

**STATEMENT OF
COMMISSIONER ROBERT M. McDOWELL
APPROVING IN PART, CONCURRING IN PART, DISSENTING IN PART**

Re: *Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 12-23; *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

Today the Federal Communications Commission is making the most fundamental, constructive and radical changes to the Lifeline program since its inception. We are infusing it with fiscal discipline for the first time. As a result, the program will be on track to become a more efficient tool to fulfill Congress's intended purpose: helping low-income Americans stay connected to society through telecommunications services.

In the Telecommunications Act of 1996, Congress explicitly mandated that we manage this program to help the disadvantaged. At the same time, Congress wants us to be fiscally prudent to maximize Lifeline's effectiveness for the truly eligible. With this legislative intent in mind, our action today will help eliminate waste, fraud and abuse to yield resources for those most in need while bending the unabated growth curve downward.

As I have said repeatedly since first joining the Commission, my primary goal for Universal Service reform is to instill fiscal discipline to the program. Today we largely achieve that goal for the Lifeline program in the near term. Although I would have preferred a longer-term fixed budget or cap, what we are rendering today is virtually unheard of in Washington: fiscally responsible entitlement reform.

On the bright side, some of the most appealing aspects of today's actions include the following:

- Establishing an aggressive savings target of \$200 million for this calendar year alone, with a projected \$600 million in savings in 2013;
- Largely eliminating the LinkUp program to end perverse incentives for companies to enroll those who may not be eligible, while granting a limited exception to the unique circumstances facing Tribal and Alaska Native Lands;
- Limiting support to one recipient per household;
- Creating a database to weed out duplicate recipients;
- Accelerating the process of creating a database to verify eligibility;
- Requiring pre-paid ETC accounts that have been inactive for 60 days to be removed from the Lifeline program; and
- Commencing a process for a mechanism I have long advocated: basing subsidies on a "communications price index" that should reduce financial support per subscriber as communications networks become more efficient as technology advances.

Therefore, I am voting to approve these measures.

Today's Order is not perfect, however. Due to their inherent nature, many of the assumptions used to shape our decisions are not reliable for long-term planning, making a lasting solution improbable until we can gather more critical data over the next year. Nonetheless, Commission staff has worked diligently to find the best data and cost models available today to make essential economic and financial projections. Accordingly, I have concerns about relying on these assumptions and models to forecast costs and savings for longer than beyond the current year. Among the variables that make a longer-term solution less practical are the effectiveness of the database that is designed to eliminate duplicates, the design of the prospective database that will verify eligibility and a variety of economic factors. While we bend the growth curve this year, we will be able to make even more progress next year once we have built the systems needed to administer meaningful reform.

In light of these limitations, the Commission will hold itself accountable and render an assessment of the program within six months from today, followed by a more comprehensive and formal report due next year. Based on the information and analyses contained in those reports, next year the Commission will trim the sails of today's reform to maintain our course toward more fiscally prudent shores. In other words, our improvements to the Lifeline program will remain in "beta" mode while we continue to work to maximize its efficiencies.

Please keep in mind that although Congress's intent to maintain a communications lifeline for low-income Americans is clear, the Universal Service program is structured so that consumers who can afford phone service subsidize those who cannot. In short, some consumers pay artificially high rates so others may enjoy artificially low rates, or no rate at all. Accordingly, when we spend more on Universal Service to help the Fund's recipients, we are essentially "taxing" all other phone consumers whether they are rich or poor. This Universal Service contribution mechanism, or "tax," is highly regressive. I hope those who have advocated we adopt no spending restraints at all will understand that many Americans are just scraping by in this economy. Fiscal irresponsibility would hurt them the most. Recent estimates reveal that approximately 24 million Americans are underemployed, and many are paying their phone bills in full therefore subsidizing others. Our action today attempts to limit how much we rob Peter to subsidize Paul. The Order is imperfect in this regard, however, which underscores the urgency of tackling Universal Service contribution reform as soon as possible.

Although the Order optimistically claims that our action may save the program "up to \$2 billion," I am not confident in that assertion. As a result, I concur in part while being pleased that we will review the progress of these reforms before the end of the year.

Furthermore, it should come as no surprise that I cannot support my colleagues' continued interpretation of section 706 as granting us broad powers. It does not. Additionally, I don't believe it is fiscally prudent for us to launch pilot programs that are likely to increase the Lifeline program's costs. We certainly shouldn't be laying the foundation for inflating the program before shoring up its finances. Accordingly, I respectfully dissent from these portions of the Order.¹

¹ In addition to the significant budgetary effects of expanding Lifeline to broadband, I have concerns regarding the legal authority that the Commission relies upon to launch the broadband pilot. First, this Order relies on section 706 of the 1996 Act, in part, for its legal authority for establishing a broadband pilot. By referencing the findings of the previous two "706 reports," this Order notes that those reports triggered the Commission's duty under Section 706(b) to "remove[e] barriers to infrastructure investment"

In sum, I commend the Chairman for his leadership and diligence in pushing forward these unprecedented reform efforts. I also have appreciated working with Zac Katz who is always willing to listen to our perspectives and has tried to find creative solutions. Congrats on completing your last open meeting item before jumping into your new role as Chief of Staff. I have also enjoyed working with Commissioner Clyburn and look forward to collaborating with all of my colleagues on speeding up the process for the establishment of the eligibility database. Finally, my heartfelt thanks go to Sharon Gillett, Carol Matthey, Trent Harkrader, Kim Scardino and the legions of additional bureau staff who have worked countless hours on not only the development of this item but have also been instrumental in uncovering much of the waste, fraud and abuse in this program. We are making historic progress today, but we have even more work to do in the coming year.

and “promot[e] competition in the telecommunications market.” I dissented from both of those 706 reports, and have often noted that section 706 is narrow in scope and does not provide the Commission with specific or general authority to do much of anything.

As part of its analysis, this Order points to section 706(a), a provision which opens with a policy pronouncement that the Commission “shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” 47 U.S.C. 1302(a). However, as the the D.C. Circuit Court has previously noted, “under Supreme Court and D.C. Circuit case law statements of policy, by themselves, do not create ‘statutorily mandated responsibilities.’” *Comcast Corp. v. FCC*, 600 F.3d 642, 644 (D.C. Cir. 2010). Rather, “[p]olicy statements are just that – statements of policy. They are not delegations of regulatory authority.” *Id.* at 654. The same holds true for congressional statements of policy, such as the opening of Section 706, as it does for any agency’s policy pronouncements. Equally troubling is this Order’s reliance on section 706(b) which states that if the FCC determines that broadband is not being deployed to all Americans in a reasonable and timely fashion, the Commission shall “take immediate action to accelerate deployment of such capability by removing barriers to *infrastructure* investment and by promoting competition in the telecommunications market.” 47 U.S.C. § 1302(b) (emphasis added). Providing a subsidy to consumers for broadband access does not constitute infrastructure investment nor does it promote competition. I disagree with the Order’s line of reasoning that providing a government subsidy to individuals somehow translates into removing infrastructure barriers because it could free up revenue to be used for buildout.

This Order attempts to lay the groundwork for expansion of the broadband pilot in the future by establishing a performance goal to “ensure the availability of broadband service for low-income Americans.” This Order’s analysis is analogous to arguments set forth in last year’s 706 report which equated “availability” with “affordability” in the context of section 706. I have previously disagreed with such arguments. By way of background, last year’s 706 report made the leap that Congress did not mean “physical” deployment when referring to “deployment” and “availability.” It conceded that the Act does not define the terms “deployment” and “availability.” Instead of looking to the plain statutory language to determine Congress’ intent, however, the Commission relied on legislative report language to argue that even if broadband is physically deployed to a particular area but is not affordable, it is *not* considered available under section 706. But, the actual statutory language says otherwise, stating that as part of the inquiry, the Commission should look at demographic information for “geographical areas that are *not served* by any provider of advanced telecommunications capability.” 47 U.S.C. 1302(c) (emphasis added).

Thus, for the forgoing reasons, I respectfully dissent from any parts of this Order which rely on section 706. And, specifically, I dissent from the adoption of the goal to ensure the availability of broadband service for low-income Americans and the establishment of the broadband pilot.