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

Opening Comments of the National Consumer Law Center, on behalf of its low-income clients and the Low-Income Consumer Advocates

Asian Americans Advancing Justice | AAJC
Benton Institute for Broadband & Society
Center for Rural Strategies
Common Cause
National Hispanic Media Coalition
Next Century Cities
Pennsylvania Utility Law Project, on behalf of its low income clients
Public Utility Law Project of New York
United Church of Christ, OC, Inc.

("Low-Income Consumer Advocates")

On the Further Notice of Proposed Rulemaking

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January 27, 2019

I. Introduction

On October 30, 2019, the Federal Communications Commission ("Commission") adopted a multi-part Lifeline item that includes a Further Notice of Proposed Rulemaking ("NPRM").[1] The National Consumer Law Center, on behalf of its low-income clients and the Low-Income Consumer Advocates,[2] Asian Americans Advancing Justice | AAJC,[3] the Benton Institute for Broadband & Society,[4] the Center for Rural Strategies,[5] Common Cause,[6] National Hispanic Media Coalition,[7] Next Century Cities,[8] Pennsylvania Utility Law Project, on behalf of

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[1] 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, *Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking* (FCC19-111) Rel. Nov. 14, 2019, 34 FCC Rcd 10886 *et seq*. ("NPRM").

[2] Since 1969, the nonprofit **National Consumer Law Center**® (NCLC®) has worked for consumer justice and economic security for low-income and other disadvantaged people in the U.S. through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training.

[3] **Asian Americans Advancing Justice | AAJC** is dedicated to civil and human rights for Asian Americans and to promoting a fair and equitable society for all. We provide the growing Asian American population with multilingual resources, culturally appropriate community education, and public policy and civil rights advocacy. In the telecommunications field, Advancing Justice | AAJC works to promote access to critical technology, services, and media for our communities.

[4] The **Benton Institute for Broadband & Society** is a nonprofit organization dedicated to ensuring that all people in the U.S. have access to competitive, high-performance broadband regardless of where they live or who they are. It believes communication policy - rooted in the values of access, equity, and diversity - has the power to deliver new opportunities and strengthen communities. These comments reflect the institutional view of the Benton Institute for Broadband & Society, and, unless obvious from the text, is not intended to reflect the views of its individual officers, directors, or advisors.

[5] The **Center for Rural Strategies** strives to create better opportunities for small towns and rural communities by building coalitions, developing partnerships, leading public information campaigns, and advancing strategies that strengthen connections between rural and urban places.

[6] **Common Cause** is a nonpartisan, grassroots organization dedicated to upholding the core values of American democracy. We work to create open, honest, and accountable government that serves the public interest; promote equal rights, opportunity, and representation for all; and empower all people to make their voices heard in the political process

[7] The **National Hispanic Media Coalition** is a media advocacy and civil rights organization for the advancement of Latinos, working towards a media that is fair and inclusive of Latinos, and towards universal, affordable, and open access to communications.

[8] **Next Century Cities** is a nonprofit 501(c)(3) coalition of over 200 member municipalities that supports local efforts to expand fast, affordable, reliable broadband access to residents.

its low income clients,[9] the Public Utility Law Project of New York,[10] and the United Church of Christ, OC, Inc.,[11] ("Low-Income Consumer Advocates") respectfully submit these opening comments in furtherance of a strong Lifeline program. Affordable broadband is critical for equal opportunity and engagement in modern society. At the same time, access to voice service is essential for reaching emergency service, and it also remains an important means of staying connected to friends, family, work, healthcare, schools, and services.

Unfortunately for low-income consumers who struggle to afford broadband or voice service, the proposals contemplated in this NPRM would limit the number of consumers served by the Lifeline program, risk invasive and paternalistic monitoring of consumer's usage of mobile broadband service and would hamper complementary private sector efforts at digital inclusion through the provision of free handsets or equipment. We urge the Commission to step back from these proposals and instead allow the Lifeline program some breathing room to settle into the recent dramatic changes to the Lifeline program. There has been a flurry of dramatic fundamental program design changes since 2016. Some of the biggest changes include establishment of uniform federal eligibility criteria, the inclusion of broadband service, the shift from the carriers performing eligibility determinations to the National Eligibility Verification (NV) process, and introduction of minimum service standards. These changes, despite consumer education as well as carrier training, naturally create confusion and require time for the program participants to adjust. It is not unexpected for program participation to drop as participants learn the new program rules and processes, but low-income consumer advocates are concerned that the recent round of proposals and changes have injected program uncertainty about the

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[9]The **Pennsylvania Utility Law Project** provides education, assistance, representation, and advice to low income Pennsylvanians on utility matters in furtherance of its mission to ensure that all Pennsylvanians can access and maintain essential utility services.

[10]The **Public Utility Law Project of New York** ("PULP") has educated, advocated and litigated on behalf of low-income New York utility consumers for the forty years, and was deeply involved in the creation of New York's utility consumer bill of rights, and in the creation of New York's state universal service and lifeline programs.

[11]The **United Church of Christ** is a faith community rooted in justice that recognizes the unique power of the media to shape public understanding and thus society. The mission of the UCC's Office of Communication, Inc. (OC, Inc.) is to create just and equitable media and communications structures that give meaningful access and voice to diverse peoples, cultures and ideas.

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Commission's commitment to the Lifeline program and that the tone of the proposals has resulted in a chilling effect on potential Lifeline marketplace entrants and participants. It is further disappointing that, after a series of destabilizing proposals were put forward in 2017--and those proposals received almost no support in the record--that, instead of withdrawing those proposals, the FCC has returned with a new series of suggestions that will cause an even more dramatic negative impact on the low-income households who are supposed to be the beneficiaries of the Lifeline program.

Broadband is the key to opportunity for individual consumers and for communities and society as a whole. Lifeline is strategically poised to help the most vulnerable members of our society, including homeless veterans, domestic violence survivors, home-bound seniors, medically frail individuals, and families with low-income school children who cannot afford continuous access to broadband and voice service. These members of society live everywhere in America: in rural, suburban and urban areas. A robust Lifeline program can help close the digital divide that makes it harder for millions of individual to apply for jobs on-line, communicate efficiently with medical providers, and engage with the full range of financial transactions that now take place on-line, including bill payments. The Low-Income Consumer Advocates are committed to securing a strong Lifeline program and respectfully submits these comments in response to the NPRM.

At the outset, we must take note of the negative tone of the NPRM, which focuses entirely on past problems with the program and the costs attendant thereto, using anecdotal examples going back to 2014. The NPRM does not acknowledge that these concerns have been substantially mitigated, if not resolved, by more recent reforms. It does not speak to the manifest direct value of the program for millions of low-income and older Americans, much less the fact that the Lifeline program, by upholding the FCC's historic goal of universal connectivity, benefits everyone.

Lifeline is a modern embodiment of the century-old commitment to bring universal services to all Americans, as reflected in Section 1 of the Communications Act.[12] The policy goal of connecting everyone to the communications network has unquestionably been a central element of policy ever since. This objective serves everyone, not just those who receive direct assistance. It is important to recognize that the benefits of universal service redound to everyone.[13] Each additional consumer receiving telephone or data service is a potential new customer for merchants and businesses, which now have a means of reaching them or being reached by them. As discussed below, each of these additional connected households can additionally reach first responders and social service agencies that might not otherwise be able to meet their needs.

II. Background

Lifeline is a well-established federal low-income assistance program that has been around since 1985. Lifeline originally started as a low-income subsidy to help consumers afford local voice service, but was expanded to include wireless service soon after Hurricane Katrina. In recent years, the Lifeline program has undergone rigorous overhauls to improve program integrity as well as modernization to cover broadband internet. Lifeline helps low-income households afford voice and broadband service in every state and territory. Lifeline is designed to give consumers a choice between approved voice-only service, broadband-only service, or a bundled voice and data service from approved wireline (e.g., copper or fiber line to the home) or wireless companies. In order for a service to qualify as a Lifeline product, the service must meet approved minimum standards that have become more robust over time. The service providers must also be approved by the State Public Utility Commission or the Federal Communications Commission ("Commission") to participate in Lifeline as an Eligible Telecommunications Carrier ("ETC").

[12] *See* 47 U.S.C. §151 (defining the purpose of the Act as being "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,...").

[13] One way this is expressed is as "Metcalfe's Law," which posits that the value of a network is proportional to the number of people connected to it. Put another way, every additional person (or "node") on a network increases its value to every other user who can now connect to that person.

There have been substantial changes to the Lifeline program administration that enhance program integrity such as the removal of carriers from the eligibility determination role. When a consumer applies for Lifeline, the eligibility determination is centralized through the National Lifeline Accountability Database (NLAD) and the National Verifier. These two processes provide automated identity validation, United States Postal Service address verification and checks for duplicate enrollment in Lifeline. The National Verifier has federal database connections with the HUD's Federal Public Housing Assistance Program, the Center for Medicare and Medicaid Services' (CMS) Medicaid participation in all the states and automatic connections to state SNAP databases in 15 states. Consumers who are not found to be enrolled in qualifying programs through the instant, automated database check will be asked to apply manually by uploading or mailing documentation demonstrating eligibility. The National Verifier process is now available in all the states and territories.[14]

Lifeline is an essential component of universal service, because if low-income consumers cannot afford broadband or voice service they will not be connected. This not only harms those households, but also harms all people who use the network because reduced penetration and use weakens the "network effect." True universal service connectivity is service every day of the year. However, income and housing volatility and the inability of so many low-income households to weather a sudden misfortune such as a medical crisis or an emergency car repair necessary for work, can cause households to divert funds for broadband or voice service to cover surprise expenses.[15] Lifeline helps ensure continuous (every day of the year) access to essential communication services by providing a stable monthly reimbursement that households and providers can count on.

[14] As of the date of this filing, all but the last eight states and Puerto Rico must use the new process. The final states and Puerto Rico are in "soft launch" which means the new National Verifier process is available for use, but is optional until the FCC announces that the states must switch over to the new eligibility determination process, "hard launch". For more information see https://www.usac.org/lifeline/eligibility/national-verifier/.

[15] *See* discussion in III.2, *infra*.

III. Appropriate Goals and Metrics for Lifeline

The Commission's proposed goal of increasing broadband adoption for consumers who would not subscribe to broadband[16] is far too narrow a goal and would fail to address the barrier to service posed by affordability. The Commission's goal risks counting consumers who are able to secure broadband service, but, for example, are disconnected for non-payment within a few months as being served by Lifeline or not needing Lifeline in the first place. The full benefits of universal service require a goal of continuous connectivity simply because the benefits of connectivity are lost when consumers are no longer connected to the network. We recommend that the Commission adopt a goal of significant continuous participation in the Lifeline program and measure progress toward increased rates of participation.[17] Furthermore, 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 year without having to forego other basic necessities.

1. Cost is the main barrier to adoption

Cost remains the main barrier to adoption for American consumers[18] and access to continuous (every day of the year) broadband service remains elusive for poor families.[19] The

[16] NPRM at 34 FCC Rcd 10945-10946, ¶137.

[17] *See also*, Leadership Conference, *Comments in Response to the Commission's Second Further Notice of Proposed Rulemaking*, WC Docket No. 11-42; WC Docket No. 09-197; WC Docket No. 10-90 (August 31, 2015) at p.3.

[18] NCLC Issue Brief, *Digital Divide: Millions of Americans Have Limited or No Meaningful Access to the Internet* (Aug. 2019) (40% of households with incomes below $20,000 have no internet subscription through any mechanism – smartphone or home broadband) available at https://www.nclc.org/issues/ib-limited-access-to-internet.html; see also Monica Anderson, *Mobile Technology and Home Broadband 2019*, Pew Research Center, Internet and Technology (June 13, 2019) (50% cite cost as the main reason for not subscribing to home broadband service) available at https://www.pewresearch.org/internet/2019/06/13/mobile-technology-and-home-broadband-2019/.

[19] Rideout, V. J. & Katz, V.S. *Opportunity for all? Technology and learning in lower-income families*, The Joan Ganz Cooney Center (2016) at 5 (Three in ten low-income families hit the limits of their data plans in the prior year, meaning that they either had to pay more or were often unable to access the internet); See also Samuel Gibbs, *Smartphone use rises in US – but many owners struggle with cost, says study*, The Guardian (April 1, 2015) (cites Pew study finding almost a half of smartphone-dependent users have had to cancel or suspend their phone service because of the cost and that over half of smartphone-dependent users run out of data occasionally before the end of the month and one-third running out of data frequently) , available at https://www.theguardian.com/technology/2015/apr/01/smartphone-users-us-end-contract-due-to-cost-pew-data.

focus on limiting the purpose of Lifeline to the smaller subset of consumers who, but for Lifeline, would not subscribe to broadband fails to capture the daily struggles of income-fragile, low-income households. Low-Income Consumer Advocates, in their February 21, 2018 comments in response to another Lifeline NPRM and Notice of Inquiry[20], described in detail the challenges low-income households face with income volatility. We incorporate by reference those arguments. In particular, as we note in those comments, "the precarious economic state of low-income households makes it difficult for households that may have funds for a month or a few months for voice and/or broadband to be able to afford service throughout the year. Income volatility coupled with lack of adequate savings would mean that many low-income households would be denied service for the perverse reasons that they were able to afford service at one point in time. This limitation could harm those very households that are making sacrifices to obtain connectivity, but are having a hard time succeeding without assistance."[21]

2. Achieving true universal service and the full benefits of universal service requires continuous connection to broadband service

The danger of the Commission's proposed goal is that it risks excluding struggling low-income households that want home broadband or smartphone service but have not been able to afford continuous service. This is a broader pool than just non-broadband adopters. These are households that may have had enough funds for service at one point in time, but due to income volatility caused by a sudden drop in wages and/or a sudden emergency expense (e.g., car repair needed to get to work or medical emergency), the household stopped broadband or smartphone service in order to direct funds to other essentials.

Research into household financial stability reveals that modern households are living in a time of great income volatility, and low-income households face dire choices in making timely payments for necessities. The Federal Reserve observes that:

[20] Low-Income Consumer Advocates' Opening Comments on the Notice of Proposed Rulemaking and Notice of Inquiry, In the Matter of Bridging the Digital Divide, *et al.*, Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 17-287, 11-42, 09-197, FCC 17-155 (Rel. Dec.1, 2017).
[21] *Id.* at 22.

> "The potential for hardship from volatile incomes and expenses appears to be greatest among lower-income respondents and among credit-constrained respondents. Among those with volatile incomes or expenses whose family income is under $40,000 per year, 54 percent report that they struggled to pay their bills due to volatility. Among lower-income respondents who are not confident that they would be approved for a credit card if they were to apply for one, an even higher 72 percent report that they struggled to pay their bills due to income or expense fluctuations."[22]

Pew also found that "[l]ow-income families are particularly unprepared for emergencies: The typical household at the bottom of the income ladder has the equivalent of less than two weeks' worth of income in checking and savings accounts and cash at home."[23] Pew also notes, however, those funds tend to be earmarked for other necessities such as food or housing.[24] So when there is a loss in income or a sudden emergency, low-income households must often make untenable choices.

Appropriate goals for the Lifeline program should be based on the purpose of the Lifeline program. The first three universal services principles provide the context for the goals of the Lifeline program:

- "Quality services should be available at just, reasonable, and *affordable* rates".[25]
- "Access to *advanced telecommunications and information services* should be provided in *all regions* of the Nation."[26]
- "Consumers in *all regions* of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including *interexchange services and advanced telecommunications and information services*, that are reasonable comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to the rates charge for similar services in urban areas.[27]

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[22] Board of Governors of the Federal Reserve System, "Report on the Economic Well-Being of U.S. Households in 2015, pp. 18-19 (May 2016).
[23] Pew Charitable Trusts, The Precarious State of Family Balance Sheets, p.1 (Jan.2015).
[24] Pew Charitable Trusts, The Precarious State of Family Balance Sheets, p.10(Jan.2015) ("It is important to note, however, that some or all of those funds may be earmarked for upcoming regular expenses such as food or housing.").
[25] 47 U.S.C. §254(b)(1)(emphasis added).
[26] 47 U.S.C. §254(b)(2) (emphasis added).
[27] 47 U.S.C. §254(b)(3) (emphasis added).

As noted above, cost is a barrier to adoption for low-income households, and the statutory principles capture that barrier to universal service. Low-income households reside in all regions of the country, and the Lifeline program is designed to help low-income consumers in *all* regions of the country afford voice and broadband service. Affordability of service is a barrier to broadband and voice service if a household must sacrifice another basic need in order to pay for service. Lifeline's goal should be to help households afford continuous broadband and voice service, which means connectivity without sacrificing other basic needs.

The definition of universal service is designed to evolve over time to take into consideration advances in services and technologies.[28] Factors to consider include the extent to which the services:

- "are *essential to education, public health, or public safety*"[29]; and
- "have, through market choices by customers, been *subscribed to by a substantial majority of residential customers*"[30]

Voice and broadband service are absolutely essential to education,[31] as homework and assignments are designed assuming broadband access. Similarly, access to reference materials and tutorial assistance[32] have migrated online. Applications to college and for financial assistance are online.[33] Consumers rely on online public health information, and the promise and benefits of telemedicine likewise require a robust broadband connection. Voice and internet service are essential for access to emergency services as well as information on resources, evacuation notifications and shelter information in the midst of a disaster. Intermittent connectivity causes a child to fall behind in school when she loses broadband access at home. It also poses barriers to educators trying to contact parents. Technology is constantly changing and upgrading. For college students or workers whose skills must keep up with the pace of change,

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[28] See 47 U.S.C. §254 (c)(1).
[29] 47 U.S.C. §254 (c)(1)(A)(emphasis added).
[30] 47 U.S.C. §254 (c)(1)(B)(emphasis added).
[31] *See e.g.*, Clare McLaughlin, *The Homework Gap: The Cruelest Part of the Digital Divide*, NEA Today (Apl. 20, 2016) available at http://neatoday.org/2016/04/20/the-homework-gap/.
[32] *See e.g.*, free online resources such as Khan Academy available at https://www.khanacademy.org/ and free study tools such as Quizlet available at https://quizlet.com/.
[33] For example, one popular application used by many colleges and universities is the Common App available at https://www.commonapp.org/ and the free application for federal student aid is online at https://studentaid.gov/h/apply-for-aid/fafsa.

losing access for even a few months deprives them of critical skills in the information economy. Intermittent connectivity is dangerous during a medical crisis. It also limits the efficient delivery of healthcare as follow-up communications between patients and health care providers becomes limited. Intermittent connectivity limits access to emergency service to protect public safety. Disconnected households cannot reach help, and emergency notifications cannot reach these vulnerable households. Having a reliable and unchanging phone number allows case workers and doctors to reach families and individuals to access care and support services. Access to affordable voice service also facilitates important services like suicide-prevention, domestic violence, sexual assault, and other crisis and intervention hotlines. Intermittent access to broadband and voice service is not true universal service.

3. Measuring the Success of Lifeline

Surveys of Lifeline consumers and the larger low-income eligible population will provide the Commission with information on how well Lifeline is meeting the communication needs of low-income consumers (e.g., does a household have enough data for the month to perform all necessary tasks related to employment, school or healthcare access, etc.). Consumer surveys should also ask if consumers have sacrificed other necessities in order to afford broadband service (e.g., cut back on food or medicine, postponed dental or medical attention, or cut back on heat or air conditioning to name a few examples).

The Commission should also seek data on continuity of service for low-income households. Consumer surveys should explore if consumers have been disconnected for non-payment of broadband or voice in the past year or if they have experienced negative consequences of telecom debt (e.g., debt collection action or harmful data on credit reports). The centralization of the Lifeline eligibility determination and duplicates database could provide some insight into how long Lifeline consumers are receiving assistance. One baseline measurement of broader household telecom affordability would be to analyze data on disconnections and arrearages for non-payment of low-cost/budget offerings or the low-income offerings. Companies providing post-paid service will have this data which would provide one form of baseline of the larger low-income population's telecom affordability.

Another indication of unaffordable telecommunications service is the prevalence of debt collections tradeline reporting reflected on consumers' credit reports. As reported by the Consumer Financial Protection Bureau (CFPB), "Debts for telecommunications services are also among the most common debts that creditors or debt collectors seek from consumers."[34] The magnitude of telecommunications debt is large, as telecommunications debt accounts for over a fifth of all debt collections revenue.[35] Telecommunications[36] debt collection tradelines are negative information about consumer account information sent to national credit reporting agencies (e.g. Equifax, Experian, TransUnion). Negative tradeline information can stay on a consumer's credit report for years and have a negative effect on a consumer's credit score. In a national survey of 5 million consumer credit reports, telecommunications debt tradelines were second only to medical/healthcare debt.[37]

The CFPB telecommunications debt collection data analysis contains some basic demographic information. The CFPB notes that, "[c]ollection contacts for past-due telecommunications bills were most frequently cited by consumers with lower incomes and non-prime credit scores, as well as younger and non-white consumers."[38] In comparing telecom debt reporting for those with subprime credit scores to those with prime scores, the CFPB finds that, "[c]onsumers with subprime scores are 12 times as likely to have a telecom collection as consumers with prime scores."[39] The data show that 59 percent of consumers with subprime

[34] *See* Consumer Financial Protection Bureau, *Quarterly Consumer Credit Trends: Collection of Telecommunication Debt* (Aug. 2018) at p.2. *See also, id.,* at 3 (Over 20% of a nationally representative sample of credit records [about 47.7 million records] had at least one telecom item between 2013 and 2018).

[35] *See* CFPB, *Fair Debt Collection Practices Act*, BCFP Annual Report 2019 (Mar.2019) at p.10 (Telecommunications debt (20%) was second only to financial services debt (37%) and greater than healthcare debt (11%) in terms of share of debt collection industry revenue in 2018).

[36] Telecommunications as used in the debt collection analysis include debt on landline phone service (switched access lines and VoIP), mobile wireless services, internet services and video programming services (e.g., cable, direct broadcast satellite, and telephone companies). See Consumer Financial Protection Bureau, *Quarterly Consumer Credit Trends: Collection of Telecommunication Debt* (Aug. 2018) at fn4 on p.2.

[37] Consumer Financial Protection Bureau, *Market Snapshot: Third-Party Debt Collections Tradeline Reporting* (Jul. 2019) at p.13.

[38] Consumer Financial Protection Bureau, *Consumer Experiences with Debt Collection: Findings from the CFPB's Survey of Consumer Views on Debt* (Jan.2017) at p.22 (The CFPB debt collection survey asks specifically about past-due phone, cable, internet, or other telecommunication bills).

[39] Consumer Financial Protection Bureau, *Quarterly Consumer Credit Trends: Collection of Telecommunication Debt* (Aug. 2018) at pp.7-8.

scores had a telecom debt collection tradeline on their credit report compared to 5 percent of consumers with a prime credit score.[40] When looking more closely at consumer telecommunications debt appearing on consumer credit reports, the median balance due is $408 and the mean balance is $599, but 17 percent of the debt is for over $1000.[41] Monitoring telecom debt collection tradelines and exploring whether additional demographic breakdowns are possible such as income and race would be a helpful metric.

IV. The Proposal Regarding Tracking Lifeline Consumer Broadband Usage is Invasive, Burdensome and Highly Troubling

The Commission seeks comment on how to ensure that Lifeline mobile broadband users are actually using their broadband internet service.[42] This is a highly problematic question. Any observer of the rapid transformation of the reliance on broadband connectivity with the most mundane daily tasks -- such as finding bus routes and directions; contacting an employer, co-workers, or teachers; shopping or banking; staying current on the community news events of the day; or finding the hours of operation for any service or shop -- knows the value of broadband connectivity. Broadband service is the essential infrastructure of the 21st century and the platform for services, products, information and communication. Low-income consumers are aware of this. This is why Lifeline is such an important program. The questions about which apps are appropriate on a device or having Lifeline consumers regularly use an app[43] to confirm usage is paternalistic and invasive of privacy. This proposal 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.

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[40] *Id.*
[41] Consumer Financial Protection Bureau, *Quarterly Consumer Credit Trends: Collection of Telecommunication Debt* (Aug. 2018) at p.6 (The CFPB posits that the larger debt amounts are likely due to financed devices, unreturned devices and possibly early termination fees).
[42] NRPM at 34 FCC Rcd 10947-10948, ¶146.
[43] NPRM at 34 FCC Rcd 10948, ¶147.

V. The Commission's Proposal to Ban the Distribution of Free Handsets or Devices Deters Efforts at Digital Inclusion

The Commission seeks comment on requiring Lifeline providers (ETCs) to charge a fee for a handset or device at in-person enrollment.[44] These proposals are unnecessary and counterproductive. The Commission's new Lifeline order has adequately addressed concerns about abusive sales practices by banning sales commissions[45] and the requiring that sales agents register their personal information in order to access or modify customer account information.[46] Furthermore, the Commission seems to have ignored the substantial record compiled in response to its previous NPRM which documented the problems with a maximum benefit or minimum payment, almost directly analogous to this proposal.

The proposal to regulate rates of Lifeline carriers by mandating that they charge a fee for a handset or device is unlawful, and in any event would harm low-income consumers who cannot afford a device or handset. Such heavy-handed and anti-competitive rate regulation violates each of the three elements of Section 332(c)(1)(A):

- It unjustly and unreasonably discriminates against low-income consumers, as carriers are not only free to offer free or subsidized handsets to all other customers but they have in fact made it a central element of their business model.[47]
- It does nothing to protect consumers; it only harms them.
- Making Lifeline less available to qualified consumers is incompatible with four decades of effort to increase connectivity and is thus manifestly contrary to the public interest.

[44] NPRM at 34 FCC Rcd 10950, ¶153.

[45] 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, *Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking*, 34 FCC Rcd 10915, ¶68 *et seq.*

[46] *Id* at 34 FCC Rcd 10918, ¶78 *et seq*.

[47] The Commission asks, "How prevalent is the in-person distribution of free handsets today?" 34 FCC Rcd at 10950, ¶153. One need only watch a few moments of television to know that it is ubiquitous. For one of countless examples, as of January 27, 2020, Boost Mobile had an in store only offer of a free LG Stylo 5 phone for new customers.
https://www.boostmobile.com/stores/offers.html?INTCID=HP:Wide:IS:Phone:Android:4Free-GalaxyA20.

Even if it were legal to adopt such a harsh prohibition, it would be profoundly unwise policy. The notion of initiating a new form of rate regulation flies in the face of the central tenet of contemporary telecommunications policy, which is to disfavor rate regulation whenever possible in favor of free market competition. As is the case with marketing to all consumers, wireless carriers have chosen to compete by providing free or subsidized handsets ***at their expense***. There is no good reason why Lifeline subscribers should be denied the opportunity to benefit from marketplace competition in which carriers compete with each 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.

Implicit in the decision even to ask these questions is the notion that offering of free or subsidized handsets somehow harms the Lifeline program. In fact, it extends the Lifeline program by increasing the value of a subscription to consumers at no cost to the Universal Service Fund. Indeed, the Commission's misplaced bias against expanding Lifeline availability is revealed in its question asking if offering free handsets and free service "provide[s] improper incentives to potential subscribers?"[48] The answer is a resounding no: the practice provides ***proper incentives,*** by bringing new users to the Lifeline program and giving them the opportunity to spend more money on food, medicine, home energy service, housing or other necessities.

VI. Conclusion

Affordable broadband is critical for equal opportunity and engagement in modern society. Access to voice service is essential for reaching emergency service and it also remains an important means of staying connected to friends, family, work, healthcare, schools, and services. The proposals contemplated in this NPRM would limit the number of consumers served by the Lifeline program, risk invasive and paternalistic monitoring of consumer's usage of mobile broadband service, and would hamper complementary private sector efforts at digital inclusion through the provision of free handsets or equipment. We urge the Commission to step back from

[48] NPRM at 34 FCC Rcd at 10950, ¶153.

these proposals and instead allow the Lifeline program some breathing room to settle into the recent dramatic changes to the Lifeline program.

Respectfully submitted,

_//s// *Olivia Wein*________________

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January 27, 2019