



GEORGETOWN LAW

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Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: *Lifeline and Link Up Reform and Modernization, Telecommunications
Carriers Eligible for Universal Service Support, Connect America Fund*

Dear Ms. Dortch:

Thank you very much for the opportunity to comment on the Commission's initiatives to modernize the vitally important Lifeline Program and related efforts to promote broader access to telecommunications.

I. The Expansion to Broadband

The availability of life-line cellular telephone service is extremely important to low-income people for many reasons, most of which I assume other commentators have addressed. Today, however, telephone access is clearly insufficient. As more and more governmental, economic, and social actors convert to using the internet as their primary interface with the public, low-income people with only telephone service will be increasingly marginalized. Some services and opportunities will be completely unavailable to them. Others will be available only in inferior forms. And still others will be available to telephone users only late, putting them at a crucial competitive disadvantage with others seeking the same opportunities. In this way, telecommunications will play an important part in ensuring that the poor get poorer. Moreover, even when an entity does provide a telephone alternative to web access, that alternative is commonly inefficient, requiring low-income individuals to spend large amounts of their own scarce time, and quite possibly to exhaust their allotment of Lifeline telephone minutes, to obtain what those with broadband access can obtain in a few clicks.

I would like to focus on two important ways in which expanding Lifeline service to broadband would complement and advance other important federal policies. First, it would support the on-going effort to promote work, rather than public assistance, as the primary means of support for low-income people. And second, it would facilitate sweeping changes in the way federal anti-poverty programs, such as SNAP, Medicaid, and the new health care subsidies under

the Patient Protection and Affordable Care Act (PPACA, commonly known as health care reform) are being administered.

A. Promoting Employment among Low-Income People

The central theme of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law No. 104-193, was moving low-income people from reliance on cash welfare payments to greater self-sufficiency in the workplace. This theme had been echoed in previous legislation, including the Family Support Act of 1988, Public Law No. 100-485, and in numerous rules and other executive actions. Congress sought to accelerate this movement in the Deficit Reduction Act of 2005, Public Law No. 109-171, by increasing pressure on states to reduce their cash assistance roles and to require work from the remaining recipients. The current Administration has launched several initiatives to promote employment by low-income people. As a result of PRWORA and state policies, the availability of cash assistance has been sharply curtailed with short time limits and other policies. As a result, the families of low-skilled workers who are unable to secure employment often lack any alternative source of income and face severe hardship.

The movement of low-income families from welfare to work has faced several widely acknowledged obstacles. One of these is employers' reluctance to provide benefits to relatively unskilled and inexperienced workers, including many of those that had received welfare until recently. Thus, employers offer far less than full-time work to many low-income workers. As the low-skilled labor market comes increasingly to be dominated by contingent employment, this pattern is likely to become increasingly pronounced. Because many of these jobs offer wages at or near the federal minimum wage, bread-winners must work multiple part-time jobs to support their families even at a bare subsistence level. Coordinating their schedules on these various jobs traditionally and still to this day requires frequent telephone calls. The inability to receive timely a call from an employer can mean the loss of an opportunity to work a shift that has become available, potentially costing a low-income family a significant fraction of its weekly income. Absent Lifeline telephone service, many low-income people will be forced to depend on phones with expensive purchased minutes, supplemented by getting messages left on the phones of friends with land-lines or less limited cellphones. The time required to retrieve and act on these messages may be crucial, causing employers to offer work to other employees. In addition, low-skilled workers often are caught between one employer, who wants them to stay and work overtime, and another, who expects them to arrive for work after the worker's regular shift at the first job ended. Balancing the two employers, both of which are indispensable to the family's economic stability, often requires considerable back-and-forth negotiation or calls to other employees to secure last-minute replacements. Arrangements depending on friends' telephones are particularly unlikely to suffice to make these accommodations when the workers are already on the job site.

Today, however, work scheduling is increasingly handled on-line. An employer posts on the company website the shifts that are available (or emails its employees with similar informa-

tion) and allows workers to claim those shifts that appeal to them. Low-wage workers juggling multiple jobs, long commutes, and tenuous child care arrangements are likely to have little flexibility as to which shifts they can manage. If they lack ready access to broadband, they may be unable to claim those shifts that are viable for them and as a result get few or no shifts at all. Even if they have access to broadband through a library or a friend, their inability to learn about shifts as soon as they become available may be decisive. Worse, after several weeks of being able to claim few if any shifts, their employer may come to regard them as expendable.

Another obstacle to employment is the difficulty low-skilled workers have in finding any employment at all. Although the economy has improved considerably over the past few years, unemployment remains persistently high for lower-skilled workers as better-skilled and more experienced workers out-compete them for low-skilled jobs. Even in better times, however, economists and sociologists have documented a huge imbalance between the number of people seeking low-skilled employment and the number of positions available. For example, at the height of the economic boom of the 1990s, Harvard Professor Katherine Newman found that each unskilled job opening in Harlem typically resulted in a deluge of eager, even frantic, applicants. Katherine S. Newman, *No Shame in My Game: The Working Poor in the Inner City* (Knopf 1999). In this intensely competitive job market, with little to differentiate themselves from other applicants, low-skilled workers must depend on their responsiveness both to impress prospective employers and to seize opportunities for interviews that may be offered at the last minute. If forced to rely on messages left with friends or emails sent to accounts that they can only access when they can visit a public library or a friend with broadband, many low-skilled workers will be unable to respond quickly enough to secure scarce interview slots.

In addition, research suggests that employers are leery of hiring people who seem too impoverished, even for low-skilled jobs. Apparently many consciously or unconsciously equate poverty with sloppiness. Programs providing interview clothes and cosmetic dental work to low-income people seeking employment have proven impressive successes. Not having one's own telephone clearly marks someone as extremely poor and is likely to make her or him unattractive to the employers she or he vitally needs. And today, lacking routine access to email is so far outside the norm that it suggests either an extremely impoverished job candidate or one with exceptionally limited technical skills, both of which will be unattractive to employers.

More broadly, the entire process of obtaining employment is rapidly transforming. When the federal government insisted on electronic applications in the wake of the anthrax attacks, it was widely regarded as strange, and it befouled many agencies' efforts to fill positions. Today, electronic-only application requirements are ubiquitous. Low-income people without broadband access thus are likely to be excluded from a substantial fraction of available openings. Even if they can obtain temporary access to broadband through a library or a friend, they are unlikely to be able to respond to questions and offers of interviews rapidly enough to be competitive.

Indeed, for low-skilled workers, obtaining employment has long depended on applying to a large number of positions: their skills prevent them from differentiating themselves from other

candidates so they must hope to be the candidate whose application just came in when a vacancy occurs. For many years, the limiting factors on such applications were time and transportation: literally, how much could they pound the pavement. Today, technology allows low-skilled workers to send out many more job applications *if* they have reliable access to broadband. Those that do not will be at an increasingly large disadvantage, much like workers of yesteryear who lacked transportation to many prospective employers' places of business.

Recognizing this reality, an increasing number of states are requiring applicants for and recipients of public benefits to conduct on-line job searches. Lack of familiarity with the internet and lack of access to broadband is causing many to fail at these job searches and suffer sanctions despite a strong eagerness to find employment. Expanding Lifeline to broadband will both directly facilitate these job searches and will allow low-income workers to develop the facility with broadband to comply with these and other web-dependent program requirements.

Upon low-skilled workers' obtaining employment, retaining work is often a major challenge. Knowing that a large pool of similarly-skilled workers is available, many employers are quick to fire workers for absenteeism or tardiness. Yet dependence on public transit systems prone to delays and on chaotic child care arrangements make perfect punctuality and attendance impossible. Having a mobile telephone with which to call the employer as soon as a delay or absence becomes probable may moderate the employer's irritation and make the worker appear concerned and conscientious. In addition, workers without their own telephones, or with exhausted minutes, may need to borrow their employers' telephone or those of co-workers to communicate with child care providers, car pools, and the like. This need to borrow is much greater now that pay telephones have largely disappeared from most public spaces. Even if this is done with permission, it may cause irritation and make the worker seem unprofessional or uncommitted to the workplace. This can place the worker first in line for lay-offs and last in line for promotions despite solid and diligent work.

Here again, workplace standards are shifting to require broadband access. Instead of calling in, the worker with the child care crisis or public transit meltdown

Finally, the lack of reliable, affordable child care is a persistent barrier to employment for low-income people. Federal and state subsidy programs have funding to serve only a small fraction of those in need. At best, they may cover the first few months that a former welfare recipient is in the work force, terminating benefits while the new worker is still making much less than the federal poverty level. Many states have closed the waiting lists for these programs because the wait is so long that the children of people signing up today would no longer need care by the time they cleared the list. Even when subsidies are available, states seeking to stretch their funds to serve more people often provide extremely parsimonious subsidies. Purchasing child care with inadequate or no subsidies forces low-income workers to make difficult compromises. Child care centers, even bad ones, often are unaffordable. The result is a resort to various informal care arrangements, typically neighbors who take in several children each day. Because these providers are so poorly compensated, and are not professionals, they commonly are unwilling to

tolerate sick children or children who are acting out on a particular day. They expect to be able to call the parent and demand that she or he pick up the child in short order. Without lifeline telephone service, many low-wage workers cannot assure prospective child care providers that they will be responsive in this way and may be unable to secure care. In addition, when their child's health is borderline, they may have to stay home from work, and miss crucial hours of employment; with a telephone, they could go to work planning to leave early to retrieve the child if her or his condition worsens. Even more importantly, family day-care providers often are unable to take an injured or seriously ill child to the doctor because they lack anyone to watch the other children in their care. Without reliable telephone service, the parent may be unaware of their child's need for medical attention, delaying care for hours. The frustration of having a sick or injured child but being unable to reach the parent could prompt the provider to terminate services to the parent. Loss of child care arrangements is one of the leading causes of loss of employment in the low-wage workforce.

B. Facilitating Changes in the Administration of Anti-Poverty Programs

For most of their histories, administration of anti-poverty programs in this country centered on a social worker or eligibility worker based in a welfare office. Although the role of the eligibility worker changed significantly over time – at some times providing wide-ranging interventions into applicants' and recipients' lives, at other times functioning more as an auditor – the assigned eligibility worker remained the fulcrum of program administration across the decades. To obtain benefits, to report changes in their status, or to comply with periodic eligibility review requirements, a low-income individual or family would go to the welfare office, meet with their assigned eligibility worker, fill out application and review forms, and provide that eligibility worker with documentation of their income, living expenses, and other relevant circumstances.

That model of program administration is rapidly disappearing. It began to erode as the appearance of new technology enticed some adventurous states to seek greater efficiencies through automated administration. To avoid payment errors that result from over-worked eligibility workers neglecting to act timely on information recipients had provided, states established centralized call centers to take recipients' reports of their changes. To make better use of staff in smaller, rural offices with relatively modest caseloads, states are adopting "statewide caseloads" under which case records are electronic and work is routed to any available eligibility worker, regardless of where in the state she or he may be based. These eligibility workers depend on telephone contacts with applicants and recipients to resolve questions about the case; applicants and recipients can no longer visit an eligibility workers in person because the person handling their case may be on the other side of the state. An increasing number of states, led by Florida and Texas, have closed many of their local human services offices and have adopted business models that discourage or disallow direct, in-person contact with eligibility workers even when an applicant or recipient journeys to one of the few offices that do remain. These states handle most or all eligibility determination functions through call centers in which whoever answers the telephone has access to the records for the applicant or recipient and can make changes as indi-

cated. USDA has promoted reliance on these call centers in SNAP and has funded state exchanges to share ideas about best practices for expanding their roles in program administration.

Both to avoid making applicants and recipients miss time from their jobs and to more efficiently use agency staff, many states now are relying almost entirely upon telephone interviews to establish the eligibility of applicants and recipients. These often are scheduled very approximately, requiring the applicant or recipient to sit by the telephone for an hour or more to await a call. If the line is busy or does not answer when the state agency calls, the low-income household's benefits may be denied for failure to submit to the interview. *See, e.g.*, 7 C.F.R. § 273.2(e) (mandating interviews for SNAP). Public pay telephones – even if the recipient can find one and it accepts incoming calls – or friends' telephones are not practical for these purposes. With many more low-income people working, and many of their employers unwilling to allow them to conduct personal business on company time, applicants and recipients often need to reach public agencies to change the required interview to a time when the applicant or recipient is not scheduled to work.

States also are relying increasingly on on-line applications for benefits and on-line systems for recipients seeking renewal of their benefits at the end of certification periods. USDA has promoted these systems in SNAP; the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services anticipates relying almost entirely on web portals to administer the health insurance subsidies under the Patient Protection and Affordable Care Act ("health care reform") as well as the continuing Medicaid and Children's Health Insurance Program (CHIP) that will complement those premium subsidies. Many low-income people who need and qualify for benefits, however, either lack access to computers and the internet or lack the skills to navigate an on-line application. Others may be unable to navigate on-line systems because of physical disabilities (such as vision impairments or lack of manual dexterity) or mental or intellectual disabilities. Applicants and recipients may rely upon telephones to learn where they may obtain public access to the internet, to obtain guidance in navigating on-line applications or interpreting difficult terms in those applications, and to obtain paper copies of applications if they cannot, for whatever reason, apply or renew their eligibility on-line. When Georgia recently required all SNAP recipients to renew their eligibility on-line, with only its call center permitted to distribute paper renewal applications, large numbers of households were unable to reach the call center in time to get paper forms and were cut off from benefits. *See Alexis Stevens & Joel Anderson, Hundreds lose food stamps with no warning, Atlanta Journal-Constitution, Oct. 13, 2011; <http://www.ajc.com/news/cobb/hundreds-lose-food-stamps-1200370.html>.* For persons with disabilities, the availability of paper applications were the accommodations required under the Americans with Disabilities Act and section 504 of the Rehabilitation Act, 29 U.S.C. § 794. The lack of sufficient telephone service effectively means that some of these people with disabilities cannot receive the accommodation to which federal law and regulations entitle them.

The increased emphasis on work requirements in TANF, SNAP, and other programs serving low-income people requires applicants and recipients to be able to receive communica-

tions about meetings, trainings, interviews, and work assignments on short notice; if the state agency or its contractor sends written notification at all, that notice often arrives after the date of the required activity. Failure to attend those activities can result in sanctions for the low-income people, often including the termination of assistance to all members of the family.

Applicants and recipients that cannot readily receive and respond to these various kinds of inquiries, and who cannot effectively call administering agencies when experiencing difficulties with their benefits, will be at a serious disadvantage. Automated systems are programmed to close applications after ten days from when a request for documentation is made, but applicants can avoid this if they can reach an eligibility worker and explain their inability to produce what was requested. *See, e.g.*, 7 C.F.R. § 273.2(d)(1), (f)(5). Automated systems also terminate low-income households' benefits under SNAP and some other programs at the end of the pre-determined "certification period" unless the household has successfully completed the recertification process. *See, e.g.*, 7 U.S.C. § 2020(e)(4) (requiring new determinations of eligibility for SNAP households that have reached the end of their certification periods). Households that do not timely report changes in circumstances may face prosecution or administrative disqualification for fraud. *See, e.g.*, 7 U.S.C. § 2015(b) (SNAP). For the many low-income people receiving subsistence benefits precisely because their illiteracy or marginally literacy prevents them from holding jobs that pay well, submission of written reports is not a viable option. The ability to report by telephone is vital to the household's continued eligibility, to the state's keeping its error rate down (*see* 7 U.S.C. § 2025(c) (imposing fiscal penalties on states with high SNAP error rates)), and to the federal priority of ensuring accurate targeting of benefits to those eligible.

Here again, the disappearance of public pay telephones deprives low-income people of the fall-back communications strategy on which prior generations relied. Federal regulations historically have required state agencies administering federal public benefit programs to provide toll-free numbers that applicants and recipients may call for various purposes. *See, e.g.*, 7 C.F.R. § 273.13(a)(2) (SNAP notices). These regulations have limited value now for households dependent on cellular telephones, who use up minutes even when calling these numbers. In practice, even basic communication functions – reporting changes in circumstances, requesting application forms, arranging application interviews, and the like – are likely to require large numbers of minutes because many states' call centers have grossly insufficient numbers of lines and eligibility workers to cope with the volume of transactions assigned to them. This is particularly true at the beginning of months, when recipients whose benefits were suspended or terminated for that month call to try to learn the reason and correct the situation. But even at other times of the month, getting through to call centers can be extremely difficult. The continuing weak economy and rising numbers of people in poverty have contributed to swelling demand for Medicaid, SNAP, and other basic public benefit programs. Participation in SNAP is now well over twice the level of the late 1990s. The same weakness in the economy, however, has reduced state revenues and forced broad cuts in public services and workforces. As a result, states have shrunk or, at best, frozen the staffing and number of lines at their call centers and remaining local human services offices just at the time demand is rising. The result is long waiting times – in some states routinely exceeding one hour – and telephone systems that lack the capacity even to put

many callers on hold, requiring numerous call backs. The attached log documents the efforts of an advocate in Florida to reach that state's call center with a Medicaid concern: after more than one hundred calls from the 12th to the 27th of last month, the advocate was unable to reach a state employee on the Department of Children and Families' line. The calls required in this unsuccessful effort – to say nothing of the additional calls needed actually to get through – would exhaust many low-income people's monthly cellphone minutes and the willingness of their friends to allow them to borrow a telephone. Reports from other states suggest that this experience is sadly all too typical.

One central requirement of public benefit programs is that they make "fair hearings" available to applicants and recipients who disagree with actions affecting their access to benefits. In *Goldberg v. Kelly*, 397 U.S. 254 (1970), the U.S. Supreme Court held that such pre-deprivation hearings were constitutionally required under the Due Process Clauses of the Fifth and Fourteenth Amendments. Congress repeatedly has endorsed this requirement as well. *See, e.g.*, 7 U.S.C. § 2020(e)(10) (SNAP); 42 U.S.C. § 1396a(a)(4) (Medicaid). Although fair hearings traditionally were held in conference rooms in local welfare offices by traveling hearing officers, new technology and budgetary pressures driving states to want to stop paying for employee travel have caused states to rely increasingly on telephonic hearings. Some states' unemployment compensation systems now conduct almost all of their hearings by telephone; state TANF, SNAP, and Medicaid programs are moving in that direction as well. Simple hearings commonly last thirty minutes; those addressing more complicated issues can take much longer. Moreover, even where the actual hearing is still conducted in person, many states rely primarily on telephone systems for applicants and recipients to request hearings; these systems may have extensive waiting times. Many low-income people will be unable to afford sufficient minutes on either a cellular telephone or a pay telephone (if they can find one) to request a hearing, much less to participate in one once it has been scheduled. Thus, applicants and recipients lacking lifeline telephone service with sufficient minutes will be unable to exercise the due process rights they formally possess in public benefit programs.

A related set of federal policies relate to the upbringing of children whose parents have separated or divorced. The traditional arrangement in these cases was to assign sole custody to the mother and to pursue the father for child support. Increasingly, however, federal policy has sought to maintain both parents' involvement with their children. This reflects, in part, the experience that non-custodial parents involved in the lives of their children are far more reliable payors of child support than those whose only relationship with their children is check-writing. It also reflects child development research showing better outcomes – better performance in school, less risk-taking and anti-social behavior, etc. – when the non-custodial parent actively engages in the child's life as a mentor and part-time care-giver.

This requires the primary custodial parent to interact far more extensively with her or his ex-partner to arrange the transfer of the child for visitation. Failure to do so can be detrimental to the child, can jeopardize child support payments on which the custodial parent depends to provide for the child, can violate court orders on visitation and shared custody, and can put the low-

income parent at risk of losing custody of the child, a devastating, heart-breaking event. Yet a low-income custodial parent without a cellular telephone, or whose minutes have expired, is unlikely to be able to meet the demands of this coordination and avoid potentially disruptive failures. With both parents often working, and with low-income parents often relying on undependable public transportation or working at jobs where they cannot refuse unscheduled overtime, the ability to communicate about changes in plans at the last minute is vital. Access to a cellular telephone can prevent a child from being stranded when her or his parents fail to communicate and can avoid a costly and disruptive court hearing to revisit custody and support arrangements.

II. Improving Program Design

Lifeline is already an excellent program, serving important, vital needs. It does, however, need to improve in important ways if it is to meet the challenge of broadband.

A. Personalizing the Benefit

Lifeline's rule allocating only one subsidy to each household made perfect sense in its original form as a subsidy for home landline service. That structure made little sense when it moved to wireless and even less in broadband. Most obviously, one important communication need families have is knowing where their children are after school, especially when the parent is at work or in transit. Such call-ins are impossible if only one – parent or child – can have a telephone.

Providing one Lifeline subsidy to each household member over a certain age also would more equitably address the homework gap. If three or four children have to share a single Lifeline plan, they are unlikely to be able to complete their homework assignments as well as a single child with the Lifeline benefit largely to her or himself. In addition, households with two working parents will not both be able to negotiate workplace communications if only one can have a telephone. And mobile handsets may not be the ideal devices for making job applications or doing homework assignments.

The Commission seeks comments on how to identify families in which children may have homework needs. In so doing, it refers to its use of data on eligibility for free and reduced-price school meals in setting the discount rate in the E-rate program for schools. The Commission should be aware that that data source is in the process of disappearing from a significant number of schools in the lowest-income areas of the country. Under the Community Eligibility option that Congress adopted in its last child nutrition reauthorization, schools with high rates of eligibility for free and reduced-price school meals may cease collecting applications each year and instead serve meals free to all students (receiving a blended rate from USDA reflecting the share of low-income children in the last year before it adopted the option). The Commission should consider how it will adapt its E-rate eligibility formula for the take-up of Community Eligibility. Basing eligibility on the percentage of low-income children during the most recent year in which the school did collect applications seems a sensible approach.

B. Providing Meaningful Access to Broadband

Lifeline is a model of technology-forcing program design. It has driven telecommunications companies to develop valuable products for low-income consumers that have meaningfully expanded connectedness. The expansion to broadband can have a similar effect if the amount of the benefit is sufficient. I lack the data to estimate what that is, but it likely is substantially above the current level. The Commission could establish benchmarks for service quality and quantity that must be met to entitle providers to receive the higher level.

C. Service Standards and Promoting Competition

The Commission's statement expresses dismay that the level of service providers have offered Lifeline recipients has stagnated at a time when service has improved for more affluent consumers. I lack access to sufficient data about telecommunications providers' costs to know if this is, indeed, a sign of a problem. I note that the Lifeline benefit is likely to depend much more on providers' marginal costs than the benefits provided to more affluent consumers and thus may not respond to similar market changes. I also note that increased competition in the higher-income market for services has often resulted in *reduced* opportunities for low-income people. For example, as health insurers and managed care plans exerted competitive pressure on health care providers, the amount of charity care provided to low-income people declined sharply. Similarly, as the wholesale food industry became more competitive, amounts donated to food banks declined precipitously.

Competition at the consumer level may not hold as many benefits as the Commission may imagine when low-income people are involved. Low-income people may lack the information and access to identify superior offerings and to make the switch. The immediate pressures low-income people face as they seek to pay the rent, obtain enough food, and juggle work, job search, child care, and other responsibilities often leave them little time to function as demanding consumers. In addition, more differentiation in the amounts of services provided might not be transparent to low-income consumers as to which is superior (*e.g.*, how should one balance gigs of data against minutes of air time?).

Some public benefit programs have achieved significant savings by requiring competitive bidding at the program level. Medicaid has obtained substantial discounts on pharmaceuticals in this manner and has sometimes reduced its managed care costs as well. Perhaps the most successful example of this is the requirement that infant formula companies bid for the opportunity to supply the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). At times, twenty percent or more of WIC recipients were being served with the savings achieved through competitive bidding. The amount of these savings have been particularly high because the infant formula market has such a high degree of concentration, but perhaps some competition could achieve meaningful savings to benefit Lifeline.

The goal should not be to achieve a single provider or even necessarily to reduce the number of providers. Because effective participation in Lifeline requires a provider to have a network of employees or contractors to interact with potential recipients, market entry and re-entry will not be trouble-free. Experience from Medicaid managed care also shows that when a provider is terminated, some fraction of its customers do not quickly migrate to others. Instead, the goal of competitive bidding should be to force providers offering the program a particularly low level of service to come up to the general standard or exit the program.

Any standards or competitive bidding also are likely to work better if the Commission unbundled at least partially the services it is purchasing through Lifeline. At present, the \$9.25 covers both monthly service and, in effect, application assistance and handsets. Continuing to have providers supply application assistance likely makes sense, but mixing the one-time expense of a handset and the on-going cost of service is likely to distort prices. Providers who expect many recipients to switch frequently because they are in a competitive market ironically could offer inferior monthly service because they must recover the cost of handsets over a lower number of months than providers expecting to keep the same customers for a year or more.

I note in passing that borrowing the Electronic Benefit Transfer (EBT) technology of SNAP and other programs is unlikely to be of much help here. True, EBT allows SNAP recipients to spend their benefit at any authorized food store they choose. But SNAP benefits generally can only be transacted in person: when the recipient is at a food store, able to pick up the food. By contrast, Lifeline benefits generally require no physical contact with providers once the recipient has obtained a handset. What function an EBT card would serve in this context is unclear. Perhaps mobility among providers might be served by giving each recipient a unique authorization code that could be provided to a new provider if she or he decided to switch. But because the recipient's identity would require verification in any event, the same function likely could be accomplished by the duplicates database without the additional administrative effort of creating authorization codes (which no doubt many recipients would lose or misplace).

D. Indexing the Benefit Amount

Although the nominal Lifeline benefit has been fixed at \$9.25 per month for several years, the real value of that benefit has declined each year due to the effects of inflation. With inflation quite low in recent years, this may not seem an important factor. Some telecommunications services, too, may be declining in cost at the moment. Over time, however, costs are likely to rise, perhaps substantially, and a benefit that is frozen in nominal terms will not be able to support a useful benefit.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) is widely regarded as the most dramatic transformation of cash assistance in this country since the New Deal. A strong argument could be made, however, that the failure of benefit levels in Aid to Families with Dependent Children (AFDC) to keep up with inflation in the preceding decades worked an even more dramatic transformation of the program, largely

removing the working poor from the program and preventing it from achieving its stated goals of assuring a minimally adequate environment for raising children who have been deprived of parental support and care.

Similarly, if the Commission's permanent standard for the Lifeline benefit level does not include an automatic adjustment for inflation, the Lifeline program will be incrementally transformed over time into something that the Commission would never embrace deliberately. Many of the important aspirations of the current rule-making could be placed out of reach by a benefit whose purchasing power has eroded past the point of being able to support those functions. The isolation of low-income people that Lifeline sought to eliminate will gradually reassert itself.

The Commission should not assume that it can address inflation adjustments in the future through further orders. First, those demand considerable effort and administrative exertion by a Commission with many other pressing matters on its agenda. Second, because the loss of purchasing power in any particular year will be relatively modest, updating the benefit level is likely not to seem a high priority. Finally, and most simply, unless the Commission actively favors a steadily declining benefit over time, it should not postpone making a simple allowance for inflation to prevent that from occurring. President Reagan correctly concluded that Congress could not be counted upon to make inflation adjustments to the formulas by which income taxes are computed and insisted that they be indexed automatically. PRWORA removed some of the inflation adjustments in the SNAP benefit calculation formula, but Congress fairly quickly recognized the undesirable consequences and restored the major adjustments on a bipartisan basis. The Commission should learn from these examples and index the basic benefit amount.

E. Expanding the Base for the Universal Service Fund

Modernization of Lifeline is likely to require additional resources to fund meaningful progress in integrating low-income people into today's communications society. The other functions supported by the Universal Service Fund are also important and worthy. I lack sufficient familiarity with the details of their workings to know whether sensible savings may be extracted from them, but I suspect that any such savings may be insufficient to support the changes required for Lifeline's modernization.

Fortunately, modernization is also possible in the Universal Service Fund's revenue stream. Its surcharge was set at a time when the telecommunications environment was very different than it is today. Many services that were either unknown or relatively unimportant then have large market shares now. The adequate support of the Universal Service Fund, as well as equity among market participants, militates in favor of expanding the range of services drawn on to support the Fund. Many of the activities that previously took place over covered communications systems are now routinely conducted over exempt ones. This proceeding is an appropriate vehicle for eliminating the windfall resulting from those activities' shift in modes.

III. Promoting Program Integrity

Lifeline's continued effectiveness in serving its important mission, and the legitimate expectations of those paying into the Universal Service Fund, both demand effective action to ensure that benefits are going to those in need. The Commission has made extraordinary progress in this regard over a very short time and should be congratulated. Continued vigilance nonetheless is warranted. The Commission should remain alert for opportunities to improve program integrity in ways that do not undermine access for eligible recipients.

A. Assessing Program Integrity Accurately

The Commission's mandate of a duplicates database was a major reform for which it deserves considerable praise. This was a savvy recognition that Lifeline benefits can be additive, like other benefits that increase recipients' purchasing power and largely unlike purely personal benefits such as Medicare and Medicaid. The goal of making one, but only one, telephone available to each eligible recipient is a worthy and important one. Every indication we have is that this database is working well and that it has eliminated the problem of duplicate participation as nearly as can be done in a program of this size. The Commission should make policy going forward based on the strengths and weaknesses of the program today, not based on outdated perceptions from before the duplicates database was implemented.

The Commission should make some provision for determining and reporting Lifeline's error rate on an annual basis. This measure should be modeled as far as possible on the SNAP Quality Control (QC) system, the most sophisticated such measure in public benefit programs. SNAP QC begins with a determination of whether benefits were paid to eligible people in approximately the correct amount; if so, a case is determined correct. Even if some procedural requirements were not fully met, if the result is consistent with the program's goals, calling the case an error is misleading. Second, if the recipient was ineligible or received the wrong benefit amount, QC determines whether either the recipient or the agency providing the benefit violated any program rules. If both parties followed all requirements, a variance that is apparent only in 20-20 hindsight is not counted as an error because, to do so, is effectively to repudiate the program's own rules.

Thus, for example, if a Lifeline benefit is provided to an eligible person who is not simultaneously receiving a duplicate Lifeline benefit, the case should be determined correct. And a Lifeline benefit that is provided to someone who was eligible at the time she or he applied but who since has obtained a somewhat better job should also be categorized as a correct case as program rules do not (and should not) require either applicants or persons certifying their eligibility to anticipate when the applicant's income might rise over the course of a year.

SNAP QC draws a random sample including cases from all states and all months. Because Lifeline provides a far smaller benefit and has far simpler eligibility criteria, a significantly less extensive sampling system and smaller samples would be needed. On the other hand, the sample should include recipients of services from each of the participating telecommunications

providers and from each state. This would allow for both an accurate measure of how the program is doing overall as well as the identification of any defects in the procedures of particular providers or of states providing information on the enrollment status of Lifeline applicants.

B. Measures that Could Improve Program Integrity

1. Adding to the List of Programs Conferring Automatic Eligibility

Both accuracy and efficiency are enhanced when an applicant's or recipient's income eligibility can be determined through her or his participation in another means-tested public benefit program. To this end, the Commission should confer automatic eligibility on as many such programs as is administratively feasible. That said, however, the vast majority of low-income people who receive any of these programs receive at least one of three major programs: Medicaid, SNAP, and Supplemental Security Income (SSI). The Commission should not harbor unrealistic hopes about the number of people brought into the program by allowing other programs to confer automatic eligibility.

The Commission would make a serious mistake to limit applicants' and recipients' ability to qualify based on low incomes alone, without participation in other programs. If it were to impose obstacles on income-based eligibility, the primary losers would be childless adults (who may need Lifeline to help find employment) and elderly and disabled persons with incomes between about 75% and 130% of the federal poverty line (whose incomes exceed the SSI eligibility limits and who have a low participation rate in SNAP). Income eligibility also could be important to low-wage working families that do not get SNAP because they find the administrative burden excessive relative to the benefit they would receive.

A sound system of checking the performance of providers in enrolling persons should eliminate the problems that have been perceived in income-based qualification.

2. Interfaces with State and Federal Program Administrators

The Commission should make concerted efforts to persuade states to provide simple interfaces with which Lifeline can determine the participation status of applicants for and recipients of Lifeline. States may be more willing to cooperate if the Commission establishes a single entity that would use the interface on behalf of the providers rather than having each provider query the database on its own. The Commission also should consider modest allocations to states to support the building and maintenance of such interfaces.

3. Avoiding Additional Complexities

At present, Lifeline effectively has three eligibility criteria: having a low income, not already receiving a Lifeline subsidy, and identity. Each of these requirements has an obvious, essential purpose. The Commission should, however, resist any proposals to add more criteria to

this list. Doing so would increase program complexity, which almost certainly would increase its error rate. Surges in the EITC's error rate, for example, have often resulted from Congress adding unnecessary (even if seemingly attractive) complexities to the program's rules. When tax preparation firms and recipients failed to comprehend these complexities, errors ensued, which gave the public the mistaken impression that the program was fraud-ridden.

4. Ensuring Proper Incentives for Telecommunications Providers

Making eligible low-income people aware of the existence of a means-tested program, explaining application procedures to them, and assisting them in making applications are major administrative challenges for most public benefit programs, consuming many millions of federal and state funds. Programs that lack an infrastructure for performing these functions themselves commonly force recipients to spend substantial shares of their benefits purchasing the services from private providers. (The Earned Income Tax Credit and the Children's Tax Credit are examples of this approach.)

Lifeline has evolved the enviable practice of having these services provided for it by telecommunications without charge either to the program or to recipients. The Commission should recognize the value of these efforts and the likely irreplaceable benefit they confer on the program and its beneficiaries. It should not lightly adopt any reforms that undermine this role.

At the same time, the Commission is quite right to be conscience of the potential conflict of interest these providers. This can be addressed, however, by checking a sample of cases each provider has approved and charging fees to providers with excessive error rates.

C. Problematic Indirect Approaches to Program Integrity

Some indirect approaches to program integrity might, at first blush, seem appealing, either as indications of possible misuse or as changing recipients' incentives. On closer examination, these rules are likely to be ineffective and to undermine Lifeline's core goals.

1. Cost-Sharing

The Commission would be ill-advised to make any changes that would increase the number of low-income households required to contribute their own funds to obtain Lifeline service. The requirement that households purchase their food stamps prior to 1979 severely depressed participation.

Cost-sharing for health care has a significant effect on low-income people. The average low-income insured person spends 17% of her or his income on health costs compared with just 6% for the more affluent. This figure is driven primarily by the feeble coverage private insurance provides to low-income people—leaving them paying an average of 35% of their health costs—but adult Medicaid beneficiaries still pay an average of 12% of their health costs. (These figures

presumably reflect both cost-sharing on covered services and coverage limitations.) SAMANTHA ARTIGA & MOLLY O'MALLEY, KAISER COM'N ON MEDICAID AND THE UNINSURED, INCREASING PREMIUMS AND COST SHARING IN MEDICAID AND SCHIP: RECENT STATE EXPERIENCES (2005).

Demonstration projects suggest that cost-sharing can have a powerful impact on access to care. In 2003, Oregon raised premiums from \$6 to \$20 per person, eliminated hardship waivers for homelessness and other household crises, and locked anyone who did not pay out of coverage for six months. Over the next nine months, the adults' enrollment in the program shrank almost by half. Some 31% of those that disenrolled cited premium costs as their primary reason for leaving. *Id.*

Similarly, when Washington State removed low-income immigrant families from its Medicaid-like program in 2002 and offered them enrollment in a program with premiums, more limited benefits, and more significant co-payments. Less than half made the transition, and most of those that did relied on clinics or community organizations to help with the increased costs. *Id.* In 2002, a \$50 annual fee drove off 27% of enrollees in a Utah program for uninsured adults with incomes below 150% of the poverty line. Some 61% of those leaving became uninsured. *Id.* Vermont's premium increases in several low-income health care programs reduced enrollment by 11%, with between 30% and 69% of disenrollees (depending on program) citing inability to pay the cost as their reason for leaving. *Id.* When Rhode Island in 2002 began charging premiums of \$43 to \$58 per month to families with incomes over 150% of the poverty line, 18% disenrolled. Inability to pay was the most commonly cited reason for leaving, with half of disenrollees becoming uninsured. *Id.* Other states had similar experiences.

HHS researchers recently summarized the evidence as showing that "even nominal increases in medical out-of-pocket costs ... and modest copayments can have the effect of reducing access to necessary medical care. ... The problem is even more pronounced for families living in the deepest levels of poverty, who effectively have no money available to cover out-of-pocket medical expenses including copays for medical visits." OFFICE OF THE ASS'T SEC'Y FOR PLANNING & EVALUATION, HHS, FINANCIAL CONDITION AND HEALTH CARE BURDENS OF PEOPLE IN DEEP POVERTY (2015) http://aspe.hhs.gov/hsp/15/deeppoor/ib_deeppoor.pdf.

Even if requiring recipients to contribute their own funds seems a means of expanding the services provided, the effect of any such mandate is likely to reduce participation radically among the poorest and most isolated potential recipients.

2. Participation Caps

The Commission should resist any proposals to impose artificial caps on program participation. Adopting a fixed budget for the program, particularly one that does not fully accommodate the potential growth over time of Lifeline under the Commission's other initiatives, would have the effect of imposing a cap on participation.

As I demonstrated in my article, *The Political Economy of Entitlement*, 104 COLUM. L. REV. 633 (2004), participation caps are economically inefficient, much the way that rationing distorts otherwise competitive markets. Capping the supply of a benefit at a level lower than the level of demand from eligible claimants creates the equivalent of a market that will not clear. The result is likely to be considerable administrative burden to allocate the insufficient supply, with the possibility of corruption. Without a priority system, a capped program would be subject to considerable criticism. Yet either a priority system or a waiting list would require additional administrative resources that, given the modest amount of the Lifeline benefit, could easily consume more money than the cap itself saves. Merely closing the program when it reaches the cap would discourage potential participants; many likely would not return when the program reopened, not understanding the temporary nature of the closure or consumed with other crises.

A clear illustration of the problems resulting from imposing a cap on a program at the same time its substantive rules are being overhauled is the Food Stamp Act of 1977. The Act eliminated the cost-sharing requirement of the prior statute, allowing households to receive the net amount of their food subsidy without committing their own funds to purchase food stamps. Congress expected this would increase participation and budgeted accordingly when it imposed a cap on the reformed program. The surge of low-income households, especially working poor families, flocking to the program when cost-sharing ended caused a far sharper increase in participation than expected. As a result, and because the economy fell into a severe recession, the program repeatedly threatened to exceed its cap. This forced the Carter and Reagan Administrations to return to Congress several times to raise the cap. No one had any sound rationale for enforcing the cap – the additional households coming to the program were eligible and in genuine need – so the cap increases passed on a bipartisan basis. The net result was a great deal of wasted effort, both in Washington and across the country as administrators were obliged to prepare to implement contingency plans that nobody believed made any sense.

The Commission similarly has no way to be sure of the precision of its estimates of the effect of expanding Lifeline to broadband and the other changes it is making. Capping the program's budget now would bear a high risk of trapping the Commission in the same sort of unpleasant choices that the Food Stamp Program endured in the late 1970s and early 1980s. If spending under the Commission's reforms exceeds projections, the Commission can and should examine the causes. If it identifies abuses, the Commission should take targeted action to shut those abuses down. (A cap would not do this: in this scenario, eligible, needy applicants would suffer rather than whomever is causing the problem.) If, on the other hand, the Commission finds that its reforms are improving coverage among eligible recipients more than it had hoped, it should celebrate that success.

The Commission also should recognize that the full impact of its Lifeline modernization initiatives are unlikely to be seen for several years. The Congressional Budget Office typically assumes that any expansion of SNAP eligibility will phase-in over four years even if the statute makes it effective immediately. This reflects the time required for newly eligible people to learn of the changes and to decide to apply. A significant change in the Lifeline benefit, such as ex-

pansion to broadband, is unlikely to be appreciated by eligible low-income people all at once. In addition, some who are interested in the abstract may postpone applying until they become more web-literate. And if the Commission changes the application and certification processes, the possibility of transitional glitches may mask the true effects of the Commission's substantive reforms for two or more years.

The Commission also should recognize that means-tested programs like SNAP and Lifeline respond significantly to the business cycle. A strong improvement in the economy will reduce the number of people qualifying for Lifeline and hence reduce program costs; an economic slump will swell the number of eligible persons in need of service. Recognizing this reality, neither the Congressional Budget Office nor the Office of Management and Budget purport to achieve year-by-year precision in their estimates of spending in SNAP and other means-tested programs. Instead, they deliberately assume medium economic conditions – neither recession nor boom – in the out-years for their spending baselines. Their estimates are consistently high during strong expansions but low during recessions, with the aggregate result over several years that they are about right. Neither they nor the Congress and President they serve regard the estimates' failure to achieve year-by-year precision as a problem at all. Yet fixed annual caps would require the Commission to do just what CBO and OMB recognize cannot be done: anticipate how economic conditions will affect participation.

Adopting a fixed spending allocation for administrative functions, such as a particular bureau at the Commission, often makes sense because the agency controls the choices that drive costs. If the bureau's output is unsatisfactory, the Commission can decide between raising that budget and making do with what the current staff is producing. A fixed budget for a public benefit program, however, is very different because economic forces and the choices of individuals to apply are the crucial variables affecting costs and are not within the Commission's control. A cap on participation will complicate administration and disrupt achievement of the Commission's goals.

If successful implementation results in greater expenses than the Universal Service Fund can sustain, the Commission can initiate a new rule-making to make reductions in Lifeline or other programs supported by the fund, can increase the amount of the fund, or both. But such reductions should be thoughtful and policy-driven, not random and mindless as the result of any cap would be. This is the same approach Congress has taken to unanticipated or unwelcome increases in spending in SNAP, Medicaid, and other programs that, like Lifeline, meet basic needs. But no reasonable person would assert that the most recent Lifeline applicant's needs are necessarily the lowest priority for the program's resources and should bear the brunt of any funding shortfall. A cap is one of the least targeted, the least intelligent, responses to budgetary concerns.

3. Utilization Standards

The Commission should be extremely hesitant to set any rules that attach consequences to either high or low utilization of Lifeline benefits and related services. The circumstances and


capabilities of the low-income people qualifying for Lifeline are simply too varied to allow reliably accurate conclusions to be drawn. A recipient who uses up her or his Lifeline benefit quickly in a month may have faced special demands – a job search, a research paper for school, a medical problem – or may have been struggling to learn how to use the equipment or broadband. Should the recipient purchase additional service, that is no indication that she or he would have been able to have purchased the initial Lifeline allotment. Most simply, many users have difficulty gauging how rapidly they are exhausting their benefit, especially when more than one person may have access to that benefit.

Conversely, the Commission should not assume that a recipient who uses little or none of her or his Lifeline benefit is no longer in need. Some low-income people, knowing that they lack the funds to purchase additional service, may take an extremely conservative approach to their allocation to make sure it is available should an emergency arise. This kind of caution may seem extreme and irrational to a middle-income person who can afford, if necessary, to purchase more service, but for those as impoverished as many Lifeline recipients such purchases, even in an emergency, may not be possible. In addition to being partially or wholly illiterate, some Lifeline recipients also are partially or wholly innumerate and thus may have difficulty tracking their usage. For them, too, an extremely conservative approach to usage may seem the most prudent. Some also may rely on word-of-mouth that Lifeline is for emergencies and believe it improper or even dishonest to use it for non-emergency purposes. Finally, some recipients may sign up for Lifeline in anticipation of learning how to use the internet but face delays in obtaining that training (or in feeling sufficiently comfortable to start putting it to use).

When eligible recipients fail to use their Lifeline benefit, it is entirely appropriate for someone to reach out to them to ensure that they understand how the program works and to offer training in the use of the benefit if needed. (In the current administrative structure, it is unclear who might provide such outreach or training, but perhaps some states might be willing to assume that responsibility.) But no action should be taken to cancel or curtail the individual's benefits. Signing up for Lifeline may be a first, uneasy step towards greater connectedness for an individual who has lacked previous access to the internet; many such uncertain recipients would regard the cancellation of their service as a result of non-use as a failure and a sign that they should abandon the effort. That would be most unfortunate.

Thank you very much for the opportunity to submit these comments.

Sincerely yours,



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