

**DISSENTING STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

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.

I will start by saying that this is not the version of this statement that I wanted to read today. This could—and should—have been a 5-0 vote. All four Commissioners and the Chairman had set forth their principles, planks, visions, or ideas well in advance of the circulation of this item. And, as my colleague Commissioner Pai just highlighted, all five of us sat in a U.S. Senate hearing room and publicly committed to basic tenets of a modernized Lifeline program just a few months ago. Hammering out the details should have been a simple matter, particularly on a Further Notice of Proposed Rulemaking. Instead, it appears that, on yet another item, the thinking evolved, and the desire to act in a bipartisan manner has evaporated. Sadly, I am no longer surprised when this occurs.

It is clear that the majority wants to spend as much as they possibly can without any hint of restraint before a possible change in Administration. And they certainly want to do this before contribution reform, which has been put on ice until all the spending increases can be put into place and hang around long enough to acquire that certain patina of inevitability. Why else would the Joint Board be almost three months behind in producing a recommendation? It's simple: the majority has to spend to the maximum before the Joint Board makes its one big move to obscure the shopping spree under the ideal of broadening the base – or as it is better known, taxing the Internet. Everyone knows there will not be a second bite at this apple.

My position on Lifeline has not changed. Adequate controls and deterrents should be in place against waste, fraud, and abuse *before* considering a revamp of the program to include broadband. After all, the FCC is still grappling with the consequences of its previous expansion. But seeing where this proceeding was headed, I was willing to proceed on two tracks: evaluating the current program and adopting further safeguards, while issuing a Further Notice on modernizing the program.

In return, I expected that my ten readily achievable principles would be included in the item. This was not an unreasonable or unfounded expectation. I made clear to all those who would listen that chief amongst my principles—my top priority—would be to establish a cap for the Lifeline program. Since the Commission previously contemplated setting a budget in the 2012 order, and because the Chairman and at least three Commissioners publicly committed to adopting “a cost cap” for the program, this seemed like an easy lift.

Specifically, I asked that: 1) we propose a spending cap or, at the very least, a firm budget; and 2) that we propose to set it at the current level, which is approximately \$1.6 billion. This data-driven and fact-based amount seemed to be the most appropriate based on our reforms and experience with this program. It is possible that the reforms contemplated in this item may lead to greater requests and demands than present spending, but I also expect that efforts to reduce waste, fraud and abuse, and to better target the support, should limit any increase in program expenditures. Not wanting to foreclose the views of my colleagues and outside parties, I was even willing to contemplate what data or information the Commission would need to consider in order to select a different number. It is unfathomable to me that this very reasonable offer was rejected.

In addition to our experience with the Lifeline program, setting a firm budget at \$1.6 billion seems more than adequate when compared to other programs. It would seem hard to justify spending as much on a consumer service *discount* as on funding *actual network infrastructure* by rate-of-return carriers that serve the most rural parts of the country (\$2 billion) or by price cap carriers that serve most of the high-cost consumers that still lack broadband service (\$1.8 billion). After all, without

infrastructure in place, there's no broadband service, much less the possibility of a discounted broadband service.

Moreover, I have heard time and time again that the Commission's strong preference is to include concrete proposals and tentative conclusions in order to generate a better record. And, as with any proposal, parties remain free to submit alternative viewpoints and data. Frankly, I would not have been surprised to see a proposed budget here only to see an attempt to increase it substantially, against my wishes, by the time we went to order. After all, the Commission was able to increase a previously adopted E-rate cap in the span of five months.

This simple ask was rejected even though every other universal service program lives within a cap or budget and there is bipartisan support outside of this building to impose one on Lifeline. See the many statements from those House Members and Senators with oversight responsibility of the FCC, including Senators McCaskill, Manchin, and Schatz. There is no good reason why this program should be any different from other USF programs. Contrary to the belief of some, this is not an entitlement program. Additionally, the FCC and courts have recognized that we have to balance USF spending against the burden on the consumers and businesses that pay to support USF lest the required contributions serve as a deterrent to adoption. Is there no realization that this funding comes directly out of the pockets of hard working Americans, many of whom have suffered greatly under the current economy and get by under financially tenuous situations?

The fact that a proposal for a firm budget was rejected is indicative of the current state of affairs at the Commission. Unless a majority of the FCC feels compelled, on occasion, to work with the other members to show that the Commission is still functional, which is presumably how a languishing VoIP numbering item suddenly ended up on today's agenda, there is little appetite for compromise.

In addition to the budget, I made clear that I am troubled by academic research, cited by the Government Accountability Office in its most recent Lifeline report, estimating that only 1 out of 8 subscribers (and 1 out of 20 wireless subscribers) wouldn't have service absent the Lifeline subsidy. Those are failure rates of almost 88 and 95 percent, respectively. Let me repeat: consumers are paying more on their phone bills each month to support service for people that would have signed up and paid in full without a subsidy. That is the very definition of an absurdly targeted program. My request to seek comment on this request was initially accepted but later rejected. Ultimately, it did not even merit a footnote.

There are other significant problems with the item that I had hoped to engage on assuming the budget and targeting issues had been favorably resolved. I will touch on just a few.

First, I do not support the view that so-called broadband Internet access service is a telecommunications service, so I do not support the primary legal theory put forward in this item for funding broadband. It's completely flawed. I also do not support the use of section 706.

Second, there is still no requirement that Lifeline consumers pay a minimum contribution for the service. Many of the problems with waste, fraud, and abuse in the program stem from the fact that, when wireless service was added to the program, the subsidized voice service became free to end users, along with the phone and even a data allowance. Setting a minimum contribution would deter these problems and better align the current program with the original goal of providing discounted (not free) service. Although the Further Notice seeks comment on setting minimum performance standards that may have the effect of requiring an end-user charge, there should be a default rule that, in no event should the service be free to end users.

Third, I am aghast that the Commission would even consider opening the door to Link Up round two. The Commission in 2012 wisely discontinued the original Link Up program, which had become a source of significant waste, fraud, and abuse. I caution against traveling down this road again. I understand the concern about whether a broadband connection charge could serve as a barrier to adoption,

but the Lifeline program isn't intended to cover every conceivable cost, and cannot do so within a reasonable budget.

Fourth, I am concerned about tying eligibility to the SNAP program. Participation in the SNAP program is highly variable meaning that we could see large swings in program spending. In addition, adding Lifeline benefits directly onto SNAP cards could raise new accountability concerns. Before tying eligibility to any particular program or set of programs, we need to better understand how these programs operate and interact with one another. Concerns have been raised, for example, about the Low Income Home Energy Assistance Program (LIHEAP), where states have provided token LIHEAP benefits in order to qualify consumers for other programs. In addition, the item notes that recent changes to the National School Lunch Program (NSLP) enable schools to provide free lunches to all students if a certain percentage would have qualified by the old rules. If these programs continue to be qualifying programs for Lifeline, we need to better understand how these issues could impact Lifeline eligibility (and, in addition, E-rate discounts in the case of NSLP).

Fifth, I continue to object to the delegation of substantive policy decisions to staff. In particular, the Further Notice contemplates delegating the responsibility of establishing and updating a mechanism that would set minimum service levels to ensure that Lifeline supports an "evolving level" of telecommunications service. While the Bureau is supposed to tie the levels to objective, publicly available data, I don't think that's much of a safeguard given our recent experience with the Commission's 2015 Broadband Progress Report (i.e., the Section 706 Report), where the Commission contorted publicly available data to reach a predetermined outcome. Moreover, the statute is quite clear that "the *Commission* shall establish" the definition of services supported by USF.

Sixth, I continue to object to the practice of citing NALs as if they have precedential value. They do not. They are not final orders and are often challenged vociferously by the affected parties.

I also find it incredible how quickly the Commission changed its mind on the utility of broadband access at public libraries. Less than a year after ramping up E-rate funding for libraries, specifically to ensure that students without Internet access at home could get online, the Commission now blithely observes that "library hours are limited and even when they are open, they may not be able to fully accommodate the needs of their users." Can we get a refund on the new, added money we are spending on libraries?

Finally, I recognize that a couple of my comments are reflected in the item despite my dissent. In particular, I appreciate that staff honored the promise made to me before the item circulated to seek comment on making participation in the Lifeline program voluntary for providers.

While some of my non-controversial points are reflected in this item, the true measure of any working relationship is what happens when there is disagreement. I offered compromise on my top priority and was met with rejection. And it happened so late in the process that there was no time to begin a conversation about my other, serious concerns. In this respect, my low expectations for this item were met. I dissent.