

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90

COMMENTS OF FREE PRESS

Free Press respectfully submits these comments in response to the Public Notice released by the Wireline Competition Bureau of the Federal Communications Commission (“Commission” or “FCC”) that seeks comment on the National Lifeline Association (“NaLA”) Petition for Waiver (“Petition”). That Petition seeks a pause in the scheduled transition to the Lifeline mobile broadband minimum service standard (“MSS”) and voice support phase-down – specifically, until the Commission completes its State of the Lifeline Marketplace Report (“Lifeline Marketplace Report”).¹ While the Commission in general should look for opportunities to ensure that Lifeline users have robust service offerings available to them, we believe the Commission has good cause to grant a temporary pause that maintains the current minimum standards and the subsidy for voice at its current level of \$7.25. It should not make any change to these standards until it completes its analysis of the Lifeline marketplace. Further, apart from the unintended and unexpected consequences of the *2016 Lifeline Modernization Order*’s scheduled transitions, the Commission should also grant this waiver consistent with its pandemic response.

¹ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, ¶ 66 (2016) (“*2016 Lifeline Modernization Order*”).

I. As the Underlying Circumstances and Data Available to It Have Not Changed since the Commission Granted the Partial 2019 Waiver, the Commission Should Likewise Waive the Next Scheduled MSS Changes.

As a general matter, we strongly support a robust role for the Commission in administering the Lifeline program and discharging its other duties, in which the FCC seeks out, verifies, analyzes, and publicly releases data collections from regulated entities.² We had previously requested that the Commission either advance the Lifeline Marketplace Report or take up a similar data collection before acting here. However, the risk of harm stemming from uncertainty around the scheduled MSS changes warrants a pause until the Commission can issue its Lifeline Marketplace Report scheduled to be completed now within the next few months. The underlying factors that produced the unexpected and unintended impact of the MSS transition persist.³ And while some other data gathering exercise prior to the completion of that report may have been feasible and advisable last year when the *2019 Waiver Order* issued, the Commission does not have sufficient time or reason to conduct any separate and less comprehensive interim review now. Due to the risk of harm posed by uncertainty for providers, and the critical nature of Lifeline service, we urge the Commission to proceed not on hunches but informed decision-making based on data. Until such time, the public interest is best served by grant of the waiver.

² See, e.g., Letter from S. Derek Turner, Research Director, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 11-10, at 2-6 (filed July 11, 2019).

³ Compare “Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount,” WC Docket No. 11-42, Public Notice, DA 20-820 (rel. July 31, 2020); with “Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount,” WC Docket No. 11-42, Public Notice, DA 19-704 (rel. July 25, 2019), and *Lifeline and Link Up Reform and Modernization* et. al., WC Docket No. 11-42 et al., Order, FCC 19-116, ¶ 13 (2019) (showing this year’s sizable increase in the broadband data MSS is similar to last year’s) (“*2019 Waiver Order*”).

a. The Scheduled MSS Changes Pose an Unacceptable Risk of Harm to the Public Interest.

The risk of harm posed by the uncertainty for providers from the scheduled transition is too great. And this uncertainty in the marketplace harms Lifeline subscribers' access to affordable telecommunications too – because neither the Commission nor any stakeholders know the precise impact that any MSS increases and voice phase-downs will have. Some early indications of the range of reactions to any such changes suggest that providers could withdraw or impose some unaffordable and even insurmountable co-pay on Lifeline users.⁴ Nearly all stakeholders recognize that the planned increase is problematic, even if they do not agree as to the degree or specifics of the problem.⁵ More certainty can only come with more good data, and that's why it is better policy to proceed cautiously and grant the waiver. Uncertainty has long been a concern in the Lifeline program, as we have raised in other proceedings, because Lifeline serves communities that often lack stability and for whom Lifeline-supported services provide reliable access to health, safety, emergency, legal and numerous other critical services.⁶

Additionally, looming over this proceeding is the added uncertainty of the draft Order on circulation.⁷ As that item is not public, there is much we do not know. What we do know is that it

⁴ See, e.g., Petition of the National Lifeline Association for Waiver of Lifeline Mobile Broadband Minimum Service Standard and Voice Support Phase-Down, WC Docket Nos. 11-42, *et al.*, at 9 n.35 (filed Aug. 27, 2020).

⁵ See, e.g., Common Cause, Common Sense Media, Free Press, Media Justice, National Consumer Law Center, on behalf of its low-income clients, National Hispanic Media Coalition, New America's Open Technology Institute, Public Knowledge & United Church of Christ, OC Inc., WC Docket Nos. 17-287, 11-42, 10-90, 96-45 & 09-197, at 3 (filed Aug. 21, 2020) (“2020 Lifeline Advocates *Ex Parte*”).

⁶ See, e.g., Letter from Carmen Scurato, Senior Policy Counsel, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 17-287, 11-42 & 09-197, at 2, 4, 8 (filed Apr. 22, 2019) (summarizing several *ex parte* meetings with Commission staff in which Free Press, Greenlining Institute and The Utility Reform Network representatives stressed how Commission's proposals and decisions in its 2017 Lifeline proceeding, which unfairly and unwisely eliminated large classes of Lifeline providers and attempted to restrict eligible subscribers' ability to participate by imposing a co-pay or arbitrary budget cap, had sown harmful uncertainty).

proposes a partial increase in the broadband data MSS to 4.5 gigabytes per month. Given the need for greater certainty, we have joined others in requesting its release to the public.⁸ It is presently unclear what information the Commission relies upon to reach this increase to 4.5 gigabytes. We do not know if it is based on conditions that predated the pandemic or possibly stale information that could easily be refreshed in a few months with the Lifeline Marketplace Report. In the alternative, if it relies on new data or existing data applied in a new manner, such data would not appear to be properly noticed and could not be the basis for any split-the-difference increase without further study and opportunity for comment.

b. The Commission Must Have More Information Before It Can Act and the Lifeline Marketplace Report Will Satisfy This Need.

At a minimum, the Commission still needs clear answers to at least four questions: how any MSS changes will affect (1) Lifeline subscribership, (2) the affordability of the service, (3) the usefulness of the service to Lifeline subscribers, and (4) the cost to Lifeline providers.

And yet, 78 days before the scheduled transition, we are no closer to possessing new information than we were 307 days ago when nearly all stakeholders recognized the unsustainability of the 2019 transition prescribed in the *2016 Lifeline Modernization Order*, and when we filed on the need for the Commission to collect more relevant information.⁹ Thus, as

⁷ See News Release, “FCC Chairman Pai Circulates Order to Ensure Predictable Increases in Minimum Standard for Lifeline Mobile Broadband Service” (July 30, 2020).

⁸ See 2020 Lifeline Advocates *Ex Parte* at 4-5.

⁹ Letter from Leo Fitzpatrick, Policy Counsel, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 10-90, 09-197, at 2 (filed Nov. 12, 2019) (explaining that the Commission must complete the Lifeline Marketplace Report as soon as practicable and that “[o]nly when the Commission is in possession of all relevant data can it proceed with reasoned decisionmaking. The Commission’s apparent willingness to engage in discussions over alternative proposals implicitly acknowledges that some pause is needed. However, without the additional information that should be provided by this report, analysis of [] a 3GB allotment or a phasedown in support for voice-only service seems a speculative or even purely political consideration” (internal citation omitted)) (“2019 Free Press MSS letter”);

the Commission continues to lack these critical determinants, it does not have the information necessary to conduct a reasoned and data-informed assessment, which would be needed to change the minimum standards and set them somewhere short of the prescribed increase yet greater than they are today. The record in the above-captioned proceedings contains significant gaps, particularly as to forward-looking predictions on the probability that a co-pay will be imposed and how such a co-pay would impact Lifeline subscribership.

The irony here is twofold. First, the Commission already has or could readily acquire some of this very information. Lifeline advocates have access to limited program data from USAC – largely limited to the quarterly disbursements made to Lifeline providers by state – whereas the Commission has full access to USAC data and can make further requests.¹⁰ And while the Commission could have heeded our earlier calls to gather this data, waiting to do so until the Lifeline Marketplace Report was just a few months away would be an impractical choice too. Requesting additional data much earlier, and conducting the analysis necessary to assess the 2020 scheduled transition, would have avoided redundancy and provided sufficient time for a proper data collection. But now, the approaching Lifeline Marketplace Report represents the best available instrument from which the Commission can secure the data it requires, since it is nearer at hand now and since last year’s request for USAC to provide more granular data has yet to be implemented.¹¹

see also Comments of Free Press, WC Docket No. 11-42, at 4 (filed July 31, 2019) (“2019 Free Press MSS Comments”).

¹⁰ *See 2019 Free Press MSS letter* at 2; *see also* USAC, “Program Data: Lifeline Participation,” <https://www.usac.org/lifeline/learn/program-data/> (recently updated to provide the latest program participation rate by state but to continue to be updated quarterly) (last accessed Sept. 14, 2020).

¹¹ *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, 34 FCC Rcd 10886, ¶ 64-66 (rel. Nov. 14, 2019).

Second, the same *2016 Lifeline Modernization Order* the Commission cited in its *2019 Waiver Order* to justify last year’s partial increase and phase-down provides a template of the information the Commission needed to obtain in order to “take appropriate action.”¹² In 2016, the Commission recognized the “inherent uncertainty in the future Lifeline marketplace,” and it directed the Wireline Competition Bureau to issue the Lifeline Marketplace Report by June 30, 2021.¹³ The report was to review the marketplace to determine whether the “transition set out in this [2016] Order should be completed or whether the Commission should act to continue delaying Lifeline’s transition to chiefly supporting broadband services.”¹⁴ The report was to “consider the prevalence of subscriptions to various service offerings in the Lifeline program, the affordability of both voice and broadband services, the pace since adoption of [the 2016] Order at which voice and data usage have changed, and the associated net benefits of continuing to support voice service as a standalone option.”¹⁵ This review should have come even sooner than 2021, once the Commission recognized that the 2019 transition would be problematic; but having failed to take any steps since issuing the *2019 Waiver Order* to obtain better data, there is no point in the FCC either plowing ahead with another data-deprived interim increase nor attempting to conduct interim analysis before the pending Lifeline Marketplace Report is done.

c. Available Data Suggests That The Continued Phase-down Of Voice-only Support Has Not Had Its Intended Effect, and The Commission Should Consider Restoring the Support Level.

In last year’s proceeding, Free Press opposed the phase-down of support for voice-only services.¹⁶ Then, as now, we reiterate that the Commission erred and that voice-only service remains essential. What publicly available information there is supports a pause of the continued

¹² *2016 Lifeline Modernization Order* ¶ 66 (emphasis added).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* (emphasis added) (internal citations omitted).

¹⁶ See 2019 Free Press MSS Comments at 2-4.

phase-down, and a reassessment to determine whether the support should be returned to its original amount.

The primary impetus for the phase-down was to create an incentive to shift Lifeline subscribers from voice-only qualifying service to broadband offerings.¹⁷ However, recent data from USAC on the allocation of Lifeline program service by type reveals that, for the period before and after the 2019 transition (from October to December 2019), voice-only plans remained nearly as popular as ever. During this whole transition period established by the *2016 Lifeline Modernization Order*, Lifeline-eligible plans that bundle voice and broadband together can qualify for support based on meeting the voice minutes minimum or the monthly data minimum standard. The number of Lifeline subscribers taking an eligible service that qualifies based on the voice component of the bundled offering dropped from 24.21 percent to 1.16 percent of the total Lifeline subscriber base.¹⁸ At the same time, there was a roughly corresponding increase in the number of subscribers taking a service that qualified based on the broadband component of the bundled offering.¹⁹ However, voice-only qualifying service saw a much smaller drop in subscribership than voice-qualifying bundles, in absolute and percentage change terms, going from 12.90 percent to 11.83 percent of the overall Lifeline subscriber base.²⁰ This suggests a resistance or inability of voice-only subscribers to make the transition.

While there may be various reasons for different subscribers, we suspect that (as we have suggested in many prior filings) many subscribers still find greater utility in a voice plan than they do in a data plan, and thus may have specifically chosen to remain voice-only or found it impractical to switch their service. Thus, a continued phase-down will be less of a nudge for

¹⁷ *2016 Lifeline Modernization Order* ¶ 61.

¹⁸ See USAC, High-Cost and Low Income Committee Briefing Book, at 51 (July 27, 2020).

¹⁹ See *id*

²⁰ See *id*.

these subscribers than a cudgel. This is not a result intended by the *2016 Lifeline Modernization Order*, as it chose to adopt a more gradual approach to “avoid undue consumer disruption and to allow Lifeline providers sufficient time to adjust operations,” and also created the possibility to reconsider its approach to the service in the Lifeline Marketplace Report.²¹

Indeed, while the plan laid out in the *2016 Lifeline Modernization Order* proved too inflexible to account for the unexpectedly large 2019 and 2020 MSS data increases, it had the wisdom to call for the collection of additional data and to allow for course changes based on that data. The Commission failed to abide by those principles in its *2019 Waiver Order*, and it should now grant the Petition in full rather than invent another half-measure.

II. The Current Pandemic Exacerbates the Need to Pause the Scheduled MSS Transition and Represents a Change in Circumstances That Is Additional Grounds for Grant.

Everyone recognizes the vital imperative to keep people connected during the present public health emergency. No one should be disconnected in a pandemic. And, if as Free Press suspects, there may be a significant increase in the number of people who become eligible for and need the support the Lifeline program offers, the program must be ready to accept the surge. The Lifeline program is one of the few tools readily available to the Commission to directly and immediately address these needs. Given how particularly vulnerable the Lifeline population is, and how many recipients lack any alternatives to get connected, the Commission must not destabilize the program now.

The Commission must exercise great caution and ensure it does no harm, and that it does not unintentionally damage the program when so many people have no other viable option to stay connected right now. Lifeline is a unique program that is one of the few federal programs

²¹ *2016 Lifeline Modernization Order* ¶ 62.

that provides support for low-income people to access communications services. The prospect of even a small co-pay would force many Lifeline recipients to forgo the service.²²

Getting Lifeline wrong now, or even the mere possibility of getting it wrong now, is unacceptable. The Commission itself recognizes the need for pandemic specific responses. The Commission found that “in light of the coronavirus pandemic and community efforts to slow its spread, requiring Lifeline subscribers to respond to recertification or reverification efforts . . . would be an unreasonable burden on low-income households.”²³ It further recognized the importance of connectivity during the pandemic and noted that it did not believe “the public interest would be served by de-enrolling Lifeline subscribers who are unable to complete the recertification process or reverification process[.]”²⁴

The scheduled transition, or any compromise scheme proposed in the draft Order, could have the same undesired effect as de-enrolling subscribers.²⁵ Even relying only on retail cost information in the record indicates that without careful analysis of the relevant data, the MSS increase may lead to unaffordable rates, even as the perceived utility of the service increases. As we noted in our prior comments regarding a proposed imposition of even a “nominal” fee on the in-person distribution of handsets, any such charge could have a wide-ranging effect on Lifeline subscribers.²⁶

²² See Comments of Free Press, WC Docket Nos. 17-287, 11-42 & 09-197, at 32-37 (filed Jan. 27, 2020) (“2020 Free Press Lifeline Comments”).

²³ *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 35 FCC Rcd 2729 ¶ 7 (2020) (the first of five pandemic-related waivers).

²⁴ *Id.*

²⁵ The needs of low-income individuals are great at all times, but even greater in the midst of a pandemic with economic impact that will reverberate nationally and for some time. Further, the pandemic has disproportionately impacted members of low-income communities due to a higher prevalence of co-morbidities and less access to adequate healthcare, an observation at the core of the Commission pandemic-related telehealth efforts.

²⁶ See 2020 Free Press Lifeline Comments at 26-37.

The pandemic also compounds the already-unacceptable uncertainties surrounding the Lifeline program.²⁷ Granting the Petition would complement the Commission’s slate of other pandemic-related waivers,²⁸ even though we believe the Commission can and should do more than grant waivers.²⁹

That these comments are due at the commencement of first, and hopefully last, annual Lifeline Awareness week to occur during a global pandemic should remind us about the gravity of the moment. The Commission can raise awareness of the program, but should not simultaneously weaken Lifeline by changing the MSS without sufficient data to support the change.

For the foregoing reasons, the Commission should grant the Petition.

Respectfully Submitted,

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²⁷ See, e.g., Emily A. Vogels, Andrew Perrin, Lee Rainie & Monica Anderson, “53% of Americans Say the Internet Has Been Essential During the COVID-19 Outbreak,” Pew Research Center (Apr. 30, 2020) (finding “roughly half of Americans with lower incomes are worried about paying their broadband and cellphone bills”).

²⁸ See *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 20-891, ¶¶ 4-9 (WCB rel. Aug. 17, 2020) (order extending four prior pandemic-related waivers of Lifeline program rules).

²⁹ See, e.g., Letter from Leo Fitzpatrick, Policy Counsel, Free Press, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42, 10-90, 09-197 (Mar. 26, 2020) (recommending that the Commission conduct a consumer Lifeline outreach campaign and take up other proposals).