimizing waste, fraud and abuse (and thus minimizing any undue burden on the ratepayers contributing to the overall USF), it still makes no practical sense for the Commission to raise unnecessary participation and cost barriers, such as prohibiting wireless-only ETCs (or any ETC) from offering free or low-cost equipment to Lifeline subscribers. Given the harsh realities of poverty in America, it is plain that such a requirement would punish those who unquestionably qualify for and need Lifeline support, and would only

²⁴ *See, e.g.*, "FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program," United States Government Accountability Office, GAO-15-335 (Mar. 2015). The GAO summarizes the Commission's own programmatic goals for Lifeline as the following: "(1) to ensure the availability of voice service for low-income Americans, (2) to ensure the availability of broadband for low-income Americans, and (3) to minimize the Universal Service Fund contribution burden on consumers and businesses."

²⁵ *See* Free Press 2015 Lifeline Comments at 32–60.

reduce the contribution burden (if at all) by keeping these poor people away from the program altogether.

Finally, these data reflect the importance of Lifeline as a lifeline. That is, millions of people in America were pushed into dire straits and poverty during the Great Recession, and some of these people utilized Lifeline support and the connectivity it provides to help pull themselves back out or alleviate some of the effects of living in poverty. This illustrates the role that Lifeline plays as a social safety net, and demonstrates why arbitrary program caps are senseless, unlawful, and cruel.²⁶

In sum, telecommunications services are generally viewed by consumers as essential, but some may find greater utility in particular services. Even among one type of service, households 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 people, and affordability is directly related to an individual consumer's perceived utility of a service, the Commission must structure Lifeline to be responsive to individual preferences. This can be accomplished while also continuing to be vigilant about reducing the already low levels of programmatic waste. The best way to accomplish these program goals is through a fully portable subsidy that recipients can apply to the service of their choosing. The worst way to accomplish these program goals would be to conjure up novel legal theories that require ETCs to charge customers for equipment – which in any case is not even directly subsidized by Lifeline dollars –

²⁶ See Comments of Free Press, WC Docket 06-122, at 1 (filed July 29, 2019) (“An overall cap on USF would be ill-conceived and arbitrary for . . . 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.”).

or to adopt questionable measures of effectiveness in how dollars are spent that have little to do with Lifeline’s central purpose.

I. Measuring the Lifeline Program Against An Additional Goal of Increasing Broadband Adoption That Would Not Occur “But For” Lifeline Support is Inappropriate.

A. Adding a “but for” broadband adoption goal serves no beneficial purpose.

The Commission proposes to add a new goal to Lifeline, asking if it should tinker with the program to prioritize “increased broadband adoption for consumers who, without a Lifeline benefit, would not subscribe to broadband.”²⁷ Notably, the goal does not merely seek to add adoption to the list of measurable program outcomes, but specifically proposes to measure adoption for those eligible individuals who would not subscribe “but for” the assistance of the Lifeline program. To put a finer point on it, the new goal ostensibly would work to deprive or at least de-prioritize benefits to fully eligible individuals who – in the Commission’s judgment, at least – still might adopt broadband even without the benefit of Lifeline. In this formulation, the proposed goal is both completely unnecessary and unworkable.

Promoting broadband adoption for otherwise non-adopters is already implied within the existing Lifeline goals. In the initial *2012 Lifeline Reform Order* establishing measurable program goals, the Commission decided to measure the achievement of its second goal, ensuring broadband service is available to low-income consumers, by measuring “the extent to which low-income consumers are subscribing to broadband.”²⁸ This language is consistent with the

²⁷ See *Bridging the Digital Divide for Low-Income Consumers*, WC Docket No. 17-287, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, ¶ 136 (rel. Nov. 14, 2019) (“FNPRM”).

²⁸ See *2012 Lifeline Reform Order* ¶ 35.

Commission’s other Lifeline goals, which seek to ensure that both voice and broadband service are available (and, as the *2016 Lifeline Order* explicitly included, affordable²⁹ for all low-income consumers. The category of “all low-income consumers” necessarily includes the category of “low-income consumers who would not subscribe to broadband but for Lifeline assistance.”

Consequently, the only novel aspect of the instant FNPRM’s proposed goal is the addition of the “but for” condition. Proposing to measure this subset of broadband adoption separately is notable not merely for its redundancy, but also for its unworkability. The Commission itself acknowledges these inherent challenges, agreeing with the GAO’s assessment that the current structure of the Lifeline program “ma[kes] it difficult for the [C]ommission to determine causal connections between the program and the number of individuals with telephone access.”³⁰ Given that the stated purpose of introducing clear goals for Lifeline is to measure the program’s impacts, establishing a redundant and virtually impossible to measure goal would not improve the Lifeline program or serve the public interest.³¹

Rather than expanding the Commission’s understanding and assessment of Lifeline’s purpose, adding a new “but for” condition would introduce an exclusive aspect to the program goals. Separating and elevating the goal of increased adoption only for those who would not adopt broadband “but for” Lifeline assistance, despite the present inclusion of this group within the Commission’s existing goals, would indicate a unique preference for this type of Lifeline subscriber over other equally eligible subscribers. The Commission openly admits to this, stating

²⁹ See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, ¶ 408 (2016) (“*2016 Lifeline Order*”).

³⁰ FNPRM ¶ 138.

³¹ *2012 Lifeline Reform Order* ¶ 24.

its intention to alter the Lifeline program structure “to ensure that Lifeline funds are being used effectively . . . by encouraging broadband adoption by households that otherwise would not subscribe to the supported service.”³²

It is patently ridiculous to propose a new measurement to evaluate an existing program that requires unspecified alterations (and in this case, limitations) merely to complete the evaluatory measurement. Moreover, such a preference is unsupported by the statute. Section 254(b) directs the Commission to pursue universal service policies that promote “just, reasonable, and affordable rates,”³³ and ensure “[c]onsumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas”³⁴ have comparable access, with no exclusionary conditions or “but for” clauses preferencing certain groups above others.

Instituting a goal that amounts to a preference for certain Lifeline-eligible subscribers over other equally eligible subscribers cannot serve the Commission’s statutory goal of achieving universal service, unless we accept the idea that extending Lifeline support to some eligible individuals necessarily means that other eligible individuals must go without. However even a cursory analysis shows that this is not the case – the Lifeline program is in fact underutilized. As shown above in Figure 1 and discussed in the accompanying text, the Lifeline participation rate is low and in recent years has continued its steady decline, dropping from 33 percent

³² FNPRM ¶ 138.

³³ *See* 47 U.S.C. § 254(b)(1).

³⁴ *See id.* § 254(b)(3).

participation in 2016 down to 25 percent participation in 2018,³⁵ and plummeting even further through the first three quarters of 2019 to 18 percent.

As these most recent numbers demonstrate, there was a sharp drop in 2019 on the whole and in the third quarter especially, when Lifeline lost 1.7 million subscribers in just three months (Figure 2). That amounts in 2019 alone to a 20 percent decline from 2018 in the total number of Lifeline subscriptions.

Annual disbursements for Lifeline have correspondingly shrunk, declining by 61 percent since the peak outlay year of 2012, with a CAGR of -12.6 percent.³⁶ Most of that decline has taken place under current Commission leadership.³⁷ As shown in Figure 3, the Lifeline program has returned to 2002 inflation-adjusted spending levels, despite the fact that nearly 5 million more people in 2018 lived below 125 percent of the poverty level than did in 2002.³⁸ In other words, while there are more people who qualify for Lifeline based on income alone today, Lifeline is allocating the same inflation-adjusted amount of money it did in 2002, long before widespread internet or cell phone adoption.

³⁵ USAC, “Program Data: Lifeline Participation,” <https://www.usac.org/lifeline/learn/program-data/> (last accessed Jan. 17, 2020).

³⁶ USAC, “Program Data: Lifeline Disbursement Data,” <https://www.usac.org/lifeline/learn/program-data/> (last accessed Jan. 17, 2020). Total percent decline and CAGR numbers are adjusted for inflation. The nominal decline comes out to 56.5 percent, and the nominal CAGR to -11.2 percent.

³⁷ Since the end of 2016, annual disbursements have declined by 38 percent nominally, 41 percent inflation-adjusted.

³⁸ See *U.S. Census Historical Poverty Tables*. As previously noted, annual Census data on poverty is summarized at 100 percent and 125 percent of the poverty threshold, while Lifeline program participation (for income-qualifying participants) is set at 135 percent.

Figure 2

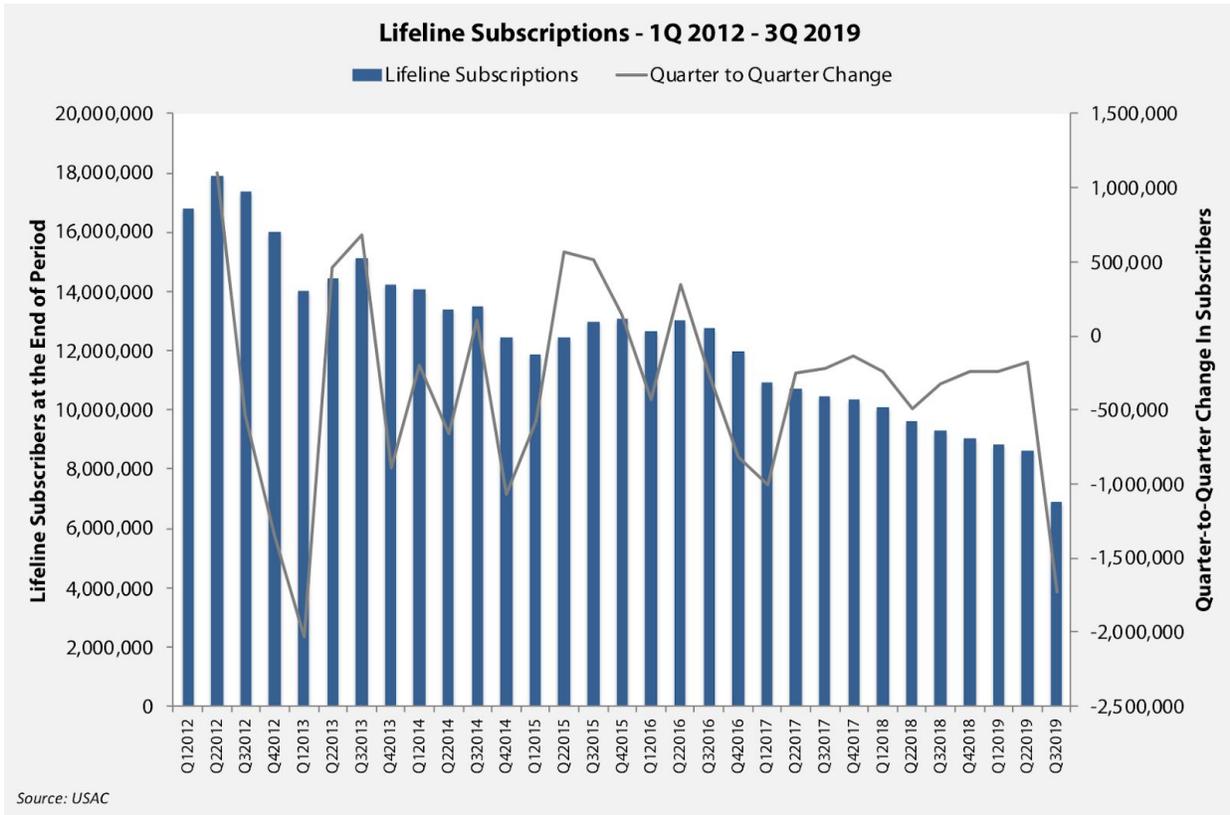
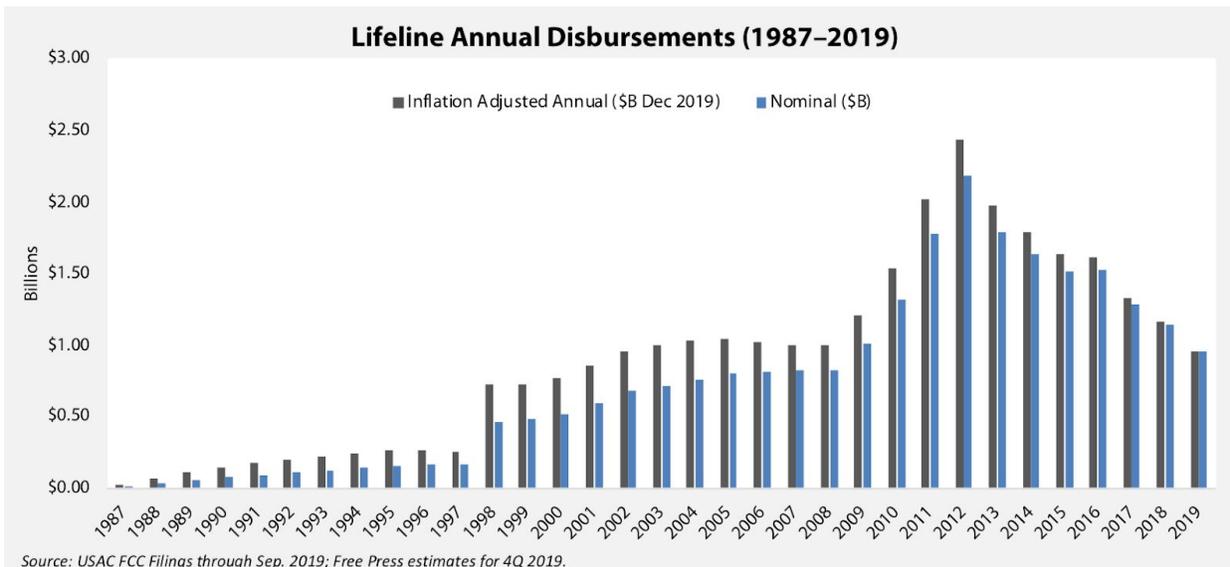


Figure 3



The Lifeline program has seen many reforms in recent years aimed at minimizing waste, fraud and abuse, which have no doubt contributed to this decline. Free Press has welcomed these reforms, but only to the extent they have been targeted at rooting out actual waste and not recharacterizing anti-poverty measures as inherently wasteful or fraudulent.³⁹ But given the above data, there is no rational basis for engaging in zero-sum thinking regarding Lifeline-eligible individuals. Pitting equally eligible Lifeline subscribers against each other, or preferencing one particular group of eligible subscribers over others, cannot possibly be justified for a program that is so underutilized as to make its support anything but scarce.

The only justification the Commission offers for the addition of its preferential “but for” program goal is “to ensure that Lifeline funds are appropriately targeted toward bridging the digital divide.”⁴⁰ However, the FNPRM provides no evidence of Lifeline funds being inappropriately targeted along these lines. While the Commission spends ample time in the FNPRM detailing anecdotal instances of waste, fraud, and abuse, the “but for” distinction made in the proposed goal would not limit any such improper payments. To the extent there is any concrete plan for implementing the proposed new goal, it merely would limit certain eligible

³⁹ See Written Testimony of Jessica J. González before the United States Senate Committee on Commerce, Science, and Transportation, 11–12 (Sep. 6, 2017).

⁴⁰ FNPRM ¶ 136.

individuals from accessing Lifeline benefits for which they fully qualify.⁴¹ The failure to demonstrate the nature of the supposed problem this “but for” adoption goal purports to solve is especially baffling considering the lengths to which the Commission goes in the FNPRM to craft the largely un-measurable measurement. Without any substantial evidence of funds being inappropriately targeted, instituting a preferential goal and altering the Lifeline program structure first to only assess the results of that alteration later must be considered arbitrary and capricious.

B. Implementing a “but for” broadband adoption goal would be burdensome and cruel.

The Commission’s proposed implementation of a preferential goal to promote broadband adoption specifically for those who would not adopt “but for” Lifeline support would be both burdensome and cruel. Assessing which Lifeline subscribers qualify as “but for” adopters would be an extremely difficult task, and the Commission’s proposal to add additional questions to the Lifeline enrollment process in order to identify this group would present a clear and measurable burden for eligible individuals. Specifically, the FNPRM suggests asking Lifeline applicants questions regarding “how the program has impacted their broadband adoption,” such as “whether they already subscribe to voice or broadband service, and whether they would be able to afford

⁴¹ See, e.g., Statement of Commissioner Jessica Rosenworcel, concurring in part and dissenting in part, “FCC Further Strengthens Lifeline Against Waste, Fraud, and Abuse,” at 2 (Nov. 14, 2019) (“the agency suggests surveying Lifeline recipients—all of who have already been means-tested for eligibility—whether they would be able to afford service without Lifeline. This does not add up, unless the real goal is to further restrict participation in the program.”); Statement of Commissioner Geoffrey Starks, concurring in part and dissenting in part, “FCC Further Strengthens Lifeline Against Waste, Fraud, and Abuse,” at 2 (Nov. 14, 2019) (“ . . . I don’t believe we’ve ever probed elderly Medicare recipients on how much they actually value their medical services; nor should we probe vulnerable, Lifeline recipients on how much they value their connectivity.”).

their Lifeline-supported service without the Lifeline discount?”⁴² From a purely bureaucratic perspective, adding unnecessary questions to an already lengthy enrollment process requires applicants to spend more time and energy jumping through logistical hoops, thus discouraging enrollment by eligible individuals who desire support. A Commission that has repealed numerous reporting requirements for broadcast and telecommunications companies on the grounds that filling out forms supposedly is too burdensome for smaller companies should engage in more humility and less hypocrisy when adding to the reporting requirements faced by Lifeline eligible individuals who have even fewer resources.

Moreover, the Commission’s proposed questions are invasive and patronizing. This is not merely a matter of phrasing – it is a matter of intent and purpose. An individual applying for Lifeline broadband who has already provided substantial documentation to prove their eligibility should not then be required to justify their decision to apply. Soliciting this justification implies that Lifeline eligible individuals are not equipped to determine if they actually need support, or that they are not needy enough to deserve support. But the Commission has already determined who needs and deserves support: any individual who meets the eligibility criteria established by the Commission itself. It does not serve the Lifeline program goals or universal service goals generally to discourage or shame eligible individuals from completing their Lifeline enrollments.

Further, with or without the implementation of survey questions, establishing a goal to preference those who would not subscribe to broadband “but for” Lifeline support ignores the realities of poverty, affordability, and adoption. Even if the Commission could somehow determine precisely which Lifeline-eligible individuals qualify as “but for” adopters, it is

⁴² *Id.* ¶ 139.

inappropriate to measure the effectiveness of the Lifeline program simply through the lens of how many individuals would not subscribe unless they had the subsidy. The Commission does not use a “but for” metric to judge the impact of the High-Cost Fund, nor do we as a nation measure the impact of other social service programs for essential goods in this manner.

Would some of the participants that came onto and off Lifeline during the 2008–12 subscriber expansion have subscribed to telecommunications services in the absence of Lifeline support? Of course. Did many of these people maintain service because of short-term help from the Lifeline program? Almost certainly. However, what the Commission (and Federal-State Joint Board on Universal Service) have long understood, but this current Commission ignores, is that basic telephony, mobile telephony and broadband internet access are essential services.⁴³ Because most people view communications services as essential, we see them saying in survey after survey – and showing through their actions in the marketplace – that they place a higher value on telecommunications services than they do even on many other goods and services also universally seen as necessities. This is why the price elasticities of demand for

⁴³ See *Federal-State Joint Board On Universal Service*, CC Docket No. 96-45, Recommended Decision, 22 FCC Rcd 20477, 20491–20494, ¶¶ 55–68 (2007) (“[B]roadband Internet services are essential to education, public health, and public safety . . . [and] wireless telecommunications services are no longer a luxury in our society, but are a fundamental necessity for an overwhelming majority of consumers for public health, safety, and economic development.”); see also *In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, WC Docket Nos. 11-42, 09-197, 10-90, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818, ¶¶ 4–5 (2015) (“Today, broadband is essential to participate in society. . . . Broadband is necessary for even basic communications in the 21st Century, and offers improved access to and quality of education and health services, improved connectedness of government with society, and the ability to create jobs and prosperity. Broadband access thus is necessary for even basic participation in our society and economy.”) (internal citations omitted). We note that these notions, of the essential nature of these services and importance to keeping all people connected, are absent from the instant FNPRM.

telecommunications services are so low, suggesting that people at all income strata will prioritize the purchase of basic communications over almost all other goods, including even such necessities as gasoline and electricity.⁴⁴ Thus, the current Commission’s endless fixation upon constructing a program that only reaches those users who would not purchase telecommunications services but for the \$9.25 per month Lifeline subsidy is not only impossibly pointless; it lacks a basic understanding of welfare economics, it is inefficient, and it is ultimately cruel.

For some Lifeline subscribers, the subsidy drives them to adopt broadband when they otherwise would not. For other eligible subscribers, however, Lifeline support effectively operates as an income subsidy that reduces the price of essential broadband service, allowing them to reallocate scarce resources to pay for other necessities. This second group of eligible individuals is equally deserving of Lifeline support. Indeed, when the Commission first created Lifeline in 1985, it understood that it was crafting a program to not only promote adoption but also to make an otherwise “undue burden” in the form of high telecommunications prices more manageable for people who could and would (with difficulty) still pay the higher prices.⁴⁵

The Commission’s proposed “but for” goal also ignores the inherent instability of poverty. Many eligible individuals applying for Lifeline support will have adopted broadband in the past, either because they sacrificed other necessities as discussed above, or because budgets and incomes fluctuate and such fluctuations have a greater marginal impact on low-income

⁴⁴ See, e.g., Free Press 2015 Lifeline Comments, nn. 34–35.

⁴⁵ See *1985 Lifeline Order* ¶ 15 (“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.”).

households. An unexpected bill or a shift in work hours may mean the difference between some families being able to subscribe to broadband or needing to drop their service. Inconsistent service is not universal service, and an eligible recipient's having managed to afford broadband in the past does not indicate that Lifeline support is unnecessary now.

The only conceivable explanation we can imagine for this designation of preferential disbursements to those who would not adopt “but for” Lifeline as somehow more “appropriate” than disbursements to other fully eligible Lifeline subscribers (and imagine we must, since the Commission fails to articulate any justification for this arbitrary distinction) is the argument that it is inefficient to subsidize service for those who would subscribe to broadband regardless, and (from a company standpoint) that such subsidization might displace non-Lifeline subscriptions. However, this complaint not only ignores the Lifeline program's existing goals to promote broadband affordability and availability for all low-income consumers, but flies in the face of economic research. A recent econometrics-based study found “no evidence to support a displacement effect of Lifeline accounts for regular paid subscriptions” and even noted that “the results indicate a mild positive relationship between the two, suggesting Lifeline accounts may actually stimulate the number of regular paid accounts.”⁴⁶

Altering the Lifeline program to focus on an exclusionary goal of promoting broadband adoption only for those who would not subscribe without Lifeline support would place undue additional burdens on applicants, discourage eligible individuals from subscribing, and arbitrarily redirect funds towards the Commission's preferred subscribers at the expense of equally eligible subscribers. The Commission provides no logical or evidentiary basis for establishing this goal,

⁴⁶ George S. Ford, *A Fresh Look At the Lifeline Program*, Phoenix Center Policy Paper Number 55, at 35 (July 2019).

which serves no beneficial purpose that could begin to counterbalance these harms, and flies in the face of the law as well the fact that the program is under-utilized and still shrinking rapidly. Neither the public interest nor the principles of universal service can countenance a program measure whose only purpose can be to arbitrarily discriminate.

II. Eliminating Free Devices Is Inappropriate.

The Commission's consideration of a proposed fee on handsets is contrary to the principle of universal service and is premature given current reform implementation efforts. The proposal also fails to address the uncertainty it would cause and in fact contravenes its own stated goals.

A. The Commission's consideration of a mandatory fee on handsets is contrary to the central purpose of universal service.

Prohibiting the distribution of free-to-the-user handsets strays far from the touchstone of the Lifeline program: its purpose is to benefit the consumer.⁴⁷ In the instant FNPRM, the Commission proposes this prohibition for the sole express purpose of promoting program integrity. Then, it places the burden of an additional fee on Lifeline consumers – a burden that carriers have independently elected to absorb as part of provisioning this program.

The Commission lacks any data to suggest that such a proposal is necessary, failing to demonstrate the nexus between the kind of conduct it seeks to deter and how a fee would address it. The Commission has at its disposal data and analysis from staff at the Commission and the ability to direct USAC to provide the same, as well as a pending Lifeline Marketplace report. Yet

⁴⁷ See 47 U.S.C. § 254(b)(3) (requiring the Commission to “base policies for the preservation and advancement of universal service” on the principle of access for “[c]onsumers in all regions of the Nation, including low-income consumers”); see also *Alenco Commc'ns, Inc. v. FCC*, 201 F.3d 608, 621 (5th Cir. 2000) (“The purpose of universal service is to benefit the customer, not the carrier.”).

it produces none of that data to support its assertion that offering free devices threatens program integrity.

The record established in the 2016 and 2017 Lifeline proceedings do not provide any such evidentiary support. Instead, the Commission relies on guesswork and insinuation.⁴⁸ However, there is some limited experimental evidence that suggests the offering of free handsets produces the same approval rate for eligible subscribers as for discounted or unsubsidized handsets. The progenitor of the ban on distributing in-person handsets in 2016 and the entity the Commission cites heavily in support of the handset fee proposal, TracFone Wireless Inc., submitted a study during the 2014 Lifeline pilot program which compared paid monthly broadband offerings that also offered three device options: a free device, a discounted device and no device. The results show that Lifeline pilot program applicants who chose the free device offering were approved for Lifeline support at a similar rate to those who selected the discounted or no device offering.⁴⁹ Put another way, those applying for the free device option appear to correctly self-identify their eligibility just as often as those who paid for their device. However, we note that deterring applicants who are unaware as to their eligibility status should not prompt the need for integrity measures, but for consumer education measures instead.

⁴⁸ See Comments of the Community Action Partnership, Consumer Action, Maryland CASH Campaign, the National Association of American Veterans, Inc., and the National Consumers League, WC Docket No. 11-42 at 2 (filed June 17, 2013) (noting support for TracFone's petition and no data).

⁴⁹ See Report of TracFone Wireless, Inc. on Broadband Adoption Lifeline Pilot Program, WC Docket No. 11-42, at 3-4 (filed Feb. 13, 2015). Aggregating the rate of free and discounted options show similar approval rate, disaggregating them show results opposite results for each offering. Further, more than half of non-approvals were due to applicants not meeting the additional criteria of the pilot program. We do not suggest that this study, or others like it, is definitive. The report is an imperfect proxy for consumer perception of whether they are eligible for a program or not, especially, as here, the paid monthly broadband element of the pilot program could deter the very kind of subscribers currently in the Lifeline program now.

Ostensibly, but improperly, the Commission seemingly seeks to place more of the onus for ensuring program integrity on the shoulders of those who seek and need the benefit of the program. If we follow this logical thread further, we see it yields questionable and untenable results: there certainly would be no waste, fraud and abuse if all eligible users were forced out of the program by the imposition of such burdens. Chairman Pai's ongoing and barely concealed efforts to impose such burdens and employ double standards⁵⁰ to gut Lifeline in the name of program integrity suggest that their apparent goal of merely reducing Lifeline participation is not as far-fetched as it seems.

In predictable fashion, the Commission feigns surprise that anyone could oppose this FNPRM.⁵¹ By framing the current Commission's actions on Lifeline within a false dichotomy of protecting program integrity versus allowing eligible users to receive maximum utility from the program, the Commission wrongly declares any critique of its unbalanced approach as supporting waste, fraud, and abuse.

Thus, in effect, the Commission seeks to place the cost of program integrity measures not on itself, USAC, or even the carriers, but squarely on the beneficiaries. For a subsidy program to reassign its implementation costs to the beneficiaries is not seen in other poverty alleviation or mitigation programs like SNAP or Medicaid. Upfront costs present a deterrence to all eligible users, particularly to short-time participants.

⁵⁰ *See, e.g.*, Dissenting Statement of Commissioner Mignon Clyburn on Bridging the Digital Divide for Low-Income Consumers, 2-3 (Dec. 1, 2017) (noting “how this Administration enables providers to provide free data to consumers, but not if they are economically poor; How this Administration allows universal service benefits to flow in perpetuity for companies, but not for the economically poor; that this Administration praises competition and choice, but not for the economically poor”).

⁵¹ *See* Statement of Chairman Ajit Pai, “FCC Further Strengthens Lifeline Against Waste, Fraud, and Abuse” (Nov. 14, 2019) (“Pai Statement”).

The Commission thus obstructs its own proper ends through these improper means. The Lifeline program exists to serve its beneficiaries. To the extent that the Commission concerns itself with program integrity measures to combat waste, fraud and abuse, it cannot do so in a vacuum or at the expense of its primary goal. And when the Commission has recently engaged in such ideologically motivated but factually and legally bankrupt decision-making, the courts have soundly rebuked the agency even as they gave it significant deference.⁵²

Without any evidentiary basis or rational justification, requiring carriers to impose even a nominal fee on devices included in Lifeline offerings seems to be a thinly-veiled attempt to take another bite out of the apple and frustrate the real-time in-person distribution of handsets to eligible subscribers,⁵³ given that the Commission's proposal to ban such distribution more directly has languished along with its other extremely unpopular 2017 proposals in these dockets. Now, the Commission seeks comment on how such fees might accomplish the same means by unnecessarily burdening in-person device distribution.

B. The Commission's proposed fee on handsets is ill-suited for its stated purpose and produces absurd results which are antithetical to universal service.

The Commission must consider the inequities created by the proposed fee. In effect, this proposal would redistribute wealth from some of the poorest people in this country to

⁵² See, e.g., *Nat'l Lifeline Ass'n v. FCC*, 921 F.3d 1102 (D.C. Cir. 2019) (invalidating the agency action, which threatened to reduce Lifeline services on Tribal lands, as not supported by evidence); *Mozilla v. FCC*, 921 F.3d 1102 (D.C. Cir. 2019) (remanding in part on three issues where the Commission did not comply with its obligations under the Administrative Procedure Act).

⁵³ See *2017 Lifeline Order* ¶ 101 (seeking comment on prohibiting Lifeline providers from distributing handsets in-person).

corporations – and among these corporations some of the very carriers the Commission identifies as the source of program integrity risk and derides as “unscrupulous.”⁵⁴ Even setting aside the reform measures from 2016, and the early indications that they are working, why would the Commission elect to institute a program integrity measure that would explicitly burden low-income Lifeline users rather than the carriers so often responsible for threatening program integrity? By its construction, the imposition of the fee particularly disadvantages those who do not already possess a compatible handset or device. In the broader universal service context, the imposition of an arbitrary fee to disincentivize conduct by a program beneficiary sets the Lifeline program apart from other programs. Despite calls from some quarters for the Commission to do more to manage fraud in the high-cost program,⁵⁵ the Commission has not considered any proposals to impose a similar preemptive and arbitrary fee on its beneficiaries. The Commission fails to justify this novel and counterintuitive proposal. Without such justification, it smacks of a paternalistic fervor to regulate the lives of the poor instead of regulating to protect them and the Lifeline program itself from potentially predatory behavior by the carriers.

Even if, for argument’s sake, the fees imposed are “nominal,”⁵⁶ the proposal could take millions of dollars from the pockets of LGBTQ+ youth, survivors of domestic violence, veterans, the elderly, and others who benefit from the program. All for the purpose of deterring adoption by eligible beneficiaries and redistributing those funds to carriers that would otherwise voluntarily choose to forgo any such fee while potentially diminishing their service to fully

⁵⁴ See Pai Statement.

⁵⁵ See, e.g., GAO, “FCC Should Take Additional Action to Manage Fraud Risks in Its Program to Support Broadband Service in High-Cost Areas,” GAO-20-27, at 19 (Oct. 2019) (recommending that the Commission implement an antifraud strategy for the high-cost program).

⁵⁶ FNPRM ¶ 157.

eligible participants. Lifeline providers are not altruistic enterprises, but they have developed a business model around the free handset that works. That the Commission ignores the moral implications of imposing additional burdens on poor people is not surprising, but that it now also ignores market realities and the “innovation” it often promotes at nearly all costs is surprising indeed.

Furthermore, the Commission must consider the impact of fees, even nominal ones, on the lived experiences of low-income people, and must eventually recognize that its proposed actions are another unjustified part of a larger war on the poor by the current administration. It is already expensive it is to be poor in this country, and with compounding costs even “nominal” fees can become onerous.⁵⁷ The Commission fails to acknowledge how efforts to shrink SNAP, Medicaid, and other poverty programs may impact Lifeline recipients and how the current proposals in this proceeding might increase their hardship.⁵⁸ Failure to consider this impact and context reveals the all-too-likely underlying purpose of this proceeding: to continue the Commission’s ideological assault on the Lifeline program and low-income people.

⁵⁷ See Barbara Ehrenreich, “It Is Expensive to Be Poor: Minimum-wage jobs are physically demanding, have unpredictable schedules, and pay so meagerly that workers can't save up enough to move on.,” *Atlantic* (Jan. 13, 2014).

⁵⁸ See Paul Krugman, “Trump’s War on the Poor,” *N.Y. Times* (April 26, 2018).

C. The Commission’s consideration of a fee on handsets is premature, as significant reforms which potentially address the harms identified are in the process of being implemented.

Nearly all⁵⁹ the examples of waste, fraud, and abuse described in this FNPRM predate the implementation of the good 2016 Lifeline reforms the Commission is still slowly implementing,⁶⁰ as well as the Commission’s Office of the Inspector General 2018 report and a 2017 GAO Lifeline Report. That the Commission would seek new solutions, for problems that those still not fully implemented 2016 reforms are specifically designed to address, is mystifying. Here, the Commission proposes a solution in search of a problem that’s currently being solved.

The instant FNPRM cites to a March 2018 report by the Office of the Inspector General to Congress.⁶¹ This report does not examine the impact of the pending rollout of the National Verifier. In fact, it does not even reference the Verifier at all. Then the Commission refers to an August 2019 “advisory.”⁶² This advisory presents several known issues regarding the insufficiency of National Lifeline Accountability Database (“NLAD”), issues that were previously identified in the *2016 Lifeline Order* and spurred the still uncompleted mandate to

⁵⁹ The Commission obliquely refers to revelations of Assurance Wireless’s failure to remove hundreds of thousands of subscribers per its obligations under the non-use rule as an impetus for this FNPRM. We do not know if and when further enforcement actions will occur and thus, without further understanding more of the conduct in question, could not support this proposal as an obviously premature and potentially still ineffective method for targeting such conduct.

⁶⁰ *See, e.g.*, CBS Denver, “Government’s Free Phone Program Riddled with Abuse, Fraud” (Nov. 6, 2014) (last visited Jan. 24, 2020); CBS Denver, “FCC Commissioner ‘Outraged’ At What CBS4 Investigation Revealed About Free Phone Program” (July 20, 2015) (last visited Jan. 24, 2020). The opportunities for waste, fraud and abuse at the point-of-sale cited in these stories arose from the deficiencies identified in the 2016 proceeding which then prompted the creation of the National Verifier, among other reforms.

⁶¹ FCC, “Office of Inspector General Semiannual Report to Congress,” at 10 (Mar. 2018) .

⁶² FCC Office of Inspector General, “Advisory Regarding Fraud in the Lifeline Program,” at 1 (Apr. 16, 2019).

establish a National Verifier. The time, resources and staff the Commission utilized to simply highlight a conclusion determined two years prior, and for the very same reasons, is another type of “waste” the Commission should curtail. While we support the Commission’s continued oversight of NLAD, the system exists primarily to detect duplicates, not to confirm identities through external and independently vetted databases like Medicaid, as the National Verifier does. An advisory in the midst of the National Verifier rollout reaffirming the limits of NLAD seems pointless, unless the point is to manufacture outrage in support of this Chairman's ideological vendetta against Lifeline.

In addition to reciting these earlier and since-addressed examples of waste, fraud, and abuse, the FNPRM dwells again on the “Improper Payment Rate” for the Lifeline program.⁶³ In 2018, the rate was 18.47 percent.⁶⁴ This figure warrants attention because the Commission uses the figure to single out the program⁶⁵ and to support further “reform.” The rate comes to us from the Commission’s 2018 Annual Financial Report (“AFR”), which is independently audited by the very same Office of the Inspector General that conducted the investigation also cited by the Commission. While we reserve the right to conduct a closer examination of the report’s methodology for calculating this rate in the future, we can still make several statements based on what we know now from this report: 1) the Commission has access to non-public and internal information or audits from which it generates this rate, which might be relevant to this proceeding;⁶⁶ 2) not all Lifeline subscribers captured under this metric are necessarily ineligible, as it may include eligible subscribers who did not meet certain reporting requirements; and 3) the

⁶³ FNPRM ¶ 13.

⁶⁴ FCC, Fiscal Year 2018, Agency Financial Report, 85, tbl.1 (2018).

⁶⁵ FNPRM ¶ 13 (labeling Lifeline as “an outlier among USF programs”).

⁶⁶ See FCC, Fiscal Year 2019, Agency Financial Report, 101-02 (2019) (“2019 AFR”).

Commission's reliance on this metric to support its proposals requires that it more closely examine how eligible subscribers are being lumped into this metric. The Commission must investigate whether reductions in this rate and the overall reductions to the program in 2019 do not represent an expulsion of eligible subscribers.

Yet, in the 2019 AFR, the updated improper payment rate is 9.32 percent.⁶⁷ This is nearly half the previous rate,⁶⁸ with an improvement that exceeds the Commission's projected goal for 2019 of 15 percent by a wide margin. While this rate remains concerning and we tentatively support careful and considered efforts to continue improving it while ensuring the program does not unnecessarily de-enroll eligible subscribers, the FNPRM's failure to consider the 2019 improvement raises several questions. The 2019 AFR is undated but the forward includes a message from Chairman Pai dated November 19, 2019.⁶⁹ The FNPRM was released November 14, 2019, and is cited in the 2019 AFR.⁷⁰ As the FNPRM was released just five days before the 2019 AFR, the item clearly played no role in improvements measured in 2019 but simply had to be taken into account in the instant proceeding. If the improvements are largely due to the implementation of the 2016 reforms, then it presents the Commission with an opportunity to now examine and build upon these promising reforms.

⁶⁷ *See id.* at 89, tbl.1 (2019).

⁶⁸ The Commission notes that it "became aware of additional instances of non-compliance in the USF-LL program and the actual improper payment rate may be higher than 9.32% reported above." *Id.* However, even considering the period in which revelations of Assurance Wireless's failure to de-enroll non-users came to light, if Assurance Wireless is among the "instances of non-compliance" referenced by the Commission, the amount would be large but not so large as to eliminate the reduction since 2018. Further, at the heart of Assurance Wireless's conduct was the carrier's failure to implement the non-use rule. This conduct occurs at the carriers' backend and in of itself would not implicate the need for additional measures at the point-of-sale or the proposed mandatory fee breathlessly urged here by the Commission.

⁶⁹ *See id.* at 92.

⁷⁰ *See id.*

Yet instead of recognizing these sizable incremental improvements, the Commission now takes a shot in the dark with a novel and cruel measure. The timing of the release of the FNPRM and 2019 AFR raises serious questions: Why did this Commission not wait to release the present order and FNPRM with an updated 2019 improper payment rate, as the current proceeding was dutifully cited to in the 2019 AFR? Did the Chairman have a draft or copy of the 2019 AFR at the same time that he was publicly citing to last years rate? Will the Commission acknowledge this drastic reduction in the current proceeding?

While the Pai FCC's Lifeline proposals from 2017 through today have shown no patience to let those reforms take effect, the current Commission will likely claim the credit for the 2019 reduction and attempt to advance its terrible proposals from 2017 and in this proceeding.⁷¹ Holding all else equal as to Commission or USAC action,⁷² the phased rollout of the National Verifier and 2016 Lifeline reforms throughout 2019 appears to be the most likely contributor of this reduction in the rate. Further, implementation of the National Verifier continues through 2020. With "hard" launches remaining in several states, reverifications of subscribers, the efforts

⁷¹ Curiously, the 2019 AFR itself does not seem to acknowledge the significant reduction in Lifeline's improper payment rate, and while praising the "reforms" in the FNPRM issued just days before it relegates the National Verifier and other 2016 reforms to a supporting role.

⁷² Since the 2016 reforms were adopted but not fully implemented prior to Chairman Pai's taking leadership, the current Commission can only be credited with the implementation of those reforms. And given the various efforts of the current Commission majority to at times weaponize the implementation, even that may be giving it too much credit.

to secure further data matching agreements, and others, we will likely see the improper rate continue to plummet and possibly surpass the Commission's own 9 percent report for 2019.⁷³

We do not suggest that the Commission's work is done upon completion of the rollout of the National Verifier. Indeed, public interest commenters following the implementation of the National Verifier have requested a formal feedback mechanism.⁷⁴ The Commission can closely monitor the impact of the National Verifier, and ensure that its implementation leads to greater access to vital communications services. The Commission can also closely monitor the impact of its own directives to USAC and its implementation of those directives to ensure that the National Verifier is not overly burdensome to the subscriber. It has already agreed to more closely engage with USAC at the suggestion of the 2017 GAO Lifeline Report.⁷⁵

And the Commission should more closely engage with public interest advocates. At meetings with all five Commissioners and the Telecommunications Access Policy Division in April 2019, Free Press, along with other public interest advocates and a Lifeline subscriber, urged the Commission to center program changes on efforts to alleviate the hardship to the Lifeline applicant or subscriber.⁷⁶ At these meetings, we shared how even barriers which on their

⁷³ The 2018 and 2019 AFRs note the primary contributors to the improper payment rate are either "missing certifications" or "incomplete certifications." The National Verifier alleviates a significant factor in producing missing or incomplete certifications by automatically confirming the eligibility of a majority of eligible applicants with trusted, qualifying external sources and, failing that, requiring additional documents to be uploaded to a centralized system for additional verification by USAC staff.

⁷⁴ See Comments of Public Interest Commenters, WC Docket Nos. 17-287, 11-42, 09-197, (filed Dec. 18, 2018).

⁷⁵ See GAO, "Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program," GAO-17-538, 81-82 (2017) (noting Commission's assent to the GAO recommendation) ("2017 GAO Lifeline Report").

⁷⁶ See Letter from Carmen Scurato, Sr. Policy Counsel, Free Press, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 17-287 et al. (filed Apr. 14, 2019).

own appear *de minimis*, can compound. These proposals make clear that this feedback was ignored.

Conclusion

Despite the Commission's insistent framing of the instant FNPRM as beneficial to program integrity, its proposals would do little to aid integrity and much to harm recipients. Retooling the Lifeline program's goals to specifically promote broadband adoption only by those who would not adopt "but for" Lifeline support, and to prohibit carriers participating in the program from offering free-to-the-user handsets as part of their Lifeline offerings, would serve only to hinder program effectiveness by limiting the potential utility for eligible Lifeline subscribers. In both cases, the Commission has failed to present any evidentiary support to demonstrate the problems the FNPRM purports to solve, or to offer any rational justification regarding how these proposals would ameliorate them. In both cases, the Commission's proposals threaten to shrink the Lifeline program by reducing eligible enrollment, cruelly and arbitrarily denying universal service support to low-income families that the Lifeline program is meant to serve. We cannot help but understand this FNPRM as a continuation of this Commission's prior efforts to undercut the Lifeline program, in tandem with this administration's broader attack on critical social welfare services and the communities that depend on them.

The Commission should abandon the instant FNPRM's proposals, along with its colossally unpopular 2017 proposals, and work instead to ensure the Lifeline program is fully equipped to meet the communications needs of low-income people and support truly universal service.

Respectfully Submitted,

/s/_____

Leo Fitzpatrick, Policy Counsel
Dana Floberg, Policy Manager
S. Derek Turner, Research Director
Free Press
1025 Connecticut Avenue, NW
Suite 1110
Washington, DC 20036
202-265-1490

Dated: January 27, 2020