

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

In the Matter of)	
)	
<i>Restoring Internet Freedom</i>)	
)	
<i>Bridging the Digital Divide for Low- Income Consumers</i>)	WCB Docket Nos. 17-108, 17-287, 11-42
)	
<i>Lifeline and Link Up Reform and Modernization</i>)	

**COMMENTS OF NEXT CENTURY CITIES
AND AMERICAN LIBRARY ASSOCIATION**

Francella Ochillo
Executive Director
Next Century Cities
1342 Florida Ave NW
Washington, DC 20009

Ryan Johnston
Policy Counsel
Next Century Cities
1342 Florida Ave NW
Washington, DC 20009

April 20, 2020

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

In the Matter of)	
)	
<i>Restoring Internet Freedom</i>)	
)	
<i>Bridging the Digital Divide for Low- Income Consumers</i>)	WCB Docket Nos. 17-108, 17-287, 11-42
)	
<i>Lifeline and Link Up Reform and Modernization</i>)	

**COMMENTS OF NEXT CENTURY CITIES
AND AMERICAN LIBRARY ASSOCIATION**

I. Introduction

Next Century Cities (“NCC”)¹ and American Library Association² submit these comments in response to the Wireline Competition Bureau seeking to refresh the record in the Restoring Internet Freedom Order in the above captioned dockets relating to the Lifeline program.³ Americans, regardless of zip code, deserve access to the benefits of high-speed connectivity. Affordable and reliable access to broadband is essential for meaningful participation in an increasingly digital society, more so as shelter in place orders become commonplace. By the same token, access to voice services are critical for reaching emergency personnel, healthcare providers, family and friends.

The goal of Lifeline is to bring universal services to all Americans as enshrined Section 1 of the Communications Act.⁴ This is a noble goal that does not only benefit those that directly receive

¹ Next Century Cities is a nonprofit nonpartisan 501(c)(3) coalition of over 200 member municipalities that works collaboratively with local leaders to ensure reliable and affordable broadband access for every community, while helping others realize the economic, social and public health importance of high-speed connectivity.

² The American Library Association (ALA) is the foremost professional association for the nation’s 117,000 libraries. Central to ALA’s mission is advancing equitable access to technology and information for everyone, everywhere.

³ *Wireline Competition Bureau Seeks to Refresh Record in Restoring Internet Freedom and Lifeline Proceedings in Light of the D.C. Circuit’s Mozilla Decision*, WC Docket Nos. 17-108 et. al., DA 20-168 (WCB 2020).

⁴ See 47 U.S.C. § 151 (“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, sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, . . .”).

assistance from the program. The benefits of universal service spread exponentially across consumers as more consumers are able to get online.⁵

The Lifeline program has been and continues to be an important tool for local officials to help keep low-income consumers within their jurisdictions connected. Designed to be an aid in times of need and disaster relief, Lifeline supports the most vulnerable members of our society who simply cannot afford access to broadband or voice services. Subscribers are not concentrated in urban or rural areas. Their varying demographics include the poor, veterans, domestic violence victims, students, seniors, the disabled, and others. While they are often excluded from policy-making discussions in Washington, DC, they can be found anywhere in America, including places like our own hometowns.

Communications technologies are critical, particularly in the wake of an emergency. Families with limited income who may be displaced by natural or economic disaster rely on the modest subsidy that Lifeline provides in order to stay connected when they need it the most. Additionally, Lifeline helps ensure that millions of households on the wrong side of the digital divide are able to apply for jobs on-line, communicate with educators and healthcare providers, and engage on digital platforms.

II. Lifeline Is Born of Universal Service Goals

The Lifeline program was established as a low-income assistance program in 1985. Originally, Lifeline only included voice service, but was expanded to include wireless after Hurricane Katrina. Over the course of the Lifeline program, it has been the subject of overhauls and improvements to increase program integrity and expand broadband access across the nation.

The Lifeline program is structured to give consumers the choice between voice-only service, broadband-only service, or a bundled service that includes both voice and data from an approved wireline or wireless service provider. For a service provider to qualify as a Lifeline provider, the service must meet certain minimum standards that have been the subject of ongoing scrutiny and improvement. These service providers must also be approved by State Public Utility Commission's or the Federal Communications Commission ("FCC" or "Commission") itself in order to participate in the Lifeline program as an Eligible Telecommunications Carrier ("ETC").

As the program has progressed it has been the subject of substantial administrative changes to bolster program integrity. The National Lifeline Accountability Database and National Verifier are the two processes by which the eligibility determination is centralized. These processes

⁵ Whether you subscribe to Reed's or Metcalf's law, it is obvious that more users generate more connections. Increasing users benefits all the other users of a network as they are now able to make more connections with new entrants.

provide identity verification, address verification, and prior enrollment. The National Verifier maintains connections with the department of Housing and Urban Development’s Federal Public Housing Assistance Program, the Center for Medicare and Medicaid Services’ Medicaid participation in all states and automatic connections to state SNAP databases in 15 states. Considering that Lifeline enrollment has been on a steady decline since 2016.⁶ A more centralized process is supposed to make it easier for low-income households to subscribe.

Nonetheless, broadband adoption lags in low-income households nationwide.⁷ Local officials are painfully aware of the many reasons why universal service is not only a priority during times of national emergency. Universal service means connectivity every day, regardless of events gripping the nation. Lifeline helps to provide some certainty that low-income populations will have opportunities to participate in a digital society.

III. The FCC’s Ability to Administer Lifeline Is Rooted in Title II Authority

The Court in *FCC v. Mozilla* remanded the question about broadband’s designation with respect to the Lifeline Program because the Commission failed to respond to relevant and significant public comments demonstrating that the agency’s decision was not based on a consideration of the relevant factors.⁸ The FCC seeks comment on whether there are any other sources of authority that it may utilize in order to continue providing broadband services through the Lifeline Program.⁹ However, both congressional intent and the Telecommunications Act are clear – if broadband is not designated as a common carrier, it cannot be subsidized through the Lifeline program.

The Lifeline program, as the Court notes, subsidizes access to certain communications technologies.¹⁰ When broadband was added to the Lifeline Program in 2016 it was clear that the Commission intended to provide “telecommunications services to consumers.”¹¹ The Court correctly points out that, at the time, this made sense as Congress had tethered Lifeline eligibility to common-carrier status, and that to provide service an entity needed to be designated as an eligible telecommunication carrier, which generally extends to common carriers regulated under Title II.¹² Broadband’s inclusion in the Lifeline Program is dependent on its common carrier

⁶ Universal Admin. Serv. Co. 2018 Annual Report at 6, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2018/USAC-2018-Annual-Report.pdf>.

⁷ Monica Anderson & Madhumitha Kumar. Digital divide persists even as lower-income Americans make gains in tech adoption, FactTank (May 7, 2019), <https://www.pewresearch.org/fact-tank/2019/05/07/digital-divide-persists-even-as-lower-income-americans-make-gains-in-tech-adoption/>.

⁸ *See Mozilla Corp. v. FCC*, 940 F.3d 1, 113 (D.D.C. 2019).

⁹ *Wireline Competition Bureau Seeks to Refresh Record in Restoring Internet Freedom and Lifeline Proceedings in Light of the D.C. Circuit’s Mozilla Decision*, WC Docket Nos. 17-108 et. al., DA 20-168 (WCB 2020) at 2-3.

¹⁰ *See Mozilla* 940 F.3d at 109 (D.D.C. 2019) (citing 47 U.S.C. §§ 214, 254; 47 C.F.R. § 54.403).

¹¹ *Id.* at 110 (citing *In re Lifeline & Link UP Reform and Modernization*, 31 FCC Rcd. 3962, 3964 (2016); 47 C.F.R. § 54.403).

¹² *See* 47 U.S.C. §§ 214(e), 254(e).

status.¹³ Therefore, the Commission’s decision to reclassify broadband as a Title I Information service disqualifies it from eligibility in the Lifeline Program.¹⁴

The Commission argued that it need not respond to commenters raising this issue at the time and that it could provide broadband services through ETCs that maintain networks that also support voice services.¹⁵ Notably, the Commission’s response does not explain how a Title I service would be included under a Title II program. Commenters correctly stated that if broadband is not classified as a “common carrier” it cannot be included in the Lifeline Program.¹⁶ Inclusion in the Lifeline program is contingent upon classification under Title II and being designated as a common carrier.¹⁷

Lifeline is a universal service program that is essential in keeping millions of low-income Americans connected, rightly classified under Title II. Without the requisite legal authority, the Commission cripples its own ability to achieve universal service goals.

IV. Americans Who Are Struggling With Food and Rent Rely on Lifeline

Municipal leaders are on the front lines, responding to the needs and concerns of the communities they serve. As cities continue to innovate, local leaders are constantly searching for ways to connect residents that are locked out of digital opportunities. According to the United States Census Bureau, approximately one in four households in America do not have access to the internet.¹⁸ This rate increases drastically for low-income and minority households.¹⁹ Lifeline helps fill in the gap while easing the load for local officials working to connect every household in their communities.

Residents in Ohio can share why the Lifeline program has been instrumental in keeping them connected. Susan Jagers, the Director of the Ohio Poverty Law Center emphasized “Lifeline service helps to make basic telephone service affordable for low-income Ohioans who typically cannot afford the more expensive service offerings of local telephone companies.”²⁰ She added, “These families can afford little more than food and rent. But, like everyone, they need access to

¹³ *In re FCC 11-161*, 753, F.3d 1015, 1048-49 (10th Cir. 2014) (holding that only an ETC designated under 47 U.S.C. § 214(e) will be eligible to receive universal service funding, and only common carriers are eligible to be designated as ETCs).

¹⁴ *See Mozilla*, 940 F.3d at 111.

¹⁵ *Id.* at 112.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *See Computer and Internet Access in the United States: 2016*, United States Census Bureau (Aug. 2018), <https://www.census.gov/content/dam/Census/library/publications/2018/acs/ACS-39.pdf>.

¹⁹ *Id.*

²⁰ Press Release, Communications Workers of America, Community Leaders Call on PUCO to Reject AT&T’s Request to Drop out of Lifeline Program (Aug. 14, 2018) *available at* <https://cwa-union.org/news/releases/community-leaders-call-on-puco-reject-atts-request-drop-out-of-lifeline-program>.

communication services to ensure they can reach emergency services, medical providers, caregivers and family members.”²¹

In nearby Michigan, approximately 44% of the over 1.3 million eligible households rely on Lifeline.²² Local officials across the state play a key role in connecting countless others that still do not have access to broadband. For example, in Detroit, Michigan, “Connecting low-income residents to the internet has been a longstanding priority for the City of Detroit, prior to Covid-19,” according to Joshua Edmonds, Digital Inclusion Officer. “During this pandemic, we have placed a greater emphasis and exhausted resources in order to connect some of our most vulnerable residents to quality, low-cost broadband. The obstacles that our disconnected populations face combined with the staggering risk of infection are among the many reasons why we see Lifeline as a vital subsidy that can save lives.”

The Universal Service Company is using stakeholder input to improve the mechanics of the Lifeline program.²³ Likewise, the FCC should work with a diverse group of stakeholders, including local officials and representatives from low-income communities, to ensure that Lifeline reaches populations in the greatest need. Considering that only a quarter of those eligible for the Lifeline program take advantage of its services,²⁴ the Commission can do more to help get information into the hands of eligible subscribers. The FCC is uniquely positioned to educate the public on the availability of Lifeline. Further, the Commission is in a key position to work with local leaders to adopt user-centered policies that make it easier for qualifying individuals to access potentially life-saving services.

V. Lifeline Helps Support Local Emergency Relief Efforts

Cellular services were added to the Lifeline program in the wake of the Hurricane Katrina relief efforts.²⁵ Years later, when Hurricane Maria decimated Puerto Rico or wildfires threatened California, Lifeline kept Americans connected when they needed it the most. In the throes of a global pandemic, a disaster of exponentially greater proportion, Lifeline is an indispensable tool for the Commission, disconnected residents, and local officials.

²¹ *Id.*

²² A Lifeline that Breaks Down Barriers to Affordable Communication. National Consumer Law Center, <https://nclc.org/images/pdf/take-action/lifeline/fact-sheets/MI-LL.pdf>.

²³ Universal Admin. Serv. Co., 2019 Annual Report at 14, <https://www.usac.org/wp-content/uploads/about/documents/annual-reports/2019/USAC-2019-Annual-Report.pdf>.

²⁴ See Lifeline Participation, Universal Service Administrative Co. (Nov. 20, 2019), <https://www.usac.org/lifeline/learn/program-data/>.

²⁵ See e.g. *In the Matter of Federal-State Joint Board on Universal Service; Schools and Libraries Universal Service Support Mechanism; Rural Health Care Support Mechanism; Lifeline and Link-Up*, CC Docket Nos. 96-45, 02-6, WC Docket Nos. 02-60, 03-109, Order, 20 FCC Rcd 16883 (2005).

Now that schools have transitioned to online platforms and countless brick and mortar businesses have closed their doors, low-income households can easily be locked out of possibilities to work and learn if they are unable to get online. Lifeline ensures that Americans who would not otherwise have digital access are able to benefit from broadband. Particularly in the age of coronavirus (“COVID-19”), affordable and reliable broadband is essential for every resident in every community.

Lifeline may also be able to help the millions of Americans who are suddenly unemployed. However, enrollment obstacles such as having to prove three months of qualifying income can prevent those in need from being able to participate in the program. At a time when rent and utilities take precedence over a broadband subscription, the Lifeline program could be the difference between remaining connected and being forced offline.

To the agency’s credit, the Commission has taken steps to ensure that no Lifeline subscribers are involuntarily de-enrolled from the program,²⁶ recognizing that the COVID-19 pandemic has created many challenges for those who may not be able to afford to purchase a broadband plan at face value. However, while that is an important emergency relief measure, it has not lowered the threshold for enrollment or increased the benefit for Americans who would benefit greatly from the program.

Local leaders are keenly aware of the impact that connectivity has on the well-being of its residents. For instance, in New York, where the lack of broadband access can easily guarantee isolation, approximately three million households are eligible for Lifeline assistance.²⁷ That is one of the largest eligible populations in the country. Strictly enforced stay-at-home orders coupled with a recent surge in unemployment intensifies the need to connect households that cannot afford broadband services. Mayor Lovely Warren shared how Lifeline could help connect low-income residents in the City of Rochester:

"Preserving and expanding access to phone and broadband services for low-income residents is more critical than ever. As we deal with the COVID-19 crisis, our economy and government services are becoming almost exclusively digital. We must ensure that everyone in our society can participate and have the opportunity to better their lives. Our public policy must meet this challenge."

At a time when the Commission aims to use every tool imaginable to connect disconnected populations, Lifeline is already at the Commission’s fingertips, and the only one specifically designed to reach low-income households that local officials may not have the resources to

²⁶ See *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 20-354 (WCB 2020).

²⁷ Program Data: Lifeline Participation, Universal Service Admin. Co, <https://www.usac.org/lifeline/learn/program-data/>.

support. The Commission should help educate the public on the importance of Lifeline and develop strategies for ensuring service availability in every market. Additionally, as the Commission examines ways to improve Lifeline so that it meets new, overwhelming need, it should also explore ways to expand the program to include fixed broadband services.

VI. Lifeline Is a Critical Resource for Students on the Wrong Side of the Digital Divide

Voice and broadband services are essential to education, especially given new reliance on distance learning.²⁸ Reference materials, tutoring assistance, applications for colleges and financial aid, for example, are now only available online. Students need reliable access to video applications and online learning platforms to complete assignments, classwork, and attend lectures. Those without broadband access are at a distinct disadvantage with few opportunities to catch up,²⁹ namely children who do not have broadband access at home are often left to try and use public Wi-Fi networks which are severely limited by COVID-19 closures. This is one of many ways in which the Lifeline program provides a critical resource. For low-income students, it may be the only way to complete coursework from their homes.

For years, Commissioner Jessica Rosenworcel has raised concerns about what the current national emergency has brought to light. Expressing concern about an increasing disparity between those who have internet access at home and those who do not, the Commissioner stated:

. . .data from this Commission suggests one in three households do not subscribe to broadband service. . . Where they overlap is what I call the homework Gap. According to the Pew Research Center, the Homework Gap is real because five million households out of the 29 million households in this country with school-aged children lack access to broadband. Now think about what it means to be a student in a household without broadband. Just getting basic schoolwork done is hard. . . Borrowing a device and finding a signal that is not password protected becomes a prerequisite for getting any schoolwork done.³⁰

We agree that Lifeline is an indispensable tool in addressing the “homework gap.” Local leaders stand ready to help their communities make the best use of the program to address that need. They also welcome opportunities to collaborate on ways to strengthen the Lifeline program.

²⁸ See e.g., Clare McLaughlin, *The Homework Gap: The Cruellest Part of the Digital Divide*, NEA Today (Apr. 20, 2016) available at <http://neatoday.org/2016/04/20/the-homework-gap/>.

²⁹ See generally Monica Anderson & Andrew Perrin, *Nearly one-in-five teens can't always finish their homework because of the digital divide*, FactTank (Oct. 26, 2018), <https://www.pewresearch.org/fact-tank/2018/10/26/nearly-one-in-five-teens-cant-always-finish-their-homework-because-of-the-digital-divide/>.

³⁰ *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, Statement of Commissioner Jessica Rosenworcel, 30 FCC Rcd 7818, 7952-53 (2015).

VII. Conclusion

There are still too many communities in the United States that are starving for fast, reliable, and affordable broadband access. The aforementioned recommendations are intended to help identify areas where the Commission can and should do more. Being able to reduce broadband deployment gaps and target limited resources toward those communities will bring the Commission another step closer to its goal of providing universal broadband access to all Americans.