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April 21, 2011

Federal Communications Commission
Federal-State Joint Board on Universal Service
445 Twelfth Street, SW
Washington DC 20554

Re: Federal-State Joint Board on Universal Service, CC Docket No. 96-45
Lifeline and Link-Up, WC Docket No. 03-109

Dear Chairman and Commissioners:

In response to the Federal Communications Commission's recent Notice of Proposed Rulemaking,¹ the American Civil Liberties Union, Asian American Justice Center, Communications Workers of America, National Urban League, NAACP, National Coalition on Black Civic Participation, National Consumer Law Center, on behalf of its low-income clients, National Disability Rights Network, National Hispanic Media Coalition, National Organization for Women Foundation, United Church of Christ, Office of Communication, Inc. , as the undersigned members of The Leadership Conference on Civil and Human Rights, write to offer our suggestions to improve the access of low-income, minority and other unserved and underserved communities to essential telecommunications services, including high-speed Internet and broadband. We participated in front of the Joint Board and are pleased to see that the Joint Board concurred in many of our suggestions last year.

In brief, we suggest below that the Commission:

- Move quickly to expand Lifeline and Link-Up to support broadband services that can support voice as well as other applications;
- Expand Lifeline and Link-Up to support broadband services this year, and move expediently to initiate the broadband pilot projects so that the Commission can restructure Lifeline supports by the end of 2013;
- Create a financial set-aside for competitive grants within the Lifeline program to encourage states to adopt improved program administration that will promote more consumer control, increased competition, develop public-private partnerships, enhance efficiency and protect privacy;
- Expand and simplify eligibility rules, create incentives within the program to reach target populations and reduce waste and fraud, and mandate combined outreach (and possibly administration) of this program with other similar programs;
- Increase efficiency and reduce waste by incorporating into the Lifeline program the latest and best thinking regarding federal benefit programs—particularly by expanding and simplifying eligibility rules, creating incentives within the program to

¹ *Lifeline and Link-Up Reform and Modernization*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, FCC 11-32 (rel. March 4, 2011) (*NPRM*).

reach target populations and reduce waste and fraud, combining outreach of this program with other similar programs, redefining “household,” and continuing to promote broadband access in Indian country;

- Postpone any consideration of a cap until the reforms proposed in the current proceeding can be implemented, especially in light of the growing need for Lifeline in these challenging economic times and the unambiguous evidence that Lifeline and Link-Up are taken up by about 32 percent of the population that is eligible to receive it; and
- Take this opportunity to reevaluate the current distribution of financial support between universal service funds to support low-income consumers and programs that support high cost areas to ensure greater economic efficiencies and value for money.

Importance of Broadband in this Economic Environment. One of The Leadership Conference’s top priorities is an economy that works for all. And at a time when so many families are hanging by a thread, we are focused on the needs of workers and their families, along with the structural barriers that threaten to keep entire communities from sharing in the country’s economic recovery for generations to come. That is why we support measures to promote a broad-based economic recovery, and the provision of tools, such as broadband access, to take advantage of that recovery. As the Commission found in its National Broadband Plan:

Broadband is a platform for social and economic opportunity. It can lower geographic barriers and help minimize socioeconomic disparities—connecting people from otherwise disconnected communities to job opportunities, avenues for educational advancement and channels for communication. Broadband is a particularly important platform for historically disadvantaged communities including racial and ethnic minorities, people with disabilities and recent immigrants.²

As the Commission notes, broadband is the critical communications infrastructure in the 21st century. “Access to broadband is increasingly important for all Americans to actively participate in our economy. Broadband can serve as a platform for educational, economic and social opportunities. It can also minimize economic disparities.”³ And yet, the data shows vast disparities in access. The Commission’s Broadband Consumer Survey showed that 93 percent of households with an income under \$75,000 have broadband at home, while only 40 percent of adults with an income of less than \$20,000 have such access. In that survey, non-adopters cited cost as primary obstacle to adoption.⁴

This access is critically important for success in the job market, especially in a competitive job market where March 2011, unemployment was 8.8 percent, black unemployment was 15.5 percent and Latino unemployment was 11.3 percent. Broadband plays a critically important role in all parts of the jobs pipeline – covering job readiness that includes obtaining skills necessary for a job, job placement that includes successfully applying for a job, and job progression that includes retraining for advancing through a job. For example, qualifications in science, technology, engineering and math are vital for gaining entry to sectors where there is greatest job growth. Gaining those qualifications is almost impossible without access to broadband. From 2008 to 2018, the Bureau of Labor Statistics estimates that average job growth in all occupations will be about 10.1 percent. However, professional and related (16.8 percent), services (13.8 percent) and management, business and financial (10.6 percent) sectors were each

² Federal Communications Commission, Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan* at 169 (rel. March 16, 2010) (*National Broadband Plan*), available at <http://download.broadband.gov/plan/national-broadband-plan.pdf>.

³ NPRM at para 266.

⁴ *Id.* citing *National Broadband Plan* at 172.

estimated to have above average job growth.⁵ Each of these categories include jobs where at least some basic levels of computer literacy and applications via electronic mail and other forms of technology is essential. This can only occur with access to and effective use of broadband.

The Commission should expand Lifeline and Link-Up to support broadband services this year, and move expeditiously to initiate the broadband pilot projects so that the Commission can restructure Lifeline supports by the end of 2013. We strongly support the expansion, *this year*, of Lifeline support to broadband services. The Commission should adopt the NBP and Joint Board recommendation to permit Lifeline customers to apply Lifeline discounts to any service or package that includes basic voice service, making it more portable, including bundles with offerings such as Internet access.⁶

At the same time that we believe the Commission can immediately take the relatively simple step of authorizing the use of Lifeline funds for broadband services, we wholeheartedly support the Lifeline pilot projects proposed in the National Broadband Plan to more fundamentally reanalyze the program. We request the Commission to adopt a strict timeline for pilots, and a target date for a fully restructured program. We suggest a launch of pilots four months after the order in this proceeding, one-year timeline for pilot implementation and evaluation, and a target date of a restructured Lifeline program by the end of 2013. The Commission is able to implement pilot programs quickly when it wishes, and it should do so here.⁷

Rigorous efficiency and evaluation of these pilot programs is essential.⁸ The Commission should require significant reporting by pilot participants to evaluate their efficiency and effectiveness. To ensure efficiency of the pilot programs, the Commission should ensure that entities chosen for pilot programs have sufficient capacity to manage the program including proven experience in operating such programs or similar programs in other sectors and have close links to the particular communities being served. To ensure proper evaluation, the Commission should insist that each pilot program undergo rigorous evaluation undertaken by evaluators with prior experience in such evaluations.

The Commission should break down silos and obtain ideas from across government, non-profits and industry to achieve maximum efficiency of pilot projects. The Commission should combine the evaluation data coming out of the pilot data with data coming from the BTOP grants to identify ideas for implementation and evaluation. The Commission should also look far and wide for programs that are run by various non-profits and the private sector and see how they can be brought within the pilot program umbrella. It would be inefficient to reinvent the wheel when there are numerous, effective broadband rollout and adoption programs funded by others arms of the government and by collaboration between non-profits and industry. We strongly encourage the Commission to invite participants from a wide range

⁵ U.S. Bureau of Labor Statistics, *Employment Projections: 2008-18*, accessed January 13, 2011 at <http://www.bls.gov/emp/>.

⁶ *National Broadband Plan*, Recommendation 9.1 at 174; *Federal-State Joint Board on Universal Service, Lifeline and Link-Up*, CC Docket No. 96-45, WC Docket No. 03-109, Recommended Decision, para. 74-75 (rel. Nov. 2010) (*2010 Joint Board Recommendations*).

⁷ For example, see the pilot program established for the E-rate program to investigate use of E-rate funds for mobile wireless, which have already been implemented. *Schools and Libraries Universal Service Support Mechanism, A National Broadband Plan For Our Future*, CC Docket No. 02-6, GN Docket No. 09-51, Sixth Report and Order, 25 FCC Rcd 18762 (rel. Sept. 28, 2010) (*2010 Schools and Libraries, Sixth Report and Order*), 28, 2010).

⁸ See generally, General Accountability Office, *Improved Management Can Enhance FCC Decision Making for the Universal Service Low Income Program* (October 2010) GAO-11-11.

of organizations and experts—beyond those who have traditionally been involved in the universal service program.⁹

The pilot programs are an opportunity for the Commission to consider broadly how a restructured Lifeline program could address the many factors that we already know impact low levels of broadband subscribership among low-income people. Multiple barriers inhibit broadband adoption, including the cost of broadband access, the cost of computer or other Internet access device, and the lack of digital literacy.¹⁰ The Commission should look at ways that universal service support funds might be a component of programs designed to support digital literacy, rather than a free-standing program.¹¹

For this reason, we recommend that the Commission adopt flexible rules about eligibility for pilot project funding. While we believe public-private partnerships offer good mechanisms to leverage resources and expertise,¹² in some cases collaborations do not occur with the participation of an ETC as currently defined under Commission rules. Several members of The Leadership Conference, as well as non-profits such as the National Urban League and the Asian American Justice Center are currently providing these services in partnership with the federal government, private sector and other non-profits and are capable of developing and implementing pilot projects that learn from their experiences, but would not be able to get funding if the pilots were limited to ETCs. We see particular value for sustainability in partnering with community anchor institutions. In addition, we believe that the Lifeline pilots should permit expenditures of Lifeline funds on hardware or other elements of a comprehensive program.

Once the Commission understands which methods are the most effective in promoting broadband adoption, we can address the needed legal and policy changes to effectuate them.

The Commission should take a number of steps to improve the operation and administration of Lifeline to increase efficiency and reduce waste by incorporating into the Lifeline program the latest and best thinking regarding federal benefit programs. As the Commission pursues pilot programs to determine how best to bring broadband services to low-income people, it has a unique opportunity to take a step back and rethink the Lifeline program, to improve it operationally and to adopt and promote best practices in federal benefits programs and in the use of new technologies to serve low-

⁹ The FCC held one workshop on the pilot programs, but few of the participants were from social service experts with experience in bringing benefits to low income individuals. See WCB Announces Roundtable Discussion to Explore Broadband Pilot Programs for Low-Income Consumers, DA 10-1041 (June 8, 2010).

¹⁰ Dharma Daily, et al., Social Science Research Council, *Broadband Adoption in Low Income Communities* (March 2010) at 25-36. See also, Smith, Aaron. Pew Internet & American Life Project, *Home Broadband 2010* (August 2010) available at: <http://www.pewinternet.org/~media/Files/Reports/2010/Home%20broadband%202010.pdf>.

¹¹ This approach is consistent with the Joint Board's recommendation that the Commission explore creative ways to serve homeless populations through agencies that serve them. *2010 Joint Board Recommendations*, paras. 12-14.

¹² For example, Lifeline could provide \$10 subsidies for broadband access, a provider could provide subsidized computer or Internet access device, a non-profit or public entity (school, library, community center) could provide digital literacy training, and a researcher with experience and evaluation could provide evaluation. A number of current projects follow a similar conceptual model, such as the various broadband adoption programs run by the affiliates of the National Urban League and BTOP grants awarded to the BBOC coalition that includes the National Urban League and the Asian American Justice Center as members. See National Telecommunications and Information Administration. *Broadband USA Connecting America's Communities. Grants Awarded: Public Computer Center Projects*, Available at: <http://www2.ntia.doc.gov/computercenters>. Comcast-NBCU and CenturyLink-Qwest merger conditions include commitment to broadband expansion that includes \$10 Internet access, netbook, and digital literacy training. FCC Grants Approval of Comcast-NBCU Transaction (January 18, 2011), available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-304134A1.pdf; FCC Conditionally Approves CenturyLink/Qwest Merger, available at: http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0318/DOC-305278A1.pdf.

income people. We suggest that the program be improved now so that its eventual expansion to broadband support will be based on the strongest possible program. Lifeline and Link-Up currently suffer extremely low participation rates. According to the Universal Service Administrative Company (USAC), 25.7 million households qualified for Lifeline support, but only approximately 8.2 million households were enrolled, resulting in an abysmally low participation rate of approximately 32 percent.¹³ In addition, some policymakers are concerned there might be opportunities for fraud and abuse in the program. We make several recommendations to improve these outcomes.

In developing our recommendations, we looked to a program that is widely held in high regard by experts in federal benefits programs – SNAP – the Supplemental Nutrition Assistance Program, which is the program more commonly known as food stamps, run by the U.S. Department of Agriculture, Food and Nutrition Service. In 2010, SNAP served 40 million people at a cost of \$68 billion dollars, giving each recipient an average benefit of \$133 per month. Of the \$68 billion in annual costs, about \$3.5 billion comprises non-benefit costs. Simply put, SNAP is accommodating more people with increasing accuracy. Food stamp participation increased from about 17.2 million in fiscal year 2000 to 26 million people in July 2006, and, during a similar time period (between FY2000 and FY2004) payment accuracy simultaneously improved 34 percent to 94 percent overall.¹⁴

The Commission should create a financial set-aside within the Lifeline program for competitive grants to encourage states to adopt improved program administration that will promote more consumer control, facilitate increased competition, promote public-private partnerships, enhance efficiency and protect privacy. Specifically, we propose an annual financial set-aside for which states could apply to support migration to improved program administration. Such competitive grants would be available for states that:

- Create a portable electronic benefit for Lifeline recipients;¹⁵
- improve program administration by combining data collection, verification, and enrollment functions with existing state-level databases that already serve Lifeline's target population; and
- improve privacy protection for recipients by separating eligibility data (which would be collected by the state) from account and service-related information, which would remain in the hands of the carrier.

The Commission should set aside about \$10 million per year to be available through an RFP process that will permit states to apply for funding for projects meeting these criteria. Such a competitive grant process is currently in use by SNAP.¹⁶ These funds should come from the funding streams as well as the

¹³ USAC, *Lifeline Participation Rate Study* (2009).

¹⁴ See Supplemental Nutrition Assistance Program Participation and Costs (Data as of March 31, 2011), found at <http://www.fns.usda.gov/pd/SNAPsummary.htm>.

¹⁵ For example, SNAP uses an electronic benefit transfer (EBT) program. In the SNAP system, food assistance recipients apply for their benefits in their local office, and an account is established in the participant's name once eligibility is established. A plastic card is issued and the user selects a PIN. New funds are deposited into the account each month. This aspect of the SNAP system makes it like an electronic voucher. We do not recommend a plastic card for Lifeline, but an electronic account could be a good substitute.

¹⁶ SNAP has received, through the federal appropriations process, funds for pilots to increase participation in SNAP through improved program design. The USDA provides grants to state, local governments and not-profits for pilot projects that simplify application and eligibility systems and find administrative efficiencies that achieve the goal of providing nutrition assistance to those in need. See e.g., FY 2011 Supplemental Nutrition Assistance Program

financial penalties from carriers or states who fall short of program objectives as proposed below. In addition, the program guidelines could favor state proposals that incorporate matching funds from carriers—carriers that would reap financial benefits over time once they are relieved of their current Lifeline administrative obligations.

Moving to these electronic systems would improve privacy protections, outreach and administration. It is a fundamental privacy principle that the government should only collect as much information as necessary to complete a particular transaction and store it for a similarly limited duration.¹⁷ Partnering with another entity that already collects verification information prevents duplicative collection and storage of information. For example, in this case, privacy protection will be enhanced by separating very personal eligibility information (such as income level) from information held by the carrier (such as telephone number and the many other types of data available to private carriers offering telephone and broadband services), which are already subject to strong privacy laws.

Furthermore, joining enrollment and education about Lifeline with other programs that serve low-income people will increase knowledge and participation in the program. Joining databases serving similar populations with different programs has proven to reduce administrative waste in other federal benefit programs. For example, the Children’s Health Insurance Program Reauthorization Act of 2009 (CHIPRA) allows states to rely on the eligibility determination for certain programs to automatically qualify a child for Medicaid or CHIP; the term the Centers for Medicare & Medicaid Services use for this process is “Express Lane Eligibility.” The state of Alabama began to use data from SNAP and Medicaid and was able to save costs by using the same data twice to apply for both programs, as well as identify easily children who were eligible for both programs but not receiving benefits.¹⁸ In Louisiana, the child health insurance program and Medicaid program found that 22 percent of the caseload was churning on and off the rolls. After making some administrative changes with the information, they were able to reduce this number to 1 percent in seven years, thus reducing the amount of time wasted enrolling and disenrolling the same individuals.¹⁹ The Lifeline default eligibility criteria overlap with several CHIPRA Express Lane programs.²⁰ The Commission’s proposal to require all states to use the default eligibility criteria—which we support below—will facilitate attempts to coordinate with the “Express Lane Eligibility” process in the states, but the Commission will also need to take a leadership role in approaching the Centers for Medicare & Medicaid Services to introduce the Lifeline program to the value of integrated outreach and enrollment.

Incentivizing joint operation with other state-run federal benefit programs will also help to compensate for the complexity of creating a stand-alone administrative system to support a relatively small monthly benefit amount. While \$10.00 per month can certainly help bring telephone service within reach for some

Participation Grants, Request for Applications and FY 2010 USDA , Food and Nutrition Service, Supplemental Nutrition Assistance Program (SNAP) Request for Application, Increasing SNAP Participation Among Medicare’s Extra Help Population at <http://www.fns.usda.gov/snap/government/program-improvement.htm>

¹⁷ For a brief history on these principles, please see Robert Gellman, *Fair Information Practices: A Basic History*, at <http://bobgellman.com/rg-docs/rg-FIPShistory.pdf>

¹⁸ Dorothy Rosenbaum and Stacy Dean, Center on Budget and Policy Priorities, *Improving the Delivery of Key Work Supports: Policy & Practice Opportunities at A Critical Moment*, at 72 (Feb. 24, 2011).

¹⁹ *Id.* at 76.

²⁰ For example, the Temporary Assistance for Needy Families program (TANF), SNAP, the school lunch program and Head Start are programs highlighted for coordination to enroll children in Medicaid and SNAP. See Center for Medicare & Medicaid Services memo to State Health Officials re Express Lane Eligibility Option (Feb. 4, 2010).

families, the small size of the program makes it difficult for the program to reap the administrative efficiencies gained through economies of scale. Encouraging states to find administrative efficiencies in their existing programs will increase the efficiency of the Lifeline fund.

Not only will this proposal increase efficiency, outreach, and privacy, but creating these systems will decrease the likelihood of a single recipient “double dipping” by acquiring services from two carriers; an electronic account could be credited with the monthly Lifeline benefit each month and the recipient could direct those funds to the carrier of his or her choice. Thus, two carriers would not be able to obtain reimbursement for the same consumer in a single month.

The Commission should expand and simplify eligibility rules, create incentives within the program to reach target populations and reduce waste and fraud, and mandate combined outreach (and possibly administration) of this program with other similar programs. In addition to the incentive structure proposed above, a number of other improvements in the Lifeline program could be made as stand-alone requirements:

- *Simplify eligibility standards and make them consistent.* An important reform for SNAP that has improved its administration and thus its efficiency is a simplified eligibility structure. Thus, we endorse the Joint Board’s recommendation that the Commission mandate minimum uniform eligibility criteria for all states and making eligibility for Lifeline more consistent with other federal programs by increasing eligibility from 135 percent to 150 percent of the federal poverty guideline (FPG).²¹ Such a change will bring consistency and will benefit a particularly vulnerable group of consumers who may fall through the cracks, without imposing a significant economic burden, since so many programs that indicate Lifeline eligibility already accept at least 150 percent of poverty.²²
- *Create financial incentives for states or carriers to improve their outreach and administrative efficiency.* SNAP has substantially improved its error rates over the years through several initiatives, in part due to financial incentives and penalties based on performance. The national payment error rate has declined by 56 percent from 1999 to 2009, from 9.86 percent to a record low of 4.36 percent in 2010.²³ Under FNS’s quality control system, the states calculate their payment errors annually by drawing a statistical sample to determine whether participating households received the correct benefit amount. Once the error rates are final, FNS is required to compare each state’s performance with the national error rate and imposes financial penalties or provides financial incentives according to legal specifications.²⁴ In addition, states can subcontract with local nonprofits for outreach, education, screening and application assistance activities and receive up to 50 percent reimbursement from federal dollars.²⁵ These types of incentive structures could be useful models for Lifeline.

²¹ 2010 Joint Board Recommendations, paras. 10-12.

²² National Consumer Law Center and TURN Joint Board Comments at 9-10 (citing comparably high eligibility rates for SNAP, TANF, Section 8 Housing and LIHEAP.)

²³ Kay E. Brown, Director, Education, Workforce, and Income Security Issues, General Accountability Office, Testimony Before the Subcommittee on Department Operations, Oversight, Nutrition, and Forestry, Committee on Agriculture, U.S. House of Representatives, Overview (July 28, 2010), GAO-10-956T.

²⁴ *Id.* at 4.

²⁵ See, e.g., Center for Law and Social Policy, SNAP Outreach Funding (December 21, 2010) found at http://www.clasp.org/admin/site/documents/files/CWF_SNAP-Outreach.pdf.

- *Collect and report publicly detailed electronic data from every state.* SNAP is a model program because it collects and posts data from every state and territory that participates in the program and makes that data available to the public on a timely basis. The data collected includes: number of persons participating; households participating; benefits; average monthly benefit per person; and average monthly benefit per household. This data for Lifeline, if made public, would improve the Commission’s knowledge about the program because it would allow for independent analysis.
- *Accurately define and implement the one-per-household limitation.* The Commission has incorrectly characterized the Lifeline eligibility limitation as a “one per address” limit, when in fact the limit is one per *household*. As the Commission is well aware, more than one household can often reside at one address, for example, through multiple households in a homeless or domestic violence shelter, and given the reality of families sharing homes during difficult economic times. We propose the following definition of household: “Any individual or group of individuals who are living together as one economic unit,” which is based on the LIHEAP definition.²⁶ The use of “household” would be consistent with the FCC’s current eligibility and certification rules. The FCC’s current income-eligibility criteria use the definition “all income received by all members of the household.”²⁷ Providers and states would then use addresses to implement the eligibility rule, but it would not be the only means to verify households. Additionally attempts to administer a one address rule would be a very burdensome. The U.S. population is very mobile. According to a recent article, about 37.1 million Americans — 12.5 percent of the population — changed addresses from 2008 to 2009.²⁸ Determining whether someone shares an address with someone else in the program will do little to determine if they actually living together. This new definition would go a long way toward solving the problem of residents of group homes from obtaining Lifeline support. The term “dwelling” should be defined broadly to allow for shelters and commercial residential properties such as single room occupancies (SROs). These new definitions will remove existing barriers to Lifeline support for income and program-eligible residents of group homes.
- *Require applications that are linked with other federal benefit programs with similar target populations.* In addition to a financial incentive to promote migration to third-party administrators, we support a mandatory timetable to move all states toward joint enrollment in Lifeline with other federal benefit programs. This single change will do more to improve participation rates than just about any other change the Commission could make. In addition, as explained above, moving toward joint enrollment has proven to be an ultimate cost-saver for many states by identifying wasteful administrative practices and problems within the system. These programs need not be expensive, and can build on collaborations among state and federal benefits programs that already exist. Many states are moving toward single online benefits portals that assist residents with all federal benefits programs in the state. These efforts should take all measures to assist the availability of Lifeline and Link-Up to low-income housing, such

²⁶ See 42 U.S.C. § 8622 (6).

²⁷ 47 C.F.R. § 54.400(f) and 47 C.F.R. § 54.409(b). Furthermore, consumers must present documentation of household income in the certification and verification process (47 C.F.R. § 54.410(a) and (c)(2)) and the Commission’s certification and verification rules also require consumers to certify the number of individuals in their household. (§ 54.410 (b)(3) and (c)(2)).

²⁸ Haya El Nasser, *More move, but not long distance*, USA TODAY, May 11, 2010
http://www.usatoday.com/news/nation/census/2010-05-10-mobility_N.htm

as multiple occupant dwellings subsidized with government funds. Individuals should be able to obtain the Lifeline benefit independently, as research shows a significant percentage of the public will not apply for the benefit jointly with other programs.²⁹ Thus, the Commission should not rely solely on coordinated enrollment as a means of applying for Lifeline.

- *The Commission should ensure low-income consumers maximum flexibility to meet their needs while ensuring companies do not receive compensation for substandard services.* -- We support mechanisms that would make Lifeline support more supportive of the mobile technology that is needed and desired by low-income individuals. However, we strongly encourage the Commission to proceed cautiously to ensure companies that offer service to low-income Americans do not receive government support for substandard services.³⁰
- *The Commission should continue and enhance particular efforts directed toward Indian country.* Given the currently low penetration rates for American Indians in the United States for basic telephone service, the Commission should continue to enhance service for American Indians and consult with tribal leaders to ensure tribal members and tribal lands are adequately served.

The Commission should not adopt a cap on the low-income universal service funds. While we respect and endorse the Commission's goals of fiscal responsibility, we nonetheless maintain that imposing a cap on the Lifeline program, which has not undergone any significant revision or review in almost 15 years is premature. As noted above, the program is currently successfully reaching only approximately about 32 percent of eligible recipients. Given the negative economic conditions afflicting most of the United States, and the critical importance of broadband access for individuals seeking jobs and training, it would be very harsh to cap a program just when it is most needed. If the Commission is currently considering programmatic changes that will target some of the recent sources of growth in the program, it seems more appropriate to see whether those changes have the desired impact before adopting a cap. Moreover, the Commission has not proposed any means to implement a cap. We strongly oppose any caps that would offer service to the first individuals to apply for it. The Commission should prioritize access to individuals who are most in need, as it does in the E-rate program.

The Commission should adopt a modest recalibration of universal service funds that the funding allocation more accurately reflects need and should dedicate \$50 million toward funding the pilot projects. The Commission should implement a minor recalibration between the low income and high cost funds. There is currently a wide disparity between expenditures on high cost areas and low income individuals. In 2010, high cost support was \$4.5 billion, or 56 percent of the total fund, whereas low income support was \$1.2 billion, which is only 15 percent of the total fund.³¹

The Commission stated that it could save close to \$1 billion from the high cost program through a variety of measures, such as reforming the inter-carrier compensation methodology. At this time, the Commission has proposed that the full \$1 billion in savings from the high cost program will be diverted

²⁹ California's Lifeline program uses both income and program eligibility criteria and 80 percent of the California Lifeline recipients used program-eligibility to enroll. See California Public Utilities Commission, Docket No. R. 04-12-001, D. 08-08-029 (Aug.21, 2008) Finding of Fact #18.

³⁰ For example, some services offer a very low number of minutes per month and then charge rates as high as 20 cents per minute after the monthly minimums are exhausted. Such a program could wind up gouging, rather than helping, low-income consumers.

³¹ Federal Communications Commission, The Connect America Fund & Intercarrier Compensation Reform Notice of Proposed Rulemaking, February 13, 2011; Federal Communications Commission, National Broadband Plan, Chapter 8, Exhibit 8-A. March 2010, available at: <http://www.broadband.gov/plan/8-availability/>.



to the Connect America Fund. We suggest that if cost savings is achieved through eliminating administrative duplicity and squeezing out nonproductive expenses, some portion of that efficiency—perhaps 15 percent—should be set aside for the low-income program. We emphasize that this recommendation does not reflect any lack of appreciation for the needs of rural America. We strongly support this funding, and as indicated above, particularly support efforts directed toward tribal lands and tribal members with low subscribership rates. Constituents of many of The Leadership Conference’s members reside in rural areas and these people should not be left behind, particularly given the importance of ensuring the economic success of rural America and historically disadvantaged groups in those areas. The disparity in the current allocation of funds among programs, however, is quite drastic, particularly given that the low-income program is already in many fewer households than are eligible.

We recommend that a portion of these reallocated funds be spent on the pilot projects and the remainder added to the rest of the existing program. We recommend funding the pilot programs at \$50 million level, using the \$23 million identified by the Commission as well as additional funds from increased efficiencies in other parts of USF. To illustrate, the average BTOP adoption grant was \$5.7 million (\$251 million for 44 projects),³² \$50 million would appear to be the minimum needed to fund sufficient projects to create a critical mass of data for proper evaluation. In addition, we note that we have also identified another source of revenue for the Lifeline program: we support adoption of financial penalties against carriers or administrators that engage in fraud or waste or fall significantly short of program goals, such as outreach. These penalties can also be used to augment the funds already collected and provide market-based incentives to improved program operation.

We hope that these recommendations and analysis prove useful to the Commission and we look forward to collaborating with you to further the goal of bringing broadband to all Americans. Please contact Leadership Conference Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, UCC Office of Communication, Inc., at 202-841-6033, or Chris Calabrese, ACLU, at 202-715-0839, or Corrine Yu, Leadership Conference Managing Policy Director at 202-466-5670, if you would like to discuss the above issues or any other issues of importance to The Leadership Conference.

Sincerely,

American Civil Liberties Union
Asian American Justice Center
Communications Workers of America
National Urban League
NAACP
National Coalition on Black Civic Participation
National Consumer Law Center, on behalf of its low-income clients
National Disability Rights Network
National Hispanic Media Coalition
National Organization for Women Foundation
The Leadership Conference on Civil and Human Rights
United Church of Christ, Office of Communication, Inc.

³² National Telecommunications and Information Administration. *The Broadband Technology Opportunities Program: Overview of Grant Awards*, available at: http://www.ntia.doc.gov/reports/2010/NTIA_Report_on_BTOP_12142010.pdf