

**RE-EVALUATING FCC POLICIES CONCERNING THE LIFELINE
AND LINK-UP PROGRAMS**

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I. INTRODUCTION

Since 1984, the Lifeline Assistance program (Lifeline) has been the centerpiece of efforts by U.S. telecommunications regulators to ensure that traditional local telephone service is affordable for low-income households.¹ Lifeline reduces monthly local telephone bills for customers who sign up for the benefit through a credit on their basic service charge. The Federal

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¹ The programs originated in 1984 and 1985 under the FCC's general authority under 47 U.S.C. §§ 151, 154(i), 201 & 205 (1934). The first of two Lifeline plans adopted by the Federal Communications Commission (FCC) in 1984 reduced an eligible subscriber's monthly telephone bill by an amount equal to the subscriber line charge (SLC) of \$3.50, with half the reduction coming from a 50% waiver of the SLC, and the rest from the participating state. The second Lifeline plan, adopted by the FCC in 1985, waived the entire SLC of \$3.50, and was matched by the state, so a subscriber's bill was reduced by a total of \$7.00. These programs were subsequently established as explicit universal support mechanisms in response to the federal Telecommunications Act of 1996, specifically, 47 U.S.C. § 254(b)(1), (2) & (5) (2000) and rules promulgated pursuant to 47 C.F.R. § 54.400 *et seq.*

Communications Commission's (FCC) rules² establish the amount of the discount, which averaged \$11.22 in 2004.³ The Link-Up America (Link-Up) program, which is a companion program to Lifeline, reduces the cost of telephone installation by fifty percent. The reduction assumes the form of a credit to the service installation charge.⁴ A third program — toll limitation support — compensates eligible telecommunications carriers for offering no-cost toll limitation service.⁵

Lifeline, Link-Up, and toll limitation are the three support mechanisms in the low-income program financed from contributions to the federal Universal Service Fund (USF) by telecommunications carriers. In addition to supporting that program, the federal USF also provides support for three other programs: (1) predominantly small, high-cost companies serving remote and rural areas; (2) discounts for telecommunications and Internet access services for eligible schools, school districts, libraries, and consortia; and (3) reduced telecommunications and Internet service rates to rural health care providers so that their payments for those services are no more than their urban counterparts for the same or similar services.⁶ A basic level of federal funding for Lifeline is currently provided from the federal USF for all states. States may receive additional federal support if they elect to provide matching support either through state universal service funds or state assessments against eligible telecommunications carriers.⁷

² See 47 C.F.R. § 54.403 (2000) for Lifeline support reductions.

³ FCC, Universal Service Monitoring Report, CC Docket 98-202, tab. 2.3.

⁴ See 47 C.F.R. § 54.411 (2000) for Link-Up reductions.

⁵ "Toll limitation" is defined in 47 C.F.R. § 54.400(d) as denoting "either toll blocking or toll control for eligible telecommunications carriers that are incapable of providing both services. For eligible telecommunications carriers that are capable of providing both services, 'toll limitation' denotes both toll blocking and toll control." In § 54.400 (b) "Toll blocking" is defined as "a service provided by carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel." (c) "Toll control" is defined as "a service provided by carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle."

⁶ See www.universalservice.org for a description of the programs.

⁷ The term "eligible telecommunications carrier" or ETC has a specific meaning in the 1996 Act. To be designated an ETC, a company must meet conditions prescribed in 47 U.S.C. § 214(e) (1996). With respect to the maximum federal and matching support for Lifeline, there are currently four tiers of federal support on a monthly basis for the

Although the low-income program represents approximately \$820 million or 11.2 percent of total national USF support of \$7.3 billion estimated for 2006, it attracts considerable political attention because of the low participation rates,⁸ and because it is the only program of the four that is targeted to people and not to faceless institutions or companies.

In this article, we examine the evolution of policy objectives for Lifeline and Link-Up that were first developed by the FCC,⁹ then outlined in the federal Telecommunications Act of 1996 and subsequently reaffirmed in the FCC's 1997 Universal Service report and order¹⁰ and the FCC's subsequent decisions that have shaped state strategies for meeting those objectives. We also analyze whether the mechanism for funding Lifeline and Link-Up is appropriate given

federal Lifeline component of the program. The first tier of federal support is a \$6.50 credit which is available to all eligible subscribers. The second tier of federal support is a \$1.75 credit which is available to subscribers in those states that have approved the credit. All 50 states have approved this tier of support. The third tier of federal support is one-half of the amount of additional support up to a maximum of \$1.75 in federal support. All states, except for seven, match that tier of support. The maximum monthly Lifeline discount for low-income consumers not living on reservations is currently \$13.50, with \$10 in federal support and \$3.50 in matching state support. States can provide more support than \$3.50, but it is not matched. In addition, a fourth tier of federal support is available for eligible residents of tribal lands as long as that amount does not bring the basic local residential rate below \$1.00 per month per qualifying low-income subscriber. For consumers living on reservations, the maximum monthly Lifeline support is currently \$38.50, with \$35.00 in federal support and \$3.50 in state matching support. *See* 47 C.F.R. § 54.403 (2000).

⁸ The national participation rate was 33.7% of eligible households in 2002. *See* FCC, Report and Order and Further Notice of Proposed Rulemaking, WC Docket 03-109, *In re* Lifeline and Link-Up (04-87), app. K, tab. 1.A (Rel. Apr. 29, 2004).

⁹ The FCC's initial policy objectives for universal service did not refer explicitly to universal service. The 1934 Communications Act envisioned the benefits of a universally accessible network in 47 U.S.C. § 151 that created the Federal Communications Commission:

For the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communications, and for the purpose of securing a more effective execution of this policy by centralizing authority heretofore granted by law to several agencies and by granting additional authority with respect to interstate and foreign commerce in wire and radio communication, there is created a commission to be known as the "Federal Communications Commission," which shall be constituted as hereinafter provided, and which shall execute and enforce the provisions of this chapter.

47 U.S.C. § 151 (1934).

¹⁰ FCC, *In re* Federal-State Joint Board on Universal Service, *Report and Order*, FCC 97-157 (Rel. May 8, 1997).

rapidly changing technologies and services.¹¹ Finally, we examine whether there might be better ways to implement Lifeline and Link-Up. To that end, we apply findings from recent research conducted for the Public Utility Research Center (PURC), the University of Florida, which were subsequently distilled in a report.¹² We also apply complementary findings from research conducted by Mark Burton and John W. Mayo.¹³

A. Initial Policy Objectives – Low-Income Subscriber Access to Basic Telephone Service at Affordable Rates

At this juncture, we should step back several years and review the evolution of Lifeline and Link-Up. The FCC established these programs in 1984, upon recommendation of the Federal-State Joint Board.¹⁴ Since 1985, the FCC has amended the programs several times under its general regulatory authority.¹⁵ In July 1995, before enactment of the Telecommunications Act of 1996, the FCC issued a Notice of Proposed Rulemaking (NPRM) to review the programs and elicit comments on “ways in which the market can work to reduce obstacles that prevent those who want telephone service from being able to afford it and help those with service to maintain

¹¹ We do not address the toll limitation component of the low-income program in this article. In 2005, only \$5.8 million or less than 1% of all funding for low-income support was used for that purpose.

¹² See Lynne Holt & Mark Jamison, *Making Telephone Service Affordable for Low-Income Households: An Analysis of Lifeline and Link-Up Telephone Programs in Florida*, Public Utility Research Center Report, University of Florida (Feb. 1, 2006), available at <http://bear.cba.ufl.edu/centers/purc/documents/LifelineReportFinal.pdf> (last visited Mar. 1, 2006). Associated reports are available at: <http://www.purc.org/Lifeline2.htm>.

¹³ See Mark Burton & John W. Mayo, *Understanding Participation in Social Programs: Why Don't Households Pick Up the Lifeline?* Working Paper, Department of Economics, Georgetown University (Mar. 2005), available at http://bear.cba.ufl.edu/centers/purc/documents/Burton-MayoUnderstandingParticipationinSocialPrograms2005_000.pdf (last visited Mar. 2, 2006).

¹⁴ MTS and WATS Market Structure, and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Recommended Decision*, CC Docket Nos. 78-72 & 80-286, 49 Fed. Reg. 48325 (Rel. Nov. 23, 1984) (recommending the adoption of federal Lifeline assistance measures); MTS and WATS Market Structure, and Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, *Decision and Order*, CC Docket Nos. 78-72 and 80-286, FCC 84-637, 50 Fed. Reg. 939 (Rel. Dec. 28, 1984) (adopting the Joint Board's recommendation).

¹⁵ See 47 U.S.C. § 254 (b)(1), (2) & (5) (2000) and rules promulgated pursuant to 47 C.F.R. 54.400 *et seq.*, *supra* note 1.

it.”¹⁶ A subsequent NPRM was issued following passage of the 1996 Act, in which the FCC raised the question of interpretation concerning section 254(j) of the Act affecting the collection, distribution, and administration of Lifeline proceeds and, specifically, the flexibility afforded the FCC in amending the program to make it more compatible with the Act.¹⁷ The Joint Board concluded that the FCC did have such flexibility, and the FCC concurred with the Joint Board in a report and order issued in May 1997.¹⁸

The 1996 Act outlined several principles, including the availability of quality service at “just, reasonable, and affordable rates,” and access of consumers throughout the nation to telecommunications and information services. Low-income consumers are explicitly included in the requirement for provision of such access.¹⁹ The FCC’s 1997 Universal Service report and order interprets the 1996 Act as follows:

¹⁶ See FCC, Newsreport No. DC 95-97, Action in Docket Case, *FCC Seeks Comment on Initiatives to Increase Telephone Subscribership*, CC Docket Nos. 95-115, 80-286 (July 13, 1995).

¹⁷ Federal-State Joint Board of Universal Service, *Recommended Decision*, CC Docket No. 96-45 (Nov. 8, 1996). Prior to the FCC, *Report and Order*, *supra* note 10, Lifeline and Link-Up were funded by contributions to a Lifeline/Link-Up pool administered by the National Exchange Carrier Association, Inc. All interexchange carriers having at least .05% of prescribed lines nationwide were required to contribute on a flat-rate, per-line basis. 47 U.S.C. § 254(j) states: “Lifeline assistance. Nothing in this section shall affect the collection, distribution, or administration of the Lifeline Assistance Program provided for by the Commission under regulations set forth in section 69.117 of title 47, Code of Federal Regulations, and other related sections of such title.”

¹⁸ FCC, *Report and Order*, *supra* note 10, ¶ 337.

¹⁹ 47 U.S.C. § 254(b) states: “Universal service principles. The Joint Board and the Commission shall base policies for the preservation and advancement of universal service on the following principles:

- (1) Quality and rates. Quality services should be available at just, reasonable, and affordable rates.
- (2) Access to advanced services. Access to advanced telecommunications and information services should be provided in all regions of the Nation.
- (3) Access in rural and high cost areas. Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.
- (4) Equitable and nondiscriminatory contributions. All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.
- (5) Specific and predictable support mechanisms. There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

With respect to the Lifeline and Link-Up programs, we observe that the Act evinces a renewed concern for the needs of low-income citizens. Thus, for the first time, Congress expresses the principle that rates should be “affordable,” and that access should be provided to “low-income consumers” in all regions of the nation. These principles strengthen and reinforce the Commission's preexisting interest in ensuring that telecommunications service is available “to all the people of the United States.” Under these directives, all consumers, including low-income consumers, are equally entitled to universal service as defined by this Commission under section 254(c)(1).²⁰

The definition of “affordable” received more extensive scrutiny by the Joint Board in the *Recommended Decision* to which the FCC’s 1997 Universal Support and Order responded. Specifically, the Joint Board found that “factors, other than rates, such as local calling area size, income levels, cost of living, population density, and other socio-economic factors may affect affordability.”²¹ The Joint Board rejected the concept of a nationwide affordable rate and acknowledged the role of states in making the primary determination with respect to affordability.²² However, if subscribership were to fall below the 1996 level, the Joint Board suggested that the FCC might work informally with the affected state to determine the factors resulting in the lower level and the implications for rate affordability.²³

(6) Access to advanced telecommunications services for schools, health care, and libraries. Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services as described in subsection (h).

(7) Additional principles. Such other principles as the Joint Board and the Commission determine are necessary and appropriate for the protection of the public interest, convenience, and necessity and are consistent with this Act [47 USCS §§ 151 et seq.]”

Id.

²⁰ FCC, *Report and Order*, *supra* note 10, ¶ 335.

²¹ FCC, *Recommended Decision*, *supra* note 17, ¶¶ 66 & 126.

²² *Id.* ¶ 131.

²³ *Id.* ¶ 132.

In a subsequent report and order issued in April 2004, the FCC returned to the principles of universal service that were articulated in 47 U.S.C. § 254(b), noting that “these principles also recognize that ensuring rates are affordable is a national priority.”²⁴ In that report and order, the FCC observed that “The Lifeline/Link-Up program is one of several universal service support mechanisms to further those (universal service) goals.”²⁵

B. *Changing Policy Objectives—Increasing Emphasis on Program Participation*

The FCC’s interest in the low level of subscribership, particularly among the poor, predated the 1996 Act. In July 1995, the FCC sought comments on initiatives to increase telephone subscribership, specifically on ways Lifeline might be modified to increase network subscribership.²⁶

While continuing to acknowledge the importance of low-income subscribers’ access to affordable basic telephony service, the FCC appears to have placed greater emphasis after passage of the 1996 Act on the importance of participation in Lifeline and Link-Up. This emphasis is reflected in FCC actions regarding the programs to date. Low subscribership was raised as a concern, particularly among low-income households, in an FCC staff report released only a few days after the enactment of the 1996 Act.²⁷ In the 1997 Universal Service report and order, the FCC agreed with the Joint Board that participation in Lifeline and Link-Up was low.²⁸ Efforts to increase program participation are reflected in that order: the FCC adopted the Joint Board’s recommendations that allow Lifeline to be offered in all states regardless of whether

²⁴ FCC, *Report and Order*, *supra* note 8, ¶ 3.

²⁵ *Id.* ¶ 4 (emphasis supplied).

²⁶ FCC, *Notice of Proposed Rulemaking*, In the Matter of 281 Amendment of the Commission’s Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket 95-115, July 20, 1995, ¶ 36.

²⁷ FCC, Common Carrier Bureau, *Preparation for Addressing Universal Service Issues: A Review of Current State Support Mechanisms*, Feb. 23, 1996.

²⁸ FCC, *Report and Order*, *supra* note 10, ¶ 346.

they provided matching funds and to require all ETCs to offer Lifeline service.²⁹ The basic level of federal support was also increased but only if states agreed to permit carriers to reduce the intrastate charges paid by subscribers.³⁰

In December 2000, the FCC requested the Joint Board to review the Lifeline and Link-Up programs for all low-income consumers, including the review of income eligibility criteria.³¹ In its *Recommended Decision* the Joint Board suggested several changes to increase program participation and the FCC subsequently issued an NPRM to solicit comments on the Joint Board's recommendations.³² The FCC's report and order (April 2004) had as its objective increasing participation in the Lifeline and Link-Up programs by making the low-income support mechanism more effective.³³ A survey conducted in tandem with that report and order noted that "only one-third of households currently eligible for Lifeline/Link-Up actually subscribe to this program."³⁴ To encourage greater program participation, the FCC expanded the federal default eligibility criteria to include an income-based criterion of 135 percent of the Federal Poverty Guidelines (FPG) and the addition of the Temporary Assistance to Needy Families (TANF) program and the National School Lunch's free lunch program as federal default eligibility criteria. Other measures included adoption of federal certification and verification procedures and outreach guidelines. In July 2005, the FCC announced a sixteen-member working group of

²⁹ *Id.* ¶¶ 326, 347 & 348.

³⁰ *Id.* ¶¶ 326, 352.

³¹ Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Order*, 15 FCC Rcd 25257 (2000).

³² Federal-State Joint Board on Universal Service, CC Docket No. 96-45, *Recommended Decision*, 18 FCC Rcd 6589, 6591 (Rel. Apr. 2, 2003).

³³ FCC, *Report and Order*, *supra* note 8, ¶1.

³⁴ *Id.*

FCC and public service commission staff to develop best practices and outreach materials for the Lifeline and Link-Up programs.³⁵

One could conclude that the FCC's interest in increasing Lifeline participation was simply the result of the Commission's interest in expanding access by low-income households to basic telephone service. However, the FCC's own reports show that eighty-eight percent of low-income households nationally subscribe to local telephone service³⁶ and only thirty-five percent subscribe to Lifeline. This suggests that sixty-five percent of low-income households with telephone service do not receive Lifeline benefits. Lifeline does not appear to have a large impact on the proportion of low-income households receiving telephone service.³⁷ In Florida, for example, approximately ninety percent of low-income households have a phone³⁸ and only about twelve percent participate in Lifeline.³⁹

C. *Reviewing the FCC's Approaches for Increasing Participation*

The FCC's efforts in increasing Lifeline program participation have focused on streamlining certification and verification procedures and expanding the federal default eligibility criteria that trigger Lifeline and Link-Up program participation. In addition, the FCC has focused on more effective measures of "getting the message out."

³⁵FCC, *FCC Announces Members of Joint Working Group on Lifeline and Link-Up Services*. NARUC Bulletin No. 20-2005: 3, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-2539A1.doc (last visited Jan. 24, 2006).

³⁶Universal Service Monitoring Report, *supra* note 3, at 2-2.

³⁷ See Christopher Garbacz & Herbert G. Thompson, Jr., *Estimating Telephone Demand with State Decennial Census Data from 1970-1990: Update with 2000 Data*, 24 J. REG. ECON. 373, 373-78 (2003) (finding that Lifeline discounts are decreasing in their capacity to increase telephone penetration in the United States). For example, a study by the FCC staff estimated that increasing the income criterion for Lifeline from 125% of FPG to 135% of FPG would increase the number of households with telephone service in the United States by only 247,000 in 2005. See FCC, *Report and Order*, *supra* note 8, app. K-26. The addition of 247,000 households would represent only 0.23% of the approximately 105.8 million households that had telephone service in 2005.

³⁸See Justin Brown. *Understanding Participation in Telecommunications Lifeline Programs: A Survey of Low-Income Households in Florida*. PURC Working Paper, Department of Telecommunication, University of Florida (2006), available at <http://www.purc.ufl.edu> [hereinafter Brown, *Understanding Participation*].

³⁹ See Holt & Jamison, *supra* note 12, at 14.

Federal default eligibility criteria apply to those states that have elected not to implement their own Lifeline and Link-Up programs. To date, five states do not implement their own programs and have elected instead to use the default criteria: Delaware, Hawaii, Indiana, Louisiana, and New Hampshire.⁴⁰ In terms of default eligibility criteria, consumers may qualify for Lifeline and Link-Up benefits through the income-based criterion of 135 percent FPG or through eligibility in one of the following programs: the National School Lunch's Free Lunch program, TANF, Medicaid, Food Stamps, Supplemental Security Income, Federal Public Housing Assistance (Section 8), Low Income Home Energy Assistance Program, and Bureau of Indian Affairs Program.⁴¹ In states that subscribe to the federal default program, an ETC must obtain a signed document from the Lifeline recipient certifying under penalty of perjury that the consumer receives benefits from a Lifeline-eligible program or that he or she meets the income criterion, and that he or she will alert the carrier if the Lifeline eligibility no longer applies.⁴²

Most states have adopted their own Lifeline and Link-Up programs and have some flexibility in establishing eligibility criteria governing those programs. However, for those states, eligibility criteria are restricted to those that are solely or directly based on income. Moreover, eligibility criteria for tribal lands must be reasonably applicable to low-income residents of those reservations.⁴³ In addition to the selection of eligibility criteria, states vary in other ways in their design and implementation of Lifeline: their choice of certification and verification procedures for program participation; restrictions on the types of service available to Lifeline subscribers (single residential line without advanced features to multiple residential lines

⁴⁰FCC, *Report and Order*, *supra* note 8, app. G.

⁴¹ 47 C.F.R. § 54.409(b) (2003).

⁴² 47 C.F.R. § 54.409(d)(1-3) (2004).

⁴³ 47 C.F.R. § 54.409(a) (2003) (stating that "The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income. A state containing geographic areas included in the definition of 'reservation' and 'near reservation,' as defined in § 54.400(e), must ensure that its qualification criteria are reasonably designed to apply to low-income individuals living in such areas.").

with or without advanced features); and level of benefit offered by states (a maximum benefit of \$8.25 in Indiana to a maximum benefit of \$18.45 in Massachusetts).⁴⁴

In 2005, with funding from BellSouth and Sprint, PURC undertook several research initiatives so that we might better understand the determinants for Lifeline and Link-Up participation in Florida and the nation. Four surveys examined customers' perceptions and two econometric studies provided quantitative findings to that end. The four surveys included: (1) in-person interviews of Floridians who attended Lifeline/Link-Up outreach programs in various parts of the state for a better understanding of their levels of awareness and comprehension of the programs and why they ultimately decided to enroll or not enroll in Lifeline; (2) telephone interviews of Floridians concerning their use of communications services, knowledge of Lifeline, and attitudes toward Lifeline; (3) a written survey of low-income households to ascertain their awareness of Lifeline and their reasons for non-participation if they were aware of the program, qualified for it, and did not participate; and (4) written surveys of households that qualified for Lifeline and that had disconnected their telephone service.⁴⁵ One of the econometric studies

⁴⁴ See Burton & Mayo, *supra* note 13; see also FCC, Universal Service Monitoring Report, *supra* note 3, tab. 2.3 (listing Lifeline Support by State of Jurisdiction (Mar. 2004)).

⁴⁵ Reports of the surveys are: Justin Brown & Mark A. Jamison, *Motivations Behind Low-Income Households Bypass of Support for Universal Service*, PURC Working Paper, University of Florida (2005); Justin Brown, *Perspectives on Communications Services & Lifeline: Results of a Telephone Survey of Florida Households*, PURC Working Paper, University of Florida (2006) [hereinafter Brown, *Perspectives on Communications*]; Brown, *Understanding Participation*, *supra* note 38; Justin Brown, *Disconnecting from Communications: A Survey of Floridians Who Qualify for Lifeline and Dropped Their Telephone Service*, PURC Working Paper, University of Florida (2006) [hereinafter Brown, *Disconnecting from Communications*]. All four surveys are available at www.purc.org.

examined Florida county-level data for 2003-2005, and the other study examined state-level data for the United States from 2000-2005.⁴⁶

There is a price tag for Lifeline and Link-Up subsidies: these subsidies are reflected in telephony rates of all subscribers whose companies elect to pass the charges on to them.⁴⁷ So the relevant questions are: (1) what benefits do all telephone subscribers receive from those subsidies; and (2) do the benefits exceed the costs? At least conceptually, the benefits conferred by these subsidies are based on the value of increasing subscribership to telecommunications network. To the extent that this network is expanded by a given consumer, the utility and value of the larger network to all network users theoretically exceeds the incremental cost of adding that consumer. In 2004, the Lifeline and Link-Up programs were funded by almost \$763 million in subsidy payments.⁴⁸ By far the largest share of funding for the two programs applied to Lifeline (\$731 million or ninety-six percent), with the remaining \$32 million applied to Link-Up. The discount level for Lifeline and Link-Up has grown by sixty-four percent in nominal dollars since policy changes in 1998, which allowed a basic level of support to be provided to all states and expanded the basic level of federal support.⁴⁹ The total number of Lifeline and Link-Up participants increased from 7.6 million in 1998 to 8.7 million in 2004, almost a fifteen percent increase. The number of nontribal Lifeline and Link-Up subscribers actually declined slightly from 2002 to 2003 but increased from 2003 to 2004 by less than five percent and one percent,

⁴⁶ See Janice A. Hauge, et al., *Discounting Telephone Service: An Examination of Participation in Florida's Lifeline Program Using Panel Data*, PURC Working Paper, University of Florida (2006); see also Janice A. Hauge, et al., *Participation in Social Programs by Consumers and Companies: A Nationwide Analysis of Penetration Rates for Telephone Lifeline Programs*, PURC Working Paper, University of Florida (2006). Both papers are available at <http://www.purc.ufl.edu>.

⁴⁷ ETCs may, but are not required to, pass on those assessments to their customers.

⁴⁸ FCC, Universal Service Monitoring Report, *supra* note 3, tab. 2.2.

⁴⁹ FCC, *Report and Order*, *supra* note 10. In 1998, Lifeline benefits were offered to qualified individuals residing in tribal lands.

respectively.⁵⁰ Enrollment numbers for Lifeline might be expected to increase from 2004 to 2005 resulting from the expanded eligibility criteria and streamlined certification and verification procedures authorized by the FCC's Report and Order (April 2004), all things equal. However, other public policy actions could offset growing participation. In Florida, for example, the Florida Public Service Commission actually reported declining enrollment in Florida's Lifeline program from September 2004 to September 2005. This reduction was largely due to BellSouth's implementation of federally-mandated annual verification of recipient eligibility.⁵¹

It appears that existing Lifeline and Link-Up funding mechanisms are increasingly costly ways of trying to improve low-income households' access to telecommunications services. While the Lifeline and Link-up discount level increased sixty-four percent since 1998, the percentage of low-income households with telephone service increased only two percentage points.⁵² Indeed, Garbacz and Thompson⁵³ find that the cost of increasing telephone penetration through Lifeline and Link-Up discounts is high and increasing: the cost of adding a low-income household to the network increased from \$260 in 1990 to \$2,127 in 2000 (figures are in 1999 dollars). However, the FCC's efforts for increasing participation in Lifeline and Link-Up may not be the most effective method of advancing the universal service objective of increased access of low-income consumers to affordable telephony service.

⁵⁰ FCC, Universal Service Monitoring Report, *supra* note 3, tab. 2.1.

⁵¹ These procedures resulted in the company's determination that a large number of customers were no longer eligible for Lifeline benefits. In September 2004, 154,017 Floridians (served by all companies) subscribed to Lifeline; in September 2005, the number reported was 139,261. See Florida Public Service Commission, *Lifeline & Link-Up Assistance Florida Programs: Number of Customers Subscribing to Lifeline Service and the Effectiveness of Procedures to Promote Participation*, Dec. 2005, at 5, available at <http://www.psc.state.fl.us/general/publications/reports/tele-lifelinereport2005.pdf> (last visited Mar. 2, 2006). The total number of Lifeline and Link-Up participants (non-tribal and tribal) nationwide was 8.45 million for the first nine months of 2005. See Universal Service Administrative Company, *Lifeline Subscribers by State or Jurisdiction*, app. L108 (2Q2006) and Universal Service Administrative Company, *Link-Up Beneficiaries by State or Jurisdiction*, app. L109 (2Q2006). This number is still about 260 thousand more than for the first nine months of 2004.

⁵² FCC, Universal Service Monitoring Report, *supra* note 3, tab. 6.4.

⁵³ See Garbacz & Thompson, *supra* note 36, at 377.

D. *Plausible Explanations for Participation Rates in Lifeline*

The participation rate in Lifeline is determined by the number of participating households divided by the total number of eligible households. States have some flexibility to design and implement their own Lifeline programs. The FCC estimated the nationwide Lifeline participation rate to be 33.7 percent in 2002. However, the 33.7 percentage rate is not indicative of the typical state's experience.⁵⁴ Nearly half (49.3 percent) of the Lifeline subscribers in the United States were in California in 2002, which had a 132 percent participation rate. California's over-enrollment (32 percent more Californians participated than were eligible) might have been the result of self-certification.⁵⁵ If California's Lifeline subscribers are excluded the nationwide participation rate would have been much lower—19.5 percent. In short, the number of subscribers nationwide had been growing (as noted, from 7.6 million in 1998 to 8.7 million in 2004) but the FCC determined in 2004 that the participation rate was still sufficiently low to warrant more aggressive measures.

Will the FCC's adopted measures and the states' corresponding actions to adopt complementary measures make a significant difference in average participation rates? The Burton and Mayo study concludes that expanding the eligibility criteria governing Lifeline participation appears to have no significant impact on participation, a finding confirmed by the PURC nationwide econometric study.⁵⁶ The two econometric studies conducted for PURC found that Lifeline participation rates were higher with higher local telephone rates and greater Lifeline discounts.⁵⁷ These findings appear to complement the Burton and Mayo study that found administrative features of state Lifeline programs have a significant bearing on program

⁵⁴FCC, *Report and Order*, *supra* note 8, tab. 1-A.

⁵⁵ *Id.*; *see also* ¶ 28 (stating a plausible reason for California's high participation rate).

⁵⁶ The one possible exception is the addition of the criterion, the Low Income Energy Assistance Program. *See* Burton & Mayo, *supra* note 13.

⁵⁷ *See* Hauge, et al., *supra* note 46.

participation.⁵⁸ In states with more burdensome enrollment processes and lower discounts on local telephone rates, one might expect lower participation rates, all things equal, because the costs to low-income consumers in terms of administrative hassles would appear to outweigh the benefits they might realize from lower rates for basic telephone service.

The surveys conducted for PURC indicate the primary barrier to Lifeline participation appears to be a lack of public awareness.⁵⁹ Therefore, the appropriate response would appear to be more aggressive and targeted marketing of the program, particularly by people and organizations trusted by prospective Lifeline participants.⁶⁰ The econometric studies show differences in factors affecting participation rates in Florida and elsewhere, suggesting that marketing efforts should differ across geographic areas and population groups to be optimally effective. However, targeted marketing costs money. Is the universal service objective of affordable rates for low-income consumers in all regions of the nation most effectively realized by continuing along the FCC's decision trajectory of expanding eligibility criteria and streamlining qualification procedures?

Perhaps another perspective is needed. So let us revisit the question: to what extent do low-income households really have access to affordable telephone service? A survey of low-income households commissioned for PURC's report found that over half the respondents had access to a cell phone.⁶¹ A survey of customers who disconnected from BellSouth and who also qualified for Lifeline found that many had access to cellular telephone at home (thirty-six percent) or at work (forty-seven percent) and some survey respondents stated that they had

⁵⁸ See Burton & Mayo, *supra* note 13.

⁵⁹ See Holt & Jamison, *supra* note 12, at vi.

⁶⁰ *Id.*

⁶¹ *Id.* at 28.

dropped their wireline service because they preferred a cellular phone.⁶² Therefore, at least some substitution of cellular telephony for wireline telephony is occurring among low-income households. Other studies also appear to corroborate these survey results. For example, Rodini, Ward, and Woroch conclude that substitution for the population as a whole applies to second fixed lines.⁶³ Because the data used in the survey for this article are from 2000-2001, it seems reasonable to expect this finding to be more relevant to primary fixed lines in 2006 because total wireless substitution has increased significantly in recent years. At the end of 2004, there were more wireless subscribers (184 million) than wireline subscribers (176 million access lines) in the United States.⁶⁴ Incumbent wireline companies are also focusing more of their efforts on wireless services.⁶⁵ Moreover, wireless prices have continued to fall.⁶⁶ The Florida-specific econometric study identifies cell phone penetration as a determinant of Lifeline participation. Specifically, greater cellular penetration in a Florida county was associated with lower Lifeline program participation rates.⁶⁷ While substitution appears to be occurring, we note this trend cautiously because the U.S. econometric study commissioned for PURC's report did not find that cell phone penetration had a significant effect on Lifeline penetration nationwide.⁶⁸ One possible explanation is that cellular phone penetration is likely to be greater in states with larger urban areas, like Florida, where markets are likely to be more lucrative and competitive. The FCC estimates cellular phone penetration to be sixty-two percent nationwide; however, Anchorage,

⁶² *Id.* at 32.

⁶³ Mark Rodini, et al., *Going Mobile: Substitutability Between Fixed and Mobile Access*, 27 TELECOM. POL'Y 457-76 (2003).

⁶⁴ FCC, *In re* Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, Tenth Report, WT Docket No. 05-71, ¶ 197 (Rel. Sept. 30, 2005).

⁶⁵ *Id.*; see also Dionne Searcy, et al., *As Telecom Shifts, Providers Seek New Connections; Phone Companies Roll Out Products, Services in Fight for Tech-Savvy Customers*, WALL ST. J., Dec. 6, 2005, at A-1.

⁶⁶ FCC, *Market Conditions of Mobile Services*, *supra* note 64, ¶¶ 198-99.

⁶⁷ Holt & Jamison, *supra* note 12, at 36. Three wireless providers only received ETC status from the FCC in 2005 in Florida so their customer base was not captured in the Florida econometric study.

⁶⁸ *Id.* at 35 n.77.

Alaska with the lowest population density has a penetration rate of fifty-one percent and the Tampa SMA in Florida, with the highest density, has a penetration rate of seventy-two percent.⁶⁹

Providers of wireless service throughout the nation have only recently begun to receive ETC status. Therefore, the number of wireless customers receiving Lifeline assistance is very small. In 2005, approximately 121 wireless competitive ETCs provided Lifeline support to an average number of only 116,588 customers.⁷⁰ Wireless providers offer various monthly calling plans to different niche markets.⁷¹ In the future, we might expect more niche marketing of calling plans to low-income subscribers, in addition to other types of subscribers.

Like wireless providers, cable companies have been vying with wireline companies for a greater share of the phone subscribers. More than five million subscribers receive phone service from cable companies and cable companies are offering those services as part of a larger bundle of services.⁷² This prospect raises the policy question of the definition of “affordable service,” as articulated in the 1996 Act. The Act contemplated a different type of service and set of payment assumptions that may no longer comport with our rapidly changing technologies.

⁶⁹ FCC, *Market Conditions of Mobile Services*, *supra* note 64, ¶ 175.

⁷⁰ Information via e-mail to Lynne Holt from John Mardis, External Relations, Universal Service Administrative Company, Mar. 14, 2006 (on file with author). Mr. Mardis noted that USAC does not specifically track the number of wireless versus wireline companies so the data provided are not definitive.

⁷¹ For a description of niche marketing efforts, see Shawn Young, *Telecommunications; Mobile Mavens: African-Americans and Hispanics Are the Early Adopters When It Comes to Wireless Phone Service*, WALL ST. J., Oct. 24, 2005, at R. 11.

⁷² Peter Grant & Amy Schatz, *Battle Lines: For Cable Giants, AT&T Deal Is One More Reason to Worry*, WALL ST. J., Mar. 7, 2006, at A-1; Searcy, et al., *supra* note 65, at A-1. Standard & Poor’s also noted: “In addition to the broadband area, the cable companies are competing with the Bells and other telcos via cable telephony offerings. North American cable providers added more than 580,000 VoIP subscribers in the third quarter of 2005 to finish September with approximately two million IP phone customers.... We expect the cable companies to offer a discounted bundle of telephony service and their traditional television service. With their large marketing budgets, established customer loyalty, and a secure broadband networks (sic), we believe the cable companies have the ability to put pressure on the traditional voice carriers with their service bundles.” See Standard & Poor’s, *Industry Surveys: Telecommunications Wireline*, Feb. 9, 2006, at 11.

E. Time for Another Approach

What is the most appropriate approach given this trend toward increasing substitution of wireless service for wireline service, increasing cable company and Internet competition for phone service shares, the popularity of alternative payment methods such as prepaid mobile and calling cards, and the findings that states vary in the determinants of Lifeline participation? Specifically, strategies to increase Lifeline participation in one state might not be as effective in another. Is there a better way to proceed? Is the FCC's recent focus on increasing participation rates "barking up the wrong tree"?

We argue that the focus on participation rates is misdirected and the goal of the 1996 Act should be revisited, specifically the principles of availability of quality service at "just, reasonable, and affordable rates" and "access of consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas ... to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."⁷³

Of course, the first principle raises a valid question of who should determine what is affordable for low-income consumers given rapidly changing communications technologies and the uneven impact of those changes on consumers throughout the country? Targeting currently occurs for Lifeline and Link-Up eligibility because the eligibility criteria must be income-based. However, access to other communications modes may be more important than targeting based on low-income criteria alone. The survey of customers who disconnected from BellSouth found that less than one quarter of respondents cited affordability of local phone service as their most

⁷³ 47 U.S.C. § 254(b) (2000).

important reason for disconnecting. Over half have access to wireline telephony at home and over a third to wireless telephony.⁷⁴ Moreover, the existing discount formula for Lifeline and Link-Up is becoming increasingly problematic because it fails to reflect the greater availability of communications options in densely populated areas of the nation compared to more sparsely populated regions.⁷⁵ In effect, the current approach arguably gives low-income households a financial incentive to stay with old technologies rather than adopt more advanced communications services. Furthermore a household in a densely populated region with more communications options might receive a higher discount than a household with fewer options. Admittedly, the cost of living may be higher in more densely populated regions, all things equal, but that is not true for all commodities.

The funding to reimburse companies is implicitly redistributed through the federal Universal Service Fund mechanism administered by the Universal Service Administrative Company (USAC) so the support to individual ETCs may have little relationship to the actual cost of serving their low-income customers.⁷⁶ To receive federal USF support, an eligible telecommunications carrier must meet four conditions: (1) make Lifeline service available to qualifying low-income consumers; (2) publicize the availability of the service; (3) notify the Lifeline subscriber of impending termination if the carrier believes the subscriber no longer is eligible for Lifeline; and (4) allow subscribers sixty days following the date of the letter indicating impending termination to demonstrate continued eligibility.⁷⁷ While the FCC's intent, in adopting the Joint Board's recommendation, was to provide a competitively neutral funding

⁷⁴ Brown, *Disconnecting from Communications*, *supra* note 45, tab. 4.

⁷⁵ See *supra* note 7 for the federal and state matching funding formula. The formula applies to all states although states may decide not to provide any or a full match to federal support.

⁷⁶ 47 C.F.R. § 54.407 (1997) (specifying the rules governing reimbursement for Lifeline subscribers); 47 C.F.R. § 54.413 (1997) (specifying the rules governing reimbursement for Link-Up reimbursement).

⁷⁷ 47 C.F.R. § 54.405 (2004).

mechanism for Lifeline by decoupling it from the FCC's cost allocation and pricing rules,⁷⁸ the communications services currently offered are increasingly different from the clearly demarcated intrastate and interstate telephony services provided before 1996. Indeed, the FCC arguably envisioned another telecommunications universe as early as 1995 when it noted in an NPRM:

Thus, although our universal service policies have been relatively successful, additional measures may now be necessary to continue to carry out our statutory mandate of making universal service available to all Americans. This Notice presents initiatives aimed at increasing connection and reconnection to, and reducing disconnection from, the public switched telecommunications network. Our review of non-subscribership data, the reasons for non-subscribership, together with the ever-broadening variety of services being offered, indicate a combination of measures may offer the best opportunity to achieve our objective of a universal opportunity to subscribe. *We are particularly interested in ways wireless and cable television technologies can now be used and will be available in the future to achieve the goals of universal service. Similarly, we encourage parties to comment on the role of the Internet in achieving universal service.*⁷⁹

In light of the changing technology, pricing schemes, and bundling efforts in the competitive market, we propose that the existing program be transformed to a voucher program

⁷⁸ See FCC, *Recommended Decision*, *supra* note 17, ¶ 213.

⁷⁹ See FCC, Notice of Proposed Rulemaking, *In re* 281 Amendment of the Commission's Rules and Policies to Increase Subscribership and Usage of the Public Switched Network, CC Docket 95-115, July 20, 1995, ¶ 2 (emphasis added).

that each state would fund itself.⁸⁰ Each state would be required to fund its program at no less than the total amount of federal and state matching support currently in effect for that state although states could certainly provide greater levels of support. We envision this transformation taking place through voluntary state experiments with various forms of vouchers and funding mechanisms. States not wishing to adopt a voucher-based program would be permitted to continue with the current Lifeline/Link-Up programs. The Federal-State Joint Board on Universal Service would serve as a clearinghouse of data and analyses so that states could learn from each other.

Our proposal allows for states to adopt different policies where differences make sense or to adopt uniform policies where uniformity makes sense, without federal pre-emption or federally-imposed financial transfers among states. The current inter-state transfer of universal service moneys was initiated about fifty years ago to equalize costs and prices among states.⁸¹ The goal of low-income programs is to improve affordability for low-income households relative to higher-income households, not to equalize prices for low-income households across states, so there appears to be no reason for this type of federal funding mechanism. Each state that adopted a voucher-based program would be allowed to opt out of the current federal funding of Lifeline and Link-Up; that is to say, the federal fees assessed against interstate revenues for each opt-out state would not include fees for funding the USAC's support of Lifeline and Link-Up programs.

⁸⁰ Vouchers are not an original idea for these programs. For example, the concept is raised in a report by the Progress & Freedom Foundation, *Digital Age Communications Act: Proposal of the Universal Service Working Group*, Release 2.0, Dec. 2005, at 23-24. An Appendix to the report by Bob Atkinson, Columbia Institute for Telecommunications, proposes the automatic provision of vouchers to low-income consumers through the Department of Agriculture's Food Stamps program and to individuals in high-cost markets to buy telecommunications services at market rates. Low-income households in high-cost areas would receive both vouchers. This proposal includes a method of establishing the size of the "high-cost" voucher and ways to curb the program so that more affluent households with multiple residences would not be subsidized. *See supra* note 48.

⁸¹ Richard Gabel, *Development of Separations Principles in the Telephone Industry*, East Lansing, MI: Institute of Public Utilities, 1967, at 116.

States could choose which, if any, social service programs would trigger Lifeline and Link-Up participation, or they could elect to simply use income-based criteria. Research for the PURC report noted that most eligible households that qualify for those programs automatically meet the income-based criterion of 135 percent of FPG.⁸² As a result, the social programs criteria do not significantly increase the number of eligible households. However, states may find it more expedient to use existing social programs to distribute communications vouchers. This approach of qualifying households could decrease bureaucratic costs and also eliminate the need for low-income households to sign up for communications voucher benefits separately from other social program benefits.

We propose that the role of ETCs, as currently configured, should be eliminated from the programs altogether. Subscribers would receive on a monthly basis vouchers that could be used for telephone bill discounts, cell phone post-paid bills or prepaid card discounts, calling card purchases, payment for VoIP services (Voice over Internet Protocol), cable service telephony, and other communications services. All retail providers of such products would be required to accept the vouchers and existing consumer protection laws would be used to ensure that fly-by-night outfits do not bilk consumers. Because the distinction between intrastate and interstate services and voice services and other communications services is rapidly disappearing, we propose that the discount could be used for any communications connectivity including broadband service. In our view, Lifeline support should be provided for a defined functionality

⁸² Holt & Jamison, *supra* note 12, tab. IV, at 15. The Shimberg study for the report found that 93.4% of total eligible households in Florida were eligible for Lifeline and Link-Up through the 135% of FPG income-based criterion. We have no reason to believe that the situation in other states is markedly different. Eligibility criteria for TANF, Medicaid (in specified cases), and LIHEAP are more generous than for the Lifeline and Link-Up programs under the 135% of FPG criterion. We would suggest that recipients who were receiving Lifeline and Link-Up benefits before the proposed program is implemented be grandfathered into the new program.

and access and not for specific services.⁸³ We contend that this approach is much more reflective and supportive of the competitive industry that telecommunications has become and that it is also much more technologically neutral than the existing approach. One of the problems with Lifeline and Link-Up under the existing system is that, due to federal forbearance, VoIP providers and cable companies, for example, do not contribute to the federal USF. In our view, the suggested proposal would go further than the Lifeline and Link-Up programs operating under existing federal and state regulatory authority in supporting competition and promoting deployment of developing communications technologies throughout the nation. Furthermore, in the long run, the proposed program structure would be streamlined and simpler to administer. It would also decouple the program from a redistribution funding mechanism that has become increasingly divorced from the true objective of the 1996 Act — “just, reasonable, and affordable rates.”

Fewer transaction costs are associated with our proposal than with the current system. A state could implement our suggestions without enrollment forms and procedures. As the Burton and Mayo study found, administrative burdens were significantly related to decisions of nonparticipation.⁸⁴ Second, customers tend to apply for programs they trust so marketing may be more effective if enrollment forms are available at other social service agencies providing programs from which they might already receive benefits. Third, the elderly as a whole tend to lag behind young people in their adoption of new technologies but there are signs that deployment of other technologies will affect them, as well. It may come as no surprise that when

⁸³ This is not a new concept. In fact, it has been around since 1996. In its *Recommended Decision*, the Joint Board cited Washington UTC’s objections to defining universal service in a similar vein: “Washington UTC, for example, argues that listing specific services to support “freeze[s] universal service policy in the technology and services of 1996. Washington UTC proposes instead that a description of functionalities and access, rather than services, be used to define universal service.” See FCC, *Recommended Decision*, *supra* note 17, ¶ 34

⁸⁴ See Burton & Mayo, *supra* note 13.

asked about Lifeline expansion priorities, low-income respondents preferred extending the subsidy to cell phones over cable and Internet access. However, benefit extensions to cable and Internet access, currently not part of the Lifeline program, were not lagging that far behind.⁸⁵

Technological neutrality was clearly of importance to the FCC. Following passage of the 1996 Act, the FCC released a Further Comment Public Notice which posed the question as to “whether the new universal service support mechanisms should provide support for Lifeline in order to make the support technologically and competitively neutral.”⁸⁶ Technological advances increasingly undermine the justification for perpetuating a program that is not used by most low-income households and is far from technologically-neutral. In the 1997 Universal Service Report and Order, the FCC endorsed the Joint Board's recommendation to adopt the principle of “competitive neutrality.” The FCC also concluded in the report and order that “universal service support mechanisms and rules should not unfairly advantage one provider, nor favor one technology.”⁸⁷ But certain technologies are clearly favored over others under the present scheme.

Our proposal does not necessarily entail changes to other programs supported by the federal USF although reforms in those programs could and probably would affect service availability options to Lifeline and Link-Up subscribers in ways that we cannot easily predict.⁸⁸

⁸⁵ See Brown, *supra* note 38, tab. 6. Over one-fourth of those surveyed (28.4%) indicated the strongest preference for cell phones, followed by 22.5% for cable television and 20.6% for Internet access.

⁸⁶ FCC, *Common Carrier Seeks Further Comment on Specific Questions in Universal Service of Proposed Rules*, CC Docket 96-45, Aug. 2, 1996, Question 71.

⁸⁷ FCC, *Report and Order*, *supra* note 10, ¶ 350.

⁸⁸ Many proposals have been put forth to reform the universal service funding mechanisms. For example, the National Association of Regulatory Utility Commissioners issued a report, *Federalism and Telecom*, July 2005. That report recommends revamping the collection of revenues to be based on either all revenues (interstate and intrastate), or telephone numbers, connections, or a hybrid of the two. For a discussion of proposed solutions, see also Allen S. Hammond, IV, *Universal Service: Problems, Solutions, and Responsive Policies*, 57 FED. COMM. L.J. 187 (Mar. 2005).

To conclude, the times are changing and the mechanism for Lifeline and Link-Up needs to keep pace with those changes.