

## PUBLIC UTILITIES COMMISSION

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February 22, 2016

VIA ECFS

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: Ex Parte - *In the Matter of Lifeline and Link-Up Reform and Modernization; Lifeline and Link Up*; WC Docket No. 11-42**

Dear Ms. Dortch:

As California Public Utilities Commissioners, we write regarding the Federal Communications Commission's (FCC or the Commission) Second Further Notice of Proposed Rulemaking (*FNPRM*) in the above-referenced docket. The positions we advocate here are consistent with the policies the California Public Utilities Commission (CPUC) has adopted and with the comments the CPUC has filed previously in this docket. As the Commission takes further steps to modernize and reform the Lifeline program, we urge the Commission to refrain from making any changes to Lifeline eligibility criteria and the eligible telecommunications carriers (ETC) review process that would harm low-income consumers or make it more difficult for them to access reliable Lifeline service at affordable rates.

Some carriers have recommended that the Commission eliminate all federal assistance programs that currently qualify for Lifeline, with the exception of the Supplemental Nutrition Assistance Program (SNAP). This proposal would drastically change the eligibility criteria and eliminate all of the following government assistance programs that currently qualify for Lifeline: 1) Medicaid; 2) Supplemental Security Income (SSI); 3) Federal Public Housing Assistance; 4) Low-Income Home Energy Assistance Program (LIHEAP); 5) National School Lunch Program (NSLP); 6) Temporary Assistance for Needy Families; 7) Bureau of Indian Affairs general assistance; 8) Tribally administered Temporary Assistance for needy Families (Tribal TANF); 9) Head start families that meet income standards; 10) the Food Distribution Program on Indian Reservations (FDPIR); and 11) other programs designated by state commissions pursuant to 47 C.F.R. § 54.409(a).<sup>1</sup>

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<sup>1</sup> See 47 C.F.R. § 54.400(j).

In comments, the CPUC opposed eliminating these federal assistance programs from the qualification criteria because doing so would have a significant negative impact on low-income families in California. Medicaid is the leading program<sup>2</sup> and SNAP, SSI, NSLP and LIHEAP are the next most widely used programs that Californians use to qualify for Lifeline.<sup>3</sup> Access to a reliable, affordable phone service is, literally, a *lifeline* for many low-families who struggle to make ends meet by helping them find jobs, access critical health care and social services, and connect with families and friends. For these reasons, we urge the Commission to continue to keep this *lifeline* alive for the many families who rely on it by not limiting or reducing the number of federal assistance programs that qualify for Lifeline.

Some carriers have also recommended that the Commission eliminate the ETC designation process. They propose that the Commission establish a new registration/certification process specifically tailored to the Lifeline program and allow carriers to participate in the program on a voluntary basis. As stated in the CPUC's comments in this docket, the CPUC does not support eliminating the ETC requirements or the state ETC designation review process. The ETC requirements are vital to ensure that carriers have the facilities/technical means to provide Lifeline service, including 911 and E911, throughout a designated service area, and to commit to provide strong consumer protections and service plans that are commensurate with retail offerings. States should continue to have the primary responsibility of reviewing ETC applications and granting designations because states are better suited to determine whether a local carrier has met ETC service and facilities requirements.<sup>4</sup> The CPUC recommended in its comments that the Commission continue to strengthen and improve the ETC designation process and consider the issues and problems that the CPUC reported to the Commission that it has experienced in reviewing the ETC applications. A summary of those issues and problems is attached to this letter.

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<sup>2</sup> See Comments of the California Public Utilities Commission on Second Further Notice of Proposed Rulemaking, pp. 17-23 (filed Sept. 24, 2015).

<sup>3</sup> In addition to these government assistance programs, the California LifeLine Program allows families on Special Supplemental Nutrition Assistance Program for Women, Infants and Children (WIC) and Medi-Cal to qualify for Lifeline pursuant to 47 C.F.R. § 54.409 (a).

<sup>4</sup> See 47 U.S.C. 214(e)(2) – “Designation of eligible telecommunications carriers. A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission.”

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Pursuant to Section 1.1206 of the Commission's rules, a copy of this notice is being filed electronically in the above-captioned docket. Please contact Cindy Yun at (415) 703-1999 or [sjy@cpuc.ca.gov](mailto:sjy@cpuc.ca.gov) for any questions.

Respectfully submitted,

/s/ Catherine J. K. Sandoval

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CATHERINE J. K. SANDOVAL  
Commissioner  
California Public Utilities Commission

/s/ Carla J. Peterman

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CARLA J. PETERMAN  
Commissioner  
California Public Utilities Commission

/s/ Michel P. Florio

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MICHEL P. FLORIO  
Commissioner  
California Public Utilities Commission

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Following is a list of issues that CPUC staff has encountered that the FCC may not have considered in evaluating ETC applications:

- a. Some wireless resellers (Mobile Virtual Network Operators, MVNOs) obtain their minutes from other MVNOs or wireless minutes consolidators. CPUC staff refers to MVNOs that obtain their minutes from other MVNOs or wireless minutes consolidators as “second-string” MVNO’s because those MVNOs have no direct relationship with the facilities-based provider that deploys network infrastructure. These second string MVNOs do not have their own facilities (e.g. deploying antennas or equipment; adjusting nearest cell tower; leasing or building additional cell sites (*See* FCC 05-46 ¶21)). Accordingly, the second string MVNOs cannot influence the deployment of facilities and therefore cannot reasonably comply with the obligation to provide service within their service area to any customer requesting service.
- b. CPUC staff has found inaccurate and misleading statements in FCC-approved compliance plans regarding the technical capability of purported MVNO subject matter experts (e.g. one company represented 80 years combined experience, but only one individual was identified as having any telecommunications experience).
- c. Through due diligence reviews of ETC corporate officers and affiliated entities, CPUC staff found individuals that are not “good players” and may cause a risk to the federal Lifeline program based on prior court findings of improper/illegal behavior.
- d. CPUC staff has observed that many ETC applicants that are MVNOs do not offer retail service in California when they are applying for ETC designation. CPUC staff does not consider these applicants’ service offerings to comply with the FCC’s definition of Lifeline service, which is a retail offering to which the federal support is applied (*See* 47 C.F.R. § 54.401(a)(1)). This calls into question the underlying motivation of the ETC applicant.
- e. ETCs serve a community of Lifeline customers pursuant to a host of rules and regulations, which limit the ETC’s ability to make a profit. In contrast, it is less expensive to offer straight retail services than it is to offer Lifeline because of the lack of rules and compliance obligations. This raises a question as to why a carrier would choose to be a LifeLine-only ETC and not offer service on a retail basis to all customers with the ability to pay. Offering service to all customers with the ability to pay is

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the essence of being a common carrier. The Lifeline-only ETC business model runs counter to the very concept of being a common carrier, and does not comport with the definition of “Lifeline” service, which is a retail offering to which the federal subsidy is applied.

- f. Enhanced Lifeline for Tribal customers provides a supplemental subsidy of \$25/month in addition to the regular Lifeline subsidy of \$9.25, but in some cases the company (particularly an MVNO) does not incur additional costs. Some tribal lands in California are near or in large cities or towns, and it is not reasonable to give the Enhanced Lifeline support where there is no additional cost to providing service to the eligible tribal customers. For example, there is tribal land in Redding, California, across Interstate 5 from the Redding International airport. Serving eligible tribal members in this area does not impose on the service provider additional costs and there is no basis for additional Enhanced Lifeline support in this area. In more rural areas, the tribal members obtain service in the same place as non-tribal Lifeline customers – Walmart, Target, etc., with no additional cost to serving these eligible tribal members. In other tribal areas, such as Yurok and Karuk tribal regions in Northern California, they have no cellular service and have limited to no landline phone service. Tribal Lifeline has not been sufficient to encourage buildout in many tribal regions and must be coordinated with other programs to increase infrastructure access.
- g. CPUC staff reviews new technologies and service offerings to ensure that they are reliable and can reach emergency services. For example, more than once we have rejected plans with wireless local loop service that did not reliably identify caller location when calling E911 and did not reliably complete calls.
- h. CPUC staff evaluates the cost of proposed Lifeline service plans to comparable retail offerings and rejects Lifeline plans that cost a Lifeline customer more than comparable retail plans.
- i. CPUC staff ensures compliance with FCC consumer protection rules. For example, one MVNO did not comply with CTIA handset unlocking policies, and staff withheld ETC designation approval until the company was in compliance.
- j. Considerable ambiguity exists in federal rules and practices regarding Broadband Internet Access Service (BIAS) providers and Voice over Internet Protocol (VoIP) providers. Consequently, when these types of

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providers request ETC designation, the CPUC staff, through the CPUC Legal Division, has informed BIAS and VoIP ETC applicants in writing that the CPUC does not exercise jurisdiction over these services.<sup>1</sup> Accordingly, CPUC staff informed these service providers to apply for ETC designation directly with the FCC. Prior to release of the FCC's *Open Internet Order*<sup>2</sup> the FCC did not classify BIAS providers as common carriers under Title II of the Communications Act. Notwithstanding the prior classification of BIAS under Title I, the FCC allowed BIAS providers to participate in Federal high-cost USF programs. Similarly, the FCC has not classified Interconnected Voice over Internet Protocol (VoIP) service as a telecommunications service or the providers as common carriers, yet it allows these companies to apply for ETC designation as Lifeline providers.

In evaluating ETC applications, CPUC staff also complements the FCC's compliance review for wireless resellers in the following ways:

1) States have significant local information about carriers. The CPUC's Communications Division (CD) staff performs in-depth research and analysis of ETC designation requests to:

- ◆ Review company behavior in California and other states. To comply with the definition of LifeLine, ETCs should have retail plans that the LifeLine discount is applied to. CD staff examines retail offerings and local pricing plans.
- ◆ Probe the carrier claims, applying research methods to verify the claims of the applicant.
- ◆ Use the data request process to obtain more detailed information on corporate structure and affiliated companies, financial and technical capability, network and facilities, and association with other entities or individuals. CPUC staff has found instances where the ETC applicant did not disclosed affiliates, other states' legal actions against companies and individuals, and dubious affinity marketing of products unrelated to LifeLine service (e.g. acai berry colon cleanse).

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<sup>1</sup> In addition, section 710 of the California Public Utilities Code severely limits the CPUC's authority over VoIP and IP-enabled services.

<sup>2</sup> *Report and Order on Remand, Declaratory Ruling, and Order*, FCC 15-24 (rel. Mar. 12, 2015), *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28.

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- ◆ Query other states' ETC coordinators to find how the carrier is performing in those states. The FCC's fraud task force has contacted the CPUC's ETC group to learn about carrier behavior.
- ◆ Verify state coverage maps for wireless and wireline carriers' service areas.

2) States can provide a higher level of coordination between the federal LifeLine and state LifeLine programs. The California LifeLine program has complementary, but very specific, rules for its state program. States are aware of local language requirements and ensure that carriers provide information in relevant local languages. California has extensive research in language proficiency and ensures that programs like California LifeLine are marketed in the proper language.

3) CPUC staff can better ensure carriers comply with local law, including verifying the following:

- ◆ Timely payment of CPUC universal service programs surcharges and CPUC user fees.
- ◆ Certificate of Public Convenience and Necessity (CPCN) registration conditions and Wireless Registration (WIR) status.
- ◆ The relevance of any open CPUC proceedings on a carrier's ability to function as an ETC.
- ◆ Potential COLR obligations.

4) CPUC staff has information on tribes in California through work with Small local exchange carriers and has relationships with the Tribes through other work (e.g. California Advanced Services Fund Broadband Consortia, California Teleconnect Fund and other programs) that is used to evaluate ETC requests to receive Enhanced federal support.

5) CPUC updates state rules for evaluating ETC designation requests on its own schedule. Two examples are the recent decisions regarding the California LifeLine proceedings (state program) and the recent conditional acceptance of a carrier which did not comply with federal rules for unlocking of handsets.