



September 2, 2011

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

Re: WC Docket No. 11-42; WC Docket No. 03-109; CC Docket No. 96-45

Dear Ms. Dortch:

On behalf of the undersigned members of The Leadership Conference on Civil and Human Rights, we write to supplement the record in the following ways: (1) to offer feedback in response to the Federal Communications Commission's proposal to require a payment by anyone receiving a Lifeline phone at no cost; (2) to demonstrate the specific beneficial impact of the program on the lives of low-income communities; and (3) to further amplify our previous comments in response to the Commission's recent public notice seeking comment on the broadband pilot projects and Lifeline eligibility for the current program. In our original filing, we described the importance of broadband connections to low-income people and underserved communities to assist them with getting sustainable jobs, education, and economic equity. Below we use analyses by organizations with expertise in economic security to demonstrate the importance of the Lifeline benefit to eligible families.

Imposing a minimum Lifeline charge would not support the Commission's goals and would impose great hardship on Leadership Conference constituencies.

In the Notice in this docket, the Commission sought comment on a proposal to diminish waste, fraud, and abuse. The Commission proposed a number of options to reduce the likelihood that a telecommunications carrier was receiving Lifeline support for a customer who is not using the service. Citing the Joint Board's concern with services that are offered to the consumer at no cost,¹ the Commission proposed the imposition of a minimum charge on Lifeline customers by carriers receiving Lifeline support. Specifically, the Commission sought comment on a proposal requiring all Eligible Telecommunications Carriers (ETCs) to collect some minimum monthly amount, such as \$1,² or, in the alternative, collect an up-front payment of \$10 or \$15 to initiate Lifeline service.³ The undersigned members of The Leadership Conference do not support the Commission's proposal to impose minimum monthly or up-front fees on no-cost Lifeline phones.

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Executive Vice President & COO
Karen McGill Lawson

¹ Notice of Proposed Rulemaking, 26 FCC Rcd. 2770, 2798-99 (2011) ("NPRM").

² NPRM at 2799.

³ Id..



At the outset, it is important to note that while the Joint Board recommended the Commission investigate free, no-cost, Lifeline services, it explicitly eschewed any particular recommendation in response to these services. Specifically, the Joint Board stated:

It is not our intention through this recommendation to prejudge any of the concerns enumerated above since the Joint Board is clearly in support of the need for low-income support to achieve the goals of universal service. The Joint Board simply needs to express our concern and need for a thorough review as guardians of the significant federal and state dollars directed toward this purpose.⁴

In addition, the Joint Board also highlighted concerns raised by representatives of low-income communities that these no-cost services may not offer adequate minutes or other features important for Lifeline consumers.⁵

The proposal for a minimum charge for Lifeline consumers has prompted significant opposition.⁶ For example, the National Association of State Utility Consumer Advocates (NASUCA) stated:

Although the notion of requiring all Lifeline customers to “have some skin in the game” may have some superficial attractiveness, that superficiality is far outweighed by the very real fact that the recent substantial growth in Lifeline subscription has been almost entirely the result of the availability of prepaid wireless service that is provided at no up-front cost to the Lifeline customer. For the Commission to assume that such payments are needed “to ensure that Lifeline consumers genuinely want phone service” is an unreasonably paternalistic attitude; as if a customer would obtain this vital means of communication frivolously and merely because it is free. Likewise the assumption that such payments are required to ensure “that low-income households have the incentive to make appropriate use of their Lifeline-supported services....”⁷

Similarly, consumer groups representing low-income consumers pointed out a number of downsides to the proposal, including the severe hardship it would cause for the 18 percent of consumers who do not have access to banking services.⁸

A few commenters have supported the idea.⁹ For example, Leap Wireless and Cricket Communications have articulated support for the proposal, but have also suggested that

⁴ *Joint Board Recommended Decision*, 25 FCC Rcd. 15598, 15628 (2010).

⁵ *Id.* at 15627 (quoting commenter Consumer Groups: “There is an urgent need for the Commission to undertake a very detailed look at the pre-paid wireless Lifeline product and adopt basic minimum standards to ensure adequate value to the Lifeline consumers and to the ratepayers who subsidize the Universal Service Fund.”)

⁶ *See, e.g.*, Comments of American Association of Retired People at 5; Comments of NAACP of Reno/Sparks Nevada.

⁷ NASUCA Comments at 15-16.

⁸ *See* Consumer Group Comments at 11-12 (citing *FDIC National Survey of Unbanked and Underbanked Households* (December 2009), available at: www.fdic.gov/householdsurvey/full_report.pdf).

⁹ *See, e.g.*, Indiana Utility Regulatory Commission Comments at 6 (“as the price of a commodity approaches zero, demand approaches infinity...”).



minimum service obligations would be an acceptable way to address this concern. Specifically, Cricket praised the CPUC for approving Lifeline plans that offered only an adequate number of minutes. Cricket has also proposed limiting Lifeline reimbursement to only the portions of the month that a consumer has access to the PSTN (so if minutes ran out mid-month, the Lifeline payment would cover a portion of the month). In addition, Cricket also proposed that the Commission authorize support for Lifeline plans that commit to either an unlimited calling plan or a minimum amount of minutes, such as 1,200 minutes per month, to be eligible.¹⁰

While The Leadership Conference fully supports the goals of the Commission to reduce opportunities for waste, fraud and abuse, we do not see how imposing fees on a no-cost service would serve the Commission's goals. The goal of the Lifeline service is to increase telephone penetration by offering lower-cost telephone services. No-cost services accomplish this goal very effectively—particularly for the most difficult to reach populations. The underlying logic of the Commission's proposal is flawed. The proposal would, in essence, be adopting a self-defeating measure: increase the costs of a service that it has artificially lowered in order to increase subscribership. It would be the same as offering an \$11 Lifeline benefit only to take back \$1.

We believe there are several ways to accomplish the Commission's goals in this instance without adopting such a self-contradictory policy. The Commission is validly concerned that procedures need to be in place to prohibit consumers from obtaining multiple Lifeline benefits, especially with wireless Lifeline phones. The Commission has recently taken action to reduce waste, fraud and abuse¹¹ by ensuring that all consumers know they are only entitled to one benefit and by creating a database to identify any consumer who receives more than one benefit. This order will make substantial progress toward reducing the chance that an individual will receive more than one Lifeline payment per month. This, in turn, protects the integrity of the Lifeline funds. We also note that our proposal for the Commission to employ electronic vouchers would be a further means to ensure that individuals are not receiving benefits in excess of the Commission's rules. In addition, we note that the Commission has conditioned ETC access on requiring the provider to have direct contact with Lifeline subscribers to verify their eligibility.¹²

A second way to address policy concerns is to ensure that these products offer benefits to the consumer sufficient to last throughout a typical month, thus reducing the likelihood that a consumer may seek out a second telephone when his or her minutes from her no-cost phone are exhausted. In particular, as The Leadership Conference noted in its comments before the Joint Board, and as the Joint Board noted when it asked the Commission to consider the implications of no-cost Lifeline phones, the number of minutes offered by some of these products is very small—too small to be expected to last a typical consumer for a full month. If federal funds are going to support a service to assist low-income customers, the tangible benefit provided should not be substandard. Most important, the benefit must not inadvertently cause the consumer to

¹⁰ Leap Wireless and Cricket Communications Reply Comments at 8-9.

¹¹ *Lifeline and Link Up Reform and Modernization Order*, WC Docket 11-42, FCC 11-97 (rel. June 21, 2011).

¹² See, e.g., *TracPhone Petition for Forbearance from 214(e)(1)(A)*, 20 FCC Rcd. 15095, 15103-05 (2005); *Virgin Mobile ETC Designation Order*, 25 FCC Rcd. 17797, 17804-05 (2010).

purchase supplemental minutes at very high rates, far beyond what the competitive marketplace typically offers.¹³

For example, as noted, Cricket and Leap Wireless have suggested that a no-cost Lifeline phone offer at least 1,200 minutes per month to Lifeline customers.¹⁴ The Commission's recently released Wireless Competition Report shows that in 2009, the average minutes of use per month by consumers was approximately 700 minutes.¹⁵ However, the average use by minutes varies widely by type of carrier and by race, gender and ethnicity. For example, T-Mobile customers used 1,007 minutes on-average in the last quarter of 2009 while AT&T customers used 670.¹⁶ A 2010 Nielsen study found that African Americans used more than 1,300 minutes per month, while Hispanics use 826 minutes per month, Asian/Pacific Islanders use 692 and whites use 647. Women tend to use 22 percent more minutes than men (856 minutes to men's 666 minutes).¹⁷ Similarly, people who are deaf and hard of hearing, or have speech-related disabilities, use texting almost exclusively, so their minutes of use would be very low in relation to their SMS usage. Ideally, the Commission should periodically perform its own analysis to determine the number of minutes of use per month for the average low-income consumer in order to ensure that wireless Lifeline service is providing connectivity throughout the month.

We propose that the Commission adopt a guideline for no-cost Lifeline services that incorporates a minimum number of minutes per month premised on the most recent Commission Wireless Competition Report or other similar data, and pegged to the number of minutes used by the median or average user. It is possible that further analysis will determine that a percentage of the median or average number of minutes will be adequate to provide phone coverage for the full month. If the Commission adopts this approach, it must also adopt a self-executing mechanism that changes with existing official data on consumer use. Such a mechanism would reduce regulatory delay and burden and ensure that the offerings receiving federal Lifeline support will keep pace with technology and the marketplace. A mechanism relying on current usage by most subscribers would be an appropriate means to meet the statutory definition of universal service of an "evolving level of telecommunications services" that "have, through the operation of market choices by customers, been subscribed to by a substantial majority of residential consumers...."¹⁸

The Commission has the authority to impose such a condition, at a minimum, as a part of its authority to grant waivers to wireless providers receiving Lifeline-only universal service support pursuant to Section 254(e)(6). As part of that analysis, the Commission determines whether the service offering is in the public interest by considering the benefits of increased consumer choice

¹³ See, e.g., TAG wireless which offers 68 free minutes per month and then 100 minutes for \$7.00, but the 100 minutes expire after 7 days. <http://www.dpimobile.com/site/GetMinutes.aspx>

¹⁴ Leap Wireless and Cricket Communications Reply Comments at 8-9.

¹⁵ *Fifteenth Annual Wireless Competition Report*, WT Docket 10-133 (rel. June 27, 2011) at ¶ 180, Chart 19 (first half of 2009 was 735 minutes, second half of 2009 was 696 minutes).

¹⁶ *Id.* at ¶ 181, Chart 20.

¹⁷ Nielsen Company, *African-Americans, Women and Southerners Talk and Text The Most in the U.S.*, (Aug. 24, 2010) available at http://blog.nielsen.com/nielsenwire/online_mobile/african-americans-women-and-southerners-talk-and-text-the-most-in-the-u-s

¹⁸ 47 U.S.C. §§254(c)(1) and 254(c)(1)(B).

and the unique advantages and disadvantages of the applicant's service offering.¹⁹ In addition, the Commission requires companies seeking ETC designation to demonstrate that they "offer[] local usage comparable to that offered by the incumbent local exchange carrier (LEC)."²⁰ While the Commission has not made a determination about particular aspects of a plan that are "comparable," it reserved the right to determine that some plans do not meet that standard.²¹ In its ETC designation orders, the Commission routinely states that it is reserving the right to impose additional obligations on wireless prepaid ETCs in the future.²²

The Commission should use its authority to adopt a minimum number of minutes and/or SMS messages, as described above, for Lifeline plans receiving federal support and offered at no cost to the consumer. We would further encourage the Commission to consider some additional consumer education disclosures that would aid Lifeline subscribers in identifying the best product for their needs and avoiding extremely high charges.

Lifeline support is critically important for families whose income falls far short of minimum economic security.

The Lifeline and Linkup programs offer critical support for low-income people who need telecommunications and broadband services to survive and thrive. To illustrate the great difficulties people in poverty face in meeting their basic needs, including telephone service, below we compare a poverty-level income in the U.S. with the projected expenses that make up a budget that would meet families' minimum needs.

Currently the Commission's Lifeline and Linkup programs are available to individuals who are at 135 percent of the federal poverty guideline. The U.S. federal poverty guideline for 2011 is \$22,350 per year for a family of four and \$14,710 for a family of two.²³ The Leadership Conference has requested the Commission to increase this threshold to 150 percent of the poverty guideline, which would mean a family of four eligible for Lifeline would be earning \$33,525 per year and a family of two could earn no more than \$22,065.

Such a family would still be earning well short of the minimal economic security salary of \$42,106, which the Economic Policy Institute (EPI) has determined represents "the pre-tax annual family income ... required to maintain a safe but modest standard of living."²⁴ EPI has produced indices that are designed to look beyond the poverty guideline, which is widely viewed among experts as insufficient, and develop budgets that would provide basic income security for

¹⁹ See, e.g., *Virgin Mobile ETC Designation Order*, 25 FCC Rcd. at 17799.

²⁰ See Federal-State Joint Board on Universal Service, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371, 6380, (2005) (*ETC Designation Order*).

²¹ *ETC Designation Order* at 6385.

²² See, e.g., *Virgin Mobile ETC Designation Order* at 17803, n.39.

²³ 2011 HHS Poverty Guidelines, U.S. Department of Health and Human Services available at <http://aspe.hhs.gov/poverty/11poverty.shtml>.

²⁴ James Lin and Jared Bernstein, Economic Policy Institute, *What We Need to Get By*, EPI Briefing Paper #224 (2008) available at: <http://www.epi.org/publications/entry/bp224/>. The calculator is available at: http://www.epi.org/content/budget_calculator.



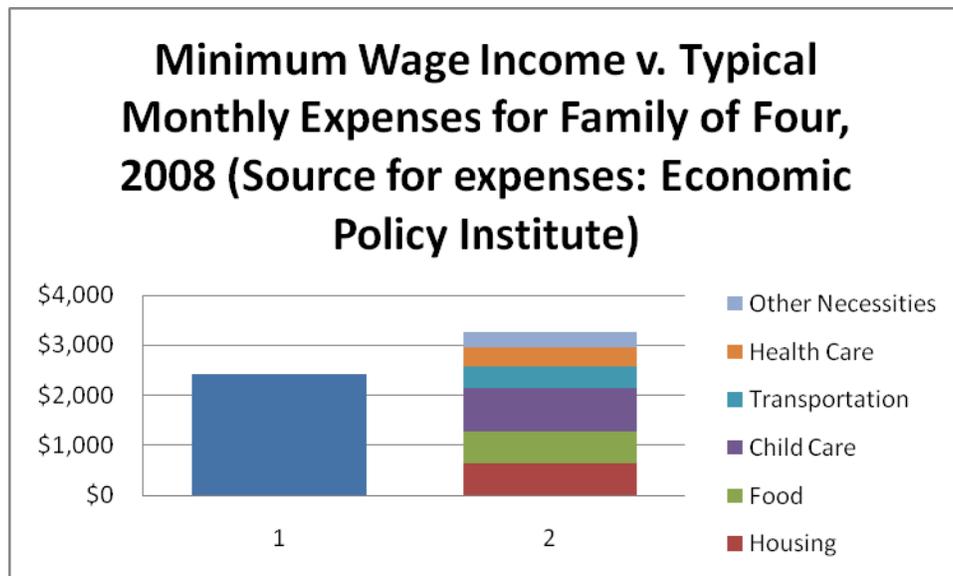
families of various sizes and in various locations. EPI's family budget calculator illustrates with specificity the dollar amounts low-income families spend on particular parts of their budgets and can provide more specific understanding of the benefits of a Lifeline subsidy.

For example, for a family of four in Oklahoma City in 2008, the following budget is estimated:²⁵

Item	Cost
Monthly Housing	\$641
Monthly Food	\$643
Monthly Child Care	\$850
Monthly Transportation	\$447
Monthly Health Care	\$385
Monthly Other Necessities	\$309
Monthly Taxes	\$234
Monthly Total	\$3,509
Annual Total	\$42,106

If we compare this budget of minimum economic security with minimum wage income, we see that a family attempting to achieve economic security is facing expenses far beyond its means. Someone earning a minimum wage salary in the United States would earn \$1,208 a month or \$14,496 per year, not even enough to reach the poverty level for a family of two. Two parents working at minimum wage would earn \$2,416 monthly and \$28,992 annually. A household that is earning minimum wage would be eligible for the Commission's Lifeline and Linkup programs. For these families, even \$10 per month in Lifeline support would make a contribution toward making ends meet on a monthly basis.

²⁵ See Economic Policy Institute, Basic Family Budget Calculator, Two parents, two children, Oklahoma City, OK HUD Metro FMR Area.
http://www.epi.org/content/budget_calculator/?family_type=2P2C&state=OK&area_name=Oklahoma+City%2C+OK+HUD+Metro+FMR+Area



As these data show, families earning minimum wage or who are at the poverty line routinely face expenses that vastly exceed their resources. Essential needs such as health care, food, and housing compete for scarce funds with other needs that enable individuals to climb a ladder of economic security, such as child care and broadband access. Individuals eligible for Lifeline must make daily tradeoffs on which bills to pay, in a never-ending cycle. When housing and food are beyond reach, it can be extremely difficult for a family or individual to take the additional steps necessary to better their economic circumstances. Without a program to subsidize and promote the use of telecommunications technologies, many individuals will be unable to take advantage of the programs, such as online learning, federal benefits programs, or job lists, which will help them improve their own condition.

Remedies addressing low-income populations have a particular relevance to the constituencies that The Leadership Conference represents, including people of color and people with disabilities. For example, the most recent unemployment numbers reveal that in July 2011, overall unemployment was 9.1 percent, whereas black unemployment was 15.9 percent and Latino unemployment was 11.3 percent.²⁶ Moreover, people with disabilities are currently among the most under and unemployed of any group in America and among the poorest. The unemployment rate for people with disabilities was a staggering 16.8 percent in July.²⁷ The percentage of people with disabilities living in poverty was 25.3 percent in 2008 and experts believe this number has climbed higher since then.²⁸

²⁶ Bureau of Labor Statistics, Economic News Release, Tables A-2 and A-3 (Aug, 2011) available at <http://www.bls.gov/news.release/empstoc.htm>

²⁷ *Id.* at Table A-6.

²⁸ Erickson, W., Lee, C., von Schrader, S. (2010, March 17). Disability Statistics from the 2008 American Community Survey (ACS). Ithaca, NY: Cornell University Rehabilitation Research and Training Center on Disability Demographics and Statistics (StatsRRTC), available at: <http://www.ilr.cornell.edu/edi/disabilitystatistics/reports/acs.cfm?statistic=7>



We would also like to highlight the extremely meaningful accounts of the importance of Lifeline services in the lives of low-income people that the Commission has already received. Recently, the National Consumer Law Center, a member of The Leadership Conference, included in the record real stories of ordinary people who are positively affected by the Lifeline program. Among the people quoted was a Lifeline user from Seattle, who stated, “As a person in recovery from substance abuse, my free phone is instrumental to my success; I can reach friends who can help me if I need help. I also use my free phone to stay in touch with my medical provider as well as my case manager.” In addition that filing referenced, for example, medical staff who routinely assist their patients in obtaining Lifeline phones in order to track the health of ill children.²⁹ These types of stories are repeated around the country every day.

The Commission should structure broadband pilots flexibly to focus on testing core questions about efficacy in broadband adoption efforts.

In its public notice, the Commission asks a number of questions about how to structure the pilot programs, including whether the pilots should adopt more flexible eligibility standards and how to evaluate the results. As The Leadership Conference members described in its original filing, the Commission should use its pilot projects flexibly to test various proposals for new rules to determine which are the most effective.³⁰

Some of the very proposals put forward in this docket could be the subject of a real-world test in the pilots. It would seem incredible for the Commission to create pilot projects and not test new ideas subject to debate. Among the proposals the Commission could test are the newer eligibility proposals in this docket to determine their effectiveness and impact on participant behavior; the Leadership Conference’s proposal to use electronic vouchers instead of the existing model of support; and the proposal to offer one phone per adult, contrasting it with the proposal to maintain its existing rule of one Lifeline telephone per household. We also urge the Commission to set up a pilot project to test the role of the cost of equipment in increasing broadband adoption, in addition to the question of leasing vs. purchase that the Commission lays out in its Notice.³¹ Also, a pilot project could give consideration to the assistive technology needs and special requirements of people with disabilities. It would make sense to set up several pilots side by side, each with similar target populations, but each offering different types of support for hardware. The results could greatly inform Commission policy.

We also reemphasize the Commission’s important obligation to reach out and identify innovative broadband adoption projects beyond simply issuing a public notice seeking comment. For example, workshops, hearings and other mechanisms to solicit comments are a useful means to ensure participation by organizations that do not ordinarily monitor FCC regulatory proceedings.

²⁹ *Id.*

³⁰ Leadership Conference Lifeline Letter (filed April 21, 2011) at 4.

³¹ While we believe that leasing could be an effective means to ensure that a provider is offering technical support to users, we also emphasize the negative experiences of some low-income people in leasing computer equipment, as highlighted by the National Consumer Law Center in this docket.



The Commission should adopt The Leadership Conference’s proposed “household” definition for eligibility and add WIC and the Homeless Veterans to the programs that confer eligibility for Lifeline.

In its original comments, The Leadership Conference supported a definition of “household” developed by the National Consumer Law Center based on the LIHEAP definition of household. Specifically, we proposed to define household as “any individual or group of individuals who are living together as one economic unit.”³² We continue to support that definition. Not only does this definition recognize the core family/economic unit that deserves support, it obviates the need for the Commission to develop waivers for individuals and families that live in group housing. If the Commission does not adopt a household definition as we proposed, the NTIA DTV model is an appropriate mechanism to consider; we note, however, that the definitions of group housing used in the DTV process were much narrower than what should be considered for Lifeline and that the process for individuals using P.O. boxes does not account for individuals who still lack a mailing address at their residence.

Finally, we support two additional proposals to modernize the program. We understand that the U.S. Department of Agriculture recently met with the Commission, seeking to persuade the Commission to add one of its nutrition assistance programs – Special Supplemental Nutrition Program for Women, Infants and Children (WIC) – as a federal default eligibility option.³³ We strongly support this request. Women with young children are particularly in need of telephone and broadband access. Parents of young children require telephonic access to pediatricians, child care providers and schools. This constituency could also benefit from broadband access. For example, it is much easier for a parent to pursue an online degree from his or her own living room while children sleep, than it is to find child care or babysitting while traveling to a library for online access.

We likewise support the request of the Department of Veterans Affairs for automatic enrollment for those participating in the Homeless Veterans Program.³⁴ Homelessness afflicts Hispanic and African-American veterans at greater rates than all veterans; while one in ten veterans living in poverty become homeless, that number rises to one in four for Hispanic and African-American veterans living in poverty.³⁵ After their service to our country, veterans struggling to regain economic stability deserve assistance with telephone and broadband without jumping through any additional bureaucratic hoops.

³² Leadership Conference Lifeline Letter (filed April 21, 2011 at 8 (citing 42 U.S.C. § 8622 (6))).

³³ Letter from Debra R. Whitford, Supplemental Food Programs Division, USDA to Marlene Dortch, FCC, Docket No. 11-42 (filed August 17, 2011).

³⁴ Letter from Peter Dougherty, Homeless Veterans Initiative Office, Department of Veterans Affairs to Marlene Dortch (filed August 23, 2011).

³⁵ *Id.*, attachment at 2.



In summary, the undersigned members of The Leadership Conference on Civil and Human Rights encourage the Commission to impose reasonable minimum service obligations on no-cost wireless Lifeline service offerings and oppose the suggestion to require minimum payments for these products as counterproductive. In addition, we urge the Commission to take prompt action to modernize the program and to implement broadband pilots that will test various mechanisms to best improve broadband adoption. Please contact Leadership Conference Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, UCC Office of Communication, Inc., at 202-841-6033, or Christopher Calabrese, ACLU, at 202-715-0839, or Corrine Yu, Leadership Conference Managing Policy Director at 202-466-5670, if you would like to discuss the above issues or any other issues of importance to The Leadership Conference.

Sincerely,

American Association for People with Disabilities
Asian American Justice Center
Communications Workers of America
Disability Rights and Education & Defense Fund
National Urban League
NAACP
National Consumer Law Center, on behalf of its low-income clients
National Disability Rights Network
National Hispanic Media Coalition
National Organization for Women
The Leadership Conference on Civil and Human Rights
United Church of Christ, Office of Communication, Inc.