

**COMMENTS
OF
TEXAS LEGAL SERVICES CENTER
BEFORE THE
TEXAS SENATE BUSINESS AND COMMERCE COMMITTEE
REGARDING THE INTERIM CHARGE
TO BE HEARD OCTOBER 9, 2012**

Mr. Chairman and Members of the Texas Senate Business and Commerce
Committee:

My name is Lanetta Cooper and I am testifying on behalf of Texas Legal Services Center, a state-wide nonprofit organization that provides legal assistance on behalf of vulnerable Texans. I am here today to speak on the Provider of Last Resort (“POLR”) requirement and Texas Universal Service Fund (“TUSF”).

The Provider of Last Resort (“POLR”) obligation and the Texas Universal Service Fund provisions of the Public Utility Regulatory Act are still necessary tools to carry out the public policy goal of universal service. Ubiquitous access to the communication network is essential to the social and economic commerce of Texas and for our health and safety. Telecommunications can no longer be considered POTS, plain old telephone service. Technological advancements, the increasing dominance of wireless telephones as the “telephone” of choice for Texas consumers, and the emergence of broadband service into the mainstream of business, social, and governmental commerce require us to review existing

universal service polices to determine whether regulatory tools need to be replaced or altered to further the goal of universal service given the current state of technology. As the Federal Communications Commission (“FCC”) has noted in a recent order, “[n]etworks that provide only voice service, however, are no longer adequate for the country’s communication needs.”¹ Our comments will focus primarily on the lifeline program component.

TLSC continues to have the same concerns and recommendations relating to telecommunications utilities’ POLR obligations set out in our testimony to this committee on August 14, 2012. POLR is still an important obligation to retain in areas not currently deregulated, and it must be affordable. That obligation should be met by the telecommunication utilities with telephone wireline service availability to ensure all segments of Texas’ population have access to basic local telecommunications service and to ensure that a consumer’s access to reliable internet connection is not compromised. We would just add a couple of items of anecdotal information to underscore our recommendation. A public interest organization of senior citizens did a focus group of about 100 low income seniors aged sixty to eighty years in Dallas. Twenty-five per cent of the group only used wireline telephone service. But of those seniors eighty years of age and older, approximately 67% of them only used wireline telephone service. For this segment of Texas consumers, especially the advanced elderly, access to wireline telephone service is essential to their health and welfare. As another example, a friend of mine requires the use of wireline service to talk to an elderly aunt who lives several states away. The aunt cannot adequately hear and understand the telephone conversation if wireless telecommunications service is used.

The penetration rate for the lifeline program is low and more effort must be put forth to ensure all qualified Texas households receive the benefit of lifeline. There are approximately 2 million households in Texas whose family

¹ Re: *In the Matter of Connect America Fund A National Broadband Plan for Our Future, et al.*, Docket Nos. WC Docket No. 10-90, et al. Report and Order and Further Notice of Proposed Rulemaking, Paragraph 2 (FCC October 27, 2011) (“FCC Broadband Order”)

incomes qualify the households for Texas lifeline discounts.² Subscribership in the Texas lifeline program averaged 560,000 monthly for May, June, and July 2012, the most recent data available.³ Surprisingly, the most recent federal telephone lifeline program data reveals a higher penetration rate. The Universal Service Administrative Company (“USAC”) reported that the federal lifeline program had 791,782 subscribers at the end of the first quarter of 2012.⁴ Nonetheless, both sets of data reveal significant and material gaps for Texas low income households between their eligibility for lifeline and their subscribership in lifeline. This gap should be considered a significant reason why the telephone penetration rates for low income households are materially lower than for households with higher incomes. See attachment labeled lifeline participation that reflects FCC industry data⁵ that shows lower income households are less likely to have a telephone than higher income households. Anecdotal information from one of the Texas Legal Aid offices estimated that about 10% of their clients had no telephone service. Another Legal Aid office reported that many of their low income clients had a hard time maintaining telephone service even if they were able to initiate service. Increasing lifeline subscribership will have a positive effect on the number of low income households who will be able to obtain telephone service and maintain telephone service. To increase lifeline subscribership we recommend the Legislature: 1. Direct the PUC to more actively promote lifeline service in Texas; 2. Direct state agencies providing services to low income people to be more proactive in explaining lifeline availability to its clients and helping the clients to apply for lifeline; and 3. Require all telecommunications utilities, including wireless, that provide basic voice service to provide lifeline service.

The PUC should more actively promote lifeline in Texas. I have a true story to share with you that reflects our concern on this issue. A community based organization working with a woman in her eighties to help reduce her

² See, *2012 State of Texas Low Income Housing Plan and Annual Report*, p. 24 (Texas Department of Housing & Community Affairs).

³ Information provided to TLSC by the Texas Public Utility Commission (“PUC”).

⁴ FCC lifeline data reported on USAC website at usac.org/about/tools/fcc/filings/2012/q4.aspx. See also attachment labeled Telephone Penetration by Income Level.

⁵ Industry Analysis and Technology Division Wireline Competition Bureau, *Telephone Subscribership In the United States (Data through July 2011)*(FCC December 2011).

electric rates realized she qualified for telephone lifeline services but was not a lifeline subscriber. The organization contacted the telephone company and was able to reduce the elderly woman's bill by the lifeline discount; but the telephone company refused to unbundle caller ID from other vertical services. As a consequence, this person is paying a higher telephone bill to retain her caller ID despite the apparent intent of the legislature that caller ID should be considered a part of basic local telecommunications service ("basic service") for those customers sixty-five years of age and older.⁶ How could this person not have been a subscriber to lifeline services? How could the telephone company fail to offer this elderly customer caller ID unbundled from the other vertical services? There are apparent gaps in the marketing of lifeline services. More should be done. We recommend that the Legislature direct the PUC to:

- Maintain an email list of nonprofit organizations who work with the elderly and low income populations of this state;
- No less than quarterly email information about lifeline and the application form to members of the email list;
- Monitor the marketing activities of telecommunication utilities to ensure that basic service is provided on a stand-alone basis; that caller ID is included in basic local service for those applicants 65 years of age or older; and that the lifeline discount is explained to applicants;
- Enter into memoranda of understanding with state agencies that provide services to the low income and elderly and with public housing authorities⁷ to improve the enrollment rates in the lifeline service program; and
- Form a working group with these agencies and the public housing authorities to regularly review progress in lifeline enrollment and to make

⁶ See Public Utilities Regulatory Act ("PURA") §§ 58,051(a-1)("Notwithstanding Subsection (a) and Section 59.151, basic network services include residential caller identification services if the customer to whom the service is billed is at least 65 years of age."), 65.002(4)(F)("residential caller identification services if the customer to whom the service is billed is at least 65 years of age.").

⁷ We note that a working group should be formed. The PUC already was required to enter into an MOU with the housing authorities to improve enrollments. The only proof that the PUC worked with the housing authorities we found were the MOUs the PUC executed in 2006. Apparently, the PUC did not on a regular basis provide the housing authorities with information about lifeline nor provide them with applications.

changes, if any, to the activities the agencies and the public housing authorities perform to improve lifeline enrollment.

State agencies should be directed to educate their employees about lifeline and to forward applications for lifeline on behalf of Texas consumers they determine fall within lifeline guidelines.

This recommendation mirrors legislation passed by the state of Florida. I have attached a copy of that legislation highlighting the relevant sections. Florida's procedure of agency forwarding of applications to the lifeline administrator is extremely important. This year the FCC rejected automatic enrollment which was our procedure for subscribing consumers to the lifeline service.⁸ Instead, an application must be filed. Automatic enrollment is the most efficient method for meeting the goal of universal service. Since automatic enrollment is realistically no longer an option, the Florida procedure is the most efficient option available and minimizes the risk of a low income consumer falling through the gaps between learning the consumer is eligible and enrolling the consumer in the lifeline program.

All carriers, including wireless carriers, who provide voice services should be required to provide basic local service with protections from disconnection and to provide lifeline services.

Currently, wireline carriers are required to provide basic service on a stand-alone basis and to not disconnect basic service if a customer's partial payment covers the carrier's charge for that service. In addition, wireline carriers are required to offer lifeline service. Wireless carriers offering voice service are not required to provide these services unless certified to receive universal service funding. The availability of these services supports universal service. We also recommend that wireless carriers providing lifeline services be allowed reimbursement from the universal service funds directly or indirectly through the resale of wholesale service. Providing low income consumers access to lifeline and basic services from wireless carriers is critical. According to a 2010 National Health Interview

⁸ See *In the Matter of Lifeline and Link Up Reform and Modernization, et al.*, Report and Order and Further Notice of Proposed Rulemaking, Paragraph 172, WC Docket No. 11-42, et al., (FCC January 31, 2012) ("FCC Lifeline Order").

Survey⁹, adults living in poverty (100% federal poverty guidelines or less) and near poverty (between 100 and 200% federal poverty guidelines) were more likely to live in households with only wireless telephones than higher income adults. A legal aid office we contacted in Texas estimated 65% of their clients did not have wireline service, but only wireless service. Including all wireless carriers within the requirement to provide basic services and lifeline services in their service areas will improve low income customers' access to the communications network.

Caller ID services should continue to be provided as a part of basic service for Texas customers sixty-five years of age and older. We further recommend that the statute language be clarified to ensure every carrier providing voice service, regardless of the regulatory standards the carrier operates within, provides this service. Seniors are hesitant to answer a telephone when they do not know who is calling. Caller ID takes away this fear from seniors and realistically keeps them connected with the network.

The Texas Legislature should consider including texting as a part of basic service for those carriers who offer that service. Including texting as a part of basic service will provide members of the deaf and hard of hearing community and people with speech disabilities with “comparable” lifeline service.

Access to 911 service should be available through texting and not just through voice communication. Texting access to 911 service will provide “comparable” access to more segments of the Texas population. Texting access to 911 service would also provide greater assurances that a person with only the ability to communicate by texting on a telephone would receive help.

As prices for basic service rise, the amount of lifeline support should be updated. The current income eligibility requirement for lifeline service is set at 150% federal poverty guidelines or less. This income level is substantially below budget levels Texans need to meet basic expenses.¹⁰ Consequently,

⁹ Stephen J. Blumberg and Julian V. Luke, *Wireless Substitution: Early Releases of Estimates From the National Health Interview Survey, January-June 2010* (National Center for Health Statistics December 21, 2010).

¹⁰ See Center for Public Policy Priorities' budget estimator at www.cppp.org/fbe/estimator_step1.php.

using universal service funds to minimize the cost impact of increasing basic service pricing on low income customers will increase the likelihood a low income consumer would be able to maintain telephone service. Increasing the lifeline discount to account for the rising price of basic service has been adopted by the PUC in certain TUSF high cost areas of the state.¹¹ We recommend this concept be adopted state-wide and be part of the lifeline service offered by all carriers.

The Legislature should consider extending universal service support to broadband service. The FCC Broadband Order extended universal service support to broadband service.¹² Access to the internet is now an essential component of personal and business daily life. Many job listings are only posted on a potential employer's website. Given the deregulation of university and college tuition, on-line college courses constitute an economical alternative to obtaining a college degree. The use of on-line college courses is increasing.¹³ On-line courses also allow those working full-time the ability to develop additional skills to pursue job advancement or pursue different careers. Students are increasingly required to submit their work on-line to their Professors. More and more college and high school students are dependent upon the internet for research. Businesses require internet access to communicate with suppliers and customers. Yet access to the internet in Texas has physical and income barriers. The startup manager for an organic grain mill in Elgin, Texas, only thirty miles from Austin, found there was no wired internet service available.¹⁴ This is an indication that more infrastructures for the internet are needed to bring areas as close as thirty miles from Austin into the 21st century of communications. In addition, children in rural areas are often in a catch 22 situation. Even if the public school remains open after the end of the school day so that students may use

¹¹ See PUC SUBST. Rule 26.412(f)(1)(F)(i).

¹² See FCC Broadband Order at Paragraph 19 ("While continuing to require that all eligible telecommunications carriers (ETC) offer voice services, we now require that they also offer broadband services.")

¹³ See *The Digital Revolution and Higher Education* (Pew Research Center August 28, 2011).

¹⁴ The mill was able to obtain terrestrial wireless service.

the internet to complete homework assignments, children living on farms have to catch the school bus which departs after the end of the school day. The lack of infrastructure to support internet access is placing the rural parts of our state at an economic and social disadvantage. Universal support is necessary to level the playing field for all Texas citizens.

Even if the infrastructure is present, low income consumers have financial difficulty accessing the internet. A legal aid office stated that many of their clients could not afford the internet service and also did not own a computer. Public libraries can provide access to the internet but often times they have inadequate resources. A legal aid employee reported visiting two libraries in her service area and always finding lines of people waiting to access the internet through the library's computers. She further reported that the computers were old and needed replacing.

TLSC recommends that the Legislature consider extending universal support to broadband deployment in Texas. TLSC also recommends that the Legislature direct the PUC to establish a task force comprised, both rural and urban, of advocates for low income consumers, public libraries, schools, and nonprofit organizations that provide services within low income communities to deliberate and provide the legislature a proposal on universal service support of internet access for low income consumers.