

**TESTIMONY OF CHRISTOPHER GUTTMAN-McCABE
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on

“THE LIFELINE FUND: MONEY WELL SPENT?”

before the

HOUSE OF REPRESENTATIVES COMMITTEE ON ENERGY AND COMMERCE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

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Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee, on behalf of CTIA – The Wireless Association® (“CTIA”), thank you for the opportunity to speak with you today on the subject of the Federal Universal Service Fund’s Lifeline program. Throughout its history, the Lifeline program has helped advance the goal of ensuring that every American has access to telecommunications services and the wireless industry plays an increasingly important role in furthering that objective. CTIA looks to work constructively with the Subcommittee to ensure that the Lifeline program is run in an efficient, responsible manner so that it may continue to fulfill this mission.

Today, my testimony will focus on three areas. First, I want to offer a brief history of the Lifeline program, and especially the wireless industry’s role in it. Second, I would like to dispel a few popular misconceptions about the program. Third and finally, I would like to offer CTIA’s views on the programmatic reforms recently adopted by the Federal Communications Commission.

A Brief History of the Lifeline Program

To understand where we are and how we got here, a brief history of the Lifeline program may be helpful.

Under the leadership of Chairman Mark Fowler, the Lifeline program was created by the FCC in 1985. Its purpose was to ensure that any increase in local rates that occurred following the break-up of the Bell System would not put local phone service out of reach for low-income households. The FCC was concerned that the implementation of a subscriber line charge would force low-income consumers to drop voice service, which, the FCC found, “had become crucial to full participation in our society and economy.” (2012 Lifeline Reform Order, at para. 12.)

That notion - that access to telecommunications service is essential to full participation in our economy - led Congress to enact Section 254 of the Act as part of the Telecommunications Act of 1996, which includes specific universal service principles to ensure that low-income consumers have access to telecommunications service. The 1996 amendments also directed the FCC to consider “such other principles as the Joint Board and the Commission determine are necessary and appropriate.” Upon the recommendation of the Federal-State Joint Board, the Commission thus adopted rules that universal service support mechanisms should be

"competitively neutral" and "not unfairly advantage one provider, nor favor one technology." (1997 Universal Service First Report & Order, at para. 364.) On this basis, the Commission also endorsed the Joint Board's recommendation that "all eligible telecommunications carriers, not just ILECs, should be able to receive support for serving qualifying low-income consumers." (Universal Service First Report & Order, at para.365.)

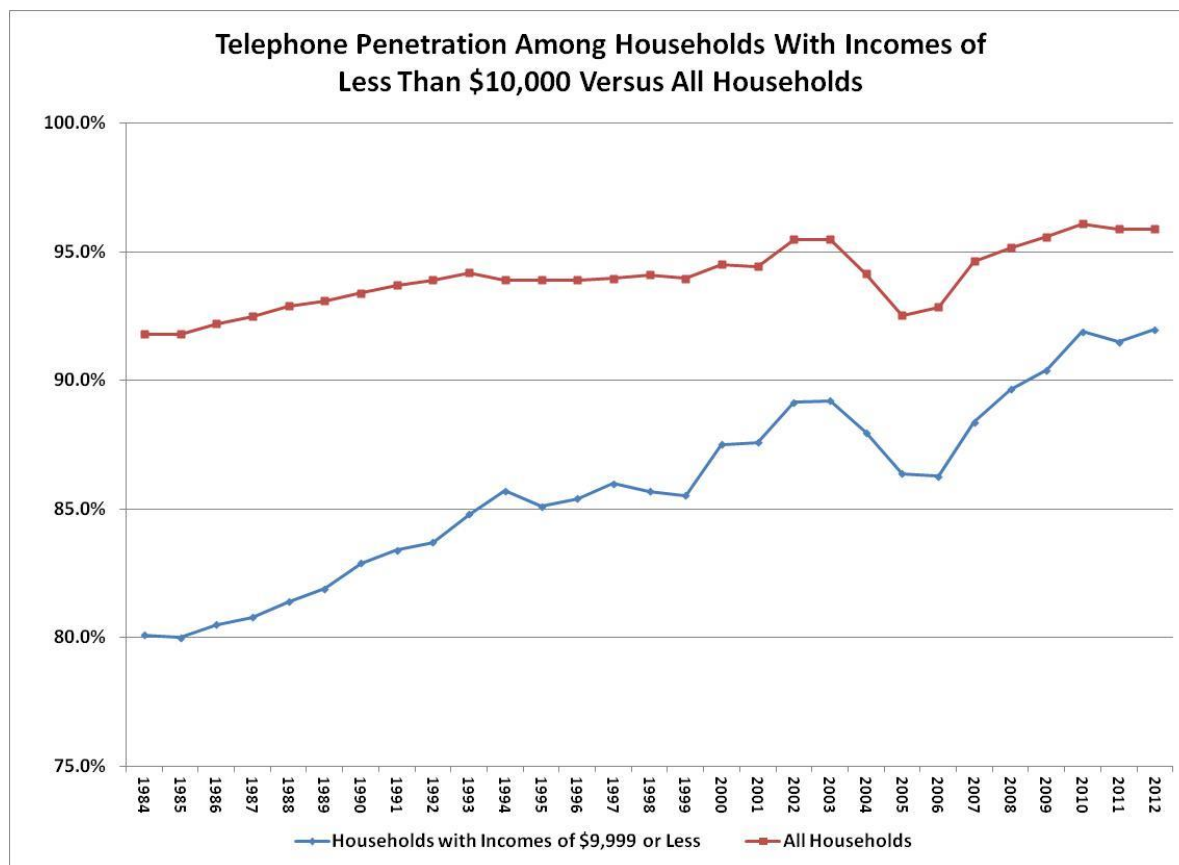
In 2005, under the leadership of Chairman Michael Powell, the Commission established a framework for the federal designation of wireless providers serving rural areas to qualify as "eligible telecommunications carriers," making them eligible for support from the high-cost fund. (2005 ETC Designation Order) Designation of wireless providers as ETCs was conditioned on the offering of Lifeline services to qualified low-income consumers. (2005 ETC Designation Order, at para. 17.)

Later in 2005, the next major modernization of the Lifeline program occurred, when the FCC, under Chairman Kevin Martin, granted TracFone's petition seeking forbearance from the statutory requirement that a carrier designated as an ETC for purposes of federal universal service support provide service, at least in part, over its own facilities. In evaluating TracFone's petition, the Commission had to consider two different provisions of the Act. First, it had to consider the universal service goals embodied in Section 254, and second, it had to consider whether TracFone's petition could satisfy all three prongs of the test for forbearance set forth in Section 10. The Commission ultimately concluded that the requirement that a Lifeline provider be facilities-based would impede greater provision of Lifeline services and that forbearance from the facilities requirement would promote competitive market conditions. As such, it granted TracFone's petition in September 2005, noting that it would advance "the statutory goal of providing access to low-income consumers." (In the Matter of Federal-State Joint Board on Universal Service, Petition of TracFone Wireless for Forbearance from 47 USC 214(e)(1) and 47 CFR 54.201(i), at para. 17.) This proved particularly timely, as it allowed for Lifeline supported service to be made available to people displaced by Hurricane Katrina. ("Wireless Carriers Mull Participation in Cellphone Plan for Katrina Evacuees," TR Daily, October 27, 2005.)

Nearly three decades after its creation, and through an evolution shaped by Congress and FCC leaders from both parties, data demonstrates that Lifeline has been a critical component in the effort to expand telephone subscribership (2012 Lifeline Reform Order, at paras. 15-16).

Since 1984, the year of the Bell System break-up and the year immediately before creation of the Lifeline program, telephone penetration has improved from 91.4% of households to 95.9% of households in March 2012, the last period for which FCC data is available. (FCC’s 2012 Monitoring Report, at Table 3.2) To some, an increase in the total penetration rate of 4.5% may seem small, but it is, in fact a powerful accomplishment and equates to more than 5 million American households having - or not having - access to a telephone and thus a connection to emergency services, employers, health care providers, and family.

The impact of the Lifeline program has been especially dramatic with respect to households with incomes of less than \$10,000. Telephone penetration for those lowest income households increased from 80% in 1984 to 92% in 2012. And the gap in telephone subscribership between low income households and all households shrank from more than 11% to less than 4%.



Source: FCC Monitoring Reports

But in spite of this progress, our work is not yet done. According to 2012 data from the Centers for Disease Control, there are still several million American households that lack any phone service.

Misconceptions about the Lifeline Program

I've now had the opportunity to share with you a set of things that are comprised of facts: 1) the history of the Lifeline program and 2) what the program has accomplished.

I would now like to address things that are *not* based on facts – that is, several long-standing but non-factual misconceptions about the Lifeline program.

Thank you for the opportunity to set the record straight.

The first common misconception about the Lifeline program is that it relies upon taxpayer funds. This idea has been repeated in the press and on talk radio with such a frequency that it is simply accepted by many as true. But repeating a falsity does not make it true.

Here are the facts: The Lifeline program, like all USF programs, is funded through levies imposed on providers of interstate telecommunications services. Wireless companies, wireline telephone companies, and VOIP providers contribute to the fund and generally recover those contributions from their end-user customers. Funds are remitted not to the U.S. Treasury, but rather go to the Universal Service Administrative Company, an independent, not-for-profit organization established by the FCC to administer the four universal service programs.

Universal service contributions collected and distributed by USAC do not impact the Federal budget, the deficit, or the debt in any way. Congress appropriates no money for the fund and, because of that, increasing or decreasing the size of the Lifeline program, or any other component of the overall universal service program, will not impact the federal budget.

The second frequent misconception about the Lifeline program is that it provides “free cell phones” to people. Some have taken this untrue assertion so far as to claim that the government is subsidizing iPhones or will soon be providing low-income people with iPads. While Apple might be happy to have the added business, the reality is that Lifeline subsidies, which are set at

\$9.25 per month for both wireline and wireless service, only support *services*, not devices. Smartphones and tablets are not included in the Lifeline program, which is generally offered on 2G/3G spectrum with a low-cost or no-cost device provided by the carrier, generally from a very limited selection of phones. Sprint's Assurance® Wireless affiliate, for instance, offers a single device – the Kyocera Jax – for use by Lifeline customers. TracFone's Safelink Wireless® provides only two options –with its Lifeline offering.

The FCC's Recent Reforms and Beyond

With a mission as important as Lifeline, it's vital the program be run efficiently with full accountability.

CTIA's members have a very significant interest in ensuring that the full range of universal service programs are administered in a responsible manner that prevents waste, fraud, and abuse.

Because CTIA and its members are committed to the responsible stewardship of Lifeline funds, we supported the FCC in its efforts to enact new Lifeline accountability measures in 2011 and 2012. These reform measures include rules eliminating Lifeline support for more than one connection per household, new standards for determining Lifeline eligibility, new requirements for ETCs to review Lifeline subscribers' eligibility (something carriers previously were prohibited from doing), a new monthly minimum usage requirement that is intended to ensure that support is awarded only in instances that will actually benefit low-income consumers, a requirement that providers annually recertify the eligibility of their Lifeline subscribers, rigorous audit requirements, the creation of a database to prevent duplication of support across carriers in real time, and a commitment to create a nationwide "eligibility" database to ensure that only qualified consumers receive benefits. The FCC also eliminated subsidies that had been called into question, including toll limitation support and LinkUp support outside of tribal areas. Collectively, these reforms have brought, and should continue to bring, new efficiency and cost savings to the Lifeline program.

Before addressing whether additional reforms are needed, let me be clear that CTIA believes the most important step that can be taken to safeguard the program and prevent waste, fraud and abuse is for the FCC's 2012 reforms to be fully implemented. This is particularly true with

respect to the creation of the national duplicate database. No consumer should “double dip” from the Lifeline program and CTIA fully supports the Commission’s effort to develop an automated national duplicate database to prevent these abuses.

The implementation of a duplicates database will fill a critical gap in the program’s regulatory structure, because while the FCC and USAC have implemented a state-by-state in-depth data validation process through which Lifeline carriers’ customer lists are collected and compared by USAC for the purpose of identifying and resolving duplicates, these interim measures, robust as they are, are not a substitute for a fully automated, national database. Unfortunately, while the duplicates database was to be “operational as soon as possible and no later than a year from release of the Order,” (2012 Lifeline Reform Order, at para. 185) the Commission has not yet completed its work on this project. This must be corrected as expeditiously as possible.

CTIA also strongly supports the development of a national eligibility database, which we believe will be the most effective way to improve administration of the program because it will assign program functions to parties who are best able to perform them by placing eligibility decisions in the hands of appropriate government agencies. In the 2012 Lifeline Reform Order, the Commission directed “the Bureau and USAC to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common programs through which consumers qualify for Lifeline.” (2012 Lifeline Reform Order, at para. 97) It is of the utmost importance that the Commission and USAC complete their work to create and operationalize the database this year.

Notwithstanding last year’s reforms, questions have been raised about whether additional accountability mechanisms are necessary. In particular, it has been suggested that further enrollments in the Lifeline program should be frozen until the 2012 reforms are in place. CTIA believes it is neither necessary nor advisable to freeze the program, as doing so would deny legitimately eligible Lifeline subscribers from accessing the program. In addition to the aforementioned FCC/USAC interim measures to prevent duplication, applicants seeking to establish their eligibility for Lifeline service must provide documented proof of qualifying program participation or proof of qualifying income, and the FCC has committed to provide by

the end of this year an automated means of determining eligibility for the three most common programs through which consumers qualify for Lifeline. In states where a database of eligible customers exists, ETCs must check that database before any service is approved. The federal database solution will provide a more efficient means for carriers to verify program status and eligibility, but state-based solutions that are consistent with federal rules will play a useful role in the interim.

Another reform suggestion is the idea that mobile virtual network operators, which offer service by reselling capacity procured from facilities-based wireless provider, should be precluded from providing Lifeline service. CTIA does not believe such a prohibition is appropriate, as it would unreasonably discriminate against a class of carrier solely on the basis of its business model and deny Lifeline consumers the full benefit of competition-driven value and innovation that characterize the mobile wireless market. MVNOs offering Lifeline service are subject to the same accountability requirements that apply to facilities-based providers, such as taking steps to avoid duplicate subscriptions, validating consumers' eligibility to receive service, and compliance with the non-usage rule. As long as they comply with these obligations, MVNOs cannot be barred without violating the fundamental notions of competitive and technological neutrality that undergird not only universal service policy, but also competition policy generally.

Still others have raised the suggestion that Lifeline service should be subject to a cap. Unlike the universal service fund's other components, which support carriers or institutions, the Lifeline fund is unique in supporting individuals only. While there was significant growth in the fund between 2008 and 2011, that growth correlated to increased demand for other social welfare programs during the economic downturn. As the economy improves and the 2012 reforms are implemented, USAC's projections regarding Lifeline demand have declined, alleviating pressure on the fund and diminishing the need for a cap.

CTIA also is concerned about proposals to impose a co-payment obligation on Lifeline service. In January, the Georgia Public Service Commission voted to impose a \$5.00 monthly service rate for all wireless Lifeline subscribers in Georgia. CTIA has challenged the Georgia PSC's imposition of a mandatory co-payment as inconsistent with Section 332(c)(3)(A) of the Communications Act, which expressly provides that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or

any private mobile service.” On its face, the imposition of a minimum charge by a state indisputably regulates “the rates charged by any commercial mobile service,” and is thus preempted by Section 332(c)(3)(A). Accordingly, in the event that a minimum charge is contemplated, it must be done at the federal level, both because the states lack jurisdiction to impose such measures and because Lifeline is a national program.

However, while acknowledging that the appropriate venue for discussion of a minimum charge is at the federal level, there is still belief among many CTIA members that a minimum charge is unnecessary and perhaps counterproductive. While a minimum charge of \$5.00 per month may seem modest to members of the Subcommittee, it may represent a significant imposition for those who fall within the income threshold for Lifeline eligibility. Additionally, for those subscribers who do not have a bank account or credit of any sort, as is the case for a significant number of Lifeline subscribers, simply making a co-payment may be a challenge. And finally, for carriers to accept a co-payment, arrangements will have to be made with retailers and others to accept payment, increasing the cost of program administration, with the likely effect that consumers will receive fewer minutes of use.

Finally, notwithstanding the accountability measures imposed by the FCC last year, there are some who simply want to preclude wireless participation in the Lifeline program. CTIA believes proposals like H.R. 176 are incompatible with the idea that universal service policy should be technologically and competitively neutral. It has long been a central tenet of American telecommunications policy that every American should have access to telecommunications service, and proposals that would uniquely discriminate against wireless providers’ ability to participate in programs intended to achieve this objective are inconsistent with much of what this Subcommittee and the Commission have attempted to achieve over the last quarter-century. H.R. 176 and proposals like it also ignore the fact that we are evolving from a wireline-centric to a wireless-centric nation and if policymakers are going to have a conversation about sunseting the PSTN, that conversation will require that we identify ways to fill any gaps that its retirement might leave. With respect to Lifeline, wireless is the way to fill that gap. For these reasons, CTIA urges the Subcommittee to reject H.R. 176.

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Over the nearly three decades since its creation, the Lifeline program has served an important purpose and justifiably enjoyed bi-partisan support. CTIA hopes this continues and we pledge to work with the Subcommittee, the Commission, and other interested parties to ensure that low-income Americans continue to have affordable access to basic telecommunications service. CTIA believes this objective can be accomplished in a way that is both technologically and competitively neutral and fiscally responsible, and we look forward to engaging with you to accomplish these objectives.

Thank you for the opportunity to testify today. If CTIA can provide any additional information you would find helpful, please let us know.