



November 21, 2011

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

Re: *Ex Parte* disclosure pursuant to 47 CFR § 1.1206(b) in WC Docket No. 11-42; WC Docket No. 03-109; CC Docket No. 96-45

Dear Ms. Dortch:

On November 16, 2011 Professor David Super of Georgetown University Law Center, Cheryl Leanza of the United Church of Christ, OC Inc., and Corrine Yu of the Leadership Conference on Civil and Human Rights held a telephone conference call with Kim Scardino, Jamie Susskind, and Jonathan Lechter of the Telecommunications Policy Access Division.

Professor Super discussed generally the eligibility rules and whether eligibility verification requires photo ID in other federal benefits programs. He explained that the programs vary considerably but the most detailed eligibility procedures are in SNAP. Most programs do not require a picture ID, although they do require identify verification. *See, e.g.*, 7 C.F.R. § 273.2(f)(1)(vi) (SNAP). In some cases these programs rely on third-party verification. *Id.* § 273.2(f)(4)(ii), (5)(ii). He explained that there are definitely low income people who do not have photo ID to verify identity and who are not required to produce photo ID to receive federal benefits. *Id.* § 273.2(f)(1)(vi) (explicitly allowing other forms of identification verification other than photo IDs); *id.* § 273.2(F)(5)(i) (requiring state agencies to accept any verification that reasonably supports households' assertions on the application). He explained that because of linked concerns about seeking photo identification for other purposes, such as voting, questions of requiring identification are extremely sensitive. *See* 7 U.S.C. § 2016 (h)(9) (making SNAP photographic identification cards optional for states). Corrine Yu explained that the Leadership Conference shares concerns about national ID requirements and highlighted the testimony of Wade Henderson, President and CEO of the Leadership Conference, a copy of which is attached to this letter.

Professor Super explained that some members of low-income families or households may not have Social Security Numbers (SSNs). In addition to the privacy issues related to SSNs, e-verify, for example, has not eliminated the unreliability of using SSNs for identity verification. Professor Super reported that e-verify's operation continues to be quite problematic and unreliable. Cheryl Leanza emphasized on behalf of the Leadership Conference that we have significant concerns with the accuracy of e-verify; a copy of the Leadership Conference's concerns with e-verify is attached.

He discussed the verification of income. The originating statute or regulations in most of the major anti-poverty programs on which the FCC relies require verification of income. This is typically done at two stages today. Initially this is accomplished by the household providing

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verification by a pay stub or getting their employer to complete a state verification form. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(f)(1)(i); *see* 7 C.F.R. § 273.2(f)(4), (5) (describing methods of verification in SNAP). Subsequently, the state typically double checks this data using data brokers or other electronic verification. *See* 42 U.S.C. § 1320b-7 (establishing Income and Eligibility Verification System (IEVS)). To verify federal benefit income, such as SSI, agencies will use an award letter or may be able to query SSA's data-bases in real time. Most states already have real-time ability to access the data from SSI, so a benefits counselor can access it immediately with the client via computerized access.

The statutory limits of IEVS describe which programs can access it and contribute toward it; they also impose strict privacy rules. In addition to IVEVS, agencies administering means-tested programs rely on other sources for income verification, such as the records of their unemployment compensation and Child Support Enforcement agencies. There has been a significant change over time and now much of child support is paid through state agencies and enables states to verify child support payments, although these systems are not completely seamless. *See generally* 42 U.S.C. §§ 651-669 (setting out extensive federal requirements for state child support enforcement systems).

Professor Super described how an agency might verify participation in a federal or federal-state benefit program. He explained that most federal benefits programs provide an award letter or notice of eligibility when an individual or household is deemed eligible and also a card to help maneuver in the system—these include a Medicaid card and an EBT card for SNAP. *See* 7 C.F.R. § 274.10 (setting out identification card requirements in SNAP, which need not involve photographic identification cards); *id.* § 274.12(e)(1) (providing for issuance of EBT cards). He explained that states contract for databases associated with SNAP, but it was unlikely that one company had all the SNAP data for all the states. He explained that each individual is likely to have a case number for their particular state that is unique in the state, but it would not be a unique number nationwide. This number would appear on benefits letters and eligibility cards or documents. USDA has declined to develop a national eligibility database. Social Security numbers are unique nationally, but they are subject to strict privacy requirements and safeguarded to protect against identity theft.

The Commission staff asked about participation rates in federal benefits programs. Professor Super explained that participation rates vary widely and also that they can be hard to track in certain programs. For example, free school meals usually experience a very high take rate, particularly in elementary school, but the target population is very specialized. On the other hand, low rates for LIHEAP and TANF reflect two factors. First, they are funded pursuant to an annual appropriation and are not funded adequately to meet demand. This leads to a range of state policies to discourage participation or simply deny benefits to make expenses fit available funds. Second, measuring take rates is difficult for these two programs because the target populations are difficult to identify because the eligibility rules are so detailed and variable among states. It is very hard to estimate reliably the total TANF-eligible population, so the total numbers of families in poverty with children are often used as a benchmark. LIHEAP participation rates are also a little difficult to estimate because of the variations in state eligibility criteria. Most other programs participation rates are somewhat easier to estimate, although state-specific eligibility rules can complicate estimation in Medicaid.

Prof. Super explained that Medicaid's high participation rate is explained in large part by the expense of health care, which is extremely difficult for individuals with little income to purchase without aid. EITC has a high participation because of its simplicity in application – a single application once per year– and has also benefitted from extensive outreach and education programs and the self-interest of tax prepara-

tion companies in helping people apply (and collecting a fee for doing so). *See generally* Dean Plueger, *Earned Income Tax Credit Participation Rate for Tax Year 2005*, IRS Research Bulletin (2009). SNAP has comparably high take rates with some populations, particularly TANF recipients and SSI recipients, because many use joint applications. *See* 7 U.S.C. § 2020(i)(2); 7 C.F.R. § 273.2(k). In addition, the lowest-income people participate more highly in SNAP because the benefits are scaled to income: these beneficiaries have fewer resources and receive the most support. The working poor participate at the lowest levels in TANF because of the difficulty in applying for benefits—if online benefit applications become more widespread that might increase the number of beneficiaries. *See generally* Office of Research and Analysis, Food and Nutrition Service, U.S. Department of Agriculture, *Trends in Supplemental Nutrition Assistance Program Participation Rates: Fiscal Year 2002 to Fiscal Year 2009* (August 2011), available at <http://www.fns.usda.gov/ora/MENU/Published/snap/FILES/Participation/Trends2002-09.pdf>.

Prof. Super described some of the details of several programs. He explained that TANF is a flat block grant. As a condition to receiving TANF funds, states are required continue a “maintenance of effort” but often these efforts are not in cash payments to households. 42 U.S.C. § 609(a)(7). In fact, a small minority of TANF money is paid to household in benefits. LIHEAP is funded by a federal block grant to each state. The last two years have seen significant federal funding cuts to LIHEAP. In these cases states will impose more and more severe eligibility limitations. Prof. Super explained that shrinking availability of cash assistance, with continued failure to fund housing assistance to most of those eligible, means that households are often doubling up – sharing a single residence. As these supports are cut back often their only financial assistance is SNAP.

Professor Super explained that SNAP is the most efficient program of the existing federal benefits programs in reaching a broad range of low-income people, but that the Affordable Care Act will likely result in even wider reach for Medicaid its expansion of eligibility. This expansion will likely include a number of people who do not receive any federal benefits now because so many federal benefits are limited to families with children, persons with disability, or the elderly. Although SNAP does reach some childless adults, in much of the country they are only eligible for three months of support every three years. 7 U.S.C. § 2015(o).

The Commission asked about experience with communicating with individuals about their benefits—whether U.S. mail or telephone is most effective. Generally Prof. Super thought that mailed letters was most effective, although because the service in question is telephone service automated telephone calls had merit also. Electronic communication is generally not effective with these populations because even if they have access it is more likely to be an occasional visit to the library – often as infrequently as every two months or less.

Professor Super discussed how other federal benefits programs deal with homeless populations. He explained that federal SNAP rules explicitly prohibit states from requiring a fixed address to receive support. 7 C.F.R. § 273.2(f)(1)(vi). States who implement this have not found it to be difficult because this is a common attribute of the target population. Professor Super explained that requiring additional recertification for homeless individuals would likely lead to reduced participation rates. In the research that he has conducted short recertification intervals are often the greatest negative indicator of participation. *See* David A. Super, *Are Rights Efficient? Challenging the Managerial Critique of Individual Rights*, 93 CALIF. L. REV. 1051 (2005); David A. Super, *The Quiet “Welfare” Revolution: Resurrect-*

October 20, 2011
Page 4 of 4



ing the Food Stamp Program in the Wake of the 1996 Welfare Law, 79 N.Y.U. L. REV. 1271 (2004). He noted that homeless individuals face particular challenges with retaining documentation because transitory housing and crime rates for these populations means they cannot retain their documents easily.

Sincerely,



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Co-Chair, Leadership Conference on Civil and Human Rights,
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