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Testimony of Randolph J. May

President, The Free State Foundation

Hearing on “Lifeline: Improving Accountability and Effectiveness”

before the

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Committee on Commerce, Science, and Transportation

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Mr. Chairman, Ranking Member Schatz, and Members of the Committee, thank you for inviting me to testify. I am President of The Free State Foundation, a non-profit, nonpartisan research and educational foundation located in Rockville, Maryland. The Free State Foundation is a free market-oriented think tank that focuses its research primarily in the communications law and policy and administrative law and regulatory practice areas. I have served as Associate General Counsel at the Federal Communications Commission and have been closely involved with communications law and policy for over thirty-five years. I am a past Chair of the American Bar Association's Section of Administrative Law and Regulatory Practice. And I am currently a public member of the Administrative Conference of the United States and a Fellow at the National Academy of Public Administration.

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, the focus of today's hearing, is an important means of effectuating the policy of promoting universal service through a "safety net" mechanism. Indeed, if Lifeline service is properly formulated and implemented, so that it aids low-income persons 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.

Now I will turn to some of my specific views, having in mind the context of where matters stand today. But, first, from my free market-oriented perspective, 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. And, in the same vein, the USF surcharge (from an economic perspective, in reality, a “tax”) that all consumers pay for all interstate and international calls currently stands at 17.4%.¹ This surcharge also has the effect of depressing usage for all consumers, including those at the lower end of the income scale.

That said, as a long-time supporter of a properly formulated and implemented Lifeline subsidy program, I support measures to further reform the program so it remains viable,² and so it sustains public support. In my view, Lifeline should be a “safety net” that operates within boundaries to aid those truly in need, not another federal entitlement program that is structured, or that evolves, in a way so that its subsidies inexorably

¹ FCC Contribution Factor and Quarterly Filings, available at: <https://www.fcc.gov/encyclopedia/contribution-factor-quarterly-filings-universal-service-fund-usf-management-support>

² 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 reform.

expand to subsidize those further up the income scale who are not truly in need.³ From the perspective of sound policy, this “program boundary” constraint 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.”⁴ 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....”⁵

Regarding near-term reforms, the Commission should take steps to prevent waste and fraud that go beyond those salutary steps it took in the 2012 *Lifeline Reform Order*.⁶ For example, while the FCC’s rules require service providers to determine eligibility for Lifeline, they prohibit the carrier from retaining any documentation provided by the consumer to demonstrate eligibility after a determination has been made. The Commission’s concern that the privacy of Lifeline subscribers be protected is not unwarranted, but as TracFone and other carriers contend, there should be a means to do

³ For this reason, I do not favor Lifeline eligibility criteria that provide subsidies to those persons whose income places them above the federally-defined poverty level, or at least much above the poverty level.

⁴ GAO Report, “FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program,” March 2015, at 14.

⁵ Id.

⁶ 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.

this without getting rid of records that might help prevent fraud and abuse.⁷ Another reform proposed by TracFone to inhibit fraud and abuse would prohibit in-person distribution to prospective Lifeline customers. While this proposal may not be necessary if the document retention proposal is adopted as a means of discouraging fraud, in light of earlier reports concerning questionable on-street distribution of handsets, it may still warrant consideration if in-person distribution abuses continue.⁸ While the 2012 order's requirement for annual recertification was a step in the right direction as a means of weeding out ineligible recipients, the use of some form of Electronic Benefit Transfer card associated with an underlying Lifeline-qualifying program could be considered as a further reform. Without waiting for the annual recertification to come around, such an electronic payment vehicle has the advantage of promptly de-enrolling from Lifeline a cardholder who is de-enrolled from the associated benefits program to which the card is tied.

With regard to expanding Lifeline support to include broadband service, the Commission – and Congress – should proceed with caution. While there is considerable merit to the notion that, at some point and in some way, 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 existing program. The results from the FCC's broadband pilot program demonstrate the challenges inherent in attempting to expand the

⁷ 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>

⁸ I supported this TracFone proposal in June 2013 in comments filed with the FCC, available at: http://www.freestatefoundation.org/images/TracFone_Petition_for_Rulemaking_Comments_061713.pdf. If such a in-person prohibition were adopted, there would not appear to be a need to apply it to in-store distribution from established outlets.

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, in understated fashion: “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.”⁹ 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.”¹⁰

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 phone handsets typically used to access Lifeline-supported voice services.¹¹ Support for “access” without the means to acquire the associated devices is meaningless. This is just

⁹ GAO Report, at 34. As pointed out above, the “contribution burden” surcharge is currently set at a hefty 17.4%.

¹⁰ 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 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.

¹¹ If Lifeline is expanded to include broadband, wireless services 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/>

another factor relating to cost that must be considered in deciding whether Lifeline should be expanded to include broadband.¹²

It is worth noting that GAO reports that “the FCC did not adopt our previous recommendation to conduct a needs assessment or develop implementation and evaluation plans prior to establishing the [pilot broadband] program.”¹³ While the efficacy of such measures may vary depending on their execution, a proper needs assessment, along with evaluation and implementation plans, is warranted when considering a major revamp of the Lifeline program that could involve a substantial increase in subsidies.

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 costly. This realization should prompt consideration of significant reforms in the way the current program is structured. I have discussed many of these more fundamental restructuring reforms in the past. For example, ultimately, it probably makes sense to restructure Lifeline to provide a nontransferable portable voucher that an eligible subsidy recipient can take to any participating service provider. Any provider that accepts a voucher for broadband would agree to provide a Commission-defined basic broadband service to voucher recipients at no more than the Commission-defined subsidized rate. Obviously, it is far easier to describe the concept for a voucher program in broad outline than it is to formulate and implement the parameters of such an efficient and effective program. But, as a group of

¹² Another separate factor to consider 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 higher and higher speeds is more costly. And it is unlikely that proponents of expansion of Lifeline to include broadband will be receptive to providing a level of service the Commission has deemed not to be “broadband.”

¹³ *Id.*

Free State Foundation-affiliated scholars said in a September 2014 Response responding to the House Commerce Committee’s #CommActUpdate Universal Service White Paper: “[A] portable voucher structure gives purchasing power directly to low-income individuals, allowing them to participate in the telecommunications marketplace like any other consumer. And it allows the fund to benefit directly from competition among broadband providers. To attract recipients and avoid customer defection, providers must compete on price and service as they do in the marketplace generally.”¹⁴

Moreover, in order to provide more accountability to the Lifeline program – indeed, to each of the USF programs – consideration should be given to funding them through the federal budget and appropriations process rather than through subscriber surcharges. As the Free State Foundation-affiliated scholars said in the September 2014 #CommActUpdate Response, this “would improve the transparency of the program by vesting oversight in Congress,” rather than in the “murky, semi-private Universal Service Administrative Company.” Funding universal service programs through the appropriations process “would also apply a hard budgetary cap to expenditures established for a definite period of time, requiring the Commission to wring inefficiencies out of the system in order to serve the public within congressional funding restraints.”¹⁵

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, when considering proposals to expand Lifeline to include

¹⁴ Response to Questions in the Fifth White Paper, “Universal Service Policy and the Role of the Federal Communications Commission,” September 19, 2014, available at: http://freestatefoundation.org/images/Response_to_Questions_in_the_Fifth_White_Paper_091914.pdf

¹⁵ Id.

broadband service, in light of the additional costs likely to be involved, policymakers should proceed cautiously.

Thank you for giving me the opportunity to testify today. I will be pleased to answer any questions.