Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

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Report on the Future of the Universal Service) WC Docket No.21-476
Fund)

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COMMENTS OF NEXT CENTURY CITIES, THE NATIONAL CONSUMER LAW
CENTER & COMMON SENSE MEDIA

February 17, 2022

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COMMENTS OF NEXT CENTURY CITIES, THE NATIONAL CONSUMER LAW CENTER & COMMON SENSE MEDIA

I.   Introduction

Next Century Cities ("NCC"),[1] the National Consumer Law Center ("NCLC"),[2] and Common Sense Media ("Common Sense")[3] submit these comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Inquiry for the report on the future of the Universal Service Fund.[4] The FCC's commitment to supporting universal service is an acknowledgement that everyone in the United States needs access to essential communications services. Universal service is not only a bedrock principle of the Communications Act that established the Federal Communications Commission,[5] related policies support also enable digital options for education, healthcare, work, emergency services, transportation, financial services, the modern marketplace, cleaner energy technologies and other facets of the human experience. While

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[1] Next Century Cities is a nonpartisan 501(c)(3) nonprofit coalition of over 200 member municipalities that work collaboratively with local leaders to expand reliable and affordable broadband connectivity for every resident in their communities.

[2] Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and communications and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people in the United States. NCLC files these comments on behalf of its low-income clients.

[3] Common Sense is the nation's leading independent nonprofit organization dedicated to helping kids and families thrive in a world of media and technology.

[4] *See generally*, *Report on the Future of the Universal Service Fund*, WC Docket No. 21-476, Notice of Inquiry, FCC No. 32-127 (2022).

[5] 47 U.S.C. §151.

broadband has become an essential service for modern life, voice services remain critical, particularly for public safety.

While the recent COVID-response programs such as the Emergency Broadband Benefit ("EBB") and Emergency Connectivity Fund ("ECF"), and the recent Affordable Connectivity Program ("ACP"), are welcomed additions to the effort to connect all people, they are only one part of the total ecosystem required to achieve universal service. The Universal Service Fund continues to be an important part of that ecosystem. Specifically, the Lifeline program's voice and data and voice-only subsidies for consumers is not replicated elsewhere, and the ECF program does not reach as far or cover as many needs as the E-rate program.

One program does not serve all ends. That is why all of the programs that target vulnerable populations should work together to ensure that varying communication needs are met. For example, people may require voice access for 911 and mobile service for texting and communication on-the-go, robust broadband at home, well-connected schools and libraries, tools to reach K-12 schools as well as higher levels of education, devices, opportunities to learn about digital technology and more. None of the current programs can do all of those things, but all of them should integrate with each other to meet a range of needs.

II.   Any Reduction of the Lifeline Program Could have Serious Public Safety Implications.

The current public safety landscape assumes consumers have cell phone service. Localities rely on voice and text-based services to notify their communities of information surrounding natural disasters. In fact, the National Weather Service and other agencies often send out wireless alerts when a tornado, flash flood, evacuation order, or other emergency are happening.[6] Agencies also rely on sending life-saving disaster information on emergency shelters and assistance through texting.[7]

> "Disasters frequently disrupt communications systems which can leave survivors feeling overwhelmed and helpless when they are trying to locate shelters," said FEMA Administrator Deanne Criswell. "Since texting capabilities are often unaffected during disasters, our updated Text to Shelter option is an easy and accessible way survivors can locate nearby shelters with a tap of a button. This feature will help keep our communities safe."[8]

Accordingly, consumers must have adequate access to voice, texting, and data services to receive these alerts and information.[9]

In the wake of the California wildfires in 2018, the California Public Utilities Commission found that 80% of calls to 911 originated from a wireless device.[10] Residents should not fear that they will be unable to reach emergency services or get disaster response updates because they cannot

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[6] FEMA, *Wireless Emergency Alerts*, https://www.fema.gov/emergency-managers/practitioners/integrated-public-alert-warning-system/public/wireless-emergency-alerts (last visited Feb. 10, 2022); Jan Wesner Childs, *Your Cell Phone Can Help Keep You Safe in Severe Weather, But Here's What You Need to Do* (March 25, 2021), https://weather.com/news/news/2021-03-25-how-to-get-wireless-emergency-alerts-cell-phone-severe-weather.

[7] *See* e.g., FEMA Press Release, "FEMA Updates Shelter Locator Texting Feature" (February 8, 2022), available at https://www.fema.gov/press-release/20220208-fema-updates-shelter-locator-texting-feature.

[8] *Id.*

[9] *See* e.g., FEMA webpage, "FEMA Mobile App and Text Messages", available at https://www.fema.gov/about/news-multimedia/mobile-app-text-messages.

[10] *See* Ryan Johnston, Communities Responding to Natural Disasters Through Network Resilience at 3 (2021), https://nextcenturycities.org/wp-content/uploads/March-2021-Publication-_-Network-Resilience-Paper-by-Ryan-Johnston-_-Final-Publication-1.pdf.

afford indispensable voice-only services. Furthermore, the National Emergency Number Association has found that an estimated 240 million 9-1-1 calls are placed in the U.S. every year. Of these calls, 192 million are placed from a wireless device.[11] This statistic emphasizes the need for reliable wired voice service as well.

Municipalities and public safety organizations across the nation rely on voice and smartphone data connectivity to distribute emergency messages, weather event updates, school closing alerts and information related to vaccine availability. For example, Santa Clara County, California, utilizes a service called WebEOC to aggregate information regarding emergency situations to help deploy response and recovery coordination.[12] This digital solution requires that residents are able to access the system wherever they are, often through the use of a smartphone.[13] The county also noted that before they were able to implement this digital system, they had no technology-based system for situational awareness.[14] The OES system also utilizes AlertSCC, which is a web-based public alert system. This system utilizes email, text, or phone notifications to provide residents information on evacuation or shelter-in-place orders, fires, unhealthy air quality, and excessive heat warnings.[15] Similarly, Washington, DC, has the AlertDC system that allows users to pick which types of emergency alerts and notifications they would like to receive.[16]

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[11] National Emergency Number Association, *9-1-1 Statistics*, https://www.nena.org/page/911Statistics (last visited Feb. 10, 2022).

[12] Letter from James R. Williams, County Counsel, County of Santa Clara & Phillip R. Malone & Jef Perlman, Juelsgaard IP and Innovation Clinic to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 17-108 at 6 (filed Dec. 6, 2017).

[13] *Id*. at 7.

[14] *Id*. at 6.

[15] *Id*. at 7.

[16] Homeland Security and Emergency Management Agency, *AlertDC - Alerts Straight To Your Devices*, https://hsema.dc.gov/page/alertdc (last visited Feb. 10, 2022).

Mobile alerts are not only used to alert residents to natural disasters. Montgomery County, Maryland, and Albany, New York, school districts, provide systems that alert parents and students to events impacting school operations through text or email.[17] Some communities use mobile alerts to keep residents updated on government services and changes to public health requirements. From weather-related emergencies to safety alerts, these mobile messaging enables residents to make informed decisions instantaneously.

III.   The Lifeline Program Provides a Minimal Amount of Parity Between Those With a Fixed Connection and Those Relying on Mobile Connections.

The Lifeline program provides a $9.25 a month subsidy for low-income consumers to use towards the purchase of a very modest broadband service and, for the moment, $5.25 for voice service.[18] Lifeline service that includes broadband data and voice, where broadband minimum standards are met, receive the full $9.25 per month reimbursement. Mobile voice and data plans where the voice service that meets the minimum standards receive a $5.25 per month reimbursement.[19] At the current subsidy amount, less than 1% of Lifeline subscribers use their Lifeline subsidy for stand-alone broadband service while 7% use Lifeline for stand-alone voice service.[20] Currently, the most popular Lifeline service is a mobile voice and data plan (92.5%).[21] Notably, the *2016 Lifeline Modernization Order* included a phase-out of support for voice and public interest has remained

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[17] Montgomery County Public Schools, *AlertMCPS*, https://www.montgomeryschoolsmd.org/emergency/alertmcps.aspx (last visited Feb. 10, 2022); *School closed or delayed? Get a text message, right to your phone!* (Dec. 7, 2021), https://cbs6albany.com/newsletter-daily/sign-up-for-school-closings-text-alerts-right-to-your-phone.

[18] FCC Order, WC Docket Nos. 11-42, 09-197, 10-90, DA 21-1389 (Rel. Nov. 5, 2021) (pauses the phase-out of voice support until Dec. 1, 2022, among other things).

[19] *Id.*

[20] USAC Board of Directors High Cost Low Income Committee Briefing Book at 55 of 59 (Jan, 24, 2022)(available for public use)(Lifeline Program Service Type Trends showing 92.5% of Lifeline services are bundled voice and data plans).

[21] *Id.*

strongly opposed to this phase-out for voice.[22] Reducing and eliminating the Lifeline voice subsidy

is antithetical to the Commission's goals of universal service and may potentially disconnect many

households that rely on the Lifeline program.

As the minimum service standards have increased over time, fewer providers also voluntarily

include a mobile phone with their Lifeline plans. Lifeline is a discount off the broadband and/or

voice *service*, meaning that the handsets have not traditionally been covered by the Lifeline

program except during the emergency response to Hurricane Katrina.[23] Lifeline provides those

without the means to afford a standard cell phone plan with the ability to remain connected through

a discounted service that frequently covers the full cost of the plan. Lifeline is the only program

whose purpose is to directly help low-income households afford voice and broadband services so

that families can experience the benefits of connectivity enjoyed by their peers. It appears that the

low subsidy amount and requirement for providers to be Eligible Telecommunications Carriers

have resulted in the trend toward support of mobile voice and data plans.[24]

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[22] *See e.g.,* Joint Public Interest Ex Parte Letter for a Pause of the Lifeline Minimum Service Standard and Reinstatement of Voice Subsidy,WC Docket Nos. 11-42, 09-197, 10-90 (October 27, 2921); Joint Public Interest Comments in support of NALA Petition of Waiver of Lifeline Mobile Broadband Minimum Service Standard and Voice Support Phase-Down, WC Docket Nos. 11-42, 09-197, 10-90 (September 14, 2020); Public Interest Letter Requesting the Extension of COVID-19 Waivers, Restoration of Lifeline Voice Support and Freeze of Lifeline Minimum Service Standards, WC Docket Nos. 11-42, 09-197,96-45, 17-287 (August 10, 2020); Public Interest Letter in Support of the Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket 11-42 (July 31, 2019); Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, DA 19-617, WC Docket No. 11-42 (June 27, 2019).

[23] Federal-State Joint Board on Universal Service, et al, 20 FCC Rcd 16833 (2005) (established an emergency temporary Lifeline assistance program for survivors of Hurricane Katrina that included a cell phone and a set amount of minutes).

[24] While internet service providers have not flocked to Lifeline, they have been active participants in the Affordable Connectivity Program and the Emergency Broadband Benefit Program which do not require broadband providers to become Eligible Telecommunications Carriers.

While the pandemic has laid bare the essential need for broadband service to access opportunities, the pandemic has also increased the need for voice service, particularly for those who do not have the digital skills or cannot afford equipment to benefit from broadband services. Phone calls and text messaging are still reliable ways to reach people. One agency in Massachusetts relied on text messages to households enrolled in SNAP to encourage them to apply for heating assistance, increasing enrollment in heating assistance by 5%.[25] It is also common practice for state and federal assistance programs to rely on toll-free numbers as a way for consumers to get help.[26] The current Lifeline service offering is particularly critical to connect low-income consumers to emergency services and public safety information.

Additionally, for too many lower income adults a cellular service plan is their only connection to the Internet.[27] Non-low income households have higher levels of adoption (smartphones, broadband and connected device(s)).[28] The Lifeline and ACP programs together help maintain minimal parity between non-low-income households that often have both robust broadband service, connected devices as well as a wireless plan, and low-income families.

Access to broadband today is as essential as electricity was in the last century. For those who can afford broadband service, broadband integration in modern life has been nearly ubiquitous, and Internet access has transformed the classroom. As then FCC Commissioner now FCC Chair Jessica Rosenworcel has noted, the "homework gap" is the cruelest part of the digital divide. From access

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[25] NCLC correspondence with MA Office of Community Development regarding targeted outreach to households with young children (Jan. 26, 2022).
[26] *See e.g.*, ACP Support Center at (877) 384-2575.
[27] Emily Vogels, Digital divide persists even as Americans with lower incomes make gains in tech adoption, Pew Research Center (June 22, 2021) (chart: "The share of Americans with lower incomes who rely on their smartphones for going online has roughly doubled since 2013").
[28] *Id*.

to jobs and healthcare, the harmful effects of digital exclusion increase, especially as more necessities and of modern life, including opportunities to participate in cleaner energy technologies, move online.

The current minimum standards for Lifeline broadband are modest, concerns are that the $9.25 set amount for Lifeline is keeping more robust broadband out of the Lifeline program. However, Lifeline is one of four Universal Service Fund programs that has the administrative foundation and public policy mandate to tackle the affordability barrier to access to modern communications services. Furthermore, the EBB and now the ACP have been built on the Lifeline program delivery infrastructure. If funding for ACP runs out and additional appropriations become unlikely, it is conceivable that Lifeline could take-on the broadband support components from the ACP. Nonetheless, USF Contributions reform will most need to be addressed to ensure adequate and stable long-term funding.

IV. **The E-Rate Program remains the only Permanent Program Dedicated to Ensuring Schools and Libraries are Connecting Students.**

Currently there are two programs housed at the FCC to help schools and libraries provide broadband services to students: the E-Rate Program and the Emergency Connectivity Fund ("ECF"), a COVID relief that is unrelated to IIJA. There is a major difference between these two programs.

The pandemic has shown that an Internet connection is indispensable for education. ECF allows funds to be used for the provision of educational services, but they do not center those uses in the same way as the E-Rate program. The Commission's ECF focus is to support remote learning by

covering certain equipment and services for off-campus use to connect students to their virtual classrooms. The Commission's Schools and Libraries ("E-Rate") program provides discounts for telecommunications, Internet access, and internal connections to eligible schools and libraries. However, many of these buildings have been closed during the COVID-19 pandemic. The continued operation of the USF is critical for future connectivity funding. Whether ECF receives another appropriation is up to Congress. The USF is not so constrained.

The ECF does not reimburse grant recipients for equipment or services that are paid for by other federal pandemic relief programs, such as discounted broadband through EBB and now ACP.[29] As a result, some schools and libraries have declined to promote the EBB now ACP program. In addition, the ECF program only allows schools or libraries to provision their own networks when there is no other commercially available Internet access service option available. This limitation forces these institutions to rely on already existing infrastructure to be able to connect their students or patrons. It is not present within the E-Rate program. E-Rate recipients can use funding to provision networks and utilize creative solutions outside of existing infrastructure to help connect students. While the ECF has been an incredibly useful pandemic relief effort, the E-Rate program could learn from the ECF and further explore ways to provide schools and libraries more flexibility in bringing connectivity to their communities.

V.   The Infrastructure Act and the Need for Continued USF Support.

The bipartisan infrastructure law, IIJA, makes available $65 billion dollars to establish and support several new broadband infrastructure programs housed in different agencies. These programs do

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[29] FCC, *Emergency Connectivity Fund Fact Sheet*, https://www.fcc.gov/sites/default/files/ecf_factsheet.pdf (last visited Feb. 14, 2022).

not have specified timelines and could theoretically be maintained indefinitely. However, because these programs are wholly dependent on annual appropriations there is no guarantee that new funding will be allocated year to year. As IIJA funded projects are implemented, Congress may be less inclined to provide new funding. With the risk that annual appropriations could be cut, the Commission must ensure that USF programs that will continue to support its universal service goals.

The programs housed within the Universal Service Fund are not subject to annual appropriations. Instead, these programs are funded through contributions included on business and residential telecommunications bills. While there are different proposals on how to reform the contributions methodology,[30] the contribution funding mechanism guarantees that independent of appropriations from Congress, these programs will continue to operate. Furthermore, annual Congressional appropriations can vary from year to year which makes it extremely difficult to implement programs such as Lifeline. Unless Congress makes Lifeline an entitlement program, as a discretionary program it could be subject to wide swings in annual appropriations, making it difficult to establish benefit amounts and ensure those enrolled in service have continuous access to service and could result in the rationing of access to essential service.[31] Reliance on an unstable funding mechanism for something as critical to the nation's economic prosperity is antithetical to the goal of Universal Service.

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[30] *See e.g*., Ad Hoc Telecom Users Committee ex parte filing in WC Docket Nos. 21-476, 06-122 (February 14, 2022).
[31] *See* e.g., LIHEAP Funding History, available at https://liheapch.acf.hhs.gov/Funding/energyprogs_gph.htm (shows the wide variation for the US HHS Low Income Home Energy Assistance Program).

VI. **How the Commission's proposals under this NOI Will Impact Digital Inclusion and Equality.**

As the Commission determines how the IIJA impacts the Universal Service Fund, it must also look to the future of how these programs could impact digital equity. For instance, the Commission should start by considering how those that have been digitally redlined will be impacted. The Commission also needs to ensure that those with disabilities are consulted, and their unique needs are built into future universal service programs.

A. Digital Redlining Continues to be a Major Factor to the Lack of Broadband Access in Marginalized Communities.

In low-income or marginalized communities — that includes urban, rural, and Tribal communities — broadband may be slower, or it may not exist at all. Whereas, a few blocks over, across the street, or in the next town over households may have access to high-speed broadband. This type of deployment exacerbates the inequities that too many under-connected communities face. Historically, many of the same communities that have been historically redlined by banks, electric companies, and other industries face the same challenges with Internet service providers. While the IIJA tasks the Commission with investigating and promulgating rules on digital redlining, it has up to two years to do so.[32]

It is laudable that these rules will be put into place. However, the time frame with which the Commission must do so all but ensures that other IIJA programs, some at different agencies, will already have had their rules created. There is a critical opportunity for the Commission's anti-digital redlining rules to be included in the new IIJA programs under its purview and included in

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[32] *See* Infrastructure Investment and Jobs Act, H.R. 3684, 117th Cong., at § 60506 (2021).

IIJA programs being implemented through different agencies and close coordination and collaboration will be critical.

B. The Commission Must Ensure New USF Rules Consider How Those with Disabilities will be Impacted.

Currently, the Universal Service fund does not contain any program that specifically addresses the affordability needs of those with disabilities. This oversight potentially cuts off many who have difficulty accessing accessible voice, and Internet based services. As an initial step, the Commission should consider ways to coordinate outreach so that low-income households using Video Relay Service[33] and low-income consumers participating in the Commission's National Deaf-Blind Equipment Distribution Program (NDBEDP), also known as iCanConnect[34] are also aware of Lifeline and the Affordable Connectivity Program. The development of accessible ACP applications and outreach materials should also be a priority. As the Commission reviews current USF policies, it must ensure that those who are disabled are able to access connectivity just as easily as everyone else.

VII. How Congress Can Help.

The FCC has broad authority to review, change, and administer the programs that are under its jurisdiction. This broad ability empowers the agency to be nimble and address new issues as they arise. As the Commission undertakes new and more complex challenges, working closely with Congress can give the Commission more resources and better avenues to achieving universal service. Congress can also appropriate additional funds into programs such as the ECF.

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[33] Federal Communications Commission, Video Relay Service, https://www.fcc.gov/consumers/guides/video-relay-services (last visited Feb. 14, 2022).
[34] National Deaf-Blind Equipment Distribution Program, https://www.fcc.gov/consumers/guides/national-deaf-blind-equipment-distribution-program (last visited Feb. 17, 2022).

A. The Commission has the Power to Review and Revise the USF Program Structures to Meet the Evolving Needs of Consumers.

The broadband landscape in the United States is an ever-changing landscape that presents new challenges and requires innovative solutions to connect those in the hardest to reach areas. The Commission has the power to unilaterally review and revise USF program design which will allow it to better meet the evolving needs of the nation. The IIJA programs are intended to help meet specific needs faced by communities. From deployment to affordability, digital equity planning and mapping, these programs are targeted at specific hurdles. However, once that work has been completed there still may be some in those communities that are not able to fully recognize those benefits.

The Commission should periodically revisit how the USF operates, and promptly respond to the concerns and challenges placed before it. Congress can and should periodically direct the Commission to undertake a holistic look at the USF and be encouraged to anticipate the next barriers and problems and provide the Commission with any additional tools needed to be proactive to achieve the goals of universal service.

B. Congress Should Establish a Separate Connected Devices Subsidy Program.

Access to connected devices continues to remain at the heart of digital adoption challenges for many consumers. Currently, the Affordable Connectivity Program provides $100 dollars for a consumer to purchase a laptop, desktop, or tablet from their provider.[35] Households must contribute between $10 and $50 dollars and there is a limit of one device per household. The limitation on devices hampers technology adoption and use where households have more than one

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[35] Next Century Cities, The Affordable Connectivity Program: Resources for Next Century Cities Members, https://nextcenturycities.org/acp/ (last visited Feb. 14, 2022).

child in school or more than one working adult in the household. Furthermore, devices become outdated after a certain number of years. The ACP, while funded at $14 billion, is not a permanent program and the device subsidy has limitations.

Congress can help by establishing a permanent device subsidy program that allows other entities to distribute the devices (e.g., as part of a digital equity or literacy program), allows for updated devices (e.g., able to run current anti-virus software and use current operating systems), and allows flexibility in meeting all the members of a household's technology needs. Doing so now would ensure that the new programs in the IIJA are able to be put to the most effective use. Easing the financial burden of accessing cost-prohibitive devices ensures that students, parents, and the elderly can connect to the essential services they need.

C. Congress Should Consider Revising Rules that Allow only ETCs to Participate in USF Programs.

With EBB and ACP, non-ETC providers have been eligible to participate. This has allowed municipal governments, coops, utility companies, and other smaller providers to serve their communities through these programs. The shift in focus of the USF programs to broadband service may benefit from increasing the number and types of providers of broadband service. There may be a cooperative or a municipality that has the capacity to be an effective Lifeline or High-Cost recipient. Expanding the number and types of providers who are eligible to participate in USF programs could increase the number of eligible areas and consumers that these programs could impact. Failing to do so will only preserve the status quo and keep some disconnected households offline.

VIII. Conclusion

The USF provides an indefinite source of critical funding for programs that serve some of the most vulnerable and disconnected populations in the nation. The passage of COVID relief emergency broadband programs and the IIJA have created many programs that act as significant complements to the USF programs. Unfortunately, due to their temporary nature, these programs are unsuitable to supplant the USF.

As the broadband landscape in the United States continues to evolve, so must the programs that are helping to support those efforts. The COVID-19 pandemic has shown just how much of our daily lives can be accomplished online. To meet these new connectivity challenges the Commission's USF programs must also be flexible enough to respond in turn. Congress and the Commission must work together to bolster the USF so that it may meaningfully reorient to face new challenges. This agility will allow the USF to readjust and do the critical work of connecting every resident in every community regardless of the challenge presented.

Respectfully Submitted,

Ryan Johnston
Policy Counsel, Federal Programs
Next Century Cities

Olivia Wein
Staff Attorney
National Consumer Law Center

Amina Fazlullah
Senior Counsel
Common Sense Media