

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Defining Primary Lines

CC Docket No. 97-181

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429 of the Rules of Practice and Procedure of the Federal Communications Commission (“FCC”), 47 C.F.R. § 1.429, the People of the State of California and the California Public Utilities Commission (“California”) respectfully petition for reconsideration of the FCC’s Report and Order in In the Matter of Defining Primary Lines, CC Docket No. 97-181, released March 10, 1999 (“Primary Lines Order”). The FCC’s adoption of a definition of primary residential lines based on location is unreasonable and unduly penalizes multi-family households who reside together for economic reasons from obtaining affordable telephone service. At the same time, the FCC’s rejection of a definition based on subscriber account is without factual basis and contrary to the federal universal service goals that underlie residential primary lines. The FCC should therefore reconsider its order, and adopt a definition of primary residential lines based on subscriber or billing account.

I. BACKGROUND

Under established practice, the FCC has permitted the subscriber line charge for primary residential lines to be lower than the charge for secondary lines in order to promote universal service. Currently, the subscriber line charge for primary residential

lines is \$3.50, and the charge for secondary residential lines is \$6.07. Primary Line Order, ¶ 8. Until the issuance of its order, the FCC had never defined what constituted a primary residential line.

In California, primary residential lines have been defined on the basis of household. Under this definition, unrelated but separate households who reside together at one location for financial reasons have each been able to obtain a primary line at the lower rate. The use of a definition based on household has proved particularly beneficial to California urban customers who face some of the highest housing prices in the nation. Because of the scarcity of affordable housing for low-income customers, many of these customers are forced to reside with other customers at one location. California's definition of primary residential lines based on household thus recognizes the practical necessity of multi-family households resident in one location, and furthers the goal of ensuring that telephone service is universally available – i.e., affordable and accessible to the most financially needy customers.

In its Primary Line Order, the FCC rejected the definition of primary residential lines based on household. It also rejected a definition based on subscriber or billed account. Instead, the FCC adopted a definition based on location as the least administratively burdensome. In particular, the FCC stated that existing service records maintained by carriers would contain the information necessary for carriers to identify the status of lines. Primary Line Order, ¶ 31. The FCC also maintained that such a definition would “minimize[] privacy concerns.” *Id.* And, according to the FCC, carrier records are “relatively easy to verify and reasonably immune from gaming or

misreporting by customers, willful or otherwise.” Id. The FCC further claimed that “[g]enerally, [] only a single residential connection is necessary to permit all residents at a particular service location complete access to telecommunications and information services, including access to emergency services.” Primary Line Order, ¶ 16.

In contrast, the FCC claimed that a primary residential line definition based on household was administratively burdensome and invasive of customer privacy. Primary Line Order, ¶¶ 14-15, 21. The FCC also believed that a definition based on subscriber account would encourage customers to “game such a definition” by enabling a single subscriber to have more than one account under the same name. Primary Line Order, ¶ 22. The FCC, however, recognized that a subscriber account-based definition would allow multiple subscribers at one location, such as roommates with individual accounts, to each obtain a primary line at the lower rate. Id. The FCC also recognized that an account-based definition is unambiguous, compatible with carriers’ existing service records, and would eliminate the need to check whether multiple subscribers are receiving lines at the same location. Id.

California does not herein contest the reasons given by the FCC for its rejection of a definition of a primary residential line based on household. California believes that a subscriber account-based definition would also advance the fundamental universal service goals that a residential primary line rate is designed to achieve. However, the FCC’s rejection of a definition based on subscriber account, and its adoption of a location-based definition undermines universal service goals. California thus submits that the FCC’s

decision in its Primary Line Order was arbitrary, capricious and without reasoned basis.

Accordingly, reconsideration is warranted.

II. ARGUMENT

A. The Rejection of a Definition of a Residential Primary Line Based on Subscriber Account Was Not Based on Reasoned Decisionmaking

The FCC concedes that the administrative burdens attendant to a definition of primary residential line based on household do not arise under a definition based on subscriber account. Unlike a household-based definition which “present[s] carriers, consumers and the [FCC] with the ambiguous and administratively burdensome task of determining which subscribers are part of which households,” Primary Line Order, ¶ 14, a subscriber-based definition is “unambiguous” and “compatible with most carriers’ existing service records.” Primary Line Order, ¶ 22. And unlike a household-based definition, a subscriber-based definition raises no privacy concerns, as the existing service records maintained by the carrier identify the subscriber of service. *Id.* No further disclosures or other “invasive information” gathering would be required. The FCC further conceded that a subscriber account-based definition would “eliminate the need to check whether multiple subscribers are receiving lines at the same location.” *Id.*, ¶ 22. Thus, unlike a household-based definition, multiple subscribers at a single location would be easily identified by the carrier without the need for self-certification.

The FCC thus itself recognized that a subscriber account-based definition of residential primary lines would be administratively simple, unambiguous, and respectful of customer privacy. In addition, such a definition would further the goals of universal service by enabling multiple subscribers in a single location to obtain affordable service.

Nevertheless, the FCC has rejected a subscriber account-based definition for residential primary lines. The FCC cites three reasons. The principal reason seems to be that an account-based definition enables a subscriber “to game such a definition by obtaining multiple lines under different account names.” Primary Line Order, ¶ 22. The FCC also notes that some carriers allow customers to maintain separate accounts under the same name, and hence obtain more than one primary line. *Id.* Finally, the FCC claims that allowing more than one primary line per location will “excessively shift costs onto other subscribers.” *Id.*

None of these reasons withstand scrutiny. First, there is no record basis to conclude that consumer fraud or gaming will result under an account-based definition. As the FCC stated in its Access Charge Order,¹ with the exception of Ameritech and U.S. West, the industry practice of all other price-cap LECs is to identify residential primary lines by account. Access Charge Order, ¶ 36.² In that order, neither the carriers nor the FCC mention, let alone suggest, that consumer gaming is a problem with this definition. To the contrary, the FCC describes at length and with approval Bell Atlantic’s successful application of an account-based definition. The FCC thus implicitly concedes not only that an account-based definition of a residential primary line is administratively feasible, but that such a definition does not invite “customer gaming.” And, other than speculation, there is nothing in this record to suggest otherwise. The fear that a few might try to outsmart the system while the vast majority will not is simply not an

¹ In the Matter of Tariffs Implementing Access Charge Reform, CC Docket No. 97-250, FCC 98-106, Memorandum Opinion and Order (released June 1, 1998).

² A number of other non-price cap carriers also identify primary residential lines by account. See Primary

adequate reason to reject a definition that is otherwise unambiguous, administratively feasible, and advances universal service goals.

Second, the FCC's concern that some carriers enable subscribers to obtain multiple primary lines under the same name at the same location has previously been addressed by the FCC. In fact, the FCC expressly recognized in its Access Charge Order that an account-based definition was being applied by certain carriers in a manner that prevented this practice.

Specifically, in its Access Charge Order, the FCC began by stating that the "pure account" methodology used by the SBC Companies, which allows a subscriber to obtain multiple primary lines at one location, is "patently unreasonable." Access Charge Order, ¶ 38. As explained by the FCC, a pure account methodology "fails to identify [as non-primary] additional residential lines even when the lines are billed to the same name and location." The FCC, however, went on to cite with approval Bell Atlantic's application of an account-based definition which "counted lines at a particular location as primary if they were billed to separate accounts. If one account was associated with more than one line, the additional lines were classified as non-primary. Bell Atlantic went further, however, and examined the subscriber name and address for each account. If it found multiple accounts with the same subscriber name and address, it treated one line in those accounts as primary and the rest as non-primary."³

Line Order, ¶ 22 n.50.

³ In footnote 57, the FCC explained how Bell Atlantic used billing records to ascertain the number of lines billed to the same customer at a single service address. Access Charge Order, ¶ 36 n.57.

The FCC then concluded that “if subscribers in a study area with multiple lines consolidate those lines on one bill or to a single account, this method . . . will identify most of a subscriber’s additional lines at a single location as non-primary and, therefore, can be considered reasonable at least until our [primary line] rulemaking proceeding is complete.” Id.

In short, the FCC has previously found that an account-based definition of primary residential lines does not automatically enable a subscriber to obtain multiple primary lines. Bell Atlantic’s practice, for one, prevents that result, and does so without any undue administrative burden. In this proceeding, there is simply no record evidence to contradict the FCC’s previous findings, or otherwise support the conclusory statements in the instant order.

The last reason cited by the FCC—that an account-based definition of primary lines will “excessively shift[] costs onto other subscribers” —is simply without record basis. Primary Line Order, ¶ 22. There is neither a quantification of the number of multiple subscriber households that would be legitimately eligible for more than one primary line, nor a quantification of the “excessive” costs that multiple subscriber households would “shift onto other customers.” Without such information, the FCC cannot reasonably conclude that costs will be excessive or otherwise unduly burden other customers.

In sum, the FCC’s rejection of an account-based definition residential primary lines is arbitrary and unreasonable.

B. The FCC's Adoption of a Definition of Residential Primary Line Based on Location Was Based on Fundamentally Flawed Reasoning

The FCC recognizes that an account-based definition of residential primary lines shares many of the benefits of a location-based definition: both are administratively simple, both are unambiguous, and both respect customer privacy. However, as discussed above, and without rational basis, the FCC has rejected an account-based definition in favor of a location-based definition. The FCC's reasoning is fundamentally flawed.

First, the FCC claims that a location-based definition is “compatible with existing service records” and hence, is administratively simple. Primary Line Order, ¶ 22. The FCC is mistaken. Existing service records identify subscribers by name and then by billing address. The billing address may or may not be the same as the service address. Thus, in order to apply a location-based definition of primary lines, a carrier would need to look up the name of the subscriber, and then match the name with a particular service address. The expenditure of time and resources to undertake this task undisputably will impose additional administrative burdens on carriers, many of whom, by the FCC's own concession, have been applying an account-based definition. Access Charge Order, ¶ 36. Indeed, the FCC itself appears to recognize this fact, but dismissively states that “sorting records by service location should not be difficult.” Primary Line Order, ¶ 22. At a minimum, the FCC cannot reasonably conclude that a location-based definition of residential primary lines is superior to an account-based definition when the FCC has not

developed any record of the administrative costs on carriers of “sorting records by service location.”⁴

Second, while the FCC accords substantial weight to the fact that a customer’s service location is “not something the customer can easily alter or misreport to obtain the primary-line rate,” Primary Line Order, ¶ 15, the FCC unreasonably attributes little weight to the fact that multiple subscribers residing at a single location are penalized by being denied a primary line rate. In response, the FCC states that “[g]enerally ... only a single residential connection is necessary to permit all residents at a particular service location complete access to telecommunications and information services, including access to emergency services.” Primary Line Order, ¶ 16 and n.37. The FCC cites the Recommended Decision of the Federal-State Joint Board on Universal Service (“Recommended Decision”) for that statement, but that decision says something quite different. *Id.*, n.37.

At issue before the Joint Board was how to determine which residential services should be designated for federal universal service support. In deciding that issue, however, the Joint Board repeatedly spoke in terms of services provided by a connection to “a household,” and not services to a particular location. Specifically, the Joint Board stated that “support for a single residential connection will permit *a household* complete access to telecommunications and information services. All supported services, including access to emergency services, would be available to *a household* by providing support for this residential connection.” Recommended Decision, ¶ 89 (emphasis added).

⁴ To be sure, the administrative burden on carriers was described in detail as a basis for rejecting a primary line definition based on households. Primary Line Order, ¶ 15.

The Joint Board was further confronted with the issue of whether to permit federal universal service support for a second connection. Once again, speaking in terms of service to a household, and not location, the Joint Board stated that “[s]upport for a second connection is not necessary for *a household* to have the required ‘access’ to telecommunications and information services.” *Id.* (emphasis added).

Significantly, the Joint Board addressed the issue of federally-supported service to multiple households that reside in a single location. In resolving this issue, the Joint Board made clear that each customer’s initial connection was entitled to support. *Id.* (support should be given “for designated services carried on the initial connection to a customer’s primary residence.”) The Joint Board expressly responded to GTE’s concern that carriers might have difficulty determining whether a second connection to a residence (i.e., single location) is a “*household’s* second connection or whether the residence is shared by two or more *households*.” Recommended Decision, ¶ 89 (emphasis added). The Joint Board answered that “carriers can use subscriber billing information to determine the number of *households* at a given address,” *id.* (emphasis added), an administratively feasible solution.

In short, when the FCC’s reference to the Joint Board’s Recommended Decision is examined in full, it is plain that the Joint Board intended that each *household* of a multi-household residence would be entitled to federally supported services by eligible carriers so as “to permit a *household* complete access to telecommunications and information services.” Recommended Decision, ¶ 89 (emphasis added). The Joint Board did not say, as the Primary Line Order does, that only a single residential connection to a particular

location is all that is necessary to give access to services. Compare Recommended Decision, ¶ 89 (“a single residential connection will permit a household complete access to telecommunications and information services.”) Indeed, the term “location” is not even mentioned by the Joint Board.

Finally, aside from the fact that the Joint Board’s statement contradicts the FCC, there is no basis for the FCC to assume that residents in a multi-household residence will have access to services. One can well imagine a house shared by unrelated residents, each of whom has a separate telephone line in his or her bedroom which remains locked when the resident is absent, or just wishes to be alone. In that typical circumstance, residents in a single location would not have access to the primary line, a result which thwarts the universal service goal of affordable service available to all.

III. CONCLUSION

For the reasons stated, California respectfully requests that the FCC reconsider its Primary Line Order which rejects a primary line definition based on subscriber account.

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Such a definition is the only one that is both administratively feasible and consistent with the universal service goals that primary line rates seek to advance.

Respectfully submitted,

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May 4, 1999

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon all known parties of record by mailing, by first-class mail, postage prepaid, a copy thereof properly addressed to each party.

Dated at San Francisco, California, this 4th day of May, 1999.

/s/ ELLEN S. LEVINE

ELLEN S. LEVINE