

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

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90

**COMMENTS OF
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These comments are submitted in response to the *Second Further Notice of Proposed Rulemaking* released by the Commission on June 22, 2015.¹ The *Further Notice*'s principal focus is on expanding the existing Lifeline subsidy program, which primarily supports voice services for low-income persons, to include support for broadband services.²

The principle of promoting universal service has been central to federal and state communications policy for many decades, and this is as it should be. The universal service principle supports access to basic communications service for all Americans. And Lifeline service is an important means of effectuating the policy of promoting universal service through a

* These comments express the views of Randolph J. May, President of the Free State Foundation. The views expressed do not necessarily represent the views of others associated with the Free State Foundation. The Free State Foundation is an independent, nonpartisan free market-oriented think tank.

¹ Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, WC Docket No. 11-42, FCC 15-71, June 22, 2015.

² To a significant extent, these comments incorporate important elements of my testimony at the hearing on "Lifeline: Improving Accountability and Effectiveness" before the Senate Subcommittee on Communications, Technology, Innovation, and the Internet, on June 2, 2015.

“safety net” mechanism. In the *Further Notice*, the Commission states: “The purpose of the Lifeline program is to provide a hand up, not a hand out, to those low-income consumers who truly need assistance connecting to and remaining connected to telecommunications and information services.”³ Indeed, if Lifeline service is properly formulated and implemented, so that it aids low-income persons who “truly need assistance” in an efficient and effective manner, free from fraud and waste, then it should be a cornerstone of the nation’s universal service policy. This is because Lifeline is the most targeted means of providing subsidies to those truly in need of assistance.

Importantly, keeping all members of society connected, regardless of income, redounds to the benefit of those who can afford to pay as well as those who cannot afford to pay for access to the network. This result is attributable to the “network effects” principle: The larger the number of people a network reaches, the more valuable the network is to each user.

Before turning to address the question of expansion of Lifeline to include broadband, I want to make an important, too often overlooked, point. Many of the FCC’s existing regulations are unduly burdensome, if not outright unnecessary, and these regulations have the effect of raising the price of access to – and, therefore, decreasing the availability of – communications services for *all* consumers, *including low-income persons*. In the same vein, the USF surcharge (from an economic perspective, a “tax”) that all consumers pay for all interstate and international calls currently stands at 17.1%.⁴ This surcharge also has the effect of depressing usage for *all* consumers, *including those at the lower end of the income scale*.

³ Further Notice, at para. 1.

⁴ FCC Contribution Factor and Quarterly Filings, available at: <https://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>

That said, as a long-time supporter of a properly formulated and implemented Lifeline program, I support measures to further reform the subsidy program so it remains viable,⁵ and so it sustains public support. Lifeline should be a “safety net” that operates within boundaries to aid those truly in need, not another federal program that is structured, or that evolves, in a way so that its subsidies inexorably expand to subsidize those further up the income scale who are not truly in need.⁶ From the perspective of sound policy, this “program boundary” constraint defined by income becomes more important as the gap in telephone penetration rates between low-income and non-low-income persons narrows. As the March 15, 2015, GAO Report points out, as the penetration rate gap has narrowed over time, studies show that, due to price insensitivity, “many households receiving the Lifeline subsidy would choose to subscribe to telephone service in the absence of the subsidy.”⁷ Thus, GAO cautions that the Lifeline program, as currently structured, “may be a rather inefficient and costly mechanism to increase telephone subscribership among low-income households....”⁸

With this in mind, the Commission should proceed cautiously in considering modifications to Lifeline to support broadband. The Commission should take further steps to prevent waste and fraud that go beyond those salutary steps it took in the 2012 *Lifeline Reform Order*⁹ and it should make sure these measures are working. For example, the Commission has

⁵ Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking (Lifeline Reform Order), 27 FCC Rcd 6656 (2012). I acknowledge that this order, championed by Commissioner Mignon Clyburn, was a positive step in the direction of reforming Lifeline.

⁶ For this reason, I favor Lifeline eligibility criteria that provide subsidies only to those persons whose income places them at the federally-defined poverty level or close to it.

⁷ GAO Report, “FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program,” March 2015, at 14.

⁸ Id.

⁹ After adoption of the *Lifeline Reform Order*, annual Lifeline disbursements declined from \$2.2 billion in 2012 to \$1.7 billion in 2014. According to the GAO Report, this was due, at least in part, to the reduction in the number of ineligible households receiving support. GAO Report, at 24. The establishment of the National Lifeline Accountability Database (NLAD) played a positive role in achieving this reduction.

just revised its rule that prohibited carriers from retaining any documentation provided by consumers to demonstrate Lifeline eligibility after a determination had been made. This rule made it more difficult for the Commission to help prevent fraud and abuse by seeking records that would substantiate eligibility determinations.¹⁰ The Commission should monitor and enforce the new documentation requirement.

While there is considerable merit to the notion that, at some point and in some manner, broadband service should be supported with Lifeline subsidies, any such revamping of the original concept of Lifeline – as a “safety net” for access to basic voice service – should be undertaken in a way that does not threaten the sustainability of the program. The results from the FCC’s broadband pilot program demonstrate the challenges inherent in attempting to expand the program to include broadband without, at the same time, increasing substantially the total amount of subsidies provided. As the GAO Report points out, for one pilot project, with no monthly cost to subscribe, there was 100% enrollment. With a \$20 monthly fee, there were no enrollees. The GAO Report concludes: “This raises questions about the feasibility of including broadband service in the Lifeline program, since on a nationwide scale, offering broadband service at no monthly cost would require significant resources and may conflict with [the] FCC’s goal to minimize the contribution burden.”¹¹ The GAO Report goes on to say: “In addition, representatives from the projects we interviewed noted other challenges, such as difficulties with marketing the program and getting customers to pay their bills.”¹² These GAO cautions bear re-reading.

¹⁰ See TracFone Supplement to Petition to Require Retention of Program-Based Eligibility Documentation, May 30, 2012, available at: <http://apps.fcc.gov/ecfs/document/view?id=7021920913>

¹¹ GAO Report, at 34. As pointed out above, the “contribution burden” surcharge is currently set at a hefty 17.1%.

¹² Id. As the Pew Research Center reports consistently have confirmed for years, lack of “digital literacy” and lack of interest are substantial obstacles to expanding access to broadband, more important for many

Another consideration, often overlooked in discussing expansion of Lifeline subsidies to broadband, is that the devices used to access broadband service, whether a laptop, tablet, or smartphone, are, on average, considerably more expensive than the simpler phone handsets typically used to access Lifeline-supported voice and text services.¹³ Support for “access” without the means to acquire the associated devices is meaningless. This is just another factor, along with the need for access to digital literacy training, that must be considered in assessing the costs and deciding whether Lifeline should be expanded to include broadband.

The private sector has played, and can continue to play, an important role in making available devices and digital literacy training programs on a reduced cost basis for low-income persons. The Comcast Internet Essentials program is a good example of a private sector effort that is playing a positive role in expanding access to broadband for low-income persons by providing support for device and digital literacy needs in addition to the service component. While private sector programs such as Comcast’s and others are certainly helpful, their existence should not mask the fact that low cost access to broadband service, without the means to access devices and digital literacy training programs, faces obstacles. And the fact that these supplementary programs are costly should not be masked either.

Another factor to consider relating to the cost of including broadband is this: The FCC has just ratcheted up the definition of what constitutes “broadband” to 25 Mbps from 10 Mbps, a standard which only recently had been adopted. Obviously, providing “broadband” service at

people than the ability to pay or the price of service. Digital literacy programs may be worthwhile, but they certainly are not without costs either.

¹³ If Lifeline is expanded to include broadband, it goes without saying that wireless services and wireless operators should play a prominent role. Pew reports that those with lower incomes and levels of educational attainment are much more dependent on smartphones for online access than those with higher incomes and levels of educational attainment. See “U.S. Smartphone Use in 2015,” April 1, 2015, available at: <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015/>.

higher and higher speeds is more costly. And, to be frank, it is unlikely that proponents of the expansion of Lifeline to include broadband will be receptive – for very long – to providing low-income persons a level of service the Commission has deemed *not* to be “broadband,” that the FCC Chairman several times has deemed to be *not* even “table stakes.”¹⁴ This too should be considered in assessing the costs to be incurred in expanding the program to broadband.

So, realistically, any expansion of the Lifeline program to include broadband, if it is to meet the objectives of its proponents, is likely to be very costly. It is reasonable to question whether the existing benefit of \$9.25 per month per subscriber is realistic to achieve the objectives that are set forth in the Commission’s *Further Notice*. This is why I urge the Commission to ensure that the measures to reduce waste and fraud are put in place and monitored, and that the benefit (regardless of its amount) be limited to those persons either at or close to the federally-defined poverty level. If the Commission majority meant what it said at the beginning of the *Further Notice* – that the Lifeline program should be for those low-income consumers who “*truly need assistance*” – then it should be receptive to such anti-fraud measures and fiscal constraints.

Which brings me to this: The Commission asks “whether to set a budget for the program.”¹⁵ In his dissent to the *Further Notice*, Commissioner Michael O’Rielly states that the Commission should “propose a spending cap, or at the very least, a firm budget.” Since issuance of the *Further Notice*, there has been continued discussion relating to the adoption of a “budget” or a “cap,” sometimes with various adjectives attached. It seems to me that those using these terms may not necessarily share the same understanding of their meaning, because at least as I

¹⁴ See, e.g., Remarks of FCC Chairman Tom Wheeler as prepared for delivery at the Broadband Communities Summit, Austin, TX, April 14, 2015, available at: https://apps.fcc.gov/edocs_public/attachmatch/DOC-332988A1.pdf

¹⁵ *Further Notice*, para. 10.

understand the terms, they could mean different things. Here is the way I think about the “budget” and “cap” question.

If the reforms implemented prove to be effective so that the Lifeline program is expanded to include broadband subsidies, I would favor adoption of an annual or every-other-year projected budget for the program, as distinct from an inviolable hard cap with an automatic shut-off of benefits if the cap is reached. The budget will be dependent on key variables, of course, such as defining the level of broadband service that qualifies for support, defining the level of support per eligible recipient, projecting demand based on eligibility, and so forth. So, while a budget should be adopted on some periodic basis to aid in formulating and revising the parameters of the program so it that remains fiscally responsible, I would prefer avoiding imposition of an inviolable cap that, *per se*, would require automatically cutting off subsidies to those who otherwise meet eligibility requirements. For example, in the event of a severe economic downturn, which is not necessarily predictable, there may be more persons who qualify to receive subsidies in one period than projected when formulating the budget. In my view, these persons should not be denied Lifeline service because a hard “cap” has been reached. But this does not mean, of course, that the parameters of the program should not be reevaluated on an ongoing basis and adjusted (including downward if necessary) to ensure that it is operated in a fiscally responsible manner. After all, all USF subsidies, whether for Lifeline or otherwise, are paid for by consumers – presently all users of interstate telecommunications services – and the current surcharge (in effect, a tax) to fund the subsidies is 17.1%.

In summary, I support continuation of a Lifeline program that provides subsidy support to those truly in need. But in order for the program to remain viable and sustain public support, meaningful reforms aimed at reducing waste, fraud, and abuse should continue to be pursued.

And in considering proposals to expand Lifeline to include broadband service, in light of the additional costs likely to be involved, the FCC should proceed cautiously and responsibly.

Respectfully submitted,

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