

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

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

**COMMENTS OF
RANDOLPH J. MAY
PRESIDENT, THE FREE STATE FOUNDATION***

I. Introduction and Summary

These comments are submitted in response to the *Notice of Proposed Rulemaking* released by the Commission on December 1, 2017.¹ The *Notice* proposes changes to the Lifeline program which, however well-intentioned, would alter the program in a way that risks frustrating its primary purpose. As an important part of the Commission’s overall Universal Service programs, the primary purpose of the Lifeline program is to ensure that low-income persons have access to communications services. Of course, without access to such services, low-income persons

* 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 Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry, WC Docket Nos. 17-287, 11-42, and 09-197, FCC 15-71, December 1, 2017.

necessarily may encounter more difficulties taking advantage of educational and job opportunities that are crucial to improving their lives, as well as availing themselves of important health and safety services. With the primary purpose of the Lifeline program in mind, these initial comments focus primarily on two aspects of the *Notice*: (1) the proposal to discontinue Lifeline support for service provided over non-facilities-based networks; and (2) the proposal to adopt a self-enforcing “hard cap” budget mechanism. While I understand the impulse that motivates both of them, I oppose adoption of these proposals without a further convincing demonstration of need. At the same time, I support the pro-consumer, pro-empowerment proposal to allow providers to meet the minimum service standard through plans that provide subscribers with a particular number of “units” that can be used either for voice minutes or broadband service. I commend the Commission for seeking comment on this proposal.

Before addressing the proposals specifically, however, it is important to understand the context in which the proposals ought to be considered. The principle of promoting “universal service,” that is, promoting access to communications services for all Americans, has been central to federal and state communications policy for many decades. Lifeline service is an important means of effectuating the policy of promoting universal service through a “safety net” mechanism. In 2015, the Commission said: “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.”² If Lifeline service is properly formulated and implemented, so that it aids low-income persons who “truly need assistance,” and if it does so in an efficient and effective manner free from fraud and waste, then it should remain a cornerstone of the nation’s universal service policy. Indeed, if run properly,

² 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., at para. 1.

Lifeline is the most targeted means of providing subsidies to those truly in need of assistance. But note that the USF surcharge that all consumers pay for all interstate and international calls currently stands at 19.5%.³ This surcharge has the effect of depressing usage for *all* consumers, *including those at the lower end of the income scale*.

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.

My free market-oriented philosophical and policy preferences are long-standing and well known. At the same time, I have been a long-time supporter of a properly formulated and implemented Lifeline program that operates, within boundaries, as a “safety net” to aid those *truly* in need. This means it should not be just 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.⁴ While I have actively supported measures to further reform the subsidy program to reduce waste and fraud so it remains viable⁵ and sustains public support, I do not believe support for an important safety net program, properly run to eliminate waste and fraud to the maximum extent possible, is inconsistent with my free market orientation. It is in this context that I offer these comments.

³ FCC Contribution Factor and Quarterly Filings, available at: <https://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>

⁴ 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.

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).

II. Lifeline Support Should Not Be Discontinued for Resellers

The Commission seeks comment as to whether it should discontinue providing Lifeline support to non-facilities-based service providers as a means of focusing support on encouraging investment. I have a very long record of supporting policies that encourage facilities-based investment, for example, going at least back to the Commission's *Unbundled Network Elements* proceedings at the turn of the century. In general, policies encouraging facilities-based investment are to be preferred. But in communications policy – as in other areas – sometimes there are reasons justifying “exceptions to the general rule,” and I submit that this is such a case.

So, while promoting increased facilities investment is, in general, a worthwhile objective, the primary purpose of the Lifeline program is to promote the affordability of communications services for low-income persons. This has been true from the program's inception in the mid-1980s. And it was true when, in 2005 under then-FCC Chairman Kevin Martin, the Commission decided to forbear from the requirement that carriers receiving universal service support must use, “at least in part,” their own facilities. The Commission concluded forbearance was justified where, “as here, the wireless reseller is forgoing all universal service support but Lifeline, which is customer specific and is designed to make telecommunications service affordable to eligible consumers.”⁶ The Commission said “the facilities requirement is unnecessary to preserve the integrity of the universal service program or the fund.”⁷ Many times since, the Commission has declared, to similar effect, that the “purpose of the Lifeline program is to help low-income Americans access affordable phone service.”⁸

⁶ *Petition of TracFone Wireless, Inc. for Forbearance*, 20 FCC Rcd 15095, 15102 ¶ 14 (2005).

⁷ *Id.*

⁸ *FCC Reforms Lifeline Program to Eliminate Waste & Ensure Fiscal Responsibility*, News Release (June 21, 2011).

The reality is that, today, almost 70% of Lifeline subscribers are served by resellers. As the Commission has recognized, many of these are minorities who rely primarily or exclusively on wireless services, including wireless broadband services, for access to communications. There is no dispute that wireless resellers, like TracFone, have focused their marketing on reaching Lifeline-eligible low-income consumers, and, this, in turn, has increased awareness of the program. In any event, the reality today is that facilities-based providers currently are serving only a minority of Lifeline subscribers, so that discontinuing support for resellers would be very disruptive to the program.

Reducing waste, fraud, and abuse obviously should remain an important goal of the Commission, but, in my view, less drastic alternatives should be pursued to accomplish this objective. For example, the Commission should consider TracFone's suggestion to implement "conduct based requirements" to address waste, fraud and abuse concerns.⁹ Those carriers violating the conduct requirements should face stiff sanctions, including suspension from program eligibility for serious and deliberate violations. And, at the same time, the Commission should continue its other efforts to reduce waste and fraud, which already have had a positive impact. The National Verifier program should be implemented as soon as possible, consistent with ensuring that it will work properly. Once deployed, it should be an effective tool for rooting out fraud and abuse.

III. Lifeline Support Should Not Be Subject to a "Hard Cap" Self-Enforcing Budget

The Commission seeks comment on a proposal "to adopt a self-enforcing budget mechanism to ensure that Lifeline disbursements are kept at a responsible level...." The fiscal integrity of the Lifeline program is important not only to enabling it to achieve its primary

⁹ See *Notice*, at para. 23.

objective, but to maintaining public support for the program. So, I understand the impulse that motivates offering this proposal. Nevertheless, I do not favor its adoption as proposed.

As the Commission's *Notice* recognizes, there are dozens of practical implementation problems that would have to be resolved in connection with adoption of a self-enforcing budget cap, for example, relating to the appropriate period or periods for assessing compliance, the forecasting models to be utilized, the methodology to be employed in reducing payments under a cap, the way to prioritize disbursements, and more. Moreover, the notion of a self-enforcing hard budget cap runs against the objective of a "safety net" program to provide support for eligible low-income persons in need. Suppose, for example, there is a severe, unpredicted economic downturn with substantial job losses – let's hope not, but just suppose – and, therefore, many more persons than projected in the budget become eligible to receive support. During the downturn's duration, I don't think it makes sense to "close the door" when some budget cap is reached. The impact of such an action almost certainly would be capricious in its implementation.

But this does not mean that the Lifeline program's goal is to enroll more people rather than less. Despite the efforts by some to claim or imply otherwise, a measure of its success in meeting its "safety net" objective is *not* to keep increasing the number of persons enrolled. But, as I testified before the Senate Subcommittee on Communications, Technology, Innovation, and the Internet on June 2, 2015, the appropriate way to maintain the fiscal integrity of the Lifeline program, in addition to implementing and enforcing effective fraud and abuse controls, is to ensure that only those low-income persons at or very near to the federal poverty level are eligible to participate. As I stated there, Lifeline should not be "another federal entitlement 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.”¹⁰ If that occurs, the program won’t maintain public support, and shouldn’t.

IV. Enabling Consumer Choice

The Commission seeks comment “on ways the Lifeline program can responsibly empower Lifeline subscribers to obtain the highest value for the Lifeline benefit through consumer choice in a competitive market.”¹¹ In particular, the Commission points to TracFone’s request to allow providers to meet the minimum service standard through plans that provide subscribers with a particular number of “units” that can be used either for voice minutes or broadband service. TracFone proposes a minimum standard through a service offering of 1000 units where 1 unit = 1 minute of voice service = 1 MB of broadband data.

This is a pro-consumer choice, pro-empowerment, pro-market-oriented proposal worthy of adoption. Indeed, in a Free State Foundation blog published on September 11, 2017, I said:

TracFone has a proposal to give consumers enrolled in wireless Lifeline services more choice in using their Lifeline benefit. TracFone proposes that LifeLine providers be permitted to meet the FCC's minimum service standards through what it calls a "units" plan. Under the proposal, consumers would receive 1,000 units per month. According to the proposal, “A unit would be either one minute of wireless voice service or 1 MB of mobile broadband service.” In other words, the carrier said it "would provide consumers with up to 1,000 minutes of mobile voice service ... or up to 1 GB of mobile broadband data.”

This seems like a sensible way to give Lifeline customers more flexibility to decide how best to meet their own needs, while still maintaining the Commission's minimum service standards. There doesn't seem to be a good reason to presume that Lifeline customers can't determine themselves how to use the quantity of service available to them under their Lifeline plan.¹²

The Commission should adopt this pro-consumer proposal.

¹⁰ Testimony of Randolph May, Hearing on “Lifeline: Improving Accountability and Effectiveness,” Senate Subcommittee on Communications, Technology, Innovation, and the Internet, June 2, 2015, at 2-3.

¹¹ *Notice*, at para. 80.

¹² See: <http://freestatefoundation.blogspot.com/2017/09/tracfones-market-oriented-wireless.html>

V. Conclusion

In announcing the Commission's consideration of the pending Section 706 broadband deployment report, Chairman Pai declared: "Far too many Americans still lack access to high-speed Internet, and that's why the FCC's top priority under my leadership remains bridging the digital divide and bringing digital opportunity to all Americans." Chairman Pai's focus on bridging whatever digital divide remains is commendable, and he already has taken important steps in this regard. Maintaining a sound Lifeline program that meets its primary objective of ensuring that low-income persons have access to affordable communications services is an important element in achieving Chairman Pai's priority. The positions articulated in these comments are consistent with achieving that priority.

Respectfully submitted,

Randolph J. May
President

Free State Foundation
P.O. Box 60680
Potomac, MD 20859
301-984-8253

February 21, 2018