

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

Comments of the

- Access Humboldt**
- Advocates for Basic Legal Equality**
- The Benton Foundation**
- Center for Accessible Technology**
- Center for Media Justice**
- Community Voice Mail National**
- Crossroads Urban Center**
- HeartShare Human Services**
- Low Income Utility Advocacy Project**
- Minnesota Legal Services Advocacy Project**
- National Consumer Law Center, on behalf of its low-income clients**
- New Jersey SHARES**
- Ohio Poverty Law Center**
- Pennsylvania Utility Law Project**
- Pro Seniors**

(“Joint Consumers”)

I. Introduction

Access Humboldt, Advocates for Basic Legal Equality, The Benton Foundation,¹ Center for Accessible Technology, Center for Media Justice, Community Voice Mail National, Crossroads Urban Center, HeartShare Human Services, Low Income Utility Advocacy Project, Minnesota Legal Services Advocacy Project, National Consumer Law Center, on behalf of its low-income clients, New Jersey SHARES, Ohio Poverty Law Center, Pennsylvania Utility Law Project, Pro Seniors (“Joint Consumers”) respectfully submit these comments in response to the February 6, 2012 Further Notice of Proposed Rulemaking (NPRM) seeking comments on a number of issues related to the Lifeline program.²

Joint Consumers submit opening comments on several issues raised in the NPRM. Joint Consumers raise several concerns regarding the establishment of an eligibility database which include ensuring that any eligibility database(s) be paid for by the ETCs and not the Lifeline fund; allowing for Lifeline where applicant does not provide a social security number if applicants can demonstrate eligibility through other means; not conditioning receipt of Lifeline on state implementation of an eligibility database, and the adoption of strong privacy protections. Joint Consumers recognize the importance of digital literacy as a part of a comprehensive strategy to promote broadband adoption. Any digital literacy program funded out of the Universal Service Fund must be designed to meet the needs of the full range of Lifeline-eligible households and targeted to community entities that demonstrate sustainability. Recipients of a targeted digital literacy program should commit to collecting and reporting data that will be publically available. The set amount for Lifeline support should be periodically updated to ensure an appropriate amount to achieve the goals of Lifeline. The Lifeline program should include WIC as a program that confers eligibility and Joint Consumers propose a process to establish eligibility for homeless veterans. Lifeline customers should be able to apply their Lifeline benefit to bundled service offerings with a voice component. Finally, Joint Consumers urge the Commission not to alter the current statutory requirements for ETCs to offer Lifeline and the statutory process for relinquishing universal service.

¹ The Benton Foundation is a nonprofit organization dedicated to promoting communication in the public interest. These comments reflect the institutional view of the Foundation and, unless obvious from the text, are not intended to reflect the views of individual Foundation officers, directors, or advisors.

² FCC 12-11 (rel. Feb. 6, 2012); 77 Fed. Reg. 12784-12791 (Mar.2, 2012)(“FCC Order and NPRM”).

II. Consumer Concerns Regarding the Establishment an Eligibility Database

A. The ETCs Should Bear the Cost of the Eligibility Database

Many of the Joint Consumers to these comments have raised concerns in prior comments about the cost of creating a database (or numerous databases) to check a Lifeline applicant's eligibility for Lifeline.³ As the Commission appears determined to move forward with the creation of an eligibility database (or numerous databases), Joint Consumers raise several concerns the Commission should address. First, the cost to create and maintain these databases should be borne by the ETCs and not the Lifeline fund. The Lifeline fund has a \$200 million savings target that has been calculated to allow for all eligible households who apply for Lifeline to still receive the benefit.⁴ Cutting into constrained Lifeline support to create a database will undermine the ability of the Lifeline program to fulfill the Universal Service goals. Historically, the Lifeline program has helped the ETCs' low-income customers afford basic phone service and the ETCs have been reimbursed from the USF funds. Thus, the ETCs should continue to bear the costs to administer the Lifeline program as part of the cost of doing business. The creation of an eligibility database primarily benefits the ETCs by relieving them of an administrative task, thus they should bear the cost for creation, and maintenance of the database.

B. Lifeline Applicants Should Not Be Denied Lifeline for Failure to Provide a Social Security Number if They Can Demonstrate Eligibility Through Other Means

The Commission seeks comment on requiring the full social security number from Lifeline applicants, noting that the new Lifeline rules require the collection of the last four social security numbers already for the duplicates check.⁵ Joint Consumers urge the Commission to reconsider requiring the consumer's social security number (partial or total) in the first place due to the risks from ID theft and the resulting exclusion of Lifeline-eligible vulnerable consumers

³ See e.g., Consumer Groups Comments in Response to the Notice of Proposed Rulemaking on the Lifeline and Link Up Reform Modernization (April 21, 2011) at 23 - 24; Reply Comments of Consumer Groups, In Response to the Notice of Proposed Rulemaking on the Lifeline and Link Up Reform Modernization (May 10, 2011) at 5 - 6. These concerns have been raised since the very beginning of this Lifeline reform process, see e.g., Consumer Groups Comments to the Federal-State Joint Board on Universal Service, Lifeline and Link Up (July 15, 2010) at pp 18-20.

⁴ FCC Order and NPRM paras. 355 through 360.

⁵ FCC Order and NPRM para. 413.

who lack a social security number. If the name, address, phone number and date of birth is enough to verify that the consumer isn't already receiving Lifeline and if there are other ways to verify that the consumer is receiving a benefit (e.g., showing an EBT card or letter of receipt of benefits), those Lifeline-eligible consumers should not be denied Lifeline. The Commission should allow for a separate avenue for those consumers wishing to protect their personal information who opt to demonstrate participation in a benefits program through other means. This approach would allow for the protection of consumer privacy in line with the Privacy Act provision cited in the NPRM.⁶

C. The Commission Should Not Condition Receipt Of Federal Lifeline Funds On State Implementation Of An Eligibility Database.

The outcome of such a rule would be to harm Lifeline eligible consumers in states that refuse to implement the database. Lifeline is not as large as programs such as Medicaid which the Commission cites as imposing such a condition.⁷ Instead of creating a stick to punish states who do not implement a database, Joint Consumers urge the Commission to consider whether offering a monetary incentive would be more likely to encourage the desired action. Setting aside a limited amount of funds for a one-time IT investment could also address one of the barriers faced by the states in implementing an eligibility database. This targeted fund should also be paid for by the ETCs as a component of the eligibility database implementation and maintenance fund.

D. All Lifeline Databases Created To Facilitate The Administration Of The Lifeline Program Must Implement Strong Privacy Protections.

The data collected in the Lifeline application process contains sensitive personal information such as date of birth, social security number, the consumer's status as a Lifeline recipient, income information and/or participation in other low-income programs. The Commission

⁶ FCC Order and NPRM para 413, fn 1063 (Privacy Act section 7(a)(1), 5 U.S.C. Section 552A (*It shall be unlawful for any Federal, State, or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his Social Security account number.*))

⁷ FCC Order and NPRM para 406.

should be adopting the most protective privacy protocols for the handling of this information including securely storing this information, limiting the number of people with access to this database to essential personnel, and limiting the ability to place this sensitive information on flash drives and laptops, etc. Joint Consumers urge the Commission to consider the creation of a buffer between the other federal low-income benefits databases and the ETCs either via a web interface or placement of a state agency or USAC/FCC as an intermediary. The effect would be that the ETC would only have access to the relevant information, which is whether the applicant is eligible for Lifeline due to participation in a qualifying benefits program. The California Office of Privacy Protection has several publications on privacy practices for businesses.⁸ The Commission should also establish severe fines and penalties for data breaches to ensure that privacy protections are taken seriously. These fines and penalties should flow back into a fund to promote secure IT systems or the Lifeline fund.

III. Digital Literacy Is an Important Component of Broadband Adoption and Must be Tailored to Serve the Lifeline Eligible Population

A. Digital Literacy is an Important Component of Broadband Access

The Commission seeks comment on whether the statutory directive to provide “access” should include the ability of consumers to use the services once they have access to them.⁹ Joint Consumers agree that broadband “access” includes the ability to use the services. Broadband adoption barriers are more complicated than telephone adoption because in addition to being available and affordable (e.g., the cost of hardware as well as service), broadband service must also be relevant to consumers. Digital literacy is important to create a society of digital inclusion. While the Commission has not expanded the regular Lifeline program to include broadband service, it has taken the initial step of funding low-income broadband pilots in this recent Lifeline Order.¹⁰ Joint Consumers are encouraged to see the Commission’s efforts to build upon what was learned about digital literacy through the NTIA Broadband Technology and

⁸ California Office of Privacy Protection, Recommended Practices on Protecting the Confidentiality of Social Security Numbers http://www.privacy.ca.gov/consumers/ssn_rec.pdf; California Office of Privacy Protection, A California Business Practices Handbook, http://www.privacy.ca.gov/business/business_handbook.pdf.

⁹ FCC Order and NPRM at para 423.

¹⁰ FCC Order and NPRM paras. 323 through 354.

Opportunities Program (*BTOP*) and Broadband Initiatives Program (BIP) grants. Those grants are winding down at a time when digital literacy training is far from ubiquitous. The Commission seeks comment on funding a targeted, time-limited (4-year) digital literacy program of up to \$50 million.¹¹

B. A Digital Literacy program should be designed to meet the needs of the full range of Lifeline eligible households

An FCC digital literacy program should be designed to meet the needs of the Lifeline-eligible population, from seniors, to the disabled, to single working parents, to households in rural areas, to those in group housing, etc. In order for digital literacy to reach into communities to fund entities that serve low-income consumers, the digital literacy funds should be available to the range of community anchor nodes such as community centers, senior centers, religious institutions, schools and libraries, community colleges, food banks, independent living centers, community media centers, the town hall, etc. The schools, libraries and community media centers around the country have been struggling with reduced funding and hours for their computing centers and the e-rate investments could be stretched further with the assistance of Digital Literacy funding. In order to reach into hard-to-serve communities, the eligibility for digital literacy funds should be broad and the main criteria should be that the entity, as part of its mission, serves the needs of the larger community. The scope of the activities funding by Digital Literacy Funds will need to be clearly defined and the Commission should consider having the fund cover formal training as well as staff time to provide point-of-service assistance.

C. The Digital Literacy Funds Must Be Targeted to Community Entities That Demonstrate Sustainability

Not all communities will have the same mix of resources to provide low-income broadband access, some will have volunteers who donate time to run trainings, some will have partners that can provide the hardware infrastructure, and some will have donated space. It is important for scarce universal services resources to be directed to locations where there is demonstrated community commitment to facilitate sustainable broadband access and adoption.

¹¹ FCC Order and NPRM at paras 421, 434.

Joint Consumers recommend the Commission consider that applicants for Digital Literacy funds provide a match (25% - 50%) which could include donations of time, equipment, space, etc. as part of a demonstration that the Digital Literacy funds will be part of a comprehensive community approach to promotion of broadband adoption.

D. Recipients Must Commit to Collecting and Reporting Data

The Commission has taken steps to begin modernizing the Universal Service programs to promote broadband adoption (e.g., setting aside \$25 million for the Low-Income Broadband pilots). While much has been learned about designing and delivering digital literacy training through BTOP and BIP, the use of USF for targeted four-year funding for digital literacy will provide an opportunity for the Commission to apply what has been learned in its Digital Literacy program and to continue to improve upon the trainings provided to date. The Commission should require recipients of Digital Literacy funds to collect data and make this data publically available annually.

E. The Digital Literacy Program Should be a Separate Program That Could be Housed in the Low Income Universal Services Programs or the E-Rate

The Lifeline program is designed to provide direct assistance to low-income households through discounted service via the ETC of their choice. Only ETCs are eligible for Lifeline reimbursements. As described above, a Digital Literacy program funded with Universal Services Funds, would require the creation of a separate program to allow for non-ETC, community node organizations to receive funds from the USF.¹²

IV. The Amount of Lifeline Support for Voice Service Should Be Based on Periodic Review to Remain Current and Adequate to Promote Connectivity

¹² FCC Order and NPRM at para 425 (“Nothing in the statutory framework, however, dictates that the Commission must keep these four programs functionally separate from one another, or precludes the Commission from creating a new program that is administered separately from existing programs, so long as that program is consistent with our statutory authority.”)

Joint Consumers urge the Commission to factor in a periodic adjustment mechanism for the Lifeline support amount. The interim \$9.25 is based on the average Lifeline reimbursement currently provided. Joint Consumers support NASUCA's proposal to use \$10.00 as the reimbursement amount. As NASUCA notes, \$9.25 is the *average* level of support, but many Lifeline recipients have been receiving the higher amounts of Tiers 1, 2, and 3 (for example due to the ETC or state providing matching funds to trigger a higher federal reimbursement amount). In order to avoid flash cuts to those Lifeline recipients, Joint Consumers support NASUCA's proposal to use \$10.00 as the starting point for the transition to a flat, uniform support amount. In addition, the Joint Consumers urge the Commission to review the set support amount periodically (e.g., every two years per NASUCA's proposal) to ensure that the support amount is appropriate for the goals of the Lifeline program. Joint Consumers note, that to the extent the Commission is looking to expand Lifeline service, it urges the Commission to reconsider raising the income eligibility up to 150% of poverty.

V. The Expansion of Lifeline to Include WIC participants and Homeless Veterans Furthers the Goals of Universal Service

Joint Consumers support the inclusion of WIC as a program that confers Lifeline eligibility on its participants. WIC focuses on improving prenatal and pediatric health through nutritional supplementation, nutrition education and counseling and increased access to health care and social service providers for low-income pregnant, breastfeeding and postpartum women; infants; and children up to five years of age. Over 35 percent of WIC recipients do not participate in other federal assistance programs. The Department of Agriculture administers WIC as well as two programs that currently qualify households for Lifeline -- food assistance (SNAP) and free and reduced school lunches. The Commission has already identified food assistance (SNAP) as one of the first three programs for the eligibility database.¹³ Thus the Commission and USAC will already be establishing a relationship with the Department of Agriculture to facilitate access to participation databases. WIC could be added as part of this process early on.

The Commission also seeks comment on how it could establish eligibility for homeless veterans or veterans at risk of homelessness where they have no income and therefore cannot

¹³ FCC Order and NPRM at para. 403.

provide documentation such as a tax return or current income statement from an employer. The Commission seeks comment on whether additional certification from an authorized Department of Veterans Affairs (VA) official, such as an outreach worker or program coordinator, demonstrates that the individual is a veteran who has no income.¹⁴ Joint Consumers support a process where a veteran can obtain additional certification of his or her status as homeless/at risk of being homeless veteran without income. We'd expand the list of entities that could provide certification to include licensed social workers, medical professionals, and non-profits providing other low-income support services. Documentation could be comprised of a short, simple, easy-to-read affidavit¹⁵ with a social worker or other qualified entity's certification that the Lifeline applicant is a homeless veteran or is at risk of being homeless. Community Voicemail serves hundreds of thousands of clients with voicemail service, almost all of whom are eligible for Lifeline, and 11% of those are veterans.¹⁶ They note that the VA assists veterans with other programs in a similar way.

VI. Mandatory Application of the Lifeline Discount to Bundled Service Offerings Will Promote Consumer Choice and Enhance the Value of the Lifeline Benefit

Joint Consumers support the mandatory applicability of the Lifeline discount to bundled service offerings. We applaud the Commission for protecting access to essential voice service in its Order by spelling out in Section 54.403 (b)(2) that in the case of partial payments for a bundled service package, the ETC must apply the partial payment first to the allocated price of the voice telephony service component of the package. Joint Consumers note that affordability of service is key to maintaining access and that consumers should not be subject to aggressive upselling into expensive bundled services where affordable phone service is what the consumer was seeking in the first place. That said, Lifeline customers should be able to apply their Lifeline benefit to the array of service offerings of a provider. We note that this would help defray the

¹⁴ FCC Order and NPRM at para. 487.

¹⁵ Perhaps something along the lines of courts indigency affidavits to obtain fee waivers. See <http://www.mass.gov/courts/sjc/docs/affidavitofindigency.pdf>. See also http://www.courts.state.tx.us/tfid/Affidavits_of_Indigency_Introduction.asp (version 1)

¹⁶ Nonprofits like Community Voicemail can play a vital role in enrolling veterans in Lifeline. As with community based organizations assisting in enrolling low-income clients in Lifeline and providing outreach and education, these groups are uniquely situated to reach low-income clients. We encourage the development of public and private funding to support this important work.

cost of bundled service that includes voice and broadband. This promotes consumer choice and enhances the value of the Lifeline benefit.

VII. ETCs Must Abide by the Current Statutory Requirement to Offer Lifeline and The Statutory Process to Relinquish Universal Service

Joint Consumers are opposed to allowing ILECs to choose whether to participate in the Lifeline program. The ILECs are required to offer Lifeline service by statute¹⁷ and the statute also sets forth a process by which ETCs can relinquish their ETC designation.¹⁸ With state actions to remove Carrier of Last Resort obligations from carriers, the federal obligation to serve consumers is becoming even more essential. While we all look forward to a day when affordable broadband services are available to everyone, that day is not yet upon us. It is critical to ensure that customers who cannot yet get access to newer technologies are not deprived of access to traditional phone service while they await true universal deployment of broadband.¹⁹ Thus, the Commission should reject carriers attempt to undermine what is required of them by statute.

VIII. Conclusion

Joint Consumers look forward to continuing to work with the Commission on these Lifeline and universal service issues.

Respectfully Submitted,

Olivia Wein
Staff Attorney
National Consumer Law Center

April 2, 2012

On behalf of the Joint Consumers

¹⁷ 47 U.S.C. section 214(e) and section 254(c).

¹⁸ 47 U.S.C. section 214(e)(4).

¹⁹ <http://www.reuters.com/article/2012/03/28/column-dcjohnston-phone-idUSL2E8EROHD20120328> “An End to Phones in Every Home,” David Cay Johnston, March 28, 2012, Reuters.