

## FSC'S LAW & ECONOMICS INSIGHTS

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Fisher, Sheehan & Colton, Public Finance and General Economics

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## Vertical Services and Telephone Lifeline Aid

### NOTE TO READERS

#### ON-LINE DELIVERY

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### States Should Lift Bans on Subscription to Vertical Telecommunications Services for Disabled Households Seeking Lifeline Aid

The Lifeline telecommunications assistance program is a public assistance program designed to make quality telecommunications service available to low-income households at just, reasonable and affordable rates.

In Pennsylvania, the Lifeline 100 program is available from Verizon to households with gross household income at or below 100 percent of the Federal Poverty Level *or* that they are enrolled in a variety of specified public assistance programs. The Lifeline 150 program is available from all Local Exchange Carriers (LECs) to households who have income at or below 150% of the Federal Poverty Level *and* are enrolled in any one of specified programs.

The Pennsylvania Public Utility Commission (PUC) limits enrollment in the state's Lifeline 100 program to telephone customers that do not subscribe to vertical services in addition to basic local telephone service. Households that enroll in the Lifeline 150 program may choose to subscribe to one vertical service. Subscribing to additional vertical services disqualifies households from participation in Lifeline. In reaching that decision, the PUC said:

“... a program with no vertical service restriction could be self-defeating. That is, a low-income household that qualifies for Lifeline but purchases numerous optional services, whose costs exceed the Lifeline benefit, may find that their telephone service is no more affordable than it was without the assistance.”

In a report for the Pennsylvania Office of Consumer Advocate, Fisher, Sheehan & Colton, Public Finance and General Economics (FSC)

examined whether the ban on vertical services was appropriate. In its report titled “Vertical Services and Telecommunications Lifeline Services: Its Impact on Low-Income and Disabled Customers,” FSC concluded that the ban on the subscription to vertical services should be lifted.

### **Low-Income Telecomm Budgeting**

There is no reason to believe that low-income households are incapable of making wise decisions on how to budget their telecommunications expenditures, FSC said.

Telephone expenditures clearly vary based upon income. FSC presented data, for example, demonstrating that telecommunications expenditures decrease as income decreases. Households with incomes of \$10,000 or less have telecommunications expenditures of between roughly \$520 and \$550. When incomes increase to between \$30,000 and \$50,000, telecommunications expenditures increase to between roughly \$910 and \$970. When incomes increase to over \$70,000, annual telecommunications expenditures increase to more than \$1,300.

The concern expressed by the PUC is that as new vertical services become available, low-income households will purchase those services, even if such purchases make the total telephone service unaffordable. Data presented by FSC from the Consumer Expenditures Survey (Bureau of Labor Statistics), however, indicated that low-income households do not add technology, simply because it is available. During the period of 1993 through 2001, telephone expenditures for households with incomes of \$10,000 or less increased by 15% to 20%. In contrast, telephone expenditures for households with incomes of \$30,000 or more increased by more than 30% in the years 1993 through 2001. As is evident, merely because new telecommunications services became available did not mean that low-income households purchased those services with a

corresponding increase in their telecommunications expenditures.

The same conclusion is reached by comparing consumer expenditures on telephone service to the change in consumer prices represented by the Consumer Price Index. FSC presented data showing the actual change in telecommunications expenditures by income compared to what the change in expenditures would have been had it exactly reflected the Consumer Price Index for all Urban Consumers (CPI-U) for telecommunications services between 1997 and 2001.

That data demonstrated that households with incomes below \$20,000 did not add telecommunications services that served to increase their telecommunications expenditures during this seven year time frame. For households with incomes below \$20,000, the increase in expenditures almost exactly tracked the Consumer Price Index.

### **Vertical Services and Telecomm “Shopping”**

Not only is prohibiting low-income households from subscribing to vertical services unnecessary to help low-income households control their local telephone bills, but it may be counterproductive as well, FSC concluded. Such a prohibition takes the low-income Lifeline customer out of the competitive telecommunications market where most such companies offer their “good deals.”

FSC found that telecommunications companies aggressively market vertical services, but not Lifeline, even to customers for whom subscribing to such services would disqualify them from receiving Lifeline assistance.

A search for competitive local telephone service through UtilityChoice.org (the Pennsylvania web site devoted to informing Pennsylvania consumers about their competitive telecommunications, electric and natural gas choices) turned up no references to basic local telephone service that was not packaged with multiple vertical services, FSC found. This

official site for shopping for local telephone service in Pennsylvania provided no references to unbundled, unpackaged, basic local telephone service.

While there undoubtedly are basic local service offerings available through the various telecommunications carriers providing local service in Pennsylvania, FSC acknowledged, carriers do not aggressively market the basic local service which is required by the Pennsylvania PUC's lifeline prohibition on the subscription to vertical services. FSC concluded that "for a consumer to find the service that they are allowed to purchase should not be an Easter egg hunt. A low-income consumer should not need an [Office of Consumer Advocate] attorney to find the service offering needed to enroll in the Lifeline program. "

Even if local telephone companies provide basic local telephone service to customers who may request it as an "exception" to the various packages of bundled services, requiring Lifeline participants to seek that exception denies these customers the benefits of local competition. As a result, rather than allowing low-income customers to enter the marketplace for local telecommunications service, the Lifeline policy regarding vertical services specifically walls off the competitive marketplace from these customers.

### **Vertical Services and Low-Income Disabled**

The second section of the FSC report considered the narrower question of how the Pennsylvania PUC's ban on the purchase of vertical services affects low-income disabled customers specifically. After defining "disability" and considering the demographics of the disabled, the discussion next considered the extent to which vertical services represent essential purchases necessary to make basic telephone service a viable communications option for the disabled. The section finally examines the extent to which a waiver of the ban on purchasing vertical services may be necessary as a "reasonable accommodation" for disabled customers.

### **Demographics and Definitions**

Disability is a term that is defined by federal law. The Americans with Disabilities Act (ADA) applies when a person is impaired in undertaking major life activities. These activities might include caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, and the like. They also include, however, activities such as the ability to sleep, concentrate and interact with other individuals.

Disabilities are classified into "severe" disabilities and "non-severe" disabilities. These disability classifications, FSC noted, are defined terms.

The incomes of persons with disabilities systematically differ from persons without disabilities. Individuals with disabilities tend to have very low incomes and would, as a result, generally be income-eligible for Lifeline telephone assistance in the absence of prohibitions on the subscription to vertical services. Some estimates indicate that only twenty-five percent of individuals with disabilities are working, while more than three-fourths of the remaining individuals would like to work but cannot find employment.

This data translates into "real dollars of income," FSC said. FSC presented a comparison of income by age group for the total population, and for persons with no disability, with severe disability, and with non-severe disability. While income varies by age, FSC noted, it is nevertheless clear that, even among those with earned income, not only do more persons with severe disabilities have *no* earned income, but those individuals with severe disabilities *with* earned income have incomes at roughly half the level of individuals with no disability.

FSC said: "accordingly, the information below directed toward disabled persons, which outlines the need for and benefits from various vertical telecommunications services, is knowingly directed toward a low-income population that is

likely to be eligible for Lifeline telephone assistance.”

### **The Need for Vertical Services**

Having access to *vertical* telephone services, in particular, is necessary to make their access to telephone services more generally, meaningful, FSC found. Information from Verizon’s World Wide Web (WWW) page provides support for this statement.

Verizon segments its disabled customer base into the following categories:

- Hearing disabled
- Speech disabled
- Cognitive disabled
- Visual disabled

For hearing disabled individuals, Verizon recommends vertical services that allow a customer to “see who’s calling before you answer.” In particular, Verizon recommends the following vertical services to its hearing-impaired customers, among others: call waiting ID; caller ID; distinctive ring – 1 number; do not disturb; and select call forwarding.

For speech-disabled individuals, Verizon recommends vertical services that allow a customer to “recognize calls and stay connected.” Verizon recommends the following vertical services for its speech-impaired customers, among others: call waiting ID; distinctive ring – 1; preferred telephone number; and three-way calling.

For its visual-disabled individuals, Verizon recommends vertical services that allow a customer to “hear the name of the caller before you answer.” Verizon recommends the following vertical services for its visual-impaired customers, among others: star-69; busy redial; call direct; call direct plus; call messenger; call messenger plus; and speed dialing (either 30 or 8).

For its cognitively-disabled individuals, Verizon recommends vertical services that provide “aids for quick and easy dialing.” These services, Verizon says, “let you hear who’s calling and store numbers for quick and easy dialing.” Verizon recommends the following vertical services for its cognitively-impaired customers, among others: busy redial; preferred telephone number; select call forwarding; speed dialing (both 30 and 8); ultra forward, and call intercept.

Verizon tells its disabled customers that “products and services listed above represent some of the products and services that our Customers with Disabilities have found useful.” The vertical services identified provide specific functional benefits to disabled customers. As Verizon, itself, recognizes and explains to disabled individuals, these vertical services are not mere luxuries. Instead, they provide value-added service that frequently make the difference between telephone service being a meaningful communication service or not.

There is a substantial low-income disabled population within Pennsylvania that *need* vertical services, FSC concluded. Denying these households the ability to obtain Lifeline assistance is not a denial of assistance to those who do not need it. Instead, the denial of Lifeline assistance to these persons takes members of a population, who by the very nature of their physical or cognitive challenges, face an increased telecommunications cost and a decreased ability to earn income, and denies them the ability to access public assistance to help them pay those increased costs.

These persons, FSC concluded, are placed in a hopeless paradox. Either they can access the vertical services that makes telephone service meaningful to them and lose their access to assistance which makes telephone service economically accessible, or they can refrain from subscribing to the vertical services and thus keep telephone service economically accessible, but only a telephone service that does not meet the needs created by their physical and cognitive challenges.

## **Lifeline and Reasonable Accommodations**

Aside from the general policy directed toward making vertical services available to disabled customers is the issue of whether Lifeline service providers, and the state commissions that regulate them, have an obligation to make vertical services available as a reasonable accommodation for disabled customers. The discussion below examines whether a refusal to waive the prohibition on subscribing to vertical services for a disabled person, when that person has a documented need for those vertical services by reason of his or her disability, is in contravention of the Americans with Disabilities Act (ADA).

The ADA has two different sections that are relevant to the extension of Lifeline benefits to disabled customers. The first relevant section relates to public accommodations. The second relates to public benefit programs.

### **Title III of the ADA and the Lifeline/Vertical Service Connection**

Title III of the ADA imposes specific requirements and prohibitions on operators of public accommodations. A telecommunications service provider has all the attributes of a public accommodation, and represents a “public accommodation.”<sup>1</sup> The ADA prohibits operators of public accommodations from subjecting, by direct or indirect means, an individual or class of individuals with disabilities to any of the following forms of discrimination:

- Denying the chance to participate in or benefit from an opportunity;
- Affording an opportunity that is not equal to that made available to other individuals;

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<sup>1</sup> Title III of the ADA applies to operators of “public accommodations.” These public accommodation requirements cover almost all facets of American life in which members of the public come into contact with a business or other entity. “Contact” does not necessarily mean physical contact.

- Providing access that is different or separate, unless such separation or difference is necessary to provide an individual with a disability an opportunity that is as effective as that which is provided to others;
- Using direct or contractually arranged standards or methods of administration that result in discrimination or that encourage others subject to common administrative control to discriminate.

In addition, public accommodations are prohibited from imposing or applying “eligibility criteria that screen out or tend to screen out” individuals or classes of individuals with disabilities unless these criteria “can be shown to be necessary for the provision of the good, services, facilities, privileges, advantages, or accommodations being offered.”

Finally, operators of public accommodations are required to make reasonable modifications to policies, practices or procedures to permit an individual with a disability an opportunity to obtain the goods, services, facilities, privileges, advantages or accommodations being offered.

Telecommunications access limited to basic local service does not provide a meaningful communication alternative to disabled individuals:

- The denial of Lifeline benefits to disabled persons subscribing to vertical services denies disabled persons an opportunity to participate that is equal to that opportunity made available to other individuals. A subscription to vertical services is not a mere luxury for disabled individuals. Vertical services are often necessary for telephone service to be a meaningful telecommunications option.

- Denying Lifeline service because of a disabled person’s subscription to vertical services provides access to Lifeline that is different or separate than the opportunity to participate in

Lifeline that is provided to others. Basic local telephone service is not the functional equivalent telecommunications service for disabled persons to basic local telephone service to nondisabled.

- Conditioning the grant of Lifeline benefits on the non-subscription to vertical services imposes or applies “eligibility criteria that screen out or tend to screen out” individuals or classes of individuals with disabilities. These criteria (nonsubscription to vertical services) can *not* “be shown to be necessary for the provision of the good, services, facilities, privileges, advantages, or accommodations being offered.”
- Finally, waiving the prohibition on the non-subscription to vertical services for disabled customers (as well as for aging customers) is required by the mandate that operators of public accommodations make “reasonable modifications to policies, practices or procedures to permit an individual with a disability an opportunity to obtain the goods, services, facilities, privileges, advantages or accommodations being offered.” The grant of Lifeline benefits is the “goods, services, . . . privileges, advantages or accommodations being offered.”

### **Title II of the ADA and the Lifeline/Vertical Service Connection**

Title II of the ADA, which applies to state and local governments, is applicable to the Lifeline program as well. Title II applies when state and local government, and their agencies, provide services to clients.

In enacting the ADA, Congress recognized that discrimination comes in more forms than outright exclusion. Discrimination occurs, also, by overprotective rules and policies; failure to make modifications in policies and practices; exclusionary qualification standards and criteria; and segregation and relegation to lesser programs, service activities, benefits, jobs and other opportunities.

Title II states quite directly that “(s)ubject to the provision for this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of services, programs or activities of a public entity.” Discrimination is defined to include:

- Denying a qualified individual with a disability an opportunity to participate in or benefit from an aid, program or service;
- Providing an opportunity to participate in or benefit from the aid, benefit or service that is not equal or not as effective in providing an equal opportunity to obtain the same result or reach the same benefit;
- Using criteria or methods of administration that have a discriminatory effect, or that have the purpose or result of substantially impairing the goals of the program or service for people with disabilities, or that perpetuate discrimination of another public entity under common control.
- Using eligibility criteria that screen out or tend to screen out individuals or a class from full enjoyment of programs and services unless necessary for the provision of the service.

FSC reached the following conclusions as to Title II:

- The PUC policy that denies all income-qualified individuals the opportunity to access Lifeline benefits if they subscribe to vertical services denies individuals with a disability an equal opportunity to participate in or benefit from the program or service. Vertical services are not mere luxuries to persons with a disability generally. They are necessary to have local telephone service be a meaningful telecommunications alternative.
- The PUC policy that denies all income-qualified individuals the opportunity to

access Lifeline benefits if they subscribe to vertical services provides an opportunity to participate in or benefit from the aid, benefit or service that is not equal or not as effective in providing an equal opportunity to obtain the same result or reach the same benefit. Providing basic local telephone service, unpackaged with vertical services, as has been repeatedly recognized, is not the functional equivalent telephone service for disabled individuals. Moreover, providing basic local telephone service, unpackaged with vertical services, does not provide a service that provides “an equal opportunity to obtain the same result or reach the same benefit.” The “result” or “benefit” is the provision of meaningful communications alternatives through local telephone service.

- Because of the need of disabled persons to subscribe to vertical services to make local telecommunications service a meaningful telecommunications alternative, the PUC’s denial of Lifeline benefits to persons who subscribe to vertical services use criteria that have a discriminatory effect, or that have the result of substantially impairing the goals of the Lifeline program for people with disabilities. The goal is to provide meaningful telecommunications alternatives at an affordable price to low-income customers.
- Because of the need of disabled persons to subscribe to vertical services to make local telecommunications service a meaningful telecommunication alternative, the PUC’s denial of Lifeline benefits to persons who subscribe to vertical services uses eligibility criteria that screen out or tend to screen out disabled individuals from full enjoyment of the Lifeline program and services.

FSC’s complete report to the Office of Consumer Advocate, including all data tables, can be obtained by sending a request to:

[roger@fsconline.com](mailto:roger@fsconline.com)

Fisher, Sheehan and Colton, Public Finance and General Economics (FSC) is a research and consulting firm with offices in Belmont (MA), Scappoose (OR), and Iowa City (IA).

*FSC* specializes in providing economic, financial and regulatory consulting. The areas in which *FSC* has worked include infrastructure financing, public enterprise planning and development, natural resource economics, community economic development, telecommunications, public sector labor economics, planning and zoning, regulatory economics, energy law and economics, fair housing, and public welfare policy.