

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 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
	)	

**REPLY COMMENTS OF FREE PRESS**

Free Press respectfully submits these reply comments in response to the Federal Communications Commission’s proceeding in the above-captioned dockets.<sup>1</sup> Nearly all commenters agree that the proposals laid out in the Commission’s Further Notice of Proposed Rulemaking (“FNPRM”) would erect additional barriers for the poor to connect to Lifeline, overly burden both eligible subscribers and companies, and abandon the Commission’s core mandate to promote the universal availability and adoption of communications services.<sup>2</sup>

In our initial comments,<sup>3</sup> Free Press opposed the proposals in the FNPRM as yet another assault in this Commission’s continuous War on the Poor. Despite having received virtually no support for its widely unpopular 2017 proposals<sup>4</sup> which sought to destabilize and gut the Lifeline

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<sup>1</sup> 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 (2019) (“FNPRM”).

<sup>2</sup> See 47 U.S.C. § 151.

<sup>3</sup> Comments of Free Press, WC Docket Nos. 17-287, 11-42, 09-197 (filed Jan. 27, 2020) (“Free Press Comments”). Unless otherwise indicated, all citations in this Reply to other parties’ comments are to initial comments filed in these same three dockets.

<sup>4</sup> See *Bridging the Digital Divide for Low-Income Consumers*; *Lifeline and Link Up Reform and Modernization*; *Telecommunications Carriers Eligible for Universal Service Support*, WC

program, the Commission’s latest offerings are another blatant effort to deter fully eligible subscribers from using their Lifeline benefit — all under the guise of supposed (but infeasible) program integrity measures.

We noted that the FNPRM’s proposal to narrow the Lifeline program’s goals and cover only those who would not subscribe to broadband service “but for” the subsidy is unworkable, cruel, and unnecessary given that Lifeline subsidy is highly underutilized. Additionally, the proposed ban on dispensing free handsets at the time of enrollment is a bad solution in search of a problem: not only did the Commission provide scant evidence that ineligible Lifeline applicants are somehow flocking to sign up simply to secure a free handset, it also failed to consider the numerous pending administrative reforms it’s currently implementing to streamline verification of Lifeline subscriber eligibility. There is a consensus in the docket that these proposals are antithetical to the central purpose of the Lifeline program, which is to ensure that poor, marginalized, and vulnerable populations are able to connect to vital communications services.

**I. The Goal of Lifeline is to Provide Eligible Subscribers with Continuous Connectivity to Communications, Not to Increase Broadband Adoption for a Narrow Subset of Eligible Subscribers.**

The Commission’s proposed new goal would fundamentally re-engineer the program to prioritize “increased broadband adoption for consumers who, without a Lifeline benefit, would not subscribe to broadband.”<sup>5</sup> Free Press explained in our initial comments that the success of the Lifeline program should be measured by its ability to provide continuous communication services.<sup>6</sup>

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Docket Nos. 17-287, 11-42, 09-197, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, 32 FCC Rcd 10475 (2017).

<sup>5</sup> See FNPRM ¶ 136.

<sup>6</sup> See Free Press Comments at 24-25.

Other commenters agreed that altering the core purpose of the program to serve those who would not adopt broadband “but for” Lifeline is simply “absurd.”<sup>7</sup> The Commission’s efforts to further restrain the program are misguided, and not only because they ignore statutory mandates. Lifeline needs no further restraint or shrinking. It has been in a steady decline — despite the fact that the eligible population has increased, with nearly 5 million more people in 2018 living on incomes below 125 percent of the poverty line than did in 2002.<sup>8</sup> The National Lifeline Association noted that “[t]he program has not shrunk because of a lack of eligible low-income Americans; rather, it appears that program participation stands at less than 20 percent of those eligible because it has become more difficult to provide Lifeline services, and for eligible consumers to enroll and remain in the program.”<sup>9</sup>

Free Press agrees with commenters suggesting that the Commission should measure the success of the Lifeline program by its ability to provide eligible subscribers with continuous service to affordable communications services,<sup>10</sup> since “[i]t is only through continuous monthly

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<sup>7</sup> See NDIA Comments at 4.

<sup>8</sup> 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). As noted in our initial comments, 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. See Free Press Comments at 7 n.7.

<sup>9</sup> See NaLA Comments at 1-2.

<sup>10</sup> Compare NCLC Comments at 6 (recommending the goal of “significant continuous participation in the Lifeline program and measur[ing] progress toward increased rates of participation” as well as suggesting that “a more appropriate measurement of whether Lifeline service achieves the goal of universal service is whether low-income households are able to maintain service every day of [the] year without having to forego other basic necessities”) and NaLA Comments at 15 (recommending that the Commission adopt the goal of “continuous connectivity affordable for Lifeline-eligible subscribers” to advance the program’s primary goal), with TracFone Comments at 9 (focusing on the Commission’s express criterion of reasonable comparability and arguing that it “does not mean that the Lifeline service available to qualified low-income households be identical to that purchased by most households”).

connectivity that low-income Americans can have a reliable phone number for job applications, employers, schools and healthcare providers; communicate consistently by email; and have the Internet available at their fingertips.”<sup>11</sup> Instead of creating barriers and overly burdensome administrative hoops, the Commission should shift its resources to focus on “encourag[ing] more participants to join the Lifeline program.”<sup>12</sup>

The majority of commenters agree that adding a “but for” Lifeline broadband adoption goal would result in unworkable, cruel, and overly intrusive regulations. As Free Press expressed in its comments, “establishing a goal to preference those who would not subscribe to broadband ‘but for’ Lifeline support ignores the realities of poverty, affordability, and adoption.”<sup>13</sup> Many commenters echoed that same sentiment. They noted that asking subscribers whether they would forgo broadband without the Lifeline subsidy sets up too narrow of a goal,<sup>14</sup> quickly becomes unworkable,<sup>15</sup> and defies logic.<sup>16</sup> Free Press explained in our initial comments that such a measure

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<sup>11</sup> NaLA Comments at 15; *see also* NCLC Comments at 11 (suggesting the prevalence of debt collections reflected on consumers’ credit reports is an indicator of the unaffordability of telecommunications services).

<sup>12</sup> OTI Comments at 3.

<sup>13</sup> Free Press Comments at 22.

<sup>14</sup> *See* NaLA Comments at 10 (arguing that while “increased broadband adoption for consumers who, without a Lifeline benefit, would not subscribe to Lifeline is a laudable goal, that goal is too narrow” and thus “[l]imiting the Lifeline program to that goal would not advance the program’s primary goals of making telecommunications and information services affordable for, and accessible to, low-income Americans”); NCLC Comments at 6 (observing the same and noting such a proposal would fail to address fully the affordability barrier).

<sup>15</sup> *See* OTI Comments at 6 (observing that asking people “whether they would purchase broadband absent a Lifeline subsidy is both intrusive and unnecessary in the context of administering a universal service program and could deter applicants to the program”); TracFone Comments at 8 (asserting that “[i]t makes no more sense to ask a Lifeline applicant whether he/she already receives broadband or voice service than it does to ask an applicant for Food Stamps under the SNAP program whether that person already eats; or to ask an applicant for Medicaid benefits whether that person has received medical care without Medicaid.”).

<sup>16</sup> National Urban League Comments at 3 (concluding that the “but for” questions posed in the FNPRM appear “designed only to decrease the number of people signing up for Lifeline, and cannot logically lead to more broadband adoption”).

“does not serve the Lifeline program goals or universal service goals” but generally serves instead “to discourage or shame eligible individuals from completing their Lifeline enrollments,” and other commenters arrived at the same conclusion.<sup>17</sup> The National Urban League noted “these inquiries do not advance the affordability and connectivity goals of Lifeline Service” and resemble broader federal government efforts “to make the social safety net harder to qualify for and use.”<sup>18</sup> We agree with the National Urban League’s conclusion, that the Commission’s proposal ignores the fact that “[i]n the case of Lifeline recipients, these individuals are already means-tested and certified to be disabled or elderly, to live well below poverty levels, or otherwise to need government assistance.” And we share the National Urban League’s recommendation that “[e]ligibility for Lifeline assistance should not be further conditioned on an FCC probe of the sincerity of the need.”<sup>19</sup>

## **II. Prohibiting the Distribution of Free Handsets at the Time of Enrollment Runs Counter to the Commission’s Statutory Mandate to Increase Access to Affordable Communications.**

There is likewise a consensus among commenters that the Commission’s consideration of a mandatory fee on handsets at the time of enrollment is contrary to the principle of universal

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<sup>17</sup> See Free Press Comments at 22; *see also* NTCA Comments at 4 (suggesting the Commission “set adoption of a broadband connection that meets every low-income consumer’s individual needs” as a Lifeline program goal); National Urban League Comments at 3 (conveying bewilderment and being “at a loss to understand what insights the FCC hopes to gain by asking such questions”).

<sup>18</sup> National Urban League Comments at 3; *see also* NaLA Comments at 16 (noting that the Commission’s line of questioning “with the intention of then denying Lifeline service to any applicant that says they already have voice or broadband service, or could find a way to afford it without the subsidy, would undercut the primary goals of the Lifeline program and would not be [an] effective means to achieve any [current] goal”).

<sup>19</sup> National Urban League Comments at 4; *see also* NaLA Comments at 17 (arguing that there is no reason to further parse a “truly needy” population to determine who is ready to prioritize scarce resources toward connectivity and who is not in a particular month”).

service<sup>20</sup> and is premature given current reform efforts such as the National Verifier.<sup>21</sup> If implemented, the proposal would unnecessarily burden Lifeline subscribers with an additional fee, and thus would deter eligible Lifeline subscribers from enrolling.<sup>22</sup>

The price of a handset is a cost that Lifeline providers have independently and voluntarily elected to absorb as part of provisioning this program<sup>23</sup> and the FNPRM provides scant proof of a nexus between imposing a fee and deterring nefarious behavior.<sup>24</sup> As the National Urban League correctly observed in its comments, “[t]his is not being proposed as a cost-saving measure, since

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<sup>20</sup> See CTIA Comments at 10 (noting that “additional restrictions on ETCs’ handset offerings . . . [at] enrollment” would undermine the Commission’s goals).

<sup>21</sup> See NaLA Comments at 18 (questioning the need for new measures given the National Verifier and other Lifeline reforms, and explaining that any such mandatory handset fee would not be “effective at denying enrollment attempts by ineligible consumers”); TracFone Comments at 7 (arguing the same and further noting that the “prohibition of incentive-based compensation for Lifeline enrollment representatives . . . will materially reduce, and hopefully eliminate, fraud in the Lifeline program”); SBI Comments at 5-6 (expressing belief that additional restrictions are unnecessary, given existing Lifeline program rules, and that it would be inappropriate for the Commission to proceed on this proposal).

<sup>22</sup> See NHMC Comments at 7; NaLA Comments at 18 (“Forcing subscribers to pay a handset fee – no matter how small – would not make low-income consumers value Lifeline more, but rather make the service unaffordable and inaccessible for many.”).

<sup>23</sup> See SBI Comments at 6 (asserting that “where a consumer has acted dishonestly to obtain a free phone,” SBI bears the cost and therefore is incentivized “to minimize such losses by utilizing rigorous up-front processing procedures” and, in conjunction with the National Verifier, “this issue should be even less of a problem in the future, making this all but a non-issue”); GCI Comments at 2 (noting that providers “across the wireless industry, including outside of the Lifeline context, routinely provide their customers with free handsets”) (emphasis added); TracFone Comments at 5 (suggesting that “a business decision to incur the cost of Lifeline customer handsets has no bearing on whether consumers should be required to pay for handsets” and that the investment decisions to “provide [handsets] to their Lifeline customers do not create opportunities for fraud”); NCLC Comments at 14 (noting that “[a]s is the case with marketing to all consumers, wireless carriers have chosen to compete by providing free or subsidized handsets at their expense” and concluding that “[t]here is no good reason why Lifeline subscribers should be denied the opportunity to benefit from marketplace competition in which carriers compete with each [other] with more attractive offerings, especially when these voluntary marketing practices serve as a mechanism to increase digital inclusion and multiply the value of the network for all users”).

<sup>24</sup> See, e.g., OTI Comments at 11 (encouraging Commission enforcement of rules “when bad actors abuse the system,” but explaining that “imposing draconian restrictions such as a ban on free handsets is more likely to hinder the benefits of the Lifeline program than to root out fraud”).

the costs of phones have never been covered by Lifeline subsidies” and is instead “ supposed to be a deterrent to those who would subscribe just to get the phone rather than to use the service.”<sup>25</sup> A Tribal Lifeline provider commenter further explained how burdensome such a fee would be by concluding that “requiring payment for a phone would severely limit the affordability of SBI’s service offerings and interfere with SBI’s ability to meet the needs of consumers facing extremely challenging economic conditions.”<sup>26</sup>

Furthermore, commenters noted that the Commission must consider the impact of any such fees, even nominal ones, on low-income people. Even a nominal fee<sup>27</sup> for eligible Lifeline applicants would severely deter adoption and undercut the Commission’s stated goals. The FNPRM suggested that one alternative to such a fee could be the imposition of a mandatory delay on free handsets distribution that recipients could otherwise obtain in person at the time of enrollment. Such delays would also be counterproductive and cause significant harm.<sup>28</sup> For example, Tribal Lifeline applicants often times travel long distances to receive their Lifeline phones and thus it “would be a complete non-starter for SBI to delay the distribution of a phone to a customer until after the customer makes a service payment, knowing that its customer may not return for several weeks, or more, and be denied service in the meantime.”<sup>29</sup>

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<sup>25</sup> National Urban League Comments at 4.

<sup>26</sup> SBI Comments at 6 (noting that “[b]y requiring [Lifeline subscribers] to pay for handsets, the Commission risks denying citizens access to service, or forcing unacceptably difficult choices by people least able to absorb them”).

<sup>27</sup> See FNPRM ¶ 157.

<sup>28</sup> See SBI Comments at 6 (arguing that “[a] new rule prohibiting free handsets at enrollment, or delaying distribution until after a service payment” would not heighten program integrity beyond what “the Commission’s recent reforms have already achieved . . . [and] would only punish low-income consumers, particularly on Tribal lands.”).

<sup>29</sup> *Id.*

### **III. The Commission’s Proposals to Alter the Usage Rules are Overly Burdensome and Would Subject Low Income People to Invasive Surveillance.**

The Commission’s proposal to require a software application on devices receiving services through the Lifeline program, to demonstrate whether a Lifeline provider is in compliance with usage requirements, is another wildly intrusive “solution” in search of a problem.<sup>30</sup> The consensus in the record reflects this view, and Free Press recommends that the Commission abandon the proposal altogether. No evidence in the current docket — nor in the voluminous record in prior Lifeline proceedings — supports this extraordinary intervention. This kind of surveillance violates the very spirit of privacy protections the Commission has been entrusted to enforce, and wrongly places the burden of Lifeline program integrity on Lifeline subscribers rather than Lifeline providers.

The Commission has provided no evidence that Lifeline providers rely on typical application usage by Lifeline subscribers, or even background application data usage, to subvert the 30-day usage rule. As other commenters argued, building such an intrusive surveillance system to combat a totally speculative form of fraud is at best unnecessary and at worst capricious.<sup>31</sup> The Commission’s idle speculation to justify such a system completely ignores countervailing harms from surveilling Lifeline subscribers, such as decreasing trust and therefore willingness to participate in the Lifeline program. It also ignores the burden on the Commission for not only storing and evaluating that usage information, but securing it as well, and the additional

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<sup>30</sup> See FNPRM ¶ 146. Furthermore, 47 C.F.R. § 54.405(e)(3) requires compliance with the non-use rule by Lifeline providers, not subscribers. While the regulations permit self-reporting by subscribers, this proposal unnecessarily shifts yet another burden from providers to subscribers.

<sup>31</sup> See EPIC Comments at 3 (arguing against the Commission’s imposition of “additional privacy costs on [Lifeline subscribers], especially when there is no evidence that collection of personal data about internet subscribers is necessary to prevent” the claimed harms); see also OTI Comments at 9 (describing the proposal as “a highly intrusive step to ‘solve’ a ‘problem’ that the Commission has not demonstrated truly exists”).

cybersecurity risks involved in developing an application with the necessary level of access to a Lifeline subscriber's device to distinguish different kinds of application use and network usage.

The monitoring proposal also subverts the spirit of the Commission's obligations to protect the privacy of telecommunications customers under Section 222 of the Communications Act, which says “[e]very telecommunications carrier has a duty to protect the confidentiality of proprietary information of, and relating to, . . . customers . . . .”<sup>32</sup> This protection includes a duty to protect the “amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier.”<sup>33</sup> Requiring this kind of intrusive surveillance is indeed paternalistic, as noted by several commenters,<sup>34</sup> and would in effect deny low-income people the dignity of the privacy protections afforded to individuals who can pay more for their voice and broadband service.

The burden of protecting Lifeline program integrity ought to be borne by Lifeline providers. Placing the burden of preventing Lifeline program fraud on the eligible low-income individuals that use this service to stay connected, and doing so in this intrusive manner, represents another line of attack in the Commission's ongoing War on the Poor. According to the Pew Research Center, over 80 percent of Americans are concerned they have little control of the data that the government collects on them.<sup>35</sup> The Commission's proposal would only exacerbate the

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<sup>32</sup> 47 U.S.C. § 222(a).

<sup>33</sup> *Id.* § 222(h)(1)(a) (emphasis added).

<sup>34</sup> *See, e.g.*, NCLC Comments at 12 (finding that posing questions regarding the appropriateness of certain apps on a device, or requiring Lifeline subscribers to regularly check into an app to confirm their usage, is “paternalistic and invasive of privacy[,]” and “seems to disregard the dignity of struggling, low-income individuals and runs the risk of deterring participation in Lifeline by the very consumers who need broadband connectivity to access the economic promise of the information age”).

<sup>35</sup> *See* Brooke Auxier, Lee Raine, Monica Anderson, Andrew Perrin, Madhu Kumar & Erica Turner, “Americans and Privacy: Concerned, Confused and Feeling Lack of Control Over Their Personal Information,” Pew Research (Nov. 15, 2019).

