

Testimony of Chris Nelson
Public Utilities Commissioner from the State of South Dakota
to the
Senate Committee on Commerce, Science, and
Transportation
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My thanks to Chairman Thune, Ranking Member Nelson, and committee members for allowing me the opportunity to visit with you about important issues relating to the Lifeline program as seen from a state utility regulator's perspective.

By way of introduction, I am a public utilities commissioner in South Dakota, having been elected twice to this position in statewide elections. I have served six years as a commissioner. While not formally representing the National Association of Regulatory Utility Commissioners (NARUC) today, I am the immediate past chairman of the association's Committee on Telecommunications and serve on its board of directors. I also serve as one of five state members on the FCC's Joint Board on Universal Service.

It is an honor for me to share my thoughts with this committee on a topic that I and my fellow utility commissioners across the country work with on a daily basis.

Why do we have Lifeline? A 2015 FCC Lifeline Order¹ states it well: "The purpose of the Lifeline program is to provide a hand up, not a hand out, to those low-income consumers who truly need assistance connecting to and remaining connected to telecommunications and information services." It is imperative that we keep that mission in mind during these discussions.

What do I see as the priorities of state utility commissioners with regard to lifeline? I will highlight three.

First, states must remain involved in the Eligible Telecommunications Carrier (ETC) designation process. Telecommunications carriers must receive an ETC designation before

¹ FCC 15-71 released June 22, 2015, Paragraph 1. https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-71A1.pdf

receiving Lifeline disbursements. Federal law² provides state utility regulators with the sole authority (with one narrow exception³) for determining and granting ETC designations.

There is good reason for that federal law requirement. State regulator involvement provides oversight by the hands and eyes closest to where these companies operate. Obviously state regulators are in a good position to provide effective policing of these carriers.

Unfortunately, the FCC in 2016 sought to remove states from part of that designation process,⁴ which would only have had the outcome of lessening critical oversight of the program. Fortunately Chairman Ajit Pai reversed that ill-conceived attempt to jettison state oversight.⁵

State commissioners believe in cooperative federalism. That means we believe that state and federal regulators share a role in properly managing programs such as Lifeline. That also means that each side, state and federal, must respect the role of the other and not attempt to usurp that role especially when doing so contravenes federal law and effective policing of the program.

A second priority is for all involved to remain relentless at rooting out waste, fraud, and abuse from the Lifeline program.

Every fraudulent Lifeline subscription is literally a theft from the millions of hard working consumers who pay in to the Universal Service Fund. Fraudulent subscriptions take away from legitimate Lifeline subscribers. Those ill-gotten subscriptions also take crucial dollars away from the other Universal Service Fund programs such as high cost support, E-rate, and rural health.

² 47 U.S.C. § 214(e)(2)

³ 47 U.S.C. § 214(e)(6)

⁴ FCC 16-38 released April 27, 2016, paragraph 229. https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-38A1.pdf

⁵ Statement of FCC Chairman Ajit Pai on the Future of Broadband in the Lifeline Program released March 29, 2017. https://apps.fcc.gov/edocs_public/attachmatch/DOC-344129A1.pdf

Lastly, it should be a priority to make sure the federal Lifeline program can work synergistically with the 23 states (not South Dakota) that have state Lifeline programs. Those state program managers have a track record of being effective in finding and reporting fraud and waste in their programs.

It is important to understand that when strong action has been taken in the past to deal with waste and abuse within the Lifeline program, the results have been dramatic. The best example is the FCC's 2012 reform order⁶ which required recertification of participants.

That singular requirement dropped the annual Lifeline outlay from \$2.2 billion to \$1.5 billion. Chairman Pai estimated that prior to that action, \$1.3 billion⁷ was absolutely wasted by the fraud and abuse taking place. To put that dollar figure into perspective, that wasted money could have incentivized the buildout of 116,000⁸ broadband connections in places that have absolutely zero access to the internet today.

The GAO report on the Lifeline program raises many important issues. I will highlight four.

First is the need to determine the effectiveness of the Lifeline program. The report encourages finding answers to important questions such as “How many Lifeline participants would subscribe to telecommunication services without the program?” I would add several other questions such as “To what extent does this offering play a part in upward mobility and job attainment?” and “How important are Lifeline phones for 911 access?”

Anecdotal conversations with staff in the South Dakota PUC's consumer assistance division who assist Lifeline subscribers as part of their job tell me that those subscribers range

⁶ FCC 12-11 released February 6, 2012, paragraphs 129-130. https://apps.fcc.gov/edocs_public/attachmatch/FCC-12-11A1.pdf

⁷ FCC 16-38 released April 27, 2016, dissenting statement of Commissioner Ajit Pai, pages 202-203. https://apps.fcc.gov/edocs_public/attachmatch/FCC-16-38A1.pdf

⁸ \$1,300,000,000 divided by the estimated ten-year ACAM disbursement per new broadband connection.

from those who would truly be in desperate circumstances without a Lifeline phone to those who are simply looking for another “freebie.”

Second, the report makes it clear the National Verifier system is essential to effectively eliminate fraud and abuse. I have reviewed USAC’s Lifeline National Verifier Plan and it appears to me to be a sound program with many positive features.

Developing a system that will ping literally hundreds of different state-held databases is extremely complex. I am concerned there has been an underestimation on the part of USAC in how difficult it will be to obtain agreements from hundreds of different state agencies to access their databases and to design the computer interfaces for that access.

For me the description of this system harkens back to 2003 when I was South Dakota’s Secretary of State charged with implementing the federal Help America Vote Act, which required verifying voter registration data. Designing the interface with other databases within our own state government was challenging but relatively easy compared to the requirement to ping the federal social security database. Obtaining permissions and complying with protocols from another government jurisdiction was a large hurdle. I expect that USAC is experiencing that same challenge in developing the National Verifier.

It is imperative that the FCC and USAC continue to push hard to complete this task.

Third, the report highlights the need for increased audits of Lifeline providers. I commend Chairman Pai for his recent letter⁹ asking for some very specific crosschecks within the Lifeline system.

Lastly, there is a notation in the GAO report about questions and confusion among some telecommunications providers regarding Universal Service Fund contribution requirements. The

⁹Chairman Pai Orders Immediate Action on Lifeline Waste, Fraud & Abuse. Letter to Universal Service Administrative Company on July 11, 2017. https://apps.fcc.gov/edocs_public/attachmatch/DOC-345729A1.pdf

question of appropriate contribution methodology was referred by the FCC to the Joint Board on Universal Service several years ago.¹⁰ As mentioned earlier, I am one of the state members on that board and currently serve as the state members' chairman.

Prior to this year, the board had been working with the federal chair, Commissioner Jessica Rosenworcel, making progress toward a recommendation to the FCC on an appropriate contribution methodology. We have now transitioned to a new federal chairman, Commissioner Michael O'Rielly, and are working with him to resume our forward progress. I look forward to working with Commissioner O'Rielly to bring this referral to a close with a recommendation that will eliminate many of the questions the GAO referenced.

My final point is this. All of the things I have highlighted in my testimony can best be accomplished through cooperative federalism. That means the FCC and USAC working with states as the Telecommunications Act provides to accomplish the objective of a Lifeline program that serves as a "hand up" and is devoid of waste, fraud, and abuse.

Thank you for your consideration.

¹⁰ FCC 14-116 released August 7, 2014.
http://transition.fcc.gov/Daily_Releases/Daily_Business/2014/db0807/FCC-14-116A1.pdf