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TO ALL PARTIES IN RULEMAKING 06-05-028

The revised proposed decision of Commissioner Chong is enclosed. The revisions clarify the issues discussed at the March 6, 2009 workshop regarding the initial proposed decision mailed February 11, 2009. The schedule for filing comments on the proposed decision was stayed by assigned Commissioner ruling on March 12, 2009. Comments are now due on April 8, 2009, and reply comments on April 13, 2009. The revised proposed decision is on the Commission's April 16, 2009 meeting agenda.

When the Commission acts on the revised proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Except as to the comment schedule adopted above, parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Bushey at [mab@cpuc.ca.gov](mailto:mab@cpuc.ca.gov), Commissioner Chong's Chief of Staff Robert Haga at [rwh@cpuc.ca.gov](mailto:rwh@cpuc.ca.gov), and assigned Commissioner Chong. The current service list for this proceeding is available on the Commission's website at [www.cpuc.ca.gov](http://www.cpuc.ca.gov).

/s/ JANET A. ECONOME for  
Karen V. Clopton, Chief  
Administrative Law Judge

KVC:tcg

Attachment

Decision REVISED PROPOSED DECISION OF COMMISSIONER CHONG  
(Mailed 4/3/2009)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking on the Commission's Own  
Motion to Review the  
Telecommunications Public Policy  
Programs.

Rulemaking 06-05-028  
(Filed May 25, 2006)

**DECISION ADOPTING FORWARD LOOKING MODIFICATIONS  
TO THE MOORE UNIVERSAL TELEPHONE SERVICE ACT**

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**DECISION ADOPTING FORWARD LOOKING MODIFICATIONS  
TO THE MOORE UNIVERSAL TELEPHONE SERVICE ACT****1. Summary**

In 2006, the Commission opened this Rulemaking to evaluate California's universal service public policy programs in light of the competitive forces that had irrevocably changed how consumers purchase communication services. We recognized that "business as usual" monopoly regulatory practices around traditional voice telephone were not sustainable in a competitive communication marketplace with various types of carriers with different technologies competing. Through this Rulemaking, the Commission set out to reform California LifeLine in order to ensure high-quality communication services were affordable and widely available to all.

This decision recognizes significant technological and regulatory changes in the telecommunications industry and the flexibility of the statutory structure underlying the Moore Universal Telephone Service Act,<sup>1</sup> which we now refer to as the California LifeLine Program (California LifeLine or LifeLine).<sup>2</sup>

The decision reviews the current state of California LifeLine including how, absent change, the fund will grow by more than 60% to almost \$500 million over the next few years. The decision recognizes that the current methodology is not in the best long-term interest of consumers and reviews the options for change. The decision "de-links" California LifeLine from the AT&T basic rate structure in order to ensure ongoing compliance with Section 874 of the Public

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<sup>1</sup> The formal name specified in Pub. Util. Code § 871 for the program which has come to be known as the "California LifeLine Program."

<sup>2</sup> The entire program is established in Pub. Util. Code §§ 871-884.

Utilities Code, and determines that a Specific Support methodology is the best option to continue to meet the goals of the Moore Act and our overall universal service goals.

The decision sets a Specific Support discount at 55 percent of the highest basic rate of the state's communications companies without regard to the telecommunication provider or technology of service selected. This has the advantage of providing each customer the same support amount and may provide greater flexibility to low-income customers to select services beyond basic residential landline phone service, including voice services from cable providers or from wireless communications services. Such an approach acknowledges the range of providers of voice communications services beyond traditional landline telephones, and enhances technology neutrality by allowing a LifeLine customer to choose the provider that best meets his or her unique needs. The initial California LifeLine discount under the revised methodology will be \$12.20 effective on January 1, 2010.

The decision also expands the LifeLine program to include data services for consumers that receive wireless equipment through the CPUC's Deaf and Disabled Telecommunications Program (DDTP). Customers who meet the eligibility requirements for both the DDTP and California LifeLine programs can apply their California Lifeline discount to data services provided by carriers.

The decision clarifies that wireless carriers may be reimbursed by California LifeLine for providing discounted service to customers, and modifies the income-based criteria to match the low income energy program (CARE) income-based criteria on an interim basis pending the outcome of the review the CPUC is conducting of the interim CARE income-based criteria. Finally, the

decision eliminates extra payments to carriers for administration, bad debt, and to make up for forgone federal support.

## **2. Background**

On April 14, 2006, the Staff of the Commission's Telecommunications<sup>3</sup> and Strategic Planning<sup>4</sup> Divisions published a comprehensive report on the Public Policy Programs, which described each program and the need for review. On April 25 and 26 2006, the Assigned Commissioner convened two workshops to take comment from interested parties on the scope and objectives of this proceeding.<sup>5</sup>

On May 25, 2006, the Commission opened this rulemaking to conduct a comprehensive review of its Telecommunications Public Policy Programs – California LifeLine, Payphone Programs,<sup>6</sup> Deaf and Disabled Telecommunications Program (DDTP),<sup>7</sup> and California Teleconnect Fund (CTF).<sup>8</sup>

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<sup>3</sup> Now known as the Communications Division.

<sup>4</sup> Now known as the Policy & Planning Division.

<sup>5</sup> The workshops occurred on April 25 and 26, 2006, and were well-attended.

<sup>6</sup> The Commission created two payphone programs in a series of decisions during the late 1980s and 1990s. The Public Policy Payphone Program funds payphones justified for public policy but not economic reasons, and the Enforcement Program ensures that payphone providers comply with applicable law and regulations. The Legislature established the Payphone Service Providers Committee and a fund administered by the State Controller beginning on October 1, 2001.

<sup>7</sup> The Deaf and Disabled Telecommunications Program was established by the Commission to comply with Pub. Util. Code §§ 2881-2881.2. The Legislature updated the Commission's oversight of the program with Pub. Util. Code § 278, which formalized the advisory board and created a fund to be overseen by the state Controller.

<sup>8</sup> The Commission established the California Teleconnect Fund in Decision (D.) 96-10-066 to provide discounts on certain telecommunications services to schools,

*Footnote continued on next page*

To initiate the formal review, the Commission posed a series of questions regarding these programs and set filing dates for initial comments and proposals as well as reply comments. The Commission also stated that at least three public participation hearings would be held at locations throughout the state.

Initial comments and proposals were filed on July 28, 2006,<sup>9</sup> with reply comments following on September 15, 2006. Public Participation Hearings were held in San Diego,<sup>10</sup> Oxnard,<sup>11</sup> and Sacramento.<sup>12</sup> Comments focused on changes needed to the LifeLine program, including the affordability of telephone service and the need to include wireless services in the LifeLine program. Many LifeLine consumers also wanted to purchase additional communication services without losing the discount.

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libraries, certain medical clinics, and specified community-based organizations.  
68 CPUC2d 524.

<sup>9</sup> The following parties submitted initial comments: Assistive Technology Law Center, Pacific Bell Telephone Company dba AT&T California, California Cable and Telecommunication Association, California Coalition of Agencies Serving the Deaf and Hard of Hearing, California Communications Access Foundation, California Council of the Blind, California Payphone Association, California Community Technology Policy Group and Latino Issues Forum, Cingular Wireless, Citizens/Frontier Telephone, Cox California, Cricket Communications, Disability Rights Advocates, Division of Ratepayer Advocates, Equipment Program Advisory Committee, FONES4All, Greenlining Institute, 14 Small Local Exchange Carriers, SureWest Telephone, Telecommunications Access for the Deaf and Disabled Advisory Committee, The Utility Reform Network and National Consumer Law Center, Verizon California Inc., Verizon Wireless, Winston Ching, and the World Institute on Disabilities.

<sup>10</sup> September 25, 2006. *See* R.06-05-028 Public Participation Hearings Volume 1.

<sup>11</sup> October 26, 2006. *See* R.06-05-028 Public Participation Hearings Volume 2.

<sup>12</sup> November 3, 2006. *See* R.06-05-028 Public Participation Hearings Volume 3.



On July 13, 2007, the assigned Commissioner and Administrative Law Judge issued a ruling and scoping memo to define the specific issues to be addressed for each program.

The ruling determined that while new communications services, not currently subject to surcharges to fund the public policy programs, such as internet-based telephone service, may undermine the funding mechanism as customers migrate to other providers, no significant, near-term threat to the current intrastate surcharge methodology had been identified.<sup>13</sup> Accordingly, the ruling concluded the prudent course was to monitor any impacts to our funding mechanism, as well as potential changes on the federal level and by other states.<sup>14</sup>

The ruling noted that the Deaf and Disabled Telecommunications Program is currently implementing a pilot project that will bring wireless devices to participants to encourage increased mobility for users. The pilot project is limited to persons also eligible for the LifeLine program.<sup>15</sup> The ruling asked the Communications Division to monitor and evaluate the pilot program and bring forward any proposals for permanent implementation.<sup>16</sup>

The assigned Commissioner also sought a collaborative process to further develop implementation issues related to the proposals in the multiple sets of

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<sup>13</sup> Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding, at page 3 (July 13, 2007) (*Scoping Memo*).

<sup>14</sup> *Id.*

<sup>15</sup> DDTP Pilot Program Initiated to Subsidize Use of Wireless Devices by the Deaf and Disabled Community, Resolution T-17089, May 3, 2007.

<sup>16</sup> *Scoping Memo* at pages 7-8.

comments. A workshop focused on General Order (GO) 153 was convened on August 15, 2007.<sup>17</sup> A summary of the extensive input provided in this Rulemaking can be found at Appendix A.

On May 12, 2008, the assigned Commissioner mailed her draft decision resolving the issues identified with the CTF, Payphone, and DDTP programs. Comments were filed on June 2, 2008, and reply comments on June 9, 2008. On June 12, 2008, the Commission issued D.08-06-020, addressing these programs. In summary, the decision addressed four of the five Telecommunications Public Policy Programs at issue in this proceeding. The California Teleconnect Fund was expanded to include community colleges, with an initial monetary cap of \$7.2 million annually. An Office of CTF Outreach and Assistance was established. The CTF was made more competitively and technologically neutral. We further removed the tariff requirements related to CTF for non-rate-of-return carriers, and finally, ensured that all participants in the California Telehealth Network are eligible to receive CTF discounts. The Payphone Enforcement Program was combined with our existing enforcement efforts, and a Public Policy Payphone Program was reestablished, with the Executive Director delegated the task of establishing the most appropriate surcharge mechanism, including utilizing an existing program. The on-going wireless equipment pilot for the Deaf and Disabled Telecommunications Program would continue to be monitored for further action. This decision concluded the Commission's review of these four public policy programs, leaving only the California LifeLine Program for consideration by the Commission.

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<sup>17</sup> Staff Report on August 15, 2007 Workshop in Rulemaking on the Commission's Own Motion to Review the Telecommunications Public Policy Programs, R.06-05-028.

The rulemaking has considered the legal and policy issues related to three alternatives put forth – set price, specific support amount, and making no changes, resulting in a floating subsidy. The three alternatives are discussed below.

Today’s decision addresses the California LifeLine Program.<sup>18</sup>

### **3. Program History, and Technological and Regulatory Change**

The Legislature adopted the Moore Universal Telephone Service Act in 1983 to address the expected increases in local telephone service charges due to the breakup of the AT&T Bell system into long-distance and local service carriers.<sup>19</sup> Until January 1, 1984, the AT&T Bell system was a nation-wide monopoly provider of long distance and, in many areas, local telephone service. On that date, AT&T was divested of its local operating companies to allow increased competition in the long-distance market.<sup>20</sup>

Until divestiture, AT&T’s rate structure allowed higher cost local service and discounted service to low-income customers<sup>21</sup> to be supported by long

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<sup>18</sup> See, The Moore Universal Telephone Service Act, Pub. Util. Code §§ 871–884.

<sup>19</sup> Re Moore Universal Telephone Service Act, 14 CPUC2d 616, 617 (D.84-04-053). In 1983, the Moore Universal Telephone Service Act was implemented (Pub. Util. Code Section 871, Stats. 1987, Chap. 163, Sec. 2) with the goal of offering high quality basic telephone service at affordable rates to the greatest number of citizens. While the CPUC had implemented a precursor rate subsidy program through general rate cases of the telephone companies, the visionary leadership of Assemblywoman Gwen Moore led the Commission to implement the first explicit universal service policy for California through D.84-04-053 and D.84-11-028.

<sup>20</sup> *Id.* at 618.

<sup>21</sup> See Re General Telephone Company (1969) 69 CPUC 601, 676, See also Re Pacific Telephone & Telegraph (1969) 69 CPUC 55, 83. The Commission modified the

*Footnote continued on next page*

distance service charges. With the corporate separation of these components of telephone service, regulators expected that customers would be required to absorb a higher portion of actual local service costs through higher basic monthly service rates, which would present a serious financial obstacle for many customers.<sup>22</sup>

The purpose of the Moore Universal Service Act was to provide rate relief for customers “who are most vulnerable to the rising costs of phone service,” including “the needy, the elderly, the handicapped or infirm, and rural residents.”<sup>23</sup> The Commission noted that it had “many options available to it under the Moore Act for setting LifeLine rates,” and then adopted a 50% discount on the otherwise applicable residential service rate.<sup>24</sup>

In 1995, the Commission initiated revisions to its Universal Service rules, including the LifeLine program, to address the then-new competition in the provision of local exchange service.<sup>25</sup> The Commission first set forth the two essential elements of universal service:

- a minimum level of telecommunications services is available to virtually everyone in the state, i.e., there is ubiquitous presence of telecommunications services throughout the state, and

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California LifeLine service from 1969 to 1984 through general rate cases of the telephone companies.

<sup>22</sup> D.84-04-053, 14 CPUC2d at 618.

<sup>23</sup> *Id.* at 622-623.

<sup>24</sup> *Id.* at 623, citing Pub. Util. Code § 874.

<sup>25</sup> Re Universal Service and Compliance with the Mandates of Assembly Bill 3643, 60 CPUC2d 536 (D.95-07-050).

- the rates for such services remain reasonable.<sup>26</sup>

As a prelude to setting forth the changes necessary to the program to accommodate increasing competition, the Commission summarized the evolution of universal service:

In simplest terms, universal service is the idea that all people have access to those telecommunications services necessary for participation in contemporary society. Most people would agree that this means a telephone in every home. Dispute may arise over whether the telephone should, as part of universal service, do more than the bare minimum of provide dial tone, and provide access to free operator and emergency services.

Universal service has evolved over time. In the early days of the industry, universal service meant access to a telephone, perhaps not even in one's home. It then evolved to mean a phone in one's home, but access to a party line. Eventually, it evolved to mean a single party line in the home.<sup>27</sup>

As the concepts of universal service evolve, they often become statutory requirements, for example, Pub. Util. Code § 878 limits a LifeLine telephone subscriber to one "single party line" reflecting an era where multiple party lines were still in use.

The Commission's regulation of local exchange carriers has also evolved over the 20 years since the Moore Act was adopted by the Legislature and implemented by the Commission. In 1989, this Commission undertook a comprehensive re-evaluation of the regulatory framework for local exchange

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<sup>26</sup> *Id.* at page 546.

<sup>27</sup> *Id.* at pages 546-547. See also 47 U.S.C. § 254(c)(1), D.07-09-020 *mimeo.* at page 63.

carriers. The Commission noted that its basic approach to regulating telecommunications carriers – traditional cost-of-service ratemaking – had changed little since its beginning. The Commission instead adopted an incentive-based regulatory framework which, rather than solely focusing on costs, used a price cap indexing mechanism to create incentives for efficiency by the carriers.<sup>28</sup> In this way, the Commission reasoned, shareholders would have a strong profit driven motive to ensure efficient operations, with cost savings shared with customers. This approach came to be known as the New Regulatory Framework (or “NRF”) and led to an extensive regulatory history.<sup>29</sup>

In 2005 the Commission undertook its most recent comprehensive review of its regulation of local exchange carriers. On August 30, 2006, the Commission adopted D.06-08-030 which further changed rate regulation for California’s four largest incumbent local exchange carriers – Pacific Bell, Verizon, SureWest Telephone, and Citizens Telecommunications Company of California dba Frontier Telecommunications Company of California – by adopting a Uniform Regulatory Framework.<sup>30</sup> With the objective of symmetrically regulating all providers of telecommunications service, the decision eliminated all retail price

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<sup>28</sup> Re Alternative Regulatory Frameworks for Local Exchange Carriers, 33 CPUC2d 43, 59-61 (D.89-10-002).

<sup>29</sup> See, e.g., Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated. Order Instituting Investigation on the Commission’s Own Motion to Assess and Revise the New Regulatory Framework for Pacific Bell and Verizon California Incorporated, D.02-10-020 (“NRF IV”).

<sup>30</sup> Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the Regulation of Telecommunications Utilities, D.06-08-030.

regulations for all business services.<sup>31</sup> Retail price regulation for residential service, with the exception of basic service, was also eliminated.<sup>32</sup> The existing price caps on basic residential service were to remain in place until January 1, 2009, after which these four carriers would have unlimited authority to set prices for basic residential service.<sup>33</sup> Geographically averaged residential basic service rates would no longer be required.<sup>34</sup>

The decision also relaxed the procedural requirements for these four incumbent local exchange carriers when offering new services and filing tariffs.<sup>35</sup> These carriers can now provide new services with full pricing flexibility. The carriers were also authorized to allow all tariffs to go into effect on a same day filing, but any tariffs that impose price increases or service restrictions require a 30-day advance notice to all affected customers.

The decision continued price regulation for basic residential telephone service until January 1, 2009, consistent with the intent of the California Legislature as expressed in the Digital Infrastructure and Video Competition Act (DIVCA).<sup>36</sup> Subsequently as part of the High Cost Fund-B review, the Commission on September 18, 2008 extended pricing restrictions for basic

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<sup>31</sup> *Id.* at Ordering Paragraph 5.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at Ordering Paragraph 3. The Commission subsequently extended rate caps until January 1, 2011 in D.08-09-042.

<sup>34</sup> D.06-08-030 at Ordering Paragraph 1 as modified by D.08-09-042 at Finding of Fact 30 and Ordering Paragraph 4.

<sup>35</sup> D.06-08-030 at Ordering Paragraph 8. See also D.07-09-018.

<sup>36</sup> DIVCA is the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), Assembly Bill 2987 (Ch. 700, Stats. 2006), codified at Pub. Util. Code §§ 5800, et seq.

telephone service and adopted a transitional plan to permit adjustments in retail rates for basic telephone service until January 1, 2011.<sup>37</sup> In D.06-08-030, the Commission recognized the important role of affordable LifeLine service, and acknowledged the need to “rethink the relationship between LifeLine and basic residential rates” in this proceeding.<sup>38</sup>

When Assembly member Moore proposed the legislation in 1983 that would become today’s LifeLine program, the technology and regulation of local exchange service was substantially different. Cost-of-service determined local exchange rates have given way to competitive market service bundles and prices, and the nationwide monopoly provision of wireline service has been replaced with competition from wireless and internet-based telephone providers. Through the 40-year history of LifeLine, the Commission has interpreted the specific implementation details of the LifeLine program to remain true to its objective of providing affordable telephone service to low-income Californians. A brief history of actions in California related to the LifeLine program can be found in Appendix B. After reviewing the extensive history of the LifeLine program, we believe the principles adopted by the Commission in 1996 remain valid today:

1. It is the policy of the Commission to ensure that high-quality basic telecommunications services remain available and affordable to all Californians regardless of linguistic, cultural, ethnic, physical, geographic, or income considerations.
2. It is the policy of the Commission that in order to avoid stratification between information rich and information poor

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<sup>37</sup> D.08-09-042 at Ordering Paragraphs 1-4.

<sup>38</sup> D.06-08-030 at page 154.



- consumers, there should be a progressive expansion of the definition of basic service, as appropriate, and through the implementation of other policies, programs, and incentives to promote the deployment of advanced telecommunications technology to all customer groups.
3. It is the policy of the Commission to ensure that consumers have access to information needed to make timely and informed choices about basic service and ULTS.
  4. It is the policy of the Commission to provide consumers with the ability to choose among competing basic service carriers regardless of the technologies employed by the carriers who provide basic service.
  5. It is the policy of the Commission to ensure that basic service carriers adhere to interconnectivity, interoperability, common carriage, reliability, privacy and security guidelines.
  6. It is the policy of the Commission to provide incentives as needed to promote deployment of advanced telecommunications technology to all customer segments, and to position health care, community, and government institutions to be early recipients of the benefits of the information age.
  7. It is the policy of the Commission to provide a competitively neutral universal service mechanism which will minimize market distortions. The mechanism must provide for competitive provisioning of basic service, access to universal service funds, and a funding source which is broad-based and sustainable.<sup>39</sup>

In addition, California LifeLine policies should provide an evolving level of telecommunications services and take into account advances in telecommunications and information technologies and services. As we review

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<sup>39</sup> Re Universal Service and Compliance with the Mandates of Assembly Bill 3643, 68 CPUC2d 524, Appendix B, page 672 (D.96-10-066).

the current LifeLine program in today's decision, we will return to these principles to guide us in our interpretation of the Moore Act to develop a forward looking program that meets the needs of modern Californians.

### **3.1. California LifeLine Today**

The California LifeLine rate is effectively a set price for all incumbent local exchange carriers – 50% of AT&T California's (AT&T) monthly rate for basic residential telephone service – which was \$5.47 for flat rate service and \$2.91 for measured service in 2008.<sup>40</sup> Specifically, the California LifeLine General Order requires the flat rate and measured service rate equal “the lower of 50% of the utility's regular tariffed rate” or “one-half of AT&T California's regular tariffed rate.”<sup>41</sup>

Local exchange carriers are reimbursed from the LifeLine program for the difference between the California LifeLine rate and the applicable basic residential service rate of the incumbent local exchange carrier serving the area.<sup>42</sup> Thus, as AT&T is reimbursed for the 50% reduction for California LifeLine customers from the Universal LifeLine Telephone Service program,<sup>43</sup> a

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<sup>40</sup> AT&T's rates effective through December 31, 2008.

<sup>41</sup> General Order 153 §§ 8.1.4 and 8.1.5.

<sup>42</sup> General Order 153 § 9.3.2.

<sup>43</sup> D.84-11-028 established General Order 153 for the implementation, funding, and administration of the Moore Universal Telephone Service Act and officially named the program the Universal LifeLine Telephone Service (ULTS) program. The official name was changed to California LifeLine in 2005. California Public Utilities Commission Report to the California Legislature, *Universal Telephone Service to Residential Customers in Accordance with California Public Utilities Code Section 873*, June 2006, at pages 12-13, available at <http://docs.cpuc.ca.gov/published/Graphics/57534.PDF>. See also D.08-08-029, *mimeo.* at page 32.

competitive carrier operating in AT&T's service territory would be reimbursed up to \$5.47 (50% of AT&T's current basic rate) even if the competitive carrier's actual basic rate exceeded that of AT&T. Other California carriers with basic rates higher than AT&T's rate, such as Verizon,<sup>44</sup> receive substantially more from the fund as a result.

The disparity in payment amounts between companies means that the average discount provided by California LifeLine was \$8.39 per month per customer in 2007. The average discount has grown to \$9.71 for the first part of 2008. As the California LifeLine program pays the full difference between the basic rate of each carrier and the California LifeLine rate, the program pays as much as \$13.43 per customer per month for Eligible Telecommunication Carriers (ETCs) and \$21.35 for non-ETCs.<sup>45</sup> Prior to the CPUC's decision extending the cap on basic rates, the total FY 2009-2010 projected budget was \$331 million, and the fund size has grown about 20% over the past five years:

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<sup>44</sup> Verizon's local residential service rates are \$10.24 for measured service (AT&T's rate is \$5.83) and \$17.66, or for certain areas, \$17.25, for flat rate service (AT&T's rate is \$10.94). Verizon's California LifeLine customers, however, pay the same rate as customers located in AT&T's territory, and the California LifeLine fund makes up the difference between the California LifeLine rate and Verizon's otherwise applicable rate.

<sup>45</sup> Eligible Telecommunication Carriers (ETCs) are designated by the Commission pursuant to 47 U.S.C. § 214(e) to be eligible to receive federal universal service support. The Federal California LifeLine program provides up to \$10 per month - \$6.50 in lieu of carriers charging a Subscriber Line Charge (SLC) to California LifeLine subscribers, and an additional \$3.50 match to ETCs in California. This \$3.50 match means that the California LifeLine program pays AT&T \$1.97 (plus administrative fees) compared to paying Verizon \$8.69 (plus administrative fees) for every California LifeLine subscriber each month. The \$1.97 is calculated by taking the AT&T basic rate, \$10.94, dividing by two to get the \$5.47 rate charged to customers and the same owed to the carrier by

*Footnote continued on next page*

Annual California LifeLine Budgets				
FY 2005-2006	FY 2006-2007	FY 2007-2008	FY 2008-2009	FY 2009-2010
\$ 277,769,000	\$ 289,884,000	\$ 287,046,000	\$ 307,715,000	\$ 331,303,000

D.08-09-042 extended the basic rate cap for two additional years while providing for an orderly transition of the basic rate to market-based pricing and preserving affordability in high-cost areas. Absent action in this California LifeLine docket, should the URF ILECs raise their rates by the full \$3.25 allowed in D.08-09-042 (which extended the basic rate caps for two more years), the California LifeLine program will pay an additional \$2.44 per customer per month to each carrier.<sup>46</sup> Such a rate change by all carriers would increase the annual California LifeLine budget by more than \$80 million in 2009. A similar increase would occur in 2010 resulting in an annual California LifeLine budget of almost \$500 million. Comparing this amount to the historical chart above, one can see this would represent a substantial increase in the LifeLine budget (approximately \$200 million) compared to the average of the past four years.

However, since AT&T is proposing to increase its basic rate to \$13.50 per month in 2009,<sup>47</sup> a lower amount than the authorized price cap, the California LifeLine rate increase will be limited to \$0.64 from \$5.47 to \$6.11. The cost to the

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California LifeLine; deducting the \$3.50 federal match from \$5.47 leaves \$1.97 for California LifeLine to pay directly to the carrier.

<sup>46</sup> D.08-09-042 limited the increase to LifeLine customers to a rate no greater than \$6.28 (\$0.81 greater than the \$5.47 2008 rate) with the California LifeLine program paying the carrier the difference between \$6.28 and its rate, which could be as high as \$2.44 per customer per month. See D.08-09-042 at OPs 5, 6, and 11.

<sup>47</sup> See <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/10/23/BU4E13N374.DTL>.

California LifeLine program will increase approximately<sup>48</sup> \$1.92 per customer which amounts to a total annual California LifeLine budget increase of more than \$63 million.

In practical terms, this means that the Commission has extended its “Set Price” California LifeLine methodology until the end of 2010 and limited the total increase for California LifeLine customers to \$1.62 (a California LifeLine rate of \$7.09) at a cost of increasing the annual California LifeLine budget by an additional 20% to 25% per year.<sup>49</sup> A state LifeLine fund approaching \$500 million is on the high end of reasonableness even for a state the size and breadth of California. Thus, while the current methodology could be maintained for the next two years, doing so would require a significant cost, and it is not the best long-term methodology for LifeLine consumers and non-LifeLine consumers that must pay for the program.

#### **4. Positions of the Parties**

Pacific Bell Telephone Company dba AT&T California (AT&T) urged the Commission to sever the LifeLine rate from AT&T’s rate for basic service.<sup>50</sup> AT&T recommended that the Commission adopt a 12-month transition period to allow sufficient time for customer education on changes to the program, and

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<sup>48</sup> We use the AT&T differential as an effective proxy for evaluating the impact of potential changes to the program. As we have explained above, as each carrier has a different California LifeLine reimbursement amount dependent on the difference between its basic rate and the California LifeLine rate of up to \$6.11, with the potential of AT&T’s basic rates changing throughout the year up to its respective basic rate cap, it is difficult to predict with absolute precision the total dollar impact.

<sup>49</sup> See D.08-09-042 at OPs 5, 6, and 11.

<sup>50</sup> Opening Comments of Pacific Bell Telephone Company dba AT&T California in Response to Scoping Memo, at page 2 (August 24, 2007).

give carriers enough time to implement billing system changes and educate their staff.<sup>51</sup> AT&T supported an initial fixed benefit of \$15, but noted that federal support of \$3.50 will reduce the actual amount needed from state funds to \$11.50.<sup>52</sup> AT&T supported an interim Lifeline rate in 2009 as part of a process to phase-in the fixed benefit system in 2010<sup>53</sup> and that the Commission has a complete record upon which to base the changes.<sup>54</sup> AT&T advocated retaining the existing 50% subsidy for installation charges, up to \$30, reviewing and updating the fixed amount as needed, and continuing to reimburse carriers for administrative costs.

Verizon<sup>55</sup> supported a “small but affordable increased LifeLine rate” by setting each carrier’s rate separately, rather than at 50% of AT&T’s rate, to update the LifeLine rate to reflect increased median wages.<sup>56</sup> Calculating the LifeLine rate from each carrier’s basic local service flat rate, Verizon concluded, would better reflect increased costs for the carriers without a corresponding increase in program funding and surcharge requirements. Verizon opposed

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<sup>51</sup> *Id.* at page 3.

<sup>52</sup> *Id.* at page 4.

<sup>53</sup> AT&T Supplemental Opening Comments at pages 5-6 (October 3, 2008).

<sup>54</sup> AT&T Supplemental Reply Comments at pages 9-10 (October 8, 2008).

<sup>55</sup> Verizon California Inc., Bell Atlantic Communications, Inc., dba Verizon Long Distance, NYNEX Long Distance Company dba Verizon Enterprise Solutions, MCI Communications Services, Inc. dba Verizon Access Transmission Services, TTI National, Inc., dba Verizon Business Services, Teleconnect Long Distance Services & Systems Company, dba Telecom\*USA, Verizon California, Inc., Verizon Select Services Inc. and Verizon West Coast, Inc.

<sup>56</sup> 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 page 7 (August 24, 2007).

adopting a fixed benefit of \$12 to \$18, with a \$1 floor, because the benefit will not be “fixed” but rather will fluctuate with each carrier’s rate changes and will vary among customers served by different carriers, and the program fund would “balloon” by up to 42.6%.<sup>57</sup> The concept of affordability must be reflected in any new program elements, particularly for wireless service where the cost of handsets, and service overuse could be substantial.<sup>58</sup> Verizon raised a number of legal challenges to the Commission expanding the LifeLine program to include wireless service. First, Verizon pointed out that the plain words of the Moore Act, at § 871.5(b), define the program as applying only to residential telephone service, and the Commission has twice concluded that wireless service is not residential service.<sup>59</sup> Verizon next contended that wireless carriers do not offer basic flat rate or measured service, as defined in § 874, and do not offer other components of the definition of basic service adopted in D.96-10-066.<sup>60</sup> Finally, Verizon urged the Commission to proceed slowly and carefully in making any changes to the LifeLine program to avoid what Verizon described as the “problem-plagued experience with the verification and certification process changes.”

SureWest Telephone and SureWest Televideo (SureWest) jointly opposed adopting a portable “set support amount” and instead recommended that the LifeLine program continue to provide “basic, primary-line residential service at a

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<sup>57</sup> *Id.* at pages 3–5.

<sup>58</sup> *Id.* at page 9–10.

<sup>59</sup> *Id.* at pages 11–12.

<sup>60</sup> *Id.*

set discounted price.”<sup>61</sup> SureWest stated that LifeLine subsidies should only be extended to services that will achieve universal service goals to the same extent as basic, wireline service, and that reliability, safety, consumer protection, and coverage concerns make wireless and internet-based alternatives inappropriate for these subsidies at this time.<sup>62</sup> SureWest advocates for a LifeLine price set at \$5.34 (the current AT&T price), adjusted annually for inflation, with each carrier being reimbursed for the difference between \$5.34 and its regular tariffed rate for each LifeLine customer.<sup>63</sup> SureWest further requested that the Commission change its policy of allowing prospective LifeLine customers to start receiving discounted service prior to completing the certification process. SureWest explained that this policy confuses customers who incorrectly conclude that no further action is required for certification once they begin receiving the discount, and can lead to back-billings of \$100 or more where the customer fails to successfully complete the certification process.<sup>64</sup> SureWest recommended that the Commission adopt a process whereby a prospective LifeLine customer would be charged full tariffed rates at initiation of service, but then credited for LifeLine discount if the customer is deemed eligible.

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<sup>61</sup> Opening Comments of SureWest Telephone and SureWest Televideo on Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge on the Scope, Schedule, and Need for Hearing in this Proceeding, at page 2 (August 24, 2007).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at page 3.

<sup>64</sup> *Id.* at page 5.



Frontier<sup>65</sup> supported a fixed benefit approach to LifeLine service to enable customers to choose the telecommunications service that best meets their needs. Frontier calculated the initial amount based on the current draft decision proposing a High Cost Fund B benchmark of \$36, less the 50% discount in the GO 153, and arrived at \$18 as the monthly amount each LifeLine customer would have available as a credit.<sup>66</sup> Frontier supported recalculating the LifeLine amount each time the High Cost Fund B benchmark is recalculated, and continuing to reimburse carrier administrative costs.<sup>67</sup>

The Small Local Exchange Carriers<sup>68</sup> supported the recommendations of SureWest.<sup>69</sup>

The Division of Ratepayer Advocates (DRA) first observed that the current LifeLine program is both effective and sustainable.<sup>70</sup> DRA urged caution and

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<sup>65</sup> Comments on the July 13, 2007, Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge by Citizens Telecommunications Company of California, Inc., dba Frontier Communications of California, Citizens Telecommunications Company of the Golden State dba Frontier Communications of the Golden State, Citizens Telecommunications Company of Tuolumne dba Frontier Communications of Tuolumne, (August 24, 2007).

<sup>66</sup> *Id.* at page 3.

<sup>67</sup> *Id.*

<sup>68</sup> Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company, Foresthill Telephone Co., Global Valley Networks, Inc., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone Company, Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, Volcano Telephone Company, and Winderhaven Telephone Company.

<sup>69</sup> Small Local Exchange Carriers Opening Comments on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and the Need for Hearing in this Proceeding. (August 24, 2007).

prudence in considering changes to the LifeLine program, and recommended further Commission analysis particularly an affordability study. DRA supported ending the reimbursement of carrier administrative costs because the costs of obtaining a new customer, even a LifeLine customer, are a normal cost of doing business that should be borne by the carrier.<sup>71</sup>

The Utility Reform Network and the National Consumer Law Center (TURN) also found that the LifeLine program has been a success and cautioned against changes that could imperil that success.<sup>72</sup> TURN recommended that the Commission freeze LifeLine rates at the current level, \$5.34 for flat service and \$2.85 for measured service, until 2009, and review the rates every two years. TURN supported a policy of “gradualism” for any increase in LifeLine prices, constrained to a maximum annual increase of no more than 50% of the inflation rate.<sup>73</sup> TURN opposed tying LifeLine prices to either a fixed benefit or the basic rate of any carrier because the price of basic service was expected to be unrestricted in 2009, resulting in a varying LifeLine price under either scenario.<sup>74</sup> TURN also opposed expanding the LifeLine program to include wireless service,

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<sup>70</sup> Comments of the Division of Ratepayer Advocates on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and the Need for Hearing in this Proceeding at page 2 (August 24, 2007). DRA pointed out that the current penetration rate for all California households has exceeded the 95% benchmark previously adopted by the Commission.

<sup>71</sup> *Id.* at page 7.

<sup>72</sup> Comments of the Utility Reform Network and the National Consumer Law Center on the Issued Identified in the Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge at page 3 (August 24, 2007).

<sup>73</sup> *Id.* at page 4 (recommending that the Bureau of Labor Statistics’ Consumer Price Index for Urban areas be used as the measure of inflation).

and contended that the Moore Act is limited to basic residential service, not personal communications services like wireless.<sup>75</sup> TURN concluded that creating a wireless LifeLine option would degrade the quality of life for household members and result in a “giant step backward” in bringing voice communications to all Californians.<sup>76</sup>

Disability Rights Advocates observed that the current LifeLine program has been ‘incredibly’ successful, and recommended that the Commission should thoroughly analyze any proposed changes to ensure the changes would create a more effective program.<sup>77</sup> Disability Rights Advocates argued that the only statutory means for the Commission to add new services to the LifeLine program was through the process adopted by the Legislature in §871.7(c), which requires that the Commission study the social benefits to be achieved from the new service and determine that these benefits justify the costs.<sup>78</sup> Like TURN, Disability Rights Advocates raised the issue of telephone service for household members that remain at home when the individual in possession of the handset travels away from the home. Disability Rights Advocates contended that the concept of a flat benefit is too preliminary to consider implementation questions as the parties at the August 15, 2007 workshop stated, a “well-considered, well-

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<sup>74</sup> *Id.* at pages 4-5.

<sup>75</sup> *Id.* at pages 8-10.

<sup>76</sup> *Id.* at pages 10-11.

<sup>77</sup> Comments of Disability Rights Advocates on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge at page 2 (August 24, 2007).

<sup>78</sup> *Id.* at pages 2-3.

drafted plan” is necessary for the parties to assess the viability and impact of the plan.<sup>79</sup>

The California Community Technology Policy Group and the Latino Issues Forum (LIF) argued that discovery and evidentiary hearings were necessary to allow the parties to properly evaluate the “radical changes in the LifeLine” program proposed in the Scoping memo.<sup>80</sup> LIF stated that the fundamental purpose of the LifeLine program is to offer basic telephone service at affordable rates, but that the soon-to-be unregulated basic service prices could result in unaffordable LifeLine prices, even with a LifeLine fixed support amount.<sup>81</sup>

The Greenlining Institute urged the Commission to move the California LifeLine program into the 21<sup>st</sup> century by unshackling LifeLine subscribers from obsolete landline technology and allowing them to move to the overwhelmingly preferred cell phone technology.<sup>82</sup> Greenlining explained that cell phone access is essential for many low-income consumers for access to the internet and emergency services. Greenlining also stated that cell phones will have important future roles in bringing banking and health care to low-income customers.<sup>83</sup>

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<sup>79</sup> *Id.* at pages 5–6.

<sup>80</sup> Comments of the California Community Technology Policy Group and the Latino Issues Forum on the Commission’s Proposals for the Public Policy Programs at page 2 (August 24, 2007).

<sup>81</sup> *Id.* at pages 3–4.

<sup>82</sup> Comments of The Greenling Institute on the Scoping Memo of the Commission’s Rulemaking to Conduct a Comprehensive Review of its Telecommunications Public Policy Programs at page 2 (August 24, 2007).

<sup>83</sup> *Id.* at page 8.

Greenlining noted that two carriers are now offering cell phone based LifeLine in various states, using funding from both federal and state LifeLine programs. Greenlining recommended that the Commission adopt a support level that would allow wireless carriers to offer at least 300 anytime minutes, with 1,000 night and weekend minutes, for \$16.74.<sup>84</sup>

Cox<sup>85</sup> stated that the Commission should adopt a fixed support amount for the LifeLine program, effective January 1, 2009, so that customers receive a uniform benefit, bringing grater certainty and clarity to the program, and allow a minimum six-month consumer education period.<sup>86</sup> Cox also supported continuing to reimburse carriers for their administrative costs incurred in providing LifeLine Service.<sup>87</sup> Cox opposed requiring all carriers to obtain the federal Eligible Telecommunications Carrier (ETC) status prior to obtaining reimbursements from the California LifeLine program, and also opposed adopting the federal definition of basic service, which includes wireless.<sup>88</sup>

Sprint Nextel urged the Commission to take all necessary steps to allow wireless carriers to be considered eligible providers of California LifeLine

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<sup>84</sup> *Id.* at 9.

<sup>85</sup> Cox California Telcom, LLC, dba Cox Communications and Time Warner Cable Information Services (California), LLC submitted comments bearing both names but Time Warner joined in on only the CTF issues.

<sup>86</sup> Opening Comments of Cox California Telcom, LLC, dba Cox Communications and Time Warner Cable Information Services (California), on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and the Need for Hearing in this Proceeding at pages 1-2 (August 24, 2007).

<sup>87</sup> *Id.* at page 2-3.

<sup>88</sup> *Id.* at page 3-4.

service.<sup>89</sup> Sprint Nextel explained that wireless customers outnumber wireline customers by about 5 million in California,<sup>90</sup> and that the current LifeLine program deprives persons with limited financial means of the opportunity to obtain these services. Sprint Nextel supported the “fixed benefit” approach (so long as wireless carriers are also eligible to provide LifeLine service) due to its simplicity and clarity, and as being carrier and technology neutral.<sup>91</sup> Sprint Nextel, however, questioned whether the \$1 floor rate for LifeLine service represented sound social and economic policy and recognized that program cost ramifications would need to be studied and considered.<sup>92</sup> Sprint Nextel suggested that the Commission provide carriers an incentive for efficient program administration by limiting the administrative cost reimbursements now paid to LifeLine service providers to a reasonable fixed amount per customer.<sup>93</sup>

In reply, AT&T reiterated its request to delink the LifeLine price from its basic service rate, and agreed with other comments that administrative costs

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<sup>89</sup> Amended Comments of Sprint Nextel on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and the Need for Hearing in this Proceeding at page 1 (August 27, 2007).

<sup>90</sup> *Id.* at page 2 *citing* Federal Communications Commission, Trends in Telephone Service at Tables 11.2 and 8.5 (February 2007), available at [www.fcc.gov/wcb/iatd/trends.html](http://www.fcc.gov/wcb/iatd/trends.html).

<sup>91</sup> Sprint Nextel Scoping Memo Comments at page 5 (August 27, 2007).

<sup>92</sup> *Id.* at page 6.

<sup>93</sup> *Id.* at page 6, note 17 and page 8.

should be reimbursed.<sup>94</sup> AT&T supported SureWest's proposal for pre-qualifying LifeLine customers prior to initiating the discounted service.<sup>95</sup>

Verizon agreed with AT&T that delinking the LifeLine price from AT&T's basic service rate is essential and that administrative costs should continue to be reimbursed, but disagreed that a fixed benefit is a sound replacement; Verizon supported calculating the LifeLine price as 50% of each carrier's basic rate.<sup>96</sup> Verizon opposed extending the LifeLine program to wireless because the Affordability Study<sup>97</sup> showed that the customers who find telephone service the most difficult to afford "are not successful in self-regulating their use to keep phone service affordable" and are resistant to call control services.<sup>98</sup> Verizon concluded that these facts, combined with the potential for higher wireless usage fees, will result in greater numbers of customers losing service entirely.<sup>99</sup> Verizon agreed with DRA, and Disability Rights Advocates that the Moore Act must be amended to allow the California LifeLine program to move to a fixed benefit and to include wireless service.<sup>100</sup> Verizon agreed with other parties that support

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<sup>94</sup> Reply Comments of Pacific Bell Telephone Company dba AT&T California in Response to Scoping Memo at page 2-4.

<sup>95</sup> *Id.* at page 4.

<sup>96</sup> Verizon Reply Comments on Scoping Memo and Rulings of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding at pages 2-3 (September 14, 2007).

<sup>97</sup> *Id.* at page 6, note 14. (Verizon stated that the study surveyed over 5000 customers and non-customers by the Field Research Corporation in 2003 and 2004, and has been documented in four volumes.)

<sup>98</sup> *Id.* at pages 7-8 .

<sup>99</sup> *Id.* at pages 8-9.

<sup>100</sup> *Id.* at pages 11-12.

eliminating the use of California LifeLine funds to make up lost federal funds for carriers that are not designated Eligible Telecommunications Carriers by the FCC; carriers that decline to become so designated should bear the costs, not the California LifeLine fund.<sup>101</sup>

SureWest agreed with Verizon that the Commission should be cautious and methodical in updating the LifeLine program, although it is clear that the rate must be de-linked from AT&T's rates.<sup>102</sup> SureWest opposed DRA's recommendation to end administrative cost reimbursement.<sup>103</sup> SureWest joined Verizon in concluding that the Commission should not pursue the fixed benefit approach due to the uncertainties with the proposal and the resultant surcharge increases; SureWest concluded that increased surcharges in ranges calculated by Verizon (30% to 40%) are "unreasonable."<sup>104</sup> SureWest recommended that the Commission de-link the LifeLine price from AT&T's basic residential rate and update it for inflation, and that legal and jurisdictional issues prevent the Commission from expanding the LifeLine program to other services such as wireless.<sup>105</sup>

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<sup>101</sup> *Id.* at pages 14-15.

<sup>102</sup> Reply Comments of SureWest Telephone and SureWest Televideo on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding at pages 1-2 (September 14, 2007).

<sup>103</sup> *Id.* at pages 2-5.

<sup>104</sup> *Id.* at pages 5-7.

<sup>105</sup> *Id.* at page 7.



The comments of the small local exchange carriers echoed those of SureWest but added that discontinuing reimbursement of administrative costs will result in an unfunded mandate for cost of service regulated carriers.<sup>106</sup>

DRA took issue with the parties that support a fixed benefit, contending that each has a “radically different version of how the benefit would be implemented” leading DRA to conclude that more research is needed before the Commission can adopt a fixed benefit approach.<sup>107</sup> DRA proposed capping the amount a service provider can draw from the fund regardless of that provider’s otherwise applicable rate for basic service as a solution to the issue of modifying the LifeLine program to accommodate basic service pricing flexibility beginning on January 1, 2009.<sup>108</sup> DRA stated that no party had submitted any data or analysis supporting any specific initial support amount, and that no carrier had presented any data or analysis demonstrating that the LifeLine customer administrative costs exceed the costs of other customers.<sup>109</sup>

TURN agreed with SureWest and the Small Local Exchange Carriers that LifeLine prices should be frozen at the current levels, and that all other proposals

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<sup>106</sup> Reply Comments of the Small LECs on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding at page 4 (September 14, 2007).

<sup>107</sup> Reply Comments of the Division of Ratepayer Advocates on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding at page 3 (September 14, 2007).

<sup>108</sup> *Id.* at page 4.

<sup>109</sup> *Id.* at pages 6–7.

have in common a nearly complete lack of analytical support in the record.<sup>110</sup> TURN noted, but did not endorse, Verizon's cost estimates for the fixed benefit approach as the only available cost analysis. TURN opposed Verizon's proposal to base the LifeLine rate on each carrier's basic service rate, with pricing flexibility commencing on January 1, 2009, and Verizon's proposal to increase the LifeLine rate.<sup>111</sup> TURN opposed SureWest's and the Small Local Exchange Carriers' proposal to require pre-qualification for LifeLine customers; TURN contended that the current policy of enrollment on first contact facilitates low-income consumer access to the LifeLine program and that the question of prequalification is before the Commission in R.04-12-001.<sup>112</sup>

LIF opposed extending the LifeLine discount to bundles of services without additional consumer protections, primarily focused on marketing techniques and disconnection policies.<sup>113</sup>

Greenlining primarily reiterated its opening comments in reply, but opposed the parties that wanted to limit the LifeLine program to wireline.<sup>114</sup>

Disability Rights Advocates replied in agreement with the Small Local Exchange Carriers, and SureWest that fixing the current LifeLine rates at their

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<sup>110</sup> Reply Comments of The Utility Reform Network on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding at page 4 (September 14, 2007).

<sup>111</sup> *Id.*

<sup>112</sup> *Id.* at pages 6-7.

<sup>113</sup> Reply Comments of the California Technology Group and Latino Issues Forum on the Commission's Proposals for the Public Policy Programs at pages 1-2.

<sup>114</sup> Reply Comments of The Greenlining Institute on Scoping Memo of The Commissions' Rulemaking to conduct a Comprehensive Review of its Telecommunications Public Policy Programs. (September 14, 2007).

current levels is the “most fiscally viable solution” to achieve the necessary de-linking from AT&T’s rates.<sup>115</sup> Disability Rights Advocates concluded that before expanding the currently successful and financially sustainable LifeLine program to wireless or internet-based service, the Commission must thoroughly assess the financial repercussions through evidentiary hearings.<sup>116</sup>

In reply, Sprint Nextel disputed Verizon, Disability Rights Advocates, and DRA’s objections to the fixed benefit approach and expanding the LifeLine program to include wireless.<sup>117</sup> Sprint Nextel also explained that one of its purposes for advocating that wireless carriers be included in the LifeLine program is to ensure that such carriers be eligible to “receive funds from the California Advanced Services Fund envisioned” in D.07-09-020, recently issued in the High Cost Fund B program.<sup>118</sup>

#### **4.1. Opportunity to Update Information and Provide Supplemental Comments**

In response to a September 19, 2008 Assigned Commissioner’s Ruling Reopening The Record And Setting Filing Date For Comments On LifeLine Program In Light Of Transition Plan For Basic Local Service Rates Commission Rule of Practice and Procedure (the “ACR”), parties were afforded the opportunity to refresh the record and provide any new information, proposals,

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<sup>115</sup> Reply Comments of Disability Rights Advocates on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge, at page 2 (September 14, 2007).

<sup>116</sup> *Id.* at 2 – 3.

<sup>117</sup> Reply Comments of Sprint Nextel on Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding at pages 14–17 (September 14, 2007).

<sup>118</sup> *Id.* at pages 2, 4–6, 12–13.

or other input. Parties submitted supplemental comments on October 3, 2008, and reply comments on October 8, 2008. The comments are useful in that we can determine that the parties' positions and arguments have not substantially changed over the course of the past year. With the exception of AT&T's proposal to expand income qualification above its current 150% of federal poverty guidelines level, parties largely restated previous positions and offered no new ideas to assist the Commission in addressing necessary changes to the LifeLine program. Thus, parties' supplemental comments did not substantially contribute to this decision.

AT&T called for the Commission to adopt an interim LifeLine rate for 2009 and move to a fixed benefit system in 2010.<sup>119</sup> AT&T stated that the \$0.81 rate cap burdens all consumers and that the rates for non-URF companies were not addressed in D.08-09-042.<sup>120</sup> AT&T again called for a technology neutral LifeLine program that includes wireless carriers.<sup>121</sup> AT&T noted that the Commission has considerable leeway with the Universal Service Funds, and that \$270 million less is being collected than in 2007 from all the Commission programs (mostly due to reduction in CHCF-B), and that the total surcharge reduction of 1.10% gives leeway to avoid rate shock.<sup>122</sup> AT&T also called for enhanced outreach and the expansion of the income qualification above its current 150% level.<sup>123</sup>

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<sup>119</sup> AT&T Opening ACR Comments at page 1 (October 3, 2008).

<sup>120</sup> *Id.* at 3.

<sup>121</sup> *Id.* at 2. AT&T ACR Reply Comments at pages 8-9 (October 8, 2008).

<sup>122</sup> AT&T Opening ACR Comments at page 9 (October 3, 2008).

<sup>123</sup> *Id.* at 10.

Verizon called for the 2009 LifeLine rate to be 50% of the AT&T rate, not just an increase of \$0.81.<sup>124</sup> They noted that LifeLine customers purchase more than just basic services, and can afford more.<sup>125</sup> Verizon also explained how other states have high penetration rates with even higher LifeLine rates than California.<sup>126</sup> Verizon reiterated its opposition to a Specific Support Amount as not practical at this time.<sup>127</sup> Verizon also said it would cost too much since a \$12 support level would cost \$143 million per year and require a 2.05% surcharge rate.<sup>128</sup> Verizon did call for further review for possible implementation in 2011 to allow time for a transition plan to address fixed benefit plan, statutory changes, and to implement the change.<sup>129</sup> Verizon again called for the Commission to require ETC status for all carriers participating in California LifeLine.<sup>130</sup> Verizon also said that California does not need increased wireless penetration (already 5th highest), and that expanding LifeLine to wireless would be too expensive.<sup>131</sup> Verizon asked for a minimum of nine months to implement system changes for any changes to California LifeLine.<sup>132</sup> Verizon also believed that public

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<sup>124</sup> Verizon Opening ACR Comments at pages 16-17 (October 3, 2008).

<sup>125</sup> *Id.* at 20-22.

<sup>126</sup> *Id.* at 7-11, Exhibit F.

<sup>127</sup> *Id.* at 11-14.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 14, 16.

<sup>130</sup> *Id.* at 24-26.

<sup>131</sup> *Id.* at 19-23.

<sup>132</sup> *Id.* at 31-32.

participation hearings would be resource-intensive events that would add little to the results of the Affordability Study.<sup>133</sup>

SureWest reiterated that the LifeLine rate must be independent of AT&T's rates.<sup>134</sup> SureWest renewed its call to fix the California LifeLine rate at \$8.00 or 50% of carrier's basic rate, whichever is lower.<sup>135</sup> SureWest explained that such a rate could be established annually by Resolution and adjusted by changes to the Consumer Price Index, or other reliable method.<sup>136</sup> They explained again their objection to a Specific Support Amount as being too difficult to determine a fair amount.<sup>137</sup> They also called again for expansion of the funding base to include VoIP providers.<sup>138</sup> SureWest explained that it would need 60 days to implement any changes to the California LifeLine program.<sup>139</sup>

The Small Local Exchange Carriers provided comments similar to those of SureWest.<sup>140</sup>

DRA restated its position that market forces cannot be relied on to protect low-income consumers and called again for a freeze of the LifeLine rate, until a due diligence review (affordability study) is done.<sup>141</sup> DRA called for the LifeLine

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<sup>133</sup> Verizon ACR Reply Comments at pages 13-14 (October 8, 2008).

<sup>134</sup> SureWest Opening ACR Comments at page 3 (October 3, 2008).

<sup>135</sup> *Id.* at 3-5.

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 5-7.

<sup>138</sup> *Id.* at 7-8.

<sup>139</sup> *Id.* at 2.

<sup>140</sup> Small Local Exchange Carriers Opening ACR Comments (October 3, 2008), Small Local Exchange Carriers ACR Reply Comments (October 8, 2008).

<sup>141</sup> DRA Opening ACR Comments at pages 5-7 (October 3, 2008).

budget to fund such an affordability study.<sup>142</sup> DRA also called for more public hearings, and additional customer notification.<sup>143</sup> DRA did not provide any analysis of fiscal impact on the Fund.<sup>144</sup>

The Utility Reform Network (“TURN”), the National Consumer Law Center (“NCLC”), and Disability Rights Advocates (“DisabRA”) also wanted LifeLine rates frozen at current rates until 2011,<sup>145</sup> and provided an updated study by Dr. Trevor R. Roycroft.<sup>146</sup> TURN reiterated that any vouchers should be geographically specific,<sup>147</sup> and that after 2011, a review of rates should occur every two years.<sup>148</sup> TURN again stated that LifeLine should not be expanded to include wireless at this time,<sup>149</sup> and that additional interactive outreach should be conducted by the Commission.<sup>150</sup> TURN also complained that some cable/VoIP carriers claim they do not have to offer LifeLine.<sup>151</sup>

Cox supported a single fixed benefit amount as easy to administer, pro-competitive and technology neutral. They reiterated their support for adopting the technology-neutral Federal universal service rules that more readily allow participation of wireless and other services. Cox supported a consumer

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<sup>142</sup> *Id.* at 7-8.

<sup>143</sup> *Id.* at 9, 11-12.

<sup>144</sup> DRA ACR Reply Comments at page 4 (October 8, 2008).

<sup>145</sup> TURN/NCLC/DisabRA Opening ACR Comments at page 5 (October 3, 2008).

<sup>146</sup> *Id.* at 6-9, 13, Affidavit of Trevor R. Roycroft, Ph.D.

<sup>147</sup> TURN/NCLC/DisabRA Opening ACR Comments at page 14 (October 3, 2008).

<sup>148</sup> *Id.* at 5.

<sup>149</sup> *Id.* at 15.

<sup>150</sup> *Id.* at 16-18.

education program and said that they would need six months to implement new rules. Cox advocated that California LifeLine should continue to make up the EUCL for those that do not participate in the Federal program and that bundles should continue to be allowed. Cox noted that prequalification will continue to reduce participation in California LifeLine. Cox opined that funding for an affordability study should be requested from the Legislature.

Sprint Nextel reiterated support for decoupling the California LifeLine rate from that of AT&T and their support for a voucher system. Sprint Nextel again called for expanding “basic service” to include wireless in line with the pro-competition and technology neutrality requirements of the Public Utilities Code. Sprint agreed that it will cost approximately an additional \$140 million in 2010 based on the \$0.81 customer rate increase.

T-Mobile supported a Specific Support Amount as it would promote stability in the California LifeLine program and would be consistent with consumer choice. They also called on the Commission to expand the definition of “basic service” to include wireless and consolidate the CHCF-B and ULTS proceedings on this matter. T-Mobile supported retaining the LifeLine rate, as modified in D.08-09-042 for 2009 while transitioning to a Specific Support Amount in 2010. T-Mobile explained how such a Specific Support Amount was consistent with the Moore Act and that the ability to take a wireless phone out of the house is no reason to deny that residential customer its choice of provider. T-Mobile called for further study of moving to an eligibility level of 200% of the Federal Poverty Guideline as such a change is not necessary to achieve a 95%

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<sup>151</sup> *Id.* at 3-4.



penetration rate and would result in higher surcharges and a larger LifeLine program.

## **5. Discussion**

Our objective in opening this proceeding was to assess whether the Telecommunications Public Policy Programs are meeting their respective statutory purposes and requirements, and to identify and remedy any deficiencies. In our order initiating this rulemaking, we adopted the following inquiry plan for this proceeding:

- Determine whether the programs remain necessary to achieve the fundamental statutory goal of enhancing universal service and, if so, whether changes are necessary to further this goal in today's competitive and technologically varied telecommunications environment.
- Ensure that funds obtained from the surcharges are being wisely spent to provide the most advanced telecommunications services to all Californians, with efficient administration demonstrating progress toward defined goals.
- Maximize the benefits of similar federal programs.

Below, we apply these inquiries to the California LifeLine Program to determine how California LifeLine can continue to help the Commission achieve statutory goals.<sup>152</sup> The Commission has long considered the 95% subscribership goal as the best measure of affordability when evaluating the universal service programs, including California LifeLine, and because of its universal service

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<sup>152</sup> Telephone subscribership is at 96.7%, surpassing our 95% subscribership goal. See CPUC Report to the California Legislature, Residential Telephone Subscribership and Universal Services (June 2008).

programs California continues to exceed that standard.<sup>153</sup> We conclude that California Lifeline should be updated to reflect the principle of competitive and technological neutrality consistent with federal and state law in order to continue to meet the 95% subscribership goal.<sup>154</sup> We have examined numerous options for reforms to California LifeLine and select the best option to ensure the long-term success of California LifeLine in the future.

We also examine why, in Section 5.3, Wireless Residential Use and California LifeLine, the reasons previously used by the Commission to exclude wireless providers from participating in California LifeLine are no longer valid and why wireless providers should be eligible to participate in the California LifeLine program just as any other provider of service. There is nothing in the current or proposed methodology that limits participation of wireless providers in the LifeLine program. Further, other services that include the basic service elements and provide residential telephone service are also eligible to participate in California LifeLine. Providers of those services are eligible today to seek reimbursement from the California LifeLine Fund. We note that these determinations are not dependent on the support option selected and are not dependent on any changes made to California LifeLine.

### **5.1. Delinking LifeLine Price from Basic Residential Service Rate**

Effective January 1, 2011, the price for basic residential service will be set and changed at will and without regard to cost by carriers. The 1983 Moore Act

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<sup>153</sup> *Id.*

<sup>154</sup> Pub. Util. Code §§ 709(a), (c)-(g), 709.5(a). 47 U.S.C. § 254.

did not contemplate this evolution of regulation resulting from the open and competitive telecommunications market.

To develop a forward-looking LifeLine program, the LifeLine price must be set based on something other than the otherwise applicable price for basic residential service. The “touch stone” of the Moore Act LifeLine program was a Commission-approved, cost-of-service-based rate, which is no longer compatible with modern regulation. We must, therefore, find a suitable replacement for the purpose of setting the LifeLine price.

Most parties agree that delinking is essential. Sprint Nextel goes one step further and cautioned us against “hang[ing] the price of LifeLine service like an anchor on the price of non-LifeLine basic service.”<sup>155</sup> Sprint Nextel is concerned that setting the LifeLine price based on basic service prices could unfairly constrain basic service prices due to the effect on the LifeLine price and low-income customers.

A number of options have been presented by parties, which we can summarize in three scenarios: (1) Set Price; (2) Specific Support Amount (\$10-\$12 initially); or (3) Floating Subsidy (tied to each carrier’s actual basic rate).

The assigned Commissioner sought focused comments in the July 2007 ruling and scoping memo on the ideas of Set Price and the Specific Support Amount. Both would require changes to Commission rules governing California LifeLine. Extensive changes would not be needed to the current program, if the Commission simply allows the subsidy to float with the carrier’s basic rate. That option was fully addressed in opening comments. We review the supporting

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<sup>155</sup> Reply Comments of Sprint Nextel at page 5 (September 14, 2007).

arguments and opposing arguments for each of the three options in sections 5.1.1, 5.1.2, and 5.1.3. Each subsection across the sections uses common assumptions based on information in the record or otherwise publicly available. In these three sections we lay out the advantages and disadvantages of each option. To help facilitate the presentation of the advantages and disadvantages we show a range of possible outcomes for some subsections through basic addition and multiplication of figures based on the assumptions shown below.<sup>156</sup> Subsequent sections analyze these options and select the best choice for California LifeLine going forward.

In evaluating the options, the Commission measures each option against goals developed from input received in the proceeding:<sup>157</sup>

- (1) consistency with the Basic Rate scheme approved in D.06-08-030 and extended for two years by D.08-09-042;
- (2) fund cost/size;
- (3) ease of administration;
- (4) statutory compliance (affordability); and
- (5) impact on customers and low-income customers including use of advanced services.<sup>158</sup>

The Commission uses the following base assumptions in evaluating the options:

2008 LifeLine Rate:	\$5.47
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<sup>156</sup> On March 6, 2009, a workshop was held to provide an opportunity for clarification regarding numerical representations in the Proposed Decision prior to submitting comments and reply comments.

<sup>157</sup> These goals are selected as we believe they are the most critical factors in ensuring continued compliance with the Moore Act and our overall universal service goals.

<sup>158</sup> Pub. Util. Code § 709.

June 2008 LifeLine Customers:		2,371,842
2007 Annual ULTS Claims:		\$276,474,132
Current ULTS Surcharge Rate		1.15%
Average California Support (per month):		\$9.71
	California LifeLine Payment	\$7.92
	Recoverable Costs	\$1.79
Federal Support available:	Lifeline (Tiers 2-3) up to:	\$3.50
	EUCL (Tier 1) up to:	\$6.50

Current California LifeLine monthly per customer payments for the following sample companies:

AT&T	Current Draw =	\$3.48
Verizo		
n	Current Draw =	\$10.00
Telscape Comm.	Current Draw =	\$15.98
Blue Casa	Current Draw =	\$21.38

#### **5.1.1. Option One: Set Price**

By "set price," we mean an effective continuation of the existing program, because the Commission has designated that 50% of the AT&T basic rate is the California LifeLine Rate (set price) for all carriers. In other words, the Commission designates \$6.11 (or some other specific amount) as the monthly rate to be paid by California LifeLine customers, and the Commission pays the difference between the basic rate and \$6.11 from the California LifeLine Fund for each California carrier. Adopting a set price for all customers who qualify for

California LifeLine has the advantage of having the same price for all California LifeLine customers no matter the telecommunication provider.

Using the rates known at this time (which are all less than the caps authorized in D.08-09-042 for 2009), the Set Price for the four URF companies in 2009 would be:

Set Price						
1/1/2009	<u>AT&amp;T</u>	<u>Verizon</u>	<u>SureWest</u>	<u>Frontier</u>		
<b>Lifeline Rate</b>	<b>\$6.11</b>	<b>\$6.11</b>	<b>\$6.11</b>	<b>\$6.11</b>		
Basic Rate	\$13.50	\$19.91	\$19.99	\$17.85		
Average Lost Revenue	\$7.39	\$13.80	\$13.88	\$11.74		
<b>Total CA LifeLine Reimbursement</b>	<b>\$7.39</b>	<b>\$13.80</b>	<b>\$13.88</b>	<b>\$11.74</b>		

The most positive attribute of the Set Price is the consistency in marketing California LifeLine with the existing marketing campaign. A California LifeLine customer would have certainty as to his LifeLine phone cost and could budget for it, though non-California LifeLine customers would have more volatility as adjustments in the surcharge amount would occur more frequently.

#### **5.1.1.1. Basic Rate Scheme**

The Set Price is the only option that may have a difference between the period before the basic rate cap ends on January 1, 2011, and the period thereafter. Based on the price caps for basic rates allowed under D.08-09-042, AT&T of California will maintain the lowest basic rate in California for the next two years, continuing to tie the California LifeLine Rate to 50% (or less) of AT&T's basic rate for this period will not raise any legal or operational issues. Thus, the Commission is able to more easily phase-in changes over the next two years in a manner consistent with the existing program.

After 2010, the Set Price option would not be consistent with the communications market as it would limit low-income consumer choice. By setting the price that carriers could charge to California LifeLine customers, the Commission may inadvertently cause only the minimum services to be provided to those customers. In order to ensure that the basic service elements are delivered under a set price option, it would be difficult to manage the program in a way that would allow consumers to purchase more than just those basic service elements as is done today under the more flexible rules. Certainly many of the options that are allowed today could be continued under a Set Price option, but the fixing of the LifeLine price would make it more difficult should a carrier provide additional services bundled with the basic service elements.<sup>159</sup> Further, the restriction from adding elements to those basic elements means that at some point the price of basic service would be meaningless as a stand-alone rate. Technological advances mean that carriers can offer many more services for little extra costs and may even choose to offer those services at promotional rates to lure new subscribers such that no new subscriber purchases its basic service offering. In this way we could end up restricting LifeLine subscribers to only the minimum of services. While some states explicitly require this as a condition for receiving the LifeLine benefit, California has chosen to not make such a restriction explicitly or implicitly. Implementing the Set Price option would introduce this restriction on consumer choice.

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<sup>159</sup> Such a restriction would be contrary to the input received by the Commission at the public participation hearings held in this proceeding. See R.06-05-028 Public Participation Hearings Volumes 1-3.

**5.1.1.2. Fund Size/Cost**

The cost to California consumers of the Set Price option is the highest of the three options because the Set Price would be half the lowest basic rate reported by any carrier that provides service to California LifeLine customers. The Commission would have to monitor the market and make sure the Set Price is appropriately adjusted over time (e.g., at least yearly) as prices fluctuate. The result is the Commission will have a similar level of uncertainty in program size as it does with the Floating Subsidy option. As the Set Price is tied to the lowest basic rate, the program is responsible for the difference between that amount and all the carriers' basic rates.<sup>160</sup>

The following chart provides a large, middle, and low estimate of the total fund size after 2011 for the Set Price Option:

<b>Set Price LifeLine Fund Size Options</b>				Current Program	Projected 2011
	Large Fund	Midsize Fund	Small Fund	Comparison	Comparison
Set Lifeline Rate	\$6.00	\$7.50	\$10.00	\$5.47	\$8.72
Average Lifeline Payment	\$14.00	\$12.50	\$10.00	\$9.71	\$12.96
<b>Total Lifeline Fund</b>	<b>\$398,469,456</b>	<b>\$355,776,300</b>	<b>\$284,621,040</b>	<b>\$276,367,030</b>	<b>\$368,868,868</b>

The chart shows a range of possible outcomes based on whether the set price is kept at a level similar to today, grows modestly, or is set at a higher level. The impact of the size of the fund affects consumers that will be paying the surcharge, and the chart shows how varying the benefit impacts other consumers. This subsection is not intended to reflect any advantages or disadvantages of the benefit itself. To show the potential fund sizes we



standardize the basic rate at roughly double the current California LifeLine benefit, \$9.71, which we have rounded up to \$20 for ease of presentation. The \$20 is used as a simple way to reflect the impact of the Moore Act against the current benefit amount. The average rate and California LifeLine payment amounts are varied based on how much the low income consumer pays ranging from a rate similar to today up to half the \$20. The California LifeLine program pays for the remaining amount of the service. The chart also shows the current program and project a 2011 figure based on current figures increased by the \$3.25 amount allowed by the Commission in D.08-09-042 for URF carriers, apportioned to both the consumer and the California LifeLine program. This illustration is solely for the purpose of showing that the size of the fund is not a dispositive factor in choosing between options, and cannot be used for any other purpose.

For example, if a carrier has a \$10 basic rate, a set price methodology would require the California LifeLine Rate to be \$5 for all California LifeLine consumers, and the program would pay the difference between \$5 and each carrier's rate. So if AT&T had a \$17.44 rate, and SureWest maintained a \$19.99 rate, after applying the \$3.50 federal match, California LifeLine would pay those companies an additional \$8.94 and \$11.49 each month, respectively, for each California LifeLine customer. This could end up resulting in support payments greater than the carrier would get under any other option. Consideration of placing limits on the payments similar to how current payment caps are tied to

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<sup>160</sup> Pub. Util. Code § 874(a).

the difference between the ILEC basic rate and the California LifeLine rate<sup>161</sup> is discussed below in the Administration section.

#### **5.1.1.3. Administration**

Administration of the Set Price after 2010 would be difficult as distribution amounts will vary by carrier and the calculation of the amount needed for collection is dependant on multiple variables (number of California LifeLine customers and the projection of the basic rate for each carrier next year). A way of determining the amount of the Set Price over time would also have to be crafted and would be based on a number of factors. A legally viable way to set the price is to use the lowest basic rate reported by any carrier that provides service to California LifeLine customers and adjust that over time as prices fluctuate.<sup>162</sup> Some carrier billing systems would require adjustments to fix the California LifeLine rate as an independent amount instead of a calculated amount, but over time carrier billing systems could handle such a process. The Commission would have to determine a reasonable period for carriers to implement new rates.

Additional difficulties include the higher risk of potential gaming of this option compared to the other options, albeit the overall risks are low and unlikely. One potential way to mitigate the risks associated with this option would be for the Commission to place limits on the LifeLine payments made to the companies so that any individual carrier cannot set unreasonably high basic rates in order to realize the difference between the set price and their basic rate

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<sup>161</sup> See, e.g., General Order 153 § 9.2.3.

<sup>162</sup> Monthly reporting by all carriers would be needed as the basic rate could move up or down at any point and this methodology is most sensitive to carrier rate changes.

solely from the California LifeLine program. Further, it is unlikely carriers would establish high basic rates and target California LifeLine customers in order to maximize their subsidy draw, it is a real possibility.<sup>163</sup> This is a direct result of having the subsidy level fluctuate. However, constraints could be placed on the process,<sup>164</sup> such as limiting the payments made per California LifeLine subscriber. If such limits are put in place, the risks are significantly diminished. Further, the need to implement significant limits is low as carriers have limited incentive to set artificially high basic rates just to maximize their California LifeLine support. Large carriers lack the market power needed to sustain prices above the levels that a competitive market would produce,<sup>165</sup> so a carrier that attempts to maximize its California LifeLine draw does so at the expense of non-California LifeLine subscribership. Given that the risk is limited to niche carriers and the low incidence of problems with the current program, the Commission's vigilant oversight would prevent a significant problem from occurring. In addition to or in lieu of a support cap, a number of evaluative

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<sup>163</sup> See Application of ConnectTo Communications to be designated as an Eligible Telecommunications Carrier (ETC) in California, which was initially rejected for failing to offer a local usage plan comparable to existing ETCs and failing to demonstrate their designation would be in the public interest, Proposed Resolution T-17152, subsequently adjusted after modifications to make basic rate comparable to ILEC and making public interest showing.

<sup>164</sup> See, e.g., D.00-10-028 which revised GO 153 to reflect changes to the ULTS program that occurred subsequent to 1984, set standards for carriers' service representatives in informing subscribers on the availability of ULTS program, etc. Cf. D.06-08-030 FoF 50-51.

<sup>165</sup> D.06-08-030 FoF 50-51.

screens<sup>166</sup> could be put in place to minimize this risk to the California LifeLine program under a Set Price scenario.

#### **5.1.1.4. Statutory Compliance**

The Set Price scenario can be accomplished in a manner that largely comports with the California LifeLine statutes, albeit a manner that would be administratively burdensome. It requires the Commission to monitor the basic rates of all the carriers providing California LifeLine service and adjust the LifeLine price to ensure it remains below 50% of the lowest of the carriers' basic rates. Such an approach may result in temporary periods of non-compliance if a carrier lowers its basic rate to an amount that is less than twice the set price, but presumably those periods would be short. Further, a rule could be established that would require a carrier that lowers its rate to simultaneously lower the California LifeLine Rate it charges to less than the amount proscribed by the Commission. Other carriers that could not make such a simultaneous change would be reimbursed to compensate for the new lower California LifeLine Rate and be required to provide credits to customers based on the additional reimbursement.<sup>167</sup> This is not an optimal scenario.

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<sup>166</sup> *E.g.*, ratio of California LifeLine to non-California LifeLine subscribers; more frequent certification evaluations; etc.

<sup>167</sup> Sufficient time would have to be allowed for carriers to implement such a process. Such a process may also introduce legal uncertainties about retroactive ratemaking that would have to be addressed.

#### **5.1.1.5. Impact on Customers and Low Income Customers**

Marketing the Set Price is simple as it would be consistent with the current marketing campaign designed around the notion of buying telephone service for less than \$6.

The Set Price option carries the highest program cost because it would result in the highest surcharge and thus have the most negative impact on non-California LifeLine customers. It also has a large benefit to low-income customers as they would pay just half of the lowest basic rate in the state.

The ability to access advanced services would not necessarily be impinged by the Set Price option, but the risk is greater that those services would no longer be available to LifeLine customers. A large number of current LifeLine customers purchase more than just plain old telephone service and apply the LifeLine discount toward their overall bill each month.<sup>168</sup> It would be difficult to continue to allow such practices under a Set Price option. The Commission may inadvertently limit the services provided to customers under such a policy as it would be difficult to administer the Set Price option and allow carriers to provide additional services bundled with the basic service elements. This would be a significant change in California policy necessary to restrict consumer choice in order to fix the price and level of services purchased by LifeLine consumers.

Finally, there is the possibility the support amount associated with the Set Price could be less than \$3.50 which would reduce the federal match available<sup>169</sup>

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<sup>168</sup> See Verizon Oct. 3, 2008 Comments at page 5 citing the 2004 Affordability Study and Verizon's internal data submitted to the Commission.

<sup>169</sup> For example a California LifeLine rate of \$8, such as SureWest proposed, would result in a California LifeLine payment of \$2 if a carrier has a \$10 basic rate, and \$2

*Footnote continued on next page*

and reduce the total federal support to less than \$10. Such a result would be positive for all consumers.

### **5.1.2. Option Two: Specific Support Amount**

Under the Specific Support option, the Commission would designate an initial monthly subsidy of \$12 (or some other amount) to be paid to carriers to directly reduce the monthly bills of California LifeLine customers. Adopting a specific support amount for all customers who qualify for California LifeLine, without regard to the telecommunication provider or technology, has the advantage of providing each customer the same support amount and may provide greater flexibility to low-income customers to select services beyond basic residential landline phone service, including wireless communications services. Such an approach would acknowledge the range of providers of voice communications services beyond traditional landline telephones, and enhance technology neutrality by allowing a LifeLine customer to choose the provider that best meets his or her unique needs.

Using the rates known at this time (which are all less than the caps authorized in D.08-09-042 for 2009), the Specific Support Amount<sup>170</sup> (based on \$12.00 from California LifeLine) for the four URF companies in 2009 would be:

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would not meet the state matching requirements to realize the full \$1.75 available under 47 C.F.R. § 54.403(a)(3). The Floating Subsidy Option has a similar limitation.

<sup>170</sup> See *infra* Section 5.2.2. The actual amount received by each carrier may be less depending on the rate charged to the California LifeLine customer. As discussed *infra*, we will calculate the amount owed to the carrier after application of the \$3.50 in matching federal support before applying the California LifeLine Specific Support Amount. However, the total discount to LifeLine customers could be greater than the Specific Support Amount (the Specific Support Amount from California LifeLine plus \$3.50 from federal Lifeline).

<b>Specific Support</b>						
1/1/2009	<u>AT&amp;T</u>	<u>Verizon</u>	<u>SureWest</u>	<u>Frontier</u>		
<b>Lifeline Rate</b>	<b>\$1.50</b>	<b>\$7.91</b>	<b>\$7.99</b>	<b>\$5.85</b>		
Basic Rate	\$13.50	\$19.91	\$19.99	\$17.85		
California LifeLine Amount	\$12.00	\$12.00	\$12.00	\$12.00		
<b>Total CA Lifeline Reimbursement</b>	<b>\$12.00</b>	<b>\$12.00</b>	<b>\$12.00</b>	<b>\$12.00</b>		

In the initial comments AT&T provided the most comprehensive proposal for the Specific Support concept, which AT&T calls a “fixed benefit.” AT&T acknowledged that moving to a fixed benefit would require significant changes to GO 153. AT&T proposed the Commission set a fixed benefit amount structured to meet the needs of low-income customers, which would be credited on the customer’s bill. Providers would seek reimbursement for the fixed amount from the claims process. Such an approach would simplify administration of the California LifeLine program because the reimbursement amount would no longer be calculated based on the provider’s usual rate but rather limited to the actual benefit distributed to customers.<sup>171</sup>

#### **5.1.2.1. Basic Rate Scheme**

The Specific Support option can be implemented immediately and is not impacted by the end of the basic rate cap on January 1, 2011. However, the certainty that the extension of the basic rate cap transition presents will allow the Commission to implement the Specific Support option in a phased manner. For example, the Commission could tie the Specific Support amount to basic rate

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<sup>171</sup> Additional questions arose around AT&T’s proposal that required further analysis, and the Assigned Commissioner issued an ACR and Scoping Memo on July 13, 2007 seeking input on these questions including changes needed to GO 153 and timelines needed by carriers to implement any changes.

caps that will be in place over the next two years (2009 to 2010), and allow carriers a reasonable transition period to implement the Specific Support process.

After 2010, the Specific Support option would be consistent with the communications market because it would provide low-income consumers choices in service providers and types of service. Low-income consumers would have the same option in choosing communication services as non-low-income consumers, and not be limited to only landline phone options. By setting the benefit that carriers must pass through to California LifeLine customers, the Commission ensures that low-income consumers are not restricted in purchasing the types of services they need.

#### **5.1.2.2. Fund Size/Cost**

The fund size of the Specific Support option falls generally in the middle of the three options and the Specific Support fund size would be dependent on the size of the benefit provided to each California LifeLine subscriber. The Commission would not have to monitor the market each month, but could more easily make sure the Specific Support amount is appropriately adjusted over time as prices fluctuate. The result is the Commission has reasonable certainty as to LifeLine program size without the uncertainty the other two options introduce.

The following chart provides a high, middle, and low estimate of the total fund size after 2011 for the Specific Support Option:



<b>Specific Support LifeLine Fund Size Options</b>				Current Program	Projected 2011
	Large Fund	Midsized Fund	Small Fund	Comparison	Comparison
Monthly Lifeline Payment	\$14.00	\$12.50	\$10.00	\$9.71	\$12.96
Average Lifeline Rate	\$6.00	\$7.50	\$10.00	\$5.47	\$8.72
<b>Total Lifeline Fund</b>	<b>\$398,469,456</b>	<b>\$355,776,300</b>	<b>\$284,621,040</b>	<b>\$276,367,030</b>	<b>\$368,868,868</b>

As in Section 5.1.1.2, the chart shows a range of possible outcomes based on whether the Specific Support Amount is sized to keep average rates at a level similar to today's fixed rate, or some other higher level. The impact of the size of the fund is on the consumers that will be paying the surcharge, and to the chart shows how varying the benefit impacts other consumers. This subsection is not intended to reflect any advantages or disadvantages of the benefit itself. The \$20 is used as a simple way to reflect the impact of the Moore Act against the current benefit amount. The average rate and California LifeLine payment amounts are varied based on how much the low income consumer pays ranging from a rate similar to today up to half the \$20. The California LifeLine program pays for the remaining amount of the service. The chart also shows the current program and project a 2011 figure based on current figures increased by the \$3.25 amount allowed by the Commission in D.08-09-042 for URF carriers, apportioned to both the consumer and the California LifeLine program. This illustration is solely for the purpose of showing that the size of the fund is not a dispositive factor in choosing between options, and cannot be used for any other purpose.

### **5.1.2.3. Administration**

Administration of the Specific Support Amount would depend on only one variable, the number of California LifeLine customers reported by the carriers each month.

The Specific Support amount also has the advantage of being easier to administer because the amount needed for collection is only dependant on one variable (the number of California LifeLine customers). Further, every carrier gets the same per California LifeLine customer subsidy from the fund. As the California LifeLine program would provide the same amount per customer to the carrier, its billing systems could easily handle the process once any initial adjustments are made. The Specific Support amount would also cover all carrier administrative costs and other fees. The Specific Support Amount is provider and technology neutral consistent with Section 871.5(d).<sup>172</sup> In addition, it is the easiest of the options to administer for reporting and payment purposes.

Waste, fraud, and abuse issues would also be the least with the Specific Support option compared to the other options as carriers would be paid a fixed amount for each California LifeLine customer they serve. The Specific Support amount should be at least \$3.50 in order to maximize the federal Lifeline support available to California consumers.<sup>173</sup>

#### **5.1.2.4. Statutory Compliance**

The Specific Support Amount can be accomplished in a legally sound manner. Section 874 of the Public Utilities Code requires that California LifeLine customers cannot be charged more than half of the basic rate. As the basic rate will fluctuate over time and for each URF carrier after 2010, the California LifeLine subsidy would have to be set sufficiently greater than 50% of the

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<sup>172</sup> See Pub. Util. Code § 871.5(d) (“[T]he commission, in administering the lifeline telephone service program, should implement the program in a way that is equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California.”).

average basic rate in order to ensure statutory compliance. However, if the amount is set at 55% of the highest basic rate of the Carriers of Last Resort (COLRs), we can establish reasonable certainty in program revenue and costs and help manage the market expectations of California LifeLine customers. The selection of 55% of the highest basic rate of the COLRs also ensures that statutory compliance regardless of any federal matching program.<sup>174</sup> Where possible, when implementing a program to meet specific statutory goals the program should not depend on actions outside of the Commission's control. As the federal Lifeline program is outside the Commission's control, the Specific Support Amount should be set at a level that will ensure compliance with the Moore Act.<sup>175</sup>

For example, if we use the 2010 SureWest Basic Rate Cap of \$25.40, we can establish a \$14 California LifeLine discount (55% of 25.40 is \$13.97) with certainty that another 10% increase by SureWest in 2011 (to an unlikely high \$28 amount to maximize the hypothetical) will keep program participants within statutory constraints. We do not expect that this hypothetical level of pricing could be sustained in the current communications marketplace, however, we use a high

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<sup>173</sup> 47 C.F.R. § 54.403(a)(3).

<sup>174</sup> *Id.*

<sup>175</sup> Pub. Util. Code §§ 871.5–880. Setting the Specific Support Amount this way will increase its costs compared to the other options, but it also increases the benefit available to low income consumers. In Section 5.2 we discuss how, on balance, the increased benefit is more desirable at this point given the economic conditions in California and how the extra cost is reasonable as the alternative would actually reduce the per subscriber California LifeLine payment.

estimate in this situation to illustrate the maximum Specific Support amount for comparison to the other options.

Such an approach would introduce a \$12.20 subsidy in 2009 (55% of SureWest's \$22.15 cap) and a \$14 subsidy in 2010. This results in an AT&T California LifeLine Rate of \$2.19 in 2009 and \$3.44 in 2010, barring the introduction of price floor greater than those amounts. Further, a \$12.20 subsidy is somewhat larger than the current per customer average payment to LifeLine carriers, but is within the range for what that average payment would be in the future based on historic growth rates and changes to the basic rate. In addition, the \$3.50 in matching federal support would bring the total discount to LifeLine customers to \$15.70. A \$15.70 subsidy would make LifeLine service free to AT&T LifeLine customers and lower than the current LifeLine rate for customers of every other ILEC in California.

In adopting such an approach over the long-term the Commission may want to seek statutory changes to the Moore Act to avoid after 2010 having to continuously update the support amount. However, statutory changes are not needed to design and implement a change to a Specific Support amount based on the methodology set forth in this decision.

#### **5.1.2.5. Impact on Customers and Low-Income Customers**

The Specific Support approach would maximize the types of services and providers a customer could choose. Marketing the Specific Support option is simply the converse of the current marketing campaign. Marketing could easily be designed around a \$12-\$15 discount on a low-income consumer's communication services.

The Specific Support option compares favorably with the other two options when comparing the midsize projections. The Specific Support option would result in a surcharge amount in the middle of the options and thus have a fair impact on non-LifeLine customers as the surcharge would not be unduly high but would realize the maximum number of users on the network. It would also benefit low-income customers as they would have the choice of paying a low basic rate and not be limited in the types of services or providers from which they make their purchase. Such a result is most likely to satisfy broad statutory goals set forth in the Public Utilities Code.<sup>176</sup> For example, a migrant farm worker may desire a wireless phone in order to follow fruit and produce picking work at different locations. Or, a deaf person may desire a wireless texting device in order to communicate at a job outside of his or her home.

We have already discussed the technology neutral benefits of this Specific Support option above in subsection 5.1.2.

#### **5.1.2.6. Setting a Price Floor for California LifeLine Rates under the Specific Support Option**

With the Specific Support option, an issue comes up of whether a price floor is necessary for LifeLine rates. Introduction of a California LifeLine benefit that exceeds the basic rate offered by a carrier filing a claim for California LifeLine support would result in an uneconomic and unnecessary transfer from customers to service providers. The Commission has also previously determined

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<sup>176</sup> See e.g., Pub. Util. Code §§ 709, 871, 872.

that in competitive markets, the establishment of price floors does more harm than good as it retards competition.<sup>177</sup>

While providing California LifeLine support to a carrier that result in a California LifeLine subscriber having a \$0.00 rate would be reasonable, it is not reasonable to pay the carrier more than is necessary to accomplish this \$0.00 rate. Carriers will establish prices based solely on market forces after 2010 and the specific support amount would be established by the Commission on an annual basis in order to maintain compliance with the California LifeLine statutory scheme. Under such a process, there is the possibility the specific support amount could be greater than the basic rate established by a carrier. However, as the Commission has determined that telecommunication carriers lack market power,<sup>178</sup> an artificial price floor greater than \$0.00 would harm the market and retard competition.

There was support for maintaining the existing California LifeLine rate (now \$5.47) in this proceeding in order to continue a price floor associated with basic service.<sup>179</sup> However, it is incongruous that California LifeLine customers may have to pay more than the economic cost of service if a carrier would

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<sup>177</sup> D.06-08-030, FoF 80 (“Because establishing price floors retards competition in markets where carriers lack market power, it is not reasonable to establish a price floor, supported by cost data, for telecommunications offerings.”)

<sup>178</sup> D.06-08-030, FoFs 15-16, 21-27, 39-44, 50-51 57-63

<sup>179</sup> Comments of the California Community Technology Policy Group and the Latino Issues Forum on the Commission’s Proposals for the Public Policy Programs at page 3-4 (August 24, 2007), Reply Comments of SureWest Telephone and SureWest Televideo on Scoping Memo and Ruling of the Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding at pages 2-5 (September 14, 2007).

otherwise have a rate lower than the existing California LifeLine rate after applying the Specific Support amount to customer bills. In maintaining a basic rate price floor in D.06-08-030, the Commission was concerned that funding for the California LifeLine program would be unpredictable given the potential fluctuation in carrier draws.<sup>180</sup> The Commission was also concerned about the need to address the potential for dramatic swings in end-user surcharges.<sup>181</sup> In a competitive marketplace, there is no reason to maintain the current price floor on 1MR and 1FR service. Accordingly, we should remove this last price floor on 1MR and 1FR service so that carriers can charge customers less than AT&T's 2006 basic service rates. The Commission should also limit California LifeLine support paid to carriers to the greater of the Specific Support Amount or the amount that results in the California LifeLine subscriber having a \$0.00 monthly rate.

### **5.1.3. Option Three: Floating Subsidy**

The third option is a "Floating Subsidy" of 50% of each individual company's lowest priced service that includes all the components of basic service. Such an option would not have the Commission prescribe either the rate all LifeLine customers pay, nor prescribe the specific benefit amount that carriers must reduce LifeLine customer bills. In allowing both components of the LifeLine program to move with the market, or float, the Commission would create a flexible program that would treat the LifeLine customers of each carrier

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<sup>180</sup> D.06-08-030, *mimeo.* at 152.

<sup>181</sup> *Id.*

in a comparable manner and adjust for the individual circumstances of each carrier.

In letting the California LifeLine rate for each carrier float with its individual basic rate, there could be various California LifeLine rates, which would greatly complicate our marketing efforts if the message was based simply on rates. An alternative is to craft a marketing message around a 50% discount. However, based on certain groups' comments, consumers would be more responsive to marketing messages that centered on specific dollar amounts. Thus, crafting an effective statewide marketing campaign around specific dollar amounts would be more difficult under this option. While it is possible to craft localized marketing efforts targeted by carriers operating in each area of the state, such an effort would be more costly compared to the current marketing campaign. The number of carriers providing California LifeLine service and their ability to frequently adjust rates may leave marketing efforts outdated before they are launched.

Using the rate caps authorized in D.08-09-042 for 2009 (and the rates known at this time), the Floating Subsidy for the four URF companies in 2009 would be:

<b>Floating Price</b>						
1/1/2009	<u>AT&amp;T</u>	<u>Verizon</u>	<u>SureWest</u>	<u>Frontier</u>		
<b>Lifeline Rate</b>	<b>\$6.75</b>	<b>\$9.95</b>	<b>\$9.99</b>	<b>\$8.92</b>		
Basic Rate	\$13.50	\$19.91	\$19.99	\$17.85		
California LifeLine Amount	\$6.75	\$9.96	\$10.00	\$8.93		
<b>Total CA Lifeline Reimbursement</b>	<b>\$6.75</b>	<b>\$9.96</b>	<b>\$10.00</b>	<b>\$8.93</b>		

The positive attributes of the Floating Subsidy include the ease of statutory compliance. California LifeLine customers would have reasonable certainty in



their costs as half of their actual provider's basic rate, though non-California LifeLine customers would have more volatility as adjustments in the surcharge amount would occur more frequently to adjust collections to disbursements. Marketing would be more difficult and could further reduce California LifeLine subscribership.

#### **5.1.3.1. Basic Rate Scheme**

The Floating Subsidy option would have no difference between the period before the basic rate cap expires on January 1, 2011, and the period after that date. The Commission could choose to phase-in changes over the next two years in some fashion tied to the difference between the basic rates of the COLRs. For example, moving to the Floating Subsidy in 2009 would result in the SureWest California LifeLine rate increasing up to \$9.45 while the AT&T rate could not exceed \$7.09 (or \$6.75 if AT&T makes no other changes to the basic rate in 2009). The Commission could continue the interim solution adopted in D.08-09-042 to have the California LifeLine program pay more to companies to lower their California LifeLine rates to an interim figure less than 50% of their basic rate and decrease that payment amount over time so that the rate increases to the 50% level.

After 2010, the Floating Subsidy option would be consistent with the communications market as it would allow low-income consumers the ability to choose their provider based on their own economic and service needs instead of an artificially uniform rate from all providers. By allowing the California LifeLine rate to move with the market, the Commission allows low-income consumers the same level of services and options as non-low-income consumers.

**5.1.3.2. Fund Size/Cost**

Projecting the fund size of the Floating Subsidy option is less certain, but it would be less than the other two options. The uncertainty in pricing and the more difficult marketing needed could reduce the number of participants, further reducing the program costs, but not serving our telephone penetration goals. The Commission should expect to spend significantly more in marketing costs if it wishes to maintain program subscribership. The Floating Subsidy projects to be the least cost option, but carries a high opportunity cost as it is the approach least likely to maintain the high subscriber level (95%) contained in our universal service goals.

The following chart provides a high, middle, and low estimate of the total fund size after 2011 for the Floating Subsidy Option:

<b>Floating Subsidy LifeLine Fund Size Options</b>				Current Program	Projected 2011
	Large Fund	Midsized Fund	Small Fund	Comparison	Comparison
Average Lifeline Rate	\$12.00	\$10.00	\$7.50	\$5.47	\$8.72
Average Lifeline Payment	\$12.00	\$10.00	\$7.50	\$9.71	\$12.96
<b>Total Lifeline Fund</b>	<b>\$341,545,248</b>	<b>\$284,621,040</b>	<b>\$213,465,780</b>	<b>\$276,367,030</b>	<b>\$368,868,868</b>

As in Sections 5.1.1.2 and 5.1.2.2, the chart shows a range of possible outcomes based on whether the Floating Subsidy reflects an average California LifeLine payment similar to today's amount, or if rates force the average payment up or down. The impact of the size of the fund is on the consumers that will be paying the surcharge, and to the chart shows how varying the benefit impacts other consumers. This subsection is not intended to reflect any advantages or disadvantages of the benefit itself. To show the potential fund sizes we standardize the basic rate at roughly double the current California

LifeLine benefit, \$9.71, which we have rounded up to \$20 for ease of presentation. The \$20 is used as a simple way to reflect the impact of the Moore Act against the current benefit amount. The average rate and California LifeLine payment amounts are varied based on how much the low income consumer pays ranging from a rate similar to today up to half the \$20. The California LifeLine program pays for the remaining amount of the service. The chart also shows the current program and project a 2011 figure based on current figures increased by the \$3.25 amount allowed by the Commission in D.08-09-042 for URF carriers, apportioned to both the consumer and the California LifeLine program. This illustration is solely for the purpose of showing that the size of the fund is not a dispositive factor in choosing between options, and cannot be used for any other purpose.

#### **5.1.3.3. Administration**

The Floating Subsidy is the most difficult administratively as per customer distribution amounts could vary by carrier each month, and would be different for each carrier. Carriers would be able to implement such a system after an adjustment period as they would have control over their basic rate and would be able to establish a way to reflect the 50% reduction in that rate on California LifeLine consumer bills.

The Floating Subsidy option also presents uncertainty in cost expectations each month, and makes the annual planning cycle a difficult challenge. The calculation of the amount needed for collection is dependant on multiple variables (number of California LifeLine customers, the projection of the basic rate for each carrier next year, along with a broad variance projection of that rate to account for possible changes). The Commission would have additional verification burdens as costs for each carrier would have to be tracked

separately. The Commission would also have to collect a larger buffer to ensure that carrier claims would be paid in a timely manner (if rates go down one year and up the next the fund balance would also experience a larger yo-yo effect).

Waste, fraud, and abuse issues would not be significant with a Floating Subsidy as carriers would have the ability to adjust their prices and thus their California LifeLine support amount. Carriers will be constrained from setting their rates unreasonably high as customers will be paying half of the charges and carriers lack the market power needed to sustain prices above the levels that a competitive market would produce.<sup>182</sup> Parties have also expressed concern that a bundled price may be lower than the stand-alone basic rate, and thus cause California LifeLine to overcompensate the carrier. This is not a large concern as customers are no worse off than if the California LifeLine subscriber had chosen stand-alone service, and California LifeLine customers get to tailor their communication purchase to meet their needs.

#### **5.1.3.4. Statutory Compliance**

The Floating Subsidy option can be accomplished in a legally sound manner. Section 874 of the Public Utilities Code requires that California LifeLine customers cannot be charged more than half of the basic rate. As the basic rate will fluctuate over time and for each URF carrier after 2010, the California LifeLine subsidy would fluctuate for each carrier so that California LifeLine subscribers pay no more than 50% of the provider's basic rate. Each carrier would be responsible for ensuring compliance by billing their customers no more than 50% of their respective basic rate. While this would require billing changes

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<sup>182</sup> See D.06-08-030 FoF 50-51.

for each carrier, carrier billing systems could handle the process once initial adjustments are made.

#### **5.1.3.5. Impact on Customers and Low-Income Customers**

The Floating Subsidy approach would not limit the types of services and providers a customer could choose. Marketing the Floating Subsidy option is difficult as it would as prices and discounts would vary by carrier. Marketing could be designed around the 50% discount.

As the Floating Subsidy option generally carries the lowest cost, it would result in the lowest surcharge and thus have the most positive impact on non-LifeLine customers. It will also benefit some low-income customers as they would have a relatively low basic rate. Most low-income customers would be worse off as the average low-income rate would be highest under the Floating Subsidy option, and some low-income customers could even end up paying more than non-low-income customers of other carriers. Low-income customers would not be limited in the types of services or providers from which they make their purchases.

There is the possibility the support amount associated with the Floating Subsidy could be less than \$3.50 (should a carrier offer a \$6.99 service) which would reduce the federal matching funds available<sup>183</sup> and reduce the total federal support to less than \$10. Such a result would be positive for all consumers.

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<sup>183</sup> 47 C.F.R. § 54.403(a)(3).

## 5.2. California LifeLine in the 21<sup>st</sup> Century

The Commission recognized in opening this Rulemaking in 2006 that competitive forces had irrevocably changed how consumers purchase communication services. The traditional regulatory focus on the provision of voice telephony was not sustainable in a communication marketplace where voice service was just one aspect of the communication service.<sup>184</sup> For some subscribers (e.g., broadband subscribers), voice service had become an application riding on their communication services, and was not the primary driver of the communication purchase. Through this Rulemaking, the Commission set out to reform California LifeLine in a way that would “continue our universal service commitment by assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians.”<sup>185</sup>

The Commission specifically asked:

Should the program be revised to reflect technological changes in telecommunications services? If so, how? What are the estimated costs of such revisions? What are the projected, specific benefits? Would the revisions require statutory changes? If so, what is the likely time frame for adoption of the revised statutes?<sup>186</sup>

In general, parties welcomed the review of the California LifeLine program and were supportive or accepted that the California LifeLine rate

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<sup>184</sup> Order Instituting Rulemaking on Telecommunications Public Policy Programs (PPP OIR), *mimeo.* at 2, 8-9, adopted May 25, 2006.

<sup>185</sup> Pub. Util. Code § 709(a).

<sup>186</sup> PPP OIR, *mimeo.* at 20.

needed to be de-linked from AT&T's basic rate,<sup>187</sup> which we believe it is the best course at this time. No party opposed de-linking the California LifeLine rate from AT&T's basic rate. In addition, we believe the California LifeLine rate must be de-linked from the AT&T basic rate in order to ensure ongoing compliance with Section 874 of the Public Utilities Code.<sup>188</sup> Parties had different views as to how the California LifeLine program should operate after it is de-linked from the AT&T basic rate.

DRA suggested the Commission should develop an independent basis for determining what low-income customers find affordable.<sup>189</sup> However, the Commission has already stated its intention to conduct another affordability study in 2009<sup>190</sup> and many parties saw no reason to delay changes in the

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<sup>187</sup> See, e.g., DRA Reply Comments to the Commission's May 26, 2006 OIR at page 24 ("DRA generally supports the idea of de-linking the ULTS rate (given that AT&T's residential rates will not be subject to rate caps after the next two years), but observes that any change to the ULTS rate could potentially have a huge impact on California LifeLine customers and lifeline penetration rates, which would be contrary to statutory goals.")

<sup>188</sup> Pub. Util. Code § 874 requires carriers to charge no more than half their basic rate to California LifeLine customers. If we do not de-link the California LifeLine Rate from AT&T's basic rate, the Commission can only ensure statutory compliance as long as AT&T's basic rate is the lowest in the state. For example, a carrier with a \$10 basic rate could charge no more than \$5 to a California LifeLine customer, and a requirement that the carrier charge half the AT&T rate would result in a situation that does not comply with the statutory requirement. Cf. *infra* Section 5.1.1.

<sup>189</sup> DRA Comments at pages 24-30 (Nov. 9, 2007), DRA Comments at pages 5-6 (Oct. 3, 2008), cf. Cox Comments at page 9 (Oct. 3, 2008) (affordability study by June 30, 2010...should provide the Commission with insight into affordability issues...)

<sup>190</sup> D.08-09-042, *mimeo.* at 30-32, FoF 27, OP 7.

California LifeLine program to complete a new Affordability Study.<sup>191</sup> In the recent decision extending the basic rate caps for two more years, the Commission took note that approximately 25% of households in California are subscribers to California LifeLine, and that as part of the overall reforms to the California LifeLine programs, an update to the Affordability Study would be useful in ensuring that our policies continue to meet the goal of 95% subscribership. Further, as the number of California LifeLine households exceeds the number that found telephone service difficult to afford or had concerns about paying their phone bill in the 2004 Affordability Study, the use of a new Affordability Study would not produce helpful or usable information related to matters in the high cost docket.<sup>192</sup> Finally, subsequent to D.08-09-042, the Legislature adopted SB 780, which among other things requires the Commission to “prepare and submit to the Legislature a report on the affordability of basic telephone service in areas funded by the California High-Cost Fund-B” by July 2010.<sup>193</sup> Thus, while an affordability study will be undertaken, there is no reason to postpone changes to the LifeLine program pending its completion.

The continued affordability of telecommunications services can best be assured through targeted programs and policies such as the California LifeLine and the California High-Cost universal service programs. As required by

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<sup>191</sup> Cox Comments at page 9 (Oct. 3, 2008), Verizon Comments at 28-29 (Oct. 3, 2008), AT&T Reply Comments at 6-8 (Oct. 8, 2008), Verizon Reply Comments at pages 14-15 (Oct. 8, 2008).

<sup>192</sup> *Id.*

<sup>193</sup> Stats. 2008 Chapter 342.



Commission D.08-09-042 and Public Utilities Code Section 739.3 (f),<sup>194</sup> the Commission will conduct an Affordability Study in the 2009-2010 fiscal period in order to ensure that our universal service policies continue to meet the goal of 95% subscribership to basic service. The study will include a report on the affordability of basic telephone service in areas funded by the California High-Cost Fund-B Administrative Committee Fund as required by Sec. 739.3(f) and will gather information on prices and costs of basic telephone service, and penetration and utilization rates by income, ethnicity, age, and other relevant demographics. We will also conduct a statewide survey to facilitate analysis of the impacts of LifeLine in California so that we can ensure the reforms to the LifeLine program adopted in this proceeding continue to meet the goals of the Legislature and the Commission. We will report our findings to the Legislature in July 2010.

Commission staff is currently drafting an Affordability Study plan of action and the Commission has requested from the Legislature \$1 million for FY 2009-2010 to conduct a state-wide survey of consumers. The appropriation is in the Governor's proposed budget.

**5.2.1. The Specific Support Methodology  
Provides the Best Option for Maintaining  
Low-Income Subscribership**

After evaluating all of the options against the goals of the Moore Act and our overall universal service goals, we have determined that the Specific Support methodology is the best option. A Specific Support process for California LifeLine will provide the greatest flexibility to low-income customers to select

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<sup>194</sup> SB 780 (Wiggins) Chapter 342, Statutes of 2008.

the communication service that best meets their unique needs. A Specific Support process for California LifeLine is consistent with the statutory and regulatory framework of California. The cost of a Specific Support process is reasonable compared to the other options making that factor less important than it would be if there was a large cost difference. However, a Specific Support process provides the largest degree of financial stability which overall produces a larger benefit to consumers than the other options. All of the choices result in a LifeLine program that is larger than the current program; however, fixing the current LifeLine price in perpetuity is more likely to result in the most expensive option to consumers. In determining the calculation of the Specific Support Amount in the following section, we determine to use 55% of the highest basic rate of the COLRs to ensure statutory compliance regardless of any federal matching program.<sup>195</sup> Where possible, when implementing a program to meet specific statutory goals the program should not depend on actions outside of the Commission's control. As the federal Lifeline program is outside the Commission's control, the Specific Support Amount will be set at a level to ensure compliance with the Moore Act.<sup>196</sup> Selection of the Specific Support methodology would be even more compelling if we first deducted the federal matching support, but given the economic conditions in California and how the extra cost is reasonable as the alternative would actually reduce the per subscriber California LifeLine payment, the increased benefit is more desirable at this point.

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<sup>195</sup> 47 C.F.R. § 54.403(a)(3).

<sup>196</sup> Pub. Util. Code §§ 871.5–880.

A Specific Support process is the easiest to administer for many components (collections, fund management, disbursements, and verification). A Specific Support process can be accomplished in a legally sound manner, and is the most likely option that will satisfy the broad statutory goals set forth in the Public Utilities Code.<sup>197</sup> In sum, the Specific Support option is the best choice for the Commission upon which to base the California LifeLine program.

In adopting the Specific Support methodology for California LifeLine, the Commission may want to seek statutory changes to the Moore Act to simplify the administrative process after 2010 when it will have to continuously update the support amount. However, as statutory changes are not needed to design and implement a change to a Specific Support amount based on the methodology set forth in this decision, there is no need to seek specific changes immediately.

### **5.2.2. Calculation and Administration**

Commission staff will annually review the basic rate amounts charged by carriers in California and pursuant to aid the Commission in establishing a Specific Support Amount and considering the fiscal impacts of the program. Carriers shall reduce California LifeLine customers' monthly bills by the Specific Support Amount. Carriers may seek reimbursement from the California LifeLine program for discounts provided to eligible low-income customers.<sup>198</sup> Changes to the California LifeLine rules and GO 153 in accordance with the revised Specific Support Amount process shall be made.

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<sup>197</sup> See *e.g.*, Pub. Util. Code §§ 709, 871, 872.

<sup>198</sup> See Pub. Util. Code § 277.

After 2008, the basic rate will fluctuate over time and for each URF carrier, albeit within a capped range until 2011. Commission staff will prepare a Resolution proposing a methodology for calculating the Specific Support Amount in upcoming years based on the following formula. The California LifeLine Specific Support Amount shall be set at 55% of the highest basic rate of the COLRs as reported to the Commission. In its resolution, Staff should propose the method for determining the highest basic rate of the COLRs and a proposed process for making the annual changes. Staff should also include in the resolution the proposed Specific Support Amount (SSA) for 2010. To facilitate preparation of the resolution, we order COLRs to provide on August 15, 2009 the Communications Division Director their basic rate(s) effective as of July 31, 2009. We direct Staff to follow the following timeline in preparing its resolution.

COLRs submit basic rate information	August 15
Commission staff prepares draft resolution approving SSA	September 3
Mail resolution for 30 day comment period (per Section 311)	September 5
30-day comment period for draft resolution	October 5
Commission approves SSA resolution	October 20
Carriers to provide 30-day customer notice	
SSA Implementation date	January 1

The resolution will also describe the process for subsequent years, including how Commission staff will prepare a letter to the carriers detailing the new Specific Support Amount.

Whenever a COLR changes their basic FR1 rate, they already are required to submit notification of the change to the Commission.<sup>199</sup> Communication Division staff will review the rate changes, and adjust the Specific Support Amount if at any time a LifeLine customer served by a COLR in California is no longer receiving at least a 50% reduction in their basic service rate, in compliance with the Moore Act and other Commission universal service decisions.

The initial California LifeLine Specific Support Amount is calculated by using the 2009 SureWest Basic Rate Cap of \$22.15. We establish a \$12.20 California LifeLine discount – 55% of 22.15 is \$12.18, which we round up in five cent increments for ease of administration to \$12.20.<sup>200</sup> The actual amount received by each carrier may be less depending on the rate charged to the California LifeLine customer. Further, as discussed *infra*, we will calculate the amount owed to the carrier after application of the \$3.50 in matching federal support before applying the California LifeLine Specific Support Amount. The initial total discount would thus be as much as \$15.70 (\$12.20 from California LifeLine and \$3.50 from federal Lifeline).

California LifeLine support will be reduced in cases where a carrier has a rate less than the combined federal and state subsidy amounts. In no case will California LifeLine support be provided where the resulting rate is less than

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<sup>199</sup> See General Order 96-B; See also Pub. Util. Code § 495.7, D.07-09-018, FoFs 21, 31, and 38, D.07-09-019 *mimeo.* at page 56.

<sup>200</sup> Future calculations should all round up to the closest five cent increment so that the actual support amount may be slightly higher than 55% of the highest basic rate of the COLRs.

\$0.00.<sup>201</sup> Carriers will establish prices based solely on market forces after 2010 and the specific support amount will be established by the Commission on an annual basis in order to maintain compliance with the California LifeLine statutory scheme. As the Commission has determined that telecommunication carriers lack market power,<sup>202</sup> we determine that an artificial price floor greater than \$0.00 for California LifeLine customers would harm the market and retard competition. Non-ETCs that do not claim federal Lifeline/linkup funds will be presumed to have received the full federal subsidy in calculating the state Specific Support Amount. See examples in the table below:

	<b>ETC</b>	<b>Non-ETC</b>
Current Rate	\$15.00	\$15.00
Federal Lifeline Subsidy	\$3.50	(\$3.50)
Specific Support Amount Carrier Receives	\$11.50	\$11.50
Customer pays	\$0.00	\$3.50

In addition, we will reduce the price floor for Enhanced LifeLine (for residents on Native American reservations) to \$0.00 to be consistent with other low-income LifeLine program participants.

We reject the calls of parties to fix the existing California LifeLine rate at its current \$5.47 amount. It would be incongruous for California LifeLine customers to pay more than the economic cost of service if a carrier would

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<sup>201</sup> Based on initial calculations, California LifeLine will be reduced to any carrier that has a basic rate less than \$15.70 so that the rate charged to LifeLine subscribers is \$0.

<sup>202</sup> D.06-08-030, FoFs 15-16, 21-27, 39-44, 50-51, and 57-63.

otherwise have a rate lower than the existing California LifeLine rate (\$5.47) after applying the Specific Support amount to customer bills. In maintaining a basic rate price floor in D.06-08-030, the Commission was concerned that funding for the California LifeLine program would be unpredictable given the potential fluctuation in carrier draws.<sup>203</sup> The Commission was also concerned about the need to address the potential for dramatic swings in end-user surcharges.<sup>204</sup> In a competitive marketplace, we do not see any reason to maintain the current price floor on 1MR and 1FR service. Accordingly, we remove this last price floor on 1MR and 1FR service so that carriers can charge customers less than AT&T's 2006 basic service rates. The Commission shall limit California LifeLine support paid to carriers to the greater of the Specific Support Amount or the amount that results in the California LifeLine subscriber having a \$0.00 monthly rate.

The Commission recognizes that a monthly \$12.20 subsidy is somewhat larger than the current per customer average payment to LifeLine carriers, but is within the range for what that average payment would be in the future based on historic growth rates and changes to the basic rate. In addition, the \$3.50 in matching federal support would bring the total discount to LifeLine customers to \$15.70. A \$12.20 California LifeLine subsidy whether coupled with the matching federal support or not will ensure continued high subscribership levels of low-income customers in California.

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<sup>203</sup> D.06-08-030, *mimeo.* at 152.

<sup>204</sup> *Id.*

### 5.2.3. Carrier Requirements

The Specific Support Amount process is also the easiest of the options to administer for reporting and payment purposes. The Specific Support Amount is provider and technology neutral consistent with the goals outlined in Pub. Util. Code § 871.5(d).<sup>205</sup> Every carrier gets the same per California LifeLine customer support amount from the fund up to the amount that fully compensates the carrier for its service. As the California LifeLine program will provide the same amount per customer to the carrier, carrier billing systems will need to be adjusted to reflect the discounted rate. Based on the input of the parties, annual adjustments to the California LifeLine support amount should be easily accommodated by the carriers' billing systems.

We recognize the need to allow carriers some period of time to implement the revised California LifeLine process.<sup>206</sup> However, customers will see significant benefits from the new California LifeLine Specific Support Amount program compared to the existing program that along with current economic conditions<sup>207</sup> lead us to conclude that implementing anything that will improve

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<sup>205</sup> See Pub. Util. Code § 871.5(d) (“[T]he commission, in administering the lifeline telephone service program, should implement the program in a way that is equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California.”).

<sup>206</sup> See e.g., AT&T Response to Scoping Memo, at page 2 (August 24, 2007).

<sup>207</sup> See Fitch: U.S. Telecom and Cable Credit Profiles to Weaken in 2009, December 3, 2008, available at [http://www.fitchratings.com/corporate/events/press\\_releases\\_detail.cfm?pr\\_id=451798](http://www.fitchratings.com/corporate/events/press_releases_detail.cfm?pr_id=451798), as reported at Fitch: Poor Economy May Boost Pace Of Switch To Wireless, By Kathy Shwiff, Dow Jones Newswires, December 8, 2008, available at [http://money.cnn.com/news/newsfeeds/articles/djf500/200812081426DOWJONESDI ONLINE000520\\_FORTUNE5.htm](http://money.cnn.com/news/newsfeeds/articles/djf500/200812081426DOWJONESDI ONLINE000520_FORTUNE5.htm).



the services provided to California LifeLine customers should be done as expeditiously as possible. Accordingly, we establish January 1, 2010 as the effective date for changing from the current program to the California LifeLine program based on the Specific Support Amount process. As this date is on the shorter end of the implementation dates submitted in comments, we order Communication Division staff to convene a workshop before the Implementation Date to address all the new requirements, including proposed changes to GO 153.

Currently, carriers are required to track and report by month a number of factors, including weighted average number of LifeLine customers, administrative costs, number of minutes their employees spend discussing LifeLine with customers, balancing accounts for pass-through costs (Federal Excise taxes), etc., and to report the data into a 28-line claim form and attach supporting documentation to that form.<sup>208</sup> Continuing the current administrative process is problematic given the other proposed program reforms. Accordingly, Commission staff will redesign the claim form to gather only information needed to process, verify, and audit carrier LifeLine claims.

Under current rules, LifeLine customers are not assessed the public program surcharges (CTF, CHCF-A, etc.). LifeLine customers also do not pay the federal excise tax, the CPUC user fee, or any state/local taxes. These charges are currently claimed by carriers from California LifeLine and passed through to the respective taxing authorities.

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<sup>208</sup> Competitive Local Carriers can opt out from filing carrier specific cost data and receive an average amount designed to compensate smaller, less efficient carriers.

With this Decision, the California LifeLine program will no longer reimburse carriers for the pass-through costs. California LifeLine customers will still be exempt from paying into the state public purpose program funds. In addition, carriers can also no longer claim from the LifeLine fund for any federal makeup costs resulting in not having ETC status.<sup>209</sup> This includes the End User Common Line (EUCL) charge.

Beginning with the implementation of this Decision, Communication Division staff will collect end-of-month (EOM) customer counts by carrier from the Certifying Agent. The Specific Support Amount will be paid based on these counts. In addition, carriers will be responsible for submitting counts of connection and conversion incidents during the month for reimbursement. LifeLine will continue to reimburse carriers for California LifeLine benefits passed through to the customer for connection and conversion discounts. However, the Commission may revisit this issue in the future to ensure carriers are not inappropriately claiming multiple connection/conversion charges for the same customer.<sup>210</sup>

Carriers will continue to have the responsibility for reporting with each claim their rate both before and after application of California LifeLine and federal Lifeline support payments and the number of eligible customers. Carriers shall reduce California LifeLine customers' monthly bills by the Specific Support Amount. In addition, carriers are required to give thirty day notice to their customers whenever a change is made to the Specific Support Amount.

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<sup>209</sup> See *infra* Section 5.7.

<sup>210</sup> See General Order 153 § 8.1.1, *cf.* 47 C.F.R. § 54.411(c).

### **5.3. Wireless Residential Use and California LifeLine**

We began this review of the Telecommunications Public Policy Programs by receiving a staff report which summarized the current state of all programs, including LifeLine, and identified the availability of new and advanced technologies as one of the major reasons for reviewing the programs.<sup>211</sup>

In initiating this OIR, we acknowledged that our programs needed to evolve to keep up with changing technology:

When the programs were created, landline telephone service provided by monopoly service providers was the only widely-available form of telecommunications service. Since then, new technologies, such as wireless telephones and Internet-based communications, such as Voice over Internet Protocol (VoIP) have greatly expanded the range of telecommunications services available. In this context, the statutory goals and specifications of the Telecommunications Public Policy Programs may require modernization. The first inquiry is whether the programs remain necessary to achieve the fundamental statutory goal of enhancing universal service and, if so, whether changes are necessary to further this goal in today's competitive and technologically varied telecommunications environment.<sup>212</sup>

We heard significant support from consumers for allowing wireless providers to participate in California LifeLine.<sup>213</sup> We pursued this issue through

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<sup>211</sup> Staff Report on Public Policy Programs, Staff of Telecommunications, Strategic Planning, and Legal Divisions at page 27 (April 14, 2006).

<sup>212</sup> Rulemaking on the Commission's Own Motion to Review the Telecommunications Public Policy Programs 06-05-028, at page 2 (R.06-05-028).

<sup>213</sup> See, R.06-05-028 Public Participation Hearings Volumes 1-3 (Sept. 25, 2006, Oct. 26, 2006, and Nov. 3, 2006).

the scoping memo, proposing a fixed benefit approach, with the plan to consider extending this benefit to wireless and possibly other providers in a subsequent phase of this proceeding.<sup>214</sup> Comments did not support undertaking such a two step process and urged action in this decision.<sup>215</sup>

After reviewing the parties' comments, we have become convinced that the contemplated two-step approach, i.e., adopt a fixed benefit, then extend it to other providers, would be unduly complicated. As discussed above, in today's decision we adopt a Specific Support Amount approach to LifeLine rates and carrier reimbursement. This proceeding's record contains overwhelming evidence supporting the expansion of LifeLine in a technology neutral manner. Low-income consumers should not be limited to traditional wireline telephone service and deserve the same choice of what technology and services as all other customers. California LifeLine should not serve as a barrier to these technologies, but rather, a channel to greater access as these technologies are employed in residential use by consumers.<sup>216</sup>

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<sup>214</sup> Scoping Memo and Ruling of Assigned Commissioner and Administrative Law Judge Determining the Scope, Schedule, and Need for Hearing in this Proceeding at page 7 (July 13, 2007).

<sup>215</sup> See, e.g., Cox Opening ACR Comments at pages 2-5 (October 3, 2008), AT&T Opening ACR Comments at page 2 (October 3, 2008) ("This proceeding's record also contains overwhelming evidence supporting the expansion of Lifeline to alternative technologies, such as wireless telephones"), T-Mobile Opening ACR Comments at pages 4-5 (October 3, 2008).

<sup>216</sup> Pub. Util. Code §§ 871.5(b), 872, 878.

Some parties have urged us to proceed cautiously so as not to undermine the currently successful wireline program.<sup>217</sup> Concerns expressed generally fall into two areas. The first concern is that allowing customer choice of wireless services will double or triple the size of the fund. The second concern comes primarily from wireline carriers and appears based on preventing low-income customers the choice of communication services by restricting California LifeLine to only wireline offerings. As to the first concern, we have controls today that prevent the first area of concern from becoming a reality.<sup>218</sup> In addition, the Commission can put in place additional controls if they are necessary to ensure only one LifeLine service is provided to a subscriber's principal place of residence. There is nothing unique or different about wireless service that changes this directive to prevent waste, fraud, and abuse, and the Commission will remain vigilant in this area. As to the second concern, we explicitly reject the second as contrary to the goals of the Public Utilities Act.<sup>219</sup> The Moore Act lays out a clear test of whether a service is eligible to be included in California LifeLine. Twelve years ago the Commission determined that

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<sup>217</sup> Verizon Initial Comments at pages 3-5 (August 24, 2007), Verizon Opening Comments on the ACR at pages 19-22 (October 3, 2008), Opening Comments of SureWest at page 2 (August 24, 2007), Reply Comments of Disability Rights Advocates at page 2 (September 14, 2007); *cf.* Opening Comments of The Greenling Institute at page 2 (August 24, 2007), Amended Opening Comments of Sprint Nextel at page 1 (August 27, 2007).

<sup>218</sup> *See* Pub. Util. Code § 878; see e.g., D.08-08-029 ("Adopting a pre-qualification requirement for California LifeLine").

<sup>219</sup> *See, e.g.*, Pub. Util. Code §§ 709, 709.5(a), 871.5(d).

wireless did not meet the test as it “can be used anywhere.”<sup>220</sup> Today circumstances are dramatically different<sup>221</sup> as more than 30% of consumers use wireless as their residential phone, completely eschewing the landline.<sup>222</sup>

Subsequent to D.96-10-066, the Commission clarified that wireless carriers should be “allowed to provide ULTS if they comply with ULTS program rules.”<sup>223</sup> In addition, the Legislature enacted section 871.7 of the Public Utilities Code in 2000 to require the Commission to evaluate how technology innovation is impacting the definition of basic service.<sup>224</sup> While not mandating a change, the

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<sup>220</sup> D.96-10-066, 68 CPUC2d at 638. Somewhat notable is the terminological change that has occurred between 1996 and 2008 where the Commission and parties referred to “mobile telephones” in 1996 but use “wireless service” in 2008. This subtle shift is indicative of the change that has occurred where wireless services are no longer used just when “on the move,” but are now a primary residential phone for many consumers.

<sup>221</sup> Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2008, U.S. Center for Disease Control, available at <http://www.cdc.gov/nchs/nhis.htm> (More than one out of every six American homes (17.5%) had only wireless telephones during the first half of 2008, and among households with both landline and wireless telephones, 22.7% received all or almost all calls on the cellular telephones. These wireless-mostly households make up 13.3% of all households. Thus, wireless services are the sole or predominant means of residential communication in 30.8% of the U.S.). Cf. Pub. Util. Code §§ 871.5(b), 872 (“residential” means “residential use and excludes industrial, commercial, and every other category of end use.”).

<sup>222</sup> Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2008, U.S. Center for Disease Control, available at <http://www.cdc.gov/nchs/nhis.htm>. See also, R.06-05-028 Public Participation Hearings Volume 1 at pages 8-11 (Sept. 25, 2006).

<sup>223</sup> D.00-10-028 at 186. 2000 Cal PUC LEXIS 838, \*283.

<sup>224</sup> Stats. 2000, Chapter 943. Pursuant to the direction of the Legislature in this statute, the Commission adopted D.02-10-060 which summarized the Broadband Report submitted to the Legislature in August 2002, and stated that the cost of making

Legislative directive reinforces the evolving level of communication services that this Commission has adopted as its evaluative measure for considering universal service within California.<sup>225</sup> In looking at how wireless service is used today, twelve years after the Commission's last review of the subject in D.96-10-066,<sup>226</sup> we can see that wireless phones have become entrenched with our residents,<sup>227</sup> with more wireless phones than wireline phones in California.<sup>228</sup> Wireless

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broadband technology available to all would be prohibitive at that time. It also found that Internet access is available to all customers who have basic telephone services, and concluded that the Commission should continue to focus on keeping basic telephone service as affordable as possible. However, the Commission did not revisit the issue of whether wireless service had evolved to the point of being a residential service.

<sup>225</sup> See D.07-09-020, *mimeo.* page 63.

<sup>226</sup> See Opening Comments of Sprint Nextel on the ACR at pages 11-12 (October 3, 2008) ("wireless carriers are not quite literally completely barred from acting as providers of "basic" service for purposes of participating in the CHCF-B and ULTS Programs"). See also D.96-10-066 CoL 157 ("Until the Moore Act is amended by the Legislature, the ULTS program funds should not be used to subsidize a mobile telephone service that can be used anywhere."). We explicitly reject this conclusion based on our determination herein that wireless service is a residential service today. DRA Comments at page 24 (July 28, 2006) ("There is no need for statutory changes to include wireless services in the ULTS program.").

<sup>227</sup> DRA Comments at pages 25-27 (July 28, 2006) (Because of the impressive growth and penetration of wireless telephony, particularly its benefits to the low-income community, the Commission should investigate ways to encourage wireless carriers to offer California Lifeline service.) Pew Internet Project's December 2007 Survey, available at [http://www.pewinternet.org/pdfs/PIP\\_Mobile.Data.Access.pdf](http://www.pewinternet.org/pdfs/PIP_Mobile.Data.Access.pdf) (wireless phone would be more difficult to give up than the internet, TV, and landline telephone). See also Twelfth FCC CMRS Report, WT Docket No. 07-71. FCC 08-28 (rel. Feb. 4, 2008) at para. 206 (as of December 2006 there was a nationwide penetration rate of 80%); Thirteenth FCC CMRS Competition Report, WT Docket No. 08-27, DA 09-54 (rel. Jan. 16, 2009) at para. 197 (as of December 2007 there was a nationwide penetration rate of approximately 86 percent).

<sup>228</sup> FCC Local Telephone Competition: Status as of December 31, 2007 (Sept. 2008) at Tables 7 and 14 (as of December 2007, there were 32,247,015 wireless subscribers in

*Footnote continued on next page*

services are commonly found in residential use<sup>229</sup> and a substantial number of residential users use only wireless service,<sup>230</sup> and the wireless only percentage is even larger for low-income residential users.<sup>231</sup> We agree with Greenlining that the “high rate of cell phone use by low-income and minority consumers” makes it “imperative for the Commission to modify the LifeLine program to ensure access to current technology for low-income consumers.”<sup>232</sup>

The circumstances of residential use are substantially different than they were in 1996 and “residential use” now includes wireless services. As a result, the California LifeLine program must adapt to address this change. It is now appropriate that California LifeLine should subsidize wireless telephone service when consumers choose that service as their residential service. This does not

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California compared to 17,864,058 ILEC and 2,984,085 CLEC switched access lines in California).

<sup>229</sup> Opening Comments of the Greenlining Institute at pages 5-6 (July 28, 2006); Rainie, Lee, *Pew Internet Project Data Memo Re: Cell Phone Use* at page 10 (April 2006) (African-American and Latino wireless phone users are more likely to access the internet through their phones); *See also* Greenlining Declaration of Michael Phillips, *The Last Ten Percent* (submitted June 15, 2006).

<sup>230</sup> Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2008, available at <http://www.cdc.gov/nchs/nhis.htm> (Nearly one-third (30.8%) of the U.S. population live in wireless only and wireless-mostly households.).

<sup>231</sup> *Id.* (Approximately 40% of all wireless-only adults are living in households with income below 200% of the Federal Poverty Level.). *See also*, Opinion Research Corporation, *Prepaid Phones In The U.S.: Myths, Lack of Consumer Knowledge Blocking Wider Use*, prepared for the New Millennium Research Council (December 4, 2008); Low-income users latch on to iPhone, comScore, Inc., October 27, 2008 (iPhone sale data indicates an early signal that wireless smartphone service is moving from luxury to necessity).

<sup>232</sup> Greenlining Reply Comments at page 6 (September 14, 2006).



mean that we will require all low-income consumers to purchase wireless service, but rather, simply grants low-income consumers the ability to choose either a wireline or wireless service that best meets their needs.<sup>233</sup>

The Commission has regularly allowed competitive providers to receive funds from the LifeLine program even when their services are offered at higher prices than standard telephone service.<sup>234</sup> Such carriers can receive no more than the difference between the LifeLine rate and the basic rate for the ILEC. Accordingly, the idea that wireless service cannot participate in California Lifeline because it may cost more than “standard telephone service” is no longer valid.<sup>235</sup> In fact, given the advances in technology today, there is no reason we should limit participation in the LifeLine program to any type of technology of service provider as long the basic service elements are part of the service delivered to the low-income customer.<sup>236</sup>

Further, as wireless carriers do not provide “telephone service within a service area” within the meaning of Pub. Util. Code § 876, there is no necessity for wireless carriers to “file a schedule of rates and charges providing a class of LifeLine telephone service” pursuant to that section. Wireless carriers could, however, file the schedule of rates and charges for services offered to LifeLine eligible customers on a voluntary basis in order to be part of the LifeLine

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<sup>233</sup> Cox Reply Comments at page 6 (Oct. 8, 2008).

<sup>234</sup> *Cf.* D.96-10-066, 68 CPUC2d at 638.

<sup>235</sup> *Id.*

<sup>236</sup> Verizon is correct that the Commission cannot compel wireless participation in California LifeLine, but there is also no longer any reason to prohibit their participation in the program. See Verizon Initial Comments at pages 11-12 (Aug. 24, 2007), Sprint Comments at pages 11-12 (Oct. 3, 2008).

program, but will not be required to do so. It is our judgment that such a voluntary filing would not and could not constitute Commission jurisdiction over wireless carrier rates.

At the same time, we do not find any conflict between a voluntary filing of a LifeLine schedule of rates and charges and 47 U.S.C. Sec. 332(c)(3)(A)<sup>237</sup> In this regard, we note that “[w]ireless service is a substitute for wireline service.”<sup>238</sup> We also note that “California regulatory policy should reflect the fact that wireless telecommunications services compete with wireline services.”<sup>239</sup> Given this finding and conclusion, we find offering wireless carriers the opportunity to voluntarily file a schedule of rates and charges for services offered to LifeLine eligible customers to be consistent with the language in 47 U.S.C. Sec. 332(c)(3)(A).<sup>240</sup>

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<sup>237</sup> 47 U.S.C. § 332(c)(3)(A).

<sup>238</sup> D.06-08-030, FoF 39.

<sup>239</sup> *Id.* at CoL 13.

<sup>240</sup> As we seek to encourage wireless participation in California LifeLine, we are cognizant that some parties fear that even a voluntary filing would conflict with 47 U.S.C. Sec. 332(c)(3)(A). If those parties are correct the Commission can overcome such a conflict between the requirement to file a schedule of rates and federal law without any further action by the Legislature. The Legislature has previously specified that any part of the Public Utilities Code that is in conflict with the Communications Act of 1934, as amended, with respect to wireless services will not apply to the extent of that conflict. Pub. Util. Code § 247 (“Any provision of this part that is in conflict with the Communications Act of 1934, as amended, (47 U.S.C. Sec. 332(c)(3)) shall not apply to commercial mobile radio service to the extent of that conflict. If any provision contained in this part applicable to commercial mobile radio service, or the application thereof to any person or circumstance, is invalid as a result of federal preemption, the remainder of this part, or the application of the provision to other persons or circumstances, shall not be affected thereby.”). Thus, we are satisfied that wireless carriers that wish to participate in the California LifeLine program do not need to

*Footnote continued on next page*

Nonetheless, since we are not *requiring* wireless carriers to submit a schedule or rates and charges, we need not reach the question of whether this specific provision of the California LifeLine program conflicts with the Communications Act of 1934, as amended.

As we have determined that all of the reasons behind Conclusion of Law 157 in D.96-10-066 are no longer valid,<sup>241</sup> that conclusion no longer limits participation by wireless providers in the LifeLine program.<sup>242</sup> We explicitly determine that wireless providers are eligible to participate in the LifeLine program just as any other provider of service. Similarly, other services that include the basic service elements (defined in Appendix B of D.96-10-066) are eligible for LifeLine benefits and providers of those services may seek reimbursement from California LifeLine. This action is not dependent on the support option selected and should be taken no matter which option is favored by the Commission.

We are not convinced that additional data and evidence is required to allow wireless services to participate in California LifeLine. In fact, the opposite is true as we have found that wireless service significantly increases an

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comply with the California LifeLine statutory requirements (filing a schedule of rates and charges) that conflict with Communications Act of 1934 as amended.

<sup>241</sup> See DRA Comments at page 24 (July 28, 2006) (“There is no need for statutory changes to include wireless services in the ULTS program.”).

<sup>242</sup> We have determined that any remaining issues identified in D.00-10-028 have been resolved through the record developed in this proceeding such that we can adopt revisions to prior Commission orders, the ULTS program, and General Order 153, as necessary, to permit wireless providers to participate in California LifeLine.

individual's economic productivity<sup>243</sup> and is "particularly important to blue collar, less educated and low-income segments."<sup>244</sup> As the number of wireless customers continues to grow, and we observe wireless technology being increasingly essential to modern life<sup>245</sup> and growing as the sole residential line of communication,<sup>246</sup> we are convinced that we must act to assist low-income

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<sup>243</sup> DRA Opening Comments at page 27 (August 24, 2007) (benefits included: Telephone connection for some ratepayers who may not otherwise be able to maintain a landline (e.g. migrant workers); ease of continuation of service when moving a household; ability to contact employers, medical services etc, regardless of location; and the possible use of the phone unit as an inexpensive access device for advanced services.). Greenlining Reply Comments at page 6 (September 14, 2007) (increased use of cell phones in low-income and minority communities has the potential to vastly improve the health, education, and financial opportunities, as well as general access to information, with the assistance of subsidies that are already available for landline phones.).

<sup>244</sup> Sullivan, Nicholas, *Cell Phones Provide Significant Economic Gains for Low-Income American Households* at page 5, New Millennium Research Council, April 2008, available at [http://www.newmillenniumresearch.org/archive/Sullivan\\_Report\\_032608.pdf](http://www.newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf) ("The overall conclusion is that the cell phone is extremely important to Americans for personal safety, and a huge boon to an individual's economic security. By and large, it is perceived to be more practical than the landline phone by significant minorities and, in some cases, super majorities, depending on the segment interviewed. And for significant percentages of some populations, the prepaid cell phone is their only phone.").

<sup>245</sup> Castells, M., Fernandez-Ardevol, M., Qiu, J., and Sey, A., *The Mobile Communication Society: A Cross-Cultural Analysis of Available Evidence on the Social Uses of Wireless Communication Technology* (2004) Annenberg Research Network on International Communication, Annenberg.

<sup>246</sup> Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2008, available at <http://www.cdc.gov/nchs/nhis.htm>. (Approximately 40% of all wireless-only adults are living in households with income below 200% of the Federal Poverty Level.)

Californians to obtain access to these services.<sup>247</sup> Shackling customers to traditional technology that does not meet their modern needs is not a tolerable outcome for California LifeLine.

Similarly, we are committed to being frugal stewards of the LifeLine fund and do not embark on a new program that has the potential to harm the currently successful California LifeLine program. We have adequate controls in place today,<sup>248</sup> and can put in place additional controls if they are necessary to ensure only one LifeLine service is provided to an eligible subscriber's principal place of residence. In addition, Commission staff has the authority to revise administrative procedures to help ensure the efficient operation of the California LifeLine program and address any California LifeLine program irregularities or other issues. Staff authority includes determining the type and frequency of information provided by carriers and consumers to enroll and participate in the program. In addition, Staff may initiate carrier program compliance audits, and adjust the percentage of program participants audited. There is nothing unique or different about wireless service that changes this directive to prevent waste, fraud, and abuse, and the Commission will remain vigilant in this area.

### **5.3.1. California LifeLine Discounts for Data Services for DDTP Equipment Recipients**

In the public participation hearings, we heard testimony that persons with disabilities have acute needs for various types of wireless services, depending on

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<sup>247</sup> DRA Comments at pages 25-27 (July 28, 2006); Greenlining Reply Comments at page 6 (September 14, 2006).

<sup>248</sup> See Pub. Util. Code § 878; see e.g., D.08-08-029 ("Adopting a pre-qualification requirement for California LifeLine").

the person's specific and unique disability.<sup>249</sup> Some of the required services are expensive, and particularly difficult for disabled, low-income persons to afford.

Testimony from the public pointed out that people with disabilities have a higher chance of being low-income.<sup>250</sup> Testimony also focused on how the availability of a wireless service is essential for security, safety and access to services for people with disabilities.<sup>251</sup> The most informative testimony addressed the specific need for affordable text messaging plans and equipment for deaf and hard of hearing individuals so they can be "unshackled" from the Text Telephone (TTY) systems and get out of the house to work and be more self sufficient.<sup>252</sup>

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<sup>249</sup> See, R.06-05-028 Public Participation Hearings Volume 1 at pages 8-11, 28-31, 35-37, 48-49, 62-65 (Sept. 25, 2006), R.06-05-028 Public Participation Hearings Volume 2 at pages 83, 88-89, 101-102, 108-109 (Oct. 26, 2006), R.06-05-028 Public Participation Hearings Volume 3 at pages 193-203, 214-222 (Nov. 3, 2006).

<sup>250</sup> Among people between the ages of 25 and 64 with a severe disability, 27 percent were in poverty, compared with 12 percent for people with a nonsevere disability and 9 percent for those without a disability. Matthew W. Brault, *Americans with Disabilities: 2005, Current Population Reports*, P70-117, U.S. Census Bureau (rel. December 2008), available at <http://www.census.gov/prod/2008pubs/p70-117.pdf>. See also, Statement of Mr. Glenn, R.06-05-028 Public Participation Hearings Volume 2 at pages 101-102.

<sup>251</sup> Comments of the California Coalition of Agencies Serving the Deaf and Hard of Hearing at pages 7-8 (July 28, 2006). Statement of Ms. Pagano, R.06-05-028 Public Participation Hearings Volume 1 at pages 8-11 ("I am a physically disabled mother and wife and student, and I live with my cell phone about 2 feet away from me at all times. The landline, we've abandoned it. You know, the world has go[ne] wireless."). Statement of Mr. Kristen, R.06-05-028 Public Participation Hearings Volume 1 at pages 35-37. Statement of Ms. Murtti, R.06-05-028 Public Participation Hearings Volume 3 at pages 197-203 ("act swiftly now to both the national technology and improvement in 911 emergency services for people who are deaf and hard of hearing").

<sup>252</sup> Statement of Ms. Sinclair, R.06-05-028 Workshop on Universal Service Public Purpose Programs, April 26, 2006 ("So if I had a Sidekick or PDA of some sort and access to wireless service for free or at least a discounted price, I could communicate

Ms. Nora Sinclair put it best during the Workshop on the Staff Report in April of 2006 when she explained her circumstances as a newly deafened adult living on a fixed income:

I currently don't have a Sidekick or any PDA service, and if I were going to buy one, which I do need to become employed, it's about a third of my one month's salary. And that's just the purchase of the unit. In terms of monthly service, then, it would be about 30 to \$40 a month. So you can do the math on that.<sup>253</sup>

The opportunity and need for synergy between DDTP and California LifeLine became clear through the input received in the Workshops and Public Participation Hearings.<sup>254</sup> To address problems we determine that customers who meet the eligibility requirements for both the DDTP program and the California LifeLine program have particular needs that justify a targeted subsidy. We, therefore, direct that customers who meet the eligibility requirements for both the DDTP and California LifeLine programs shall be entitled to apply their Lifeline discount to non-voice communication services.

At the beginning of this proceeding, we heard testimony from consumers, particularly deaf consumers, about the affordability of information and wireless

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with the hearing world and the deaf world both.”). Statement of Mr. Obrey. R.06-05-028 Public Participation Hearings Volume 3 at pages 193-195. Statement of Mr. Singleton, R.06-05-028 Public Participation Hearings Volume 3 at page 196.

<sup>253</sup> Statement of Ms. Sinclair, R.06-05-028 Workshop on Universal Service Public Purpose Programs, April 26, 2006.

<sup>254</sup> See also Statement of Mr. Obrey. R.06-05-028 Public Participation Hearings Volume 3 at pages 193-195. Statement of Mr. Singleton, R.06-05-028 Public Participation Hearings Volume 3 at page 196.

data services.<sup>255</sup> We addressed part of this problem through the initiation of the wireless equipment pilot project where we sought to provide wireless equipment to individuals certified as having difficulty using the telephone through the DDTP program.<sup>256</sup> We knew that in many respects, the requirements of the DDTP Wireless Pilot differed from the standard operating procedures of a typical wireless carrier. For instance, given its statutory authority, the DDTP/CTAP can only offset the equipment component costs. That is, we knew the DDTP program could subsidize the wireless device, but not the monthly charge for connectivity associated with the device. Since the equipment and service are usually marketed and sold as one, this aspect presented a hurdle in terms of paying the monthly service cost for participants, which was critical considering that the Pilot was directed specifically at those that are low-income. We identified this problem early during the pilot project as consumers that were eligible for both DDTP and LifeLine were reluctant to sign-up to receive the wireless device as the monthly recurring costs were significant given their circumstances.

One way to tackle this concern recommended by Staff was to expand the California LifeLine program to provide a discount on the communication service

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<sup>255</sup> See, R.06-05-028 Workshop on Universal Service Public Purpose Programs, April 26, 2006, R.06-05-028 Public Participation Hearings Volumes 1-3.

<sup>256</sup> Resolution T-17089 (May 2007) directed Communication Division staff to implement a multi-phase Pilot program whereby eligible participants would be issued a credit which would be applied to the equipment component of a wireless communications device; the monies for the credit would come from the DDTP fund. Further, the Pilot would not exceed two years total, with a cap of 500 Pilot participants in aggregate. Communication Division was directed to monitor the progress of the Pilot and has provided detailed reports to the Commission and Executive Director.



that is essential to the low-income individuals who receive wireless equipment through the DDTP program.<sup>257</sup> By expanding the California LifeLine program to participants of the DDTP program, the Commission can ensure that the equipment purchased by the DDTP program will be effective in meeting the communication needs of low-income users.

California LifeLine support should be provided for communication services purchased by recipients of the DDTP equipment program. Certified participants in the DDTP equipment program who also qualify under LifeLine requirements will be eligible for two LifeLine lines, similar to the rules for TTY users. A voice communication service is not useful in most situations for someone that is deaf or hard of hearing, which is one of the reasons the equipment program was created to provide TTY devices for deaf and hard of hearing individuals to communicate using traditional voice communication service. Technology has advanced significantly over the past thirty years since the first TTY devices were provided under the DDTP program. Data only services that include text messaging are readily available from most wireless providers and even some wireline providers. As text messaging is a highly effective means of communication for the deaf community, it is logical under the Moore Act to provide a similar discount on data services for members of the deaf and hard of hearing communities. The California LifeLine program will provide the same monthly discount for data only services provided to individuals that qualify for both LifeLine and the DDTP programs. In this way we allow California LifeLine eligible DDTP participants to purchase just data plans that

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<sup>257</sup> CPUC Communications Division DDTP Wireless Pilot 2<sup>nd</sup> Report at page 3 (Nov. 2008).

allow them to communicate by text message as part of the California LifeLine program.

The DDTP wireless equipment pilot program was limited to a few hundred participants and one of the barriers identified by Staff in implementing the program was finding individuals who were eligible for both DDTP and LifeLine. As there are only a few hundred participants at this time, the cost impact of expanding the California LifeLine program in this manner will be relatively minimal and should not exceed \$36,000 in the first year.<sup>258</sup> An exponential growth in eligible customers will not have a material impact on the overall size of the California LifeLine program. Accordingly, given the impact of the pilot program and the addition of the LifeLine discount, we remove the pilot status from the program and make the wireless equipment program a permanent part of the Deaf and Disabled Telecommunications Program/California Telephone Access Program. Commission staff is directed to take the steps necessary to make the wireless equipment program a permanent part of the DDTP/CTAP and to conduct additional outreach to remaining wireless carriers to encourage them to participate in the program. In addition, we should consider removing the dual eligibility requirement for purposes of the equipment in a future decision.

We believe that by expanding the California LifeLine program in this manner, not only are we fulfilling the statutory goals of the Moore Act,<sup>259</sup> but we address a significant barrier identified in the DDTP wireless pilot program.

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<sup>258</sup> Based on the initial contract of 250 units (half the total authorized) multiplied by \$12 for 12 months.

<sup>259</sup> Pub. Util. Code §§ 871.5–880.

Consumers that were eligible for both DDTP and LifeLine were reluctant to sign-up to receive the wireless device as the monthly recurring costs were significant given their circumstances. A barrier to fulfilling the universal service goals of California<sup>260</sup> is eliminated through this targeted initiative.

#### **5.4. Expanded Discount – Matching California Alternate Rates for Energy’s (CARE) 200% Federal Poverty Guideline**

In comments submitted in response to the September 2008 ACR, AT&T proposed changing the 150% guideline to provide LifeLine benefits to a greater number of the “near poor.”<sup>261</sup> At the end of 2007, 2.7 million households subscribed to California LifeLine and almost 3.7 million were enrolled in CARE. If we assume that after increasing eligibility, we end up at the same number of subscribers as CARE, and the average discount provided to companies in 2007 (\$8.39) would result in an additional \$95.4 million in California LifeLine costs each year (increasing the size of the program by almost 30%).<sup>262</sup>

This may be a conservative estimate.<sup>263</sup> DRA recently estimated that 75% of eligible households enrolled in California LifeLine and 70% of eligible

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<sup>260</sup> See Pub. Util. Code §§ 701, 709, 871.5.

<sup>261</sup> AT&T October 3, 2008 Comments at page 10.

<sup>262</sup> The average discount provided by California LifeLine was \$8.39 per month per customer in 2007. The average discount grew to \$9.71 for the first part of 2008. If we were to apply the first half of 2008 amount against the nearly one million subscriber difference between LifeLine and CARE, the additional amount would exceed \$110 million.

<sup>263</sup> See generally Final Report on Phase 2 Low Income Needs Assessment prepared by KEMA, Inc., September 7, 2007, prepared for the Commission to assess the energy related needs of California’s low-income population, available at <http://docs.cpuc.ca.gov/published/GRAPHICS/73106.PDF>.

households enrolled in CARE. This means the number of households enrolled in CARE is about equal to the current number of households eligible for California LifeLine. If California LifeLine maintains the 75% subscriber to eligible household ratio an additional \$34 million in California LifeLine costs would be incurred above the \$95 million calculated above.<sup>264</sup> This would increase the size of the California LifeLine program to close to \$500 million per year. This cost increase presumes that all the eligible households that would be added by expanding the income-based criteria are not already eligible and participating in California LifeLine. However, an increase in the size of the California LifeLine program is not a given. As discussed below there may be only a slight increase in the size of the California LifeLine program if many of the households that would be eligible under an expanded income-based criteria are already participating in California LifeLine under the program-based criteria.<sup>265</sup>

The Commission has observed that penetration rates vary for many sub-segments of the population; the principal driver behind variations is simply one of economics – the lower the income, the lower the penetration rate; the higher the income, the higher the penetration rate.<sup>266</sup> Therefore, as there were approximately 12.7 million occupied housing units in California in 2007<sup>267</sup> means

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<sup>264</sup> An amount that could be as high as nearly \$40 million if the \$9.71 average for the first part of 2008 is used.

<sup>265</sup> GO 153 subdivision 5.1.5.

<sup>266</sup> CPUC Report to the California Legislature, Residential Telephone Subscribership and Universal Services, at page 36 (June 2008) (the “CPUC 2008 Universal Service Report”).

<sup>267</sup> State of California, Department of Finance, E-5 Population and Housing Estimates for Cities, Counties and the State, 2001-2008, with 2000 Benchmark, May 2008.

that California LifeLine discounts were provided to 21% of those housing units,<sup>268</sup> and CARE discounts were provided to 29% of the occupied housing units.

According to the Commission's most recent data, its universal service goals of 95% percent penetration rates have been achieved for many years.<sup>269</sup> Through analyzing subscribership data, we have determined that household income of less than \$20,000 has the strongest correlative relationship with lower penetration rates.<sup>270</sup> This means that if household income is less than \$20,000, there is a much greater likelihood that the household will not have phone service. That \$20,000 income level is also where California and national subscribership falls below 95%,<sup>271</sup> meaning that programs targeted at household incomes above \$20,000 have limited impact on meeting California's 95% subscribership goal.

In addition, expanding the income eligibility threshold is also not likely to significantly impact subscribership as those customers are most likely already

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<sup>268</sup> See also, CPUC 2008 Universal Service Report, at page 32, Chart 13. Lifeline subscribership as a percentage of residential customers has been relatively steady over time.

<sup>269</sup> CPUC 2008 Universal Service Report, page 24, Chart 6, page 24, Chart 6 (penetration rates equal or exceed 95% except for those in the lowest income bracket); pg. 25, Chart 7 (95% penetration rates except for those with annual incomes of less than \$20,000).

<sup>270</sup> See CPUC 2007 Report to the California Legislature, Universal Telephone Service to Residential Customers at pages 24-25 (August 2007) (the "CPUC 2007 Universal Service Report").

<sup>271</sup> See FCC Report on Telephone Subscribership in the United States, Table 4, Percentage of Households with a Telephone by Income, pages 23-33, rel. August 2008.

eligible for California LifeLine under the current program guidelines.<sup>272</sup> Verizon pointed out that a simple mathematical review shows that the income-based criteria already cover income ranges from 220% to 153% of the federal guidelines.<sup>273</sup> However, Verizon does not explain that the income-based criteria are no longer directly tied to the 150% of the federal numbers. Section 5.2.1. of GO 153<sup>274</sup> requires the Communications Division to adjust the Household Income Limitation requirement for California LifeLine every April 15 to reflect inflation based on change in the Federal Consumer Price Index – Urban Area (CPI-U).<sup>275</sup>

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<sup>272</sup> 2008 ULTS guidelines start at \$22,900 for a household of 1-2 persons.

<sup>273</sup> See Verizon October 3, 2008 Comments on the ACR at page 30, n. 90, citing GO 153 subdivision 5.1.4, the Lifeline Annual Income Limits for June 1, 2008 through May 31, 2009 are: for households with 1-2 members, \$22,900; 3 members, \$26,900; 4 members, \$32,400. For each additional member, add \$5,500 to the income threshold. Citing further Federal Register, Vol. 73, No. 15, January 23, 2008, at 3971-72, Federal poverty guidelines are: 1 member household, \$10,400; 2 member household, \$14,000; 3 member household, \$17,600; 4 member household, \$21,200.

<sup>274</sup> Resolution T-16591 (February 21, 2002).

<sup>275</sup> Resolution T-16010 (June 11, 1997) provides the rules for computing the income-based criteria levels:

1. The prior period income levels are multiplied by a factor of one plus the inflation factor derived from the February 2005 issue of the "The U.S. Economy." (Col.  $A \times B = C$ ). The inflation factor to be used is the "final" CPI-U for the prior year.
2. All income level amounts are rounded to the nearest \$100. If the raw number ends in 50 or greater, it should be rounded to the next higher \$100. Examples: 17,509=17,500; 17,569=17,600.
3. The percentage increase factor is three digits to the right of the decimal. Examples: 2.0%=.020; 8.5%=.085.
4. The amount for "Each Additional Member" should be rounded to the difference between 3 and 4 household members. If the rounding differs, the

*Footnote continued on next page*

Further, in 2005 the Commission added program-based criteria for LifeLine enrollment.<sup>276</sup> The programs identified in the program-based criteria tolerate various levels of household income that do not align with the California LifeLine income-based criteria. The program-based criteria are the predominant manner in which new customers enroll in California LifeLine today. Customers that do not qualify under the income-based criteria can qualify for California LifeLine under the program-based criteria as those programs allow higher levels of household income. Thus, based on the current process for adjusting the Household Income Limitation for California LifeLine and the program-based criteria allowing higher income levels and being the predominant method of verification for California LifeLine, we can determine that adjusting the income-based criteria to match the low-income energy programs will have at most only a slight impact on the cost of California LifeLine.

One of the primary arguments in support of adjusting the income-based criteria is that there is only a slight cost difference to the California LifeLine program and the Commission can standardize outreach and marketing efforts with the low-income energy programs by using the same income-based criteria for all programs. However, to do this on a permanent basis would ignore that the low-income energy programs expanded eligibility to 200% of the federal poverty guideline in 2005 as a temporary measure.<sup>277</sup> The Commission has yet to

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amount for “Each Additional Member” should be set to the difference between 3 and 4 household members.

<sup>276</sup> GO 153 subdivision 5.1.5, as enacted in D.05-04-026.

<sup>277</sup> Interim Opinion Approving Various Emergency Program Changes in Light of Anticipated High Natural Gas Prices in the Winter of 2005-2006, D.05-10-044, *mimeo.* at 18 (“While a strict benefit-cost analysis is not always controlling in the context of the

*Footnote continued on next page*

finish its review of the “costs and the benefits of this CARE program expansion, to help us determine whether the expansion of CARE should remain in effect.”<sup>278</sup> As the cost differential is likely small, the primary reason to adjust the income-based criteria for California LifeLine is to align it with other Commission programs targeted to low-income households. Accordingly, the adjustment to the LifeLine income-based criteria should also be an interim measure and should be explicitly tied to the outcome of the review the Commission is conducting of the interim CARE income-based criteria. We direct the California LifeLine income-based criteria be modified to match the CARE income-based criteria on an interim basis pending the outcome of the review the Commission is conducting of the interim CARE income-based criteria.

#### **5.5. Reimbursement of Administrative Costs and Bad Debt Losses**

One of the primary objectives of this proceeding is to “seek ways to streamline program administration and increase efficiency.”<sup>279</sup> In the process of this review, we have examined the share of program costs that are attributable to administrative costs. These costs are incurred by the carriers and reimbursed through the claims process. These costs are in addition to the overhead or administrative costs incurred by the Commission. Such costs had gotten so far out of control that in 2003 the Commission capped the administrative fee for

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low-income programs, when considering a temporary program change, it is instructive to consider the change’s economic effect.”).

<sup>278</sup> *Id.* at OP 20.

<sup>279</sup> PPP OIR at page 2.



Competitive Local Exchange Carriers (CLECs). The current capped amount is \$1.79 per customer per month for Fiscal Year 2008-2009.<sup>280</sup>

Recent program changes and the modifications we adopt today for the California LifeLine program significantly decrease the administrative burden of the program. More importantly, the market based ratemaking we have adopted for AT&T, Verizon, SureWest and Frontier, the four largest local exchange carriers and also largest California LifeLine service providers, put these carriers on equal footing with their competitors by allowing them to set their prices without regard to cost for most products and services, with full pricing freedom commencing on January 1, 2011. After the recent reforms to California LifeLine and the pricing flexibility available to most carriers, there is no longer a distinguishable difference between carrier costs associated with California LifeLine and normal costs of operations. Further, to the extent there is any difference, the program reforms we adopt herein will ensure carriers are fully compensated for any administrative costs associated with California LifeLine. Prospectively the California LifeLine benefit provided to the carriers will fully cover the administrative costs. Carriers have flexibility in establishing their basic rates and should establish rates at a level that will cover their administrative costs, just as they do for any other cost. The California LifeLine benefit will then be fully deducted from that basic rate. Accordingly, to be clear, there is no longer any need or requirement to have a separate California LifeLine recovery for carrier administrative functions.

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<sup>280</sup> See D.03-01-035 OPs 3-6.

Reimbursing administrative costs is a vestige of cost of service ratemaking, or at best a throw back to “Z Factor Treatment” of the New Regulatory Framework era.<sup>281</sup> Under cost-of-service regulation, utilities recover their reasonable costs from ratepayers. Accordingly, changes in a utility’s costs would directly result in changes in its rates. Under the New Regulatory Framework, in contrast, the primary factors considered in adjusting rates were not changes in the utility’s costs, but rather, inflation and productivity factors, with one exception.<sup>282</sup> Cost increases for “exogenous factors” were allowed to be reflected in rates through “Z factor adjustments” in the price cap index.<sup>283</sup> The Commission ultimately adopted nine criteria to evaluate whether costs met the requirement for Z factor treatment.<sup>284</sup> Administrative costs associated with the

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<sup>281</sup> See e.g., *Alternative Regulatory Frameworks for Local Exchange Carriers*, D.89-10-002, 33 CPUC2d at 161-162 (D.89-10-002).

<sup>282</sup> See, *Investigation on the Commission’s own motion into the matter of post-retirement benefits other than pensions; Application of Pacific Gas and Electric Company for authority among other things, to increase its rates and charges for electric and gas service; And related matters*, 56 CPUC2d 613, 615 note 1 (D. 94-10-037) *citing* *Alternative Regulatory Frameworks for Local Exchange Carriers*, 33 CPUC2d at 159-162, 228 (D.89-10-002).

<sup>283</sup> RE *Alternative Regulatory Frameworks for Local Exchange Carriers*, D.89-10-002, 33 CPUC2d at 161-162 (D.89-10-002).

<sup>284</sup> *Investigation on the Commission’s own motion into the matter of post-retirement benefits other than pensions.; Application of Pacific Gas and Electric Company for authority among other things, to increase its rates and charges for electric and gas service*, D.97-04-043, 71 CPUC2d 653 (April 9, 1997). These criteria are: (1) an exogenous event; (2) after implementation of NRF; (3) clearly beyond management’s control; (4) not a normal cost of doing business; (5) disproportionately impacts telephone utilities; (6) not reflected in the economy wide inflation factor; (7) timing has a major impact on the utility’s costs; (8) actual costs can be used to measure the impact of the change, or the impact can be measured with reasonable certainty and minimal controversy; and (9) the costs proposed for z-factor treatment are reasonable.

LifeLine program are not likely to have met those requirements.<sup>285</sup> However, when the ULTS program was instituted by the Commission, it adopted GO 153 to govern the administration of the ULTS program and provided that carriers could “seek reimbursement of expenses incurred and revenues lost as a result of providing ULTS.”<sup>286</sup>

The Commission chose not to change the framework associated with reimbursement of California LifeLine administrative costs after it adopted the New Regulatory Framework. As California has moved beyond the New Regulatory Framework to the Uniform Regulatory Framework, the arguments for retaining this reimbursement under the California LifeLine program are not persuasive. The Commission can and should eliminate reimbursement of administrative costs in their entirety and such costs should be recovered through the carrier service rates generally.

#### **5.5.1. Discontinuing the Payment of Carrier Administrative Costs**

Currently, carriers are required to track and report by month a number of factors, including weighted average number of LifeLine customers, administrative costs, number of minutes their employees spend discussing LifeLine with customers, balancing accounts for pass-through costs (Federal

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<sup>285</sup> As Lifeline requirements were implemented prior to establishment of the New Regulatory Framework (NRF), they would fail the second criterion. In addition, most components of the administrative costs, such as bad debt expenses, would clearly have had a difficult time passing the “not a normal cost of doing business” criterion.

<sup>286</sup> D.96-10-066, 68 CPUC2d at 639 *quoting* subdivision 5 of GO 153 *citing* former Revenue and Taxation Code sections 44181, 44182, and 44184 that indicated that the telephone corporations were to be reimbursed for providing universal telephone. (See Stats. 1983, Ch. 1143, sec. 3; Stats. 1987, Ch. 163.)

Excise taxes), etc., and to report the data into a 28-line claim form and attach supporting documentation. Competitive Local Carriers can opt out from filing carrier specific cost data and receive a higher ILEC carrier averaged amount designed to compensate smaller, less efficient carriers.

Continuing the current process is problematic. First, as noted above, there is little, if any, additional cost associated with signing up a California LifeLine customer compared to a non-LifeLine customer, and, in fact, there are additional revenue opportunities that the carrier would not have otherwise realized without the California LifeLine program. We agree with DRA that the costs of acquiring new customers is a normal cost of doing business, and that the California LifeLine subsidy enables these customers to afford service that they might not otherwise have been able to afford. California LifeLine also makes it possible for carriers to acquire and serve revenue generating customers that would otherwise disdain service.<sup>287</sup>

Second, the reasons that were initially proffered to pay the administrative costs do not make sense in a competitive communications market. A goal of the California LifeLine program is to ensure the full cost of serving LifeLine customers is paid to the carrier providing service. Just as the cost of serving non-LifeLine customers is recovered through the prices of the services offered by the carrier, the cost of serving California LifeLine customers should be recovered through the prices of the services purchased by the customer plus the California LifeLine subsidy. The administrative burden of the process is not clear in a

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<sup>287</sup> DRA Opening Comments at page 7 (August 24, 2007). DRA also observes that the carrier benefits when the LifeLine customer purchases additional, non-LifeLine services. *Id.*

competitive environment. Further, the additional benefit of the process to obtaining additional subscriber revenue clearly outweighs any additional burden.<sup>288</sup> We are persuaded that the Commission will enhance carrier incentives to provide efficient service by adopting a “reasonable fixed amount per customer.”<sup>289</sup>

Third, we have been concerned by the considerable amount of Commission resources necessary to review and audit administrative cost reimbursement claims.<sup>290</sup> Over the years, Commission staff has had concerns about the apparent misuse of this component of the LifeLine claim program and denied numerous claims for reimbursement submitted by carriers. Thus, while we have removed many of the administrative burdens from carriers, we have simply shifted those costs from carriers to California LifeLine as the Commission has taken on more administrative burden. Simplifying the separate tracking of administrative costs by carriers and the associated cost to the program of Commission review and audit of those costs will result in tangible benefits to consumers. We believe that the costs associated with administering the carrier administrative cost reimbursement far outweigh the benefits such reimbursement provides to California LifeLine and consumers.

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<sup>288</sup> *Id.* There are numerous examples of the additional benefits realized by carriers some of which have already been enumerated, such as the addition of subscribers that would otherwise not subscribe without LifeLine. As the societal benefits also enumerated above dovetail with the economic benefits to carriers, the California LifeLine program is an instance of a “win-win” for the industry and society at large.

<sup>289</sup> Sprint Nextel Opening Comments at page 6, note 7 (August 24, 2007).

<sup>290</sup> *See generally* D.03-01-035, D.00-10-028 at FoFs 180-184, OPs 48-49.

The provision of California LifeLine is not an option for certain carriers, but rather, those carriers assume the universal service responsibilities upon being certificated or licensed by the Commission to operate within California.<sup>291</sup> The regulatory framework provides great flexibility to carriers to determine the best means of operation and how to recover their costs of operation, but it does not alleviate the decade's old obligation that all carriers are responsible for ensuring universal service throughout California. The provision of California LifeLine service is an integral part of the regulatory framework.

Thus, while the Commission has significantly adjusted the administrative costs associated with California LifeLine over the years, it has not considered the reasonableness of continuing to pay carrier administrative costs nor comprehensively delineated what constitutes reasonable administrative costs.<sup>292</sup> Actions the Commission has taken to reduce carrier administrative costs include centralizing the advertising and marketing requirements with the Universal LifeLine Telephone Service Trust Administrative Committee,<sup>293</sup> and the more recent adoption of centralized certification and verification processes.<sup>294</sup> Such actions have significantly reduced the carriers' administrative costs of providing

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<sup>291</sup> While wireline carriers are required to, wireless carriers are not required, but encouraged to participate in the California LifeLine program.

<sup>292</sup> D.00-10-028 outlined the administrative expenses that carriers can recover from California LifeLine, but did not provide guidelines to aid in making the determination that a particular carrier's costs were reasonable. D.03-01-035 adopted a cap for CLEC costs.

<sup>293</sup> See Re Universal Service and Compliance with the Mandates of Assembly Bill 3643, 68 CPUC2d at 640-641 (D.96-10-066).

<sup>294</sup> D.08-08-029, *see generally* R.04-12-001.

California LifeLine to such an extent that it is difficult to determine any costs that are above and beyond those of normal operations.

The Commission can and should eliminate separate reimbursement of administrative costs in their entirety and such costs should be recovered through the carrier service rates generally. We determine that costs associated with administration of LifeLine service are a carrier obligation of providing service in California and are not separately recoverable from the program. While we did consider alternatives such as a simplified process that would use a per customer recurring cost factor and per customer non-recurring cost factor, we do not find such alternatives produce superior results for consumers.

The expenses associated with explaining available rate schedules to prospective customers, especially subsidized rate schedules which make the price more affordable for the prospective customer, is a normal cost of doing business.

### **5.5.2. Discontinuing the Payment of Bad Debt Losses**

Currently, carriers have the option of claiming that portion of LifeLine rates that are not recovered as bad debt from the fund. While large carriers such as AT&T and Verizon do not claim bad debt against the fund, a small group of carriers have very high bad debt claims.

Most businesses experience bad debt losses, which are certainly not unique to LifeLine customers. Full reimbursement of all these types of costs<sup>295</sup> is not consistent with our goal to ensure funds obtained from the surcharges are being

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<sup>295</sup> The specific costs are: bad debt expense, admin-data processing, admin-notification, admin-accounting, admin-legal, admin-service rep, and admin-other.

wisely spent with efficient administration. We note as well that recording, tabulating, and submitting these costs for reimbursement places additional administrative costs on the carriers.

We believe it would be more equitable to all customers if we eliminate bad debt as a recoverable from the fund, thereby treating bad debt as a business expense. Additionally, we are concerned that under the current system some carriers do not make adjustments to bad debt claims due to subsequent recovery of money from the customer.

### **5.5.3. Modify GO 153 to Eliminate Separate Reimbursement for Administrative Costs and Bad Debt Losses**

We conclude that the “blank check” approach to administrative costs bad debt losses at a minimum provides no incentive for efficiency and, at the extreme, is a means for unscrupulous carriers to allocate unjustified costs to the fund. The FCC does not include these costs in its LifeLine program and we are aware of no other state that does. We have determined to modify the California LifeLine program to simplify carrier implementation and Commission oversight, as well as provide an incentive for efficient administration by adopting a Specific Support Amount that encompasses all carrier costs.

We will, therefore, modify GO 153 to eliminate separate reimbursement for administrative costs and bad debt losses. Such separate reimbursement for administrative costs from the California LifeLine program shall end on June 30, 2009. Separate reimbursements for pass-through taxes (federal excise, CPUC user fees, and state/local taxes) shall end on June 30, 2009. LifeLine customers will continue to be exempt from paying into the public purpose program funds. Carriers will have until August 31, 2009, to submit all claims for reimbursement



of administrative costs and pass-through taxes as defined above incurred before June 30, 2009. No claims shall be accepted after August 31, 2009, and any claim for reimbursement not timely submitted is deemed void and denied. Further, after August 31, 2009, carriers shall submit claims for LifeLine reimbursement no later than 60 days after the conclusion of the month during which service was provided. No claims shall be accepted after the end of that 60-day period, and any claim for LifeLine reimbursement not timely submitted is deemed void and denied.

### **5.6. Pre-Qualification**

In its comments, SureWest raised the issue of changing Commission policy to require that prospective LifeLine customers complete the certification process prior to receiving discounted service. SureWest contended that the current policy confuses customers who incorrectly conclude that no further action is required for certification once they begin receiving the discount, and can lead to back-billings of \$100 or more where the customer fails to successfully complete the certification process.<sup>296</sup> SureWest and the small LECs recommended that the Commission adopt a process whereby a prospective LifeLine customer would be charged full tariffed rates at initiation of service, but then credited for LifeLine discount if the customer is deemed eligible.

On November 14, 2007, the Assigned Commissioner issued her scoping memo for Phase II of Rulemaking 04-12-001 and included pre-qualification of LifeLine customers as an issue for comment by the parties.<sup>297</sup> Such a requirement

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<sup>296</sup> Opening Comments of SureWest at page 5 (August 24, 2007).

<sup>297</sup> Assigned Commissioner Ruling Setting Scope of Phase II, R.04-12-001 at page 5 (November 14, 2007).

was adopted in D.08-08-029 making further consideration of this issue in this docket moot.

However, we do recognize the need to reimburse carriers for implementation costs related to the recent Decision requiring changes to implement pre-qualification for customers beginning July 1, 2009. Those costs can be claimed by carriers up to their calendar month January 2010 claim. Subsequent costs must be born out in rates as discussed above.

### **5.7. Non-ETC Make-Up**

Pursuant to section 254(e) of the Communications Act,<sup>298</sup> only eligible telecommunication carriers (ETCs) designated pursuant to section 214(e)<sup>299</sup> are eligible to receive federal Lifeline and Link-Up support. The federal Lifeline program provides low-income consumers with discounts of up to \$10.00 (\$6.50 for EUCL, \$3.50 for basic service) off of the monthly cost of telephone service for a single telephone line in their principal residence.<sup>300</sup> Federal Link-Up provides low-income consumers with discounts of up to \$30.00 off of the initial costs of installing telephone service.<sup>301</sup> Enhanced Lifeline and Link-Up may provide qualifying low-income individuals living on tribal lands with additional support.<sup>302</sup>

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<sup>298</sup> 47 U.S.C. § 254(e).

<sup>299</sup> 47 U.S.C. § 214(e) (setting forth the requirements for ETC designation).

<sup>300</sup> See 47 C.F.R. § 54.401(a)(2); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8957 (1997) (*1997 Universal Service Order*).

<sup>301</sup> See 47 C.F.R. § 54.411(a)(1).

<sup>302</sup> See 47 C.F.R. §§ 54.405(a)(4), 54.411(a)(3). Under the FCC's rules, there are four tiers of federal Lifeline support. All eligible subscribers receive Tier 1 support which

*Footnote continued on next page*

In opening this review of the Telecommunications Public Policy Programs, we explained our interest in carefully managing our programs to capture the maximum federal funding:

Our review of California's Telecommunications Public Policy Programs must recognize the important role of similar programs authorized by the Federal Communications Commission. These federal programs complement and provide significant funding for California's Programs. For example, the federal E-Rate Program provided more than \$220 million in support to California schools and libraries in 2005, and the Lifeline/Link-Up program provides 55% of the total funding for the California LifeLine program. The federal program, however, provides these funds only when the low-income customer is served by a carrier that is registered with the federal program. Currently, only 11% of California's customers are not served by registered carriers, but the absence of federal fund contributions is made up with California LifeLine revenue. Consequently, these carriers cost the California LifeLine program approximately twice as much to serve a LifeLine customer as a federally registered carrier. As this example illustrates, deviations from federal requirements can have significant ramifications, and any changes to California Programs must be carefully reviewed with federal requirements in mind.<sup>303</sup>

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provides a discount equal to the ETC's subscriber line charge. Tier 2 support provides an additional \$1.75 per month in federal support, available if all relevant state regulatory authorities approve such a reduction. (California has approved.) Tier 3 of federal support provides one half of the subscriber's state Lifeline support, up to a maximum of \$1.75. Only subscribers residing in a state that has established its own Lifeline/Link-Up program may receive Tier 3 support, assuming that the ETC has all necessary approvals to pass on the full amount of this total support in discounts to subscribers. Tier 4 support provides eligible subscribers living on tribal lands up to an additional \$25 per month towards reducing basic local service rates, but this discount cannot bring the subscriber's cost for basic local service to less than \$1. See 47 C.F.R. § 54.403.

<sup>303</sup> PPP OIR at page 3.

The April 2006 staff report contained a table depicting the 2004 differences between ETC qualified carriers and non-ETC qualified carriers.<sup>304</sup> Our staff has updated the tables<sup>305</sup> showing the amounts:

<b>2006 Annual Support</b>					
	<b>End of Year Number of LifeLine Customers</b>	<b>Federal</b>	<b>California</b>		<b>California Cost per customer/mont h</b>
			<b>LifeLine</b>	<b>Non-ETC Make-up</b>	
ETCs	2,980,109	\$294,699,335	\$197,482,845	\$0	\$5.52
Non-ETCs	240,004	\$0	\$15,448,921	\$24,125,634	\$13.74

<b>2007 Annual Support</b>					
	<b>End of Year Number of LifeLine Customers</b>	<b>Federal</b>	<b>California</b>		<b>California Cost per customer/month</b>
			<b>LifeLine</b>	<b>Non-ETC Make-up</b>	
ETCs	2,473,019	\$271,406,206	\$171,406,059	\$0	\$5.78
Non-ETCs	273,839	\$0	\$70,173,693	\$34,894,380	\$31.97

<sup>304</sup> Staff Report on Public Policy Programs, Staff of Telecommunications, Strategic Planning, and Legal Divisions at page 9 (April 14, 2006).

<sup>305</sup> Federal amounts come from USAC Federal Universal Service Support Mechanisms Fund Size Projections for the Third Quarter 2008, Appendix LI05 - Annual Low Income Support Amounts by State and Company through 4Q2007.

These tables show that making up the “lost” federal support due to lack of ETC status for some carriers has grown to almost \$35 million a year. On a per customer basis, the federal program provides up to \$30 in one time connection fees and \$7.73 per month for recurring costs.<sup>306</sup> This “lost” amount could be obtained from the federal Lifeline program provided that these carriers obtain ETC status. The federal requirements are already being met by most carriers so those service requirements do not prevent carriers from obtaining ETC status.<sup>307</sup>

Initially the amounts paid to non-ETCs by the California LifeLine program to make up for the “lost” federal support was small. Such a policy made some sense in the 1980s and most of the 1990s when competitive options were not as widely available as they are today. In providing extra California LifeLine support in place of federal support, the Commission could foster additional competitive options for low-income consumers while those carriers move toward becoming ETCs. However, instead of being a transitional mechanism toward carriers applying for and receiving ETC status, the Commission has allowed

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<sup>306</sup> As provided in 47 C.F.R. § 54.403(a), Tier 1 of federal support is based on the federal subscriber line charge (SLC) of the local exchange carrier, and because California has a state program, Tiers 2 and 3 result in additional support to customers. California carriers’ SLC amounts vary and because of the historically low state basic rate, the full amount available for Tiers 2 and 3 has not been provided by the federal program. The \$7.73 amount reflects an average per customer support amount calculated for the first six months of 2008 based on customer reports and payments from USAC for federal Lifeline and toll-limitation support.

<sup>307</sup> See 47 C.F.R. § 54.101, which includes e.g., voice grade access to the public switched network, single party service, access to emergency and operator services, and toll limitation for low-income customers.

these carriers to significantly increase their draw from California LifeLine without limitation or control.

There are substantial benefits to California consumers in requiring ETC designation. Section 214(e) of the Communications Act prevents eligible carriers from attracting only the most desirable customers by limiting eligibility to common carriers<sup>308</sup> and by requiring eligible carriers to offer the supported services and advertise the availability of these services throughout the service area. We believe that policies designed to encourage ETC designation will allow for a more predictable level of service to consumers and assist the Commission improve the long-term sustainability of California LifeLine, as only fully qualified carriers that are capable of, and committed to, providing universal service would be able to receive both state and federal support. In addition, ETC designation allows the Commission to more closely evaluate whether the carrier has the financial resources and ability to provide quality services throughout the designated service area. We believe that it would neither be prudent nor serve the public interest to permit a financially unsound carrier to receive universal service support but not be able to achieve long-term viability that is sufficient to sustain its operations. We believe ETC designations provide greater opportunity for the Commission to ensure multiple service providers maintain the capability and commitment to provide service throughout the designated service area. As ETCs have demonstrated the ability to remain functional in emergency

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<sup>308</sup> The Communications Act requires common carriers to furnish “communications service upon reasonable request therefore,” 47 U.S.C. § 201(a), and states that “[i]t shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services . . . .” 47 U.S.C. § 202(a).

situations, we believe the security of a carrier's network and the ability to protect critical telecommunications infrastructure is an important public interest.

Finally, the ETC designation process adds to our ability to ensure consumer protection requirements, consistent with the public interest, convenience and necessity, will help ensure consumers are able to receive an evolving level of universal service.

When we opened this docket, we indicated that maximizing federal support would be one of our goals. The best course for maximizing federal support for the LifeLine program is to discontinue making up the federal amounts paid to non-ETCs. In this way we will encourage, but not require, all non-ETC carriers to obtain ETC certification. Such an approach allow carriers freedom to make their own business decisions regarding ETC certification but not burden California consumers with insulating these carriers from the consequences of those decisions.

We, therefore, direct that GO 153 be modified to exclude all costs that could have been reimbursed pursuant to the federal Lifeline program, regardless of whether the costs are actually reimbursed to the carrier.

#### **5.8. Consumer Education Plan**

We will seek further input on a consumer education plan to inform California LifeLine consumers about the changes adopted herein. We direct staff to develop and oversee the implementation of a consumer education plan.

### **6. Comments on Proposed Decision**

The proposed decision was mailed for comment on February 11, 2009. On February 25, 2009, the assigned Commissioner scheduled a workshop on the proposed decision and set a revised comment schedule. The schedule for filing comments on the proposed decision was stayed by assigned Commissioner

ruling on March 12, 2009. Comments on the proposed decision are now due on April 8, 2009, and reply comments on April 13, 2009.

## **7. Assignment of Proceeding**

Rachelle B. Chong is the assigned Commissioner and Maribeth A. Bushey is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. The California LifeLine program is meeting statutory goals.
2. Through the 40-year history of LifeLine, the Commission has interpreted the specific implementation details of the LifeLine program to remain true to its objective of providing affordable telephone service to low-income Californians.
3. The principles adopted by the Commission in 1996 remain valid today:
  - a) It is the policy of the Commission to ensure that high-quality basic telecommunications services remain available and affordable to all Californians regardless of linguistic, cultural, ethnic, physical, geographic, or income considerations.
  - b) It is the policy of the Commission that in order to avoid stratification between information rich and information poor consumers, there should be a progressive expansion of the definition of basic service, as appropriate, and through the implementation of other policies, programs, and incentives to promote the deployment of advanced telecommunications technology to all customer groups.
  - c) It is the policy of the Commission to ensure that consumers have access to information needed to make timely and informed choices about basic service and ULTS.
  - d) It is the policy of the Commission to provide consumers with the ability to choose among competing basic service carriers regardless of the technologies employed by the carriers who provide basic service.



- e) It is the policy of the Commission to ensure that basic service carriers adhere to interconnectivity, interoperability, common carriage, reliability, privacy and security guidelines.
  - f) It is the policy of the Commission to provide incentives as needed to promote deployment of advanced telecommunications technology to all customer segments, and to position health care, community, and government institutions to be early recipients of the benefits of the information age.
  - g) It is the policy of the Commission to provide a competitively neutral universal service mechanism which will minimize market distortions. The mechanism must provide for competitive provisioning of basic service, access to universal service funds, and a funding source which is broad-based and sustainable.
4. California LifeLine policies should provide an evolving level of telecommunications services and take into account advances in telecommunications and information technologies and services.
5. California LifeLine has helped achieve the universal service goal of a 95% penetration rates for many years.
6. The California LifeLine program should be updated to reflect the principle of competitive and technological neutrality consistent with federal and state law.
7. The Commission has extended the basic rate cap until January 1, 2011 while providing for an orderly transition of the basic rate to market-based pricing and preserving affordability in high-cost areas.
8. This proceeding has included two well-attended workshops on April 25 and 26, 2006 and August 15, 2007. One workshop, over two days, focused on input from interested parties on the scope and objectives of this proceeding. The

second workshop explored the California LifeLine program and focused on GO 153.

9. This proceeding has included three public participation hearings, held in San Diego, Oxnard, and Sacramento. They focused on changes needed to the LifeLine program including the affordability of telephone service and the need to include wireless services in the LifeLine program.

10. California statutes concerning telecommunications regulation express a clear desire to support open and competitive markets.

11. California statutes call for regulators to adopt technologically and competitively neutral policies that encourage increased access to and usage of advanced telecommunication services.

12. Current telecommunications regulations support major social policies, including the provision of telecommunications services to Californians who have low incomes and/or reside in high-cost areas.

13. There is no evidence that usage patterns of low-income customers differ from those of other customers, or that competition in the voice communications market will not benefit low-income customers.

14. One of the primary objectives of this proceeding is to seek ways to streamline program administration and increase efficiency.

15. The goals of the Moore Act and California's universal service goals will be fulfilled by modifying California LifeLine to use a Specific Support methodology.

16. Under the Specific Support methodology, the Commission would designate a monthly subsidy amount, initially \$12.20, to be paid to carriers to directly reduce the monthly bills of California LifeLine customers

17. A Specific Support process for California LifeLine will provide the greatest flexibility to low-income customers to select the communication service that best meets their needs.

18. A Specific Support process for California LifeLine is consistent with the statutory and regulatory framework of California.

19. The cost of a Specific Support process is similar to the other options making that factor less important than it would be if there was a large cost difference.

20. A Specific Support process provides the largest degree of financial stability which overall produces a larger benefit to consumers than other options.

21. California LifeLine will be a larger program with or without changes; however, fixing the current LifeLine price in perpetuity is more likely to result in the most expensive option to consumers.

22. A Specific Support process is the easiest to administer in the areas of collections, reporting, fund management, disbursements, and verification.

23. A Specific Support process can be accomplished in a legally sound manner, and is the most likely option that will satisfy the broad statutory goals set forth in the Public Utilities Code.

24. A Specific Support process is the best choice on which to base the California LifeLine program in the future.

25. Commission staff will annually review the basic rate amounts charged by COLRs in California and establish a Specific Support Amount.

26. COLRs will submit basic rates as of July 31, 2009, to the Director of the Communications Division by August 15, 2009.

27. Commission staff will prepare a Resolution proposing a method for determining the highest basic rate of the COLRs, proposing a process for making the annual changes, and proposing the Specific Support Amount for 2010.

28. Commission staff can review rate changes on an ongoing basis, and adjust the Specific Support Amount as necessary to ensure compliance with the 50% subsidy requirement in the Moore Act.

29. An initial \$12.20 California LifeLine support amount for July 2009 is calculated by multiplying 55% by 22.15 and rounding up in five cent increments for ease of administration to \$12.20.

30. The actual reimbursable amount for each carrier may be less than the calculated California LifeLine support amount depending on the rate charged to the California LifeLine customer after deducting the \$3.50 in matching federal support.

31. It would be incongruous for California LifeLine customers to pay more than the economic cost of service if a carrier would otherwise have a rate lower than the 2008 California LifeLine rate (\$5.47) after applying the Specific Support amount to customer bills.

32. California LifeLine support may be provided to a carrier up to an amount such that a California LifeLine subscriber has a resulting \$0.00 rate, taking the federal subsidy amount into account first.

33. Carriers will establish prices based solely on market forces after 2010 and the Specific Support Amount will be established by the Commission on an annual basis in order to maintain compliance with the California LifeLine statutory scheme.

34. An artificial price floor greater than \$0.00 for California LifeLine customers would harm the market and retard competition.

35. There is no reason to maintain the current price floor on 1MR and 1FR service for carriers that are not rate-of-return regulated.

36. A \$12.20 California LifeLine subsidy whether coupled with the matching federal support or not will ensure continued high subscribership levels of low-income customers in California.

37. Annual adjustments to the California LifeLine support amount should be easily accommodated by the carriers' billing systems.

38. Customers will see significant benefits from the new California LifeLine Specific Support Amount program compared to the existing program.

39. Changes to the California LifeLine program should occur as expeditiously as possible.

40. Continuing the current administrative process is problematic given the other proposed program reforms.

41. This proceeding's record contains overwhelming evidence supporting the expansion of LifeLine in a technology neutral manner.

42. Low-income consumers deserve the same choice of technology and services they prefer as all other customers.

43. The Commission has controls in place today and Commission staff can adopt additional controls if they are necessary to ensure only one LifeLine service is provided to a subscriber's principal place of residence.

44. Commission staff has the authority to revise administrative procedures to help ensure the efficient operation of the California LifeLine program and address any California LifeLine program irregularities or other issues.

45. Commission staff authority includes determining the type and frequency of information provided by carriers to consumers to enroll and participate in the program.

46. Commission staff may initiate carrier program compliance audits, and adjust the percentage of program participants audited

47. The circumstances of residential use are substantially different than they were in 1996 and now encompass wireless services.

48. Wireless services are commonly found in residential use, and a substantial number of residential users use only wireless service.

49. Low-income consumers should have the ability to choose the communication service that best meets their needs.

50. All of the reasons behind Conclusion of Law 157 in D.96-10-066 are no longer valid. Conclusion of Law 157 in D.96-10-066 no longer limits participation by wireless providers in the California LifeLine program.

51. Given the advances in technology today, there is no reason we should limit participation in the LifeLine program to any type of technology or service provider.

52. There is no requirement wireless carriers file a schedule of rates and charges for services offered to LifeLine eligible customers.

53. The Commission should encourage participation by wireless providers in California LifeLine.

54. In the public participation hearings the Commission was repeatedly informed that disabled persons have acute needs for various types of wireless services, and that some of the required services are expensive, and particularly difficult for disabled, low-income persons to afford.

55. Customers who meet the eligibility requirements for both the DDTP program and the California LifeLine program have particular needs that justify a targeted subsidy.

56. The record supports allowing customers who meet the eligibility requirements for both the DDTP and California LifeLine programs be allowed to apply their California LifeLine discount to non-voice communication services.

57. The DDTP wireless equipment pilot project sought to provide wireless equipment to individuals certified as having difficulty using the telephone through the DDTP program.

58. The DDTP wireless equipment pilot project was limited in that it could only subsidize the wireless device, but not the connectivity service associated with the device.

59. Communication Division staff recommended in their reports on the wireless equipment pilot project that California LifeLine be expanded to provide a discount on the communication service that is essential to the low-income individuals who receive wireless equipment through the DDTP program.

60. Technology has advanced significantly over the past thirty years since the first TTY devices were provided under the DDTP program.

61. Data only services that include text messaging are readily available from most wireless providers and even some wireline providers.

62. Given the impact of the pilot program and the addition of the LifeLine discount, we should remove the pilot status from the wireless equipment program and make the wireless equipment program a permanent part of the Deaf and Disabled Telecommunications Program/California Telephone Access Program.

63. At the end of 2007, 2.7 million households subscribed to California LifeLine.

64. At the end of 2007, almost 3.7 million households were enrolled in CARE.

65. Seventy-five percent of eligible households are enrolled in California LifeLine.

66. California LifeLine discounts were provided to customers in 22% of the housing units in California.

67. Programmatic eligibility criteria allow customers with income ranges from 220% to 153% of the federal guidelines to partake of the California LifeLine program.

68. The number of households currently enrolled in CARE is about equal to the current total number of households eligible for California LifeLine.

69. California LifeLine discounts were provided to 21% of the occupied housing units in California, and CARE discounts were provided to 29% of the occupied housing units.

70. There may be only a slight increase in the size of the California LifeLine program if many of the households that would be eligible under an expanded income-based criteria are already participating in California LifeLine under the program-based criteria.

71. The Commission has observed that penetration rates vary for many demographic sub-segments of the population; the principal driver behind variations is simply one of economics - the lower the income the lower the penetration rate; the higher the income, the higher the penetration rate.

72. Through analyzing subscribership data we have determined that household income of less than \$20,000 has the strongest relationship with lower penetration rates.

73. Programs targeted at household incomes above \$20,000 have limited impact on meeting California's 95% subscribership goal.



74. The income-based criteria are no longer directly tied to the 150% of the federal poverty guidelines as the Communications Division is required to adjust the Household Income Limitation requirement for California LifeLine every April 15 to reflect inflation based on change in the Federal Consumer Price Index - Urban Area (CPI-U).

75. In 2005 the Commission added program-based criteria for LifeLine enrollment. Customers that do not qualify under the income-based criteria can qualify for California LifeLine under the program-based criteria as those programs allow higher levels of household income.

76. The program-based criteria are the predominant manner in which new customers enroll in California LifeLine today.

77. There is at most only a slight impact on the cost of California LifeLine by adjusting the income-based criteria, but the Commission can standardize and coordinate outreach and marketing efforts with the low-income energy programs by using the same income-based criteria for all programs.

78. In 2005 the low-income energy programs expanded eligibility to 200% of the federal poverty guideline as a temporary measure.

79. The adjustment to the LifeLine income-based criteria should also be an interim measure and should be explicitly tied to the outcome of the review the Commission is conducting of the interim CARE income-based criteria.

80. In conducting this review we examined the share of program costs that are attributable to administrative costs.

81. Carrier administrative costs had gotten so far out of control that in 2003 the Commission capped the administrative fee for Competitive Local Exchange Carriers (CLECs).

82. Recent program changes and the modifications we adopt today for the California LifeLine program mean that there is no longer a distinguishable difference between carrier costs associated with California LifeLine and normal costs of operations.

83. To the extent there is any difference between carrier costs associated with California LifeLine and normal costs of operations, the program reforms we adopt herein will ensure carriers are fully compensated for any administrative costs associated with California LifeLine.

84. The California LifeLine subsidy enables carriers to acquire and serve revenue generating customers.

85. Carriers that service the majority of LifeLine participants have flexibility in establishing their basic rates and should establish rates at a level that will cover their administrative costs, just as they do for any other cost.

86. There is no longer any need or requirement to have a separate California LifeLine recovery for carrier administrative expenses.

87. Carriers benefits from participating in California Lifeline.

88. The Commission has been concerned by the considerable amount of Commission resources necessary to review and audit administrative cost reimbursement claims.

89. Commission staff has had concerns about the apparent misuse of the administrative expense component of the LifeLine claim program and denied numerous claims for reimbursement submitted by carriers.

90. The Commission has shifted administrative costs from carriers to California LifeLine as the Commission has taken on more administrative burden.

91. Simplifying the separate tracking of administrative costs by carriers and the associated cost to the program of Commission review and audit of those costs will result in tangible benefits to consumers.

92. The costs associated with administering the reimbursement of carrier administrative expenses far outweigh the benefits such reimbursement provides to California LifeLine and consumers.

93. The provision of California LifeLine service is an integral part of the regulatory framework.

94. Actions the Commission has taken to reduce carrier administrative costs include centralizing the advertising and marketing requirements with the Universal LifeLine Telephone Service Trust Administrative Committee, and the adoption of centralized certification and verification processes.

95. Costs associated with administration of LifeLine service are a carrier obligation of providing service in California and are not separately recoverable from the California LifeLine program.

96. Alternatives, such as a simplified administrative expense process that would use per customer recurring and non-recurring cost factors, do not produce results for consumers better than that being adopted.

97. Expenses associated with explaining available rate schedules to prospective customers, especially subsidized rate schedules, which make the price more affordable for the prospective customer, is a normal cost of doing business in California.

98. A small group of carriers have very high bad debt claims, while large carriers such as AT&T and Verizon do not claim bad debt against the fund.

99. Full reimbursement of bad debt losses is not consistent with our goal to ensure funds obtained from the surcharges are being wisely spent with efficient administration.

100. It is more equitable to all customers to eliminate bad debt as a recoverable from the fund.

101. The current approach to administrative costs bad debt losses provides no incentive for efficiency and is a means for unscrupulous carriers to allocate unjustified costs to the fund.

102. Adopting a Specific Support Amount that encompasses all carriers will simplify Commission oversight and carrier implementation of California LifeLine, as well as provide incentives for efficient administration for all participants.

103. Separate reimbursement for administrative costs from the California LifeLine program should end once the Specific Support Amount methodology is in place on January 1, 2010.

104. Separate reimbursements for pass-through taxes (federal excise, CPUC user fees, and state/local taxes) should end once the Specific Support Amount methodology is in place on January 1, 2010.

105. Carriers should have a reasonable period after June 30, 2009 to submit claims for reimbursement of administrative costs and pass-through taxes incurred before June 30, 2009.

106. To aid administration of California LifeLine the Commission should limit the period carriers may submit claims for LifeLine reimbursement to a reasonable period after the conclusion of the month during which service was provided.

107. The federal Lifeline program provides low-income consumers with discounts of up to \$10.00 (\$6.50 EUCL and \$3.50 basic service) off of the monthly cost of telephone service for a single telephone line in their principal residence.

108. Federal Link-Up provides low-income consumers with discounts of up to \$30.00 off of the initial costs of installing telephone service once per customer per address.

109. Enhanced federal Lifeline and Link-Up provides qualifying low-income individuals living on tribal lands with additional support.

110. California consumers benefit from the Commission carefully managing our programs to capture the maximum federal funding.

111. California LifeLine make-up of “lost” federal support due to lack of ETC status for some carriers has grown to almost \$35 million a year.

112. This additional support currently provided by California LifeLine could be obtained from the federal LifeLine program provided that those carriers obtain ETC status.

113. There are substantial benefits to California consumers in encouraging ETC designation.

114. Policies designed to encourage ETC designation allow for a more predictable level of service to consumers and assist the Commission in improving the long-term sustainability of California LifeLine.

115. ETC designation allows the Commission to more closely evaluate whether the carrier has the financial resources and ability to provide quality services throughout the designated service area.

116. ETC designations provide greater opportunity for the Commission to ensure multiple service providers maintain the capability and commitment to provide service throughout the designated service area.

117. ETCs have demonstrated the ability to remain functional in emergency situations, furthering an important public interest.

118. The ETC designation process adds to our ability to ensure consumer protection requirements, and consistent with the public interest, convenience and necessity, will help ensure consumers are able to receive an evolving level of universal service.

119. The Commission encourages, but does not require, non-ETC carriers to obtain ETC certification.

120. Costs that could have been reimbursed pursuant to the federal LifeLine program should no longer be recovered from California LifeLine, and carriers who do not claim from the federal program will be reimbursed as if they have received the federal subsidy as an offset.

### **Conclusions of Law**

1. State policies governing California LifeLine are clearly stated in the Moore Universal Telephone Service Act, Pub. Util. Code §§ 871–884.

2. Specific state policies for telecommunications are set forth in Pub. Util. Code § 709 and California regulatory practice should reflect these policies.

3. Pub. Util. Code § 709.5 endorses a reliance on competitive markets to achieve California’s goals for telecommunications policy.

4. Pub. Util. Code § 882 establishes that regulatory policies should encourage access to a wide choice of advanced telecommunication services.

5. In Pub. Util. Code § 871, the Legislature reiterates its intent that our policies encourage development of a wide variety of advanced telecommunication facilities and services.

6. With respect to our universal service commitment, Pub. Util. Code § 709 instructs us to seek to ensure continued affordable and widespread availability of high quality telecommunications services for all Californians.

7. Universal service is defined as an evolving level of telecommunications services taking into account advances in telecommunications and information technologies and services.

8. It is reasonable to consider the impact of any regulatory reform on our state's ability to (i) rely upon competition in the voice communications marketplace; (ii) encourage development of a wide variety of new technologies and services; and (iii) support our state's public policy programs.

9. It is reasonable to continue considering the 95% subscribership goal as the best measure of affordability when evaluating the universal service programs including California LifeLine.

10. The Commission has different levels of jurisdiction over different voice communication service providers.

11. When the Commission's jurisdiction overlaps with that of other regulatory authorities, such as the FCC, California regulatory policy needs to reflect shared jurisdiction.

12. California's LifeLine program should reflect the changes in conditions that result from the dramatic growth in Internet and wireless communications technologies.

13. California LifeLine policy should reflect the fact that wireless telecommunications services compete with wireline services.

14. The circumstances of residential use are substantially different than they were in 1996 and now encompass wireless services.

15. California LifeLine policy should reflect the fact that VoIP technology competes with circuit-switched technology in the provision of voice communications services.

16. There is no compelling economic or legal reason to segment the market by user characteristics, such as income or usage patterns, or to partition different groups of customers into separate markets. Our regulatory practice should not impose such distinctions.

17. The Commission does not need additional data and evidence to allow wireless services to participate in California LifeLine.

18. This proceeding's record contains substantial evidence supporting the expansion of LifeLine in a technology neutral manner.

19. Wireless providers are eligible to participate in the LifeLine program just as any other provider of service. Similarly, other services that include the basic service elements are eligible for LifeLine benefits and providers of those services may seek reimbursement from California LifeLine.

20. The basic rate cap has been extended until 2011 while allowing for an orderly transition of the basic rate to market-based pricing and preserving affordability in high-cost areas.

21. The current price floor on Measured Rate Residential Service and Flat Rate Residential Service for carriers that are not rate-of-return regulated should be removed so that carriers can charge customers less than AT&T's 2006 basic service rates.

22. A Specific Support process can be accomplished in a legally sound manner, and is the most likely option that will satisfy the broad statutory goals set forth in the Public Utilities Code.



23. Specific Support Amount is provider and technology neutral consistent with the goals outlined in Pub. Util. Code § 871.5(d).

24. A Specific Support process is the best choice on which to base the California LifeLine program in the future.

25. Statutory changes are not needed to design and implement a change to a Specific Support Amount process.

26. The Commission may seek statutory changes to the Moore Act to simplify the administrative process after 2010 when it will have to continuously update the support amount.

27. A Specific Support California LifeLine support amount set at 55% of the highest basic rate of the COLRs as reported to the Commission on August 15 of each year is reasonable to comply with the Moore Act and other universal service statutes.

28. Commission staff will issue a Resolution to update the Specific Support Amount for 2010.

29. California LifeLine support is limited to the greater of the Specific Support Amount or the amount that results in the California LifeLine subscriber having a \$0.00 monthly rate.

30. A \$12.20 California LifeLine subsidy, whether coupled with the matching federal support or not, will ensure continued high subscribership levels of low-income customers in California.

31. As changes to the California LifeLine program should occur as expeditiously as possible, it is reasonable to establish January 1, 2010 as the effective date for changing from the current program to the California LifeLine program based on the Specific Support Amount process.

32. Commission staff should redesign the claim form to gather only information needed to process, verify, and audit carrier LifeLine claims.

33. Since carriers who serve the majority of LifeLine customers in California are no longer cost regulated, there is no reason to continue the payment of administrative costs and other fees by California LifeLine.

34. Carriers have the responsibility for reporting with each claim their rate both before and after application of California LifeLine and federal Lifeline support payments and the number of eligible customers.

35. The Commission staff can adopt additional controls if they are necessary to ensure only one LifeLine service is provided to a subscriber's principal place of residence.

36. Pub. Util. Code § 871.7 reinforces the evolving level of communication services that this Commission has adopted as its evaluative measure for considering universal service within California.

37. The reasons proffered as a basis for the Conclusion of Law 157 in D.96-10-066 are no longer valid and there is no requirement to amend the Moore Act so that wireless services can participate in the California LifeLine program.

38. Wireless carriers do not provide "telephone service within a service area" within the meaning of Pub. Util. Code § 876 and there is no necessity for wireless carriers to "file a schedule of rates and charges providing a class of lifeline telephone service" pursuant to that section.

39. Wireless carriers could file the required schedule of rates and charges for services offered to LifeLine eligible customers on a voluntary basis, but there is no requirement that they must file such a schedule.

40. A wireless carrier voluntarily filing a schedule of rates and charges would not and could not constitute Commission jurisdiction over wireless carrier rates.

41. The Commission can overcome any conflict between the requirement to file a schedule of rates and federal law through the operation of Pub. Util. Code § 247.

42. Wireless carriers that wish to participate in the California LifeLine program do not need to comply with the California LifeLine statutory requirements that conflict with Communications Act of 1934 as amended.

43. Customers who meet the eligibility requirements for both the DDTP program and the California LifeLine program have particular needs that justify a targeted subsidy.

44. California LifeLine support should be provided for communication services purchased by recipients of the DDTP equipment program.

45. Text messaging is a highly effective means of communication for the deaf community and the traditional California LifeLine benefit is of little value to the deaf community, so it is logical under the Moore Act to provide a similar discount on data services for members of the deaf and hard of hearing communities.

46. By expanding the California LifeLine program to include data services for consumers that receive wireless equipment through the DDTP program we are fulfilling the statutory goals of the Moore Act and addressing a significant barrier identified in the DDTP wireless pilot program.

47. A barrier to fulfilling the universal service goals of California is eliminated through the targeted initiative to provide California LifeLine support for data services purchased by consumers that receive wireless equipment through the DDTP program.

48. The Commission has yet to finish its review of the costs and the benefits of the CARE program expansion, to help us determine whether the expansion of CARE should remain in effect.

49. The adjustment to the LifeLine income-based criteria is an interim measure pending the outcome of the review the Commission is conducting of the interim CARE income-based criteria.

50. There is no longer any need or requirement to have a separate California LifeLine recovery for carrier administrative functions.

51. There is no longer a distinguishable difference between carrier costs associated with California LifeLine and normal costs of operations.

52. A goal of the California LifeLine program is to ensure the full cost of serving LifeLine customers is paid to the carrier providing service.

53. The cost of serving California LifeLine customers should be recovered through the prices of the services purchased by the customer plus the California LifeLine subsidy.

54. The benefit of obtaining additional subscriber revenue clearly outweighs any additional burden of California LifeLine.

55. The Commission will enhance carrier incentives to provide efficient service by adopting a reasonable fixed amount per customer.

56. The costs associated with administering carrier administrative cost reimbursement far outweigh the benefits such reimbursement provides to California LifeLine and consumers.

57. The provision of California LifeLine is not an option of certificated carriers; carriers assume the universal service responsibilities upon being certificated or licensed by the Commission to operate within California.

58. The provision of California LifeLine service is an integral part of the regulatory framework.

59. Carriers must reduce customer bills by the total reimbursement amount they receive from California LifeLine.

60. Expenses associated with explaining available rate schedules to prospective customers, especially subsidized rate schedules which make the price more affordable for the prospective customer, is a normal cost of doing business in California.

61. It is more equitable to all customers to eliminate bad debt as a recoverable from the fund.

62. The FCC does not include administrative or bad debt costs in its LifeLine program and we are aware of no other state that does.

63. GO 153 sections 9.3.9, 9.3.10, and 9.3.13 should be modified to eliminate separate reimbursement for administrative costs and bad debt losses.

64. LifeLine customers should continue to be exempt from paying into the public purpose program funds.

65. A customer pre-qualification requirement was adopted in D.08-08-029 making further consideration of the bad debt issue in this docket moot.

66. Pursuant to section 254(e) of the Communications Act, only eligible telecommunication carriers (ETCs) designated pursuant to section 214(e) are eligible to receive federal Lifeline and Link-Up support.

67. California consumers benefit from the Commission carefully managing our programs to capture the maximum federal funding.

68. Federal service requirements do not prevent carriers from obtaining ETC status.

69. There are substantial benefits to California consumers in encouraging ETC designation.

70. Policies designed to encourage ETC designation allow for a more predictable level of service to consumers and help the Commission improve the long-term sustainability of California LifeLine.

71. ETC designation allows the Commission to more closely evaluate whether the carrier has the financial resources and ability to provide quality services throughout the designated service area.

72. ETC designations provide greater opportunity for the Commission to ensure multiple service providers maintain the capability and commitment to provide service throughout the designated service area.

73. ETCs have demonstrated the ability to remain functional in emergency situations, furthering an important public interest.

74. The ETC designation process adds to our ability to ensure consumer protection requirements, consistent with the public interest, convenience and necessity, will help ensure consumers are able to receive an evolving level of universal service.

75. The best course for maximizing federal support for the LifeLine program is to discontinue making up the federal amounts paid to non-ETCs.

76. GO 153 should be modified to exclude all costs that could have been reimbursed pursuant to the federal LifeLine program, regardless of whether the costs are actually reimbursed to the carrier.

77. Changes to the California LifeLine rules and GO 153 in accordance with this revised Specific Support process are appropriate.

78. Reforms adopted herein will ensure the California LifeLine program continues to meet statutory goals.

**O R D E R**

**IT IS ORDERED** that:

1. The current price floor on Measured Rate Residential Service and Flat Rate Residential Service for carriers that are not rate-of-return regulated is removed.

2. Carriers providing wireless telephone service to subscribers otherwise eligible for the California LifeLine Program may participate in the California LifeLine Program and offer eligible subscribers a California LifeLine Program subsidy as set forth below, and such carriers are not required to file a schedule of rate and charges for this service.

3. Effective January 1, 2010, the California LifeLine Program shall provide eligible subscribers a subsidy using a Specific Support Amount. To reflect California LifeLine Program support, carriers shall reduce California LifeLine Program subscribers' monthly bills by the Specific Support Amount plus any applicable federal Lifeline and Linkup subsidy.

4. The California LifeLine Specific Support Amount shall be set at 55% of the highest basic rate (as of July 31) of the Carriers of Last Resort as reported to the Commission on August 15 of the previous year.

5. Commission staff shall annually review the basic rate amounts charged by Carriers of Last Resort in California, and establish the Specific Support Amount.

6. Commission staff shall prepare a resolution that proposes a methodology and process for determining the Specific Support Amount consistent with this decision and the resolution shall also propose the Specific Support Amount for 2010. The Specific Support Amount will be determined annually based on the highest Carrier of Last Resort basic rate.

7. Commission staff will review rate increases by Carrier of Last Resort on an ongoing basis to ensure compliance with the Moore Act. The Specific Support Amount will be adjusted if any California LifeLine Program customer being served by a Carrier of Last Resort is no longer receiving at least a 50% subsidy on their basic service rate.

8. Beginning January 1, 2010, the Specific Support Amount will be at least \$12.20.

9. California LifeLine Program support to a subscriber is limited to the lesser of the Specific Support Amount or the amount that results in the California LifeLine subscriber having a \$0.00 monthly rate.

10. Separate reimbursement for administrative costs and other fees from the California LifeLine shall end on June 30, 2009.

11. Separate reimbursements for pass-through taxes (federal excise, CPUC user fees, and state/local taxes) shall end on June 30, 2009.

12. California LifeLine Program customers will continue to be exempt from paying into the public purpose program funds.

13. Carriers shall reduce customer bills by the total reimbursement amount they receive from California LifeLine Program and show such reduction as a separate line item on the bill.

14. No later than August 31, 2009, carriers shall submit to Commission staff all claims for reimbursement of administrative costs and pass-through taxes as defined above incurred before June 30, 2009. No claims shall be accepted after that date, and any claim for reimbursement not timely submitted is deemed void and denied.

15. Carriers shall submit claims for California LifeLine Program reimbursement no later than 60 days after the conclusion of the month during



which service was provided. No claims shall be accepted after the end of that period, and any claim for California LifeLine Program reimbursement not timely submitted is deemed void and denied.

16. Changes to California LifeLine Program adopted in Decision 08-09-042 at Ordering Paragraphs 5, 6, and 11 cease to be effective on January 1, 2010.

17. Communications Division staff will convene a workshop before the Implementation Date to address all the new requirements, including proposed changes to General Order 153 and develop a consumer education plan.

18. Commission staff shall prepare and serve on all parties to this proceeding a resolution for Commission consideration conforming California LifeLine Program rules and General Order 153 to today's decision. Such resolution shall include but not be limited to the following:

- a. Commission staff shall modify the claim form to require the information needed to process, verify, and audit carrier California LifeLine Program claims consistent with the program modifications adopted herein.
- b. To further simplify the claims process, California LifeLine Program participant counts by carrier shall be collected from the Certifying Agent and shall be used to calculate and pay claims.
- c. Carriers shall report with each claim their rate applicable to the California LifeLine Program subscriber both before and after application of California LifeLine Program and federal Lifeline support payments.
- d. Each California LifeLine Program subscriber shall be limited to one Specific Support Amount per month.
- e. Subject to the Commission's ongoing review of the low-income program for electricity customers, the California LifeLine Program income-based criteria shall be modified to match the income-based criteria used in the electricity program.

- f. Carrier claims shall not include reimbursement for administrative costs and bad debt losses.
- g. Carrier claims shall not include any amounts for replacement of federal funds available to Eligible Telecommunications Carriers, but not obtained by the carrier.

19. Commission staff is authorized to revise administrative procedures as necessary to ensure the efficient operation of the California LifeLine Program and address any California LifeLine Program irregularities or other issues, including the type and frequency of information provided by carriers and subscribers to enroll and participate in the program.

20. Commission staff is authorized to initiate carrier program compliance audits.

21. The California LifeLine is expanded to include wireless text messaging services for consumers that receive wireless equipment through the Deaf and Disabled Telecommunications Program.

22. Subscribers eligible for both the Deaf and Disabled Telecommunications Program and California LifeLine Program may apply their California LifeLine Specific Support Amount to wireless text messaging services provided by carriers.

23. The California LifeLine Program provides one discount per household; however, if there is a member of the household who is hearing impaired and has a medical certificate, that household may qualify for a second California LifeLine Program discount. For customers who meet the eligibility requirements for both the Deaf and Disabled Telecommunications Program and California Lifeline Program, the discount may be applied to either landline or wireless text messaging services.

24. The wireless equipment program is made a permanent part of the Deaf and Disabled Telecommunications Program/California Telephone Access Program.

25. The Commission should continue to carefully manage our universal service programs to maximize federal universal service support.

26. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**

Summary of the record of this proceeding:

- On April 14, 2006, Staff issued its first report on the Commission's Public Policy Programs (PPPs), in which staff provided history and status on the PPPs. Comments were provided by parties on the PPP Staff Report and a good deal of the two-day workshop held by Commissioner Chong focused on the LifeLine program.
- Comments on the OIR were received on July 25, 2006, with reply comments filed on September 15, 2006. Twenty-five parties submitted comments, with many focusing exclusively on California LifeLine.
- On July 20, 2006, an ALJ Ruling was issued setting three Public Participation Hearings (PPHs), setting date for filing notices for intent to claim intervenor compensation and directing AT&T and Verizon to distribute copies of the 2004 affordability study to all parties.
- During the summer of 2006, companies responded to DRA's discovery requests.
- PPHs were held in San Diego, Oxnard, and Sacramento in September, October, and November of 2006 after mandatory notice of the hearings was included in *all* consumer telephone bills that summer. Public comments focused on changes needed to the LifeLine program including the affordability of telephone service as many California LifeLine consumers wanted to purchase additional communication services without losing the discount and the need to include wireless services in the LifeLine program.
- On July 13, 2007, the assigned Commissioner and ALJ issued a scoping memo that defined the specific issues to be addressed, set the timeline, and set the California LifeLine workshop for August 15, 2007.
- On August 15, 2007, a half day workshop session was held, in which parties discussed modernizing the California LifeLine rate and implementation issues. In preparation for that workshop, the Communications Division issued on August 2, 2007 a workshop notice in which it requested comments on eight implementation issues.
- On September 18, 2007 Staff issued its report summarizing a California LifeLine workshop that included their implementation recommendations for the adoption of a monthly set amount of subsidy per LifeLine household.

- August 2007 and September 2007 – several rounds of Opening and Reply Comments were filed by the parties in this proceeding in response to the July scoping memo.
- October 2008 – The record was reopened to allow additional comment in light of changes made to extend the basic rate cap and limit adjustments to that cap and to the California LifeLine rate in 2009 and 2010 in D.08-09-042.
- March 2009 – A workshop was held to provide an opportunity for clarification regarding numerical representations in the Proposed Decision prior to submitting comments and reply comments.

**(END OF APPENDIX A)**

**APPENDIX B*****BRIEF HISTORY OF LIFELINE IN CALIFORNIA***

- The California Commission created the California LifeLine service to primarily “take care of the needs of the poor, the infirm, and the shut-ins.”<sup>309</sup> The Commission modified the California LifeLine service from 1969 to 1984 through general rate cases of the telephone companies.
- **Pub. Util. Code § 871** was codified in by the enactment of AB 1348 (1983), known as the Moore Universal Service Telephone Act, requiring the Commission to provide low-income households with access to affordable basic residential telephone service.
- **D.84-11-028** established General Order (GO) 153 for the implementation, funding, and administration of the Moore Universal Telephone Service Act. The Universal Service Telephone Program (ULTS) was created to provide a 50% discount on residential telephone service to low-income families. This program was funded by a tax administered by the State Board of Equalization.
- **D.87-07-090**, in response to AB 386 (1987), repealed the ULTS tax and implemented a 4% all end user surcharge assessed on intrastate interLATA services.
- **D.87-10-088** established a ULTS trust for the deposits of the surcharge monies, and an administrative committee for the administration of the ULTS program. The administrative committee, ULTS-AC, was comprised of five members including 1 large LEC, 1 small LEC, 1 IEC, and 2 public interest groups.
- **Annual Budgets** for the ULTS program are adopted by the Commission through the resolution process. Information about CPUC mandated telecommunications all-end-user surcharges can be found at: <http://www.cpuc.ca.gov/PUC/Telco/Consumer+Information/surcharges.htm>.

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<sup>309</sup> Re General Telephone Company (1969) 69 CPUC 601, 676, See also Re Pacific Telephone & Telegraph (1969) 69 CPUC 55, 83.

- **D.94-09-065** standardized the ULTS rates to the lower of 50% of the LEC's tariffed rate or 50% of Pacific Bell's basic service rate and revised the assessment of the surcharge from intrastate interLATA services to all intrastate telecommunications services. This decision also required the large LECs to perform ULTS outreach to undersubscribed communities, and established a 95% subscribership goal for low-income and non-English speaking households.
- **D.96-10-066** required all competitive local exchange carriers (CLEC) to provide ULTS, extended the 95% subscribership goal for all customer groups, removed the large LECs' outreach requirement, established a marketing working group to perform ULTS outreach in a competitively neutral manner, and set the budget for the marketing working group to the annual total average ULTS marketing expenses reimbursed to the large LECs over the last 3 years (1993 to 1995).
- **D.97-12-105** established a nine-member ULTS Marketing Board (ULTS-MB), and ordered the board to use 80% of its marketing budget to bring basic telephone service to qualifying households currently without telephone service and the remaining 20% to close the gap between the total number of residential customers eligible for the ULTS program and total number of customers who actually use the ULTS program.
- **Annual Outreach Budgets** are included in the ULTS annual budgets. Resolution T-16176, the first annual budget for the outreach, set the marketing budget at \$5 million a year.
- **D.98-10-050** increased the ULTS-MB 1999 budget from \$5 million to \$7 million.
- **Resolution T-16353** (1999) approved a 12-month marketing program and the operation of a call center for the ULTS program. These marketing and outreach efforts were conducted from November 1999 through October 2000.
- **D.00-10-028** revised GO 153 to reflect changes to the ULTS program that occurred subsequent to 1984, set standards for carriers' service representatives in informing subscribers on the availability of ULTS program, etc.
- **Pub. Util. Code § 270-281** et seq. were codified by the enactment of SB 669 (1999) requiring a ULTS Trust Administrative Committee Fund be created in the State Treasury, limiting moneys in this fund to only be expended for the purpose of the program and upon appropriation in the annual Budget Act,

changing the role of the ULTS-AC from administrative to advisory, and requiring the Commission to submit a transition plan on or before July 1, 2000.

- **SB 742** (2001) mandated that the remaining funds of the ULTS Trust be transferred to the State Treasury on October 1, 2001.
- **Resolution T-16561** (2001) approved a proposed contract with Richard Heath & Associates (RHA) in the amount of \$4,983,241 for a 12-month marketing program submitted by the ULTS-MB.
- **Resolution T-16606** (2001) approved a proposed contract with RHA in the amount of \$1,481,990 for a 36-month operation of a call center submitted by the ULTS-MB.
- **D.01-09-064** revised the charters of ULTS-AC and the ULTS-MB to conform to SB 669, and directed the Information and Management Services Division (IMSD) and the Telecommunications Division (TD) to take over the administration of the ULTS program starting October 1, 2001.
- **D.02-04-059** merged the ULTS-MB (disappearing committee) and the ULTS-AC (surviving committee) into one committee, and established a nine-member board for the merged committee. The Commission solicited participation from over 4,000 groups and organizations to participate on the advisory committee process.
- **D.02-07-033** directed the Low Income Oversight Board (LIOB) to solicit public input and develop recommendations for coordinated customer outreach between the ULTS and CARE programs.
- **D.03-01-035** provided CLECs the option of using the cost factor developed by the Commission, rather than calculating their incremental costs as delineated in T-16591. Issued opinion denying Fones4All's amended petition to modify D.00-10-028 and modifying ULTS administrative expense process.
- **D.05-04-026** adopted new LifeLine certification and verification processes, as required by the Federal Communications Commission's (FCC's) Lifeline Order. Ensured California continues to receive \$330 million in federal Lifeline/Link-Up funds to protect the financial viability of the ULTS program. Adopted program-based eligibility, to facilitate participation in the program by all eligible customers.
- **D.05-12-013** adopted the revisions to GO 153 as they appear in the Telecommunications Division's August 2005 Workshop Report on Revision



and Update of GO 153, as further amended by this order; and addresses various implementation issues related to the changes in GO 153.

- **D.06-11-017** confirmed, with some modifications, the November 1, 2006 Assigned Commissioner's Ruling, suspending portions of GO Order 153 that relate to the annual LifeLine verification process.
- **D.07-05-030** adopted strategies to improve the California LifeLine certification and verification processes, and reinstated portions of GO 153.
- **D.08-08-029** adopted a pre-qualification requirement for the California LifeLine Program and resolved remaining Phase 2 issues.

**(END OF APPENDIX B)**

**INFORMATION REGARDING SERVICE**

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated April 3, 2009, at San Francisco, California.

/s/ TERESITA C. GALLARDO  
Teresita C. Gallardo