



August 31, 2015

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

Re: WC Docket No. 11-42; WC Docket No. 09-197; WC Docket No. 10-90

Dear Ms. Dortch:

On behalf of the undersigned members of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we are pleased to submit our comments in response to the Commission's Second Further Notice of Proposed Rulemaking.¹ We believe Commission policies must ensure that all members of society are connected to modern, advanced communications networks and services. Thus, we strongly support the Commission's proposal to include broadband as a Lifeline service and we offer the recommendations outlined below for the modernization of the Lifeline program. These comments build upon the principles articulated by The Leadership Conference and many other public interest organizations submitted to the Commission in June 2015 ("Lifeline Principles Letter")² that we believe are essential to ensuring a quality Lifeline program for broadband support and should form the basis of your work to modernize the program. Broadly, those principles call for a program design that ensures universality; excellence; choice and competition; innovation; and efficiency, transparency, and accountability.

The Leadership Conference has been a longstanding and staunch advocate for the inclusion of broadband service in the Lifeline program³ and is pleased that the Commission's proposal to modernize the Lifeline program addresses this critical need. Broadband is an essential service in modern life, just as electricity and telephone service were vital to economic and social life during the last century. Broadband provides people access to the tools they need in the 21st century, from closing the homework gap, to accessing educational opportunities, finding work, creating employment opportunities, accessing health care, managing chronic conditions, and so much more. And yet while 92 percent of households with incomes between \$100,000 and \$150,000 have broadband service, the adoption rate is only 47 percent

¹ Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, WC Docket Nos. 11-42, 09-197, 10-90, FCC 15-71 (Rel. June 22, 2015) ("2015 NPRM").

² June Lifeline Principles Letter, WC Docket 11-42 (filed June 10, 2015) (attached).

³ See e.g., Leadership Conference 2011 NPRM Comments (April 21, 2011) (inclusion of broadband is a top priority); Leadership Conference ex parte (May 11, 2011); Leadership Conference 2011 Reply Comments (Sept. 2, 2011) (urging prompt action to modernize Lifeline and promptly implement broadband pilots).

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for households with income below \$25,000 and marked disparities continue for most of the constituencies The Leadership Conference represents.⁴

Lifeline is a proven program that targets critical communications services to those with limited means to afford them. The Commission's 2012 Lifeline reforms are working, and it is time to include broadband as a supported service concurrently with implementing program design reforms that continue to improve program operations, promote efficiency, strengthen consumer protections, and facilitate more competitive service offerings for Lifeline recipients.

Ensuring Quality Lifeline Voice and Broadband Service

The Leadership Conference supports the highest quality services for Lifeline recipients, including broadband. As we noted in the Lifeline Principles Letter, the Commission should adopt rules that ensure that Lifeline-supported broadband enables low-income "people to perform a full range of online activities" including, but not limited to, applying for work, teleworking, completing schoolwork assignments, using online library materials, accessing digital health records and managing chronic conditions, among other activities.⁵ We envision the broadband Lifeline service evolving over time in response to market and technological changes without resorting to full-scale rulemaking for each change.

The provision of broadband Lifeline will be a nascent program offering and it is difficult to, at this early stage, identify the types of broadband service that will meet the communications needs of Lifeline households. However, we expect the Commission to set ambitious goals for Lifeline as it has for the other Universal Service programs.⁶ Data indicate that many Leadership Conference constituents and Lifeline households rely on mobile devices and service plans and, therefore, striving for robust mobile broadband products to be offered through Lifeline is especially important. While each technology comes with its own advantages and constraints, Lifeline households would be best served if they are able to choose between a multitude of high quality service offerings regardless of platform. We recommend the Commission adopt a functional standard that would allow households to complete a variety of important online activities over the course of each month while also establishing a clear demarcation of products that are of such low quality as to be undeserving of universal service support.⁷

In addition, we encourage the Commission to implement our innovation principle, in part, by incentivizing providers to offer the best services to consumers. Although the addition of new providers to the Lifeline ecosystem may help spur competition, experience with the current program indicates that more incentives are likely needed. As the Commission notes, despite a large number of competing wireless Lifeline providers, most prepaid Lifeline voice products have remained at 250 minutes for several years.⁸ Thus, we believe it might be beneficial for the Commission to tailor the support amount for Lifeline broadband services to the amount of service offered—providing increased levels of support for the highest quality or most expensive services and lower levels of support for lesser services. For

⁴ June Lifeline Principles Letter.

⁵ *Id.*

⁶ E.g., the 10 Mbps downstream/1 Mbps upstream standard for the Connect America Fund.

⁷ The Commission could act on its authority to determine that some plans do not meet the comparable local usage standard. Leadership Conference 2011 Reply Comments (September 1, 2011) at pages 4-5 (noting the Commission's authority in the ETC designation review to require ETCs to demonstrate they offer local usage comparable to that offered by the ILEC and the reservation of the right to determine that some plans do not meet the standard).

⁸2015 NPRM at ¶16.



instance, the Commission could establish a tiered benefit that might offer more than the current \$9.25 per month for robust voice and data bundled service offerings while providing less than \$9.25 for voice-only plans with modest amounts of minutes. The Commission should also monitor the broadband products chosen by Lifeline households and compare them to general residential broadband usage to identify which products are popular with Lifeline consumers and if those products are comparable to what the average households are using.⁹ Further, we recommend encouraging states to offer complementary programs that could cover increased broadband or data benefits or features beyond those made possible by the federal benefit.¹⁰

In addition to our support for adding broadband to the Lifeline program, we continue our support for voice-only, mobile, and services available at no-cost to consumers.¹¹ Voice-only services meet the needs of many vulnerable populations. As is evident from marketplace choices, mobile services have been a particularly important choice for people of color and low-income people.¹² Moreover, access to mobile services align with important anti-poverty programs.¹³ And given that the Lifeline program targets low-income populations with a subsidy, proposals to require payments by all Lifeline participants regardless of providers' offerings are counter to the objectives of Lifeline and could depress rather than facilitate participation.¹⁴

Our principles for reform include universality.¹⁵ Thus, we strongly oppose any budgeting proposals that would prevent eligible participants from using the Lifeline program. The Lifeline program has never approached full participation rates by eligible populations. The Commission rightly objects to any proposals that would halt payments to eligible consumers mid-stream.¹⁶ Likewise, we oppose proposals that would result in waiting lists for eligible households or other unreasonable and administratively cumbersome mechanisms. Rather, we recommend the Commission adopt a goal of significant participation in the Lifeline program and measure progress toward increased rates.

Pro-Consumer Reforms to the Administration of the Lifeline Program

The Lifeline Principles Letter supports a program design that drives competition and choice as well as efficiency, transparency and accountability. Thus, The Leadership Conference supports proposals that

⁹ We previously recommended that the Commission adopt a guideline for prepaid no-cost Lifeline services that considers the average minutes of use for voice for non-Lifeline customers and that any mechanism for measuring adequacy of minutes be automatically change to reflect current data. See Leadership Conference comments on 2011 NPRM (September 1, 2011) at pages 4-5.

¹⁰ For example, the Commission might set aside a modest "Lifeline Leveraging" fund to provide grants (e.g., to go towards more data or better speeds) to states or local governments that can leverage Lifeline with other broadband adoption program components. An older version of Lifeline included matching support in cases where additional non-federal telephone assistance funds were provided.

¹¹ See e.g., Leadership Conference letter (March 16, 2015).

¹² Pew Research Center, *U.S. Smartphone Use in 2015* (April 1, 2015) available at: <http://www.pewinternet.org/2015/04/01/us-smartphone-use-in-2015>.

¹³ Letter from Prof. David Super to Marlene Dortch, FCC, WC Docket 11-42 (filed Nov. 7, 2011).

¹⁴ For a detailed discussion of the problems with requiring participants to make a minimum payment for Lifeline supported services, see Leadership Conference 2011 Reply Comments (September 1, 2011) at pages 1-3.

¹⁵ June 2015 Lifeline Principles.

¹⁶ 2015 NPRM at ¶¶ 57, 58.

promote competition and enable consumers to shop with their feet if they find a better Lifeline product.¹⁷ A centralized third-party eligibility determination that is designed appropriately can facilitate portability, provide a more secure environment for sensitive personal information, and create a more efficient enrollment and re-verification process for companies and consumers. This process should move ahead in phases, protecting the efficiencies and ease of use for consumers where they exist in the current program, leveraging the modernizations that have occurred at the state level, and moving systematically to a national system.

Currently, in the majority of states, Eligible Telecommunications Carriers (ETCs) handle the Lifeline application and annual re-verification process. Consumers must hand over sensitive personal information to a carrier's customer service representative, which in turn have record-keeping obligations. In at least 17 states, some carriers have set up access to some of the state qualifying program databases (*e.g.*, state SNAP, TANF, SSI, LIHEAP databases) to query whether an applicant is a current participant in a particular benefits program. A national third-party administrator should be able to stand in the shoes of the ETCs and perform the "yes/no" program verification check in the states that have already opened up their databases to Lifeline ETCs. It is more appropriate and protective of consumer privacy for a national third-party administrator, acting as an agent of the FCC, to access sensitive government databases, rather than private companies. Utilizing existing databases rather than creating a new one also limits threats to consumer privacy.

Further, in another application of our innovation principle, the Leadership Conference has recommended creation of Lifeline program implementation incentive grants¹⁸ to fund state efforts to enhance the efficient implementation of the Lifeline program.¹⁹ While the FCC should learn from the states that have moved toward these systems, it should also ensure that state databases comply with minimum standards. No company should have an advantage in utilizing the database and the national database should not cause any delay or additional burden for qualifying Lifeline participants. Furthermore, the FCC should not duplicate databases that are already functional.

Because of the size and scope of a third-party eligibility verification system, such a system should be transitioned in a manner to avoid disruption to Lifeline beneficiaries. It is reasonable to expect that setting up access to state databases for qualifying eligibility programs for a "yes/no" check on participation could take a few years, so it makes sense to prioritize programs starting with the more popular programs used for Lifeline eligibility determinations such as SNAP and SSI. This does *not* mean that existing qualifying programs should be eliminated. Low-income households have differing needs and therefore will participate in different benefits programs, so eliminating programs will add barriers to Lifeline participation. Instead, the Commission should prioritize among programs, targeting some for streamlined eligibility determinations, and starting with the state databases of programs already open to the ETCs for the verification check.

¹⁷ See *e.g.*, Leadership Conference 2011 NPRM Comments (April 21, 2011); Leadership Conference *ex parte* (May 18, 2011); Leadership Conference letter (June 22, 2012).

¹⁸ See Leadership Conference 2011 NPRM Comments (set aside \$10 million for competitive grants to improve program implementation).

¹⁹ Examples of what such funding could encourage include covering IT costs for states to allow a national third-party administrator to "ping" various state databases to check eligibility for Lifeline. The incentive grant could also fund joint applications with qualifying programs. For example, adding Lifeline to a state's SNAP application with a check off box that describes Lifeline and states that the SNAP applicant agrees to the use of their information for the limited purpose of enrolling in the federal Lifeline program. This information could then be pre-loaded into the enhanced NLAD database.

The centralization of a Lifeline applicant eligibility verifier will also facilitate a portable Lifeline benefit. To be clear, the Lifeline benefit is already portable, allowing customers to carry the benefit with them as they select among competing providers. However, Lifeline reforms and the national eligibility database can be constructed in a manner so as to facilitate customers' awareness that they can choose among multiple providers. Moreover, the eligibility database can be designed to pre-qualify consumers who have been determined to be eligible in state databases for qualifying programs, thus facilitating coordinated enrollment. Further, once a Lifeline consumer is deemed eligible, that eligibility should last a year (or a set period of time) in the database, barring any change in circumstances. Within that year, a consumer should be able to switch providers or service without having to reapply for Lifeline, with the Lifeline benefit running for the remainder of the year of eligibility. These systems also add efficiencies to the annual re-verification process.²⁰ Commission rules should ensure frictionless transition once a customer decides to choose a new provider as it is important that the household control which communications service to purchase with the Lifeline benefit.²¹ These mechanisms would make it simpler for consumers to shop with their feet and to put pressure on the marketplace to produce better products and services for Lifeline customers, without needlessly increase burdens on consumers.²²

Conclusion

We are pleased to offer these recommendations and urge the Commission to act swiftly to include broadband in the Lifeline program, move enrollment and re-verification to a third-party administrator, while preserving the efficiencies and benefits of the current program to its participants. Please contact

²⁰ The Children's Health Insurance Program (CHIP)'s Express Lane Eligibility program used qualifying programs' eligibility determinations to streamline CHIP enrollment and verification. See CHIPRA Mandated Evaluation of Express Lane Eligibility: Final Findings, by Mathematica Policy Research and the Urban Institute (December 2013) (identifying designs effective at increasing enrollment and speeding up the application process).

²¹ Ideally, customers could choose to allocate their benefits among providers as they see fit—perhaps even allocating some to a broadband product and some to a mobile voice product.

²² We note that the Commission seeks comment on, not only a national third-party eligibility verification system, but also using a physical medium such as a SNAP EBT card or a unique identifier such as a PIN for distributing Lifeline benefits. 2015 NPRM at ¶¶ 107-110. These suggestions seem to add a significant amount of complexity to the current system with no corresponding increase in portability or efficiency. Without further evidence regarding the benefits to consumers of these systems, we do not support changes to the program that make use of it more difficult for the consumer—such as visiting an in-person office, using a PIN on a monthly basis, or other similar hurdles. An electronic system that efficiently tracks a consumer's Lifeline benefit and transfers appropriate amounts to providers could be a good solution.

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Leadership Conference Media/Telecommunications Co-Chair Cheryl Leanza, United Church of Christ, OC Inc. at 202-904-2168 or Corrine Yu, Leadership Conference Managing Policy Director, at 202-466-5670, if you would like to discuss these recommendations or any other issues of importance to The Leadership Conference.

Sincerely,

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NAACP
National Consumer Law Center, on behalf of its low-income clients
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