
REVIEW OF NEW YORK STATE AND FEDERAL LAW
AUTHORIZING THE EXCHANGE OF DATA FOR THE
LIMITED PURPOSE OF DETERMINING AFDC RECIPIENT ELIGIBILITY FOR
TELEPHONE LIFELINE PROGRAM RATES

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INTRODUCTION.

This memorandum examines how recipients of Aid to Families with Dependent Children (AFDC) can be enrolled automatically in the telephone Lifeline program through a computerized data exchange between New York Telephone (NYNEX) and the State Department of Social Services (DSS).

Telephone Lifeline is a federal and state program to assist low-income households to connect and keep telephone service in their homes. Its two components, "lifeline" and "Link-Up America," further the federal goal of universal service by reducing the cost of local telephone service for low-income households.¹ Lifeline reduces the NYNEX connection fee to \$10 to initiate service, and reduces the monthly access charge to as low as \$1 a month. As a result, AFDC households save \$45 or more on the initial connection charge, and about \$9 on the recurring monthly access charge.

NYNEX customers presently apply individually for Lifeline rates. NYNEX and DSS then verify and review continuing eligibility by manual measures for each individual. Fewer than 80% of New York

¹ Federal Communications Commission Report and Order, FCC 87-133, in CC Docket Nos. 78-72 and 80-286, adopted April 16, 1987 (summary published at 52 Fed. Reg. 21536, June 8, 1987). See 51 Fed. Reg. 1371-1374, January 13 1986, summary of FCC Decision and Order, in CC Docket Nos. 78-72 and 80-286, adopting the Federal-State Joint Board's recommendation to implement "federal lifeline assistance measures to aid low income households in affording telephone service." Id., at 1374.

Also see New York PSC Order Modifying Lifeline Program, in Case No. 90-C-0191 issued and effective July 27, 1992: "[W]e want to insure the continuation of affordable, universal service to all customers." Id. at 2. Accord, N.Y.S. Department of Public Service ("DPS") Staff "Report on New York Telephone Company's Lifeline Program," dated October 28, 1991, and issued by the N.Y. PSC November 20, 1991 ("Staff Lifeline Report"), pp. 9-10: "[T]he Commission has stated its commitment to universality of telephone service." Id., at 9.

public assistance households have a telephone,² and only about 36% of eligible NYNEX customer households currently receive the Lifeline assistance rate.³ A computerized data exchange of limited Lifeline eligibility data (data exchange)⁴ between DSS and NYNEX will automate Lifeline program enrollment of AFDC recipients and facilitate prompt and efficient verification of continuing eligibility for Lifeline rates. Through automatic enrollment, the computerized data exchange will increase participation in Lifeline.

THE FEDERAL TELEPHONE LIFELINE PROGRAM IN NEW YORK.

New York State and NYNEX participate in the federal program pursuant to Public Service Commission (PSC) order.⁵ All residential subscribers who meet the federal criteria, including qualifying under a state established income test, are eligible for "Lifeline Connection Assistance." 47 CFR §36.711. In New York, AFDC recipients meet this state income test and are categorically

² See, e.g., New York PSC Opinion 87-18, in Case Nos. 28961 and 28978, 27 NY PSC 1955, 1985 (August 31, 1987); The City of New York Life Line Outreach Program Report, March 1989, p. 3, citing FCC Monitoring Report, CC Docket No. 87-339, December 1987.

³ As of August, 1993, according to NYNEX figures, about 489,000 households were enrolled in Lifeline.

According to the DPS's Staff Lifeline Report, supra (fn. 1):

"[D]espite substantial efforts to sign up Lifeline eligibles [in New York State], ... [t]he growth of Lifeline subscribership has slowed down" P. 34.

⁴ For purposes of this memorandum, this information includes only that which is essential to enroll eligible persons automatically and to confirm their continuing eligibility. This would include name, address, eligibility for Lifeline, telephone number and database identifier, e.g., public assistance CIN number.

⁵ See New York PSC Opinion & Order Establishing an Interim Lifeline Rate, Opinion 85-12, issued May 9, 1985, in Case Nos. 28961 and 29021, 25 NY PSC 2552 (1985). From the outset, AFDC recipients have been categorically eligible for this program. Id., at 2572 and 2575.

eligible for Lifeline, along with recipients of other government programs.⁶ The Federal Communications Commission (FCC) certified New York State's Lifeline program as being in compliance with the requirements of the federal program. In doing so, it stated, "Eligible subscribers are subject to verification by the [N.Y.S.] Department of Social Services." (A copy the November 2, 1987 FCC letter is annexed as Appendix A). See 51 Fed. Reg. at 1373, supra (fn. 1).

The federal Lifeline program also furthers the purposes of AFDC assistance. It provides aid to needy households, and subsidizes the "lifeline" of full telephone access to the job market, community, family, and emergency services. It facilitates efficient contact between DSS and the AFDC recipient, and the provision of social and family services. A confidential exchange of AFDC recipient data to establish or validate eligibility for telephone Lifeline is appropriate because it is directly connected with the purposes of Lifeline, a federal or federally assisted, need-based program.

THE DEPARTMENT OF SOCIAL SERVICES MAY DISCLOSE INFORMATION TO ESTABLISH OR VALIDATE LIFELINE ELIGIBILITY OF AFDC RECIPIENTS IN A LIMITED PURPOSE COMPUTERIZED DATA EXCHANGE.

DSS may provide Lifeline eligibility data regarding AFDC recipients to NYNEX in a computerized data exchange sufficient to establish or validate telephone Lifeline eligibility if NYNEX does

⁶ These include Home Relief, Medicaid, Home Energy Assistance Program (HEAP) benefits, Veteran's Disability Pension and Veteran's Surviving Spouse Pension benefits. Automatic enrollment of Supplemental Security Income (SSI) beneficiaries would be accomplished by using a federal data base governed by other statutes and regulations.

not use the data for any political, commercial or other purpose.⁷ SSL §136(3) authorizes DSS to disclose AFDC recipient information through a central index or social service exchange for the purpose of preventing duplication and of coordinating the work of public and private agencies.⁸

To satisfy AFDC and state confidentiality requirements, NYNEX, as the recipient of the Lifeline eligibility data, must be subject to standards of confidentiality which (1) are comparable to those of DSS,⁹ (2) prohibit the names from being used for commercial or political purposes,¹⁰ and (3) must limit its use to the Lifeline program, which is a purpose reasonably related to the purposes of the public welfare program and inquiring agency, NYNEX.¹¹

Comparable standards of confidentiality require that: 1) use is restricted to the administration of a federal/federally assisted program, e.g., Lifeline; 2) use is not for a commercial or political purpose; 3) storage and processing arrangements prevent access by unauthorized personnel; and 4) all persons with access

⁷ SSL §136(3) and (4); POL §96(1)(b), (c) and (e); 18 NYCRR §357.3(a); and 42 USCA §1306a and 45 CFR 205.50(a)(1)(iv).

⁸ SSL §136(3) states in its entirety:

Nothing in this section shall be construed to prevent the registration in a central index or social service exchange for the purpose of preventing duplication and of coordinating the work of public and private agencies. (Emphasis added).

⁹ 18 NYCRR §§357.3(a)(1) and 357.5; and 45 CFR 205.50(a)(2)(ii) and (3)(ii).

¹⁰ SSL §136(4); 18 NYCRR §357.3(a)(3); 42 USCA §1306a; and 45 CFR 205.50(a)(1)(iv). 42 USCA §1306a authorizes the state to enact or enforce its own state legislation that prescribes conditions for public access to records of payment, without risk to the state of losing its AFDC funding, provided the legislation prohibits the commercial or political purposes use of any lists or names obtained, which SSL §136(4) does.

¹¹ 18 NYCRR §§357.3(a)(2); 45 CFR 205.50(a)(1)(i)(C) and (iv).

are notified of the sanctions for illegal use or disclosure.¹²

To effect comparable standards of confidentiality, NYNEX must agree in writing strictly to safeguard recipient information and preserve its confidentiality, and not to further disclose this limited information or use it for any commercial, political or other purpose.¹³ Pursuant to its federal AFDC plan, DSS has the authority to implement and enforce the safeguarding of AFDC recipient information.¹⁴ DSS should use this authority to conduct on-site audits and inspections of NYNEX confidentiality procedures to assure and preserve confidential treatment of the data and to prevent unauthorized or mistaken disclosure or misuse.

The confidential data exchange is also consistent with a PSC telecommunications privacy guideline that the use of telephone customer "information should be used only in connection with rendering or billing for that service...." "Statement of Principles on Privacy in Telecommunications," as modified September, 1991, In the Matter of Privacy in Telecommunications, 125 PUR4th 481, 487-488 (1991).

New York's Personal Privacy Protection Law, Public Officers Law (POL), Article 6-A, permits the exchange of data to implement Lifeline because, under POL §96(1)(b), (c), and (e), the exchange would:

- (1) be pursuant to an agreement with an agency contractor

¹² 45 CFR 205.50(a)(1)(i)(C) and (iv), (2)(i)(A) and (ii), and (3); and 18 NYCRR §§357.3(a) and 357.5.

¹³ POL §96(1)(b) and (e); SSL §136(3) and (4); 18 NYCRR §357.3(a); and 42 USCA §1306a and 45 CFR 205.50(a)(2)(i) and (ii), (3)(ii) and (iii).

¹⁴ 45 CFR §205.50(a)(1)(ii).

(i.e., NYNEX), and disclosure is necessary to operate a program specifically authorized by law (i.e., Lifeline);

(2) would not constitute an unwarranted invasion of personal privacy under the State Freedom of Information Law (FOIL) §89(2)(a); or

(3) be for a routine use.

Because DSS would disclose the Lifeline eligibility data to operate a program specifically authorized by law, the data exchange would be authorized as a "routine use." POL §92(10).¹⁵

The Lifeline program is "authorized by law" by PSC orders, and by order and regulations of the FCC, and NYNEX must charge the reduced rates to all persons verified as being financially eligible, which AFDC recipients are. The data exchange is necessary to efficiently administer the Lifeline program rates and increase enrollment of AFDC beneficiaries. Privacy concerns would be satisfied by the PSC's privacy guidelines that apply to NYNEX, and by the agreement that NYNEX would execute with DSS to safeguard confidential information from improper or accidental disclosure or unauthorized use.

The data exchange would satisfy the requirements of POL §96(1) and not constitute a clearly unwarranted invasion of personal privacy because it would be a limited, confidential disclosure for the purpose of confirming eligibility for Lifeline assistance, a form of federal and state sanctioned assistance for AFDC recipients. Accordingly, the elements of the above three provisions of POL §96(1) can be readily satisfied, and a

¹⁵ The exchange would also qualify as disclosure to an agency contractor, in this case NYNEX, which would promise to enroll in Lifeline all AFDC recipients certified by DSS as being eligible. POL §96(1)(b).

computerized data exchange would be consistent with state laws and regulations.

Because the information will be used directly in connection with the administration of the Lifeline program, a federal or federally assisted program which provides assistance or services in the form of discounted telephone service to individuals on the basis of need, such a data exchange would also be authorized under the federal AFDC law. 42 USCA §602(a)(9)(C).¹⁶ Codified in the federal regulations, Lifeline is clearly a federal or federally assisted program.¹⁷

CONCLUSION AND RECOMMENDATIONS.

A confidential exchange of data with NYNEX, such as by a computer matching program, for the limited purpose of bringing telephone Lifeline rates and benefits to AFDC recipient households is authorized under state and federal law. SSL §136(3); POL §96(1); and 42 USCA §§602(a)(9)(C) and 1306a.

To effect this limited disclosure:

I. The State Department of Social Services should:

(1) Determine¹⁸ that

¹⁶ It will also assist DSS in the administration of the AFDC program by facilitating contact with emergency and social service providers, and with family, the community and job market. By helping AFDC households to afford a vital telecommunications link, Lifeline encourages public assistance recipients' self-support and independence, and it furthers the purposes of the AFDC program. 42 USCA §601.

¹⁷ 47 CFR Part 36, sub-part G, "Lifeline Connection Assistance Expense Allocation," §36.701 *et seq.*; and 47 CFR Part 69, "Access Charges."

¹⁸ SSL §34(3) grants the Commissioner of Social Services power to

"(b) execute and issue determinations, decisions, orders, notices as may be required in the exercise and performance of the functions, power and duties conferred upon or vested in the department."

(continued...)

- a) Telephone Lifeline furthers the purposes of the AFDC program by facilitating low cost telephone service to all recipients, thereby making for ready and more effective communications between DSS and recipients, and providing eligible households with a vital telecommunications link to emergency and social service providers, family, community, and the job market;
- b) Lifeline is a state and "Federal or federally assisted" program of low cost telephone service rates established pursuant to FCC regulations and orders of the New York PSC, directly and categorically available to persons who satisfy a state income test for need by receipt of AFDC;
- c) NYNEX, a regulated public utility, is a "private agency" cooperating with DSS, within the meaning of SSL §136(3), for the limited purpose of coordinating and administering a telephone Lifeline rate program approved by the Public Service Commission;
- d) The telephone Lifeline rate program administered by NYNEX and authorized by the PSC can most effectively enroll or validate eligible AFDC households by the use of a computer data exchange between NYNEX and DSS; and such a data exchange constitutes a "routine use" within the

¹⁸(...continued)

The State Administrative Procedure Act (SAPA) §204(1) also authorizes an agency, upon petition, to

"issue a declaratory ruling with respect to (i) the applicability to any person ... or state of facts of any rule or statute enforceable by it" Id.

meaning of POL §92(10), implements the State's policy of universal service and coordinates the work and policies of the State PSC and DSS; and

e) A confidential exchange of Lifeline eligibility data with NYNEX to bring Lifeline savings and benefits to AFDC recipient households is a compatible purpose for which AFDC applicant information is collected, is neither a commercial or political purpose, and does not constitute an unwarranted invasion of privacy.

(2) Enter into a confidentiality agreement with NYNEX to implement a computer data exchange with standards of confidentiality comparable to those used by DSS in the administration of AFDC, including prohibitions against further disclosure and any use whatsoever by NYNEX for political, commercial or any other purpose. To assure compliance and that proper safeguards are practiced, the agreement also should allow DSS to conduct on-site audit and inspections of NYNEX confidentiality procedures to safeguard recipient information for the purposes intended and from improper or accidental disclosure or unauthorized use.

II. The Department of Public Service should:

(1) Determine that the telephone Lifeline program administered by NYNEX and authorized by the PSC can most effectively enroll eligible AFDC households by the use of a computerized data exchange between NYNEX and DSS, and that doing so furthers the State's policies on universal telephone

service and Lifeline assistance.

(2) Issue an order directing NYNEX to

(a) File tariffs with the PSC confirming its cooperation with DSS (i) to coordinate information and participate in the administration of the Lifeline program, and (ii) to effect automatic enrollment of AFDC recipients whom the computerized data exchange identifies as being categorically eligible for Lifeline rates; and

(b) Enter into a confidentiality agreement with DSS to allow DSS to disclose and exchange the Lifeline eligibility status of AFDC recipients and telephone customer identification information only for the purpose of the Lifeline program, and only with NYNEX personnel who are subject to standards of confidentiality comparable to those of DSS, the agency administering the AFDC program; and to allow DSS to conduct on-site audits and inspections of NYNEX confidentiality procedures to assure and preserve confidential treatment of the data and to prevent unauthorized or mistaken disclosure or misuse.

III. NYNEX should:

(1) File tariffs with the PSC confirming its cooperation with DSS (a) to coordinate information and participate in the administration of the Lifeline program, and (b) to effect automatic enrollment of AFDC recipients whom the computerized data exchange with DSS identifies as being categorically eligible for Lifeline rates; and

