ITIF | INFORMATION TECHNOLOGY & INNOVATION FOUNDATION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
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Bridging the Digital Divide for Low-Income Consumers	)	WC Docket No. 17-287
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	

COMMENTS OF ITIF

The Information Technology and Innovation Foundation (ITIF)[1] appreciates this opportunity to comment on the Federal Communications Commission's (FCC or the Commission) continued efforts to modernize the Lifeline program for the broadband era.[2]

ITIF strongly supports providing subsidies to help low-income Americans afford the communications services that are increasingly essential for modern life. Beyond the equities of ensuring a safety net for those less fortunate, subsidized connectivity for those otherwise unlikely to pay for broadband contributes to network effects, making the Internet a more valuable communications platform and working toward a society that can

[1] Founded in 2006, The Information Technology and Innovation Foundation, or ITIF, is a 501(c)(3) nonprofit, nonpartisan research and educational institute—a think tank—focusing on a host of critical issues at the intersection of technological innovation and public policy. Its mission is to formulate and promote policy solutions that accelerate innovation and boost productivity to spur growth, opportunity, and progress.

[2] 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, Fourth Report and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, FCC 17-155 (Released December 1, 2017) ("NPRM").

organize assuming everyone is online. Extensive evidence consistently demonstrates the benefits of broadband on economic growth, employment, and productivity.[3] Lack of broadband can also be a key obstacle for job seekers, making Lifeline a crucial tool to help lift individuals and families out of poverty.[4] Lifeline also plays an important role in helping counter economic downturns, helping those who qualify even if those numbers swell during a recession.

As broadband access continues to be more important to flourishing individuals and communities, bringing Lifeline into the 21st century by refining the support for broadband (wireline or wireless), coupled with common-sense reforms around eligibility administration and program oversight, should be change everyone supports. Unfortunately, the issue of government provided broadband subsidies for low income Americans is becoming increasingly partisan.[5] ITIF urges the Commission to hew to the center and make incremental improvements to the program rather than controversial, disruptive changes.

ITIF believes, as it argued in comments in the 2015 Lifeline proceeding, the ideal program would feature a simple and streamlined voucher system that would allow eligible participants a subsidy they could put toward virtually any communications tool of their choosing: fixed line telephony, cellular telephony, or broadband.[6] Ideally the program's funds would be disbursed directly to eligible participants and integrated with other subsidy programs, such as the Supplemental Nutrition Assistance Program. Putting the individual at the center of an effective communications subsidy program would help reduce fraud and allow market forces to best serve diverse consumer needs.

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[3] *See* e.g., Irene Bertschek, *et al*, "The Economic Impacts of Broadband Internet: A Survey," Review of Network Economics 14(4) (2015), 201-227.

[4] Aaron Smith, "Lack of broadband can be a key obstacle, especially for job seekers," *FactTank, Pew Research Center* (Dec. 2015), http://www.pewresearch.org/fact-tank/2015/12/28/lack-of-broadband-can-be-a-key-obstacle-especially-for-job-seekers/.

[5] Higher income republicans are especially skeptical of the practice. Kenneth Olmstead, *et al*, "Americans have mixed views on policies encouraging broadband adoption," *FactTank,* Pew Research Center (April, 2017) http://www.pewresearch.org/fact-tank/2017/04/10/americans-have-mixed-views-on-policies-encouraging-broadband-adoption/.

[6] In the Matter of *Lifeline and Link Up Reform and Modernization* et al., Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818. ITIF comments available at http://www2.itif.org/2015-comments-lifeline.pdf.

The Communications Act restricts the Commission in a number of ways, and there is only so much the Commission can do to work toward this structure. Count Lifeline among the many areas where Congressional action could greatly improve the status quo. Unfortunately, some of the FCC's proposals would take us further from this vision rather than closer.

ITIF urges the FCC aim to maintain a robust subsidy to help low income Americans gain connectivity. Furthermore, the Commission should maintain the nationwide provider designation; continue to allow resellers to participate in the program; take a targeted approach to minimizing waste, fraud and abuse; and approach a cap to the program with care.

THE COMMISSION SHOULD RETAIN THE NATIONWIDE "LIFELINE BROADBAND PROVIDER" DESIGNATION

The 2015 Lifeline Order created a new category of eligible Lifeline provider, the "Lifeline Broadband Provider" (LBP), preempted states from designating LBPs, and established a national LBP designator. This mechanism allows carriers to provide Lifeline services nationwide after a single designation process, rather than navigating separate bureaucracies for each state in which they wish to operate.

The NPRM proposes to return the role of designating Eligible Telecommunications Carriers (ETCs) to the states and eliminate the LBP designation.[7] A national designation should be maintained to encourage providers to operate at scale and reduce waste in the system.

As ITIF has argued in other contexts, national networks demand national policies.[8] Multiple conflicting or diverse state rules add unnecessary complexity and cost to firms' compliance. Network applications now depend on economies of scale independent of the individual state in which they are consumed. Technological advances are simply erasing the importance of state and local boundaries, and it is in the national interest to give these technologies room to grow unimpeded by artificial borders.[9]

[7] NPRM at paras. 55-58.

[8] Doug Brake, "National Networks Need National Policies," *Innovation Files, ITIF* (Nov. 2017), https://itif.org/publications/2017/11/09/national-networks-need-national-policies.

[9] *Id.*

A single, national LBP or ETC designator helps enable scale in Lifeline carriers, greatly improving efficiency. Scale efficiencies would help to combat waste, fraud, and abuse—fewer, larger firms would be less likely to risk fraud and drive out smaller, fly-by-night operations.

According to a recent GAO report, there are over 2,000 ETC providers participating in the Lifeline program.[10] This large number of providers is due to numerous carriers participating at a small scale in different states. The duplicative management and back-office functions alone of 2,000 providers represents a massive waste that should be avoided. Instead of returning all designation authority to the states and continuing this fragmented system, the Commission should be encouraging Lifeline-designated carriers to gain scale through a streamlined national process.

THE COMMISSION SHOULD RETAIN RESELLERS IN THE LIFELINE PROGRAM

The Commission should abandon its proposals "to focus Lifeline Support to encourage investment in broadband capable networks."[11] Encouraging investment in broadband is certainly a laudable goal, and ITIF continues to support the various efforts of this Commission to improve the broadband investment environment. But Lifeline is not the mechanism to provide incentives for facilities investment.

The Commission's proposal to limit Lifeline support to facilities-based providers is misguided, representing an unnecessary limitation that is far more likely to inhibit the Lifeline program and participation in communications networks, ultimately reducing network effects. The disruption the Commission's proposal would have on the program was recognized at the most recent NARUC policy retreat, where the body passed a resolution to advocate on behalf of maintaining resellers in the program.[12]

Many broadband providers focus on the business of mainstream consumers, and choose not to provide Lifeline services. However, several offer wholesale access to a variety of resellers with different business models. Some of these resellers focus their business on the particular challenges and costs of providing Lifeline services: navigating the ETC process, coordinating with the verification mechanisms, and seeking out eligible participants. This is a healthy market arraigning transaction costs appropriately.

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[10] GAO, "Telecommunications: Additional Action Needed to Address Significant Risks in FCC's Lifeline Program," U.S. Government Accountability Office, GAO-17-538, May 30, 2017, https://www.gao.gov/assets/690/684974.pdf.

[11] NPRM at para. 63.

[12] NARUC, "Resolution to Ensure that the Federal Lifeline Program Continues to Provide Service to Low-Income Households," https://pubs.naruc.org/pub/E0D49A02-AAAA-6EDE-79A1-9D97B1C6E393.

On its face, it is not clear how limiting Lifeline support to facilities-based providers would be an improvement. Resellers, of course, resell access purchased from facilities-based providers, and are already paying a market rate. It should go without saying, but Lifeline support disbursed to resellers, at least the portion that pays for the wholesale access, ultimately flows back to facilities providers, even more so if it results in a greater number of broadband subscribers long-term.

If facilities providers are not participating in the program it is likely because of the costs and potential liabilities associated with the program. The Commission should look to reducing the burden on providers participating in the program through, for example, streamlined national ETC designation, to encourage facilities-based providers to participate, rather than excluding resellers. Ideally, the Lifeline program would see the government take on the burden of identifying and verifying low-income users, effectively reducing the costs of price discrimination. Such a program would encourage participation by large facilities-based providers and add more users to the network on the margin through more efficient pricing.

As Commissioner Clyburn noted in her dissent, over 70 percent of wireless Lifeline consumers rely on resellers.[13] To restrict the program to only facilities-based providers would be massively disruptive, with very little likelihood of materially increased investment. Instead, the Commission should be happy to leverage the largely unregulated wholesale market for mobile access and continue the long precedent of allowing resellers to participate in the program.

It is not immediately clear why the Commission is unsatisfied with this arrangement, except for two points made in passing. One is encouraging investment in facilities. Again, this goal is undoubtedly better pursued through other means, such as the Connect America Fund or alleviating burdensome regulations, such as the Commission's laudable removal of the common carrier designation of broadband under the Open Internet Order. The Lifeline program is structured to assist low-income users; to cast it as promoting facilities deployment is simply a mischaracterization.

A second point mentioned by the Commission is that "the vast majority of Commission actions revealing waste, fraud, and abuse in the Lifeline program over the past five years have been against resellers, not facilities-based providers."[14] Waste, fraud, and abuse, while down from previous levels, definitely still exist in

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[13] Dissenting Statement of Commissioner Mignon L. Clyburn, Re: *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, FCC 17-155 *available at* https://apps.fcc.gov/edocs_public/attachmatch/FCC-17-155A3.pdf.

[14] NPRM at para 68.

the program, and should be addressed. But it is better addressed through other means than simply removing resellers from participation. Even if all fraudsters are resellers, not all resellers are fraudsters.

THE COMMISSION SHOULD PURSUE WASTE, FRAUD, AND ABUSE THROUGH TARGETTED ENFORCEMENT AND REFORM

AEI scholar Jeffry Eisenach said in recent testimony, "If someone had set out to design a Federal program that would be prone to waste, fraud and abuse, it is hard to imagine how they could have done a better job than with the FCC Lifeline program."[15] Indeed, the Lifeline program did not make a graceful transition in its expansion from supporting wire line voice to include wireless broadband. The program was rife with fraud, especially after support was added to include wireless service and before key reforms were put in place. However, waste, fraud, and abuse are down from earlier highs.

The Commission should recognize the relative scale of Lifeline fraud is quite small compared to other federal programs. Many federal entitlement programs see larger improper payments than the entire Lifeline budget.[16] Recent Commission estimates put improper payments at less than 3 percent.[17] Absolutely the Commission should make common sense reforms to help reduce the cost of fraud and abuse on Universal Service contributors, but Lifeline fraud is not a scourge demanding great resources to root out or radical disruptions to the program. It is better far to have an effective subsidy than to effectively dismantle the program in an effort to eliminate all waste, fraud, and abuse.

The National Verifier System should be a great assistance in helping curb waste fraud and abuse. USAC has made good progress in implementing the National Verifier, and the Commission should rely on and build on those efforts to help combat waste, fraud, and abuse.[18]

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[15] Testimony of Jeffrey A. Eisenach, Ph.D. Before the Committe on Commerce, Science and Transportation United States Senate, September 2017, *available at* https://www.commerce.senate.gov/public/_cache/files/79b60e24-1b86-4935-a88d-5dc594a2b806/8EEC0A109971FD2106D767E79290933D.eisenach-testimony.pdf.

[16] *See* Payment Accuracy, "High-Priority Programs," https://paymentaccuracy.gov/high-priority-programs/.

[17] FCC, "Agency Financial Report, Fiscal Year 2016," https://apps.fcc.gov/edocs_public/attachmatch/DOC-342186A1.pdf at 81.

[18] *See,* e.g., "Lifeline National Verifier Plan," USAC (January, 2018), https://ecfsapi.fcc.gov/file/101311591601617/National%20Verifier%20Plan%20-%20January%202018.pdf.

The Commission should also continue its targeted enforcement efforts, investigating and prosecuting fraud and abuse, and then publicize the results. Making known the large downside to defrauding the system should hopefully deter potential criminals.

Another tool to reduce fraud in the system is to require participants make some contribution toward the service Lifeline subsidizes. A maximum discount would help ensure the subsidies go to those genuinely interested in obtaining broadband, and deter fraudulent participation. The Commission should pursue its proposals around a maximum discount level, but do so with care.[19]

Specifically, the Commission should ensure a maximum discount is not so low that it deters broadband non-adopters from participating. As the NPRM acknowledges, the Lifeline program can play an important role in promoting broadband adoption.[20] Broadband non-adoption is due to complex and inter-related causes, but affordability can be a real barrier for low-income Americans.[21] The Commission should set an initial maximum discount that is relatively high—near 90 percent—and then have the maximum discount gradually decline for each individual over time. That way initial non-adopters for whom affordability is a barrier would see a lower initial price, but those who have enjoyed a discount for years may come to appreciate the relevance and value of broadband and be willing to make a higher contribution.

A ratcheting maximum discount would combat fraud and help ensure participants see robust offerings. It would also give the Commission a dial to reduce demand should participation swell and overwhelm the program's budget.

THE COMMISSION SHOULD ADJUST PARTICIPATION DEMAND AND ELIGIBLITY QUALIFICATIONS IF THE BUDGET IS EXCEEDED, RATHER THAN CAP DISBURSMENTS

Far fewer individuals actually participate in Lifeline than are eligible. Imposing a hard cap on the program based on current or past spending could see the USAC unjustly turn away qualifying, needy individuals. In the unlikely event the participation rate swells to near all who qualify, it would be far better to adjust the qualifying metrics over time than turn away legitimate participants.

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[19] NPRM at paras. 111 to 117.

[20] NPRM at para. 117.

[21] Colin Rhinesmith, "Digital Inclusion and Meaningful Broadband Adoption Initiatives," *Benton Foundation* (2016), *available at* https://ecfsapi.fcc.gov/file/60001390097.pdf.

The Commission should set an expected annual budget, and institute a mechanism to see the qualifying income level ratcheted down so the lowest-income users continue to qualify. This would help ensure the subsidy goes to those who would otherwise not procure communications in the event participation levels swell and the finances become untenable. The Commission should also look to clear, transparent mechanisms to reduce participation demand should payments grow too quickly, such as by reducing a maximum discount percentage.

The Commission should not pursue its proposal of prioritizing rural users in the event a cap is reached. Research has shown that rural non-adopters are far more likely to forego broadband because of a perceived lack of relevance or disinterest, whereas in urban areas cost is more likely to be a limiting factor.[22] In fact, the Commission should direct USAC to make further adjustments to the income qualification levels to account for local cost of living to avoid disadvantaging urban users. In any event, it is the lowest income users where a subsidy would make the largest difference in determining access to communications. The Commission should focus a low-income subsidy where it will have the largest impact.

Thank you for this opportunity to comment on the proposed modifications to the Lifeline program.

Doug Brake
Director, Telecommunications Policy
Information Technology and Innovation Foundation
1101 K Street NW, Suite 610
Washington, DC 20005

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[22] Brian Whitacre and Roberto Gallardo, "Broadband Study: Use What's There," Daily Yonder, May 13, 2015, http://www.dailyyonder.com/broadband-policy-should-focus-adoption/2015/05/13/7838/; Giulia McHenry et al., "The Digital Divide Is Closing, Even as New Fissures Surface" (paper present at TPRC 44: The 44th Research Conference on Communication, Information and Internet Policy 2016, Arlington, VA, September 28, 2016), https://ssrn.com/abstract=2757328.