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Preserving a Lifeline to Close the Digital Divide

by

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Since President Trump named him chairman of the Federal Communications Commission (FCC) on Jan. 23, Republican Ajit Pai, with the support of his fellow Republican Commissioner Michael O'Rielly, has wasted little time curtailing, or announcing proposals to curtail, some of the more egregious regulatory overreaches perpetuated by his predecessor, Democrat Tom Wheeler.

This should not be surprising. After all, Pai dissented from the most controversial of the Wheeler-era regulatory stretches.

Nor should it be surprising that many pro-regulatory advocates who supported Wheeler's initiatives — whether with regard to new net neutrality prohibitions, privacy regulations, rate controls for business broadband services, or video navigation device mandates — are now loudly voicing their opposition to Pai's deregulatory initiatives.

That is their right — even though these "regulation first" advocates all too often ignore the realities of today's competitive marketplace that make new regulatory initiatives, in many instances, counterproductive and harmful.

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Here I want to focus on one particular program — the FCC's Lifeline regime — that I fear will be undermined if those who reflexively oppose Pai on all fronts continue overreacting to his actions regarding Lifeline.

The Lifeline program, one component of the FCC's Universal Service regime, provides subsidies to eligible low-income persons — currently \$9.25 per month to those who qualify — to support their access to telecommunications services. The total subsidy provided to low-income persons under the Lifeline program is approximately \$1.5 billion per year.

In April 2016, the FCC released an order extending the availability of the Lifeline subsidy to broadband service, although it retained the same \$9.25 per month subsidy level that applies for voice service. Although Pai supported the extension of the subsidy to broadband, he dissented from the 2016 order on several grounds, including his view that the FCC lacks authority under the Communications Act to remove the states from their existing role of certifying carriers as eligible to provide Lifeline service.

Consistent with his view that the FCC lacks authority to designate Lifeline broadband service providers, in early February, Pai ordered agency staff to reconsider the grants of nine such federal designations issued in the waning days of Wheeler's tenure.

Approximately 900 Lifeline providers certified by the states remained unaffected by the reconsideration.

Then, on March 29, Pai ordered agency counsel to seek a remand of the appeal brought by the states challenging the commission's April 2016 order. In doing so, Pai stated that, on reconsideration, he wants to alter the Lifeline program to return to the states the role of certifying eligible service providers.

In my view, the supposed adverse impact of these Lifeline actions has been exaggerated in many quarters. I am an advocate of free market-oriented communications policies, especially in light of the increasingly ubiquitous competition and technological dynamism that prevails in most segments of the marketplace.

But I also have been a longtime, consistent supporter of an effective FCC Lifeline program as a safety net, as long as the program is properly structured and run efficiently in a way that minimizes waste and fraud. Indeed, because Lifeline is more narrowly targeted than the FCC's other universal service programs, if properly structured and operated, it should be the most efficient in bridging any remaining digital divide that separates those who cannot afford service from those who can.

Since becoming chairman, Pai repeatedly has said that one of his top priorities is closing the digital divide. On March 29, in remarks before the U.S.-India Business Council, he declared:

"[O]ur top priority so long as I serve as chairman of the FCC is to close what I've called the digital divide — the gap between those with access to next-generation technologies and those

without. We will work to bring the benefits of the digital age to all Americans, no matter who they are or where they live."

On the very same day, in announcing his intent to seek the Lifeline court remand because he believes the current federal Lifeline provider designation process is unlawful, Pai stated: "I want to make clear that broadband will remain in the Lifeline program as long as I have the privilege of serving as chairman."

As a Lifeline supporter, I take Pai at his word — and I think those questioning his commitment to Lifeline should, too. It is difficult to fault him for acting on his belief, clearly stated when the Wheeler-era FCC adopted the federal designation process over his dissent, that extension of Lifeline to broadband must rest on a sound legal foundation, not just on policy predilections.

If the Lifeline program is to be sustainable, it must enjoy broad bipartisan public support, and not be turned into a political football. Part of maintaining broad support requires that the program be operated in a way that minimizes fraud and waste. The FCC took some important steps in this direction two years ago, but Pai, rightly, points out that more can be done in this regard going forward.

And a final suggestion for those, like me, who look for ways to minimize the impact from unnecessarily rigid regulatory strictures: When the FCC acts on the pending petitions asking for reconsideration of the federal designation process, it should also reconsider whether the new minimum service standards it adopted for both voice and broadband Lifeline providers make sense.

The minimum standards establishing requisite levels of service may well be overly stringent, thereby rendering them inconsistent with the goal of providing Lifeline on an affordable basis. The Lifeline monthly benefit remains \$9.25, but the minimum service requirements may have the effect of driving the cost of providing the service well above the benefit level.

That, too, is inconsistent with the goal of maintaining a properly structured Lifeline program that furthers the goal of closing the digital divide for low-income persons.

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