



COMMONWEALTH OF
PUERTO RICO

Telecommunications Regulatory Board
Office of the Chairman

EX PARTE COMMUNICATION

March 21, 2016

Chairman Tom Wheeler
Commissioner Mignon Clyburn
Commissioner Jessica Rosenworcel
Commissioner Ajit Pai
Commissioner Michael O'Reilly
Federal Communications Commission
455 12th Street, S.W.
Washington, DC 20554

Re: Lifeline and Link-Up Reform and Modernization, WC Docket No. 11-42

Dear Chairman Wheeler and Commissioners:

As Chairman of the Telecommunications Regulatory Board of Puerto Rico, I am writing to thank you for considering the important place that the federal Lifeline program does and can play in bridging the Digital Divide in Puerto Rico. As the Board has shared in comments in various *ex parte* meetings with you and Commission staff,¹ the broadband adoption gap in Puerto Rico is far larger than any U.S. state, and we strongly appreciate and welcome your initiative to modernize the program.

I am writing to provide you the Board's position on several items raised by the March 8, 2016, Fact Sheet² that discusses the proposal circulated by Chairman Wheeler and Commissioner Clyburn, as well as recent filings in this docket.

Preserving the Success of Lifeline Voice in Puerto Rico

As prior Board filings have shown, the Lifeline program is very important to the people of Puerto Rico—and with regard to voice services, it has been a success. There is virtually no “voice adoption gap” in Puerto

¹ See, Comments of the Telecommunications Regulatory Board of Puerto Rico, WC Docket No. 11-42 et al. (filed Aug. 28, 2015) (“Board Comments”); Letter from Thomas M. Koutsky, Chief Policy Counsel, Connected Nation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42 et al. (Dec. 3, 2015); Letter from Thomas M. Koutsky, Chief Policy Counsel, Connected Nation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42 et al. (Feb. 26, 2016).

² Federal Communications, *Press Release: Chairman Wheeler & Commissioner Clyburn Propose Rules to Modernize Lifeline Program to Provide Affordable Broadband for Low-Income Americans* at 1 (Mar. 8, 2016).

Rico, as 94.3% of Puerto Rico households subscribe to voice service, compared to 97.6% in the rest of the United States.³

This success is due to the Lifeline program delivering low and even no-cost mobile voice service to hundreds of thousands of low-income Puerto Rican households. Data recently filed by the Universal Service Administrative Company (USAC) shows that 506,025 households in Puerto Rico—**approximately 40% of the population**—are enrolled in the Lifeline voice program.⁴ Of these, over 90% subscribe to Lifeline mobile voice service.

As the Commission expands the federal Lifeline program to broadband, we must work together to preserve—and not sacrifice—these important gains Puerto Rico has made in voice adoption. Because of economic conditions on the island, more than two-thirds of the population of Puerto Rico qualifies for Lifeline, and Puerto Rico’s 60% Lifeline participation rate is the highest in the nation.⁵ Lifeline mobile voice services, available at low or no cost to the consumer, are important means of connecting low income Puerto Ricans to emergency services, government services, healthcare providers, employers, and family.

The Board has strongly and consistently supported the Commission’s proposals to modernize Lifeline by expanding the program to broadband and by increasing administrative efficiency through a third-party eligibility verification process. There is no need in this modernization process to dismantle or sacrifice other important, successful parts of the Lifeline program, particularly with regard to the Lifeline voice services upon which over 40% of the population of Puerto Rico depends.



As a result, I ask the Commission to reconsider the proposals listed in the Fact Sheet that would increase the cost of providing Lifeline mobile voice service by requiring unlimited minute plans this year, and that would begin to reduce and eliminate federal Lifeline reimbursements for mobile-voice only Lifeline plans in 2019. I have heard from providers offering wireless Lifeline voice service in Puerto Rico today that they would consider withdrawing from our market if these proposals are adopted. At a time when the Commission is seeking to encourage participation in the Lifeline program to give low-income consumers choice and expanded service opportunities, these proposals could be a step backward.

The National Lifeline Eligibility Verification Process

The Board operates one of the nation’s largest, state-run Lifeline universal service funds, which has been operational since 2003.⁶ In doing so, the Board certifies Lifeline participants, helps confirm consumer eligibility, and manages compliance with and the effectiveness of this program. The Puerto Rico Lifeline Fund, which is required by Puerto Rico law to “complement” the federal universal service programs, currently provides \$1 per month in addition to the federal \$9.25 monthly support.

³ Federal and State Staff for the Federal-State Joint Board on Universal Service, *Universal Service Monitoring Report 2015*, CC Docket No. 96-45, WC Docket Nos. 02-6, 02-60, 06-22, 10-90, 11-42, 13-184, 14-59 (2015), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0316/DOC-337019A1.pdf, at Table 6.6.

⁴ Letter from Michelle Garber, Vice President, Lifeline Division, Universal Service Administrative Company, to Ryan Palmer, Chief, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, WC Docket No. 11-42 (filed Mar. 4, 2016) (attachment).

⁵ *Id.*

⁶ According to a report by the National Regulatory Research Institute, of the 17 states and the District of Columbia that have state Lifeline funds, only the California and New York funds are larger than Puerto Rico. Sherry Lichtenberg, *State Universal Service Funds 2014*, Report No. 15-05 (June 2015), <http://nrri.org/download/nrri-15-05-state-usf/>, at 20-22.

The Board's experience in running one of the nation's largest state Lifeline program shows us first-hand the challenges and difficulties of the current provider-based application and verification process. Depending on provider-collected and supplied data is inefficient, and monitoring these verification functions is costly to the Board. As noted in our comments, in 2011, even before the FCC required the creation of the National Lifeline Accountability Database (NLAD), the Board created its own database to process and weed out duplicate enrollments. However, the cost of that process soon became overwhelming, even for a relatively large fund of Puerto Rico's size. As a result, in 2014 the Board requested that Puerto Rico be included in the NLAD, a request that the Commission approved last year and which was accomplished in early 2016.⁷

As a result, the Board welcomes the proposal to create a third-party National Eligibility Verifier that will independently verify income eligibility of prospective Lifeline customers. The National Eligibility Verifier should work with various federal and state public assistance programs, including those that are unique to Puerto Rico, to confirm household income, and the Verifier should also have the ability to independently verify a household's income at the current Lifeline eligibility threshold in the event that public assistance program data is not available.

To Succeed in Puerto Rico, the Eligibility Process Must Include Independent Income Verification

As the Board has written before, given endemic poverty and the wide home broadband adoption gap in Puerto Rico, the Commission's efforts to modernize Lifeline will not succeed if they do not succeed in Puerto Rico.⁸ Critical to success will be ensuring that the Lifeline eligibility process does not discriminate against Puerto Rico residents.

I have discussed with all of you the fact that federal public assistance programs operate differently in Puerto Rico than on the mainland. As a result, it is absolutely critical that, as the Commission migrates the eligibility process to a third-party verifier, the Commission must retain the current Lifeline income eligibility standards, including the ability to verify income independent of enrollment in certain federal or state public assistance programs.

As the Board observed in our comments,⁹ federal public assistance programs like nutrition assistance and Medicaid operate differently in Puerto Rico, with far lower income thresholds to qualify than the Lifeline income threshold of 135% of the federal poverty guidelines. For example, eligibility for federal nutrition assistance in Puerto Rico requires a family to demonstrate that its income is approximately one-quarter to one-third of the federal poverty rate. If the Commission limits Lifeline eligibility to enrollees of federal public assistance, it would create enormous "qualification gaps" in Puerto Rico. As a result, it is imperative that the Commission retain the ability for consumers to independently demonstrate to the verifier that their income is at or below 135% of the federal poverty guidelines to enroll in Lifeline.

⁷ Wireline Competition Bureau, Federal Communications Commission, *Lifeline and Link-Up Reform and Modernization*, WC Docket No. 11-42, Order, DA 15-1243 (Nov. 3, 2015).

⁸ Board Comments, *supra* note 1, at 3-8, 30.

⁹ Board Comments, *supra* note 1, at 14-15, 21-25; *see also* Puerto Rico Board *Ex Parte*, *supra* n. 5, Attachment at 14-17 (urging FCC not to create "qualification gaps" by not taking into account the different availability of federal nutrition assistance programs in Puerto Rico).

The Board does agree that a third-party verification process should, of course, work directly with existing public assistance programs as a means of efficiently confirming income eligibility. The third-party verifier should take an expansive and inclusive approach to this job—for instance, there are over 100,000 HUD-assisted housing units in Puerto Rico,¹⁰ and determining eligibility for residents that live at any of those addresses may only require a simple confirmation of identify and residence. However, the third-party verification process must include the ability and responsibility to verify income up to and including 135% of the federal poverty guidelines as well.

In the forthcoming Order, the Commission should direct the National Eligibility Verifier to work closely with state, commonwealth, and territory governments in developing a comprehensive approach to coordinated enrollment opportunities. The Board intends to be active in the process of establishing the third-party verifier and will gladly help the selected vendor perform this verification process work with the appropriate public agencies in Puerto Rico.¹¹

National Process for Lifeline Broadband Service Providers

The Commission's *Broadband Progress Reports* show that home broadband adoption in Puerto Rico is far lower than in any state.¹² According to the U.S. Census, there are only five U.S. cities with home broadband adoption rates below 50%—and three of them are in Puerto Rico, including San Juan, which is, by this measure, the worst-connected city in the United States.¹³

While the numbers are shocking, expansion of Lifeline to broadband represents a tremendous opportunity for Puerto Rico. The broadband adoption gap in Puerto Rico is driven by poverty and income: 69% of non-adopting households in Puerto Rico make less than \$20,000 per year.¹⁴ It was therefore no surprise that in the Commission's Lifeline broadband pilot program, there were more enrollees in the three broadband pilots that took place in Puerto Rico than *all the other pilot programs combined*.¹⁵

The Board agrees that for Lifeline broadband to succeed, low-income consumers should have competitive choices in the entities from which they receive eligible broadband offers. In our comments, the Board urged that "Lifeline broadband benefits should be available to all entities that serve vulnerable, low-income populations."¹⁶ In particular, the Board said:

¹⁰ U.S. Dept. of Housing and Urban Development, Picture of Subsidized Households, <https://www.huduser.gov/portal/datasets/picture/yearlydata.html>.

¹¹ Board Comments, *supra* note 1, at 21-23.

¹² *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 15-191, 2016 Broadband Progress Report, FCC 16-6, Appendix H (rel. Jan. 29, 2016); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 14-126, 2015 Broadband Progress Report and Notice of Inquiry on Immediate Action to Accelerate Deployment, 30 FCC Rcd 1375, Appendix H (2015).

¹³ Letter from Thomas M. Koutsky, Chief Policy Counsel, Connected Nation, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 11-42 et al. (Dec. 3, 2015), Attachment at 4.

¹⁴ *Id.* at 11.

¹⁵ *Id.*

¹⁶ Board Comments, *supra* note 1, at 27.

The Board agrees that there should be a vibrant, competitive market for Lifeline services. The transition of Lifeline to broadband support is an opportunity to open up the program to a myriad of new service options. Unlike voice service, which can easily be defined and which has nearly a century of regulatory policies and expectations attached to it, broadband service and technology is rapidly evolving. In addition, reaching the most vulnerable populations—those without bank accounts, without stable addresses, or multiple families living at one address—may require a mixture of access technologies and services. The vision of Lifeline as a subsidy system for "monthly home subscriptions" simply will not work for citizens without a home or steady access to a desktop computer.¹⁷

Reaching all of the non-adopting community will require a myriad of strategies, and this will require entities that are not traditional, regulated telecommunications providers to participate in the Lifeline program. As a result, the Board strongly supports the proposal to establish a "Lifeline broadband provider" registration process that would streamline the current "eligible telecommunications carrier" process for entities that only want to offer broadband service to Lifeline customers.

In our view, community institutions like free Internet centers, non-profit assistance organizations, and Internet service providers will play an important role in informing low-income consumers about the Lifeline program and in giving them the skills in how to use the Internet effectively. Bridging the adoption gap in Puerto Rico will require an "all of the above" set of strategies and interventions. For this reason the Board is building free Internet facilities in 78 Puerto Rico municipalities, is providing specific funding to digital literacy training to the elderly, and is equipping STEM academies with devices and connectivity. Many other non-profits, technology companies, and ISPs are working in Puerto Rico to help bridge the adoption gap through similar programs.

These initiatives should not be expected to develop and offer a regulated, local exchange voice service in order to participate in the Lifeline broadband program. Such a requirement would likely have the effect of shutting these entities out of the program entirely, and would represent a significant missed opportunity. It simply makes no sense to require an entity that wishes to offer a Lifeline broadband service to be a regulated, voice telecommunications carrier.

Opening up this pathway to the Lifeline broadband program should not result in fraud and abuse of the Lifeline program. The Commission can—and should—require that registered Lifeline broadband providers meet certain financial and operational conditions, maintain compliance plans, and be subject to audit. Broadband Internet access service is also now classified as "common carrier" service, and Title II provides legal authority over broadband Internet providers to protect consumers and the public. The Commission can ask for assistance from state commissions like the Board in this process, and the Board would gladly provide that assistance. The Board believes that, properly implemented, a third-party verification process should take away the chances for fraud and abuse of the Lifeline program.

The Board does not believe that a Lifeline broadband registration process will undermine the Puerto Rico state Lifeline program. As noted above, the Board operates one of the largest state Lifeline programs in the country. By law, the Board's universal service program must "complement" federal universal service programs.¹⁸ In addition, Section 7(d)(1) of the Puerto Rico Telecommunications Act (27 L.P.R.A. sec. 269e(7)(d)(1)) helps ensure this consistency between the federal and Puerto Rico Lifeline funds by

¹⁷ Board Comments, *supra* note 1, at 27.

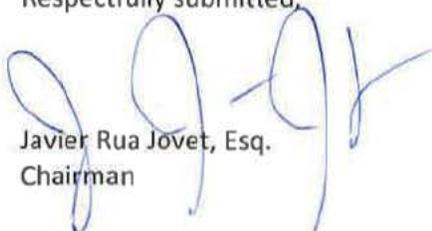
¹⁸ Puerto Rico Telecommunications Act of 1996 (Act 213), Section 7(a)(3) (27 L.P.R.A. sec. 269e(7)(a)(3)).

allowing the Board to “establish the eligibility criteria following the norms established by the FCC.”¹⁹ While I cannot speak to the enabling statutes of other state regulatory commissions that run state Lifeline programs, Section 7 and other provisions of the Puerto Rico Telecommunications Act give the Board the authority and flexibility to adjust the Puerto Rico Lifeline fund so that broadband-only providers can benefit from both the federal and Puerto Rico Lifeline funds.

* * *

In Puerto Rico, Lifeline is truly a lifeline—over 40% of Puerto Rico households today participate in the Lifeline voice program, and as a result, there is virtually no “voice adoption gap” in the island. Unfortunately, the same cannot be said of home broadband adoption in Puerto Rico. For this reason, I commend the Commission for its efforts to modernize and expand the federal Lifeline program, and the Board stands ready to do whatever we can to make the expansion of Lifeline to broadband a success in Puerto Rico.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'J. Rúa Jovet', written over a horizontal line.

Javier Rúa Jovet, Esq.
Chairman

¹⁹ *Id.* at Section 7(d)(1) (27 L.P.R.A. sec. 269e(7)(d)(1)).