

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Revisions to
the California Universal Telephone Service (Lifeline)
Program

R.11-03-013

(Filed March 24, 2011)

**RESPONSE OF THE CENTER FOR ACCESSIBLE TECHNOLOGY, THE GREENLINING
INSTITUTE, THE NATIONAL CONSUMER LAW CENTER, AND THE UTILITY REFORM
NETWORK TO THE ASSIGNED COMMISSIONER RULING AND SCOPING MEMO**

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Dated: May 28, 2013

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I. INTRODUCTION

Pursuant to the schedule set forth in the April 10, 2013 Assigned Commissioner Ruling and Scoping Memo as revised by Administrative Law Judge Bushey on May 8, 2013 via email ruling, The Utility Reform Network, Center for Accessible Technology¹, Greenlining Institute, and National Consumer Law Center (hereinafter referred to as “Joint Consumers”) file these comments on questions set forth in the Assigned Commissioner Ruling and Scoping Memo.

The Joint Consumers appreciate the dedication to the LifeLine program that the Commission and its staff have demonstrated over the past several years. Today’s society demands the ability to communicate quickly and seamlessly and LifeLine provides low-income consumers that critical link to communicate with their communities, employers, families and support network.

As the Scoping Memo indicates, the Commission is poised to make major changes to the program to ensure it remains relevant and useful in light of the latest trends in technology and customer demand. During this process, there are several critical principles of the program that the Commission must consider and protect: *Affordability, Service Quality, Equity and Value*. Joint Consumers present a comprehensive set of comments to ensure that each of these principles are woven throughout the Commission’s consideration

¹ The Center for Accessible Technology (CforAT) represents the interests of consumers with disabilities before the Commission, and has done so since mid-2011. In the predecessor proceeding to this one, R.06-05-028, as well as an earlier Rulemaking addressing changes to the LifeLine program, R.04-12-001, the interests of this vulnerable consumer group were represented by Disability Rights Advocates (DisabRA). In a number of proceedings, based on an agreement between the two organizations following a move by lead counsel from DisabRA to CforAT, CforAT formally sought and obtained permission to act as DisabRA’s successor and adopt DisabRA’s former pleadings as its own. Due to the timing of the Commission’s actions to close R.06-05-028 and open this proceeding, no such formal agreement was sought here. However, CforAT requests that the Joint Consumers’ references filings in these earlier proceedings which were submitted by DisabRA as part of the Joint Consumer group be considered as representing the positions of CforAT.

of the various proposals that will be presented in this docket. As a subsidized service, LifeLine must remain *affordable*, regardless of how quickly the rates for other services are increasing. LifeLine must provide *high quality service* regardless of the technology used by the provider, or risk not satisfying its social goals. LifeLine must ensure that low-income customers are being treated with *equity* as compared to other Basic Service customers, the program participants cannot be relegated to a lesser service merely because it is discounted. Finally, the program must be designed and administered to provide *value*, not just to the participants but to the Californians paying the surcharge to support the program. While other considerations such as customer choice, technology neutrality and carrier support are also important, the Commission should not prioritize these above the core principles of affordability, service quality, equity and value. Joint Consumers provide detailed comments below in response to the Scoping Memo to help address this delicate balance of social and economic goals.

II. SUMMARY OF RECOMMENDATIONS

Joint Consumers have comprehensively addressed the issues raised in the Scoping Memo. While we may not have addressed each and every question separately, the goal of these comments is to provide input, at least to be used for future discussions on the topic, on the majority of issues raised by the Scoping Memo. In summary, Joint Consumers recommend:

- The Commission should prioritize values of Affordability, Service Quality, Equity and Value for changes to the LifeLine program
- There is no clear statutory or legal barrier to creating a LifeLine program that varies from the adopted definition of Basic Service, but there are several policy reasons to ensure LifeLine mirrors the Basic Service requirements to avoid subsidizing a sub-standard “poor persons” service

- However, there are several unique communities of LifeLine participants whose needs must be met by the program, and they may require some slight deviations in the LifeLine elements from Basic Service to ensure additional protections for these vulnerable populations
- Joint Consumers propose a list of specific elements to be included in the LifeLine product offered by both wireline and wireless services that mirror, but don't exactly match Basic Service including unlimited minutes, texting, application of the discount to family plans, more robust directory assistance provisions, limits on bundling but allowances for wireless services that include voicemail and some CLASS services and a mechanism to petition to add additional services
- Issues raised by TURN's Application for Rehearing should be addressed here by designing an affordable, robust, and meaningful wireless LifeLine product.
- The Third Party Administrator process should be reviewed with an emphasis on communication and accountability for both the TPA and staff, but should also remain in place so the Commission can continue to implement programs that require a TPA
- Joint Consumers support preregistration, urge the Commission to continue to keep NRCs reasonable through a cap on the rate but also a cap on the subsidy, propose expansion of eligibility requirements, and urge increased use of community based organizations with specific knowledge of vulnerable LifeLine communities
- Issues regarding the provision of LifeLine using VoIP technology should be addressed in this phase and the Commission should analyze statutes in addition to Public Utilities Code Section 710 to determine eligibility to participate for these carriers
- Joint Consumers urge the Commission to limit the requirement and distribution of sensitive subscriber data, including any part of the Social Security Number and to work with the FCC to eliminate this harmful requirement of providing the SSN. This requirement not only risks privacy violation and identify theft but it is discriminatory against those customers without an SSN, some of which need LifeLine the most
- In light of a needed emphasis on affordability and value, the Commission should impose a capped, state-wide LifeLine rate and a capped carrier subsidy from the Fund. Any claims that the subsidy level in place is insufficient to allow a carrier to make a reasonable profit on LifeLine customer revenues can petition the Commission for relief with specific, data-supported analysis

III. DEFINITION OF CALIFORNIA LIFELINE SERVICE ELEMENTS

A. LifeLine and Basic Service

The Scoping Memo appears to urge parties to engage in "blue sky" thinking regarding the California LifeLine program. The breadth and depth of the questions in the

Scoping Memo indicate a willingness on behalf of the Commission to reexamine most aspects of the program. As technology evolves and customer habits and preferences change, programs that serve the public also must change to meet customer needs. Thinking out of the box and coming up with new and better ways of developing public programs is a valuable exercise. However, as the Scoping Memo suggests, the Commission must be cognizant of the legal and policy restraints placed upon the LifeLine program.

1) Legal/statutory impediments

The Scoping Memo asks parties to comment on whether there are any “legal or statutory impediments” to a LifeLine service offering that differs from Basic Service. (*Scoping Memo at p. 8*) Joint Consumers do not find any specific legal or statutory impediments to the Commission adopting a different definition of LifeLine service than Basic Service, including the latest Basic Service definition adopted in D.12-12-038.² In adopting and amending the sections of the Public Utilities Code relevant to the LifeLine service, the Legislature has maintained a focus on ensuring universal telephone service in California through the fair and equitable offering of high quality basic telephone service.³ These code sections reference “basic telephone service” as a standard with which to compare the “lifeline class of service” to ensure it is sufficient to meet the goals of the Legislature. The statute also focuses on the rate charged for that class of service. It does not, however, dictate the specific service elements required to be offered.

² Decision Adopting Basic Service Definition Revisions, D.12-12-038 (June 18, 2009).

³ See for example, Pub. UtilCode § 871 *et seq.* including § 873 (requiring Commission to “designate a class of lifeline service necessary to meet minimum communications needs.”); § 877 (Allows Commission to change rates pursuant to any general restructuring of all telephone rates); §. 871.7 (acknowledging role of technological innovation in ensuring universal service); See also § 285 (requiring VoIP carriers to create and remit end user surcharges to support Public Policy Funds.); See also AB 2213 (2009-2010 Reg. Ses.) updated statute from using the term “residential” to “household.”

Joint Consumers note that while the Commission's early LifeLine decisions required providers to offer "local exchange Basic Service," the Commission's more recent decisions on the LifeLine program set new requirements for LifeLine service offerings, and addressed issues unique to providers using alternative technologies, but those decisions do not specifically require the service offering to be identical to Basic Service.⁴ As discussed in detail below, however, a "different" service should not be an inferior service. As Basic Service is described as the minimum level of service to meet a customer's needs, LifeLine service should not be sub-minimum.

2) *Policy Impediments*

The Scoping Memo asks parties to look at whether there are impediments to creating LifeLine service that is different from Basic Service due to specific policy considerations. (*Scoping Memo at p. 8*) It is critical for parties to distinguish between the narrow and technical legal requirements of the code or previous precedent versus the broader policy implications of the Commission's actions. The provision of LifeLine service is not merely an issue of equality, i.e., that every household in California should have access to basic telephone service. Rather, it is an issue of **equity**—every household in California should have access to affordable basic telephone service. This distinction is particularly critical because LifeLine-eligible subscribers are more dependent on basic telephone service than other subscribers. They are more dependent not just because of their low-income status, but also because they are disproportionately members of communities of color, limited- or non-English speakers, or individuals with disabilities. As discussed

⁴ Order Finalizing Rules Governing Universal Service Objectives in a Competitive Telecommunications Environment, D.96-10-066 (Oct. 25, 1996) at FOF 187, COL 158, O.P. 7; But also see Decision Adopting Forward Looking Modifications to California LifeLine in Compliance with the Moore Universal Telephone Service Act, D.10-11-033 (Nov. 23, 2010) at pp.68-70 (allowing other services that include Basic Service to be eligible for LifeLine subsidy and finding that the Moore Act as currently written takes into account evolving levels of service).

below, LifeLine service needs to be affordable while providing robust and comprehensive Basic Service and specifically accommodating the unique needs of low income customers.

a. Basic Service and LifeLine must meet minimum requirements

Historically, LifeLine has merely been a discount off of what has otherwise been known as Basic Service. It was not until the early 1990's, with the introduction of competition in the local market, that the Commission needed to explicitly define the elements of Basic Service and, with it, the elements of LifeLine. The Scoping Memo notes that LifeLine has differed from Basic Service in the past. (*Scoping Memo at p. 8*) This circumstance existed, at least in part, because the Commission found that LifeLine customers needed additional services and protections and not because it relegated LifeLine as a lesser service. For example, while up until recently the Basic Service definition required only access to local directory assistance, General Order 153, which enumerates the rules of the LifeLine program, requires that a LifeLine provider must offer a LifeLine subscriber the same number of free directory assistance calls that it offers to its non-LifeLine customers.⁵ GO 153 requires a provider to offer toll-free access to in-language customer service, while D.96-10-066 and successor decisions contain no such provision.⁶ Finally, while Basic Service only requires one time free blocking for information services

⁵ D.96-10-066, Appendix B; General Order 153, Appendix A. *available at* http://docs.cpuc.ca.gov/WORD_PDF/GENERAL_ORDER/154648.pdf

⁶ General Order 153, Appendix A; D.96-10-066, Appendix B, Section 4.B. A requirement to offer in-language access to customer service was subsequently adopted by the Commission but only for some carriers and only for “non-exempt” services and the service need not be toll-free in every instance. Decision Addressing The Needs Of Telecommunications Consumers Who Have Limited English Proficiency, D.07-07-043, Appendix A (July 26, 2007).

and one time billing adjustments, GO 153 mandates ongoing free access to toll limitation for LifeLine customers.⁷

Therefore, while there are no specific legal impediments to creating a LifeLine service offering that differs from Basic Service and while the two services have varied slightly over the years, there is no history of substantial deviation between the services. In its recent Basic Service decision, the Commission indicated that it would consider proposals to “add, subtract, or refine the elements a California LifeLine Service Provider is required to offer” in order to “provide low-income customers with a broader range of flexibility for discounted LifeLine options.”⁸ However, consistent with the obligations to ensure that LifeLine is not a sub-minimum service, it is relevant here that the Commission also specifically stated that, “Defining Basic Service on a technologically neutral basis does not warrant the degrading of essential consumer needs to satisfy the lowest common denominator of service features that carriers may currently be willing to offer.”⁹

Joint Consumers urge the Commission to maintain a definition of LifeLine that closely matches the definition it adopted in its recent Basic Service Decision. Because, the Commission identified those elements as constituting the minimum service requirements necessary to meet customer needs; the Commission should not allow carriers to offer low-income customers something less than the minimum, and be subsidized for such a service.¹⁰ It would be poor policy to provide carriers an excuse or a rationale, and more so

⁷ G.O. 153, Appendix A. It is also true that for the past six months the elements of Basic Service and LifeLine have differed, but these differences are primarily due to regulatory lag between two different dockets and not an express intent by the Commission to create a large gap between the two services.

⁸ D.12-12-038 at 4.

⁹ D.12-12-038 at COL 5.

¹⁰ D.12-12-038 at 2. The Commission recently found that the package of features and functions that make up the definition of “Basic Service” are the bare minimum to meet a customer’s communication needs and that “a uniform definition of Basic Service is important so that all residential telephone customers, no matter where they live in

a motivation through subsidy, to offer a sub-standard service in the name of “choice” or “alternative technology.” While Joint Consumers understand the need to accommodate evolving consumer demand, Joint Consumers cannot support a proposal that is entirely deferential to carrier business plans, potentially creating a sub-minimum “poor persons” program. As discussed below, Joint Consumers propose a robust, valuable service offering as the minimum service requirements while still ensuring that the LifeLine product remains affordable and that the program retains a reasonable budget.

The Scoping Memo asks a broader question about whether changes to the LifeLine service elements are appropriate to “entice” non-traditional providers to offer LifeLine in California. (*Scoping Memo at p. 8-9*) Joint Consumers suggest that the Commission view the related goals of increased competition and increased consumer choice as two factors to consider among a list of considerations when changing the LifeLine program. Joint Consumers support the goal of increasing customer choice among the LifeLine participants; however, at times, this Commission has held the goal of increasing competition in the name of customer choice in very high regard.¹¹ Joint Consumers urge the Commission to find that in a list of sometimes competing considerations for surcharge-supported programs, increased competition is not necessarily at the top and Joint Consumers would not support policies or decisions designed to reach that goal at the expense of other very important

California, can expect a certain minimum level of service.” The Commission also noted comments at the PPHs that “elimination of essential service features currently available through Basic Service would be detrimental.” FOF 12. and it further noted that the Commission imposes “minimum” service requirements for the provision of basic telephone service. COL 1.

¹¹ See, for example, Opinion, Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the Regulation of Telecommunications Utilities, D.06-08-030 (Aug. 24, 2006). (URF deregulation of non-Basic Service rates); Decision Issuing Revised General Order 168, Market Rules to Empower Telecommunications Consumers and to Prevent Fraud, D.06-03-013 (Mar. 2, 2006) (gutting G.O. 168 Consumer Bill of Rights because of impact on competition); Decision Adopting Phased Transition Plan for Pricing Basic Telephone Service, D.08-09-042 (Sept. 18, 2008) (eliminating price caps on Basic Service).

considerations such as: public safety, affordability, service quality, ease of administration, program budgets, and legal obligations. The wholesale reduction of required service elements could result in a sub-minimum class of LifeLine service. Joint Consumers look forward to working with all interested stakeholders to ensure that the program meets current customer needs, appeals to potential customers, does not overburden ratepayers, and provides value for the service by looking at a broad range of possible services, features and functions.

b. LifeLine must meet unique needs of eligible customers

Low Income

LifeLine-eligible subscribers are low-income, and therefore are less likely to have broadband access¹² or access to transportation.¹³ As a result, basic telephone service may be LifeLine-eligible subscribers' **only** access to information, job offerings, community or school events, or emergency services. Accordingly, LifeLine-eligible subscribers are more dependent on reliable, affordable phone service than their non-LifeLine counterparts who may have an easier time looking information up through computers, smart phones or through more person-to-person involvement in the community.

Similarly, LifeLine-eligible subscribers lack the financial flexibility of other subscribers. For example, LifeLine subscribers are significantly less able to afford rate increases, overage fees, early termination fees, or unreasonable or excessive non-recurring

¹² Cal.P.U.C, Staff Report to the California Legislature: Affordability of Basic Telephone Service, Vol. 2, (Sept. 30, 2010) p. 14, Table 2.2a (hereafter, Affordability Study).

¹³ See, for example, William A.V. Clark and Wenfei Winnie Wang. *The Car, Immigrants And Poverty: Implications For Immigrant Earnings And Job Access*, UCLA Working Paper, (Sept.12, 2008), <http://www.uctc.net/papers/859.pdf>; see also, Rice, Lorien. *Transportation Spending by Low-Income California Households: Lessons for the San Francisco Bay Area*, Public Policy Institute of California, (2004).

charges than non-LifeLine subscribers.¹⁴ Accordingly, as discussed below, LifeLine service elements should diverge from Basic Service elements to the extent necessary to protect low-income communities.

Communities of Color

California LifeLine eligible customers are disproportionately people of color. Only 22 percent of white households are LifeLine eligible, compared to 36 percent of African American households and 56 percent of Latino households.¹⁵ Accordingly, communities of color are more reliant on LifeLine and, as a result, those communities will experience a disproportionate impact if the Commission permits LifeLine service elements that are less robust than Basic Service elements. Accordingly, the Commission should not alter the LifeLine service elements in a manner that provides less robust protection than Basic Service elements or risk violating Public Utilities Code Section 453¹⁶ and other requirements for non-discriminatory access to phone service.

Limited-English and Non-English

Limited and Non-English speaking customers compose another segment of the marketplace that is significantly more likely than average to be LifeLine eligible. For example, while 33 percent of all customers are LifeLine eligible, 71 percent of Spanish-only customers are LifeLine eligible.¹⁷ It will be difficult for those customers to decipher English-only contracts or discuss customer service issues with English-only customer

¹⁴ Affordability Study at p. 10.

¹⁵ Affordability Study, Vol. 1 at p. 2.2

¹⁶ Pub. Util. Code Sec. 453(b) states: “No public utility shall prejudice, disadvantage, or require different rates or deposit amounts from a person because of ancestry, medical condition, marital status or change in marital status, occupation, or any characteristic listed or defined in Section 11135 of the Government Code.”

¹⁷ Affordability Study at p. 18.

service representatives. Specific attention to Limited English proficiency populations also aligns with stated Commission consumer protection policies. The Commission has found that these populations are more likely to experience fraud and be confused by misleading marketing.¹⁸ Therefore, those additional protections that the Commission has already found to benefit Limited English Speaking populations should be acted upon here.

Senior Citizens

Senior citizens are also a significant demographic of LifeLine beneficiaries. At the federal level, almost half of the participants in the program are 45 to 50 years old and a substantial percent are over sixty.¹⁹ There is no reason to doubt that California's program demographics are similar. The elderly frequent combine many of the identifiers of the other communities such as the disabled. These constituents are frequently not mobile and as a result would be horribly isolated without the ability to have high quality telephone service. While they often don't need the enhanced features of some regular bundles of services they do need reliable service quality, ability to make calls over various distances, useful directory services, and robust 911 service.

Consumers with Disabilities

People with disabilities face virtually all of the dependencies discussed above at heightened levels. People with disabilities are disproportionately low-income; they have very low rates of participation in the workforce,²⁰ and during the ongoing economic crisis

¹⁸ See D.07-07-043; Order Instituting Rulemaking to Address the Needs of Telecommunications Customers Who have Limited English Proficiency, R.07-01-021 (January 11, 2007).

¹⁹ See, Statement by the Benton Foundation, "Benton: Preserve Vital Lifeline, Statement by Charles Benton to the House Communications and Technology subcommittee, on April 25, 2013, <http://benton.org/node/150348>

²⁰ According to the U.S. Department of Labor, in January of 2012, 17.4% of people with disabilities participated in the workforce, as compared to 62.9% of people without disabilities. People with disabilities had the lowest level of

facing low-income Californians following the 2008 financial collapse, many programs supporting people with disabilities have seen cuts.²¹ People with disabilities also have one of the lowest levels of connectivity of any demographic group regularly considered, a concern that has persisted over time, even as overall levels of connectivity have increased. At the same time, people with disabilities are highly dependent on affordable and reliable telecommunications in order to live independently. This includes reliable access to service that allows them to participate in their communities, maintain contact with caregivers, aides, friends and family, service providers and healthcare resources, engage in commerce, and seek help in an emergency.²² Some people with disabilities, particularly vision and/or hearing impairments, have limited ability to make use of standard forms of communication, ranging from a need for adaptive phone equipment to a need for educational and outreach materials to be provided in non-standard formats, to information provided on internet websites being designed to meet accessibility standards, to ensuring access to customer assistance using relay services or other means.²³ For all of these reasons, the LifeLine program must expressly take into consideration the way in which it engages with eligible customers with disabilities, to ensure that they have appropriate access to LifeLine.

workforce participation of any demographic section measured. See Bureau of Labor Statistics, Economic News Release updated February 3, 2012, Table A-6, Employment status of the civilian population by sex, age, and disability status, not seasonally adjusted available at <http://www.bls.gov/news.release/empsit.t06.htm>.

²¹ For example, in 2009, the California Legislature required the Department of Developmental Services (DDS) to reduce its budget by \$174 million for fiscal year 2011-2012, following prior cuts of \$334 million effective July, 2009. These cuts impact not only Supported Living Services, but other services for adults with developmental disabilities including transportation, residential services and adult day programs. At the same time, federal benefits for people with disabilities were cut or frozen for several years running. For example, there was no automatic cost of living adjustment (COLA) for Social Security in 2010 or 2011; a 3.6% increase in January of 2012 was the first adjustment that beneficiaries received since 2009.

²² See, e.g. discussion of telecommunications needs of people with disabilities in Testimony of Dmitri Belser, submitted by CforAT in Order Instituting Investigation on the Commission's Own Motion Into the Planned Purchase and Acquisition by AT&T Inc. of T-Mobile USA, Inc., and its Effect on California Ratepayers and the California Economy, L11-06-009 (Aug. 22, 2011).

²³ The specific communications needs of people with disabilities are discussed in greater detail below [section on protecting subscribers with disabilities from disproportionate access]

Mobile Families

Low-income families tend to change residences more than families with higher incomes.²⁴ Low-income renters face disproportionately higher rent-to-income ratios and disproportionately low access to affordable rent;²⁵ yet, LifeLine subscribers are less likely to be homeowners and more likely to rent.²⁶ Accordingly, the only reliable means of communication for these low-income customers can be telephone service and, specifically, the mobility provided by wireless phone service.

The continuity in service allowed by a wireless LifeLine product for many transient low income customers can be invaluable for retaining continuous access to social services and possible employment opportunities.²⁷ A subscriber who moves frequently may not receive their postal mail in a sufficiently timely manner and a wireline phone is generally disconnected upon moving. However, the particular needs of this community do not support a policy that places the value of mobility above all else and thereby allows wireless LifeLine providers to receive exemptions to many of the critical service quality and features

²⁴ See, David K. Ihrke and Carol S. Faber, *Geographic Mobility: 2005 to 2010, U.S. Census* at pp. 4-5 (Dec. 2012) (Over half of households below poverty moved and almost two-thirds of renters moved within a 5-year period. African-American, Asian, Hispanic or Latino households moved more than white households. The unemployed moved more often than the employed. Over 40% of separated households and 40% of divorced households move within a 5-year period compared to 8% for married households.); see also, Center for Housing Policy, *Should I Stay or Should I Go? Exploring the Effects of Housing Instability and Mobility on Children* (2011), available at <http://www.nhc.org/media/files/HsgInstablityandMobility.pdf>.

²⁵ John M. Quigley and Steven Raphael, *Is Housing Unaffordable? Why Isn't It More Affordable?*, 18 J.Econ. Perspectives 199 (Winter 2004), available at <http://urbanpolicy.berkeley.edu/pdf/QRJEP04PB.pdf>.

²⁶ Center for Housing Policy, *Should I Stay or Should I Go? Exploring the Effects of Housing Instability and Mobility on Children* (2011), p. 2, note 1, available at <http://www.nhc.org/media/files/HsgInstablityandMobility.pdf>.

²⁷ See, Letter from David Super, Professor, Georgetown University, FCC Ex Parte in WC Docket No. 11-42; WC Docket No. 03-109; CC Docket No. 96-45 (Nov. 7, 2011)(A stable phone number and connectivity is essential for helping the unemployed and underemployed get back on their feet; Lifeline helps workers pick up extra shift work; secure jobs; coordinate transportation to and from work and notify an employer of work missed due to emergencies, all critical for maintaining employment. Where workers have young children, reliable affordable, phone service is critical for coordinating childcare logistics and to provide an ability to reach a parent in case of emergency or if the child is sick).

of Basic Service. Accordingly, the Commission should include protections for those that move often by ensuring the availability of a valuable and robust mobility service and possibly through a pre-registration application process as discussed below.

c. LifeLine Customers should not receive second-class service

As discussed above, LifeLine subscribers are low-income, disproportionately people of color, limited or non-English speakers, individuals with disabilities and people who are dependent on continuity of service. The Commission should be sensitive to the unique needs of these populations when considering its revision of the LifeLine service elements, and should include elements that minimize disparate impacts on those communities. The Commission should not shy away from opportunities to add specific consumer protections, disclosures and features of LifeLine that will specifically address the needs of LifeLine participants. This should be a stronger consideration and goal than accommodating the needs of the different carrier providers.

Based on the discussion above, it is clear that the Commission must move forward to ensure that the LifeLine program continues to meet the needs of its participants in a fair and cost-effective manner. This charge is supported by statutory language that does not dictate particular elements for the LifeLine service but, instead, uses Basic Service as a standard. This charge is also strongly supported by the fundamental policy, already expressed by the Commission, that all California consumers have basic communication needs that must be met. LifeLine customers have specific considerations that may require even stronger and more robust protections, but in general the Commission should ensure that these customers are not shunted to a second-class service in the name of providing a technologically neutral customer choice.

3) *The Commission should not adopt the federal definition*

The federal definition of LifeLine-supported service is insufficient because, among other reasons, it is too vague to allow the Commission to determine if the LifeLine program is supporting a robust and comprehensive service. If this Commission is providing a subsidy to the carriers for offering a specific service, and if California consumers are paying a surcharge on their bills to support that subsidy, then the service being supported should be clear and specific. The federal definition, as recently revised by the FCC, consists of the following elements:

- Voice grade access to the public switched network or its functional equivalent
- Minutes of use for local service provided at no additional charge to end users
- Access to the emergency services provided by local government or other public safety organization such as 911 and enhanced 911 to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems
- Toll limitation services to the extent a carrier distinguished between toll and non-toll calls and charges a fee for toll calls in addition to the charges for LifeLine services
- The federal definition also allows Lifeline participants to apply Lifeline discounts to "any residential service plan that includes voice telephone service, including bundled packages of voice and data services" and additional features and family plans²⁸

In an attempt to prioritize technology neutrality, the FCC has chosen not to specify certain elements of the Lifeline service that are critical to consumers.²⁹ The federal definition is too vague and would potentially allow for degradation of service offerings among not only different carriers' offerings, but also different offerings from the same carrier, which in turn could lead to discrimination among groups of customers. While the FCC claims that it would "expect" low income consumers will receive the same quality of service that they

²⁸ 47 C.F.R. §§54.101(a) and 54.401(a).

²⁹ Federal Communications Commission, *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order and FNPRM, FCC12-11, ¶ 48 (Rel. Feb. 6, 2012) (hereafter, FCC Lifeline Order)

receive today, this definition lacks the specificity for the FCC to quantify or enforce that expectation.³⁰ This Commission should not make that same mistake.

The FCC states that it should rely on the communications marketplace to dictate specific elements of LifeLine service.³¹ This Commission has also supported reliance on the marketplace. However, the need for a public support program designed to help low income participants, arises precisely because the marketplace has not developed products to meet the needs of this particular category of customer. These subsidy-based supports are designed to provide incentive for carriers to offer services to low income customers because the market has failed to do so. It would be illogical to rely on the market in this instance.

B. Proposed Elements of LifeLine

The Scoping Memo sets forth several questions designed to elicit specific proposals for the required features and functions of a LifeLine service offering. As discussed above, Joint Consumers urge the Commission to design a minimum LifeLine service offering that, essentially, provides a functional equivalent to Basic Service. Specifically, that would include:

- Ability to place and receive calls on a non-discriminatory basis, over all distances, regardless of network technology
- Ability to include text messages for wireless services
- Unlimited incoming and outgoing local calls at a flat rate
- Free access to emergency services including 911, E911 or their function equivalents regardless of network technology
- Options for family plan discounts
- Access to directory services including directory assistance and a published directory

³⁰ FCC Lifeline Order at ¶ 50.

³¹ FCC Lifeline Order at ¶ 50.

- Access to 8XX calls at no additional charge or use of minutes (if using a limited-minute approach)
- Option for a service with no long-term contracts or no early termination fees
- Access to Telephone Relay Service
- Free blocking for information services and billing adjustments for mistaken charges for the same
- Free access to customer service, repair and operator services
- Ability to choose a stand alone LifeLine service offering, with the option for the customer to bundle a LifeLine offering with other services
- Service Quality requirements equivalent to Basic Service offered by COLRs

Telephone service, regardless of the technology used, has intrinsic features. At its most fundamental, telephone service consists of the ability to place and receive calls over all distances. However, the bare ability to place and receive calls is insufficient. Joint Consumers discussed the additional elements below in more detail.

1) Place and Receive Calls

Both LifeLine and Basic Service elements have historically included the ability to place and receive “voice grade” calls. It should be noted that the “ability to place and receive calls” is an issue of **access**, not **affordability**—all consumers should have this access, regardless of the price they pay. Elements requiring the ability to place and receive calls already exist in the current LifeLine definition, and are virtually identical to current Basic Service elements as revised in 2012. Joint Consumers have offered extensive comments in previous dockets as to why the technical ability to place voice grade calls of all distances is critical to meet basic communication needs and allow customers to participate in their communities.³² The requirements contained in D.12-12-038 Appendix A, Section I provide a good starting point. If the Commission found those requirements necessary for

³² See, for example, *Comments of TURN, DisabRA and NCLC on the Assigned Commissioner’s Amended Scoping Memo and Solicitation of Comments Regarding Revisions to the “Basic Telephone Service” Requirement* at pp. 12-14, Order Instituting Rulemaking Regarding Revisions to the California High Cost Fund B Program, R.09-06-019 (June 18, 2009).

Basic Service, then it follows that those same requirements should be in place for LifeLine customers as well. More specifically, Joint Consumers propose,

- LifeLine customers must be able to obtain a voice-grade connection to the public switched telephone network.
- At a minimum, LifeLine customers must be able to make and receive calls within a local exchange area or over an equivalent or larger-sized local area.
- LifeLine customers must have equal access to all interexchange carriers within the local calling area in accordance with state and federal law and regulation, or must be provided with all-distance calling.³³

Beyond the fundamental fact that all subscribers should be entitled to voice grade service, reliable phone service is particularly critical to low-income customers. As discussed above, LifeLine customers are often more reliant on phone service because it can be their only means of communication. Lifeline service may be the only means for others to contact the LifeLine subscribers or for a subscriber to contact emergency, health care, education, or other services. LifeLine subscribers are particularly dependent on reliable, voice-quality service in order to contact current and future employers. If a LifeLine subscriber is bound to inadequate telephone service because of contractual terms or the inability to pay an early termination fee, that subscriber may lose their only means of communication. Accordingly, Joint Consumers believe that the Commission should impose the following as additional elements for LifeLine service.

- If at any time, the customer fails to receive a voice-grade connection to the public switched telephone network and notifies the provider, the provider must either repair, provide Basic Service with another technology, or discontinue service without incurring early termination fees.
- Disclose before subscription that they are entitled to voice-grade service and the conditions under which the subscriber can terminate without penalty if they don't get voice-grade service.³⁴

³³ D.12-12-038, Appendix A, Section I.1.

³⁴ *Id.*

These requirements are consistent with the Basic Service requirements and will ensure that LifeLine subscribers have dependable phone service. Accordingly, Joint Consumers respectfully request that the Commission impose the above-listed requirements as elements of LifeLine service.

2) *Unlimited Minutes and texting*

In following the logic that LifeLine should serve as an equivalent service to Basic Service and provide low income customers the same robust features and functions, Joint Consumers propose that LifeLine service should be offered with unlimited minutes at a flat rate for both wireline and wireless service.³⁵ Some parties may argue that in the name of “customer choice” a LifeLine provider should be able to create a LifeLine product with a bucket of minutes. The Scoping Memo specifically requests comment on the concept of a bucket of minutes. However, the slippery slope of a bucket-of-minutes policy becomes clear even through the questions in the Scoping Memo which consider scenarios of a customer running out of minutes, of converting minutes and texts, of requiring updates to the number of minutes required, and other issues which arise once carriers are allowed to offer less than unlimited incoming and outgoing calls.

The exact number of minutes for wireless subsidized service offering has been an ongoing debate in front of this Commission. While some carriers will point to the popularity of low-cost and free wireless offerings that include minimal amount of minutes, the success of those services only tell half the story. It is important to note that there are no examples or market data about whether an affordably priced unlimited product would

³⁵ Joint Consumers also propose that those wireline carriers currently required to offer discounted measured rate service as part of LifeLine service, continue to be required to do so.

be just as popular because none of these offerings exist today.³⁶ The marketplace is an indicator of carrier offerings, but not customer need. Customers are purchasing what they are offered and they are offered what, for the most part, regulators are willing to subsidize and carriers are willing to discount. Accordingly, it is unclear at this time whether these services are meeting customer needs.

Joint Consumers doubt that low income customers will find even 250 minutes, the current popular prepaid wireless Lifeline offering, acceptable as wireless phone usage increases. It is likely that LifeLine participants who have chosen a wireless service use that service as the primary phone line and it is unlikely that they also have an alternate unsubsidized wireline service to rely upon. Therefore, it is unlikely that 250 minutes (*a little over 8 minutes a day*) will be a sufficient service to last a LifeLine participant an entire month

This is especially critical because wireless customers have relatively little control over their wireless minutes. As discussed above, low income customers are disproportionately reliant on social services, impersonal health care providers such as clinics, and other services that require significant time spent on the phone to receive the necessary services. Also, requiring LifeLine customers to pay for calls from telemarketers, wrong numbers, and other unwanted or unexpected callers could rapidly consume the subscriber's minutes and result in unexpected overage charges. Adopting a bucket-of-minutes standard would likely result in some LifeLine customers being unable to make

³⁶ Joint Consumers note that Assurance Wireless and Reach Out wireless just recently received approval for a \$30 a month unlimited voice, text, and mobile Internet plan (T-17388). It is a helpful data point that even with the minimal subsidy from the federal Lifeline program, these companies find they can presumably profit from offering this service. Further calculations would need to be performed and further data received to determine how affordable an unlimited service can be and the required subsidy. Further, Joint Consumers note that \$30 a month for an individual account is still unaffordable for many LifeLine customers, especially if you assume they will need other communication devices beyond this service.

local calls during a substantial portion of each month of service once they used all their allotted minutes. Moreover, LifeLine subscribers are more price sensitive and less able to bear the burden of overage charges. Accordingly, these customers would face involuntary termination of their LifeLine service, potentially because of providers' policies of "rounding up" minutes or because of unsolicited incoming calls. This would not be robust and effective service.

Carriers are likely to oppose offering unlimited minutes and may argue that such an offering would result in network congestion. Such arguments are simply not convincing. Wireless carrier networks are integrated voice/broadband networks that are now designed primarily for the delivery of data and video services. The relative amount of network capacity needed to deliver voice services is declining as a result.³⁷ Joint Consumers also expect, due to increasing popularity of texting for communications that used to require a voice phone call, that the combination of unlimited voice minutes and texting should help mitigate the potential congestion on the network that wireless carriers may claim will happen if LifeLine is required to offer unlimited minutes. Accordingly, the Commission should not permit LifeLine service offerings to include a bucket-of-minutes offering, and should mandate that LifeLine service be offered with unlimited minutes at a flat rate for both wireline and wireless service.³⁸

³⁷ See, for example, a description of Verizon Wireless' recent agreement to provide streaming video services to mobile devices on its network through a partnership with Redbox. Ryan Lawler, *Hands On With Redbox Instant By Verizon: Not Really A Netflix Killer. But Then, What Is?* *Techcrunch*, (Jan. 13, 2013), available at <http://techcrunch.com/2013/01/06/hands-on-redbox-instant-by-verizon/>.

³⁸ Naturally, the Commission's work in this docket would not limit a wireless carrier's ability to offer additional, unsubsidized plans with different terms that might also appeal to consumers.

3) *Family plans*

Joint Consumers urge the Commission to include a discount on family plans as part of a LifeLine service offering. There is no doubt that family plans have become a popular option for wireless consumers. These plans allow a family to share minutes, features, and functions of a single plan while each member has his or her own phone and phone number.

By allowing a subsidy to apply to a family plan option, the Commission would move wireless service closer to approximating traditional wireline LifeLine service that provides an entire household with phone service. A wireline phone serves the household by ensuring continuous phone service at the customer premises. Presumably, each person in the household has access to the wireline LifeLine service.

However, with the introduction of a wireless LifeLine service, the household is no longer provided with continuous service. Instead, one individual can walk away with the single handset and leave the rest of the occupants in the household with no access to the network. The Commission must also assume that once the household has moved to a wireless LifeLine option, they do not have wireline service as a backup. Statistics show that LifeLine customers rarely can afford both wireline and wireless service even if one of those services is discounted.³⁹ Joint Consumers have previously cited to this significant public safety issue as a barrier to supporting widespread wireless subsidized service.⁴⁰ By supporting family plans, and allowing for multiple handsets, multiple phone numbers, etc. the Commission would allow for the program to better support a household and not merely the individual with the handset. While, of course, there could be no guarantee that the

³⁹ Data from the statewide portion of the Affordability Study shows that 51 percent of non-LifeLine households had wireline and wireless services, versus 8 percent for LifeLine households. Affordability Study, Vol. 1, p. 13, Table 1.4(b).

⁴⁰ Comments of TURN on the Proposed Decision of Commissioner Chong, R.06-05-028 at p. 24 (April 8, 2009).

customer premises would maintain continuous service because all of the handsets could “leave,” family plans would tend to mitigate this public safety concern.

Joint Consumers recognize that the proposal to add family plans to the LifeLine service elements raises additional logistical issues. However, at a minimum, only members of the qualifying household should have access to the family lines. Each family plan line should have access to the basic LifeLine service elements at the discounted rate. Additionally, if a LifeLine subscriber experiences difficulty paying for a family plan, they should not lose LifeLine service altogether. If a subscriber’s family plan is involuntarily terminated, the subscriber’s plan should revert to the carrier’s “single line” LifeLine service.

4) *Free Access to 911/E911*

The ability to place and receive calls is a **necessary** element of both LifeLine and Basic Service. However, the ability to place and receive calls is not by itself **sufficient** to meet minimum communication needs. Again, the Commission’s conclusions in D.12-12-038 are relevant here as well. There, the Commission found that,

Free access to 911/E911 service is an essential Basic Service. Delays or failure to promptly route 911 calls to local emergency responders could risk significant loss to a customer relying on 911. Subscribers must have free access to emergency services, relay services, operator and directory assistance, and customer service.⁴¹

While the basic LifeLine requirement to provide access to 911 and emergency services is not controversial, the devil, as they say, is in the details. The exact requirements should be specified as they are in D.12-12-038, with individual filing

⁴¹ D.12-12-038 at COL 19.

requirements for each carrier. No carrier should be able to offer LifeLine unless that carrier can demonstrate with certainty that they are providing the functional equivalent of the 911 service offered by the Carrier of Last Resort in that area.⁴²

This includes the location-specific information that comes with E-911.

The location-specific nature of residential services is critical as noted by the Commission in D.12-12-038.

We disagree with parties' claims that customers do not require a voice grade connection within their homes as long as they have access to the mobility advantage offered by wireless. This argument ignores the essential nature of Basic Service as a residentially based service. While we recognize that wireless phones offer mobility advantages, those advantages do not negate the essential Basic Service need to be able to communicate within the customer's own residence.⁴³

Thus, with regard to wireless LifeLine, wireless LifeLine providers must abide by the Basic Service definition.⁴⁴ More information may be needed to specify how wireless LifeLine providers would be able to comply with the Commission's "service to the residence" requirement. For example, wireless LifeLine providers could make available wireless bridges to enable indoor reception for customers who cannot receive service indoors, and customers would need to be informed of the availability of this option.

⁴² See, D.12-12-038, Appendix A, Section I.2.

⁴³ D.12-12-038, pp. 21-22.

⁴⁴ It is important to note that federal requirements require a "warm line" with regard to wireless LifeLine, even for non-facilities-based wireless providers, as explained in the FCC's 2012 LifeLine reform order:

We reaffirm the Commission's previous finding that ensuring consumers' access to 911 and E911 services is an essential element of consumer protection. Given the importance of public safety, we condition this grant of forbearance on each carrier's compliance with certain obligations as an ETC. Specifically, our forbearance from the facilities requirement of section 214(e) is conditioned on each carrier: (a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order. See, *In the Matter of Lifeline and Link Up Reform and Modernization Lifeline and Link Up Federal-State Joint Board on Universal Service Advancing Broadband Availability Through Digital Literacy Training*. WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, February 6, 2012, ¶373.

Joint Consumers understand that this 911/E911 requirement may not be an easy one to meet. A review of the latest materials posted by the California Public Safety Communications Office (part of the California Technology Agency), indicates that the California Public Safety Communications Office is making steady, but slow, progress on its Wireless E911 project. This project will first ensure distribution of wireless 911 call volumes to the local Public Safety Answering Points, instead of the California Highway Patrol. Those calls should have basic information such as the phone number and cell site of the calling party. Eventually the goal will be to have more precise location information.

The latest data available from the state's 911 office, from 2011, suggests that very small percentages of each region in the state have the capability to provide the functional equivalent of a COLR-like 911 service even in the most populous areas of the state.⁴⁵ The project is moving forward and calls to local emergency personnel from cell phones have more than doubled since 2003; however, deployment does not appear to be consistent even in specific geographic regions. Joint Consumers urge the Commission to take further comment on this issue and possibly conduct fact-finding to specifically understand the 911 capabilities of the potential wireless participants in this program.

5) *Next Generation 911*

The Scoping Memo also asks "how do proposals about next generation 911 and E911 affect this analysis?" (*Scoping Memo at p. 8*) Joint Consumers are unclear regarding the specific proposals to which the ruling refers. First, it is the Joint Consumer's understanding that Enhanced 911, or E-911, has been the *de facto* standard for wireline 911 service throughout the state for many years. Any suggestion that LifeLine providers do

⁴⁵ Reports on Wireless E-911 implementation status available at <http://www.cio.ca.gov/PSCO/Services/911/we911.htm>

not have to provide the same functionality as E-911, including the information transfers that entails, would be a giant and unacceptable step backwards. Second, Joint Consumers are aware of the fact that the California 9-1-1 Strategic Plan states a goal of making California a nationwide leader on this issue and set an initial roadmap that outlines the steps necessary to build a “robust and comprehensive” NG911 system. California has even gone so far to create five pilot projects.⁴⁶

However, Joint Consumers believe that the transition to NG911 will be complex, and must be done carefully, and with input from all interested parties. At a foundational level, the transition to NG911 begs significant questions, such as how the reliability of NG911 architectures will be monitored during and after the transition, not to mention the related issue of the reliability of broadband networks in general, especially during power outages.

This Commission should be proactive in the matter of NG911 transition issues, and take steps to ensure that the public safety is not threatened by the transition of 911 services to an IP-based foundation. A proactive stance on this matter, such as the filing requirements set forth in D.12-12-038, will also ensure that the transition to NG911 receives input from all interested parties, and results in a transition process that addresses the unique issues that will arise in California. According to the recent FCC report to Congress on NG911 transition issues, it is apparent that problems have emerged in other jurisdictions:

Other states that have attempted to implement statewide NG911 have encountered delays in their attempts to move to full NG911. Alabama, for example, has contracted with Bandwidth.com to implement NG911 call routing services across the state. Bandwidth.com states that it is collaborating with the Alabama

⁴⁶ See *California 9-1-1 Strategic Plan*, Office of the State Chief Information Officer, (July 30, 2010). For more detailed information on the work done by the CA 911 Division on NG 911, see <http://www.cio.ca.gov/PSCO/Services/911/NGEN.htm>

Supercomputer Association to establish IP interconnections with all of the PSAPs in the state and will serve as its own selective router for NG9-1-1 calls. Despite Alabama's desire to pursue NG911, Bandwidth.com states that it has "encountered the difficulty of attempting to steer people anchored in outdated policies and mindsets to the next generation system, without federal requirements mandating that they do so." Bandwidth.com states that "it found that embedded gatekeeper attitudes and processes are not easily revised. Even when the state expresses its clear intent to deploy NG9-1-1, the owners of bottleneck facilities can cause many months of delay to the detriment of end-users and the other providers who have committed to the effort irrespective of technical or legal necessity."

Meanwhile, some PSAPs in other states have reported that they are hampered in their NG911 efforts due to state regulation. For example in early 2012, the Counties of Southern Illinois (CSI), a consortium of 16 PSAPs in southern Illinois, petitioned the Illinois Commerce Commission (ICC) for authorization to operate as a 911 SSP and implement a regional NG911 project. The ICC raised a number of questions regarding CSI's standing to petition for authorization, but before it could rule, CSI withdrew its request for certification, choosing to negotiate a contract with its 911 SSP, which had recently received ICC certification to operate within Illinois. While the ICC is considering changes to state regulations that could ease the deployment of NG911 systems within the state, this case remains illustrative of the difficulties that legacy regulations can pose.⁴⁷

These reports from the Federal Communications Commission give Joint Consumers pause and should be cause for concern for both the Commission and the State 911 Office. For example, the discussion of the Alabama case indicates that the contractor has experienced push-back from entities which may be affected by the transition. There may be very good reason for push-back, and absent reasonable oversight of contractor proposals and practices, and the potential for dispute resolution, the transition to NG911 could result in harms stemming from a contractor's desire to cut costs, or cut corners. One-size-fits-all thinking with regard to the NG911 transition will introduce unacceptable risks.

Joint Consumers are also troubled by the negative assessment of the role of "state regulation" displayed in the FCC's assessment of transition issues in Illinois. The Illinois

⁴⁷ Fed. Comm. Comm'n, *Legal and Regulatory Framework for Next Generation 911 Services Report to Congress and Recommendations* (Feb. 22, 2013).

Commission has every right to ensure that those involved in the transition abide by its rules. This Commission is no different, and Joint Consumers are concerned that absent a proactive stance on this Commission's part, other entities (including the FCC or private contractors) may try to influence the process in a manner that is not in the best interests of California consumers.

In conclusion on question 1.f, there is no policy reason to allow LifeLine service diverge from the Commission's Basic Service definition. The requirements for Basic Service related to access to 911/E911 should be applied to LifeLine providers.

6) *Additional Elements*

a. Access to Relay Service

Current LifeLine service elements include "Access to telephone relay services as provided for in Public Utilities Code §2881 et seq."⁴⁸ This element is crucial for consumers with disabilities that require them to rely on relay service to access the network. Joint Consumers recommend that the Commission update this service element to match the language of the Basic Service requirements, as follows:

- LifeLine providers must offer free access to California Relay Service pursuant to Public Utilities Code § 2881 for deaf or hearing-impaired persons or individuals with speech disabilities.⁴⁹

This change will ensure that individuals with disabilities who subscribe to LifeLine services will receive the equivalent of Basic Service, as discussed above.

⁴⁸ G.O. 153, Appendix A, at p. 35

⁴⁹ D.12-12-038, Appendix A, Section I. 6

b. Operator Services

Current LifeLine service elements include “access to operator service.”⁵⁰ Basic service elements include “**free** access to operator services.”⁵¹ This difference is important because LifeLine customers should not be burdened with additional fees associated with access to operator services, particularly since they are less able to bear such costs compared to non-LifeLine customers. Accordingly, the Commission should update the LifeLine service elements to include free access to operator services.

c. Customer Service

Current LifeLine service elements include the following requirement:

Toll-free access to customer service for information about California LifeLine, service activation, service termination, service repair, and bill inquiries.⁵²

This language mirrors the language in the Basic Service requirements,⁵³ and the Commission should retain this service element. Additionally, the Commission should include the following element:

- A LifeLine provider’s customer service must include an option for the subscriber to reach a customer service representative via telephone.

While the definition of Basic Service is unclear whether the required access to customer service could be provided by on-line or Internet capability only, the LifeLine service elements should be clarified to ensure that a toll-free telephone option for customer service exists. This option for LifeLine is necessary because, as discussed above, many LifeLine customers lack access to the Internet. Additionally, LifeLine customers may have less reliable transportation options, and it may be more difficult for them to reach a

⁵⁰ G.O. 153, Appendix A.

⁵¹ D.12-12-038, Appendix A, Section I. 9. (emphasis added).

⁵² G.O. 153 Appendix A

⁵³ D.12-12-038, Appendix A, Section 7 (this language specifies “free” access but not “toll free” access.)

carrier's retail establishment to obtain customer service. Accordingly, the Commission should include a requirement that LifeLine subscribers be able to reach their carrier's customer service via toll-free telephone.

7) *Consumer protection requirements.*

As discussed above, LifeLine subscribers have less discretionary income, and are therefore more price sensitive and more sensitive to "bill shock." Accordingly, the LifeLine service elements should include elements that help prevent the disproportionate impacts of unexpected charges on LifeLine customers. These elements should include the following:

- LifeLine carriers must offer a plan with monthly rates and without contract or early termination penalties.
- LifeLine carriers must offer free toll limitation, which includes:
 - Free access to toll-blocking services.
 - Free access to toll-control service if the provider is capable of providing that service.
- Free access to 800 and 8YY Toll-Free services (without using minutes in a limited minute plan).
- Free access to emergency text alerts and other public safety capabilities

Unexpected charges or the inability to pay an early termination fee could prevent LifeLine subscribers from receiving reliable voice-quality service. The above-listed requirements are necessary to provide LifeLine subscribers with the equivalent of Basic Service requirements and to ensure affordability of the program.

8) *Bundling and other services*

The Scoping Memo asks for comment on issues created by allowing providers to offer LifeLine service as part of a bundled service offering and allowing customers to apply

the discount to existing non-LifeLine plans. Joint Consumers strongly believe that each carrier participating in the LifeLine program must be required to develop, market and offer a stand-alone LifeLine product that will have its own separate, identifiable rate. Further, customers participating in the LifeLine program should be required to purchase that LifeLine service while also being able to add additional non-LifeLine, non-subsidized services to their bill at the customer's discretion.

This stand-alone requirement is critical to the public policy goals of the program. First, this Commission must ensure that the surcharge money being collected and distributed is spent in the most cost-effective, productive, and fair manner. Therefore, it must only subsidize those services that it has determined are in keeping with the LifeLine goals, to provide high quality voice service. This means that the provider cannot require its potential LifeLine customers to purchase a bundle of non-LifeLine services and that the participants should not be allowed to use the discount on existing carrier plans that have not been reviewed by the Commission. Of course, a customer should continue to have the option purchase additional services. But, by keeping those purchases distinct and listed separately on the customer's bill, the Commission and the carrier can identify the subsidized service more readily. Also, if the program allowed customers to receive a discount (the amount of the discount is unknown at this time) to any service that includes voice service (as required by the statute) then the LifeLine products will likely significantly vary throughout the state and carriers will have every incentive to pressure the LifeLine customer into a more expensive option.

In order to ensure that the LifeLine participant is protected from strong marketing tactics and misleading offers, Joint Consumers propose these rules:

- A LifeLine carrier cannot require purchase of additional services or bundled services as a condition of receiving LifeLine services.
- Bills must list charges for LifeLine services and other purchased services separately, and any notices or other documents about the subscriber's account must clearly indicate whether the document relates to the subscriber's LifeLine service, bundled services, or both.
- If a customer is not able to make a full payment for the LifeLine and bundled services, any payment will be applied to current and past due charges for LifeLine service before being applied to current and past due charges for bundled services.

Joint Consumers acknowledge that the requirement to offer a stand alone voice service is not an easy one to implement when alternative technologies such as wireless and other services are part of the program. This issue was extensively discussed in R.09-06-019 with regards to Basic Service.⁵⁴ Joint Consumers recommend that the Commission allow the LifeLine service offering to include voicemail and basic CLASS services such as Caller ID and Three Way calling for the wireless carrier. The carrier would not have to include these elements, but the record in the Basic Service docket demonstrated that those elements are a standard part of almost any wireless service plan. Further, if any LifeLine carrier wants to include another service element or feature that is not included in the Commission-approved LifeLine program, then the provider should be allowed to file an advice letter to request the addition of any such services. Joint Consumers see no reason to deviate from the above-listed service elements for LifeLine unless a carrier makes a credible, data-supported argument. Data should be either publicly available or made available to interested parties subject to Commission protective order.

⁵⁴ Comments of TURN on the Proposed Decision of President Peevey Adopting Basic Telephone Service Revisions at p. 7-9, Order Instituting Rulemaking Regarding Revisions to the California High Cost Fund B Program, R.09-06-019 (June 18, 2009); Comments of TURN et al on the Alternate Proposed Decision of Commissioner Florio, R. 09-06-019, filed August 7, 2012 at p. 8.

9) *Directory Assistance*

As discussed above, a significant number of LifeLine subscribers do not own a home computer, and have limited or no access to the Internet. As a result, those subscribers cannot rely on a white pages directory provided in electronic format (i.e., on a digital storage medium or online) and may be more dependent on calls made to directory assistance. Therefore, the LifeLine elements proposed here should go farther to protect the affordability of service than the recently adopted Basic Service elements. The Commission should include, as a service element, the following requirements:

- A carrier must provide access to directory assistance within the customer's local communication that covers an area at least equivalent to the size of the geographic area of the existing COLR's directory assistance service provider.
- A carrier must provide a defined number of directory assistance calls at a reduced rate.⁵⁵
- A carrier must provide a free directory of residential listings to the LifeLine subscriber. At the time the subscriber enrolls, the carrier must give the subscriber the choice of receiving the directory in print or in electronic format .

It is important for the Commission to preserve the ability of subscribers to choose the format in which they receive a directory. Some LifeLine subscribers do not have access to broadband. For instance, they may not have home broadband, or they may choose not to purchase a data plan with their wireless phone. A printed directory is necessary for these subscribers. Similarly, a subscriber may prefer to access their directory via a CD-ROM or

⁵⁵ The rate charged by wireline carriers to call directory assistance has skyrocketed over the past several years since the carriers were given pricing flexibility between 80% and over 500% threatening the affordability of the service. Wireless carriers also have high directory assistance charges, usually over \$1.00 a call. A discount on these calls is crucial for low income customers. (*Scoping Memo, Appendix C*)

online. Allowing subscribers to choose which directory they receive protects LifeLine customers and enhances consumer choice.

10) In-Language requirements

Current LifeLine service elements require that carriers provide “[t]oll-free access to customer service representatives fluent in the same language (English and non-English) in which California LifeLine was originally sold.”⁵⁶ Basic service requirements do not include a similar provision. As discussed above, LifeLine subscribers are more likely to be non-English or limited-English speakers, and may have difficulty understanding contractual language written in English or dealing with customer service representatives who only speak English. Accordingly, the Commission should include the following elements as LifeLine service elements:

- A LifeLine carrier must provide contracts, terms of service, billing and notices in the same language in which California LifeLine was originally sold to the subscriber.
- A LifeLine carrier must provide free access to customer service representatives fluent in the same language in which California LifeLine was originally sold to the subscriber.

These service elements will ensure that limited or non-English speaking LifeLine subscribers will understand their rights and obligations, and have equity of access to customer service.

11) Disability-Specific Protections.

As the Commission has recognized repeatedly in other proceedings, people with disabilities have unique communications needs, and represent a constituency that can be difficult to reach with educational materials or other information. Because of this, and

⁵⁶ G.O. 153, Appendix A.

because this constituency can be underserved by various utility programs, the Commission must take steps to ensure that they have access to the same information and options as other LifeLine eligible consumers. This includes the following:

- All carrier websites and web pages that provide customer information about LifeLine, including all eligibility information and any application information, must be designed to be accessible in accordance with current standards. At this time, the appropriate standard is WCAG 2.0 Level AA.⁵⁷
- The internet cannot be the only source of information about LifeLine; all web-based information and material must also be available in some other accessible manner for people who may not have computer access.
- To meet the needs of customers with visual impairments, all information about LifeLine, including eligibility information and application material must be accessible. This includes:
 - Information must be available in alternative formats (large print, Braille, audio and electronic formats) upon request; and
 - Standard printed documents must include key information in large print, including information about the availability of alternative format material.
 - Any customer of a particular carrier who has previously indicated a need for material (such as bills) in an alternative format should be provided with information about LifeLine in the same format.
- If the provider supplies information with an audio component, that component must be accessible to people who are deaf or hard of hearing
 - Carriers should provide interpreters for individual communication where such communication is provided to consumers, and any telephone-based communication regarding customer service issues should be accessible to people who cannot use standard forms of telecommunications.
 - Videos (such as any that may be provided on a carrier's website) should be captioned and/or have sign language included.
- Any outreach efforts regarding the LifeLine program should include targeting to reach people with disabilities, including targeted advertising and outreach through disability-oriented Community Based Organizations (CBOs).

12) Service quality

⁵⁷ Information about the WCAG standards is available at <http://www.w3.org/TR/WCAG/>.

The Scoping Memo asks whether the Commission should address service quality in the first phase of the proceeding. (*Scoping Memo at p. 5*) Joint Consumers include the issue of service quality in this section of the comments to emphasize its importance to the elements of LifeLine. All of the hours dedicated by the Commission and other stakeholders to ensure that the program is designed properly are wasted if the service is not valuable to the LifeLine customer because of poor service quality. The Commission has previously recognized the importance of service quality standards and should do so here again.⁵⁸

However, Joint Consumers recognize that considering and adopting specific service quality requirements for LifeLine is a significant undertaking. In addition, there is an existing Commission docket that is considering service quality issues, R.11-12-001. Therefore, Joint Consumers propose a two step approach to the issue of service quality.

First, the Commission should express a general principle that LifeLine service providers must provide the same level of service quality for its LifeLine product as Basic Service requirements. Therefore, the LifeLine providers must comply with the Basic Service definition in D.12-12-038, Appendix A, Section II where the Commission lists specific procedures and filings for service quality, including compliance with G.O. 133-C or a request for exemption from specific elements of G.O. 133-C.

Then, the Commission can further consider more specific service quality requirements in a second phase of this docket or refer these issues to the existing Commission docket considering service quality.

⁵⁸ Order Instituting Rulemaking to Evaluate Telecommunications Corporations Service Quality Performance and Consider Modification to Service Quality Rules, R.11-12-001 (Dec. 1, 2011) p. 2, citing Pub. Util. Code Section 451 and noting “The Commission has a statutory duty to ensure that telephone corporations provide customer service that includes reasonable statewide service quality standards including, but not limited to, standards regarding network technical quality, customer service, installation, repair and billing.”

13) *TURN App for Rehearing*

As the Scoping Memo notes, TURN filed an Application for Rehearing of D.10-11-033 on several specific issues.⁵⁹ (*Scoping Memo at p. 13*) The Commission granted rehearing in part and, in this Scoping Memo, parties are requested to file comments on the issues raised in TURN's rehearing request regarding wireless LifeLine and the implementation of previous Commission precedent including D.00-10-028.⁶⁰

In 2010, the Commission interpreted its precedent to suggest that wireless participation in LifeLine had been supported and adopted by the Commission in 2000 and it found that any concerns raised by the Commission in 2000 over wireless participation in LifeLine had been resolved by the record in the instant docket.⁶¹ TURN filed an Application for Rehearing on both counts. The Rehearing Decision found that the Commission's 2010 LifeLine decision, "did not explicitly contend with the remaining issues that we previously identified as precursors to a decision to allow wireless carriers to participate in the LifeLine program."⁶²

In the Rehearing Decision, the Commission provided a more detailed rationale for its treatment of the outstanding issues raised in 2000 including its voluntary jurisdiction requirements, declaring wireless as a "residential" service, and creating requirements to file a schedule of rates and charges.⁶³ Joint Consumers believe that the Commission now

⁵⁹ R.06-05-028, *TURN Application for Rehearing of D.10-11-033*, filed December 22, 2010, pp.4-9.

⁶⁰ Order Modifying Decision 10-11-033, Granting Limited Rehearing, and Denying Rehearing in all Other Respects D.12-07-022 (July 12, 2012) p. 4.

⁶¹ Modifications to the Universal LifeLine Telephone Service Program and General Order 153 D.00-10-028 (Oct. 5, 2000) p. 68.

⁶² D.12-07-022 at p. 4

⁶³ *Id.* at p. 2

has an opportunity in this docket to address the rest of the concerns raised at that time in a much more comprehensive and clear manner than it did in 2010.

For example, as discussed above, the Commission should set forth very specific E911 requirements for wireless carriers similar to the requirements in the Basic Service Decision. A clear E911 requirement would satisfy the concerns raised on this issue in 2000. In addition, the issues regarding a clear set of LifeLine elements to ensure that wireline and wireless carriers can compete for LifeLine customers on a level playing field, without one group receiving beneficial or more relaxed regulatory treatment, should also be addressed in this docket to satisfy those concerns stated in 2000. Joint Consumers have a proposal to ensure the affordability of wireless LifeLine service, which was also discussed by the Commission in 2000, and which the Commission must address here.

The Commission raised important considerations for a successful wireless LifeLine program in D.00-10-028. Joint Consumers believe that those considerations are still relevant 13 years later and were not properly addressed in 2010. However, the questions raised by the Scoping Memo and the work in the Basic Service docket suggest that the record here will be sufficient for the Commission to address those issues and still support wireless LifeLine.

14) Commission's reliance on 2010 Affordability Study

TURN's Application for Rehearing also requested rehearing on the Commission's reliance on the Affordability Study of 2010 to support its 2010 LifeLine decision.⁶⁴ The Commission granted rehearing on this issue in D.12-07-022 and the Scoping Memo requests comment here. The question asked in the Scoping Memo has two parts. It asks

⁶⁴ TURN Application for Rehearing of D.10-11-033, R.06-05-028 (December 22, 2010) pp. 9-13.

specifically about the incorporation of the Study into its analysis for the Specific Support Amount, but it also asks about affordability “generally.” TURN discusses additional issues regarding affordability below.

In its Application for Rehearing, TURN raised procedural due process concerns regarding reliance on the Study to support conclusions on affordability and the ultimate adoption of a Specific Support Amount. The Commission released the Study after the Proposed Decision was issued and the record was closed. While the Commission provided opportunity for additional comment, there was little time to do a proper analysis. The Rehearing Decision requests further comment but states that it will not reconsider the Specific Support Amount unless a party demonstrates that its analysis was flawed regardless of any due process concerns.

However, notwithstanding the Commission’s Rehearing Decision, the Scoping Memo requests further comment on various rate mechanisms for the LifeLine program and also requests further comment on affordability without reliance on the Study itself. Further review of the Study reveals from useful data from the specific surveys, but the methodology and analysis of the data is flawed. Therefore, pursuant to the Scoping Memo, the Commission seems open to consider additional argument regarding the flaws in the Study and the importance of ensuring affordability even if parties cannot demonstrate a direct connection between the improper introduction of the 2010 Study and the adoption of a rate mechanism that does not support affordability, as discussed below.

IV. PROGRAM ADMINISTRATION

A. Third Party Administrator

At the January 29, 2013 all-party meeting, several parties to the docket urged the Assigned Commissioner to review and possibly reconsider the role of the Third Party Administrator (TPA) in the California LifeLine program. The Scoping Memo requests comment on whether the TPA review of qualification and renewal is effective or whether adjustments are warranted. (*Scoping Memo at p. 13*) The Commission initially requested comment on the creation of a TPA process in 2004. At that time the FCC began requiring customers to provide income documentation to demonstrate LifeLine eligibility and the Commission believed having a TPA would streamline the process and ensure a level of fairness that might not exist if each individual carrier had to perform its own LifeLine administrative functions. Joint Consumers participated in that discussion and, in general, supported the creation of a TPA.⁶⁵

As the Commission is well aware, the implementation of the TPA and subsequent federal and state requirements for LifeLine have not gone smoothly. Joint Consumers will not dwell on the difficulties encountered by all stakeholders over the past years. However, despite the bumpy road, Joint Consumers still support the use of a TPA. Certain proposals such as pre-registration require a TPA. Further, the existence of the TPA has allowed California to opt-out of the FCC's Duplicates Database and impose additional local safeguards.⁶⁶ If done properly, the TPA should streamline the enrollment process, allow for

⁶⁵ Order Instituting Rulemaking Into Implementation of Federal Communications Commission Report and Order 04-87, As It Affects The Universal Lifeline Telephone Service Program, R.04-12-001 (Dec. 2, 2004). *See* Comments of The Utilities Reform Network (Jan. 21, 2005), Comments of the Greenlining Institute (Jan. 21, 2005), Comments of Disability Rights Advocates (Jan. 21, 2005).

⁶⁶ In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, *Order*, DA-13-329 (March 4, 2013).

coordinated enrollment, provide more local control and quality control and create a neutral and consistent arbiter for process issues.

Joint Consumers have argued over the years that with more effective outreach and education, consumers could benefit from the centralized and consistent information that should come from the TPA. Many of the frustrations with today's certification and renewal processes relate generally to the documentation requirements and would exist regardless of whether there was a TPA.

Joint Consumers believe that many of the other questions included in the Scoping Memo such as proposals about increased involvement by CBOs, changing qualification and other changes to the program will mitigate some of the complexity introduced through the third party process.

Previously, LifeLine providers have pointed out that California is one of the few states with a TPA and that other states seem to be able to administer the program itself.⁶⁷ Joint Consumers believe that the need for a TPA is very fact-specific. California has the largest state-administered programs in the country with over a million customers, independent outreach efforts, and numerous LifeLine providers. The experiences of other states may not be relevant here. Further, to the extent carriers point to other states without a TPA as a model, the Commission should demand more information from those carriers about those state programs including the number of participants, number of providers, and participation rates including statistics about customer experience regarding denials and renewals. Of course, carriers may have a difficult time getting that information

⁶⁷ See Verizon Initial Comments on Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in This Proceeding at p. 13, note 35 Rulemaking on the Commission's Own Motion to Review the Telecommunications Public Policy Programs, R.06-05-028 (Aug. 24, 2007).

for those states without TPAs because they may have to approach each and every LifeLine provider in the state instead of going to one centralized place for the data.

The recent federal reform of the Lifeline program introduced processes and procedure to address fraud, waste and abuse that would become the responsibility of the ETCs should California step away from the TPA. For example, without a TPA, for enrollment and re-certification carriers would have to receive certification of eligibility from each prospective subscriber that complies with the new Lifeline rules and handle the re-certification process for each existing Lifeline customer.⁶⁸ While there has been much discussion about the creation of eligibility databases, to our knowledge, these are not currently in existence or available, so ETCs would be responsible for reviewing the program or income documentation, maintaining the appropriate records of the documentation reviewed and handling the annual re-certification/verification process for each Lifeline customer.⁶⁹ This also entails ensuring that the ETCs have the appropriate privacy procedures in places for the handling of these sensitive records. California currently has close to 1.5 million Lifeline subscribers, therefore requiring a substantial amount of administration and record keeping.⁷⁰ Therefore, while the Commission should strive to improve consistency, reliability and communications of the TPA, it serves a vital role for today's LifeLine program.

⁶⁸ 47. C.F.R. 54.410.

⁶⁹ See e.g., 47.C.F.R. 54.410 (b)(1) and (c)(1) (certification process where there is no TPA) and 47 C.F.R. 54.410(f)(verification process where there is no TPA).

⁷⁰ USAC Lifeline Subscribers by State or Jurisdiction, Jan. 2012 to Dec. 2012, Appx LI08, 3Q2013 page 1 (May 2, 2013).

Working Group

One forum for discussion about the TPA is the Working Group calls hosted by Commission staff where some of the groups that have joined these comments participate at a high level. These calls consist of participant carriers, Commission staff, and other interested stakeholders. The meetings are informal and are designed to allow the TPA to provide status updates and statistics in addition to allowing carriers to discuss relevant issues. The Working Group has been in place for several years.

Going forward, as the issues facing the program become more complex, Joint Consumers urge the Commission to place some high level requirements on the Working Group. Decisions being made in this forum are increasingly substantive.⁷¹ The Commission has stated that CD staff should handle non-substantive/ministerial changes and that substantive changes should be made through resolution.⁷² Joint Consumers are concerned that the line between substantive and non-substantive is blurred. Joint Consumers urge the Commission to require the Working Group staff to distribute detailed minutes of the meetings so interested parties can track issues and to further require that the Working Group report open items/closed items on a periodic basis to the Commission not only to ensure that only those items suitably ministerial for CD action are being handled in the Working Group but also ensure that those ministerial items are being properly handled.

⁷¹ See also, Opening Comments of Joint Consumers on Draft Resolution T-17366 at p. 5 where Joint Consumers also raised these concerns.

⁷² Resolution T-17366 at pg. 14

B. Prequalification

Joint Consumers urge the Commission to eliminate the requirement that customers prequalify for Lifeline with a specific carrier before receiving any discounts. The prequalification requirement has been controversial since its inception in 2008. It is currently the subject of a related Motion by Assurance Wireless asking for relief for prepaid wireless carriers from this requirement.⁷³

In their response to that Motion, Joint Consumers noted their opposition to prequalification but also urged the Commission to deny that Motion in favor of resolving the issue for all carriers in this docket.⁷⁴ Joint Consumers will not repeat all of their arguments and discussion specifically in response to the Assurance Motion. However, the overarching point of their comments was to impress upon the Commission that prequalification has created significant barriers for those customers trying to sign up for LifeLine.

In particular, the requirement that a customer sign up for service as a “full rate” customer while the customer’s LifeLine application is pending requires up front payment to initiate phone service, thus deterring subscription as that customer might not have sufficient resources. While LifeLine customers receive discounted non-recurring charges, no requirements to pay a deposit, go through a credit process or pay numerous fees, taxes and other surcharges, a full rate customer receives none of those benefits.

⁷³ Sprint, *Motion for Limited Minor Adjustment or Waiver of a Prequalification Process Requirement for the Benefit of Prospective Customers of Prepaid Wireless Federal Lifeline Service Providers* (Apr. 5, 2013), Rulemaking Regarding Revisions To the California Universal Telephone Service (Lifeline) Program, R.11-03-013 (March 24, 2011).

⁷⁴ Response of the Center for Accessible Technology *et al* to the Motion by Virgin Mobile at p. 3, R.11-03-013 (April 22, 2013).

It is Joint Consumers' understanding through work with various CBOs throughout the state, that the initial up-front costs and paperwork requirements to become a full-rate customer of either a wireline or wireless company can be either too expensive or too intimidating for many potential LifeLine applicants. Despite some minor accommodations, such as the allowance of payment plans, customers often times walk away from these transactions without phone service.

The Commission's prequalification policy is based on the idea that customers who received benefits right away were being back-billed if those customers were subsequently found to be ineligible for LifeLine and this back-billing was a burden for the customer and for the carrier who had to collect the debt.⁷⁵ Joint Consumers are sympathetic to concerns about billing but believe that the benefit to potential applicants from receiving benefits upon "first contact" outweigh the possibility that some customers may be back-billed. Further, when prequalification was put in place the process flow for an eligibility determination took much longer than it takes today.

Prepaid carriers that offer a free phone with their LifeLine services find prequalification particularly vexing because it requires them to provide the customer with a phone as part of the "full rate" service prior to finding out whether the customer is actually eligible for LifeLine. However, Joint Consumers urge the Commission to eliminate prequalification for all participants and require LifeLine carriers to provide the LifeLine discount (and a phone if that is carriers' choice) upon first contact. For some carriers, the marketing concept of providing a free phone with LifeLine has proven to be very successful. To the extent that these carriers have made a business decision to provide a free phone, the

⁷⁵ See, D.08-08-029 at p. 8.

customer should not be forced to go without service until their eligibility is determined because the carrier doesn't want to provide the phone. Either carriers should take the business risk to provide phones to those who may not be eligible or they can choose to charge something for the phone. Joint Consumers recognize that there are some participants in the LifeLine program who are so impoverished that a free phone would be invaluable, but only if the phone works properly. There will also likely be participants, however, who can pay a small discounted amount for a phone, in particular if that phone has improved service quality over today's free phones. Allowing the option to provide some payment up front for a good quality phone, mitigates the risk to the carrier.

Further, Joint Consumers understand that the implementation of the Direct Application process should also mitigate the risk of the phone "walking away" with an ineligible applicant because the carrier's own personnel are reviewing the eligibility documentation before forwarding the information to to the TPA.⁷⁶ Therefore, these carriers can provide free phones with some confidence that the person will qualify for LifeLine support.

With the threat of large back billing obligations for low income consumers much reduced over the past few years, prequalification no longer serves a vital public benefit as the Commission found it once did. Instead it creates barriers for customers and shields for carriers. It should be eliminated.

C. Preregistration

In its questions regarding Program Administration and General Order 153, the Scoping Memo asks,

⁷⁶ See, T-17366 at p. 16

Should the Commission pursue an option to allow customers to be pre-registered for CA LifeLine service (obtain an eligibility determination before signing up for service with a carrier), rather than requiring customers to obtain regular service while awaiting the determination of their LifeLine eligibility (and back-crediting them to the date of the request for LifeLine)? What would be the advantages and disadvantages of such a system?" (*Scoping Memo at p. 11*)

As changes have been made to the LifeLine program from the initial creation of a TPA through the current set of questions before the parties, various consumer groups have repeatedly sought to establish a process by which customers can seek to establish their eligibility for LifeLine prior to making a selection of a carrier.⁷⁷ This issue has increased in importance as the Commission seeks to expand the potential universe of LifeLine carriers, and as the options for what constitutes LifeLine service are under review.

Joint Consumers have previously noted that a process by which consumers can obtain an eligibility determination without needing to apply through a carrier would assist in comparison shopping and help consumers be sure that their potential choices are suitable for their needs.⁷⁸ The ability to consider all options in advance remains important to consumers. To the extent that a LifeLine plan may include a contract with early termination penalties or require purchase of a particular handset, a customer may face sunk costs or other difficulties in making a change if, after seeking to enroll as a LifeLine customer, he or she is subsequently found to be ineligible for the program. A customer should not be faced with this type of dilemma; rather, at the customer's own discretion, the

⁷⁷ See, e.g., Comments of National Consumer Law Center and Disability Rights Advocates on the Revised Proposed Decision, submitted on April 8, 2009 in R.06-05-028 at p. 5 & p. 7 (referencing earlier support for the same concept in R.04-12-001); Comments of the Utility Reform Network, National Consumer Law Center and Disability Rights Advocates on the Proposed Decision of Commissioner Peevey and ALJ Bushey, submitted on March 14, 2010 in R.06-05-028 and what became this Rulemaking, at pp. 9-10.

⁷⁸ *Id.*

customer should be able to seek a determination of eligibility prior to signing up for service with any particular carrier.

In some ways, this proposal is the flip side of the issue under review in the pending Assurance Motion, in which a prepaid carrier is seeking permission to wait to initiate service to a customer until a determination of eligibility is made.⁷⁹ However, that motion would make a determination of eligibility prior to the initiation of service come at the discretion of a carrier. The customer would already have made a commitment to the carrier, but would be left with no service until the eligibility determination was complete. The Joint Consumers, in contrast, are looking to address a situation in which a customer might make one decision on service if he or she is LifeLine-eligible, and a different decision if eligibility is denied. That customer should know his or her options before making a choice, and be able to avoid being stuck in a non-optimal situation (or having extricate from such situation over any bureaucratic or financial hurdles) because of the delay in determining eligibility.

As some consumer groups have previously described, the selection of a carrier effectively locks that customer into that carrier's offerings, even if only via customer inertia.⁸⁰ However, it is difficult for customers to shop around and best determine what service meets their needs if they are uncertain whether or not they are eligible for LifeLine. As the marketplace for LifeLine products becomes more crowded and diverse, as hoped for by this Commission, the ability of a customer to shop around with full knowledge of which

⁷⁹ Motion by Virgin Mobile USA, L.P. (U 4327 C) Doing Business as Assurance Wireless for Limited Minor Adjustment or Waiver of a Prequalification Process Requirement for the Benefit of Prospective Customers of Prepaid Wireless Federal LifeLine Service Providers, filed on April 5, 2013.

⁸⁰ See Comments of The Utility Reform Network, National Consumer Law Center and Disability Rights Advocates on the Proposed Decision of Commissioner Peevey and ALJ Bushey, filed jointly in R.06-05-028 and this Rulemaking on March 14, 2010 at pp. 9-10.

offerings are relevant becomes ever more crucial. Thus, the Joint Consumers continue to urge the Commission to create a process for predetermination of LifeLine eligibility. This will allow a customer to obtain a determination of eligibility from the TPA directly, along with a unique identifier. The customer can then shop around for different LifeLine options and sign up for the service that best meets his or her needs. At the time the customer purchases service, the customer would provide the carrier with the unique identifier, which would then be confirmed between the carrier and the TPA.

This option would also allow the customer to avoid paying up-front costs (and provide assurances for carriers that provide handsets for customers, such as Assurance), eliminating barriers to signing up for service. While it does not solve the problem of the customer lacking service of any sort while the eligibility determination is pending, the customer has control over timing the application approval delay and does not bear the burden and risks of the current full-rate procedure. This is an enhanced option for customer choice, which has always been described as a priority for the Commission in its extended review of LifeLine.

Finally, certain vulnerable populations could potentially have the eligibility process addressed *en mass* in advance of any service request. For example, certain defined populations are known to be eligible for LifeLine, and have organizations dedicated to supporting their access to such services. One such population is foster youth who are nearing the end of their eligibility within the foster system. With appropriate coordination with the agency overseeing the foster care program, a list of eligible foster youth, for example all youth over 16 who are beginning to transition toward independence, who have given their consent to apply for LifeLine, could be provided to the TPA. Each youth on the

list will have a predetermination of eligibility for LifeLine and can obtain appropriate service. The Commission could similarly consider as an ongoing goal a process to coordinate with the authorizing agencies for all of the qualifying programs used to demonstrate program-based eligibility; such coordination could allow the TPA to create a pre-approved list of LifeLine-eligible consumers based on participation in the qualifying programs.

D. Continue to Support NRC But with a Cap

Joint Consumers urge the Commission to continue to support non-recurring charges through the LifeLine program. (*Scoping Memo at p. 11*) However, as discussed below, the charges and reimbursement should be capped to ensure affordability for the LifeLine participant and to ensure the burden on the Fund (and non-LifeLine ratepayers) is mitigated. A historical benefit for LifeLine participants has been the cap on non-recurring charges such as the connection charge and the conversion charge⁸¹ Carriers can claim reimbursement for the difference between their retail rate for these non-recurring charges and the capped LifeLine rate. Up until recently, this reimbursement came from both the federal Link Up subsidy and the Commission's LifeLine Fund. However, in 2012, the FCC eliminated Link Up support on all non-tribal lands.⁸² The Commission agreed to take over the support to the carriers to ensure that customers continued to only pay a capped \$10 connection charge.⁸³

In comments on the draft resolution, Joint Consumers expressed concern that the burden on the Fund would be too great if the Commission agreed to reimburse the total

⁸¹ G.O. 153, Sections 9.2.1, 9.3.1. and 9.3.3.

⁸² FCC Lifeline Order at para. 245

⁸³ T-17366 at p. 13

difference of a carrier's non-recurring connection fee and the \$10 capped rate.⁸⁴ These non-recurring fees are unregulated or subject to pricing flexibility and can easily exceed \$50 thus subjecting the Fund to a significant liability.⁸⁵ The FCC eliminated its Link Up support based on similar concerns, including a suggestion that many of the carriers were over-charging the retail connection fee and receiving unreasonable amounts of subsidy money.⁸⁶

However, in those comments Joint Consumers also expressed concern about the LifeLine participant being subjected to the full service connection amount if the Fund did not subsidize the service. This charge, along with other non-recurring charges, would be an insurmountable barrier for low-income customers. Therefore, the Commission should cap the reimbursement amount to carriers while at the same time maintaining the current cap on these charges. The proposal to cap carrier reimbursement from the Fund is further discussed below.

E. Outreach and Program Assistance

In the Scoping Memo, the Commission noted the importance of consumer education and outreach to the success of the LifeLine program. (*Scoping Memo at p. 4*) Additionally, the Commission asked “[w]hat changes should be made, if any, to the outreach and information programs relevant to LifeLine?” (*Scoping Memo at p. 12-13*) Joint Consumers urge the Commission to take advantage of the important role that Community Based Organizations (CBOs) play as both part of a targeted outreach plan (particularly for hard to

⁸⁴ Opening Comments of Joint Consumers on Draft Resolution T-17366, June 6, 2012 at p. 4-5.

⁸⁵ Scoping Memo at Appendix C

⁸⁶ FCC Lifeline Order at para 247

reach customers) and as a valuable resource for LifeLine subscribers or applicants who experience difficulty navigating the LifeLine program.

The most important CBOs for the purpose of assisting LifeLine-eligible customers are locally based non-profit organizations that provide social, educational, advocacy, informational and emergency services, including those that provide access to computers (including instruction or labs at little or no cost to individuals), particularly CBOs that work with individuals from lower socio economic and disenfranchised communities. Many of these local CBOs primarily work with populations that are faced with socioeconomic or linguistic issues, low literacy levels, geographic isolation or other barriers that prevent them from gaining access to important and relevant information. They can provide information in-language or in accessible format, and otherwise ensure that a community that may not easily be able to use standard information has access to the LifeLine program.

Many community-based organizations have spent years working in their communities and have developed experience and relationships based on trust and confidence with their target community. Furthermore, these CBOs have clearly identified community boundaries and are familiar with local issues or needs of their clients. CBOs are uniquely positioned to provide outreach and program assistance regarding LifeLine services. In fact, many CBOs already do.⁸⁷

The Commission should continue to integrate CBOs into the LifeLine outreach program, and expand participation where possible. Because these CBOs generally operate on extremely limited budgets and cannot easily take on additional tasks without additional resources, the Commission should compensate the CBOs so that they can take on the tasks

⁸⁷ Indeed, the Commission's grant program that funded the TEAM program and other similar CBO-based programs have a network of telecommunications and community experts.

necessary to assist LifeLine customers; this should also include training of CBO staff so that they can assist LifeLine subscribers with the Direct Application process or other issues with program administration. By working effectively with members of the community that they already serve, CBOs can ensure that LifeLine-eligible consumers know about the program, and assist them in enrolling. Current subscribers can also receive help with any questions or concerns about obtaining the services they need, as well as help in fully understanding the terms and conditions of LifeLine service (and any additional services offered by the carrier), and help resolving any billing or other customer service issues. Finally, these CBOs can provide valuable feedback back to the carriers and the Commission regarding the success of the LifeLine program and the potential need for future changes. Accordingly, the Commission should encourage increased participation by CBOs in the targeted outreach and administration of LifeLine.

F. VoIP

The Scoping Memo requests comment on whether Public Utilities Code Section 710 raises issues about LifeLine eligibility for VoIP providers. To the extent that Public Utilities Code Section 710 can be interpreted as restricting Commission jurisdiction over VoIP or IP enabled services,⁸⁸ then this could impact Commission jurisdiction over those carriers who offer LifeLine service using VoIP and IP technology. But these questions are multi-faceted and varied.

⁸⁸ It is relevant to the discussions here that Section 710 is based on services offered and not whole categories of carrier or types of technology. The Commission's jurisdiction is limited as to those services offered through VoIP or IP networks, but the carriers themselves are not subject to a blanket exemption, it is a service by service determination.

Precisely because the impact of Section 710 and the issues of LifeLine offered using VoIP are potentially wide-reaching, and Joint Consumers are skeptical about the Commission's ability to defer direct answers to this question to a second phase. Conclusion to a second phase could take months, and in the meantime VoIP providers continue to gain customer share and, more importantly, current LifeLine providers continue to move customers onto IP networks.⁸⁹ The Commission has some very timely and critical questions to address. Joint Consumers will not attempt to provide the full universe of issues here, but reserve the right to raise additional issues at other points in this docket.

As an initial matter, the Commission must be cognizant of the fact that in 2010 it expressly allowed VoIP carriers to offer LifeLine service as long as such providers could comply with the requirements of General Order 153.⁹⁰ Part of the Commission's rationale to allow alternative carriers to participate is the concept that a carrier which voluntarily decides to offer LifeLine must abide by the Commission's rules and regulations regarding the program irrespective of whether the Commission generally has jurisdiction over the service.⁹¹ An oft-cited example of this voluntary jurisdiction theory relates to a wireless provider that submits itself to Commission jurisdiction over its rates for a LifeLine product where the Commission would not normally have rate regulation authority over a wireless carrier. The "quid pro quo" for the carrier is the state subsidy from the Fund for serving that customer. Joint Consumers do not believe that Section 710 interferes with the Commission's theory of voluntary jurisdiction. If a carrier that normally would argue its

⁸⁹ D.12-12-038 at p. 13.

⁹⁰ D.10-11-033 at p. 4, O.P. 2, "Allows non-traditional carriers, such as wireless carriers and voice over internet protocol (VoIP) companies to participate in the California LifeLine program consistent with current requirements."

⁹¹ D.10-11-033 at COL 29.

services are protected under Section 710 wants to offer LifeLine in California, then it would have to abide by the Commission's rules.⁹²

A related question is the Commission's role in granting ETC status. All carriers must be Eligible Telecommunications Carriers to participate in either the state or federal LifeLine programs in California.⁹³ Joint Consumers note that Section 710 allows for Commission authority where the state is "expressly delegated by federal law" to exercise jurisdiction.⁹⁴ State commissions are expressly delegated by federal law to review a carrier's application for eligible telecommunications carrier status and grant or deny the request.⁹⁵ The state commission must find that the request is in the public interest. States can also require an ETC operating in the state to comply with specific state requirements. Section 710 does not remove this authority of the Commission.⁹⁶

Joint Consumers do not believe that Section 710 should serve as an absolute bar on VoIP providers offering LifeLine service, although the Commission must issue a decision in this docket that is very clear on the obligations and responsibilities of these carriers. The Scoping Memo, however, did not mention other Public Utilities Code Sections that may also be relevant to this issue. For example, Public Utilities Code Section 285 requires the

⁹² Unfortunately, some local voice carriers using VoIP technology have chosen to offer a service that is the equivalent of local Basic Service but withdraw their California tariff and no longer provide LifeLine service. At the time the Commission did not seem to realize the implications of these carriers' actions. Joint Consumers find this a disturbing practice and urge the Commission to more critically review applications in the future. Addressing Application of Comcast Phone of California LLC for Authority to Discontinue Telecommunications Services in the State of California, D.08-04-042 (Apr. 11, 2008)(Application of Comcast Phone of CA); D.08-02-006 (Application of Time Warner Cable Information Services (California), LLC).

⁹³ D.10-11-033 O.P 34, See also, T-17321, G.O. 152 §. 9.4.7.

⁹⁴ Pub. Util. Code § 710 (b).

⁹⁵ 47 U.S.C. § 214(e), 47 C.F.R. §§ 54.101-54.207.

⁹⁶ This issue is currently before the Commission in A.12-09-014, *Application of Cox California Telcom, LLC (U-5684-C for Designation as an Eligible Telecommunications Carrier*. While Joint Consumers believe that the Commission should find it has jurisdiction to review ETC applications from current or potential LifeLine providers using VoIP or IP technology to offer the service, this position on the jurisdiction question does not pre-determine the Commission's decision on the application which should be reviewed on a fact-specific case-by-case determination.

Commission to create a process whereby interconnected VoIP service providers collect and remit surcharges to the state's public purpose programs including LifeLine. While the legislation adopting this requirement made clear that no larger intent could be inferred from the bill beyond creating a level playing field among those service providers that must contribute, in the context of this docket the Commission cannot ignore the fact that VoIP customers are contributing to these programs.

Second, as discussed above, Public Utilities Code Section 871 et seq. does not strictly require LifeLine providers to offer the elements of Basic Service, although Basic Service should be viewed as a standard for high quality service. In addition, Section 871.5 requires the Commission to administer the program in a way that is "equitable, nondiscriminatory and without competitive consequences" which suggests that the Commission should take a broad view of the statutory requirements and its own policies to ensure a robust program. Therefore, to the extent that the Commission continues to allow VoIP providers to participate, it must ensure that these carriers are complying with the statutory requirements found in the Moore Act by offering affordable, high quality service. Nevertheless, these requirements do not create an absolute bar to their participation.

Finally, the Commission should address the requirements of Public Utilities Code 270(b). This provision, added after the Moore Act to codify the Commission's public purpose program fund authority for budget reasons, reads,

(b) Moneys in the funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate telephone corporations for their costs of providing universal service. Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act or upon supplemental appropriation.

The Public Utilities Code specifically requires that only those carriers designated as “telephone corporations” pursuant to Public Utilities Code Section 234 may receive monies from the Commission’s public purpose program funds, including the LifeLine Fund. As this Commission is well aware, it is a point of controversy whether VoIP *carriers* can be classified as telecommunications carriers even though Section 710 only discusses the Commission’s jurisdiction as to *services* using VoIP and IP technology and does not otherwise address the designation as telephone corporations. While this docket may not be the right forum to discuss the broader issue of VoIP carriers being classified as “telephone corporations,” the Commission cannot ignore this language and should address the Legislature’s intent and whether the wording in Section 270 creates an absolute bar to carriers that are not telephone corporations from participating in the program.

G. Eligibility Requirements

In light of the ongoing economic difficulties facing low-income and lower-income Californians as well as the importance of telecommunications access and the questions about affordability of service, Joint Consumers urge the Commission to consider expanding current eligibility requirements for LifeLine from 150% of federal poverty levels (FPL) to 200% FPL, consistent with the eligibility criteria for CARE, the low-income energy subsidy program. This expanded eligibility was first proposed by AT&T in 2008, in comments submitted in response to an Assigned Commissioner’s Ruling in R.06-05-028.⁹⁷ The Commission considered this proposal in the process leading to D.10-11-033, and consumers argued that standardizing eligibility criteria between LifeLine and CARE would

⁹⁷ D.10-11-033 at p. 79, citing AT&T October 3, 2008 Comments in Rulemaking On The Commission's Own Motion To Review The Telecommunications Public Policy Programs, R.06-05-028 (May 25, 2006) p. 10.

provide numerous benefits, including “enhanced outreach capability, potential improvements to any uniform enrollment process, and, of course, assistance for more people who would be served.”⁹⁸ Some consumer comments also noted that, even at that time, “the notion of standardizing these criteria has been given lip service for many years, and there has been no progress.”⁹⁹

In D.10-11-033, the Commission declined to move toward standardizing eligibility requirements between LifeLine and CARE. In that decision, the Commission asserted that changing LifeLine eligibility standards to match those of CARE would not be appropriate because the higher eligibility standard for CARE was authorized as a “temporary measure.”¹⁰⁰ Since that time, however, the higher CARE eligibility standard has been codified in statute,¹⁰¹ and it has now been in place for eight years. Thus it is no longer appropriate to decline to match LifeLine eligibility criteria to CARE eligibility criteria by citing uncertainty in whether the CARE expansion is going to remain in effect.

⁹⁸ Opening Comments of the Disability Rights Advocates and the National Consumer Law Center on the Proposed Decision of Commissioner Bohn, filed on October 18, 2010 in R.06-05-028, p. 10. (TURN did not join in these comments on the issue of LifeLine eligibility).

⁹⁹ *Id.* at p. 11, citing the history including Joint Consumer comments (from DisabRA, NCLC, TURN and the Latino Issues Forum) on the issue of prequalification and other Phase 2 issues, submitted in Order Instituting Rulemaking into implementation of Federal Communications Commission Report and Order 04-87, as it affects the Universal Lifeline Telephone Service Program, R.04-12-001 (Dec. 2, 2004) on August 11, 2008, at pp. 13-14; Decision Adopting Revisions to General Order 153 and Related Issues, D.05-12-013 (Dec. 1, 2005), issued in the same docket, at pp. 45-48 (referencing earlier consumer comments on coordination of low income programs filed in response to a workshop report); and Comments of Joint Consumers [DisabRA, NCLC, and TURN] on Issues Presented in Assigned Commissioner and ALJ’s Ruling Requesting Comments and Scoping Memo, filed in Rulemaking on the Commission’s Own Motion to Determine Whether Sharing of Customer Information Between Regulated Water Utilities and Regulated Energy Utilities/Municipal Energy Providers Should be Required; and if so, to Develop the Rules and Procedures Governing Such Sharing, R.09-12-017 (Dec. 17, 2009) on April 23, 2010, at pp. 10-11.

¹⁰⁰ D.11-10-033 at p. 81, *citing* Order Instituting D.05-10-044 Interim Opinion Approving Various Emergency Program Changes in Light of Anticipated High Natural Gas Prices in the Winter of 2005-2006).

¹⁰¹ Pub. Util. Code §739.1(b)(1) (“The commission shall establish a program of assistance to low-income electric and gas customers with annual household incomes that are no greater than 200 percent of the federal poverty guideline levels, the cost of which shall not be borne solely by any single class of customer. The program shall be referred to as the California Alternate Rates for Energy or CARE program. The commission shall ensure that the level of discount for low-income electric and gas customers correctly reflects the level of need.”). This provision, which was part of SB 695, was in fact adopted into law in 2009.

While all of the previously identified benefits, including administrative convenience as well as improved access to affordable service for low-income and lower-income customers, would follow from such a change, Joint Consumers recognize, as they did in R.06-05-028, that such an expansion would impact the size of the fund.¹⁰² While Joint Consumers firmly believe this program should help a broader group of people, including those working poor caught between a low paying job and public benefits, we are also concerned about expanding the Fund such that it will require significant higher surcharges from those paying into the Fund. It is currently unclear how much money the expansion of the program to accommodate wireless carriers will be. Thus, we ask the Commission to obtain estimates on the potential impact on the size of a fund from such an expansion, and to affirmatively consider this issue, perhaps in a second phase of this proceeding.

H. Phases of Issues

Joint Consumers have addressed most of the issues raised by the Scoping Memo as possible Phase 2 issues in other parts of the document. The role of the CBO, service quality, and VoIP issues are addressed elsewhere. Joint Consumers note that the questions regarding the Joint Accounts and Appeals Process are issues currently pending before the Working Group and Commission staff. These are critical issues that are impacting customers' ability to sign up or continue as a LifeLine customer every day. As a non-carrier, Joint Consumers cannot provide specific proposals to these more technical questions in opening, but reserves our right to reply to other proposals.

¹⁰² See, e.g. Comments of National Consumer Law Center and Disability Rights Advocates on the Revised Proposed Decision, filed on April 8, 2009 in R.06-05-028, at p. 3; Reply Comments of National Consumer Law Center and Disability Rights Advocates on Commissioner Chong's Revised Proposed Decision, filed on April 13, 2009 in R.06-05-028, at pp. 5-6.

However, the Scoping Memo asks a critical question about subscriber data and privacy. This question raises multiple issues, some of which are being discussed in the Working Group including the types of documentation that the carriers must receive pursuant to federal rules but that may contain sensitive person data due to income and program eligibility requirements. These issues must also be worked through with the TPA and carriers. Joint Consumers note, as discussed above, that the existence of the TPA does mitigate subscriber and privacy concerns by centralizing data and limiting access to the TPA, as long as the Commission maintains the policy that carriers should not have access to the data.

One of the biggest issues relating to subscriber privacy raised by the recent changes to the rules is the FCC's requirement that a customer must provide the last four digits of the applicant's Social Security Number (SSN). This issue impacts the Joint Account issue (unclear whose SSN is being provided in order to verify), the opt-out of the duplicates database, and the requirement to forward documentation that will contain the SSN to the carriers. Joint Consumers strongly oppose the use of the SSN, even the last four digits on any LifeLine documentation. This issue is not just a privacy issue, but also an equity issue because it places a barrier for those customers that do not have an SSN for any number of reasons. Joint Consumers recognize that this SSN requirement comes from the FCC and the state commissions, even those with their own programs, do not have discretion. However, Joint Consumers urge the Commission to push the FCC to eliminate this requirement and to implement state-specific requirements in such a way to minimize the requirement, collection and distribution of any portion of a LifeLine customer's SSN.

V. PRICING OF LIFELINE OFFERINGS AND SSA

The Scoping Memo asks whether it is in the “public’s interest” to extend a customer rate freeze for a set period. (*Scoping Memo at p. 13*) Joint Consumers believe that action must be taken with regard to rate protection, whether it be a continuing a strict freeze, or the adoption of TURN’s original proposal for a CPI-U inflation-based adjustment.¹⁰³ As is discussed elsewhere in these comments, the affordability of basic telephone service continues to be a key issue, and the ongoing economic stagnation, which shows little sign of abating, places ongoing pressure on California households, especially those with lower incomes.

The Scoping Memo requests comment on “TURN’s argument that LifeLine rates could increase to \$10.50.” (*Scoping Memo at p. 13*) Joint Consumers would like to refresh the record on this matter. Given that AT&T increased its basic rate to \$23.00 in 2013, it is now the case that AT&T LifeLine customers could face rates of \$11.50. Given that the current LifeLine rate is \$6.84, should the increase to \$11.50 be allowed, LifeLine customers in AT&T’s service area would face a 68.1 percent rate increase. Such an increase is unacceptable and should be rejected by the Commission.

The Scoping Memo also states that TURN assumes that the carrier will “maximize” the rate the customer pays, subject to the 50% limit from the Moore Act. (*Scoping Memo at p. 13*) Here again, Joint Consumers believe that evidence points to the fact that AT&T and Verizon have implemented rate increases for Basic Service (and LifeLine service) in recent years.¹⁰⁴ Whether AT&T would in fact “maximize” LifeLine rates in the future is unknown

¹⁰³ Opening Comments of The Utility Reform Network on the Proposed Decision of Commissioner Bohn, R.06-05-028 (Oct. 18, 2010).

¹⁰⁴ Scoping Memo, Appendix C

to Joint Consumers, but it is at least conceivable. However, if AT&T were to increase its LifeLine rate to \$10.35, which would be permissible under the Moore Act, it would receive the full amount of the SSA, while its LifeLine customers experienced a 51.3 percent rate increase.¹⁰⁵ The same is true for other carriers. For example, given the potential for a \$12.65 SSA (based on 55 percent of AT&T's basic rate) Verizon could increase its LifeLine rate from the \$6.66 reported in Appendix C, to \$8.26—a 24 percent increase. With such an increase Verizon would draw the full SSA, and remain under the Moore Act's 50 percent cap requirement. The potential to substantially increase LifeLine rates while preserving the full amount of the draw points to the need for a cap on LifeLine rates, such as the CPI-based approach advocated by TURN.

The Moore Act supports a freeze on the LifeLine rate by requiring that a LifeLine rate “shall not be more than 50 percent of the rates for basic flat rate service.”¹⁰⁶ As these carriers continue to increase their Basic Service rates, there is no risk that a capped LifeLine rate will exceed the required threshold. And, as long as the rate is set as a cap and not a freeze, then the rate can go down to the extent a carrier's Basic Service rate may go down. Therefore a cap on the rate can continue under the statute.

The cap should also continue indefinitely for policy reasons. One of the primary obligations of the Commission is to ensure universal service through affordable phone service. The affordability of basic phone service is being threatened through the elimination of price caps. If LifeLine service is allowed to “float” with Basic Service rates, even if only once a year, then the affordability of LifeLine will also be threatened.

¹⁰⁵ \$10.35 is less than 50 percent of AT&T's \$23 basic rate, and \$10.35 plus the \$12.65 equals \$23, leading to no reduction in the SSA.

¹⁰⁶ Pub. Util. Code Section 874(a).

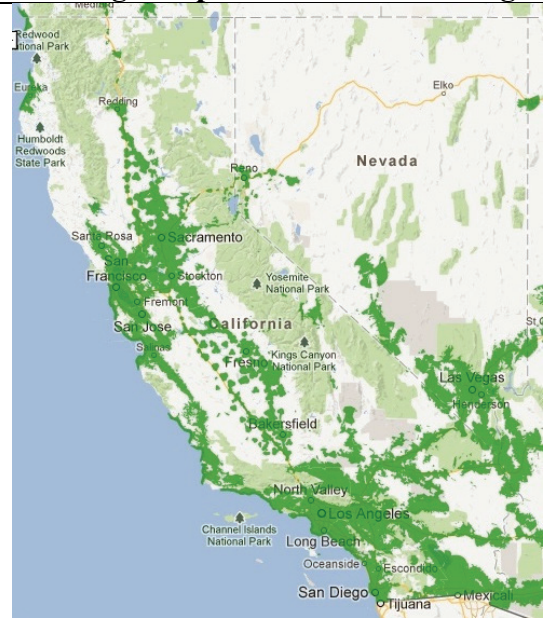


The goal to increase competition for LifeLine and allow for increased customer choice is another policy consideration. Some carriers may argue that a cap on the rate will serve as a disincentive to offer service. Joint Consumers suggest that if a carrier believes that the combination of a capped rate, capped subsidy and federal subsidy will not serve as sufficient compensation, then that carrier should come to the Commission to demonstrate its concerns. The Commission should provide an opportunity for carriers to request additional subsidy money beyond the cap discussed below, if that carrier is willing and able to demonstrate that its costs for providing LifeLine service render it unable to make a “reasonable” return.

As discussed below, in previous dockets the record was replete with discussion from carriers about how many additional minutes and services the average LifeLine customer purchases beyond the basic LifeLine service. This ability to sell additional services, at unregulated rates, suggests that the cap on the voice/LifeLine service is more of a benefit to the consumer than a cost to the carrier due to the additional revenue generated from these “captive” customers once they are enrolled in the LifeLine program.

The Scoping Memo also asks whether the Commission should consider a “state-wide LifeLine Basic Service rate (or maximum) for all LifeLine carriers?” (*Scoping Memo at p. 13-14*) As discussed above, Joint Consumers support a permanent cap on the LifeLine rate with possible ability to implement automatic increases indexed to other social services cost of living increases. Presumably, this capped rate would be the *defacto* state-wide rate. Joint Consumers do not have a recommendation of exactly what amount that rate should be at this time and whether it should be the same for wireless and wireline providers and other alternative technology providers.

The Scoping Memo also asks about how a cap would apply to wireless LifeLine providers. (*Scoping Memo at p. 14*) Joint Consumers are concerned about the affordability of a wireless LifeLine alternative, and the wireless LifeLine options discussed in the Scoping Memo illustrate the problem. As discussed above, Joint Consumers firmly believe that any wireless LifeLine product must be consistent with the provisions of the definition of Basic Service and key among those provisions is the ability of the Basic Service customer to choose an option that allows the consumer to make and receive unlimited outgoing calls, and to receive unlimited incoming calls. Related to this requirement is an option to make unlimited calls to 800/8YY numbers. Three of the existing federally-supported wireless LifeLine plans identified in the Scoping Memo have unlimited calling options—plans offered by Cricket Communications, Nexus/Reach Out, and Virgin Mobile. Two issues arise based on Joint Consumers’s review of two of these plans. First, there is a substantial price difference between the plans, with the Cricket plan priced at \$21.50 per month. The Cricket plan provides only voice and text messaging services. The Virgin Mobile plan is priced at \$30 per month, and while including unlimited voice and text messages, it also adds “Virgin XL Downloads,” which are non-messaging services. Thus, given the current SSA, LifeLine customers would face significantly different price points for these unlimited options, well above current wireline LifeLine rates.

Second, Joint Consumers are concerned about the scope of availability of these services on a geographic basis. Joint Consumers believe that it is imperative that any wireless LifeLine alternative include unlimited voice service and texting, and the carriers offering these federal LifeLine products offer coverage that is less than comprehensive:

Coverage Maps for Cricket and Virgin Mobile	
	Cricket Statewide Coverage Map
	Virgin Mobile Coverage Map, North
	Virgin Mobile Coverage Map, South

Thus, even if some subset of wireless carriers were to offer LifeLine services that were consistent with the provisions of the Commission’s Basic Service definition as that applies to unlimited usage, it is doubtful that such an alternative would be available statewide.

A. Cap on SSA

The Scoping Memo poses the following question regarding the Specific Support Amount (SSA):

How should the Commission address the question of carrier compensation? The SSA was created to increase along with the rates of the four largest ILECs so as to give incentive for carriers to charge less to customers. Should this process be reevaluated? If the SSA is frozen, when basic rates increase, the LifeLine customers will be forced to make up the difference (barring a corresponding price freeze). (*Scoping Memo at p. 14*)

Joint Consumers believe that the process associated with the SSA should be reevaluated.

TURN has previously proposed that both LifeLine rates and the carrier draw from the LifeLine fund be capped, with annual adjustments based on the rate of CPI inflation.¹⁰⁷

Joint Consumers reassert this proposal. This approach is superior to the currently planned arrangement. As proposed, the current Specific Support approach would unreasonably reward carriers for increasing basic rates—each basic rate increase would be rewarded by an increased draw from the LifeLine fund.¹⁰⁸ It makes no sense from an economic or policy perspective to reward carriers for raising basic rates with higher LifeLine subsidy draws.

And there is substantial evidence that carriers, especially California's largest ILEC AT&T, are not hesitant about raising basic rates. When D.11-10-033 was released, AT&T's Basic Service rate was \$16.45,¹⁰⁹ it is now \$23.00.¹¹⁰ This rate would appear to be the highest in the state, and would define the SSA amount to increase to \$12.65 from the \$10.50 that was

¹⁰⁷ Opening Comments of the Utility Reform Network on the Proposed Decision of Commissioner Bohn, R.06-05-028 (Oct. 18, 2010).

¹⁰⁸ "CD staff will annually review the basic rate amounts charged by carriers in California and establish a Specific Support Amount based on 55 percent of the highest URF COLR's basic rate." D.10-11-033, p. 54.

¹⁰⁹ David Lazarus, *Getting hung up on basic phone rate increases*, *Los Angeles Times*, (Jan 27, 2010). <http://articles.latimes.com/2010/jan/27/business/la-fi-lazarus27-2010jan27>.

¹¹⁰ Scoping Memo, Appendix C, p. 1.

specified in D.11-10-033. AT&T's annual increases should not come with the added bonus of automatic increases in the SSA draw which in this instance would be over \$2.00 a customer, equating to well over a million dollars of ratepayer surcharges for the largest LifeLine provider in the state.

The current approach to the SSA is based on the incorrect assumption that LifeLine customers purchase only LifeLine service. This is factually incorrect. LifeLine service providers have the opportunity to sell high-margin non-Basic Services to LifeLine customers. As a result, LifeLine providers receive additional compensation for serving LifeLine customers. This additional compensation must be acknowledged in the design of a reasonable alternative to the current SSA.

The most recent data that is at Joint Consumers's disposal on the extent of LifeLine customer expenditures is from the 2010 Affordability Study. With regard to telephone service and features, that study found that only 37 percent of LifeLine customers subscribed to LifeLine service alone, with 34 percent buying one additional feature, 19 percent buying two additional features, and 10.6 percent buying three or more features.¹¹¹ That study also shows that 38 percent purchase long distance service, 32.9 percent of LifeLine subscribers purchase DSL Internet access service, and 6 percent purchase pay for television services on their monthly telephone bill.¹¹² Table 1 reports the spending on landline services by LifeLine customers, based on the 2010 Affordability Study.¹¹³

Table 1: LifeLine Customer Landline Bills Reported by LifeLine Customers
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¹¹¹ Affordability Study, Volume 1, Table 1.11a Number of Added Features—Landline Customers and LifeLine Subscribers, p. 29.

¹¹² Affordability Study, Volume 1, Table 1.11b Specific Additional Telephone Features or Equipment— Landline Customers and LifeLine Subscribers, p. 31.

¹¹³ Affordability Study, Volume 1, Table 2.7 Typical Monthly Bill Including Fees, Taxes, Surcharges for Landline Service, by LifeLine Status, p. 71.

Bill Amount	Percentage of LifeLine Customers
\$1-\$25	48
\$26-\$50	29
\$51-\$75	14
\$76-\$100	4
\$101 and above	6
Average Bill	\$38.25
Median Bill	\$29.10

Table 1 shows that the average bill for a LifeLine customer is \$38.25. This indicates that the ILECs providing LifeLine service are earning substantial margins from the sale of services other than Basic Service to LifeLine customers. These additional sales add to carrier profits and mitigate the need for a dollar-for-dollar offset any carrier “losses” due to reduced service rates associated with the LifeLine program. The SSA approach takes no account of these benefits of the LifeLine program that participating ILECs enjoy. These additional revenues provide a “safety valve” that allows the SSA to be capped, as Joint Consumers recommend, and adjusted by the rate of CPI inflation.

Capping the SSA, as Joint Consumers recommend, would at least shield ratepayers from further burden and potential gaming by the ILECs who are now free to set basic rates to what they believe the market will bear. In D.10-11-033, it was decided to cap the recovery of administrative expenses using the CPI-U.¹¹⁴ The equity of the LifeLine program

¹¹⁴ D.10-11-033, p. 90.

will be dramatically improved if carrier draws and LifeLine rates are capped using a similar mechanism. Again, as discussed above, part of this proposal urges the Commission to create a mechanism to allow carriers to request additional subsidy if they can demonstrate that the current funding sources, including the subsidy draw and payment by the LifeLine participant is insufficient.

B. Geographic Deaveraging

The Scoping Memo asks whether the Commission should consider the use of geographic deaveraging of basic rates when computing the SSA. (*Scoping Memo at p. 14*) This question also comes from the Commission's Rehearing Decision of D.10-11-022.¹¹⁵ D.10-11-033 makes no mention of geographic deaveraging when addressing the SSA, which TURN identified as a flaw in the support for the Commission's Decision. However, because the SSA does not vary from carrier to carrier, the SSA is based on what amounts to a "deaveraged rate." Under the D.10-11-033 approach, if one URF provider of last resort increases its basic rates (for its entire service territory), then all URF providers of last resort see their SSA-based draws increase, regardless of what the other URF carrier rates are (or whether they too have been increased).

Given that D.10.11-033 requires that the SSA be established based on 55 percent of the highest basic rate of the State's URF carriers of last resort,¹¹⁶ it appears that D.10-11-033 would also enable an SSA based on deaveraged rates of an individual URF carrier, i.e., one that targets higher rates at some limited portion of the URF carrier's service geography. This presents a significant problem for the SSA, as it would appear to allow the

¹¹⁵ D.12-07-022, pp. 10-12.

¹¹⁶ D.10-11-033, p. 3.

statewide SSA to increase based on rate increases in an even more limited geographic area than is the case with the current SSA. As discussed earlier, Joint Consumers propose that the SSA be adjusted based on CPI inflation and not tied to Basic Service rates. Joint Consumers believe that it is most reasonable to apply the CPI inflation factor to the already-established SSA, and to ignore the impact of deaveraging, as geographic deaveraging would enable gaming on the part of carriers.

Joint Consumers discussed the some of the problems with rate deaveraging in its October 18, 2010 comments on the proposed decision in R.06-05-028:

The PD does not address the impact of basic rate deaveraging on the objectives of the LifeLine program. TURN does not believe that there is any good policy reason to abandon statewide LifeLine prices. However, the PD's Specific Support approach, combined with the potential for geographic deaveraging, will introduce outcomes and create incentives with LifeLine prices that unfairly burden low income consumers residing in high-cost areas.¹¹⁷

Should the Commission not adopt Joint Consumers' CPI-inflation-based approach to the adjustment of the SSA, Joint Consumers believe that the Commission should otherwise modify the SSA methodology to reduce the potential for gaming. Rather than focusing on the highest rate of a carrier, the rate upon which the SSA is based should be calculated using a weighted average rate for the "highest rate" URF carrier. The weights utilized should reflect the number of households for which each rate applies. For example, suppose the current URF provider of last resort with the highest rate modified its rate structure so that rather than charging customers \$20 on a company-wide basis, the carrier deaveraged rates so that the basic rate was \$20 for 90 percent of households in its service area, and \$25 for 10 percent of households in its service area. Instead of recalculating the SSA based on a

¹¹⁷ Opening Comments of the Utility Reform Network on the Proposed Decision of Commissioner Bohn, R.06-05-028, p. 10.

\$25 rate, the weighted average rate of \$20.50 should be used instead. This approach would mitigate the potential for gaming, although, not to the same extent as Joint Consumers' CPI-based adjustment proposal.

C. Affordability Study

The Scoping Memo asks for comment about the 2010 Affordability Study and about affordability "generally." (*Scoping Memo at p. 13*) Joint Consumers address the specific issues regarding TURN's Application for Rehearing above. However, further issues regarding affordability should be considered.

Although there are significant flaws with the 2010 Affordability Study¹¹⁸, useful information can be found on the matter of affordability, as the survey utilized in the CHCF-B region poses an unbiased question regarding consumer perceptions of affordability. In addition, data compiled from the CHCF-B survey provides important information regarding the LifeLine program which the Commission should consider as it evaluates potential changes in the LifeLine program. For example, the CHCF-B survey points to the limits of choice among consumers who reside in CHCF-B areas:

- As expected, the CHCF-B areas have generally poor access to telecommunications services, and LifeLine eligible households tend to have the poorest access to services within these areas.¹¹⁹
- Choosing to not utilize LifeLine eligibility does not seem to be related to increasingly diverse forms of telecommunications available to citizens. Rather, it seems to be related to age and race/ethnicity categories (3.3 and 3.1). Eligible customers over 40 are much less likely to use LifeLine, as are non-Latino Whites.¹²⁰

¹¹⁸ In the CHCF-B docket, R.09-06-019, the Assigned Commissioner recently requested comments on "the findings regarding the findings on the affordability of basic telephone service published in the CD report." (April 23, 2013) The Commission should take notice of the work in the other docket.

¹¹⁹ Affordability Study, Vol. 2, p. iv.

¹²⁰ Affordability Study, Vol. 2, p. iv.

- Many households have access to cell and high-speed internet outside of the household phone service. However, LifeLine customers without wireless access are once again the least likely to have these additional services. Most important, less than a fifth of LifeLine customers without wireless access have a high-speed internet connection (see Table 2.2b).¹²¹
- Digital phone service is rare among this population.¹²²

One key question facing this Commission is what will happen to consumers if changes in the LifeLine program result in LifeLine becoming less attractive to consumers. The CHCF-B survey provides insight on this matter, i.e., failure to utilize LifeLine results in a greater chance of loss of phone service.

Choosing to not utilize LifeLine despite being eligible leaves a larger number of customers at risk of losing phone service. Customers who are Latino, aged 18 to 29, or who earn less than \$34,000 are disproportionately at risk of losing their phone service entirely (6.1, 6.2, and 6.3). Households in the \$24,001 to \$34,000 range are also at high risk of having to discontinue phone service features (6.8).¹²³ Utilization (of LifeLine) among households earning \$24,000 or less is disturbingly low. Over a third of households in this income category do not utilize LifeLine service for which they are eligible.¹²⁴

The information from the CHCF-B survey points to a substantial population that finds paying for telephone service, even at LifeLine rates, to be difficult. Furthermore, this population resides in an area where there are fewer alternatives. The Commission should not ignore this evidence regarding the vulnerability of this population to the loss of telephone service. Data from the CHCF-B survey indicates that a substantial portion of LifeLine customers find that it is “hard” to pay their monthly bills.

Table 4.1 Perceived Affordability of Last Month’s Telephone Bill¹²⁵

Affordability	<i>Not a LifeLine subscriber</i>	<i>LifeLine subscriber</i>	Total

¹²¹ Affordability Study, Vol. 2, p. 12.

¹²² Affordability Study, Vol. 2, p. 38.

¹²³ Affordability Study, Volume 2, p. iv.

¹²⁴ Affordability Study, Volume 2, p. 20.

¹²⁵ Affordability Study, Volume 2, Table 4.1.

	%	%	%
Easy	66	49	63
Hard	34	51	37

The fact that 51% of Lifeline subscribers find it hard to afford their last monthly bill suggests that increases in LifeLine rates would pose unacceptable risk to the goals that are expressed in the Moore Act.

One other factor associated with the 2010 Affordability Study and associated Staff Report's assessment of rate increases is the use of the term "tolerable" to characterize an "affordable" change. For example, materials associated with the 2010 Affordability Study state:

[T]here is some tolerance for paying a higher phone bill. On average, customers report being able to afford a 63 percent increase in basic phone service. Thus most customers would seemingly absorb, for example, an imaginable increase of around 10 percent.¹²⁶

Embracing this theme, the Staff Report states:

When asked to report the increase threshold that customers might tolerate while still retaining landline service, LifeLine customers report tolerable increases of around \$10 to \$15 dollars.¹²⁷

These results do not suggest "affordability." Rather, the results illustrate that demand for basic telephone service continues to be highly inelastic. If consumers could easily substitute wireless and VoIP for basic telephone service, as is suggested elsewhere in the Staff Report,¹²⁸ then customers would not "tolerate" an average 63 percent rate increase for Basic Service.¹²⁹ The Affordability Study's conclusion that consumers would "absorb. . .

¹²⁶ Affordability Survey 2010, Volume 2, p. 157. (A more extensive portion of this text appears on page 15 of the Staff Report, however, it is misidentified as coming from page 152 of Volume 2.

¹²⁷ Staff Report to the California Legislature, Affordability of Basic Telephone Service, September 30, 2010, p. 10.

¹²⁸ Staff Report, pp. 21-22.

¹²⁹ In markets where consumers can easily substitute, small changes in price will induce customers to change.

an imaginable increase of around 10 percent” also indicates a lack of ability to easily substitute. Of course, with regard to basic telephone service rate increases, the question becomes, to the customer who is facing the rate increase “what do I give up so that I can continue to pay my rising bill?” For upper income households, the ability to pay a higher rate will come with a lower sacrifice, which is reflected in the much higher “tolerable percentage increases” for upper income groups discussed in the Staff Report. Perhaps by cutting back on a latte once a week a higher income customer could make up the difference. For lower income groups, however, the sacrifice is likely to require confronting a more onerous choice.

VI. CONCLUSION

This detailed and comprehensive set of comments emphasize four main principles: Affordability, Service Quality, Equity and Value. Joint Consumers appreciate the opportunity to provide some “big picture” and more detailed thoughts on the future of LifeLine, but any subsequent decision from the Commission on this issues should prioritize those four core principles. Joint Consumers look forward to working with staff and stakeholders on improving this vital program.

Filed: May 28, 2013

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