

*I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use*

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and the Administrator of the Office of Information and Regulatory Affairs has not otherwise determined that the action is a significant energy action.

*J. National Technology Transfer and Advancement Act (NTTAA)*

Since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this decision is contained in the Economic Analysis, which is available in the docket (Ref. 7).

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 745**

Environmental protection, Abatement, Child-occupied facility, Clearance levels, Hazardous substances, Lead, Lead poisoning, Lead-based paint, Target housing.

**Andrew Wheeler,**  
*Administrator.*

Therefore, for the reasons set forth in the preamble, 40 CFR chapter I, subchapter R, is amended as follows:

**PART 745—[AMENDED]**

- 1. The authority citation for part 745 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

- 2. Amend § 745.223 by revising the definition for “Clearance levels” to read as follows:

**§ 745.223 Definitions.**

\* \* \* \* \*

*Clearance levels* are values that indicate the amount of lead in dust on a surface following completion of an abatement activity. To achieve clearance when dust sampling is required, values below these levels must be achieved.

\* \* \* \* \*

- 3. Amend § 745.227 by revising paragraph (e)(8)(viii) to read as follows:

**§ 745.227 Work practice standards for conducting lead-based paint activities: Target housing and child-occupied facilities.**

\* \* \* \* \*

(e) \* \* \*

(8) \* \* \*

(viii) The clearance levels for lead in dust are 10 µg/ft<sup>2</sup> for floors, 100 µg/ft<sup>2</sup> for interior window sills, and 400 µg/ft<sup>2</sup> for window troughs.

\* \* \* \* \*

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

[WC Docket Nos. 11–42, 17–108, 17–287; FCC 20–151; FRS 17241]

**Restoring Internet Freedom; Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) responds to a remand from the U.S. Court of Appeals for the D.C. Circuit directing the Commission to assess the effects of the Commission’s *Restoring Internet Freedom Order* on public safety, pole attachments, and the statutory basis for broadband internet access service’s inclusion in the universal service Lifeline program. This document also amends the Commission’s rules to remove broadband internet service from the list of services supported by the universal service Lifeline program, while preserving the Commission’s authority to fund broadband internet access service through the Lifeline program.

**DATES:** This *Order on Remand* shall become effective February 8, 2021.

**ADDRESSES:** Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Annick Banoun, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1521, [annick.banoun@fcc.gov](mailto:annick.banoun@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s *Order on Remand* in WC Docket Nos. 11–42, 17–108, and 17–287, adopted October 27, 2020, and released on October 29, 2020. The document is available for download at <https://www.fcc.gov/document/fcc-responds-narrow-remand-restoring-internet-freedom-order-0>. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

**Synopsis**

1. In the *Restoring Internet Freedom Order* (83 FR 7852, Feb. 22, 2018), we reversed the Commission’s misguided and short-lived utility-style regulation of the internet and returned to the light-touch regulatory framework for broadband internet access service that facilitated rapid and unprecedented growth for almost two decades. In this *Order on Remand*, we maintain this well-established approach after further considering three discrete issues raised by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit).

2. In *Mozilla Corp. v. FCC*, the D.C. Circuit upheld the vast majority of our decision in the *Restoring Internet Freedom Order*, remanding three discrete issues for further consideration—namely, the effect of that *Order* on: (1) Public safety; (2) the regulation of pole attachments; and (3) universal service support for low-income consumers through the Lifeline program. Because the court concluded that “the Commission may well be able to address on remand” these three issues, it declined to vacate the *Restoring Internet Freedom Order*, pending our further analysis. After considering the three issues identified by the court in light of the record developed thereafter, we see no grounds to depart from our determinations in the *Restoring Internet Freedom Order*.

**I. Background**

3. Building on decades of precedent, the Commission adopted the *Restoring Internet Freedom Order* to return to the successful light-touch bipartisan framework that promoted a free and open internet and, for almost twenty years, saw it flourish. The *Restoring*

*Internet Freedom Order* took effect on June 11, 2018. The *Restoring Internet Freedom Order* reversed the *Title II Order* (80 FR 19738, April 13, 2015), adopted in March 2015, which reclassified broadband internet access service from an information service to a telecommunications service and reclassified mobile broadband internet access services as a commercial mobile service and adopted three bright-line rules—blocking, throttling, and paid prioritization—as well as a general internet conduct standard and “enhancements” to the transparency rule. The *Restoring Internet Freedom Order*, adopted in December 2017, ended the agency’s brief foray into utility-style regulation of the internet and restored the light-touch framework under which a free and open internet underwent rapid and unprecedented growth for almost two decades. The *Restoring Internet Freedom Order* ended Title II regulation of the internet and returned broadband internet access service to its long-standing classification as an information service under Title I, consistent with Supreme Court’s holding in *Brand X*. Having determined that broadband internet access service—regardless of whether offered using fixed or mobile technologies—is an information service under the Communications Act of 1934, as amended (the Act), we also concluded that as an information service, mobile broadband internet access service should not be classified as a commercial mobile service or its functional equivalent.

4. *Mozilla Corp. v. FCC*. In *Mozilla Corp. v. FCC*, the D.C. Circuit largely affirmed the Commission’s classification decision in the *Restoring Internet Freedom Order*. On February 6, 2020, the D.C. Circuit denied all pending petitions for rehearing, and the Court issued its mandate on February 18, 2020. Although largely affirming the Commission’s decision, the *Mozilla* court “remand[ed] for further proceedings on three discrete points.” The first is the effect of the “changed regulatory posture” in the *Restoring Internet Freedom Order* on public safety. The D.C. Circuit observed that “Congress created the Commission for the purpose of, among other things, ‘promoting safety of life and property through the use of wire and radio communications’” in section 1 of the Act, and concluded that public safety is “an important aspect of the problem” that the agency must consider and address. The *Mozilla* court also noted that “[a] number of commenters voiced concerns about the threat to public

safety that would arise under the proposed (and ultimately adopted)” *Restoring Internet Freedom Order*, including “how allowing broadband providers to prioritize internet traffic as they see fit, or to demand payment for top-rate speed, could imperil the ability of first responders, providers of critical infrastructure, and members of the public to communicate during a crisis.” The court declined to consider petitioners’ arguments based on “an incident involving the (apparently accidental) decision by Verizon to throttle the broadband internet of Santa Clara firefighters while they were battling a devastating California wildfire,” which occurred after the *Restoring Internet Freedom Order*. Likewise, the court declined to consider the responses to those arguments in the Commission’s brief because they had not been set forth in the *Restoring Internet Freedom Order*.

5. The second discrete issue that the D.C. Circuit remanded is how the reclassification of broadband internet access service affects the regulation of pole attachments. The D.C. Circuit noted petitioners’ “substantial concern that, in reclassifying broadband internet as an information service, the Commission, without reasoned consideration, took broadband outside the current statutory scheme governing pole attachments.” Our authority over pole attachments pursuant to section 224 of the Act extends to attachments made by a cable television system or provider of telecommunications service. States may “reverse preempt” our pole attachment rules and adopt their own rules governing pole attachments in place of ours. The *Mozilla* court acknowledged our observation that facilities remain subject to pole attachment regulation when deployed by entities commingling broadband internet access service with a service covered by section 224 of the Act. The D.C. Circuit found that our conclusion was sound with respect to “providers who ‘commingl[e]’ telecommunication and broadband services” but incomplete given the court’s view that post-reclassification, “the statute textually forecloses any pole-attachment protection for standalone broadband providers.” The *Mozilla* court concluded that “[t]he Commission was required to grapple with” the matter of pole-attachment regulation for broadband-only providers and remanded the issue for further consideration.

6. The third discrete issue that the court remanded is the statutory basis for broadband internet access service’s inclusion in the Lifeline program. The

Lifeline program helps low-income Americans gain access to affordable communications services, and is part of the Commission’s universal service efforts to close the digital divide. First created by the Commission in 1985, Congress codified this commitment to low-income consumers in the 1996 Telecommunications Act. Currently, the Lifeline program offers qualifying low-income consumers a discount of up to \$9.25 per month on voice, broadband internet access service, or bundled services that meet the program’s minimum service standards. Consumers who reside on Tribal lands can receive a discount of up to \$34.25 on Lifeline service that satisfies the minimum service standards. The D.C. Circuit described petitioners’ concern “that reclassification would eliminate the statutory basis for broadband’s inclusion in the [Lifeline] Program” and pointed out that “Congress [ ] tethered Lifeline eligibility to common-carrier status,” citing statutory language limiting the designation of eligible telecommunications carriers (ETCs) and receipt of universal service support to common carriers. Similarly, citing the U.S. Court of Appeals for the Tenth Circuit’s “observ[ation], before broadband was classified as a telecommunications service, that ‘broadband-only providers . . . cannot be designated as ‘eligible telecommunications carriers’ because ‘under the existing statutory framework, only ‘common carriers’ . . . are eligible to be designated as ‘eligible telecommunications carriers,’” the D.C. Circuit concluded that the *Restoring Internet Freedom Order*’s reclassification of broadband internet access service would appear to preclude broadband’s inclusion in the Lifeline Program. Consequently, the *Mozilla* court “remand[ed] this portion of the [Restoring Internet Freedom Order] for the Commission to address.”

## II. Discussion

7. We address in turn each of the three issues the *Mozilla* court remanded and conclude that, in each case, there is no basis to alter our conclusions in the *Restoring Internet Freedom Order*. Specifically, we examine the effects that the *Restoring Internet Freedom Order* might have on public safety communications, pole attachment rights for broadband-only providers, and the universal service Lifeline program, as well as how such possible effects bear on the Commission’s underlying decisions to classify broadband internet access service as an information service and eliminate the internet rules. Our analysis below shows that the *Restoring*

*Internet Freedom Order* promotes public safety, facilitates broadband infrastructure deployment for ISPs, and allows us to continue to provide Lifeline support for broadband internet access service. Further, we conclude that any potential negative effects that the reclassification may have on public safety, pole attachment rights for broadband-only providers, and the Lifeline program are limited and would not change our classification decision in the *Restoring Internet Freedom Order* even if such negative effects were substantiated. Rather, we find that that overwhelming benefits of Title I classification and restoration of light-touch regulation outweigh any adverse effects.

#### A. Public Safety

8. The *Mozilla* court directed us to address the effect on public safety of the “changed regulatory posture” in the *Restoring Internet Freedom Order*. The *Mozilla* court focused in particular on claims in the record concerning dangers that might arise from “allowing broadband providers to prioritize internet traffic as they see fit, or to demand payment for top-rate speed,” and how such actions “could imperil the ability of first responders, providers of critical infrastructure, and members of the public to communicate during a crisis.” Among other things, the D.C. Circuit rejected our argument that “the public safety issues . . . were redundant of the arguments made by edge providers,” finding instead that “unlike most harms to edge providers incurred because of discriminatory practices by broadband providers, the harms from blocking and throttling during a public safety emergency are irreparable.”

9. We find that neither our decision to return broadband internet access service to its long-standing classification as an information service, nor our subsequent decision to eliminate the internet conduct rules, is likely to adversely impact public safety. To the contrary, our analysis reinforces our determinations made in the *Restoring Internet Freedom Order*, and we find that on balance, the light-touch approach we adopted and the regulatory certainty provided by the *Restoring Internet Freedom Order* benefit public safety and further our charge of promoting “safety of life and property” and the national defense through the use of wire and radio communications. We also find that even if there were some adverse impacts on public safety applications in particular cases—which we do not anticipate—the overwhelming benefits of Title I

classification would still outweigh any potential harms.

#### 1. The Commission’s Public Safety Responsibilities

10. Advancing public safety is one of our fundamental obligations. The Title I approach spurs investment in a robust network and innovative services, which enhances the effectiveness of our work to promote public safety consistent with our statutory responsibilities. Indeed, this has been the case over the almost 20 years during which broadband internet access service (and, as appropriate, mobile broadband internet access service) was classified as a Title I service.

11. As the D.C. Circuit explained, when “Congress has given an agency the responsibility to regulate a market such as the telecommunications industry that it has repeatedly deemed important to protecting public safety,” then the agency’s decisions “must take into account its duty to protect the public.” We take seriously our public safety responsibilities, as demonstrated by a number of our recent actions. In 2019, for example, pursuant to Kari’s Law Act of 2017 the Commission required newly manufactured, imported, sold, or leased multi-line telephone systems—such as those used by hotels and campuses—to allow users to dial 911 directly, without having to dial a prefix such as a “9” to reach an outside line. We also adopted rules pursuant to section 506 of the RAY BAUM’S ACT to ensure that “dispatchable location” information, such as the street address, floor level, and room number of a 911 caller, is conveyed with 911 calls so that first responders can more quickly locate the caller. More recently, we proposed taking action to modernize the Commission’s rules to facilitate the priority treatment of voice, data, and video services for public safety personnel and first responders, including removing outdated requirements that may impede the use of IP-based technologies. The Commission has taken important measures to increase the effectiveness of Wireless Emergency Alerts (WEAs) by requiring Participating Commercial Mobile Service Providers to support longer WEA messages; support Spanish-language messages; create a new message category (“State/Local WEA Tests”); and further implement enhanced geotargeting capabilities. We have also urged wireless service providers and electric power providers to coordinate their response and restoration efforts more closely following disasters, resulting in the

establishment of the Cross Sector Resiliency Forum in February 2020. Further, to safeguard America’s critical communications infrastructure from potential security threats, we prohibited the use of public funds from the Commission’s Universal Service Fund (USF) to purchase or obtain any equipment or services produced or provided by companies posing a national security threat to the integrity of communications networks or the communications supply chain, and proposed to require certain USF recipients to remove and replace such equipment and services from their networks and reimburse them for doing so. We also initially designated Huawei Technologies Company (Huawei) and ZTE Corporation (ZTE) as covered companies for purposes of this rule, and we established a process for designating additional covered companies in the future. Additionally, the Commission’s Public Safety and Homeland Security Bureau issued final designations of Huawei and ZTE as covered companies, thereby prohibiting the use of USF funds on equipment or services produced or provided by these two suppliers. We also recently proposed, pursuant to the Secure and Trusted Communications Networks Act, to (1) create a list of covered communications equipment and services that pose an unacceptable risk to the national security of the United States or the security and safety of United States persons; (2) ban the use of federal subsidies for any equipment or services on the list of covered communications equipment and services; (3) require that all providers of advanced communications service report whether they use any covered communications equipment and services; and (4) establish regulations to prevent waste, fraud, and abuse in the proposed reimbursement program to remove, replace, and dispose of insecure equipment. In furtherance of our duties to protect life, we also recently designated 988 as the 3-digit number to reach the National Suicide Prevention Lifeline and required all service providers to complete the transition by July 16, 2022.

#### 2. Overview of Public Safety Communications Marketplace

12. Public safety communications fall into two broad categories: (1) Communications within and between public safety entities, and (2) communications between public safety entities and the public. We review each in turn.

13. *Communications Among Public Safety Entities*. The record reflects that

many public safety entities have access to and make use of dedicated public safety-specific and/or prioritized, specialized enterprise-level broadband services for data communications between public safety officials. Perhaps the most important example of a dedicated network is the Congressionally-created First Responder Network Authority (FirstNet). In 2012, Congress passed the Middle Class Tax Relief and Job Creation Act, which in part directed “the establishment of a nationwide, interoperable public safety network” to “ensure the deployment and operation of a nationwide, broadband network for public safety communications”—a resilient network capable of supporting both data and voice communications. The law granted 20 megahertz of spectrum to be used for the network and allocated \$7 billion of funding. FirstNet is “explicitly designed for fast, prioritized public safety communications.” FirstNet offers service priority and preemption, which allow first responders to communicate over an “always-on” network. Public safety entities using FirstNet can boost their priority levels during emergency situations “to ensure first responder teams stay connected” even when networks are congested. AT&T describes preemption as an “enhanced” form of priority service because it “shifts non-emergency traffic to another line,” which ensures national security and emergency preparedness users’ communications are successfully completed. According to AT&T, priority and preemption support voice calls, “text messages, images, videos, location information, [and] data from apps . . . in real time.” In the first half of 2019, the monthly numbers of device connections to FirstNet “outperformed expectations at approximately 196% of projected targets.” In May 2019, “a majority of agencies and nearly 50% of FirstNet’s total connections were new subscribers (not AT&T migrations).” As of August 2019, FirstNet was deployed in all 50 states, and nearly 9,000 public safety agencies and organizations were subscribers of the network. The number of public safety agencies subscribing to FirstNet services continues to increase. Recent data suggests that more than 12,000 public safety agencies and organizations—accounting for over 1.3 million connections nationwide—subscribe to FirstNet services. These trends suggest that first responders recognize the benefits of prioritization, preemption, and other innovative features that enhance public safety communications. The record reflects that “[m]ore and more, public safety is

relying on the FirstNet core and public safety’s own dedicated network for critical public safety communications—one that offers faster performance than commercial networks.” The Spectrum Act requires FirstNet to apply for renewal of its license after 10 years (*i.e.*, in 2022). The Act states that to obtain renewal, FirstNet must demonstrate that “during the preceding license term, the First Responder Network Authority has met the duties and obligations set forth under [the Spectrum] Act.”

14. As we observed previously, other service providers have recently begun offering or enhanced their public safety services to compete with FirstNet. For example, Verizon offers services designed for first responders and public safety entities through its public safety private core that include the ability to prioritize public safety communications to ensure that they stay connected during emergencies. Such services also provide an extra layer of assurance that public safety communications will continue to operate during peak times. In addition, public safety users “have access to several . . . enhanced services” from Verizon, including Mobile Broadband Priority Service and data preemption. These services “provide public safety users priority service for data transmissions” by giving users priority over commercial users during periods of heavy network congestion and “relocat[ing] network resources from commercial data/internet users to first responders” if networks reach full capacity.

15. Similarly, U.S. Cellular offers “enhanced data priority services for first responders and other emergency response teams.” The company uses a “dedicated broadband LTE network that separates mission-critical data from commercial and consumer traffic,” ensuring that national security and emergency preparedness personnel “have access to vital services” during emergency situations. In addition to prioritizing network access, U.S. Cellular uses preemption “to automatically and temporarily reallocate lower priority network resources to emergency responders so they can stay connected during emergencies or other high-traffic events.” T-Mobile also launched a specialized set of rate plans for first responder organizations in early 2019, aimed at addressing these organizations’ needs that their high-speed data allowance not run out or be slowed during emergencies. These dedicated or specialized types of service plans allow first responder organizations to receive unlimited smartphone or hotspot data that receives high priority on the network at all times.

T-Mobile is also expanding these efforts by offering Connecting Heroes, a program launching later this year to provide a version of this service for free to U.S. state and local public and non-profit law enforcement, fire, and emergency medical services (EMS) agencies.

16. Though many communications between public safety entities increasingly take advantage of these enterprise-level dedicated public safety broadband services, the record reflects that public safety entities employ broadband internet access services for their communications between public safety officials as well. As the Association of Public-Safety Communications Officials-International, Inc. (APCO) explains, public safety agencies rely on retail broadband services for a variety of public safety applications, including for example, accessing various databases, sharing data with emergency responders, translating communications with 911 callers and patients in the field, streaming video into 911 and emergency operations centers, and accessing critical information about a 911 caller that is not delivered through the traditional 911 network.

17. While this proceeding focuses on a specific data service—broadband internet access service—we note that the universe of public safety to public safety communications extends beyond this particular service. The enterprise services described above often provide a viable alternative for states and localities to purchase dedicated broadband connections to use for public safety communications. In addition, voice services continue to play an important role. The Commission has historically supported these efforts through the establishment of three priority services programs that support prioritized voice services for public safety users. The Telecommunications Services Priority System (TSP) authorizes the “assignment and approval of priorities for provisioning and restoration of common-carrier provided telecommunication services” and “services which are provided by government and/or non-common carriers and are interconnected to common carrier services.” The Government Emergency Telecommunications Service (GETS) “provides government officials, first responders, and NSEP personnel with ‘priority access and prioritized processing in the local and long distance segments of the landline networks, greatly increasing the probability of call completion.’” And, the Wireless Priority Service program

(WPS) provides “prioritized voice calling for subscribers using Commercial Mobile Radio Service . . . networks.” As noted above, we recently proposed modernizing these rules to broaden the scope of information covered to address data and video and to remove outdated requirements that may impede the use of IP-based technologies.

18. *Communications Between Public Safety Entities and the Public.*

Communications between public safety entities and the public occur using a wide array of communications technologies. With respect to broadband services, the record reflects broad consensus that not only do public safety entities and first responders need to be able to communicate rapidly and reliably with each other during crisis situations, but members of the public using mass-market services must also be able to easily and efficiently communicate with first responders and access public safety resources and information. As the County of Santa Clara states, “[T]he fundamental work of government, including public safety personnel, is outward facing: To protect our residents, we must be able to communicate with them, and they with us.” The record suggests that most data communications between public safety entities and individuals likely take place over broadband internet access services, and not enterprise or dedicated services. As CTIA explains, consumers regularly use their mobile devices and broadband connections “to access broadly available information regarding threatening weather, shelter-in-place mandates, ongoing active-shooter scenarios, and other matters essential to public safety.” Members of the public often rely on broadband services during emergencies to enable them to find and receive potentially life-saving information, and to allow public safety officials to build on-the-ground situational awareness with information they gather from residential broadband service users. First responders can also gain valuable information from members of the public through mass-market broadband access, such as when “citizens used hashtags to flag rescuers and to compile helpful databases” in the wake of Hurricane Harvey in 2017.

19. Further, “public safety” communications may encompass more than just communications during emergencies, as the COVID-19 pandemic has demonstrated, with many Americans relying on telemedicine over mass-market broadband services for “routine health care, triage, and basic health advice” as well as for updates on public health information and stay-at-

home and quarantine orders. 5G networks’ ability to transmit massive amounts of data in real time will also help enable new applications that will allow more advanced communications between the public and health care officials, such as allowing health care professionals, through ubiquitous wireless sensors, to remotely monitor patients’ health and transmit data to their doctors before problems become emergencies, and to develop connected ambulance services for faster patient transport.

20. Non-data and one-way broadcast communications services, notably including members of the public making use of voice services to call 911, continue to play a central role in public safety communications between Americans and public safety entities. Consistent with Congressional direction, the Commission has “designate[d] 9-1-1 as the universal emergency telephone number within the United States for reporting an emergency to appropriate authorities and requesting assistance,” and has adopted regulations designed to improve its performance and effectiveness. Audio and video communications also are important for public safety communications to the public, including for communicating emergency alerts. The Emergency Alert System is a national public warning system through which broadcasters, cable systems, and other service providers deliver audio alerts that include modulated data that can be converted into a visual message to the public to warn them of impending emergencies and dangers to life and property in accordance with Commission regulations. In addition, communications via text message also have taken on an important public safety role, including through Commission-mandated text-to-911 capabilities and Wireless Emergency Alerts. Consistent with its statutory duties, the Commission has played a major role in establishing and facilitating these means of communication between public safety entities and the public.

3. *The Benefits of Increased Innovation, Investment, and Regulatory Certainty Provided by the Restoring Internet Freedom Order Will Enhance Public Safety*

21. In the *Restoring Internet Freedom Order*, the Commission “eliminat[ed] burdensome regulation that stifles innovation and deters investment” and predicted that “this light-touch information service framework will promote investment and innovation.” The *Mozilla* court affirmed this finding,

concluding that our position as to the economic benefits of reclassification away from public-utility style regulations was “supported by substantial evidence.” The record reflects that our finding applies just as much, if not more so, to public safety communications. Consistent with our findings in the *Restoring Internet Freedom Order*, a number of commenters assert that the Commission’s reclassification of broadband internet access services has “restored a regulatory environment that encourages robust investment in broadband networks and facilities that can be used for many purposes, including public safety purposes,” and that this light-touch regulatory environment has improved and expanded the resources available to public safety entities and consumers alike. Though many factors affect ISPs’ investment decisions, these comments lend support to our findings in the *Restoring Internet Freedom Order* that “reclassification of broadband internet access service from Title II to Title I is likely to increase ISP investment and output” and that the “ever-present threat of regulatory creep is substantially likely to affect the risk calculus taken by ISPs when deciding how to invest their shareholders’ capital, potentially deterring them from investment in broadband.” Given the variety of factors and the limited nature of the scope of the remand and subsequent record, described below, we do not reopen or expand on these predictions at this time. We reject the argument that AT&T’s plan to grandfather legacy DSL services (with speeds ranging from 788 kbps to 6 Mbps) undermines our reliance on the likelihood of increased investment as a result of the *Restoring Internet Freedom Order*. The *Mozilla* court has already affirmed the Commission’s finding that the *Restoring Internet Freedom Order* is likely to promote investment and deployment. In any event, AT&T’s filing demonstrates that its customers in the service areas referenced by Public Knowledge et al. have plenty of options for broadband internet access service (at speeds of 10 Mbps and higher). Finally, we observe that the reclassification of broadband internet access service as an information service had no effect on the Commission’s authority over ISPs’ discontinuance of broadband services, as the Commission explicitly forbore from section 214 with respect to broadband internet access services in the *Title II Order*.

22. As described above, an increasing number of public safety entities

subscribe to enterprise-level quality-of-service dedicated public safety data services. While the Greenlining Institute raises concerns that the record does not specify the number of public safety entities that purchase enterprise-grade services, or the affordability and competitiveness of the fees for such services, we observe several commenters explained the widespread nature of such services. For example, NCTA explains that one of its members provides data connectivity solutions “for thousands of public safety entities, including police and fire departments, hospitals, ambulance services, public safety dispatchers, medical dispatch centers, and 911 providers throughout the country.” Further, as noted above, as of August 2019, FirstNet was deployed in all 50 states, and nearly 9,000 public safety agencies and organizations were subscribers of the network. As Verizon explains, public safety entities generally purchase enterprise service contracts that are “similar to other large agreements that government entities use to buy most goods and services on favorable terms for a fair price,” explaining that some states use master agreements negotiated by nationwide purchases organizations such as the National Association of State Procurement Offices, for example. We also note that because such services were excluded from regulation under the *Title II Order*, that Order did not reduce the costs of such services in any case. These types of plans were not subject to the requirements of the *Title II Order* or the *Open Internet Order* (76 FR 59192, Sept. 23, 2011). However, even these non-mass-market offerings benefit from the *Restoring Internet Freedom Order*’s light-touch approach, regulatory certainty, and likely investment incentives because they often make use of infrastructure that also is used to facilitate broadband internet access services (e.g., middle mile connections). As CTIA states, “[r]obust and expansive broadband infrastructure benefits both consumers and public safety personnel, whether they rely on mass-market connectivity or enterprise offerings, because even infrastructure built principally to serve mass-market broadband consumers (such as middle-mile networking) increases overall network capacity, improving the experience of enterprise and government users and those utilizing non-[broadband internet access service] data services.” Further, as broadband speeds and other performance characteristics continue to improve, the range of public safety services and applications that could

potentially be offered over these networks expands.

23. The record reflects that the regulatory certainty and light-touch approach the *Restoring Internet Freedom Order* affords also likely gives ISPs stronger incentives to upgrade networks to 5G, paving the way for new and innovative applications and services that can benefit public safety. 5G networks’ ability to transmit massive amounts of data in real time will help enable new applications that provide immediate situational awareness to enable public safety professionals and first responders to “provide more informed support and make better decisions during an emergency.” For example, 5G capabilities will enable search and rescue drones and other unmanned vehicles to reach areas that would otherwise be inaccessible, and will also help enable products “like augmented reality headsets that can help firefighters see through smoke, and create augmented disaster mapping that helps rescue teams get a clearer picture of the situation on the ground.” The deployment and growth of 5G and the innovative applications it will enable will have clear public safety benefits, and we believe that our light-touch, market driven approach likely has, and likely will continue, to encourage ISPs’ investments in these networks.

24. The record reflects that improved, more robust broadband networks and services also have obvious and significant benefits for communications between public safety entities and the public. According to one commenter, “[t]hree in ten Americans describe themselves as ‘constantly’ online,” and that “the best way to reach them will be for public safety communication to also take place online.” As the Edward Davis Company explains, “better, faster, and more widespread broadband connections make it easier for the public to contact public safety in times of need and help public safety respond more quickly.” Indeed, the Public Safety Broadband Technology Association asserts that light-touch regulation “promotes extensive deployment and quick adoption of fast broadband, which enables citizens to reach public safety more easily in times of need.” Similarly, USTelecom observes that increased investment has “given rise to robust, reliable, and resilient networks that improve consumers’ access to public safety information, providing first responders and other government agencies with new and innovative ways to communicate and share, analyze, and act on information during emergencies.”

25. The COVID–19 pandemic has brought that point into stark relief. The

robustness and reliability of ISPs’ networks have helped make possible the large-scale changes to daily life, including reliance on telework, digital learning, telehealth, and online communications with local and state officials. The record demonstrates that, even with unprecedented increases in traffic during the COVID–19 pandemic, broadband networks have been able to handle the increase in traffic and shift in usage patterns. The ability of these networks to absorb major increases in traffic has allowed Americans to maintain social distancing, which experts have found to yield tremendous public health and safety benefits by “flattening the curve” of viral transmissions. USTelecom observes that one study showed that out of the ten countries with the highest populations in the world, the United States was the only country to not experience any download speed degradation in April 2020. Further, unlike the European Union, which takes a utility-style approach to broadband regulation and has had to request that bandwidth intensive services such as Netflix reduce video quality in order to ease stress on its network infrastructure, the United States has not had to take similar steps, despite similar surges in internet traffic. This country’s robust and resilient broadband networks are, in significant part, the result of over two decades of almost continuous light-touch regulation, which has promoted substantial infrastructure investment and deployment. For the foregoing reasons, we conclude that our decision to return broadband internet access service to its historical information service classification benefits public safety communications by encouraging the deployment of more robust, resilient broadband services networks and infrastructure over which public safety communications to, from, and among the public ride.

#### 4. The *Restoring Internet Freedom Order* Is Unlikely To Harm Public Safety Communications, and Any Harm That It Could Cause Would Be Minimal

26. We find that our reclassification and rule determinations in the *Restoring Internet Freedom Order* are not likely to adversely affect public safety communications over broadband internet access service. First, we explain why the same protections we identify in the *Restoring Internet Freedom Order* as sufficient to protect openness generally—transparency, antitrust, and consumer protection law—equally protect the openness of public safety communications. Next, we find an absence of evidence of harms to public

safety communications arising from the *Restoring Internet Freedom Order* or from the two-decade history of light-touch regulation of the internet. We then review assertions regarding specific forms of possible harm to public safety communications—blocking, throttling, loss or delay due to paid prioritization, barriers to communications by individuals with disabilities, and damage to the safety and reliability of critical infrastructure—and conclude that the record reflects insufficient evidence of such harms as a result of the *Restoring Internet Freedom Order* or that such harms are likely to arise. Finally, we conclude that even if a harm to public safety communication were to somehow arise from the *Restoring Internet Freedom Order*, its impact would be limited because broadband internet access service, while important, is only a part of the broader public safety communications ecosystem. As such, we reject assertions by Public Knowledge et al. that “[i]n making its finding that reclassification and elimination of the rules will not harm public safety, the Commission focuses strictly on the question of prioritization of service.”

27. *Transparency, Antitrust, and Consumer Protection Laws Prevent Harms.* The protections highlighted in the *Restoring Internet Freedom Order* are important factors in preserving the openness of public safety communications over broadband internet access service. Among these protections are the transparency rules we adopted, which “require ISPs to disclose any blocking, throttling, affiliated prioritization, or paid prioritization in which they engage.” As we explained in the *Restoring Internet Freedom Order*—in analysis that the *Mozilla* court upheld as reasonable— “[h]istory demonstrates that public attention, not heavy-handed Commission regulation, has been most effective in deterring ISP threats to openness and bringing about resolution of the rare incidents that arise. The Commission has had transparency requirements in place since 2010, and there have been very few incidents in the United States that plausibly raise openness concerns.” “Transparency thereby ‘increases the likelihood that harmful practices will not occur in the first place and that, if they do, they will be quickly remedied.’”

28. Indeed, many ISPs, including all major ISPs, have gone further than disclosing their policies by making “enforceable commitments to maintain internet openness.” As NCTA explains, “[a]ll major broadband providers have

now publicly made enforceable commitments not to engage in conduct that violates consensus open internet principles.” ISPs have made these commitments despite the lack of Title II regulation, and the record reflects that ISPs recognize the importance of these commitments with respect to public safety communications—for example, Comcast explains that its incentives to adhere to public commitments to open internet protections “are rightly even stronger . . . when it comes to serving the public safety community, particularly first responders during an emergency.” We disagree with Free Press’s assertions that the “notion that transparency and shaming will discipline carriers is a vain hope.” We observe that the *Mozilla* court has already upheld the Commission’s findings regarding reliance on the transparency rule. These commitments are not merely empty promises with no binding effect; instead, as a direct result of the *Restoring Internet Freedom Order*, the terms of such commitments are now enforceable by the Federal Trade Commission (FTC), the nation’s premier consumer protection agency. Indeed, a Memorandum of Understanding between the Commission and the FTC states that the FTC will “investigate and take enforcement action as appropriate against internet service providers for unfair, deceptive, or otherwise unlawful acts or practices, including . . . actions pertaining to the accuracy of the disclosures such providers make pursuant to the *Internet Freedom Order*’s requirements, as well as their marketing, advertising, and promotional activities.”

29. Commitments to transparency carry particular force in the context of public safety communications because of the strong incentive for ISPs to maintain or improve their reputations by protecting such communications. As NCTA explains, “broadband providers recognize the vital importance of ensuring robust and reliable networks for public safety communications, and know that they would need to answer to customers and policymakers if their practices were to threaten to hamper public safety in any way.” In addition, there are strong business incentives for broadband providers to ensure that public safety communications remain unharmed. ISPs have more than business incentives to ensure that broadband communications remain unhampered by harmful network management practices. As ACA Connects explains, the community-based providers that it represents also “have a personal stake in ensuring the

safety of their neighbors, family and friends.” As we previously found in the *Restoring Internet Freedom Order*, even when public safety is not at stake, it is likely that “any attempt by ISPs to undermine the openness of the internet would be resisted by consumers and edge providers.”

30. Likewise, consistent with our findings in the *Restoring Internet Freedom Order*, we find that antitrust law can also protect consumers from practices that may hinder their ability to access public safety resources and similarly helps protect public safety communications over broadband internet access service from blocking, throttling, alleged degradation due to paid prioritization, and other harms to openness. The antitrust laws, particularly sections 1 and 2 of the Sherman Act, as well as section 5 of the FTC Act, protect competition in all sectors of the economy, including broadband internet access. Consequently, if an ISP attempts to block or degrade traffic in a manner that is anticompetitive, relief may be available under the antitrust laws. Moreover, to the extent an ISP has market power, antitrust laws could be used to address any anticompetitive paid prioritization practices by an ISP. As we explained in the *Restoring internet Freedom Order*, “[o]ne of the benefits of antitrust law is its strong focus on protecting competition and consumers.” If the types of conduct and practices that had been prohibited under the *Title II Order* were challenged as anticompetitive under the antitrust laws, such conduct would likely be evaluated under the “rule of reason,” which amounts to a consumer welfare test. A welfare approach was established in *Reiter v. Sonotone Corp.*, 442 U.S. 330, 343 (1979). The transparency rule the Commission adopted amplifies the power of antitrust law and the FTC Act to deter and, where needed, remedy behavior that harms consumers, including for public safety purposes.

31. Further, consistent with our conclusion in the *Restoring Internet Freedom Order*, we believe that consumer protection laws also help protect public safety communications from practices that could harm openness. The FTC has broad authority to protect consumers from “unfair and deceptive acts or practices.” The FTC’s unfair-and-deceptive-practices authority “prohibits companies from selling consumers one product or service but then providing them something different,” which makes voluntary commitments not to engage in blocking, throttling, or paid prioritization enforceable. The FTC also requires the

“disclos[ur]e [of] material information if not disclosing it would mislead the consumer,” so if an ISP “failed to disclose blocking, throttling, or other practices that would matter to a reasonable consumer, the FTC’s deception authority would apply.” Reclassification restored the FTC’s authority to enforce those consumer protection requirements in the case of broadband internet access service. Indeed, the FTC has already successfully used its authority to pursue a complaint against AT&T for allegedly deceptively marketing one of its own mobile broadband subscription plans. And all states have laws proscribing deceptive trade practices.

32. The D.C. Circuit found that the Commission’s reliance on antitrust and consumer protection laws to limit anticompetitive behavior was reasonable, especially as part of the broader regulatory and economic framework, and we do not revisit those prior Commission findings here. Nor do we find that reasoning substantially diminished when public safety concerns are at issue. For one, that reasoning retains its full force with respect to protections that flow from the ISPs’ own public statements. ISPs know that their public statements regarding network management—whether made to comply with our transparency rule or otherwise—are subject to enforcement by the FTC. Thus, ISPs’ public statements, in effect, create *ex ante* requirements to which they are bound. The record does not reveal that enforcement of those statements, such as through the FTC’s consumer protection authority, would be any less effective at preventing contrary ISP conduct than would enforcement of Commission rules prohibiting the same network management practices.

33. Consumer protection and antitrust laws help guard against risks from conduct not foreclosed by providers’ public statements, as well. The record here does not reveal credible claims that ISPs would somehow target their conduct to harm public safety in a manner that would require *ex ante* public safety-focused legal protections. Instead, commenters’ concerns here reflect the view that the ISP conduct that could lead to public safety harms is the same conduct about which concerns have been expressed more generally, even if the consequences of such conduct could be particularly dire in the public safety context. Because consumer protection and antitrust laws help safeguard users of broadband internet access service from conduct that could undermine internet openness—and because that same conduct underlies the

public safety concerns expressed by commenters here—those laws help address any public safety concerns notwithstanding their lack of an express public safety focus. Although some commenters observe that antitrust and consumer protection laws are not framed with a focus on public safety concerns, neither the Title II regulatory framework nor the restrictions on ISP conduct in the bright line and general conduct rules adopted in the *Title II Order* specified particular restrictions on ISPs in connection with public safety, either. Although “traffic prioritization . . . practices that serve a public safety purpose, may be acceptable under our rules as reasonable network management” under the *Title II Order*, the restrictions on ISP conduct under the bright line rules were not framed in terms of public safety, nor did the factors identified by the Commission to guide the application of its general conduct rule focus on public safety concerns. This conclusion is not diminished by the fact that the Commission did adopt a public safety-focused *carve-out* from those conduct rules because that carve-out rule did not restrict ISP conduct in any way. In sum, even the *Title II Order* itself thus adopted rules restricting ISP conduct that it anticipated ultimately could benefit public safety, notwithstanding the lack of a public safety focus.

Consequently, although we do not presume that consumer protection and antitrust laws themselves provide perfect protections against all possible public safety concerns, we conclude that they do still provide significant protections notwithstanding their lack of an express public safety focus, and rely on them in conjunction with the broader range of considerations that collectively persuade us that public safety harms are unlikely under our regulatory framework in the *Restoring Internet Freedom Order*. Even *ex post* FTC enforcement of such conduct as “unfair” or anticompetitive practices would have a significant effect by causing providers to avoid conduct in the first instance if it has the potential to result in liability under those legal regimes. We anticipate a similar deterrent effect from consumer protection laws. Although the *Mozilla* court noted that the record reflected concern about adequacy of *ex post* enforcement in the public safety context to the extent that such potential for enforcement did not fully deter harmful ISP conduct from occurring, we find that to be a far more limited concern than some commenters claim. As a threshold matter, while the court

focused on commenters’ concerns about “dire, irreversible” public safety consequences from ISP conduct such as loss of life, commenters here raise a wide array of situations with a claimed nexus to safety of life and property where it is doubtful that ISP conduct—even assuming *arguendo* that it occurred and had momentary effects on the relevant applications—would result in meaningful harm, let alone loss of life. More fundamentally, we rely on transparency, consumer protection laws, and antitrust laws only as one part of a broader set of considerations that collectively persuade us that public safety harms are unlikely to result from the regulatory approach in the *Restoring Internet Freedom Order*. For example, ISPs’ conduct in the first instance is likely to be informed by the highly probable reputational effects. In addition, as we explain below, even if ISP conduct like paid prioritization were to occur, the record does not reveal likely practical harm to applications used for public safety communications over mass market broadband internet access service. We note that such public safety communications often occur over specialized networks which generally include quality-of-service guarantees—unlike best efforts broadband internet access service—which further limits the scope of communications potentially affected.

34. *Absence of Proven Harms.* The internet has been subject to light-touch regulation for the entirety of the time since enactment of the 1996 Act, apart from the short period in which the *Title II Order* controlled. Further, during most of the past two decades, the Commission did not have in place potentially enforceable attempts at conduct regulation. The Commission adopted the *Comcast-BitTorrent Order*, which attempted to directly enforce Federal internet policy that it drew from various statutory provisions, in August 2008. On April 6, 2010, the U.S. Court of Appeals for the D.C. Circuit rejected the Commission’s action, holding that the Commission had not justified its action as a valid exercise of ancillary authority. The Commission adopted the *Open Internet Order* in December 2010, but it was not effective until some months later. The *Verizon* court decision was decided on January 14, 2014, and the *Title II Order* was not adopted until over a year later, on February 26, 2015, and became effective several months later. Yet for all this time from which to draw, commenters claiming that the *Restoring Internet Freedom Order* harms public safety communications are only able to point

to a few heavily-contested public-safety-related incidents. Notably, none of the claims arises from the time period prior to the existence of rules governing ISPs. Even if these claims were valid—and we find below that they are not—they do not establish a compelling basis to reconsider the *Restoring Internet Freedom Order's* determinations and impose preemptive, industry-wide, utility-style regulations. The dearth of evidence of practices harmful to public safety is unsurprising, as ISPs lack an economic incentive to engage in practices such as blocking or throttling, especially when these practices may harm public safety.

35. Commenters opposing the *Restoring Internet Freedom Order* repeatedly cite as support a 2018 incident involving the decrease in the Santa Clara, California fire department's broadband service speed during an emergency. However, as explained below, the changed regulatory posture in the *Restoring Internet Freedom Order* had no bearing on how this incident played out, both because the broadband service at issue was not subject to either regulatory regime and because the provider's conduct would not have been prohibited under the *Title II Order* even if it did apply. Notably, no commenter contested in their reply comments other commenters' claims that the incident would not have been prevented under the *Title II Order*. The County of Santa Clara asserts that while the County's firefighters were "in the midst of fighting the Mendocino Complex Fire in the summer of 2018, Verizon severely throttled the broadband internet" of the fire department, which prevented the department's equipment "from tracking, organizing, and prioritizing resources from around the state and country to where they are most urgently needed." The County of Santa Clara concedes that Verizon reduced the speed of the fire department's broadband service because the fire department's account had exceeded its monthly data cap. Although Verizon's established practice was to not enforce data speed restrictions on public safety users' plans during emergency situations, a customer service error led to the speed of the fire department's service being reduced despite this policy. Verizon contends that once its management learned of the customer's complaint, Verizon "immediately and publicly addressed the situation, including by updating training for call center representatives to ensure that they are aware that they must promptly remove any data throughput limitations for first responders in an emergency. That same

week, Verizon introduced a new plan for public safety customers that eliminated any data speed restrictions for first responders, at no additional cost, and that gave other public safety customers two month' leeway before any throughput limitation would be enforced.

36. As an initial matter, the Santa Clara incident is not relevant to an analysis of the effect of the *Restoring Internet Freedom Order* on public safety. Because the fire department's service plan from Verizon was an enterprise plan rather than a mass-market service, it is not a broadband internet access service under either the *Title II Order* or the *Restoring Internet Freedom Order*. Even if the service plan had been a mass-market service, however, the record does not demonstrate that it would have run afoul of the *Title II Order*. Neither the classification of broadband internet access service as a telecommunications service nor the *Title II Order's* bright line rules prohibited data use caps such as the one in the fire department's service plan. In fact, the *Title II Order* specifically explained that "[a] broadband provider may offer a data plan in which a subscriber receives a set amount of data at one speed tier and any remaining data at a lower tier." Neither does the record demonstrate that the possibility of case-by-case review of data caps under the general conduct rule—with its uncertain outcomes—would have prohibited such plans. Following the incident, to avoid another such error, Verizon took a number of steps, such as "updating training for call center representatives to ensure that they are aware that they must promptly remove any data throughput limitations for first responders in an emergency" and "introducing a new plan for public safety customers that eliminated any data speed restrictions for first responders, at no additional cost." Thus, the issue was quickly addressed due to public awareness and market-based pressure on Verizon to take swift corrective action—precisely the mechanisms that we anticipated would be most effective under the *Restoring Internet Freedom Order's* light-touch approach. Further, the record does not provide demonstrable evidence that the *Title II Order* regime would have resulted in any incremental benefit. We disagree with Free Press' assertion that "Title II allowed the Commission to do more than just enforce those Net Neutrality rules. It also empowered the Commission to assess and prevent other forms of unjust or unreasonable behavior—which may well have

included Verizon's decision to cap and throttle firefighters during an emergency. . . ." It is undisputed that Verizon's plan with respect to Santa Clara County was not a broadband internet access service offering; therefore, as discussed above, it would not have been subject to the internet conduct rules under the *Title II Order*, including the no unreasonable interference/disadvantage standard.

37. We also disagree with ADT that two incidents from 2015 and 2016 warrant Commission rules prohibiting blocking and throttling of public safety-related services. ADT alleges an incident occurred in 2015, in which a number of its customers in Puerto Rico using a specific broadband provider suddenly lost the ability to use features of its home automation service that enables customers to control their alarm systems remotely or to access their video surveillance cameras, and another, similar incident occurred on the mainland in 2016. We considered and rejected such concerns as a basis for conduct rules in the *Restoring Internet Freedom Order*, however, explaining that "it is unclear if the blocking was intentional and the blocking was resolved informally." ADT does not provide any new information here that justifies revisiting those observations. Further, we observe that ADT has not pointed to any such issues since the adoption of the *Restoring Internet Freedom Order*, consistent with our expectation that ISPs are unlikely to risk the reputational damage of engaging in such practices. In addition, our transparency rule requires ISPs to disclose such practices, which would enable alarm services companies like ADT to address such issues in a timely manner. Indeed, ADT itself recognizes that the currently mandated disclosures "provide a framework for ensuring that public safety and alarm company communications using broadband services are afforded protections against unintentional blocking or throttling, that they are informed of mechanisms to promptly restore services, including any repair or restoration performance metrics, and that they are provided contact information necessary to trigger ISP corrective actions." ADT urges us to "remind ISPs that they must prominently display contact information and sufficiently disclose the[ ] mechanisms to have service promptly restored in the event of inadvertent blocking or throttling of broadband services." We restrict this *Order on Remand* to addressing the issues specifically remanded by the D.C. Circuit and decline to comment upon or

interpret other aspects of the *Restoring Internet Freedom Order* such as the transparency requirements. We do note, however, that ISPs remain obligated to fulfill all transparency obligations set forth in the *Restoring Internet Freedom Order*, including disclosure of redress options. Relevant to its concerns about discrimination by ISPs with competing alarm monitoring services, ADT notes that ISPs have “stated commitments to refrain from engaging in unreasonable discrimination” and recognizes that “[f]ailure to comply with disclosed practices exposes ISPs to liability.” Thus, we conclude that the incidents cited by ADT do not justify revisiting the regulatory approach we adopted in the *Restoring Internet Freedom Order*.

38. *Speculation Regarding Specific Forms of Harm*. We next review speculative claims in the record regarding various specific types of harm to public safety communications that allegedly could arise from the *Restoring Internet Freedom Order*. In each case, we find no evidence that the form of harm at issue has occurred and conclude that such harm is unlikely to arise as a result of the *Restoring Internet Freedom Order*.

39. *Speculative Harm—Blocking and Throttling*. We disagree with commenters who assert that the *Restoring Internet Freedom Order* will lead to ISPs engaging in blocking and throttling practices that harm public safety. As an initial matter, all major ISPs have made written commitments not to engage in practices considered to violate open internet principles, including blocking and throttling. Even in the absence of such commitments, as we previously found in the *Restoring Internet Freedom Order*, it is likely that “any attempt by ISPs to undermine the openness of the internet would be resisted by consumers and edge providers.” Consequently, ISPs lack an economic incentive to engage in practices such as blocking or throttling, especially when these practices may harm public safety. As the D.C. Circuit explained, “the harms from blocking and throttling during a public safety emergency are irreparable.” We agree, and as such note ISPs’ enforceable commitments against blocking and throttling, and again note that such emergency communication often occur over specialized, non-mass market data services to maintain quality-of-service. Even if, as the County of Santa Clara et al. claims, “[i]t is difficult, if not impossible for governments to identify harm caused by violations of net neutrality principles,” we observe that it would be as difficult to detect violations of binding net neutrality rules as it is voluntary commitments. We observe

that the record lacks evidence of blocked or throttled public safety as a result of the reclassification of broadband internet access service as an information service and the elimination of the internet conduct rules. Thus, we find no basis on this record to conclude that ISPs have engaged or are likely to engage in blocking or throttling that cause harm to public safety in a manner that would have been prohibited under Title II.

40. Importantly, although proponents of Title II regulation express concern that a light-touch framework will lead to practices such as throttling and blocking, the record does not contain even one recent example of such conduct harmful to public safety that would have been prohibited under Title II. If unleashing ISPs from Title II regulation truly endangered public safety, then one would expect that this threat would have materialized in the more than two years that have passed since the *Restoring Internet Freedom Order* took effect. Instead, there has been no evidence that the anticipated harms have occurred, or that ISPs plan to engage in blocking or throttling of public safety traffic.

41. Likewise, we find unpersuasive commenters’ concerns regarding the effect of service plans that limit data or speeds on members of the public who rely on mass market broadband internet access services to access public safety information. We observe that broadband service plans that limit data or speeds were not prohibited even under the *Title II Order*; as such, we find the return of broadband internet access service to its information services classification and elimination of the conduct rules irrelevant to the impact on the permissibility of throttling under a data plan when the data cap is exceeded. We also observe that the record provides no evidence of any actual incidences of throttling or usage-based plan allowances that have harmed consumers’ mass market broadband internet access service communications in the public safety context.

42. We are similarly unpersuaded by commenters’ concerns that public safety communications may be harmed if ISPs theoretically engaged in blocking or throttling practices because “transmissions from public safety officials” cannot “reliably be isolated and identified as governmental communications.” Because ISPs understand that broadband internet access service is used for public safety communications, they have strong incentives to act in accordance with their commitments to abide by open internet principles for all

communications, lest they risk reputational damage they might suffer if they were found to be hampering communications that have public safety implications. ISPs’ successful response to the exponential network demands during the COVID-19 pandemic demonstrate their willingness and ability to act under a light-touch regulatory framework to protect and facilitate public safety communications during crises.

43. Taken together, these considerations persuade us that commenters’ concerns that the regulatory approach of the *Restoring Internet Freedom Order* would lead to ISP blocking or throttling that causes harm to public safety are speculative and unlikely to occur. The dearth of real-world examples of public safety harms from blocking or throttling mass market broadband internet access service bolsters our views discussed above that the transparency rule, coupled with consumer protection and antitrust laws—especially when further coupled with the particular reputational harms likely to arise were ISPs to block or throttle traffic in a way that harmed public safety—substantially reduce the likelihood of such conduct occurring in the first instance. And scenarios of concern to commenters involving service plans with data caps or speed limits would not have been addressed differently under the Title II regime in any event. As a result, these speculative concerns do not justify altering our regulatory approach in the *Restoring Internet Freedom Order*.

44. *Speculative Harm—Paid Prioritization*. We are unpersuaded by commenters who assert that the *Restoring Internet Freedom Order* will result in ISPs engaging in harmful paid prioritization practices that will have an adverse effect on public safety. The Commission has long recognized and permitted prioritization of public safety communications. For decades, National Security and Emergency Preparedness (NSEP) personnel have had access to priority services programs that leverage access to commercial voice communications infrastructure to support national command, control, and communications by providing prioritized connectivity during national emergencies. (“NSEP personnel” generally refers to individuals who are responsible for maintaining a state of readiness or responding to and managing any event or crisis (local, national, or international), which causes or could cause injury or harm to the population, damage to or loss of property, or degrades or threatens the NSEP posture of the United States.) This

prioritized connectivity may consist of prioritized provisioning and restoration of wired communications circuits or prioritized communications for wireline or wireless calls. The current priority services programs were established pursuant to Executive Order 12472, issued in 1984, which called for development of priority services programs to facilitate communications among top national leaders, policy makers, military forces, disaster response/public health officials, public utility services, and first responders. The Commission's rules for the current priority services programs date back to the establishment of the Telecommunications Service Priority (TSP) System in 1988 and the creation of the Priority Access Service (PAS), more commonly referred to as Wireless Priority Service (WPS), in 2000. As the Commission explained when it classified wireline broadband internet access service as an information service, for example, the "classification of wireline broadband internet access service as an information service, . . . will not affect the Commission's existing rules implementing the National Security Emergency Preparedness (NSEP) Telecommunications Service Priority (TSP) System." In any case, even assuming *arguendo* that classification of broadband internet access service as a telecommunications service otherwise might have affected the application of these rules—such that obligations under those rules newly would have applied as a result of that classification—that outcome did not actually result from the *Title II Order* given the forbearance granted there. We recently sought comment on updating and revising our rules governing the priority services programs. The Commission recently proposed to update its rules to expand the scope of the priority services programs to include data, video, and IP-based voice services. As the variety and volume of dedicated services for prioritization of public safety traffic demonstrate, prioritization of public safety communications is critically important to protecting life and property, and nothing in our rules currently prevents service providers from prioritizing public safety communications. Even the *Title II Order* acknowledged that public safety could benefit from traffic prioritization without running afoul of the bright-line rules in effect at the time, noting that "traffic prioritization, including practices that serve a public safety purpose, may be acceptable under our rules as reasonable network

management." Moreover, the Commission's proposals, should they be adopted, could provide an additional avenue to ensure that public safety communications are appropriately prioritized. As Free State Foundation explains, "[s]haring commercial cores and network traffic on an undifferentiated basis with non-public safety users can pose serious risk to the integrity of public safety communications in times of emergency and other peak congestion situations. When networks are congested or at risk of becoming so, providing network preferences for public safety-related data traffic can prevent disruptions of calls and other timely information being sent to and from first responders and other responsible agencies."

45. The Commission explained in the *Restoring Internet Freedom Order* that "we expect that eliminating the ban on paid prioritization will help spur innovation and experimentation, encourage network investment, and better allocate the costs of infrastructure, likely benefiting consumers and competition." We see no basis for departing from this reasoning in the public safety context. Concerns expressed by commenters regarding potential adverse effects to public safety as a result of paid prioritization of non-public safety communications appear to be purely hypothetical at this point. Indeed, even as the country faces an unprecedented crisis, the harms predicted by such commenters have not materialized. We note that paid prioritization arrangements are ubiquitous throughout our economy. As Free State Foundation explains, "[b]oth market participants and economists have recognized that such arrangements can benefit customers who choose to pay more for enhanced services while making other customers no worse off. In the broadband communications context, paid priority arrangements between broadband ISPs and edge providers can benefit consumers by offering them novel services supported by Quality-of-Service guarantees. Edge service providers, including new entrants, potentially can improve their competitiveness by obtaining fast and extra-reliable broadband connections. Prioritized access may be necessary for some future internet-based innovative services to function and attract customers. And public safety agencies already stand to benefit from these pro-innovation and pro-investment effects of paid prioritization arrangements and to thereby better fulfill their duties to the public." Moreover, ISPs have made clear, enforceable written commitments

to their customers not to engage in paid prioritization. We also observe that our theories in the *Restoring Internet Freedom Order* for when paid prioritization might be used contemplated fairly narrow scenarios that are unlikely to be the kind of pervasive practices feared in the *Title II Order*, and the record here does not undercut that assessment. In particular, we rejected assertions that allowing paid prioritization would lead ISPs to create artificial scarcity on their networks by neglecting or downgrading non-paid traffic or public safety communications, creating a widespread need for, and purchase of, paid prioritization arrangements. Instead, we anticipated paid prioritization being used to address innovative, but ultimately targeted, scenarios. In addition, a number of ISPs question the likelihood and prevalence of paid prioritization arrangements actually occurring in practice. Given those considerations, neither scarcity of network resources nor instances of paid prioritization are likely to be anywhere as pervasive as feared by proponents of the *Title II Order*, particularly to the point of adversely impacting public safety communications. Further, as AT&T points out, the *Title II Order* did not ban all prioritization. That Order expressly permitted direct interconnection between ISPs and content delivery networks, which act as agents for paying content providers. The *Title II Order* also made clear that certain categories of service, such as "enterprise" services and those services considered "non-BIAS services," were not subject to the Order's restrictions. Finally, under the *Title II Order*, the Commission was authorized to grant waivers of the paid priority ban where the petitioner could demonstrate that "the practice would provide some significant public interest benefit and would not harm the open nature of the internet." We thus conclude that the scenarios of potential concern for public safety communications are much narrower than commenters fear. As a result, such concerns do not alter our decision to retain the regulatory framework of the *Restoring Internet Freedom Order*.

46. We are unpersuaded by assertions that permitting paid prioritization practices that were impermissible under the *Title II Order* will necessarily lead to degradation of public safety communications. Such commenters "mistakenly believe that QoS is a zero-sum game, one in which it is impossible to tailor the management of network resources to the needs of specific

organizations and applications without impairing those not so managed.” As we already concluded in the *Restoring Internet Freedom Order*, “‘prioritizing the packets for latency-sensitive applications will not typically degrade other applications sharing the same infrastructure,’ such as email, software updates, or cached video.” The record here supports a similar conclusion for a wider array of applications, as well. As Rysavy Research explains, for example, “‘prioritizing one application over another does not necessarily mean a poorer experience for the lower-priority applications. A video streaming application can tolerate considerable delay because the player buffers information, so a user watching a video will never notice some slightly-delayed data. . . . Because different applications have different needs, traffic management is not a zero-sum game.’” As such, we find that commenters’ concerns that the *Restoring Internet Freedom Order* will lead to reduced speed for customers that do not pay extra for paid prioritization, resulting in harms to public safety, are not well-founded.

47. *Speculative Harm—Communications by Individuals with Disabilities.* We are not persuaded by the claims of some commenters that the regulatory approach adopted in the *Restoring Internet Freedom Order* would detrimentally effect the safety of life and property for persons with disabilities. We consider these arguments insofar as they relate to the public safety remand in *Mozilla*. To the extent that these comments raise other issues related to the effect of the *Restoring Internet Freedom Order*’s regulatory approach on persons with disabilities, we do not reopen those issues from the *Restoring Internet Freedom Order* here and thus reject the arguments as outside the scope of this proceeding. Consistent with the Commission’s commitment to communications services for individuals with disabilities, we conclude that the regulatory approach established in the *Restoring Internet Freedom Order* ultimately benefits public safety communications by individuals with disabilities in the same manner as public safety communications more generally—by encouraging competition and deployment. Further, as held in the *Restoring Internet Freedom Order*, the regulatory approach adopted there does not significantly alter the regulatory landscape of statutory protections for communications by persons with disabilities.

48. In substantial part, the concerns raised about potential public safety

harm to persons with disabilities are the same harms commenters raise with respect to the public more generally from potential blocking, throttling, or paid prioritization—that users’ broadband internet access service-based communications services needed for public safety reasons might be hindered by such ISP conduct and/or that users might pay more for broadband internet access services with capabilities that avoid such harms. To the extent that commenters simply raise the same concerns that we have considered and found unpersuasive in the case of the public more generally, we likewise reject them in the specific context of persons with disabilities for the same reasons.

49. Nor does the record persuade us that there are likely public safety harms in connection with services used specifically by persons with disabilities as a result of the regulatory approach adopted in the *Restoring Internet Freedom Order*. The California Public Utilities Commission (California PUC) contends that persons with disabilities “‘increasingly rely upon internet-based video communications, both to communicate directly (point-to-point) with other persons who are deaf or hard of hearing who use sign language, and through video relay service,” and that “[t]hese applications often require significant bandwidth, making their use particularly sensitive to data caps and network management practices.” As to data caps, however, neither the classification of broadband internet access service as a telecommunications service nor the *Title II Order*’s bright line rules prevented such caps. Nor does the record demonstrate that the possibility of case-by-case review of data caps—with its uncertain outcomes—would meaningfully address commenters’ hypothetical public safety concerns that data caps would hinder the functionality of services relied upon by persons with disabilities for public safety-related communications. Commenters do not explain why they think the application of that case-by-case review would have addressed any theoretical concerns about public safety communications involving persons with disabilities. We do recognize that the use of broadband internet access service to facilitate video communications by persons with disabilities is distinct from the specific types of applications “such as email, software updates, or cached video” that the *Restoring Internet Freedom Order* identified as typically unlikely to be degraded by prioritization of latency-sensitive applications on the same facilities. In addition to the video

communications services cited by the California PUC, BBIC cites educational tools for persons with disabilities: “Remote Real-time Captioning for classes, E-Text through *Bookshare.org* (Accessing and Downloading Accessible Text Books) and the ability to access and download software including dictation software, screen readers, and Text To Speech Softwares.” As a threshold matter, the nexus to public safety is unclear, particularly as it relates to the use of broadband internet access service by persons with disabilities to download books and software. We also find that downloading books and software are likely akin to the non-latency-sensitive uses of broadband internet access service that the Commission already held unlikely typically to be affected by prioritization of other traffic, and the record here does not demonstrate otherwise. With respect to “Remote Real-time Captioning for classes,” we are not persuaded that any public safety implications are materially different for that use of broadband internet access service than for others, like video communications, discussed in the text. To the extent that BBIC’s concern is about blocking or throttling of traffic, the Commission already rejected the likelihood of that in the *Restoring Internet Freedom Order*, and we do not revisit that conclusion here. Nor are we persuaded that there are public safety implications for these specific uses of broadband internet access service cited by BBIC that cannot adequately be addressed, if needed, through the marketplace or other laws given that their nature and context does not appear to involve the need for immediate communications to address imminent threats to life or property. But we do not find the likely effects on these services meaningfully different than our public safety analysis of the other video communications applications potentially used by the public more generally as raised by commenters in the record here. Indeed, there is no evidence of such harm occurring since the *Restoring Internet Freedom Order* took effect. Consequently, we reject public safety concerns about video applications used by persons with disabilities for the same reasons we reject public safety concerns raised in connection with other latency-sensitive over-the-top services used by the public more generally for public safety purposes. Although the record does not persuade us of likely public safety harms to communications involving persons with disabilities using video communications over broadband internet access service, should such

evidence emerge we have authority to act consistent with the regulatory approach to broadband internet access service adopted in the *Restoring Internet Freedom Order*. As we held in the *Restoring Internet Freedom Order*, the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) “directed the Commission to enact regulations to prescribe, among other things, that networks used to provide” advanced communications services (ACS), which includes electronic messaging and interoperable video conferencing services, “may not impair or impede the accessibility of information content when accessibility has been incorporated into that content for transmission through . . . networks used to provide [ACS].”

50. We also are not persuaded by commenters’ claims that ISP conduct will lead to violations of laws establishing protections for persons with disabilities. As a threshold matter, the nexus between those concerns and public safety issues (or any other remanded issue) is far from clear—and to the extent commenters raise issues lacking a nexus to the remanded issues, we reject them as beyond the scope of this proceeding. Independently, the record does not demonstrate that the regulatory approach adopted in the *Restoring Internet Freedom Order* will lead to the violation of the laws cited by commenters. Commenters express vague concerns about the potential violation of section 225 of the Act, which calls for the Commission to establish Telecommunications Relay Services (TRS) to provide certain persons with disabilities communications services that are functionally equivalent to voice telephone service. The Commission’s rules define the standards that providers subject to section 225 must meet. Although some TRS services are carried via broadband internet access service, commenters do not explain how the regulatory approach in the *Restoring Internet Freedom Order* will preclude providers subject to section 225 from complying with the Commission’s rules implementing section 225. We also see no basis in this record to conclude that our policy discretion under section 225 of the Act to revise our TRS rules to reflect evolving standards over time would be materially affected under the regulatory approach adopted in the *Restoring Internet Freedom Order*.

51. Commenters’ arguments are also flawed insofar as they focus not on violations of laws by the ISPs themselves but on the theory that ISPs’ conduct might make it harder for third parties to comply with their obligations under laws protecting individuals with

disabilities. For one, the record does not demonstrate that such effects on third party compliance are likely. Independently, we are not persuaded that such speculative concerns would provide a sound basis upon which to revisit the regulatory approach of the *Restoring Internet Freedom Order*. Even assuming *arguendo* that certain regulation of ISPs could make it easier for third parties to comply with those third parties’ statutory obligations, the net result would be to shift compliance burdens away from the parties actually subject to the statutory duties and onto the ISPs. In effect, such regulation would require ISPs to implicitly subsidize the compliance costs of the entities actually subject to the statutory duties. We are not persuaded that would be an appropriate basis for regulation.

52. Finally, we are unpersuaded by BBIC’s assertion that provider conduct no longer prohibited by the regulatory approach in the *Restoring Internet Freedom Order* might violate the Americans with Disabilities Act’s (ADA) “prohibit[on on] interference with rights granted under the ADA statute” or “raise state law tort issues such as claims for prospective interference with business advantage.” BBIC does not explain why the theoretical potential for a provider’s conduct to violate any such requirements is, in itself, a reason to return to the regulatory approach of the *Title II Order*. Not only is the potential for violations theoretical, but BBIC has not sufficiently articulated a potential legal violation. We thus reject BBIC’s assertion that “[t]he FCC must explain its analysis of whether the ADA interference statute is violated by ISP demands for payment for fast internet access for additional payments or at risk of slowdown of the data or vital services including telemedicine for persons with disabilities.” In other words, even assuming *arguendo* that certain provider conduct already is prohibited by a law like the ADA’s prohibition on interference, the record does not reveal any public safety benefit from the Commission separately and independently regulating broadband internet access service providers simply to ensure they comply with obligations they already otherwise are subject to by law. Finally, the record does not reveal any additional public safety concerns that would arise from the speculative claimed violation of these laws, independent of the concerns about the public safety effects of ISPs’ pricing and network management practices that we already considered and rejected above. Indeed, one concern raised by the California PUC appears even further

removed, insofar as it expresses concern about the loss of “copper wires which carry 911, closed captioning and TTY services.” Neither the definition nor classification of broadband internet access service is tied to the physical medium—copper vs. fiber—over which it is provided, however, nor does the California PUC give any indication of how the *Title II Order* would have addressed its concerns about the loss of copper network facilities better (or at all).

53. *Speculative Harm—Critical Infrastructure*. We disagree that the elimination of the internet conduct rules will impact the safety and reliability of “critical infrastructure sectors,” including electric, gas, water, and communications utilities, “which in turn negatively impacts public safety,” as claimed by some commenters. Commenters cite various federal laws or statements of policy regarding critical infrastructure in general or the use of the internet and other communications technologies as part of those sectors. In some cases, the cited materials appear to adopt principles or requirements specific only to the implementation of those statutes or involve communications services generally in a way that extends far beyond the scope of this proceeding. Nor is our analysis altered by references to “state laws making the interference with administration of government an offense ranging from a civil to a criminal misdemeanor—or felony.” The record is not sufficiently developed on these legal standards and their potential application to any provider conduct that theoretically could raise public safety concerns for us to formally opine on them here, and in any case BBIC does not explain why the theoretical potential for a provider’s conduct to violate any such requirements is, in itself, a reason to return to the regulatory approach of the *Title II Order*. The California PUC also cites its efforts to “adopt[] a number of emergency customer protection measures to support residential and small business customers of utilities affected by disasters,” stating that these come in the aftermath of a disaster and involve what it asserts without elaboration are “vital communications services.” The actual nexus between the California PUC’s customer protection measures and protection of critical infrastructure or public safety more generally is unclear on this record. And the California PUC’s concern in this regard appears to center on arguments certain providers made objecting to its regulations, among many other grounds, on the basis of the

preemption portion of the *Restoring Internet Freedom Order*. These arguments appear to have been made prior to the *Mozilla* court vacating that portion of the *Restoring Internet Freedom Order*—a fact the California PUC does not address—and otherwise remain unresolved. We thus are not persuaded that these arguments demonstrate a public safety harm arising from the *Restoring Internet Freedom Order*'s regulatory approach. Commenters' concerns about critical infrastructure-related risks are premised on the same ISP conduct that underlie commenters' public safety concerns more generally—blocking, throttling, and paid prioritization—which we find unlikely to occur for the reasons already discussed above. As we found, the effects of ISP conduct involving paid prioritization, should they occur, are unlikely to detrimentally affect applications used for public safety purposes generally, and the record does not justify a different conclusion in the case of the applications cited by commenters in connection with critical infrastructure. Late in the proceeding BBIC filed an *ex parte* attaching in full a number of law journal articles and a brief from the *Mozilla* litigation from 2018 and 2019 without directing the Commission's attention to particular elements or aspects of those attachments beyond the specific quotes or arguments from those materials that it referenced in earlier filings, instead stating simply that "the attached material [is] responsive to issues raised in these proceedings." Reviewing that filing in a manner consistent with the circumstances, each of the attachments appear, at least in part, to discuss public safety concerns in general, including critical infrastructure issues in particular. To the extent that the attachments appear to bear on the remanded public safety issue, these attachments do not appear to raise facts, arguments, or concerns that differ in material ways from those we otherwise address and find unpersuasive in this section. For example, we do not readily identify in these attachments—and BBIC's accompanying *ex parte* letter does not highlight—circumstances where ISPs are likely to behave differently than otherwise reflected in our public safety analysis; nor applications or services with technical characteristics materially different than those otherwise considered in our analysis; nor legal responsibilities imposed on the Commission that we have not met here; nor other reasons for the Commission to reject its regulatory approach from the *Restoring Internet*

*Freedom Order* that are materially different from the arguments the Commission otherwise finds unpersuasive in its analysis here. Nor is there evidence of such harm occurring since the *Restoring Internet Freedom Order* took effect.

54. Although commenters discuss various applications that arguably have at least some nexus to critical infrastructure protection, the record does not reveal technical details regarding the operation of any of those applications that demonstrates that they would be significantly affected by ISP network management, let alone in a way that would have been prohibited by the rules adopted in the *Title II Order*. Nor is it even clear that all of the cited applications rely on mass market broadband internet access service, rather than enterprise services, specialized services, or other services that fell outside the scope of the *Open Internet Order* and *Title II Order*. For example, it is not clear from the record that "Smart Grid communication to the internet-enabled backbone," necessarily relies on mass market broadband internet access service. Nor is it clear whether the operation of certain devices that facilitate the applications cited by commenters, such as "internet-connected thermostats, solar panels, and energy storage units," would rely on mass market broadband internet access service or instead on some other "non-BIAS data services" and as such, by default would not have been regulated by the *Title II Order* in any event. Commenters' various high-level claims about the general importance of communications to critical infrastructure also appear to extend beyond mass market broadband internet access services. Indeed, it is the increasingly robust broadband made available since the *Restoring Internet Freedom Order* that has made possible the "fast, instantaneous communications" needed for many of the beneficial critical infrastructure-related programs to be effective.

55. *Limited Scope of Any Hypothetical Harm*. We emphatically agree with the *Mozilla* court that "whenever public safety is involved, lives are at stake." Our analysis above demonstrates that harms to public safety, and thus American lives, have not arisen and are unlikely to arise as a result of the *Restoring Internet Freedom Order*. To be thorough, we must further observe that if some harm were nonetheless to arise, its impact would necessarily be limited by the important but bounded role that broadband internet access service plays in the broader public safety communications

marketplace. Public safety entities often rely on enterprise-level broadband data services for communications between public safety officials, which were never subject to the *Title II Order*. And while mass market broadband services are a critical element of public safety communications for members of the public, such services are not the only means of disseminating, accessing, and conveying important public health and safety communications, as consumers rely on voice services (most notably 911 capabilities), the emergency alert system, and wireless emergency alerts for accessing important public safety information as well.

#### 5. The Public Safety Benefits and Overall Benefits of the *Restoring Internet Freedom Order* Outweigh Any Unlikely Harms to Public Safety

56. Our analysis leads us to conclude that the likely benefits of the *Restoring Internet Freedom Order* for public safety clearly outweigh any harms. Getting broadband to more Americans sooner and at lower prices can and will likely save lives. This public safety benefit extends beyond broadband internet access service to all commingled services that rely on the same facilities, and even to other services that ISPs may invest in with money that they would otherwise have spent on regulatory compliance. Weighed against our conclusion that harms to public safety have not arisen and are unlikely to arise as a result of the *Restoring Internet Freedom Order*, it is clear that the benefits of the underlying order outweigh the costs as to public safety. Moreover, we must take into account that the likely benefits of the *Restoring Internet Freedom Order* extend far beyond public safety, and into every realm of American life touched by the internet. As we explained in the *Restoring Internet Freedom Order*, reinstating the information service classification for broadband internet access service "is more likely to encourage broadband investment and innovation, further our goal of making broadband available to all Americans and benefitting the entire internet ecosystem. ISP investment does not simply take the form of greater deployment, but can also be directed toward new and more advanced services for consumers. Enabling ISPs to freely experiment with services and business arrangements that can best serve their customers, without excessive regulatory and compliance burdens, "is an important factor in connecting underserved and hard-to-reach populations," and we agree with the Chamber of Commerce that the positive

effects of the *Restoring Internet Freedom Order* likely will help “enable the deployment of rural broadband and 5G technologies that benefit the entire economy and will help close the digital divide.” We thus conclude that the overall benefits of the *Restoring Internet Freedom Order* (including to public safety) clearly outweigh any harms to public safety.

#### B. Pole Attachments

57. The *Mozilla* court directed us to “grapple with the lapse in legal safeguards” that results from reclassification eliminating section 224 pole attachment rights of ISPs that lack a commingled telecommunications service or cable television system (*i.e.*, broadband-only providers). For the reasons below, we find that the benefits of returning to the light-touch information service classification adopted in the *Restoring Internet Freedom Order* far outweigh any limited potential negative effects resulting from the loss of section 224 rights for broadband-only ISPs.

##### 1. Section 224 Authority

58. The Commission has broad authority under section 224 of the Act to regulate attachments to utility-owned-and-controlled poles, ducts, conduits, and rights-of-way. Section 224 defines pole attachments as “any attachment by a cable television system or provider of telecommunications service to a pole, duct conduit, or right-of-way owned or controlled by a utility.” It authorizes us to prescribe rules to ensure that the rates, terms, and conditions of pole attachments are just and reasonable; require utilities to provide nondiscriminatory access to their poles, ducts, conduits, and rights-of-way to telecommunications carriers and cable television systems (collectively, attachers); provides procedures for resolving pole attachment complaints; governs pole attachment rates for attachers; and allocates make-ready costs among attachers and utilities. The Act defines a utility as a “local exchange carrier or an electric, gas, water, steam, or other public utility, . . . who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.” However, for purposes of pole attachments, a utility does not include any railroad, any cooperatively-organized entity, or any entity owned by a federal or state government. Section 224 excludes incumbent local exchange carriers from the meaning of the term “telecommunications carrier,” therefore these entities do not have a mandatory

access right under section 224(f)(1). The Commission has held that when incumbent local exchange carriers obtain access to poles, section 224 governs the rates, terms, and conditions of those attachments. The Act allows utilities that provide electric service to deny access to their poles, ducts, conduits, or rights-of-way because of “insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.”

59. The Act nonetheless only gives the Commission limited authority. It exempts from our jurisdiction those pole attachments in states that have elected to regulate pole attachments themselves, referred to as reverse preemption states. Twenty-four states and the District of Columbia have elected this reverse preemption, leaving our rules to govern pole attachments in 26 states and the U.S. Territories. Section 224 also does not cover poles owned by municipalities, electric cooperatives, railroads, or the Federal or state governments.

##### 2. The Benefits of Reclassification Outweigh Any Potential Drawbacks for Broadband-Only ISPs

60. Based on the record, we find that the benefits of returning broadband internet access service to its historical information service classification outweigh any potential adverse effects resulting from the loss of pole attachment rights under section 224 for broadband-only ISPs. First, we find that any drawbacks of reclassification are limited because in the areas where federal pole attachment regulation applies, almost all ISPs’ pole attachments remain subject to section 224, as they commingle cable or telecommunications services with their broadband services. Second, we conclude that the benefits of reclassification for broadband-only providers outweigh any limited pole attachment-related drawbacks they face—and the *overall* benefits of reclassification outweigh the drawbacks of broadband-only ISPs’ attachments no longer being subject to section 224.

61. *Drawbacks of Reclassification Are Limited.* Section 224 applies to attachments of cable television systems and providers of telecommunications services, but not to providers of only information services. As the Commission has previously clarified, however, “where the same infrastructure would provide ‘both telecommunications and wireless broadband internet access service,’ the provisions of section 224 governing pole attachments would continue to apply to such infrastructure used to provide both

types of service.” This determination is consistent with the U.S. Supreme Court’s decision in *NCTA v. Gulf Power Co.*, in which the Court held that the protections afforded by section 224 to cable attachments remain in place when a service provider uses the same facilities to offer broadband internet access service to its subscribers. Thus, in non-reverse preemption states, “the protections afforded by section 224 to cable television systems and providers of telecommunications service remain in place when a service provider uses the same facilities to offer broadband internet access service to its subscribers.” Only the few ISPs that do not offer cable or telecommunications services over the same network would not be able to avail themselves of the protections Congress established in section 224 and the Commission’s implementing rules.

62. We find that the vast majority of subscribers are served by ISPs that provide either cable or telecommunications services over their networks and therefore remain able to take advantage of the rights guaranteed by section 224 after the reclassification of broadband internet access service as an information service. Public Knowledge et al. claim that AT&T may soon cease to provide a telecommunications service or a cable television service, and as a result, “the entire AT&T network will no longer be eligible for pole attachment rates” and AT&T may no longer “qualify as a LEC.” Speculation regarding a single provider is insufficient to justify changing our course. Further, in the attachment on which Public Knowledge et al. rely, AT&T merely sets forth a plan to grandfather DSL (a legacy information service). The document specifically states that customers that wish to retain plain old telephone service (a telecommunications service) may do so, and Public Knowledge et al. do not provide any evidence that AT&T plans to discontinue any telecommunications services offered over any of its facilities. Carriers must obtain Commission approval prior to discontinuing telecommunications services, and interested parties would have an opportunity to object to any proposed continuance. The record overwhelmingly confirms our conclusion. According to ACA Connects, all of its members “‘commingle’ broadband with either or both a cable or telecommunications service over the same network.” Likewise, the Edison Electric Institute’s members “report that at this time very few ISPs seek to attach to electric

company poles to provide broadband-only service.” USTelecom cites a November 2019 report stating that at least 96% of the broadband market was served by companies that either provided telecommunications services or operated a cable system.” Further, we agree with ACA Connects that ISPs will continue to offer commingled services for the foreseeable future because “ISPs have an incentive to offer as many services as possible over their networks to achieve efficiencies and maximize revenues, and thus very few providers only offer over their networks standalone broadband service.” In fact, NCTA argues that a reason broadband-only providers are particularly rare is “precisely because triple-play services are both popular with subscribers and beneficial to providers.” Notably, multiple commenters agree that the majority of existing ISPs offer commingled services. Further, ISPs may gain the status of telecommunications providers, and thus become eligible for section 224 pole attachment rights. Our experience with the substantial participation in the Connect America Fund (CAF) Phase II universal service support auction and, more recently, our Rural Digital Opportunity Fund Phase I auction demonstrates that providers are willing or able to become telecommunications carriers when they find it beneficial. 220 applicants qualified to bid in the CAF Phase II auction, and as of September 2020, 192 of 194 winning bidders had been designated as ETCs in 45 states and been authorized to begin receiving support. The Rural Digital Opportunity Fund auction imposed similar ETC designation requirements on applicants. Bidding in the Rural Digital Opportunity Fund Phase I auction is scheduled to begin on October 29, 2020, and the Commission received 505 applications to participate. As another option, a broadband-only provider may also partner with an existing cable or telecommunications provider to invoke section 224 protections.

63. Although we agree that timely “access to utility poles is a competitive bottleneck,” based on the record, we are convinced that reclassification does not significantly limit new entrants to the marketplace or the effectiveness of the Commission’s recent one-touch-make-ready rules. Broadband-only providers now have the regulatory flexibility to enter into innovative and solution-oriented pole attachment agreements with pole owners. Indeed, Southern Company notes that its operating companies—Georgia Power, Alabama Power, and Mississippi Power—

“routinely enter into pole license agreements with entities that are neither cable television systems nor telecommunications carriers” and “[t]he negotiation of these pole license agreements is often more efficient than negotiation of pole license agreements with cable television systems or telecommunications carriers because the prospective licensee appears to be more interested in a deal that works than they are interested in ensuring that any perceived regulatory rights are reflected in the agreement.” Further, since the adoption of the *Restoring Internet Freedom Order*, there is only limited evidence in the record that a small number of broadband-only providers have experienced increased costs to obtain access to poles, and there is also evidence that such costs or other barriers have not increased. For instance, Southern Company explains that “its operating companies have not increased pole attachment rates or prohibited a broadband provider from attaching equipment following the Order” and that it must “answer to a state public service commission when it comes to the lease of property capitalized within the rate base.” Only WISPA provides some isolated and anecdotal examples of higher pole attachment rates, but fails to demonstrate the existence of a widespread problem. Indeed, WISPA emphasizes that these few incidents do not outweigh the overall positive impact of Title I reclassification for its members. Although some commenters contend that the reclassification has adversely impacted broadband-only providers, they largely fail to provide data or specific examples that connect the *Restoring Internet Freedom Order* to a rise in pole attachment rates or denials of pole access. For instance, while Google Fiber states that, prior to the *Title II Order*, negotiations over pole attachment agreements with pole owners “were difficult and time consuming,” and it “had to be willing to pay higher rent than cable operators and telecommunications providers,” as commenters note, Google does not provide examples of similar negotiation and rate difficulties since the adoption of the *Restoring Internet Freedom Order*. Notably, Google merely speculates that it “may find itself with no right to use [“one-touch make-ready”] OTMR procedures in a given market.” Google Fiber advocacy at the time suggests that it anticipated accruing benefits from our adoption of OTMR. Google Fiber strongly supported OTMR adoption in the *2018 Wireline Infrastructure* (83 FR 46812, Sept. 14, 2018) proceeding,

despite the fact this proceeding occurred after we reclassified broadband as an information service in the *Restoring Internet Freedom Order*. Google Fiber also had a representative on the Broadband Deployment Advisory Committee who voted in favor of its report recommending that the Commission adopt OTMR. We find this speculation unconvincing and, to the contrary, agree with ACA Connects members that over time, new and existing attachers, as well as pole owners, will “find it to their advantage to use [the OTMR] process, making it an industry standard—regardless of whether an attacher has section 224 rights.”

64. Further, despite its concerns that pole owners will use the reclassification of broadband internet access service as an information service to delay and even block new deployments by broadband-only providers, Google acknowledges that before broadband internet access service was classified as a telecommunications service, it was able to enter into such agreements with utilities. Southern Company confirms that in February 2014, “Google Fiber first approached Georgia Power about a pole license agreement” and “[b]y December 15, 2014, the parties had fully executed their agreement.” Notably, although Google Fiber repeatedly emphasizes the unfairness of its inability to take advantage of pole access rights for cable operators under section 224, NCTA contends that Google Fiber could, in fact, be classified as a Title VI cable service due to its video offering, but has taken the position that its video offering is not a cable service in order to avoid regulatory burdens under Title VI.

65. The limited impact of the loss of section 224 rights for broadband-only providers is further diminished by the fact that states have the ability to reverse-preempt the Commission’s rules under section 224(c)—and a substantial minority have in fact done so. As multiple commenters note, our Title I classification does not impact the 24 states and the District of Columbia that have chosen to reverse-preempt our rules. Therefore, if a state prefers to adopt a different regulatory approach, that state has the opportunity to exercise its authority to expand the reach of government oversight of pole attachments, and several states that have reverse preempted currently regulate pole attachments by information service providers. The *Restoring Internet Freedom Order* does not disturb the authority of states that have reverse preempted to assert such jurisdiction or prevent states that have not reverse

preempted from doing so in order to assert such jurisdiction. The California Public Utilities Commission expresses concern that “ISPs may attempt to invoke the information services classification as a shield against a State’s jurisdiction to regulate pole attachment safety.” It claims that “overloaded poles and/or insufficiently maintained attachments” have presented public safety issues. However, California currently regulates pole attachments at the state level so it is free to assert its authority over pole attachments by broadband-only providers under California law as it wishes without federal restriction under the Act.

66. We note further that section 224 has several gaps, such that the exclusion of broadband-only providers is not aberrant. Section 224 applies to specific categories of poles and, as noted above, only in applicable states. As noted above, poles owned by municipalities, electric cooperatives, railroads, and Federal and state governments are not covered under section 224, and so the adoption of the *Restoring Internet Freedom Order* does not affect the access of any ISP to such poles.

67. *The Benefits of Reclassification Outweigh Any Pole Attachment-Related Drawbacks.* Ultimately, the record supports our determination that the reclassification of broadband internet access service as an information service has facilitated rather than inhibited new technologies and business models, despite the rare potential for pole attachment access challenges. To this end, given the overall benefits of Title I reclassification, we find that it would be counterproductive to upend our light-touch regulatory framework for broadband internet access service because of speculative concerns that at most would impact a small minority of ISPs and consumers.

68. First, there is no question that the overall benefits of reclassification outweigh the limited drawbacks that stem from broadband-only ISPs losing their section 224 pole attachment rights. As we have discussed, numerous commenters—including broadband-only ISPs—assert that Title I reclassification has promoted robust infrastructure investment and deployment in broadband networks and facilities. Indeed, the *Mozilla* Court upheld our cost-benefit analysis in the *Restoring Internet Freedom Order*, stating that we made a “reasonable case that [our] ‘light-touch’ approach is more conducive to innovation and openness than the *Title II Order*.”

69. Second, the regulatory certainty provided by the Commission’s actions

in the *Restoring Internet Freedom Order* create incentives that likely help foster substantial investment in new broadband infrastructure, including poles, and increased broadband deployment. For instance, “[a] WISPA member in Minnesota has invested \$1.5 million dollars to expand its network by adding 12 new towers since January 2018” and “[t]his expansion has allowed the company to fully cover two additional counties in Minnesota.” We agree with the majority of commenters that these benefits outweigh the loss of section 224 protections for the very limited number of broadband-only providers that do not offer a cable or telecommunications service over the same network as they provide broadband internet access service. Indeed, despite a membership including broadband-only providers, WISPA emphatically confirms our position that “[t]here is no doubt that the *Restoring Internet Freedom Order*’s abandonment of burdensome Title II regulations for broadband internet access service providers is of paramount importance in promoting deployment of new service and enhancing competitive offerings. If it were actually a choice between the world of Title II regulation and the lighter touch of Title I regulation, with no pole attachment protections for broadband-only providers, WISPA would choose the latter paradigm.”

70. We decline at this time to address requests in the record to reinterpret section 224 or rely on other sources of authority to extend the availability of access rights under section 224 to broadband-only providers. A number of commenters propose sources of Commission authority to extend section 224 to cover broadband-only ISPs. For instance, WISPA proposes to directly apply section 224 or rely on ancillary authority. Specifically, WISPA contends that the plain text and objective of section 224, as well as provisions such as sections 157 and 257 of the Act, and section 706 of the 1996 Act, is “to level the playing field, promote competition, expand the public’s access to advanced services or ensure that customers have access to service at ‘just and reasonable rates.’” According to WISPA, we could also exercise our ancillary jurisdiction under section 154 or rely on section 706 as our statutory authority to extend pole access and rate rights to broadband-only providers. Other commenters offer general support for us to extend section 224 to cover broadband-only providers. Alternatively, Southern Company proposes “to unwind many of the incumbent-friendly pole attachment regulations adopted by the Commission

during the past decade, in order to allow broadband-only providers to compete on a more level regulatory playing field.” For the purposes of this *Order on Remand*, we find that even assuming we lack authority to extend section 224 to cover broadband-only providers, the overall benefits of reclassification outweigh the limited drawbacks. Parties arguing in favor of extending pole attachment rights to broadband-only ISPs are free to file a petition for rulemaking or petition for declaratory ruling, which we then may consider with the benefit of a full and focused record on the topic.

### C. Lifeline Broadband Services

71. The D.C. Circuit in *Mozilla* directed us to consider on remand the statutory basis for broadband internet access service’s inclusion in the Lifeline program. After such consideration, we further explain our finding that we have legal authority under section 254(e) of the Act to distribute Lifeline support for broadband service provided by ETCs. That authority is undergirded by the clear intent of Congress that universal service efforts should increase access to advanced services, and the record in this proceeding offers broad support for our conclusion.

#### 1. The History of Funding Broadband Services Through the Universal Service Fund

72. In the 2011 *USF/ICC Transformation Order* (76 FR 73830, Nov. 29, 2011), the Commission adopted comprehensive reforms to modernize the Universal Service Fund (USF or Fund) to “implement Congress’s goal of promoting ubiquitous deployment of, and consumer access to, both traditional voice calling capabilities and modern broadband services over fixed and mobile networks.” As part of this modernization effort, the Commission leveraged the funding disbursed through the Fund’s high-cost mechanism to encourage the deployment of broadband-capable networks, even though broadband internet access service was at the time classified as an information service. The Commission stated that by “referring to ‘facilities’ and ‘services’ as distinct items [in section 254(e)] for which federal universal service funds may be used . . . Congress granted the Commission the flexibility not only to designate the types of telecommunications service for which support would be provided but also to encourage the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) and any other universal service principle that the Commission may

adopt under section 254(b)(7).” The Commission further concluded that section 254 allowed it to condition the receipt of universal service support on ETCs offering broadband capabilities to their customers. The Tenth Circuit affirmed this approach as a reasonable interpretation of the statute and upheld the Commission’s authority to structure universal service support to ensure that the universal service policies set out in section 254(b) of the Act are achieved.

73. The Commission first funded broadband internet access service offerings in the Lifeline program when it launched the Lifeline Broadband Pilot Program as part of the reforms adopted in the *2012 Lifeline Order* (77 FR 12952, March 2, 2012). In doing so, the Commission relied upon the same theory of legal authority it applied to the high-cost mechanism in the *USF/ICC Transformation Order*. At the time that the Commission initiated the Lifeline Broadband Pilot Program, broadband internet access service was classified as an information service under Title I. After a successful pilot program, in the *2016 Lifeline Order* (81 FR 33026, May 24, 2016), the Commission expanded the Lifeline program to include support for broadband internet access service funding. However, since broadband internet access service had been reclassified as a telecommunications service subject to Title II regulatory requirements before the *2016 Lifeline Order*, the Commission relied on that reclassification when expanding the Lifeline program to include support for broadband but did not disavow the legal authority theory used in the *USF/ICC Transformation Order* or the *2012 Lifeline Order*.

74. In the *2017 Lifeline Notice of Proposed Rulemaking (NPRM)* (83 FR 2104, Jan. 16, 2018), to ensure that the Commission was administering the Lifeline program on sound legal footing, the Commission proposed to apply the same theory of legal authority it used in the *USF/ICC Transformation Order* and the *2012 Lifeline Order* to continue funding broadband internet access service in the Lifeline program. In that *NPRM*, the Commission asserted that it had the proper authority “under Section 254(e) of the Act to provide Lifeline support to ETCs that provide broadband service over facilities-based broadband-capable networks that support voice service.” The Commission concluded that this “legal authority does not depend on the regulatory classification of broadband internet access service, and thus, ensures the Lifeline program has a role in closing the digital divide regardless of the regulatory classification of broadband service.”

Indeed, the Commission further concluded that it had a “‘mandatory duty’ to adopt universal service policies that advance the principles outlined in section 254(b) and we have the authority to ‘create some inducement’ to ensure that those principles are achieved.” In the same *NPRM*, the Commission sought comment on eliminating the Lifeline Broadband Provider category of ETC, a broadband-only ETC designation that had been newly created in the *2016 Lifeline Order* when broadband internet access service had been classified as a Title II service.

75. Finally, in the *2019 Lifeline Order* (84 FR 71308, Dec. 27, 2019), the Commission re-evaluated the legal structure of the Lifeline Broadband Provider ETC category. With no obligation to offer the supported voice service under section 254(c), the Commission found that the Lifeline Broadband Provider category was in conflict with section 214. As such, the Commission eliminated this ETC category. Free Press argues that the Commission’s decision to reclassify broadband internet access service as an information service “locks [] out” broadband-only providers from the Lifeline program. Thus, all ETCs currently are required to be common carriers and to offer voice service. The Commission has held that the section 214 requirement that an ETC offer the supported services through “its own facilities or a combination of its own facilities and resale of another carrier’s service” would be satisfied when service is provided by any affiliate within the holding company structure.

## 2. The Commission Has Authority To Support Broadband Service in the Lifeline Program

76. Upon further review and having considered the record in both the *Restoring Internet Freedom* proceeding and in response to the *2017 Lifeline NPRM*, we determine that we have authority under section 254 of the Act to provide support for broadband internet access service from the Lifeline program in addition to a qualifying voice service. First, we elaborate on our application of the theory of legal authority adopted in the *USF/ICC Transformation Order* to the Lifeline program. Second, we address how this authority is not dependent on the regulatory classification of broadband internet access service and is consistent with the section 214(e) requirement that ETCs be common carriers. Third, we make necessary adjustments to the Commission’s rules to implement this approach. Finally, we address how this legal authority will still allow the

Lifeline program to reimburse broadband-only service offerings.

77. We conclude, as the Commission found in the context of the high-cost mechanism, that we have authority under section 254 to continue funding broadband internet access service offerings in the Lifeline program and that this position is strongly supported by the text of the Communications Act and the record. Under section 254(e), carriers receiving support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Under this statutory provision, the Commission has flexibility to design its support mechanisms to fund both the service itself—here, voice telephony—and the underlying facilities used to offer the supported service—here, broadband-capable networks. Modern communications networks are multi-use networks used to provide an array of services. Providing Lifeline support when ETCs provide broadband internet access service thus has the effect of supporting the underlying broadband-capable network also used to offer voice telephony. As in the high-cost program, the Commission’s support mechanisms can and should incentivize ETCs to offer access to the services that advance the principles of section 254(b). The Leadership Conference *Ex Parte* also raises a number of suggestions for further Commission action to respond to the COVID–19 pandemic, which we do not address here as they are beyond the scope of this remand proceeding. Other commenters argue that the Commission lacks authority to fund broadband internet access services through the Lifeline program under section 254. We believe this is incorrect, and we address those arguments below. All ETCs participating in the Lifeline program are and will remain common carriers and must offer voice services by themselves or through an affiliate, but the Commission can also continue to support broadband internet access service in the Lifeline program, and the universal service support will flow to the facilities of ETCs that are by definition common carrier providers of voice services.

78. Section 254(e) states that ETCs “shall be eligible to receive specific Federal universal service support” and that an ETC receiving universal service support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.” Section 254(c) does not impose an impediment to this conclusion. While section 254(c)(1) refers to universal service as

“an evolving level of telecommunications services,” this does not prohibit the Commission from using the program to more broadly advance the principles set forth in section 254(b) and indicates that Congress disfavored a static approach focused on legacy technologies. Additionally, section 254(b) establishes the principles on which the Commission shall base its policies for the preservation and advancement of universal service. Such principles include ensuring that quality services are available at “affordable rates” and that “access to advanced telecommunications and information services should be provided in all regions of the Nation.”

79. As the Commission concluded in the *USF/ICC Transformation Order*, by requiring in section 254(e) that ETCs use high-cost support for both facilities and services, Congress granted the Commission flexibility to not only designate the types of services for which support would be provided, but also to encourage the deployment of the types of facilities that will best achieve the principles set forth in section 254(b). In addition, the Commission has a “mandatory duty” to implement universal service policies that advance the principles outlined in section 254(b), and to accomplish that duty we have the authority to “create some inducement” to ensure that those principles are achieved. Our authority under section 254 therefore permits us to direct universal service support through the Lifeline program to both voice services and broadband internet access service in accordance with our long-standing principle “that universal service support should be directed where possible to networks that provide advanced services, as well as voice services.” In upholding the Commission’s reliance on this approach when it instituted the modernized high-cost programs, the Tenth Circuit approvingly noted that by “interpreting the second sentence of § 254(e) as an implicit grant of authority that allows it to decide how USF funds shall be used by recipients, the FCC also acts in a manner consistent with the directive in § 254(b) and allows itself to make funding directives that are consistent with the principles outlined in § 254(b)(1) through (7).” The National Lifeline Association (NaLA) and AT&T propose that the Commission may be able to rely on its ancillary authority under section 4(i) of the Act to continue to support broadband internet access service in the Lifeline program. The National Consumer Law Center (NCLC) and the United Church of Christ (UCC),

as well as AT&T, pointed to section 254(j) as another potential source of authority for supporting broadband internet access service in the Lifeline program. Additionally, the Lifeline Connects Coalition urged us to explore using Title I’s general jurisdictional grant as an option to support broadband internet access service in the Lifeline program or ancillary authority options for the principles outlined in section 254(b). Because we find that section 254(e) provides a clear source of authority for the Commission to support ETCs providing broadband internet access service in the Lifeline program, we do not find it necessary to rely on the other sources of legal authority proposed in the record.

80. The D.C. Circuit in *Mozilla*, in remanding this issue back to the Commission, stated that we “fail[] to explain” how our authority under section 254(e) could extend to broadband internet access service “now that broadband is no longer considered to be a common carrier[service].” We clarify that while broadband internet access service itself is not a common carrier service, many broadband providers are ETCs—and thus, by definition, are common carriers. Section 254(e) permits us to direct universal service support to both the voice service and broadband internet access service provided by such ETCs. This support flows regardless of the type of service provided, as long as it goes to support the facilities of a designated ETC. Thus, it is the “common-carrier status” of the provider, not the service, that governs whether the provider is eligible to receive Lifeline support for services provided over its network. If a service provider is not a common carrier and thus cannot become an ETC, the Lifeline program cannot support its provision of broadband internet access service. For this reason we also reject NARUC’s contention that the Commission’s continued use of “voice telephony service” to define the supported service creates a risk that a provider that is not a common carrier will obtain designation as an ETC. There is no basis for NARUC’s claim that the 10th Circuit’s decision in *In re FCC 11–161* rejected the Commission’s use of voice telephony service as the supported service, and nothing in our Order today changes that result. As the court noted in that decision, only common carriers are eligible to obtain designation as an ETC and the court “agree[d] with the FCC that the petitioners’ argument ‘will not be ripe for judicial review unless and until a state commission (or the FCC) designates . . . an entity’ that is

not a telecommunications carrier as ‘an eligible telecommunications carrier’”; under § 214(e).” Since NARUC provides no evidence that a non-common carrier has been designated by the FCC or a state commission, much less as the result of the *Restoring Internet Freedom* proceeding, and the legal authority we identify today continues to require ETCs to be common carriers, we see no risk that a non-common carrier will receive an ETC designation.

81. We thus reject arguments that we cannot support broadband internet access service in the Lifeline program if it is not classified as a telecommunications service. Our approach outlined today does not impact the ETC designation process or the requirement that support recipients be ETCs and, consistent with the statute ETCs will still offer voice telephony service and be required to be common carriers. While the Commission has not classified VoIP service as a telecommunications service, it has consistently recognized that a provider may offer VoIP on a Title II basis if it voluntarily “holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements.” Thus, the Commission is continuing to support telecommunications services pursuant to its authority under section 254 of the Act. This approach simply enables low-income consumers to receive discounts for broadband internet access service provided by ETCs, allowing us to work towards fulfilling our principles of ensuring affordable rates and access to advanced telecommunications and information services across all regions of the Nation.

82. We disagree with commenters that argue that the *Restoring Internet Freedom Order* renders the Commission unable to ensure the availability of Lifeline-supported options for low-income consumers. The Commission retains the authority, if warranted, to condition Lifeline support on the provision of broadband internet access service, as it has in the context of the high-cost mechanism. The limited example put forward in the context of AT&T’s grandfathering of legacy DSL does not persuade us otherwise—as the commenters who raise the point admit, “the loss of these DSL connections does not necessarily mean a loss to existing Lifeline subscribers.” We also note that the *Restoring Internet Freedom Order* does nothing to change the procedures by which carriers may seek to relinquish their status as ETCs, which will continue to be governed by section 214(e)(4) of the Act to ensure that

geographic areas are not left without a Lifeline provider.

83. We further reject arguments that the Commission cannot apply the legal authority articulated in the *USF/ICC Transformation Order* because of the differences between the high-cost program and the Lifeline program. However, as articulated in this section, we do not believe that the program differences are material with respect to the Commission's authority under section 254(e) to provide funding for broadband service in the Lifeline program, as funding will ultimately flow to supported facilities. Every ETC, whether they participate in the high-cost program, Lifeline program, or both programs, necessarily incurs network costs associated with the provision of the supported voice service and advanced services, such as broadband internet access service. In the case of facilities-based Lifeline providers, these costs arise in deploying and maintaining their own broadband-capable networks used to offer the voice telephony supported service. Resellers participating in the Lifeline program likewise incur costs associated with the network used to offer the supported voice service by directly compensating the underlying facilities-based providers for the wholesale voice services. Some commenters also raised concerns that our actions to reclassify broadband internet access service as an information service would bar resellers from the Lifeline program. In the *2017 Lifeline NPRM* the Commission sought comment on the continued role of resellers in the Lifeline program more generally, as well as on other possible rule changes that might be warranted should resellers remain in the Lifeline program. Although we do not adopt changes in that regard in this *Order*, those issues remain pending. Both programs ultimately offset those network costs. The main difference is that the high-cost program provides supplemental support for areas that are especially expensive to serve, while the Lifeline program compensates providers for some of their costs so they can offer discounted service to low-income Americans, thus incentivizing ETCs to provision, maintain, and upgrade facilities and services where low-income consumers live. Contrary to some commenters' suggestion, this statutory authority is entirely consistent with the Lifeline program's goals of promoting affordability and availability of voice and broadband services. Indeed, the Commission first established the Lifeline program goal of ensuring the availability of broadband service in the

*2012 Lifeline Order*—well before the Commission decided to impose Title II regulation on broadband internet access service. The Commission's authority to disburse Lifeline funds for broadband service is in part due to the fact that such funding ultimately flows to support the provision, maintenance, and upgrading of the voice-capable networks, but the Commission can and does still direct Lifeline funds in a way to best promote affordable voice and broadband services for low-income consumers.

84. We also reject arguments by some commenters that we cannot justify supporting broadband internet access service through the Lifeline program if the supported voice service is scheduled to eventually receive no Lifeline reimbursement in certain parts of the country. In the *2016 Lifeline Order*, the Commission adopted a phasing out of support for voice-only service in the Lifeline program in most areas after December 1, 2021. In doing so, the Commission concluded that "Lifeline should transition to focus more on [broadband internet access service] given the increasingly important role that broadband service plays in the marketplace. . . ." The Commission also created a carve-out of the support phasedown, allowing continued support to voice services at a rate of \$5.25 per month after December 1, 2021 to eligible subscribers served by a provider that is the only Lifeline provider in a Census block. First, support for voice-only services is not ending entirely, as the Lifeline program will continue to offer support to eligible subscribers in a Census block with only one ETC. Nothing in the text of section 254 requires an ETC to receive universal service funds everywhere it offers the section 254(c)(1) supported service. Section 254(c)(1) refers to the services included in the definition of universal service as being "supported by Federal universal service support mechanisms," but does not specify the details of those mechanism or under what range of circumstances universal service funds must actually flow. Likewise, although section 254(e) requires ETCs to use support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended," it does not specify how the Commission must direct those funds to be allocated as between support for "the provision . . . of services" vs. "the provision, maintenance, and upgrading of facilities" used to offer the section 254(c)(1) supported service. Second, voice services will continue to be a component of many Lifeline offerings,

as nearly 90% of Lifeline subscribers currently choose to apply their discount to a bundled offering that includes voice service along with broadband internet access service that meets the program's minimum service standards. As such, even as the voice phasedown continues, the Commission will continue to support the provision of voice services and voice-capable networks by ETCs. We therefore disagree with commenters asserting that it is unreasonable to claim that Lifeline support would benefit voice facilities while continuing to phase out support for voice-only service. As to comments urging the Commission to pause the voice phasedown at this time, we decline to decide here and the issue remains open from the *2017 Lifeline NPRM*. This *Order* is limited to addressing the three discrete issues remanded to the Commission by the D.C. Circuit. Nevertheless, we believe that a continued voice phasedown does not impede the Commission from relying on the legal authority we have explained herein.

85. We also disagree with commenters who argue that the best approach to supporting broadband internet access service through Lifeline is to simply reclassify broadband internet access service as a Title II service. We find our approach today instead allows for the Lifeline program to fund broadband internet access service offerings, while also allowing the Commission to continue to apply a light-touch regulatory approach to broadband internet access service, and will promote investment and innovation without grafting costly and restrictive requirements onto a program that is focused on making vital services affordable. Free Press also raises the possibility that as providers transition away from offering switched telephone service they may not be eligible to participate in the Lifeline program with broadband internet access service classified as a Title I service. While Free Press casually raises this concern, it does not offer any evidence of it impacting the Lifeline marketplace today, or anytime in the near future. As such, we decline to address this concern at this time and believe that voice telephony as a supported service will not present any near-term challenges for providers.

86. We next make necessary adjustments to the Commission's rules. In the *2016 Lifeline Order*, the Commission amended § 54.101 of its rules to include broadband internet access service as a supported service. As we discuss above, the classification of broadband internet access service as an

information service does not bar us from providing support for the provision of broadband by ETCs who are providing voice telephony, but broadband internet access service cannot be an independent supported telecommunications service under section 254(c). Although section 254(e) directs that “[a] carrier that receives [universal service] support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended,” section 254 is silent about the mechanics by which the Commission may determine the magnitude of high-cost or Lifeline support an ETC will receive, including the conditions that trigger the flow of support. By contrast, where Congress wished to specify in greater detail the mechanics of how support amounts would be calculated and triggered, it did so. Consequently, so long as the Lifeline funds ultimately are used consistent with the requirements of section 254(e), there is no statutory bar to conditioning the receipt of support on the provision of an information service offered over the network that provides the section 254(c)(1) supported service, and calculating support amounts in a way that accounts for the fulfillment of that condition. The California PUC previously argued that if broadband internet access service were reclassified as an information service, the Commission may not have the ability to impose its Lifeline minimum service standards on broadband services offered in the Lifeline program because of the limitations of section 254(c). As stated here, however, section 254(c) does not impose a bar on how the Commission might trigger universal support to a properly designated ETC. In the high-cost program, the Commission long has provided support without relying on a trigger based solely on the provision of the section 254(c)(1) supported service. For example, the Commission calculated the amount of high-cost support for rate-of-return carriers based on the number of voice or broadband internet access services lines they provided, even though only voice telephony was the section 254(c)(1) supported service. Thus, because broadband internet access service is not a section 254(c) telecommunications service, we remove broadband internet access service from the list of supported services in § 54.101, while preserving our authority to fund broadband internet access service through the Lifeline program.

87. We note that, while we did not propose this specific rule change in the *2017 Lifeline NPRM*, the Commission

did specifically seek comment on relying on section 254(e) as the legal authority to support broadband internet access service in the Lifeline program without relying on the regulatory classification of broadband internet access service as a telecommunications service. Since this rule change is a direct result of our reliance on this legal theory, we find that removing broadband internet access service as a supported service in these rule sections is supported by the text of the *NPRM* itself and, in addition, is in any event a “logical outgrowth” of the proposal in the *NPRM*. We also note that this rule change will have little practical effect on ETCs as the authority outlined today allows the Lifeline program to continue funding broadband internet access service offerings.

88. *Continued Support for Plans that Only Satisfy the Broadband Minimum Service Standards.* We next clarify that the Lifeline program can continue to provide support for broadband-only offerings by ETCs to qualifying low-income households. In order to receive reimbursement for providing a Lifeline service, ETCs must identify if the service meets the mandatory minimum standards for voice or broadband to determine the amount of support they can claim from the Lifeline program. With the phasedown of voice support proceeding in accordance with the Commission’s current rules, we expect to see some subscribers who receive a Lifeline service that only qualifies for Lifeline support because the service meets the program’s minimum service standards for broadband internet access service. Even though these offerings do not rely on a qualifying voice service—although they could very well include some level of bundled non-qualifying voice service, as many Lifeline subscribers receive today—we can continue to provide reimbursement under the statutory authority we outline today. As the *Mozilla* court notes, section 214(e) requires that entities designated as ETCs must be common carriers. The common carrier requirement of section 214(e) creates a limitation on the type of entities that may be designated as an ETC, but it does not prohibit an ETC from providing a broadband only-service to a qualifying low-income household and also receiving Lifeline support for that service to that household. The statute does not mandate that ETCs only offer service on a common carrier basis, nor does it prevent the Commission from reimbursing broadband internet access service offerings as a way to accomplish the principles on which the

Commission is required to base its universal service policies pursuant to section 254(b).

89. Using universal support to promote advanced services by ETCs that are, by definition, common carriers is consistent with past Commission efforts in the high-cost mechanism. In 2016, for example, the Commission allowed high-cost support for broadband-only loops for rate-of-return carriers. In doing so, the Commission stated that it was applying the principle first outlined in the *USF/ICC Transformation Order* “that universal service support should be directed where possible to networks that provide advanced services, as well as voice services.” NaLA echoed this approach when it stated that, even if the Commission continues its phase-down in Lifeline voice support, “as long as voice telephony service remains a supported service and ETCs are offering voice service, the Commission can continue to provide universal service funding only for the provision of broadband service. . . .” Under the approach we adopt today, ETCs, operating as common carriers, would still be required to offer voice service, including through bundled service offerings, but the Lifeline program would target its resources to induce ETCs to provide broadband internet access service offerings, both bundled and standalone, to Lifeline subscribers.

90. A number of commenters expressed concern that the Commission would be unable to support broadband-only providers as a result of broadband internet access service’s status as an information service. The Commission has already decided this issue and it is no longer before us now. As we explained in the *2019 Lifeline Order*, broadband-only providers that do not offer any voice service cannot participate in the program because they are not common carriers offering the supported voice service and thus do not satisfy the requirement in section 214(e)(1) that ETCs “offer the services that are supported by the Federal universal support mechanisms” under section 254(c). AARP encourages us to use section 706 of the 1996 Act as a source of authority to support stand-alone broadband. However, we have determined that section 706 is not a grant of regulatory authority and merely a hortatory congressional statement.

91. The California PUC raises a concern that classifying broadband internet access service as a Title I service will impact states’ ability to support broadband-only services in state universal service programs. We disagree. Congress specifically delineated the states’ authority to

“advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunication service, and safeguard the rights of consumers.” This authority is broad enough for the states to accomplish their universal service goals without forcing a burdensome federal regulatory regime (*i.e.*, Title II) on broadband internet access service offerings. It is true that the text specifically references telecommunications services, but that reference is part of a larger list of areas where states can act as long as the state action is not inconsistent with section 254. Section 254 not only permits a state to work with telecommunications carriers in the state to support its own universal service programs, but it also allows states to “adopt regulations to provide for additional definitions and standards to preserve and advance universal service within the state. . . .” As long as those state actions do not rely on or burden Federal universal support mechanisms, then a state is permitted to structure its programs in a way that it deems best to promote universal service.

92. Finally, while we are confident that our analysis of the statutory authority allows for the continued support of broadband internet access service through the Lifeline program, we would still reach the same conclusion on the classification of broadband internet access service that we did in the *Restoring Internet Freedom Order* even if a court were to conclude that the Lifeline program could not support broadband internet access service. As the Commission previously stated, a return to Title I classification better facilitates critical broadband investment through the removal of regulatory uncertainty and lower compliance burdens. Further, Title I classification allows for greater freedom to operate and serve customers in rural or underserved areas of the country. Additionally, by reclassifying broadband internet access service as a Title I service the Commission sought to bring greater regulatory certainty to the market, removing a fog that stifled innovation. As such, we believe that the benefits of reclassification would outweigh the removal of broadband internet access service from the Lifeline program, were the sound statutory authority relied on today be found insufficient.

*D. The Order on Remand Is Consistent With the Administrative Procedure Act*

1. The Commission’s Notice and Comment Procedures Comported With the Administrative Procedure Act

93. We conclude that we have satisfied the notice and comment requirements of the Administrative Procedure Act (APA) in this proceeding. We therefore reject arguments to the contrary. The *Restoring Internet Freedom NPRM* (82 FR 25568, June 2, 2017) sought comment on returning to the long-standing information service classification of broadband internet access service, and we did just that in the *Restoring Internet Freedom Order*. The D.C. Circuit’s decision in *Mozilla* left the regulatory approach adopted in the *Restoring Internet Freedom Order* in place while remanding to us for further analysis the effect on certain public safety, pole attachment, and Lifeline universal service support issues. The Commission sought comment in the *2017 Lifeline NPRM* on, among other things, the treatment of broadband internet access service under the Lifeline program irrespective of the regulatory classification of that service.

94. Agencies generally have broad discretion to choose the appropriate procedural response to a court remand, including whether and to what extent to conduct a new rulemaking proceeding. In this *Order on Remand*, we do not reconsider or alter any aspect of the regulatory approach adopted in the *Restoring Internet Freedom Order*. To the extent that commenters contend that additional notice would be required to adopt an approach different than the one we take in this *Order on Remand*, those arguments are not applicable here. Instead, we simply act in response to the *Mozilla* remand to explain our decision not to revisit that approach in light of the three discrete issues remanded by the D.C. Circuit. Thus, as a threshold matter, we conclude that the APA does not compel additional notice beyond that already provided. Indeed, except to the extent that we remove broadband internet access service from the list of supported services in our universal service rules, our *Order on Remand* procedurally could be analogized to a decision declining to initiate a rulemaking to revise the regulatory approach adopted in the *Restoring Internet Freedom Order* in light of the three remanded issues—which need not be preceded by its own notice and comment procedures under the APA. Alternatively—and again, except to the extent that we modify our universal service rules to remove broadband internet access service from

the list of supported services—our response to the three remanded issues could be seen as, at most, an interpretive rule or policy statement.

95. Independently, we conclude that even if some form of additional notice and comment procedures were required here in light of *Mozilla*, our procedures on remand have been sufficient. The Bureau elected to refresh the record on issues implicated by the *Mozilla* remand to supplement the original *Restoring Internet Freedom* rulemaking record and the record of the *2017 Lifeline NPRM*, consistent with similar actions taken by the Commission’s Bureaus in many instances in the past. Nothing in the D.C. Circuit’s remand displaced the Commission’s authority to “conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice,” nor to rely on Bureaus’ actions on delegated authority for “the prompt and orderly conduct of its business.” The Bureau’s request for comment on the *Mozilla* remand was published in the **Federal Register** (85 FR 12555, March 3, 2020), hereinafter referred to as “*Restoring Internet Freedom Remand Public Notice (PN)*”). We also agree with numerous commenters that the issues to be addressed on remand were apparent, including from the *Mozilla* decision itself. Before turning to specific questions upon which the Bureau sought to develop the record further, the *Restoring Internet Freedom Remand PN* began with requests for comment framed in terms that mirrored the scope of the D.C. Circuit’s remand in *Mozilla*. Commenters criticizing the scope of the *Restoring Internet Freedom Remand PN*’s request for comments on the remanded issues neglect that fact. Nothing about the *Restoring Internet Freedom Remand PN* hindered commenters from understanding the supplemental information that the Commission would be considering or from raising the arguments they wished to raise in response to the remand. To the extent that some court precedent contemplates notice and comment in certain circumstances where an agency engages in new fact-gathering on remand, the objective is to ensure that parties have an opportunity to comment on any new factual information critical to the agency’s decision whether to modify a rule on remand. While we consider the additionally-gathered information instead to supplement information in the original rulemaking record, even if it were critical information, we find that the objectives of that precedent have been satisfied here.

96. We also find that there was adequate time for participation by commenters. Commenters expressing concern about the timing of the comment period focus specifically on the development of the record related to public safety issues. Commenters do not identify any inadequacy in the comment period provided in the *Restoring Internet Freedom Remand PN*, which provided a full opportunity for commenters to raise public safety concerns and which the Commission is considering in responding to the *Mozilla* remand. With respect to the *Restoring Internet Freedom Remand PN* requesting comment to supplement the record in response to the remand, the process was appropriate, as well. As USTelecom observes, “the Commission published the Notice on March 3, 2020, more than a month and a half before comments were due.” This comment cycle included an extension of time “to enable state, county, and municipal governments to be able to respond adequately to the issues raised in the Public Notice relating to how the Commission’s action affects public safety.” This provided ample opportunity to submit information in response to the *Restoring Internet Freedom Remand PN*. To the extent that certain parties belatedly sought a further extension, we agree with the Bureau that the request was neither timely nor provided evidence that further extension of time was warranted.

97. The record also does not persuade us that there are additional arguments or information that interested parties in fact would have raised under a different comment process that they were unable to raise in the record for consideration in this proceeding. We reject arguments in response to the *Restoring Internet Freedom Remand PN* that reiterate concerns that certain commenters’ efforts to address the COVID-19 pandemic limit their ability to fully participate even under the extended comment cycle. Those arguments are not materially different from the arguments the Bureau considered and appropriately rejected in the *Further Extension Denial Order*. Further, in addition to the formal comment process, parties were able to make *ex parte* filings, as well. Insofar as certain parties sought a further 60-day extension of the already once-extended comment period, we note that substantially more than 60 days have passed since that comment deadline, during which time they have been free to raise their arguments in *ex parte* filings, which are considered by the Commission as part of the record in this proceeding.

98. We reject the claims of some commenters that the U.S. Supreme Court’s recent decision in *DHS v. Regents of the Univ. of Cal.* support their prior contentions that “the Commission must have a formal Notice of Proposed Rulemaking (NPRM) as a prelude to issuing any response to the remand by the *Mozilla* Court.” Contrary to those claims, *DHS v. Regents of the Univ. of Cal.* does not specify that a new, Commission-level Notice of Proposed Rulemaking would be required here. To the extent that *DHS v. Regents of the Univ. of Cal.* speaks to the procedures to be followed when an agency takes new action to provide additional explanation on remand, it does not adopt any one-size-fits-all approach, but merely observes that the procedures followed must be whatever otherwise is required for the relevant action. In contrast to the posture in that case—where DHS’s prior decision was vacated—the D.C. Circuit in *Mozilla* remanded without vacatur, leaving the *Restoring Internet Freedom Order* in place, and in this *Order on Remand* we do not modify or alter the regulatory approach adopted there. Consequently, whatever procedures theoretically might be required for DHS in response to *DHS v. Regents of the Univ. of Cal.*, it does not follow that a new, Commission-level rulemaking would be required here. Independently, as discussed above, we also find that even assuming *arguendo* that some manner of additional notice and comment were required, our procedures here have been adequate.

## 2. The Commission Thoroughly Considered the Relevant Issues on Remand

99. In the substantive sections of this *Order* we thoroughly analyze the effects of the *Restoring Internet Freedom Order* on public safety, pole attachments, and Lifeline consistent with the D.C. Circuit’s remand, and explain why those considerations do not persuade us to depart from the regulatory approach we adopted in that *Order*. This included addressing the thousands of public comments by identifying which ones were responsive to the three specific issues subject to the remand and analyzing those responsive arguments here. Our action satisfies both the *Mozilla* remand and the APA’s reasoned decision-making requirements. We therefore reject arguments that the Commission’s analysis of the remanded issues has failed, or will fail, the reasoned decision-making requirements of the APA.

100. Our analysis in the *Order on Remand* also demonstrates that we remained open-minded regarding the

issues remanded in *Mozilla*. In *Little Sisters of the Poor*, the Supreme Court recently “decline[d] to evaluate the final rules [at issue there] under the open-mindedness test” that had been used by the Third Circuit given that “the text of the APA provides the “maximum procedural requirements” that an agency must follow in order to promulgate a rule.” The Court concluded that “the open-mindedness test violates the ‘general proposition that courts are not free to impose upon agencies specific procedural requirements that have no basis in the APA.’” To the extent that commenters seek to advance the same basic “open-mindedness” test here, the Supreme Court’s decision provides an additional reason why it is unavailing. But in any case, we independently conclude that we did, in fact, remain open-minded for the reasons discussed in the text. For one, the cases cited by commenters expressing concern in this regard involved scenarios where the court was evaluating the adequacy of the original notice or opportunity for comment rather than where, as here, the agency is responding to a court’s remand to consider certain specific issues in evaluating whether they warrant a change in its prior decision. Indeed, rather than evidence that the Commission had a closed mind on the remanded issues as some commenters contend, the solicitation of comments in the *Restoring Internet Freedom Remand PN* reveals our willingness to give full consideration to those issues. In contrast to the Bureau’s requests for comment in the *Restoring Internet Freedom Remand PN*, the district court in *Int’l Snowmobile Mfrs. Ass’n v. Norton*, confronted a situation where agency decisionmakers made “definitive statements” about the outcome “before the [environmental review] process was complete.” A Bureau-level Public Notice requesting comment does not similarly represent “definitive statements” about the outcome the full Commission will reach in this proceeding. Our analysis likewise demonstrates that we remained open-minded in that regard, but were not persuaded to depart from our regulatory approach in the *Restoring Internet Freedom Order* on the basis of those considerations.

101. We also have no obligation in this proceeding to re-open issues from the *Restoring Internet Freedom Order* that were not remanded by *Mozilla*. Some commenters quote language from *DHS v. Regents of the Univ. of Cal.*, that an agency supplementing its original reasoning must “‘deal with the problem

afresh.’’ To the extent that these commenters suggest that we therefore must reopen the issues in the *Restoring Internet Freedom Order* more broadly, we reject that claim. The DHS action at issue in *DHS v. Regents of the Univ. of Cal.* had been both vacated and remanded in full. The relevant ‘‘problem’’ that DHS was dealing with there thus was the entirety of its action. Here, by contrast, the D.C. Circuit declined to vacate the *Restoring Internet Freedom Order*, leaving it in place while directing the Commission to address ‘‘three discrete points.’’ In this context, it is most reasonable to define the ‘‘problem’’ that we consider afresh here to be the effect of the regulatory approach in the *Restoring Internet Freedom Order* on the public safety, pole attachment, and Lifeline universal service support issues identified by the *Mozilla* court. Insofar as commenters raise issues beyond the scope of the remanded issues, we reject them as outside the scope of this proceeding. While in some cases commenters raise issues with no clear nexus to the remanded issues at all, in other cases commenters raise arguments that potentially encompass, but extend beyond, the remanded issues. We reject arguments only insofar as they fall outside or extend beyond the remanded issues, and otherwise consider them in our analyses of public safety, pole attachments, and Lifeline support, respectively, insofar as they do in fact bear on any of those issues. Taking up those broader issues here would unsettle reasoning and decisions not rejected by the court, giving us—and parties supportive of the *Restoring Internet Freedom Order*’s regulatory approach—a task on remand that not only was not required but that could not reasonably have been anticipated by *Mozilla*’s remand of ‘‘three discrete points.’’ For example, commenters relitigate the question whether the Commission was correct in predicting that Title I classification would promote competition, investment, and innovation—a finding that was affirmed by the D.C. Circuit and is outside the scope of the remand. While many commenters argue that experience following the *Restoring Internet Freedom Order* has borne out the Commission’s prediction, some argue that Title I classification has had no effect in investment, and others still claim that it has decreased investment. We need not and cannot settle this dispute here: Because such issues lie outside the scope of the remand, commenters did not have a full and fair opportunity to address these issues in

the same comprehensive way that they did prior to the *Restoring Internet Freedom Order*. Perhaps for that reason, the evidence offered in this proceeding fails to grapple with the effect of Title I classification on competition, investment, and innovation with nearly the same depth of analysis as the studies submitted in the *Restoring Internet Freedom* record, and therefore nothing in the comments in this remand proceeding provides firm ground to revisit the predictive judgment that we have already made. Should parties wish to raise issues beyond those subject to the D.C. Circuit’s remand in support of a request for new rules, they may do so in a petition for rulemaking supporting their request for such broader action.

#### *E. The Order on Remand Is Consistent With the First Amendment*

102. Our *Order on Remand* also is consistent with the First Amendment of the U.S. Constitution. Contrary to the suggestion of some commenters, neither the classification of broadband internet access service as an information service nor the *Restoring Internet Freedom Remand PN* seeking comment on the *Mozilla* remand represents a government restriction on speech that requires scrutiny under the First Amendment. In particular, we are not persuaded that actions taken by broadband internet access service providers to manage traffic on their networks constitutes governmental action. Nor does the record support the view that the request for comments in the *Restoring Internet Freedom Remand PN* somehow compelled, restricted, or otherwise chilled private parties’ speech.

#### III. Procedural Matters

103. *Paperwork Reduction Act*. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

104. *Congressional Review Act*. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this *Order on Remand* to Congress and the Government

Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

105. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

106. For further information about this rulemaking proceeding, please contact Annick Banoun, Competition Policy Division, Wireline Competition Bureau, at (202) 418–1521 or [annick.banoun@fcc.gov](mailto:annick.banoun@fcc.gov).

#### IV. Supplemental Final Regulatory Flexibility Analysis

107. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), this Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) supplements the Final Regulatory Flexibility Analysis (FRFA) included in the *2019 Lifeline Order* in WC Docket Nos. 17–287, 11–42, and 09–197, to the extent required by the adoption of this *Order on Remand*. The Commission sought written public comment on the proposals in the *2017 Lifeline NPRM*, including comment on the initial Regulatory Flexibility Analysis. This Supplemental FRFA conforms to the RFA.

##### *A. Need for, and Objectives of, the Order on Remand*

108. The Commission is required by section 254 of the Communications Act of 1934, as amended, to promulgate rules to implement the universal service provisions of section 254. The Lifeline program was implemented in 1985 in the wake of the 1984 divestiture of AT&T. On May 8, 1997, the Commission adopted rules to reform its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Since the *2012 Lifeline Order*, the Commission has acted to address waste, fraud, and abuse in the Lifeline program and improved program administration and accountability.

109. In this *Order on Remand*, the Commission addresses several items remanded to it by the D.C. Circuit Court of Appeals in *Mozilla v. FCC*. As part of addressing those issues, the Commission clarifies its legal authority for reimbursing broadband internet access service through the Lifeline program. This clarification requires minor revisions to the Commission’s Lifeline rules. With this action, we fulfill the Commission’s role as the steward of the Universal Service Fund

(USF or Fund) and ensure that the Lifeline program can continue to allocate its limited resources to reimbursing increasingly important broadband internet access service for low-income Americans.

*B. Summary of Significant Issues Raised by Public Comments to the IRFA or FRFA*

110. The Commission received no comments in direct response to the IRFA contained in the *2017 Lifeline NPRM* or the FRFA in the *2019 Lifeline Order*.

*C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration*

111. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments.

112. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

*D. Description and Estimate of the Number of Small Entities to Which Rules May Apply*

113. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. A small business concern is one that: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

114. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s Office of Advocacy, in general a small business is an independent business having fewer than 500

employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 30.7 million businesses.

115. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2018, there were approximately 571,709 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

116. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal and town or township) with populations of less than 50,000 and 12,040 special purpose governments— independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”

1. Wireline Providers

117. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated the entire year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our actions. According to Commission data, one thousand three hundred and seven (1,307) Incumbent Local Exchange Carriers reported that

they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees. Thus, using the SBA’s size standard the majority of incumbent LECs can be considered small entities.

118. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers and under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on these data, the Commission concludes that the majority of Competitive LECs, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

119. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a small business size standard specifically for Interexchange Carriers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally-developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have

1,500 or fewer employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities.

120. *Operator Service Providers (OSPs)*. Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable NAICS Code category is Wired Telecommunications Carriers. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 indicate that 3,117 firms operated for the entire year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of OSPs are small entities.

121. *Local Resellers*. The SBA has not developed a small business size standard specifically for Local Resellers. The SBA category of Telecommunications Resellers is the closest NAICS code category for local resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under the SBA's size standard, such a business is small if it has 1,500 or fewer employees. 2012 Census Bureau data shows that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small

entities that may be affected by the rules adopted.

122. *Toll Resellers*. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. MVNOs are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 2012 U.S. Census Bureau data show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

#### 2. Wireless Carriers and Service Providers

123. *Wireless Telecommunications Carriers (except Satellite)*. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms employed fewer than 1,000 employees and 12 firms employed 1,000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of Wireless Telecommunications Carriers (except Satellite) are small entities. The Commission's own data—available in its

Universal Licensing System—indicate that, as of August 31, 2018 there are 265 Cellular licensees that will be affected by our actions. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

124. *Wireless Communications Services*. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these small business size standards. In the Commission's auction for geographic area licenses in the WCS there were seven winning bidders that qualified as “very small business” entities, and one winning bidder that qualified as a “small business” entity.

125. *Satellite Telecommunications Providers*. This category comprises firms “primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.” Satellite telecommunications service providers include satellite and earth station operators. The category has a small business size standard of \$35 million or less in average annual receipts, under SBA rules. For this category, U.S. Census Bureau data for 2012 show that there were a total of 333 firms that operated for the entire year. Of this total, 299 firms had annual receipts of less than \$25 million. Consequently, we estimate that the majority of satellite telecommunications providers are small entities.

126. *Common Carrier Paging*. As noted, since 2007 the Census Bureau has placed paging providers within the broad economic census category of

Wireless Telecommunications Carriers (except Satellite).

127. In addition, in the *Paging Second Report and Order* (83 FR 19440, May 3, 2018), the Commission adopted a size standard for “small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$15 million for the preceding three years. The SBA has approved this definition. An initial auction of Metropolitan Economic Area (“MEA”) licenses was conducted in the year 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (“EA”) licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses.

128. Currently, there are approximately 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 291 carriers reported that they were engaged in the provision of “paging and messaging” services. Of these, an estimated 289 have 1,500 or fewer employees and two have more than 1,500 employees. We estimate that the majority of common carrier paging providers would qualify as small entities under the SBA definition.

129. *Wireless Telephony*. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. The closest applicable SBA category is Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had fewer than 1,000 employees and 12 firms had 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that a majority of these entities can be considered small. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261

have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, more than half of these entities can be considered small.

130. *All Other Telecommunications*. The “All Other Telecommunications” category is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing internet services or voice over internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for “All Other Telecommunications”, which consists of all such firms with annual receipts of \$35 million or less. For this category, U.S. Census Bureau data for 2012 show that there were 1,442 firms that operated for the entire year. Of those firms, a total of 1,400 had annual receipts less than \$25 million and 15 firms had annual receipts of \$25 million to \$49,999,999. Thus, the Commission estimates that the majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

### 3. Internet Service Providers

131. *Internet Service Providers (Broadband)*. Broadband internet service providers include wired (e.g., cable, DSL) and VoIP service providers using their own operated wired telecommunications infrastructure fall in the category of Wired Telecommunication Carriers. Wired Telecommunications Carriers are comprised of establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. The SBA size standard for this category classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2012 show that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, under this size standard

the majority of firms in this industry can be considered small.

### E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

132. As the changes enacted today are primarily clarifications of existing Commission rules or statutory authorities, we do not anticipate that the changes will result in significant additional compliance requirements for small entities. However, some small entities may have an additional burden. For those changes, we have determined that the clarity the rule changes will bring to the Lifeline program outweighs the burden of any increased compliance concerns. We have noted the applicable rule changes below impacting small entities.

133. *Compliance burdens*. The rules we implement impose some compliance burdens on small entities by requiring them to become familiar with the new rules to comply with them. In most instances, the burden of becoming familiar with the new rule in order to comply with it is the only additional burden the rule imposes.

134. *Adjusting systems to account for potential changes in Lifeline reimbursement rates*. The rules we implement may require small entities to change their billing systems, customer service plans, and other business operations to account for modifications in the Lifeline supported services. We believe these changes will not be significant.

### F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

135. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

136. This rulemaking could impose minimal additional burdens on small entities. These impacted small entities should already be familiar with the Commission’s supported services rules, but the removal of broadband internet

access service as a defined supported service may cause some small entities to adjust their business practices.

137. The Commission will send a copy of this *Order on Remand* including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this *Order on Remand*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Order on Remand* and the Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

**V. Ordering Clauses**

138. Accordingly, *It is ordered* that, pursuant to sections 1–4, 201, 230, 231, 254, 257, 303, 332, 403, 501, and 503 of the Communications Act of 1934, as amended, 47 U.S.C.151–154, 201, 230, 231, 254, 257, 303, 332, 403, 501, and 503, and § 1.2 of the Commission’s rules, 47 CFR 1.2, this *Order* is *Adopted*.

139. *It is further ordered* that, pursuant to §§ 1.4(b)(1) and 1.103(a) of the Commission’s rules, 47 CFR 1.4(b)(1), 1.103(a), this *Order on Remand* shall be effective 30 days after publication in the **Federal Register**.

140. *It is further ordered* that part 54 of the Commission’s rules *Is Amended* as set forth in Appendix A of the *Order on Remand*.

141. *It is further ordered* that the Commission shall send a copy of this *Order on Remand* to Congress and to the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

142. *It is further ordered* that the Commission’s Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Order on Remand*, including the Final Regulatory Flexibility Analysis (FRFA), to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 54**

Communications common carriers, Health facilities, Infants and children,

Internet, Libraries, Puerto Rico, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone, Virgin Islands.

Federal Communications Commission.

**Marlene Dortch**,  
*Secretary*.

**Final Rules**

The Federal Communications Commission amends part 54 of title 47 of the Code of Federal Regulations as follows:

**PART 54—UNIVERSAL SERVICE**

■ 1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, and 1302 unless otherwise noted.

■ 2. Revise § 54.101 to read as follows:

**§ 54.101 Supported services for rural, insular, and high cost areas.**

(a) Voice telephony services shall be supported by Federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

(b) An eligible telecommunications carrier eligible to receive high-cost support must offer voice telephony service as set forth in paragraph (a) of this section in order to receive Federal universal service support.

(c) An eligible telecommunications carrier (ETC) subject to a high-cost public interest obligation to offer broadband internet access services and

not receiving Phase I frozen high-cost support must offer broadband services within the areas where it receives high-cost support consistent with the obligations set forth in this subpart and subparts D, K, L, and M of this part.

(d) Any ETC must comply with subpart E of this part.

■ 3. Amend § 54.400 by revising paragraph (n) to read as follows:

**§ 54.400 Terms and definitions.**

\* \* \* \* \*

(n) *Supported service*. Voice telephony service is the supported service for the Lifeline program.

\* \* \* \* \*

■ 4. Amend § 54.403 by revising paragraph (b)(1) to read as follows:

**§ 54.403 Lifeline support amount.**

\* \* \* \* \*

(b) \* \* \*

(1) Eligible telecommunications carriers that charge Federal End User Common Line charges or equivalent Federal charges must apply Federal Lifeline support to waive the Federal End User Common Line charges for Lifeline subscribers if the carrier is seeking Lifeline reimbursement for eligible voice telephony service provided to those subscribers. Such carriers must apply any additional Federal support amount to a qualifying low-income consumer’s intrastate rate, if the carrier has received the non-Federal regulatory approvals necessary to implement the required rate reduction. Other eligible telecommunications carriers must apply the Federal Lifeline support amount, plus any additional support amount, to reduce the cost of any generally available residential service plan or package offered by such carriers that provides at least one service commensurate with the requirements outlined in § 54.408, and charge Lifeline subscribers the resulting amount.

\* \* \* \* \*

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