

TESTIMONY
OF
JEFFREY A. EISENACH, PH.D.
BEFORE THE
COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION
UNITED STATES SENATE

September 6, 2017

Mr. Chairman and Members of the Committee, thank you for the opportunity to appear before you at today's hearing on Addressing the Risk of Waste, Fraud, and Abuse in the Federal Communications Commission's Lifeline Program.

I have had the opportunity to study communications, media and Internet policy issues over the course of many years and in several capacities, including in my current positions as Co-Chair of the Communications Media and Internet Practice at NERA Economic Consulting, as an adjunct professor at George Mason University Law School, and as a Visiting Scholar at the American Enterprise Institute. While I am proud to be affiliated with these organizations, I am appearing today solely on my own behalf, and the views and opinions I express should not be attributed to any of the organizations with which I am or have been affiliated.

I can summarize my testimony in three sentences. First, promoting universal access to modern communication services and the Internet, especially for low-income and disadvantaged Americans, is a noble cause and a pragmatic objective which deserves Federal support. Second, the Federal Communications Commission's (FCC) current lifeline program is not an effective or efficient means of achieving these goals, nor are current reform efforts likely to make it so. Third, we cannot give up: the doors of digital opportunity must be opened for low-income and disadvantaged Americans, and it is therefore incumbent on policymakers to develop a new approach that is both effective and a good investment for the American taxpayer.

Let me address each point in turn.

First, the evidence regarding the positive effects of expanding availability and adoption of broadband communications services and Internet access on economic progress and personal opportunity is incontrovertible. There is a broad and deep literature on overall economic effects which has consistently demonstrated a positive relationship between broadband and economic growth, employment and productivity.¹ Research is also increasingly demonstrating the socioeconomic benefits of broadband for disadvantaged populations. For example, new research published in the *Journal of Medical Internet Research* shows that when people from low

¹ See e.g., I. Bertsekas *et al.*, "The Economic Impacts of Broadband Internet: A Survey," *Review of Network Economics* 14(4) (2015) 201-227 at 222 ("In sum, we find strong evidence for positive impacts of broadband internet on economic outcomes.").

socioeconomic positions begin using the Internet they use it for a variety of capital enhancing activities, including education, job seeking and obtaining health information.² Recent research from the Pew Internet Center also shows that broadband plays an important role in facilitating job search activity.³ There is also substantial research demonstrating the benefits of broadband expansion in rural areas. For example, Atasoy found that gaining access to broadband in a county increased the employment rate by approximately 1.8 percentage points, with larger effects in rural areas.⁴ A 2016 Hudson Institute study found that the rural broadband industry supported over 69,000 jobs and \$100 billion in e-commerce in 2015.⁵

Academics will always quibble about the details and the magnitudes, but there is widespread agreement that broadband availability and Internet access generate significant socioeconomic benefits and that expanding both availability and adoption are worthy objectives for public policy.

My second point, directly addressing the main focus of today's hearing, is that the FCC's Lifeline program is both ineffective and inefficient as a means of promoting online access for poor and disadvantaged Americans. Let me be clear what I mean by each of those words. It is ineffective because it has little if any impact on behavior. Indeed, there is no compelling evidence that Lifeline causes a significant number of people to get communications services they would not already have in the absence of the subsidy. It is inefficient because it is extremely wasteful and prone to fraud and abuse, meaning that it costs the communications users who pay for it – including low income households – far more than it should.

If Lifeline were effective in opening the doors of digital opportunity to low-income and disadvantaged populations, it could be argued that at least some reasonable level of waste or inefficiency should be tolerated. But it is not. When asked by Government Accountability Office (GAO) for evidence that the program achieves its public policy goals, the FCC could only produce to two academic studies, both of which suggest the program is ineffective in increasing subscribership. As the GAO explained:

The studies that FCC referred us to suggest ... that many low-income households would choose to subscribe to telephone service in the absence of the Lifeline subsidy. ... As such, the Lifeline program, as currently structured, may be a rather inefficient and costly mechanism to increase telephone subscribership among low-

² See R. McCloud *et al*, "Entertainment or Health? Exploring the Internet Usage Patterns of the Urban Poor: A Secondary Analysis of a Randomized Controlled Trial," *Journal of Medical Internet Research* 18:3 (2016) (available at <http://www.jmir.org/2016/3/e46/f>). (The study also finds that "familiarity and skills in using the Internet enhance the capacity to use it for diverse purposes, including health and to increase capital....")

³ See Aaron Smith, "Lack of Broadband Can Be a Key Obstacle, Especially for Job Seekers," Pew Research Center (October 28, 2015) (available at <http://www.pewresearch.org/fact-tank/2015/12/28/lack-of-broadband-can-be-a-key-obstacle-especially-for-job-seekers/>). See also Council of Economic Advisers, "The Digital Divide and Economic Benefits of Broadband Access," (March 2016).

⁴ See Hilal Atasoy, "The Effects of Broadband Internet Expansion on Labor Market Outcomes," *ILRRReview* 66(32) (April 2013) 315-345.

⁵ See Hanns Kuttner, *The Economic Impact of Rural Broadband* (Hudson Institute, 2016) (available at <https://s3.amazonaws.com/media.hudson.org/files/publications/20160419KuttnerTheEconomicImpactofRuralBroadband.pdf>)

income households, because several households receive the subsidy for every additional household that subscribes to telephone service due to the subsidy.⁶

In fact, one of the studies produced by the FCC found that only one out of twenty households enrolled in the wireless Lifeline program subscribes to telephone service because of the subsidy,⁷ and the other found that while the Link Up program had a modest effect on wireline penetration, Lifeline – though much more expensive – had very little effect.⁸

Thinking about the way the program is designed, these results are hardly surprising. Lifeline, after all, pays telephone companies to identify people who are eligible for Federal income support programs and, if they are, gives them free or subsidized phone service. It does not reward the companies for signing up new subscribers – that is subscribers who do not already have telephone service. Nor does it provide funding or in any way encourage companies to reach out to difficult to serve populations. Further, as my AEI colleague Professor Daniel Lyons has noted, the 2016 extension of the program to broadband services does nothing to change these incentives – it just extends the availability of the \$9.25 subsidy to broadband, without any evidence that broadband subscribership will be increased measurably as a result.⁹

If someone had set out to design a Federal program that would be prone to waste, fraud and abuse, it is hard to imagine how they could have done a better job than with the FCC Lifeline program. The program is administered by over 2,000 companies, most of them resellers of services actually provided by others, which can be certified for participation by any of 55 or so state and territorial entities, plus the FCC. The companies receive checks from the Universal Service Administrative Company (USAC) based on how many qualifying customers they claim to serve. Once a customer is signed up, the payments – about \$9.25 per month, unless one happens to be serving a customer on an Indian reservation, in which case the amount is tripled – keep coming, even if the customer never actually uses the service. The companies self-certify that the participants are eligible, but in just over a third of the cases it recently reviewed, the GAO could not verify that the subscriber actually qualified for the subsidy.¹⁰

⁶ See US Government Accountability Office, *FCC Should Evaluate the Efficiency and Effectiveness of the Lifeline Program*, (GAO-15-335, March 24, 2015) at 14 (available at <http://www.gao.gov/products/GAO-15-335>) (hereafter GAO 2015 Report). See also Daniel A. Lyons, *To Narrow the Digital Divide, the FCC Should Not Simply Extend Lifeline to Broadband* (American Enterprise Institute, March 2016) at 33 (hereafter Lyons 2016).

⁷ See Olga Ukhaneva, “Universal Service in a Wireless World” (Georgetown University, November 2015).

⁸ See Daniel A. Akerberg, *et al*, “Estimating the Impact of Low-Income Universal Service Programs,” *International Journal of Industrial Organization* 37 (2014) 84-98. Akerberg *et al* found that while Link Up (which covers set up costs for new telephone subscriptions) was far more effective than Lifeline, which covers monthly bills. Link Up subsidies were eliminated except in tribal areas in 2012 *Lifeline and Link Up Reform and Modernization, Order* (27 FCC Rcd 15842 (WCB 2012)) (hereafter 2012 Reform Order).

⁹ Lyons 2016 at 1.

¹⁰ See Government Accountability Office, *Additional Action Needed to Address Significant Risks in FCC’s Lifeline Program* (May 2017) at Exec. Summary (“Lifeline’s structure relies on over 2,000 Eligible Telecommunication Carriers that are Lifeline providers to implement key program functions, such as verifying subscriber eligibility. This complex internal control environment is susceptible to risk of fraud, waste, and abuse as companies may have financial incentives to enroll as many customers as possible. Based on its matching of subscriber to benefit data, GAO was unable to confirm whether about 1.2 million individuals of the 3.5 million it reviewed, or 36 percent, participated in a qualifying benefit program, such as Medicaid, as stated on their Lifeline enrollment application.”) (hereafter GAO 2017).

As Senator McCaskill put it after reviewing the most recent GAO report:

A complete lack of oversight is causing this program to fail the American taxpayer—everything that could go wrong is going wrong. We’re currently letting phone companies cash a government check every month with little more than the honor system to hold them accountable, and that simply can’t continue.¹¹

It should be noted that the FCC’s mismanagement of the Lifeline program is not an outlier. The universal service program has been rife with waste, fraud and abuse throughout its history. For example, when the Commission first began subsidizing wireless competitive communications carriers in the mid-2000s, it ended up writing checks for hundreds of millions of dollars to cell phone carriers for serving customers they were already serving without a subsidy.¹² Reviewing the FCC’s high-cost programs in 2008, the GAO found that: the “FCC has not established performance goals or measures” for the program; “while some internal control mechanisms exist... these mechanisms are limited and exhibit weaknesses that hinder FCC’s ability to assess the risk of non-compliance;” “the carrier certification process exhibits inconsistency across states that certify carriers;” and, “carrier audits have been limited in number and reported findings, and carrier data validation focuses primarily on completeness, not accuracy.”¹³

The history of the Lifeline program, of course, is even more disturbing, especially as it relates to subsidies for mobile subscriptions from non-facilities based carriers.¹⁴ Almost immediately reports began emerging of rampant fraud and abuse as fly-by-night operators took advantage of the same sorts of management failings that have characterized the Commission’s oversight of other universal service programs.¹⁵ For example, in its 2010 report on the Commission’s low-income programs, the GAO found:

Although FCC and USAC have some mechanisms in place to identify and evaluate risks and monitor compliance with program rules, [T]he Low-Income Program lacks key features of effective internal controls. FCC and USAC primarily use audit

¹¹ Press Release, “McCaskill-Requested Report Shows Massive Fraud, Waste in ‘Lifeline’ Phone Program,” (June 29, 2017) (available at <https://www.mccaskill.senate.gov/media-center/news-releases/breaking-mccaskill-requested-report-shows-massive-fraud-waste-in-lifeline-phone-program>).

¹² See e.g. Kevin W. Caves and Jeffrey A. Eisenach, “The Effects of Providing Universal Service Subsidies to Wireless Carriers” (Criterion Economics, June 2007). The study found “no statistically significant relationship between subsidies and either the availability of wireless service from any carrier or the number of carriers offering service” and concluded that “USF funding does not significantly increase the availability of mobile telephone service in high cost areas.”)

¹³ See Government Accountability Office, *Telecommunications: FCC Needs to Improve Performance Management and Strengthen Oversight of the High-Cost Program* (GAO-08-633, June 2008) (available at <https://www.gao.gov/assets/280/276644.html>).

¹⁴ For a concise history of the FCC’s expansion of Lifeline to non-facilities-based wireless carriers, see Government Accountability Office, *Improved Management Can Enhance FCC Decision Making for the Universal Service Fund Low-Income Program* (GAO 11-11, October 2010) (available at <http://www.gao.gov/assets/320/312708.pdf>) at 16-17 (hereafter GAO 2010).

¹⁵ See e.g., Phil Goldstein, “TracFone, Icon and Others Face Fines in FCC Lifeline Crackdown,” *Fierce Wireless* (October 1, 2013) (available at <http://www.fiercewireless.com/wireless/tracfone-icon-and-others-face-fines-fcc-lifeline-crackdown>); see also “Remarks of FCC Commissioner Ajit Pai at the Citizens Against Government Waste Policy Breakfast” (July 28, 2014) (available at <https://www.fcc.gov/document/commissioner-pai-remarks-citizens-against-government-waste-bfast>).

findings to monitor compliance with program rules. However, the number and scope of USAC’s audits have been limited and there is no systematic process in place to review the findings of those audits that are conducted. Further, FCC and USAC have not conducted a risk assessment specific to the Low-Income Program that includes consideration of all program vulnerabilities, such as the possibility that multiple carriers may claim support for the same telephone line and that households may receive more than one discount, contrary to program rules.¹⁶

The FCC did react to the 2010 GAO study by adopting its February 2012 Reform Order, which the Commission claimed would “substantially strengthen protections against waste, fraud and abuse” and “improve program administration and accountability.”¹⁷ It is true that the 2012 Order resulted in removing a significant number of ineligible subscribers from the rolls – 29 percent of them. As then Commissioner Pai pointed out, the Commission’s mismanagement of the program resulted in paying out approximately \$1.3 billion in subsidies to phone companies for serving subscribers who were later decertified.¹⁸

Of course, we now know that the 2012 Order did not end waste fraud and abuse. Five years after releasing its 2010 study, in March 2015, the GAO again looked at the Lifeline program and found that of the 11 key reforms adopted in the 2012 Order, the FCC had implemented only seven, and that the Commission still had not – as noted above, evaluated the effectiveness of the program. The 2015 GAO study also noted that the 2012 Order included a Further Notice of Proposed Rulemaking on how best to implement an automated eligibility verification system – but three years later – found that “the FCC has not met the timeframe established in the Order or revised any timeframes for when or how this automated means would be available.”¹⁹

With this history in mind, the notion that the FCC’s April 2016 Lifeline Reform and Modernization Order is going to result in a well-managed, cost-effective program represents the triumph of hope over experience. Indeed, the 2016 Order exhibits the same lack of seriousness, let alone urgency, that have brought us to where we are today. As then Commissioner Pai said at the time, the 2016 Order “does not clean up the waste, fraud and abuse,” “does not address known loopholes that let unscrupulous carriers exploit the program,” and even “eliminates checks against waste, fraud, and abuse,” such as safeguards against lifeline trafficking.²⁰ Almost comically, the Order also does not contain a budget, but rather a non-binding trigger mechanism calling for further study.²¹

¹⁶ See GAO 2010 at Highlights.

¹⁷ Federal Communications Commission, *In the Matter of Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket 11-42 (February 6, 2012) at ¶1 (hereafter 2012 Reform Order).

¹⁸ Federal Communications Commission, *In the Matter of Lifeline and Link Up Reform and Modernization, Third Report and Order, Further Report and order, and Order on Reconsideration* (WC Docket No. 11-42, April 27, 2016), Dissenting Statement of Commissioner Ajit Pai (hereafter 2016 Reform Order); dissenting Statement of Commissioner Ajit Pai at 4161 (hereafter Pai Dissent).

¹⁹ GAO 2015 Report at 12. The need for an eligibility database was actually raised in the 2011 NPRM that led to the 2012 Order. See *Lifeline and Link Up Reform and Modernization* WC Dkt. No. 11-42, *Notice of Proposed Rulemaking*, 26 FCC Rcd 2770 at ¶207 (hereafter 2011 NPRM).

²⁰ Pai Dissent *passim*.

²¹ As Commissioner O’Rielly put it in his dissent to the 2016 Reform Order: “A joke. Not a budget.” (O’Rielly dissent at 4181).

The Order did put in place a process for launching a National Verifier database, and the current Commission is to be credited with following through with that effort. But even assuming a best-case scenario, the National Verifier system will not be “hard launched” even in the six trial states until at least March 31, 2018 – two years after the Order was signed. It will not be fully deployed until sometime in 2019 at the earliest – seven years after the Commission set out to create such a system in its 2011 Lifeline and Linkup NPRM.²² And given the loopholes and other shortcomings in the Order’s other enforcement mechanisms, there is no reason to believe the National Verifier, even if it works, will bring an end to the waste, fraud and abuse of Lifeline.

For me, the history of the Lifeline program raises an important question: Is there ever a point at which Congress will hold an agency accountable for gross, repeated, ongoing, systematic mismanagement of a multi-billion dollar federal program. Because if there is such a point, this is the program, this is the agency and this is the time.

This brings me to my third point: The need for an alternative. As I said above and deeply believe, it is essential that we continue working to open the doors of digital opportunity to low income and disadvantaged Americans. That means we need to design and implement something a lot better than Lifeline. While it is not within this scope of this testimony to lay out a complete program, let me suggest four principles for replacing Lifeline with a more effective approach to advancing digital opportunity.

First, Federal and state governments should work to reduce barriers to broadband deployment and adoption, and to the efficient functioning of the broadband marketplace, so as to lower prices and increase the availability of affordable broadband services. That specifically includes reducing taxes – including universal service fees – on broadband services. Taxes and fees overall account for 18.6 percent of the average consumer’s monthly bill, and while some of those are general sales taxes, Federal USF fees alone account for more than a third of the total, 6.64 percent.²³ Financing communications subsidies by taxing communications users makes no economic sense – it is literally putting money into one pocket after taking it from the other. If universal service programs are worth funding – and I believe that properly constructed programs are worth funding – they are worth financing out of general tax revenues.

Second, regardless whether Lifeline is replaced or reformed, support should be targeted to those who do not already have service. As Commissioner O’Reilly put it in his dissenting statement on the 2016 Order, the refusal to target support means that “the agency prefers to give away money to people who already have broadband while other hard-working Americans that sit just above the eligibility threshold pay ever higher fees to fund the program, possibly at the expense of being able to afford broadband themselves.”²⁴

²² See Federal Communications Commission, “Wireline Competition Bureau Announces Initial Launch of the National Lifeline Eligibility Verifier” (August 31, 2017) available at http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0831/DA-17-816A1.pdf.

²³ See Scott Mackey and Joseph Henchman, *Wireless Tax Burdens Rise for Second Straight Year in 2016*, Tax Foundation (October 2016) (available at <https://taxfoundation.org/wireless-tax-burdens-rise-second-straight-year-2016>).

²⁴ O’Reilly Dissent at 4182.

Third, the replacement for lifeline should reflect an assessment of who needs help, and of what sort. What we know with certainty is that throwing more than a billion dollars a year at the problem in the form of \$9.65 monthly checks written to telephone companies for serving anyone eligible for a Federal assistance program is not achieving the desired goal. A more effective approach would begin by realizing that the Americans most likely to be offline today are the elderly and those with low educational attainment, and that these populations likely need more than a free phone to make real use of the Internet.²⁵ Similarly, while blacks and Hispanics are as nearly likely to own smart phones and tablets as whites, they are more than twice as likely as whites to say that training would help them use the Internet more effectively in making important decisions.²⁶ And, as my colleague Daniel Lyons has suggested, a Lifeline replacement program “should include ways for low-income recipients to acquire computers and other equipment they need to get online,” perhaps drawing lessons from the old Link Up program.²⁷

Fourth, and finally, I would like to respectfully suggest that it is time to consider a new delivery mechanism – one that involves neither the Federal regulatory agency which has so grossly mismanaged the Lifeline program nor the telephone companies that have profited so handsomely from that mismanagement. I hold Chairman Pad and the other members of the FCC in high regard, but the FCC has demonstrated repeatedly, under talented management from both political parties, that it is not very good at the low-income assistance business. Maybe it’s time to try another path.

* * *

Mr. Chairman and Members of the Committee, this completes my testimony. I look forward to answering any questions you may have.

²⁵ Monica Anderson and Andrew Perrin, “13% of Americans Don’t Use the Internet: Who Are They?” Pew Research Center (September 7, 2016) (available at <http://www.pewresearch.org/fact-tank/2016/09/07/some-americans-dont-use-the-internet-who-are-they/>).

²⁶ Andrew Perrin, “Smartphones Help Blacks, Hispanics Bridge Some – But Not All – Digital Gaps with Whites,” Pew Research Center, August 31, 2017 (available at <http://www.pewresearch.org/fact-tank/2017/08/31/smartphones-help-blacks-hispanics-bridge-some-but-not-all-digital-gaps-with-whites/>).

²⁷ Lyons 2016 at 6-7.