DISSENTING STATEMENT OF
COMMISSIONER AJIT PAI

Re: *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, *Telecommunications Carriers Eligible for Universal Service Support*, WC Docket No. 09-197, *Connect America Fund*, WC Docket No. 10-90.

Ronald Reagan once said: "Government is like a baby. An alimentary canal with a big appetite at one end and no sense of responsibility at the other." That is an apt analogy for today's Lifeline program. To be sure, Lifeline was established in 1985 during the Reagan Administration in order to help make telephone service more affordable for low-income Americans. But that Lifeline program was vastly different than the one we have now. To equate the two is like saying that *The Godfather: Part II* is the same as *Paul Blart: Mall Cop 2* because both are movie sequels. The reality is this: adjusting for inflation, the Lifeline program is over twenty-three times as large today as it was at the end of the Reagan Administration. And soon, it'll be even larger.

For its first two decades, the Lifeline program largely worked without controversy. But a few years ago, it lost its way. Discounted service was replaced by free service and free phone giveaways. Unscrupulous operators exploited the program for their own benefit. Ineligible consumers signed up. Numerous people enrolled in Lifeline multiple times. The end result was massive waste, fraud, and abuse. The American people lost confidence in the program.

From 2008 to 2012, Lifeline spending grew from $821 million to over $2.1 billion, an increase of over 160%. And the number of consumers participating in the program exploded from about 6.7 million to about 17.2 million. Even Lifeline's fiercest defenders were forced to acknowledge that the program was a mess and the FCC needed to bring it under control.

In 2012, the Commission enacted reforms designed to prevent individuals from receiving more than one Lifeline subsidy and to enforce the program's eligibility limits. These changes have helped. But we still have a long way to go if we are going to fix the program. Today, Lifeline spending and enrollment are still almost double what they were at the end of 2008. Waste, fraud, and abuse are still rampant. And in a report issued earlier this year, the nonpartisan Government Accountability Office (GAO) "concluded that the Lifeline program, as currently structured, may be a rather inefficient and costly mechanism to increase telephone subscribership among low-income households."[1]

Here are just two examples of the program's problems. Last November, the CBS affiliate in Denver discovered multiple Lifeline providers distributing free phones "like Halloween candy" at a city intersection.[2] Agents who received $3 for every free phone they dispensed were signing up ineligible individuals. One enrolled an undercover producer using someone else's food stamp card. And that producer was given a free phone on the spot. This is clearly illegal, but all of the available evidence suggests that Denver is not an anomaly. This is happening all over the country.

And aside from unlawful abuse of the program, Lifeline is plagued by waste that *is* lawful. Case in point: Oklahoma.

Across the country, the typical Lifeline subsidy is $9.25 per month. But those who live on Tribal lands receive $34.25 per month, whether or not they are members of a Tribe. This a big deal because the

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[1] U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-335, TELECOMMUNICATIONS: FCC SHOULD EVALUATE THE EFFICIENCY AND EFFECTIVENESS OF THE LIFELINE PROGRAM, 14 (Mar. 2015) (GAO 2015 REPORT).

[2] CBS4 Denver, *Government's Free Phone Program Riddled With Abuse, Fraud* (Nov. 6, 2014), *available at* http://cbsloc.al/1GwXqGV.

FCC currently treats virtually all of Oklahoma as Tribal land. So of the 307,434 Oklahomans receiving Lifeline support at the end of 2014, only 339—0.11%—did not qualify for the enhanced Tribal subsidy.

How much does this cost consumers? The $128 million in Lifeline funds bestowed upon Oklahoma in 2014 was the second highest of any state, despite the fact that Oklahoma ranks only 28th in population. Nationally, the Lifeline program spends about $5 per person. But in Oklahoma, Lifeline spending is about $33 a person, which is over six times the national average, and about ten times the amount that neighboring Kansas receives. If Lifeline spending in Oklahoma were only twice the national average, which would still be more than every state but Alaska, Americans would save over $89 million a year, which is more than 5% of the total cost of the program.

The differences are also staggering at the household level. Currently, for example, a non-Native American in Tulsa is eligible for $300 more per year in subsidies than a low-income person in East Los Angeles or Appalachia. This is outrageous!

My priorities for the Lifeline program, which I outlined almost a year ago,[3] are clear. We must implement meaningful reforms to restore fiscal responsibility. We must root out waste, fraud, and abuse. We must target Lifeline spending on those who really need the help. And we must ensure that dollars coming from hard-working Americans' phone bills each month are wisely spent.

Unfortunately, this document does not reflect these priorities. This is disappointing. At a March 18 Senate Commerce Committee hearing, Senator Claire McCaskill asked us to "speak up for the record" if we objected to a list of four Lifeline reforms she set forth to promote fiscal responsibility—things like requiring beneficiaries to have "skin in the game" or imposing a fiscal "cap" on the program.[4] And four of the five Commissioners did not speak up when she again asked whether "anybody disagrees with those four reforms." But today, the Commission refuses, by and large, to include those reforms as proposals. Instead of fixing the program, it proposes to expand an open-ended, spendthrift entitlement. This is irresponsible.

Let me be clear. I am open to having a conversation about including broadband in the Lifeline program. But any such change must go hand-in-hand with the reforms that are necessary to producing a fiscally responsible program. And this proposal fails that basic test.

First, it does not even propose a specific budget to prevent future runaway spending and reduce fraud. As discussed above, since 2008, Lifeline spending has almost doubled, growing from $821 million to $1.6 billion per year today. And during this time, the universal service tax rate on every American's phone bill has increased by 83%, rising from 9.5% to 17.4%—even as Americans' median income has gone down in the same period. Yet Lifeline remains the *only one* of the four Universal Service Fund programs that has not been placed on a budget.

A budget induces careful spending. This is as true for the federal government as it is for a family. When spending is capped, funds are spent more wisely, and where they are most needed. And because a capped pool of funds improves accountability for each dollar spent, a budget increases the incentives for eliminating waste, fraud, and abuse. Moreover, if we expand the program to include broadband without a budget, little would prevent the program from doubling in size again—with American consumers on the hook for the increase.

Again, the nonpartisan GAO shares these concerns. In its Lifeline report, GAO observed that the "risk of significant costs to the program are even greater [with respect to broadband than voice] given that

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[3] Remarks of FCC Commissioner Ajit Pai at the Citizens Against Government Waste Policy Breakfast (July 28, 2014), *available at* http://go.usa.gov/3V7Ex.

[4] CSPAN, *Federal Communications Commission Oversight Hearing* (Mar. 18, 2015), *available at* http://cs.pn/1BpUn41.

[the] FCC notes that a lesson learned from the broadband pilot program is that higher monthly subsidies have the highest participation rates."[5]

Putting the Lifeline program on a budget is not a new or novel idea. In the *2012 Reform Order*, the Commission stated that it "fully expect[ed] to have the information to determine an appropriate budget for the program" in 2013.[6] Two years after that deadline, we have that information. So at a minimum, we should have proposed setting the budget at the current spending level of $1.6 billion. A $1.6 billion cap, along with other critical reforms, would ensure a bigger bang for our bucks and promote fiscal responsibility.

For over two weeks, I pushed for this proposal. And the answer was no. But then, suddenly, late yesterday afternoon, the Chairman's Office presented the Republican Commissioners with a last-minute offer out of the blue. They were prepared to propose an annual budget of $1.6 billion to last through the end of 2016. But even if all goes smoothly, an expansion of the broadband program will not begin to be widely implemented until the end of 2016. So having a budget that would expire before the broadband expansion was completely operational was a joke.

But it gets worse. Even this one-year, $1.6 billion budget had a gigantic loophole. It would have allowed up to 4.2 million new households to sign up for the program, irrespective of the budget. This could have cost up to $465 million a year. So the one-year, $1.6 billion budget was really a one-year, $2.065 billion budget.

In the spirit of finding common ground, Commissioner O'Rielly and I offered a compromise: a proposal for a $1.6 billion budget through the end of 2018 with an annual increase for inflation and no loopholes. This was a big concession. We were prepared to vote for a proposal to permanently expand the Lifeline program to include broadband in exchange for a three-year budget proposal. We were prepared to go more than halfway to find consensus. But our proposal was rejected (as were other bipartisan entreaties that would've sought comment on a budget in a neutral, not slanted, fashion). As a result, this item does not contain any budget proposal.

Second, the document does not propose requiring Lifeline subscribers to pitch in as a condition of getting service. We should have proposed requiring Lifeline recipients to make a minimum contribution of at least 25% of the cost of service.

This approach would have several advantages. It would cut down on waste, fraud, and abuse. It would ensure that everyone has a stake in the responsible stewardship of the program. It would help Lifeline return to its original purpose of discounted service, rather than free service. It would end Lifeline's outlier status among universal service programs as the only one which offers free service. And it would be consistent with the commitment that virtually all of us publicly agreed to when Senator McCaskill asked us about a "skin in the game" requirement.

Third, the document does not propose targeting limited Lifeline resources on closing the digital divide. The average annual household income of those eligible for Lifeline support is roughly $38,000. Numerous families with incomes at that level already subscribe to broadband. Under this proposal, therefore, the Commission could end up directing a huge amount of broadband subsidies to those who are already online. In my view, this is not efficient, productive, or fair. If we are going to refocus Lifeline on broadband, our goal should be increasing broadband adoption—that is, helping Americans without Internet access cross the digital divide, not supporting those who have already made the leap.

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[5] GAO 2015 REPORT at 34–35.

[6] *See Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 12-23, 11-42, 03-109, CC Docket No. 96-45, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6810, para. 359 (2012).

On a related point, roughly 42 million households are currently eligible for the Lifeline program. According to the U.S. Census Bureau, that is 34% of all households in the United States. Notwithstanding the decline in economic fortunes since 2009, that is too many. The federal government should not be subsidizing broadband service for one-third of our nation's households. If we are going to expand the program to include broadband, Lifeline should target our neediest citizens. Yet the Commission proposes nothing of the sort.

Fourth, the item does not propose a real solution to the problem of Lifeline spending on Tribal lands. As I noted earlier, the typical Lifeline subsidy is $9.25 per month while those who live on Tribal lands receive $34.25 per month regardless of whether they are members of a Tribe. To be clear, I have no problem with providing an enhanced subsidy to those living on sparsely populated, remote Tribal lands where costs are high and communications infrastructure is lacking. But the current system yields absurd results.

Oklahoma is Exhibit A. It's become a magnet for those interested in perpetrating Lifeline fraud. Companies have taken advantage of excessive subsidies at ratepayers' expense. For instance, the owner of Icon Telecom was part of a scheme to defraud the Lifeline program out of more than $25 million.[7] Specifically, he knowingly asked the FCC for funds for tens of thousands of phantom customers—many of whom "received" the larger Tribal subsidy. The number of customers the company fabricated was astounding. In September 2011, Icon reported having 2,200 customers in the program. Just over a year later, that number was more than 135,000. Thankfully, the scheme was uncovered, and in early 2014 Icon's owner pleaded guilty to money laundering for transferring over $20 million from the company to his personal account.

Today, the Commission should have proposed limiting the enhanced subsidy only to Tribal lands that are sparsely populated (for example, counties with less than 15 people per square mile). Limited resources should only go to high-cost Tribal lands, not to cities that have advanced telecommunications infrastructure and are in the top 50 in the United States in population, like Tulsa (2010 Census population: 391,906). Instead, we merely "seek comment" on various ideas—a pretty good sign of where the Commission is not likely to go.

To be sure, there are some things in this plan with which I do agree. For example, we should require Lifeline providers to retain documents demonstrating that consumers are eligible to participate in the program. It's bad enough that providers internally make eligibility determinations in which they have an obvious self-interest. But it's especially troubling that providers do not—and in fact may not—retain documentation to prove that the consumers who receive Lifeline support are, in fact, eligible for the program. How is it possible to perform eligibility audits if Lifeline providers don't keep documents proving customers' eligibility?

But despite some positive aspects to parts of this item, the Commission's main proposal would take us in the wrong direction. It would expand a broken program. It would waste even more money. And it would raise taxes on the American people.

For all of these reasons, I respectfully dissent.

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[7] Press Release, U.S. Attorney's Office for the W. Dist. of Okla., *Icon Telecom, Its Owner, and a Former Associate Charged In $25 Million Fraud In Federal Wireless Telephone Subsidy Program* (June 4, 2014), *available at* http://go.usa.gov/3V7mP.