

June 11, 2015

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

**Re: Ex Parte Communication in *In re Lifeline and Link Up Reform and Modernization*,
WC Docket Nos. 11-42, 03-109 and 09-197**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the undersigned hereby provides notice that on June 11, 2015, Adam Shoemaker and I of Davis Wright Tremaine, LLP met, on behalf of Nexus Communications, Inc., with Travis Litman of Commissioner Rosenworcel's Office.

In our meeting, we explained that much of the criticism of the Lifeline program cannot be supported by the evidence, which shows that the program is decreasing in size and has an extraordinarily low rate of erroneous payments under the federal government's own IPERA standard. We also shared some suggestions for the future of the Lifeline program, including supporting broadband services and creating a national eligibility database based on the Supplemental Nutrition Assistance Program. I presented the attached slides during the meeting.

We also discussed ways to promote ETCs' access to state-run databases that contain information about participants in the Supplemental Nutrition Assistance Program ("SNAP"). TracFone reported recently that it has negotiated database access arrangements in 23 states.¹ This shows that eligibility determination through existing state databases queries is a viable solution, one that would not lead to increased costs for the Commission and would provide Lifeline ETCs with instantaneous eligibility determinations. There are several ways that the Commission could facilitate such arrangements. The best option would be for the Commission to negotiate with states for bulk database access usable by all ETCs. The states would likely be more responsive to a request from the Commission than from many individual ETCs. In the alternative, the Commission could develop a standardized form that ETCs could use to request SNAP database access from states, and the Commission encourage the states to provide ETCs

¹ See Letter from Mitchell F. Brecher, Greenberg Traurig, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Dkt. No. 11-42, attachment at 4 (filed June 5, 2015).

access. The Commission could assist in this process by leading a workshop to educate the state SNAP administrators and ETCs about the process of gaining access.

In our meeting with Mr. Litman, we also discussed Nexus' belief that the Lifeline industry needs clear guidance regarding the rules governing the sale of Lifeline ETCs, either through transfers of control or asset acquisitions. As it stands now, the only Commission-level guidance that has been provided is footnote 1,000 in the 2012 Lifeline Reform Order, which states (emphasis added):

In the event there is a change in *ownership control* of an existing Lifeline-only ETC that received forbearance of the facilities-based requirement, *designated prior to December 29, 2011*, and that Lifeline-only ETC is acquired *by a telecommunications carrier* that does not meet the definition of a facilities-based carrier under section 214(e)(1)(A), the controlling carrier may not rely on the existing Lifeline-only ETC's compliance plan and must submit a compliance plan for Bureau approval as detailed in paragraph 379 [of the 2012 Lifeline Reform Order] before receiving reimbursement from the program.

The scope of this guidance is limited to (i) changes in ownership (i.e., "ownership control,") (ii) of a carrier that was designated an ETC prior to December 29, 2011, and most importantly, (iii) transactions where the buyer is another telecommunications carrier. It does not—by its own terms—apply to acquisitions by entities or persons that are not themselves telecommunications carriers.

Despite the limited scope of footnote 1,000, the Wireline Competition Bureau released a Public Notice in 2014 which asserted that Commission approval is required in advance of "any" transfer of ownership or control of an ETC with an approved Lifeline compliance plan, citing footnote 1,000 as its authority. The Public Notice also seems to indicate that any buyer to which control of an ETC would be transferred must have its own approved compliance plan.

This is illogical. When control of a Lifeline ETC is transferred, the company will continue to exist and continue to be subject to the terms of its compliance plan. In this situation, it may be prudent to ask the buyer to commit that the ETC will continue to honor the terms of its compliance plan under the new ownership. There is, however, no reason that the new owner should itself be required to obtain its own, additional compliance plan approval. First, the owner may be an entity that is not itself in the business of providing telecommunications services, in which case the compliance plan requirement is not applicable. Second, the Commission's delay in approving new compliance plans (no new approvals have been issued since December 2012) will stymie any prospective buyers from seriously considering entering into a deal that contains this requirement. Even if a prospective buyer were willing to subject itself to the Compliance Plan process, it would quickly come to realize what has become apparent to other companies in the industry: there is no predictable way to meet the criteria necessary to obtain approval.

For these reasons, the broken compliance plan process has chilled the transactional activity that would have otherwise led to consolidation and professionalization of the smaller Lifeline ETCs, which in turn, would have led to a healthier competitive landscape. Instead,

Lifeline ETCs seeking to sell their businesses find themselves unable to seriously negotiate with any entities except other ETCs with approved compliance plans. Institutional investors from reputable firms are unable to enter into a stock purchase agreement without first obtaining a compliance plan. Even internal reorganizations appear to be problematic under the Bureau's Public Notice, which states that approval of the compliance plan is limited to the entity's structure at the time the plan was approved, even if such changes do not effect a change in control. There is zero support for this position in the 2012 Reform Order.

In addition, neither footnote 1,000 nor the Bureau's Public Notice address assignments of assets; they address only ownership and control. Other Commission rules, such as those governing international Section 214 authorizations, clearly distinguish between transfers of control and asset assignments for good reason: they have different corporate and regulatory effects on the affected entities. The Commission should recognize such distinctions in the Lifeline ETC context, and should clearly define a rational, streamlined process that will allow owners who would like to exit the business to exit, and good actors to enter the Lifeline industry.

Please contact me if you have any questions regarding this filing.

Respectfully submitted,

/s/ Danielle Frappier

Danielle Frappier
Counsel to Nexus Communications, Inc.

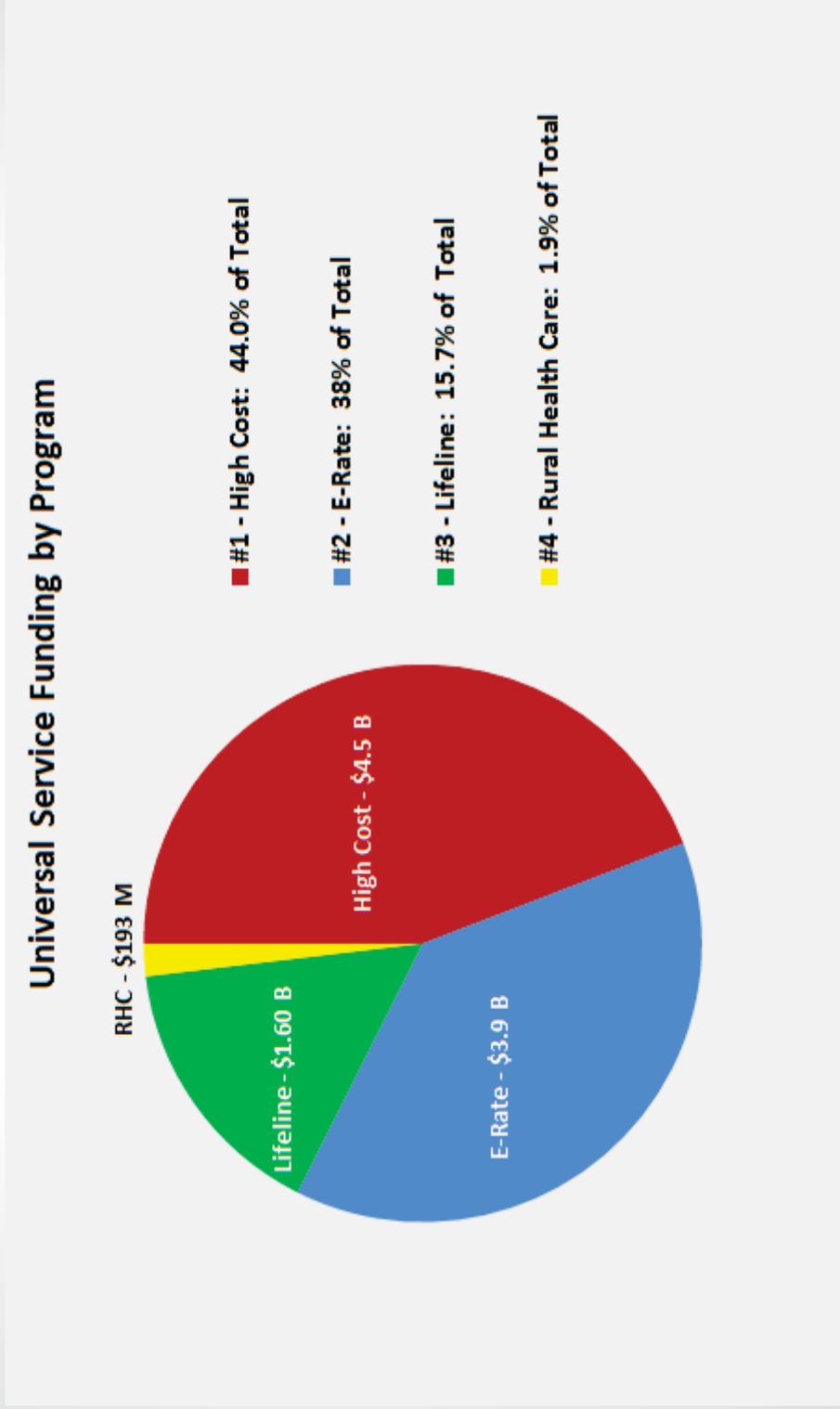
Cc: Travis Litman

The Lifeline Program:
An Update on Reforms and a Perspective
on Further Changes

May 28, 2015



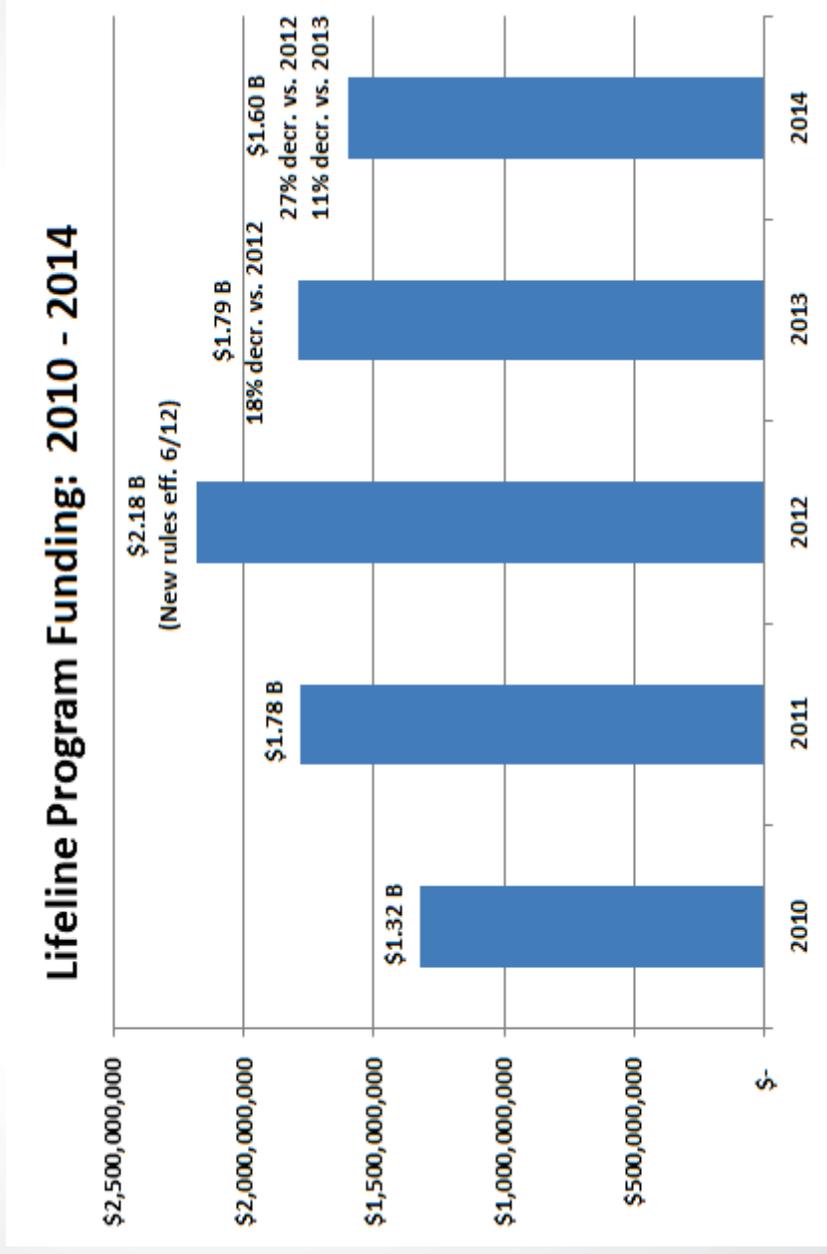
Putting the Lifeline Program in Perspective



The High Cost/CAF and E-rate programs account for over 80% of USF spending.

Amounts above reflect 2014 spending for Lifeline and RHC, and 2015 program levels for High Cost and E-rate.

The Monetary Effects of the 2012 Reforms and an Improving Economy



Discussions of “explosive growth” are based on data from more than three years ago.

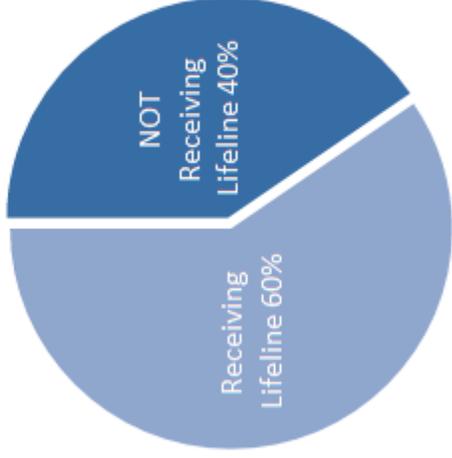
There has been a **de facto budget since 2012** (no new approvals of compliance plans, FCC states), and it has led to undersubscription.

Lifeline Enrollment

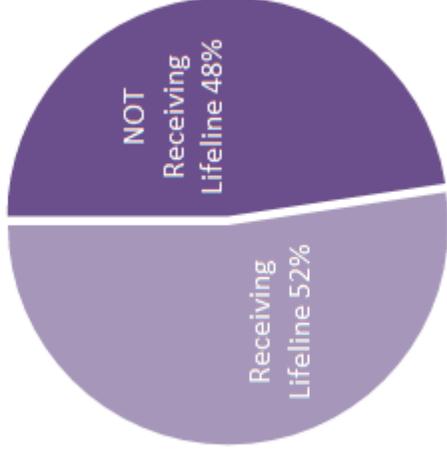
About 40% Unserved as of 4Q 2014



All States--Qualified Households



FCC States--Qualified Households



Now that the NLAD has eliminated duplicates and prevents new ones from occurring, and the 2012 reforms have been implemented, the program should focus on its critical mission: **servicing the needs of the low income population.**

Sources

Lifeline:

<http://www.usac.org/about/tools/fcc/filings/2015/q1.aspx>

SNAP:

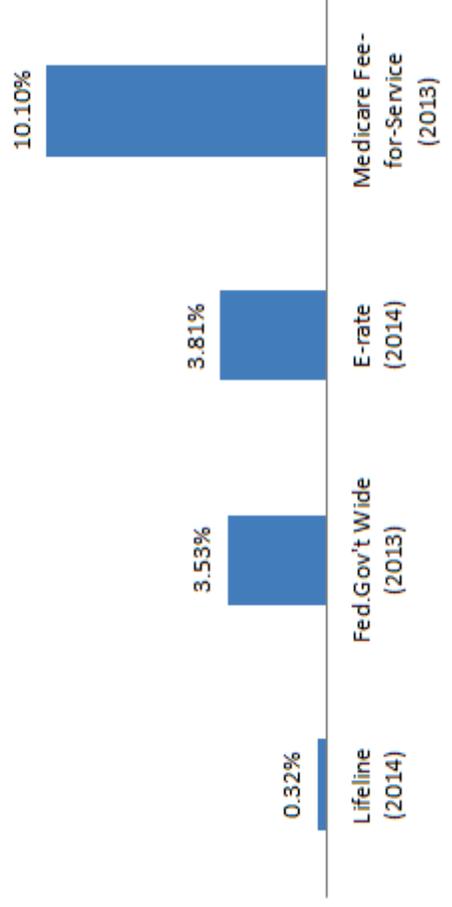
<http://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap>

But What About Waste, Fraud and Abuse?



Media hype and “gotcha” infotainment stories often overshadow the federal government’s own data that reflect a high level of compliance.

Improper Payments (IPERA)



Source: FCC Fiscal Year 2014 Agency Financial Report at Table 1;
www.paymentaccuracy.gov

Even where payments have found to have been improper “...the vast majority of improper payments are due to unintentional errors.”

www.paymentaccuracy.gov/about-improper-payments (emphasis added)

High Level of Compliance

The Results of the “Biennial” Audits



- Over 25 Lifeline ETCs were audited as required in 2012 Lifeline Reform Order
- Audited operations in 2013
- Reports were publicly filed with the FCC
- \$37M in Lifeline payments audited
- \$10K in monetary findings, or 0.03% of total

Further Reforms Needed



- Guiding principle: driven by facts and current data, not politics

1. Broadband services should be supported

- Including broadband offerings entirely covered by the subsidy—the Lifeline broadband pilot demonstrated that this is **key** to increasing broadband adoption among low income consumers
- Critiques that the subsidy was never “meant” to cover all costs glosses over the fact that the subsidy level was never raised to meet market prices
 - ETCs focusing on the low income market constructed an offering that could be provided at the capped subsidy level

Further Reforms Needed



- 1. Broadband services should be supported (continued...)**
 - Lifeline is the only USF program that does not have broadband deployment as its focus
 - USF funds should support an ever-evolving level of service consistent with Sec. 254 of the Act, while remaining cognizant of
 - the needs of vulnerable populations and
 - what is feasible from an economic and technological standpoint
 - Addressing the homework gap will require at-home broadband access

Further Reforms Needed



- 1. Broadband services should be supported (continued...)**
 - A stagnant subsidy amount is incompatible with the goal of providing an ever-evolving level of service for low income Americans
 - Worse, the current \$9.25 was set by averaging the 2011 rates set for copper wireline, plain old telephone service. *2012 Lifeline Reform Order* at para. 53.

Further Reforms Needed



2. Database Access to Eligibility Information

- If a national Lifeline eligibility database is unlikely in the next year (it was originally slated for end 2013!), then efforts should be made to assist ETCs in gaining access to existing databases, such as SNAP
 - SNAP is the basis for over 90% of enrollments
- Collaboration between industry and Commission on ways to solve the database issue
- For example, a model contract that the ETC and state SNAP administrators could enter into would greatly advance goal of automating eligibility determination
 - Privacy and security measures blessed by the FCC and FNS would give administrators and ETCs the confidence that the contractual provisions are sufficiently stringent

Further Reforms Needed



3. Text (send or receive) should count as usage

- The point of the usage rule is to confirm that the subscriber still wants the service
- If a written or oral confirmation by the subscriber can count as usage, there is no reason that text should not count. (None are supported services—that’s beside the point.)
- The support for TracFone’s petition on this issue was strong.
 - Petition referenced in Public Notice DA 14-1591.

Further Reforms Needed



4. ETCs should be required to keep copies of proof of eligibility
 - Copies of SNAP cards, Medicaid cards, etc.
 - For limited period (90 days) to permit USAC/FCC to audit compliance
 - Eliminates the “rogue agent” problem
 - Privacy concerns can be resolved with advance, informed consent
 - Security protocols based on commercially-reasonable practices, and can be further addressed in upcoming Commission proceeding

