

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



FILED
05-28-13
04:59 PM

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

Rulemaking 11-03-013
(Filed March 30, 2011)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE ASSIGNED COMMISSIONER RULING AND SCOPING MEMO**

LINDSAY M. BROWN
Attorney
for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1960
Email: Lindsay.Brown@cpuc.ca.gov

ALIK LEE
Analyst
for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2050
Email: Alik.Lee@cpuc.ca.gov

NATALIE BILLINGSLEY
Analyst
for the Division of Ratepayer Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1368
Natalie.Billingsley@cpuc.ca.gov

May 28, 2013

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION	1
II. DISCUSSION	1
1. Definition of CA LifeLine Service Elements;	3
a. Are there any legal or statutory impediments to LifeLine service elements differing from Basic Service elements?	3
b. Are there any policy impediments to LifeLine service elements differing from Basic Service elements?	5
c. For policy or legal reasons, should the LifeLine service elements be the same as the Basic Telecommunications Service Elements adopted in D.12-12-038? What is the rationale for or against distinguishing the service elements for LifeLine and Basic Service? Note that LifeLine currently diverges from the Basic Service elements in D.12-12-038, and that it differed from the Basic Service elements under the prior Basic Service definition.	6
d. If the LifeLine service elements diverge from basic service, how should they diverge? What service elements should be different? Please address the advantages and disadvantages of any differences in the LifeLine service elements as compared to the Basic Service elements.	7
e. Should the basic service elements follow the federal Lifeline definition? Please address the advantages and disadvantages of using the federal Lifeline service elements definition	7
f. Compliance with 911 and Enhanced 911 Rules: The federal LifeLine definition allows carriers to participate in the program if they comply with the E911 standard. Is this the appropriate standard for emergency service provided by LifeLine wireless carriers? Should wireline LifeLine providers be required to continue to provide 911 service, as opposed to E911 service, for LifeLine customers? How do proposals about next generation 911 and E911 affect this analysis?	9
g. Are changes in the LifeLine service elements appropriate to entice wireless carriers and other nontraditional providers to offer LifeLine service, and to increase competition and choices for Californians about the type of LifeLine service they can receive and the range of providers?	12

i.	If the Commission required a “bucket of minutes” for LifeLine, should this requirement be the same across technologies? For example, is a “bucket of minutes” requirement more or less appropriate for wireless or wireline service offerings? Is a “bucket of minutes” standard appropriate for wireline LifeLine, which currently offers unlimited incoming and outgoing local calls all month long?	13
l.	Could the Commission do both – that is, adopt a minimal wireless LifeLine service definition, but also allow wireless providers to offer a discount equal to the SSA to any existing service offering?.....	14
o.	What issues are raised by the application of LifeLine to bundled service offerings? Are any additional steps or requirements necessary to ensure that Californians are not required to purchase additional or bundled services as a gateway to subscribing to LifeLine?.....	15
p.	What rules, if any, are warranted regarding contract early termination fees or cancellation of contracts without penalty if service is not adequate? Should these rules differ for wireless or wireline LifeLine?	17
q.	What additional issues should the Commission consider regarding LifeLine service elements and requirements for LifeLine service?	17
2.	Program Administration and General Order 153.....	17
a.	What changes are necessary to make the administration of the CA LifeLine program more efficient and accessible for customers and other stakeholders? California uses a third party administrator for initial LifeLine qualification and for annual renewal. Is that process effective or are adjustments warranted?	17
b.	What changes to program administration and General Order 153 are needed to accommodate prepaid services? Please be specific about the proposals and about any advantages and disadvantages of those proposals to accommodate pre-paid services.....	18
c.	Should the CA LifeLine program continue to require “pre-qualification” of LifeLine subscribers, that is that a subscriber must obtain service from a carrier before being approved for LifeLine?.....	20
d.	Should the Commission pursue an option to allow customers to be pre-registered for CA LifeLine service (obtain an eligibility determination before signing up for service with a carrier), rather than requiring customers to obtain regular service while awaiting the determination of their LifeLine eligibility (and	

	back-crediting them to the date of the request for LifeLine)?	20
e.	Should California continue to support non-recurring or connection charges through the Life Line program?	23
f.	Is outreach about the LifeLine program adequate or effective for all Californians, including those with special needs and non-English speaking Californians? What changes should be made, if any, to the outreach and information programs relevant to LifeLine? Should in-language marketing be required?	23
g.	Does Public Utilities Code 710 raise any issues about LifeLine eligibility for VoIP providers? If so, should VoIP eligibility to participate in LifeLine be referred to a second phase of this proceeding to ensure accountability to program rules and requirements?	24
3.	Should the Commission extend the Cap on LifeLine Rates & SSA subsidies?	27
a.	How should the Commission respond to the TURN Motion filed June 12, 2012 (along with the responses by other stakeholders)? The Commission issued D.12-07-022 granting a limited rehearing of D.10-11-033.	27
i.	How should the Commission address those factors identified in D.00-12-028 (and not addressed in D.10-11-033), and how should their potential effect on wireless providers in California be addressed?	27
ii.	How should the incorporation of the study entitled “Affordability of Telephone Service 2010, Survey of Households” and telephone affordability in general be addressed?	27
c)	Is it in the public’s interest to extend a customer rate freeze for a set period of time (beyond June 30, 2013)? What would be rationale for the Commission to, in effect, re-regulate rates? How should the Commission address concerns that carriers will shift price burdens onto low-income consumers rather than claim government subsidy.	28
i.	Please comment on TURN’s argument that LifeLine rates could increase to \$10.50 (under AT&T’s \$21.00 basic service package) which assumes the carrier will maximize the rate the customer pays (limited only by 50% of the basic rate from the Moore Act), and claim less from the federal and state LifeLine funds.	30
c.	Should the Commission consider a state-wide LifeLine basic service rate (or maximum) for all carriers? How would this	

apply to wireless providers?.....	31
d. How should the Commission address the question of carrier compensation? The SSA was created to increase along with the rates of the four largest ILECs so as to give incentive for carriers to charge less to customers. Should this process be reevaluated? If the SSA is frozen, when basic rates increase, the LifeLine customers will be forced to make up the difference (barring a corresponding price freeze).....	33
i. Should the Commission reconsider its decision to eliminate bad debt reimbursement for carriers?	34
ii. Should the Commission consider the use of geographic de-averaging of basic rates when computing the SSA?	34
III. CONCLUSION.....	35

TABLE OF AUTHORITIES

PAGE

CPUC Decision

D.96-10-066.....	4
D.00-12-028.....	24
D.01-09-058.....	14
D.02-02-027.....	14
D.06-03-013.....	9
D.06-06-010.....	22
D.06-08-030.....	25
D.08-04-057.....	13, 14, 15
D.08-08-029.....	18
D.08-09-042.....	24
D.10-10-034.....	26
D.10-11-033.....	passim
D.12-07-022.....	7, 11, 23, 30
D.12-12-038.....	passim
D.13-02-022.....	23

California Public Utilities Code

§ 234.....	23
§ 234(a).....	22
§ 270(b).....	22, 23
§ 285.....	22
§ 710.....	23
§ 739.3.....	24
§ 781-884.5.....	3
§ 871.7.....	4
§ 873.....	3

Federal Statues

47 C.F.R. § 332(c)(3)(a) 13
47 C.F.R. § 54.101 6, 9

Other Authorities

In the Matter of Lifeline and Link Up reform and Modernization,
WC Docket No. 11-42, WC Docket No. 03-019, cc Docket No. 96-45,
WC Docket No. 12-23; FCC 12-11 (released February 6, 2012)..... 9
G.O. 153 § 4.6.2.2. 4

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

Rulemaking 11-03-013
(Filed March 30, 2011)

**COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES
ON THE ASSIGNED COMMISSIONER RULING AND SCOPING MEMO**

I. INTRODUCTION

Pursuant to the schedule established by the April 10, 2013 Assigned Commissioner Ruling and Scoping Memo (ACR), as modified by Administrative Law Judge (ALJ) Bushey's May 8, 2013 email granting an extension of time to file, the Division of Ratepayer Advocates (DRA) submits these Comments on the questions contained in the ACR concerning the California LifeLine program.¹ DRA here does not address all of the questions contained in the ACR, but reserves the right to respond to other parties' positions in Reply Comments.

II. DISCUSSION

The ACR requests comment on an extensive list of questions about issues and potential changes to California's LifeLine program. DRA's positions are summarized below:

- There are no policy or legal impediments to having a different definition of "LifeLine" service elements versus "Basic Service" service elements, but they should generally be similar. The basic service elements should be the minimum standard for LifeLine service elements, but the Commission may wish to adopt additional protections for low income LifeLine customers.

¹ In these comments, DRA will refer to the California LifeLine program as "LifeLine" and the federal Lifeline program as "Lifeline".

- California should continue to maintain its own definition of what constitutes LifeLine service, rather than adopting the more limited federal definition.
- California should continue to maintain its own definition of what constitutes acceptable 911/E911 service rather than matching the federal definition.
- Service providers need to clearly state in their advertising/marketing material whether they are offering state LifeLine, federal Lifeline, or both. This is important as the programs are different.
- VoIP service is not presently eligible to provide subsidized LifeLine service. The Commission has not deemed VoIP providers to be "telephone corporations" under the Public Utilities Code, and thus they cannot receive Lifeline subsidies. To the extent that this needs to be discussed further, that should be done in Phase II of this proceeding.
- The Commission should not weaken the wireline LifeLine program in order to "entice" VoIP and wireless carriers to participate. The wireline program works and should not be diminished to accommodate "new" technologies.
- Implement pre-registration as a complementary option to pre-qualification.
- The Commission should apply the Rule 12 marketing requirements to all LifeLine service providers, not just AT&T.
- The Commission should consider changes to G.O. 153 in Phase II, after it has made any program changes.
- There is no need for the Commission to expand the California LifeLine program to include prepaid wireless service. The federal Lifeline program already includes this service and there is no reason for the state program to duplicate the federal program.
- The California LifeLine program should still subsidize service connection/activation charges, as those can be a significant financial barrier to low income consumers getting LifeLine phone service.
- The 2010 Affordability Study is of limited relevance today due to regulatory and market changes since the Study was performed.
- The Commission should return to the fixed discounted rate for wireline LifeLine service which the Moore Act envisioned,

instead of using a fixed dollar amount voucher (the Specific Support Amount—SSA). The voucher system is better suited for wireless LifeLine.

- The Commission needs to cap carrier draws from the LifeLine Fund need.
- The Lifeline fund should not be used to reimburse carriers for bad debt.

1. Definition of CA LifeLine Service Elements

a. Are there any legal or statutory impediments to LifeLine service elements differing from Basic Service elements?

DRA does not believe that there are any legal or statutory impediments to adopting LifeLine service elements that are different from the Basic Service elements the Commission approved in Decision (D.) 12-12-038, the decision Adopting Revised Basic Telecommunications Service Elements.

In 1983, the Moore Universal Telephone Service Act (Moore Act) created the California LifeLine program which is “. . . an important means for achieving universal service by making basic telephone service affordable to low-income households through the creation of a lifeline class of service.”² The Moore Act provides:

- (a) (1) The commission shall annually do all of the following:
- (A) Designate a class of lifeline service necessary to meet minimum communications needs.
 - (B) Set the rates and charges for that service.
 - (C) Develop eligibility criteria for that service. . . .³

Thus, the Moore Act requires the Commission to determine what level of Basic Service is necessary to “meet minimum communications needs” for the LifeLine program.

² The Moore Act is codified as Public Utilities Code §§ 781-884.5.

³ Public Utilities Code § 873.

The Moore Act does not contain any language that discourages or prohibits the Commission from using different definitions of “Basic Service” in its differing programs. In fact, the Moore Act indicates that there may be other important factors that the Commission should consider in determining an appropriate level of service for the LifeLine program. For example, the Moore Act asked the Commission to look at issues related to how advanced telecommunications services may be incorporated into the LifeLine program:

It is the intent of the Legislature that the commission initiate a proceeding investigating the feasibility of redefining universal telephone service by incorporating two-way voice, video, and data service as components of basic service. It is the Legislature's further intent that, to the extent that the incorporation is feasible, that it promote equity of access to high-speed communications networks, the Internet, and other services to the extent that those services provide social benefits that include all of the following:

- (1) Improving the quality of life among the residents of California.
- (2) Expanding access to public and private resources for education, training, and commerce.
- (3) Increasing access to public resources enhancing public health and safety.
- (4) Assisting in bridging the "digital divide" through expanded access to new technologies by low-income, disabled, or otherwise disadvantaged Californians.
- (5) Shifting traffic patterns by enabling telecommuting, thereby helping to improve air quality in all areas of the state and mitigating the need for highway expansion.⁴

It is clear that many of the elements that the Moore Act has requested the Commission examine, and to the extent feasible, incorporate into the LifeLine program, may be beyond the scope of “traditional” Basic Service. However, the fact that the Moore Act encourages the Commission to consider redefining “universal telephone service” by integrating components such as data and video demonstrates that the Legislature

⁴ Public Utilities Code § 871.7.

envisioned that the Commission might develop a different set of service elements for LifeLine than for “traditional” Basic Service.

There are currently differences between the LifeLine service elements, which are part of G.O 153, and remain in use today, and the Basic Service elements adopted in D.96-10-066. For example, the LifeLine service elements require “. . . toll-free access to customer service representatives fluent in the same language (English and non-English) in which California LifeLine was originally sold”⁵ whereas neither the basic service elements adopted in D.96-10-066 nor D.12-12-038 contained such a provision.

However, the LifeLine service elements should, at a minimum, include all of the Basic Service elements adopted in D.12-12-038, and the Commission should add any supplementary elements to the LifeLine service elements that are necessary to provide additional consumer protections for LifeLine customers. LifeLine service elements must also comply with statutory and federal directives, such as requirements that 911 calls be free and carriers not charge 711 relay service calls separately from the fixed charge for Basic Service.

b. Are there any policy impediments to LifeLine service elements differing from Basic Service elements?

As the ACR notes, there are currently slight differences between LifeLine and Basic Service elements. The only policy impediment DRA sees to having different definitions is that it could potentially make it more difficult for the Commission to administer the LifeLine program. DRA does not anticipate that this will be an issue, however, as the Commission already has LifeLine service elements that differ from Basic Service elements and does not have a problem administering the LifeLine program with these differences. However, DRA believes that the Commission needs to maintain enough consistency between the two definitions for efficient administration and oversight of the LifeLine program to ensure that it meets program goals and provides the minimum level of communications services necessary for low-income Californians.

⁵ G.O. 153 § 4.6.2.2.

- c. For policy or legal reasons, should the LifeLine service elements be the same as the Basic Telecommunications Service Elements adopted in D.12-12-038? What is the rationale for or against distinguishing the service elements for LifeLine and Basic Service? Note that LifeLine currently diverges from the Basic Service elements in D.12-12-038, and that it differed from the Basic Service elements under the prior Basic Service definition.**

The Commission should use the Basic Service elements from D.12-12-038 as the minimum standard for LifeLine service elements. In D.12-12-038, the Commission adopted revised basic service elements which comprise the minimum service requirements to meet customer's needs. DRA believes that these basic service requirements represent the minimum service requirements for low income customers as well, particularly LifeLine customers. However, the Commission should remain open to adopting additional service elements for the LifeLine program in order to provide further services and protections for LifeLine customers.

Therefore, DRA recommends the Commission allow for differences between the Basic Service elements and LifeLine service elements. Allowing for differences will give the Commission more flexibility to design an optimal LifeLine program that will enable low-income people to receive essential telecommunication services needed to participate in society (e.g. to access government assistance, to call 911, to have a call-back number to give to prospective employers, and to stay in touch with family members). Permitting variations in the LifeLine and Basic Service elements will also help the Commission more prudently manage the growth and levels of LifeLine subsidies. This is important because LifeLine funding is derived from surcharges on non-LifeLine telephone customers' bills.

d. If the LifeLine service elements diverge from basic service, how should they diverge? What service elements should be different? Please address the advantages and disadvantages of any differences in the LifeLine service elements as compared to the Basic Service elements.

As explained above, while DRA does not believe the LifeLine service elements *must* be the same as the Basic Service elements, LifeLine service elements should generally track basic service elements. LifeLine service elements should, at a minimum, include all of the Basic Service elements adopted in D.12-12-038, but is not necessarily be limited to those. The needs of LifeLine customers may show that the Commission ought to adopt additional service requirements for LifeLine service, such as making mandatory items that are permissive for basic service.⁶

e. Should the basic service elements follow the federal Lifeline definition? Please address the advantages and disadvantages of using the federal Lifeline service elements definition

DRA does not believe that the California definition of LifeLine basic service should follow the federal Lifeline definition. It is important for California to continue to have its own definition of Lifeline service elements as doing so results in more consumer choices and better consumer protections than are available under the federal program.

The federal definition of Lifeline service is based on the federal definition of Basic Service in 47 C.F.R., § 54.101. As DRA explained in several rounds of comments on the Commission's efforts to revise the California definition of Basic Service elements in the CHCF-B Fund docket⁷, the Federal Communications Commission (FCC) definition lacks sufficient detail or clarity to be appropriate for use in California.⁸ For example, the FCC definition of Basic Service requires that local usage is the amount of usage that should be

⁶ See D.12-12-038, Conclusion of Law 5.

⁷ R.09-06-019.

⁸ See Comments of The Division of Ratepayer Advocates on the Proposed Decision Adopting Basic Telephone Service Revisions, 12/5/2011, R.09-06-019, at 3.

provided “free of charge”, but that the FCC has not defined what that amount of usage should be.² The Commission agreed in D.12-12-028 that it would be inappropriate for the Commission to replace its definition of Basic Service “. . . with one from a federal agency that was developed under different circumstances and for different purposes.”¹⁰

Adopting the federal definition of Lifeline Basic Service could result in fewer consumer choices and consumer protections. The federal and state LifeLine programs act in a complimentary fashion, increasing consumer choices while keeping California program costs down for ratepayers who subsidize the California program. One large overarching example of program differences leading to greater consumer choice is the inclusion of wireless services, particularly prepaid wireless, in the federal program. Although this Commission has made changes to the definition of basic service and otherwise moved to include wireless services as eligible for California LifeLine support, wireless carriers may not currently participate in the California LifeLine program.¹¹ The federal Lifeline program, however, currently allows wireless service, including *prepaid* wireless service, to be eligible for a Lifeline subsidy.¹²

While DRA is not in favor of California conforming to the federal Lifeline requirements and service elements, there may be advantages in allowing federal and state LifeLine programs to operate concurrently if they allow consumers to choose different or additional terms, services, elements, and protections. However, it is important to require carriers to clearly advertise whether they are offering state or federally supported LifeLine programs when subscribers sign-up for service. Such disclosures would inform consumers so they can choose their desired options, pricing, and features from federal

² Id.

¹⁰ D.12-12-028, at 17.

¹¹ See D.12-07-022, *Order Modifying D.10-11-033, Granting Limited Rehearing, and Denying Rehearing in All Other Respects*, at 5 (granting limited rehearing to “. . . focus on only on those issues that are true preconditions to allowing wireless carriers to provide LifeLine service.”)

¹² See D.12-07-022, *Order Modifying D.10-11-033, Granting Limited Rehearing, and Denying Rehearing in All Other Respects*, at 5 (granting limited rehearing to “. . . focus on only on those issues that are true preconditions to allowing wireless carriers to provide LifeLine service.”)

versus state LifeLine programs. Thus, there are advantages in an approach that increases customers' LifeLine choices. DRA remains opposed to California relying solely upon the federal Lifeline service elements definition because it may reduce the consumer protections contained in the California LifeLine program. For example, unlike the federal LifeLine program, California LifeLine offers discounted rates for service connection or activation fees, service conversion fees, or deposits. The California LifeLine program also offers an exemption of pass-through taxes, which the federal program does not offer.

f. Compliance with 911 and Enhanced 911 Rules: The federal LifeLine definition allows carriers to participate in the program if they comply with the E911 standard. Is this the appropriate standard for emergency service provided by LifeLine wireless carriers? Should wireline LifeLine providers be required to continue to provide 911 service, as opposed to E911 service, for LifeLine customers? How do proposals about next generation 911 and E911 affect this analysis?

DRA supports Lifeline customer access to the most effective 911/Enhanced 911 (E911) services available, regardless of what technology platform or service the customer relies upon. In addition, all telecommunications services eligible for Lifeline support must provide reliable access to emergency services, including reliable Automatic Location Identification (ALI) and Automatic Number Identification (ANI) information providing the caller's location and call-back information, wherever locally available.¹³ These two features are key differences between 911 versus E911 service.

It is critical for public safety that Public Safety Answering Point (PSAP) personnel, who receive 911 emergency calls, have quick and easy access to the most accurate caller location information. Public policy must still guide public safety and

¹³ The "Basic Telecommunications Service Elements," Number 2(b) applies the 911/E911 location accuracy standard of the local carrier of last resort (COLR), which reflects the capacities of the local emergency service Public Safety Answering Point (PSAP), to non-wireline providers serving the same area. (D.12-12-038; *see also* ACR, Appendix A, at 2)

facilitate adoption of effective new emergency communications technologies that work in a more mobile communications environment; “next generation” 911 technology specifically needs to operate with wireless (and nomadic VoIP in the event that VoIP-enabled services become eligible for Lifeline funding in the future). CPUC policy recognizes that “although the marketplace will likely drive most providers to provide 911 services,” the promotion of public safety is nevertheless “independent of the marketplace.”¹⁴ CPUC LifeLine policy can and therefore should promote the highest possible next generation 911/E911 caller location accuracy.

FCC rules also contain some basic guidance:

Consistent with our recent amendment to section 54.101, eligible Lifeline telephony services therefore must provide ... access to emergency 911 and enhanced 911 service to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems ...¹⁵

Federal Universal Service Administrative Company (USAC) rules which apply to both facilities and non-facilities-based carriers provide additional guidance concerning minimum Lifeline minimum requirements:

- Provide 911 and E911 access, regardless of activation status and availability of minutes.
- Provide handsets that are E911-compliant¹⁶

Such requirements are relevant as far as the local PSAP capabilities, and the service accounts and handsets of individual Lifeline customers are concerned. However the evolving capacities of enhanced 911 technologies to locate mobile callers with some

¹⁴ CPUC, D.06-03-013, at 67-8.

¹⁵ *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, WC Docket No. 03-019, CC Docket No. 96-45, WC Docket No. 12-23; FCC 12-11 (released February 6, 2012).

¹⁶ http://www.usac.org/res_documents/LI/training/2012/2012-li-dc-lifeline-program-overview.pdf

precision, and for wireless (and VoIP) services to perform reliably in emergency situations, remain concerns.¹⁷

California's Basic Telecommunications Service Elements¹⁸ Section I, 2(b) and (d) require reasonable comparability of 911/E911 location accuracy and reliability and that basic service providers must provide customer information about location accuracy and reliability.

- (b) Any carrier that is not a traditional wireline provider of basic service will be required to make a showing by filing a Tier 3 Advice Letter that demonstrates its ability to provide 911/E911 location accuracy and reliability that is at a minimum at least reasonably comparable, but not necessarily identical to, that traditional wireline service offered by the existing COLR.
- (d) Each basic service provider must provide its potential and existing customers information regarding its 911/E911 emergency services location accuracy and reliability.¹⁹

Subsection (b) sets a reasonable comparability standard that appears higher than the federal one although still relying on a subjective evaluation to be performed in the advice letter review process. The language of section (d) however, implies that consumers will still need to be informed about the deficiencies of the mobile versions of 911/E911 relative to wireline E911, which implies differences in functionality.

E911 for wireless (and VoIP) is a technological work in progress and some new 911 technologies, such as those based on GPS systems, may provide caller location information more functionally comparable to a street address than the more common mobile E911 technologies currently in use, but at a significant cost.²⁰ DRA recommends that California consider a more exact standard of reliability and locational precision than

¹⁷ The FCC's "Consumer Guide on VoIP and 911 Service" raises a number of problems that must be resolved, from DRA's perspective, before VoIP 911 is considered an adequate functional equivalent for California's LifeLine customers. However, because VoIP carriers are not currently eligible to receive California LifeLine subsidies, DRA will refrain from discussing this issue further at this time. <http://www.fcc.gov/guides/voip-and-911-service>

¹⁸ D.12-12-038, Appendix A at 2.

¹⁹ Id.

²⁰ GPS-enabled service requires a data plan which adds approximately 50% to the cost of service.

the federal criteria for the LifeLine emergency services requirements, and incorporate updates to the LifeLine requirements to comport with future changes to California's basic service elements, particularly with respect to pushing mobile 911 technologies towards true functional equivalency with wireline E911.

g. Are changes in the LifeLine service elements appropriate to entice wireless carriers and other nontraditional providers to offer LifeLine service, and to increase competition and choices for Californians about the type of LifeLine service they can receive and the range of providers?

DRA does not believe that changes in the LifeLine service elements are necessary to entice wireless carriers and other nontraditional providers to offer LifeLine service. The Commission made a policy determination in D.10-11-033 that all service providers, including wireless carriers, should be able to offer LifeLine under the state program. However, in D.12-07-022, the Commission decided that wireless providers could not participate in the state LifeLine program at this time. However, currently, customers in California have the option of signing up for wireless Lifeline under the federal program.

The federal Lifeline and the state LifeLine programs are complimentary, and together they offer eligible program participants choices. For example, while some low income customers find that wireless service better meets their needs than wireline, it would appear that some consumers prefer prepaid wireless service, which is currently subsidized by the federal government. DRA does not see a need to duplicate that offering by adding it to the California LifeLine program at this time. Because customers already have a choice in their service provider, DRA thinks it would be premature to modify the California program solely to entice "non-traditional" providers to seek subsidies for services. Furthermore, as DRA explains below, VoIP service providers are not currently eligible to receive LifeLine subsidies.

- i. **If the Commission required a “bucket of minutes” for LifeLine, should this requirement be the same across technologies? For example, is a “bucket of minutes” requirement more or less appropriate for wireless or wireline service offerings? Is a “bucket of minutes” standard appropriate for wireline LifeLine, which currently offers unlimited incoming and outgoing local calls all month long?**

The Commission should not adopt a “bucket of minutes” across technologies. DRA does not believe that the Commission should degrade wireline LifeLine in order to accommodate the addition of a wireless LifeLine option. For example, if the Commission were to adopt a requirement that wireless LifeLine must include a “bucket of minutes” (i.e., a certain number of minutes), that should not be used as a justification to reduce or eliminate the current wireline requirement of unlimited minutes for incoming calls in the name of “technological neutrality”. Currently, consumers who use wireline LifeLine are able to receive an unlimited number of incoming flat and measured rate telephone calls.

The Commission should not to adhere to “technical neutrality” at the expense of ruining the current wireline LifeLine program, noting that it is appropriate to have some different standards to reflect the varying capabilities of different technologies. While not supportive of the idea, DRA views the “bucket of minutes” concept as a primary example of something that may work for wireless, but that would degrade wireline service given that it is unnecessary and inapplicable to a service that has a history of providing unlimited incoming and outgoing local calls.

As described further below, DRA supports unlimited calling for wireless LifeLine service. However, if the Commission chooses to adopt a “bucket of minutes” requirement for wireless LifeLine service providers, then DRA proposes that the number of minutes should be set at a high level. If the Commission sets the “bucket of minutes” at a high level, low income consumers will be less likely to incur overage charges. If the Commission adopted a low number of minutes, such as 250 minutes, then LifeLine customers signed up for a “bucket of minutes” service may use up all of their minutes in

the beginning of the month. They would then be unable to make calls for the rest of the month without incurring charges for using excess minutes – charges that they cannot afford. The minutes could be used up by unsolicited phone calls or the rounding up of minutes. And if the LifeLine customer cannot pay the overage charges, then the carrier may cut off the customer’s LifeLine service. While DRA understands that a “bucket of minutes” option for wireless LifeLine may seem like an attractive alternative, DRA believes that ultimately, any “bucket of minutes” requirement will not serve LifeLine customers well.

DRA proposes, instead, that the Commission adopt a requirement that both wireline and wireless service providers offer unlimited minutes at a flat rate for the LifeLine program. This would preserve the status quo for the requirement that the Commission has had for wireline LifeLine. With regard to wireless LifeLine, a requirement that wireless service providers participating in the LifeLine program offer unlimited minutes at a flat rate will ensure that LifeLine customers are protected from high phone bills which they cannot afford to pay and that they will be able to make and receive phone calls when they need to do so.

I. Could the Commission do both – that is, adopt a minimal wireless LifeLine service definition, but also allow wireless providers to offer a discount equal to the SSA to any existing service offering?

It is theoretically possible for the Commission to adopt a minimal wireless LifeLine service definition and LifeLine rate and also allow wireless providers to offer a discount equal to the Specific Support Amount (SSA) for any existing service offering.²¹ However, the Commission cannot *require* wireless carriers to offer LifeLine service, because it cannot regulate wireless rates.²² Thus, if the Commission chooses to establish both a wireless LifeLine rate, and allow use of an SSA for bundled wireless services,

²² The Commission is preempted from doing so by 47 U.S.C. § 332(c)(3)(a).

participation by wireless service providers to offer either a fixed rate or accept SSA vouchers for their services, or both, would need to be entirely voluntary.

Also, DRA is concerned that if the Commission adopts a minimal wireless LifeLine service definition and also allows wireless service providers to offer a discount equal to the SSA to any service offering, wireless service providers will have an incentive to “upsell” the service offering to LifeLine customers. DRA fully discusses this concern in the answer to the following question.

- o. What issues are raised by the application of LifeLine to bundled service offerings? Are any additional steps or requirements necessary to ensure that Californians are not required to purchase additional or bundled services as a gateway to subscribing to LifeLine?**

DRA expressed its concern about the upselling of expensive services to LifeLine customers by AT&T in the Rule 12 proceedings.²³ In both proceedings, DRA analysts observed AT&T customer service representatives confusing potential LifeLine customers by aggressively marketing to them high-priced services that they may not have wanted or needed.²⁴ DRA is concerned that without proper Commission oversight, carriers could use similar aggressive marketing tactics to sell potential LifeLine customers services they do not need.²⁵

The Commission most recently updated Rule 12 in D.08-04-057. While the Commission made modifications to Rule 12 in 2008, it kept the core disclosure rules that it imposed in D.01-09-058, the 2001 Commission decision adopting Rule 12.

In D.08-04-057, the Commission stated:

... we order AT&T to file an advice letter with modifications to its current Tariff Rule 12 to require AT&T customer service

²³ See D.08-04-057, *Opinion Approving Pacific Bell Telephone Company Advice Letters 28800 and 28982 With Modifications* (R.05-04-005, R.98-07-038), at 1, 5, 8-9; D.01-09-058, 2001 Cal PUC LEXIS 914 at *3-*6, *17..

²⁴ D.08-04-057 at 26; D.01-09-058, 2001 Cal PUC LEXIS 914 at *17.

²⁵ Such as Call-Waiting or other vertical services, Internet Services, or Bundled Services.

representatives to explain to customers seeking new service the difference between flat rate and measured rate for basic service and to disclose the monthly cost of each before marketing bundled services to such customers. We will also require that AT&T modify its Tariff Rule 12 to require it to post the rates for basic flat rate and measured rate service on its website. The information shall be posted on same web page as information regarding the cost and composition of bundles and shall be no less prominently displayed.²⁶

If the Commission wishes to allow carriers to offer LifeLine customers bundled services, then DRA proposes that the Commission extend the service protections similar to those it ordered AT&T to adopt in D.01-09-058²⁷, as amended by D.08-04-057, to all carriers offering LifeLine.²⁸

DRA's concerns with upselling are also consistent with the views the Commission expressed recently in D.12-12-038. The Commission noted in that decision that "[w]hile basic service may be offered in combination with additional features or as part of a larger bundle of services, basic service should also be made available without obligating the customer also to subscribe to video or data services."²⁹ If the Commission wishes to allow carriers to include LifeLine with bundled service offerings, the Commission will need to adopt carefully craft rules to ensure that LifeLine-eligible customers are sufficiently protected from "upselling" tactics such as the rules the Commission adopted in D.08-04-057.

²⁶ D.08-04-057, at 2.

²⁷ The Commission also amended D.01-09-058 in D.02-02-027

²⁸ D.08-04-057 required AT&T to disclose to customers the lowest priced option for what they request. The decision also required AT&T to disclose the difference between flat and measured service and their respective rates and charges. The decision also required AT&T to disclose these rates prominently on its webpage and to modify its instructions to customer service representatives to make these disclosures.

²⁹ D.12-12-038, COL 4, at 54.

- p. What rules, if any, are warranted regarding contract early termination fees or cancellation of contracts without penalty if service is not adequate? Should these rules differ for wireless or wireline LifeLine?**

As a policy matter, LifeLine customers of both wireless and wireline carriers (and any other modality) should not incur early termination fees or be obligated to sign a contract. Wireline residential service has not been subject to contracts. If wireless providers offer Lifeline service, they should likewise offer it without a contract or associated early termination fees. DRA believes that the Commission should proactively adopt a rule to this effect that applies to all telecommunications providers, regardless of technology or regulatory variables.

- q. What additional issues should the Commission consider regarding LifeLine service elements and requirements for LifeLine service?**

DRA does not have additional suggestions for consideration at this time, but will respond to suggestions of other parties in DRA's reply comments.

2. Program Administration and General Order 153

- a. What changes are necessary to make the administration of the CA LifeLine program more efficient and accessible for customers and other stakeholders? California uses a third party administrator for initial LifeLine qualification and for annual renewal. Is that process effective or are adjustments warranted?**

FCC rules require the use of a Third Party Administrator (TPA) for initial LifeLine qualification and annual renewal. However, based on its participation on the Lifeline Working Group conference calls³⁰, DRA is aware that LifeLine carriers are having problems with regard to timely certification or recertification of LifeLine

³⁰ The Commission directed the Communications Division to have periodic conference calls with all the Lifeline parties to discuss potential problems with Commission Staff and the Lifeline Administrator.

customers by the current Lifeline Administrator.³¹ There appears to be a lingering issue concerning the fact that the TPA has not yet recertified tens of thousands of Lifeline customers,³² which creates problems for both LifeLine customers and the carriers implementing the program. Customers who the TPA have not yet recertified are either disconnecting service or paying higher rates than they would be charged under the LifeLine program. This creates confusion and financial issues for the carriers, and obviously causes great harm to the low-income consumers that LifeLine is meant to help.

At this time, DRA has no specific recommendations on how the Commission can resolve such issues, but DRA urges the Commission to continue to monitor the situation and to be prepared to take decisive action if warranted.³³ More generally however, DRA recommends the Commission ensure that contracts with TPA include appropriate performance standards and penalties for non-compliance. Currently, the LifeLine Advisory Committee and LifeLine Working Group do not have the opportunity to provide their advice on, feedback to, or review the TPA contract. DRA recommends that the Commission allow the Lifeline Advisory Committee and LifeLine Working Group to review and provide input on the TPA contract.

b. What changes to program administration and General Order 153 are needed to accommodate prepaid services? Please be specific about the proposals and about any advantages and disadvantages of those proposals to accommodate pre-paid services.

Currently, no pre-paid carriers provide California LifeLine service. However, Sprint Nextel (Sprint), a prepaid federal wireless provider, filed a Motion for a Limited Minor Adjustment or Waiver of a Prequalification Process Requirement for the Benefit of Prospective Customers of Prepaid Wireless Federal Lifeline Service Providers (Motion), to have the Commission modify the pre-qualification requirements and DRA supported

³¹ Issues such as customer validation and technical issues are often discussed on the working group calls.

³² LifeLine Working Group Call, May 22, 2013.

³³ Perhaps the Commission should consider financial sanctions against the Third Party Administrator if established benchmarks are not met.

this motion.³⁴ In its comments on Sprint's Motion filed on April 22, 2013, DRA said that it supported Sprint's Motion because if the Commission granted Sprint's request, it would make prepaid wireless phones more accessible to LifeLine-eligible, prepaid customers.³⁵ DRA concurred with Sprint that there is no requirement in any federal or state law, rule or regulation that prospective LifeLine customers must have an activated working phone prior to the TPA determining their eligibility for the LifeLine program.³⁶ DRA also agreed with Sprint that it should be possible for prepaid wireless federal Lifeline service providers to know whether a prospective customer is eligible for Lifeline before they provide the customer with a free wireless handset or require the customer to activate service.³⁷ To date, the Commission has yet to rule on Sprint's Motion.

Despite its support of Sprint's motion, DRA continues to have concerns about the quality of the prepaid phones that carriers sell to federal Lifeline customers in California. Even though the federal program has little to no fiscal impact on the California program, DRA is troubled that Lifeline customers switching to prepaid wireless phones under the federal program in California might surrender important service quality protections they had under the California wireline LifeLine program.³⁸ The service quality issues include, but are not limited to, complaints about poor quality pre-paid phones, dropped calls, and dead zones.

Because pre-paid wireless service providers already participate in and receive a subsidy from the federal LifeLine program, DRA does not see a need at this time for the

³⁴ Motion by Sprint Nextel for Limited Minor Adjustment or Waiver of a Prequalification Process Requirement for the Benefit of Prospective Customers of Prepaid Wireless Federal Lifeline Service Providers, filed May 5, 2013.

³⁵ DRA Response to Sprint's Motion for a Limited Minor Adjustment or Waiver of a Prequalification Process Requirement for the Benefit of Prospective Customers of Prepaid Wireless Federal Lifeline Service Providers filed in R.11-03-013, 4/22/3, at 1.

³⁶ *Id.*

³⁷ *Id.* at 1-2.

³⁸ Under the Federal Lifeline rules, any customer that accepts a wireless Lifeline phone must give up their California wireline account. Therefore, due to the issues concerning service quality with wireless devices (dropped calls, dead zones, no service after earthquakes, etc.) a Lifeline family who has a wireless device might face difficulty if they need to use their phone in an emergency.

California program to duplicate this aspect of the federal one. It is DRA's understanding that inclusion of prepaid service providers has led to explosive growth in the size of funding required for the federal Lifeline program. Since the federal program offers a prepaid wireless option, DRA is concerned that expanding the California program in a similar way would be duplicative and lead to an unnecessary expansion of the California LifeLine fund. Substantial increases in the California LifeLine program costs would increase the surcharge for all of the non-LifeLine ratepayers who pay to subsidize the low-income LifeLine customers.

Therefore, to better support the needs of customers and carriers in offering federal Lifeline for prepaid wireless customers, DRA recommends changes in program administration to allow preregistration of program participants so they can avoid unnecessary upfront charges for handsets and minutes, that may not be reimbursed if it turns out they do not qualify for the program. This is discussed in more detail below in response to question 2d below.

- c. Should the CA LifeLine program continue to require “pre-qualification” of LifeLine subscribers, that is that a subscriber must obtain service from a carrier before being approved for LifeLine?**
- d. Should the Commission pursue an option to allow customers to be pre-registered for CA LifeLine service (obtain an eligibility determination before signing up for service with a carrier), rather than requiring customers to obtain regular service while awaiting the determination of their LifeLine eligibility (and back-crediting them to the date of the request for LifeLine)?**

DRA believes that at least one positive development has occurred since the Commission's adoption of D.08-08-029, the decision adopting LifeLine pre-qualification requirements. The pre-qualification requirements have minimized backbilling problems. However, there has also been a marked decline in enrollment in the LifeLine program over the past several years in comparison to the predecessor Universal Lifeline Telephone

Service (ULTS) program.³⁹ Particularly considering that we have been in an economic recession since 2008, adopting a process that minimizes the burden on customers and removes barriers to their participation is crucial. It certainly suggests that the pre-qualification process may not be effective in meeting customer needs as it is currently structured.⁴⁰

DRA supports offering a pre-registration option as an alternative to the current pre-qualification process the Commission adopted in D.08-08-029. A pre-registration option would allow potential LifeLine customers to complete the LifeLine application process and determine eligibility prior to signing up for service with a carrier. Offering a pre-registration option would help increase enrollment of eligible customers in the LifeLine program for two primary reasons.

First, DRA believes that the current pre-qualification requirements may create barriers to low income customer participation in the LifeLine program by requiring consumers to pay non-discounted rates and charges until they are certified as eligible for LifeLine. The purpose of the LifeLine program is to provide basic telephone service that is affordable to low-income households.⁴¹ A pre-registration process would allow

³⁹ See TURN Motion to Extend the Rate Freeze for California LifeLine Service and Order a Corresponding Freeze to Subsidy Amount Granted Carriers, R.11-03-013, 6/12/12, at 5 (discussing the fact that the California LifeLine program saw a drastic decrease in LifeLine subscribers from 3.5 million users in 2006 to 1.5 million in 2012).

⁴⁰ TURN Motion to Extend the Rate Freeze for California LifeLine Service and Order a Corresponding Freeze to Subsidy Amount Granted Carriers, R.11-03-013, 6/12/12, at 3 (providing that the economic recession has led to a dramatic increase in number of people living in poverty in California. Using 2010 United States census data, TURN stated that the poverty rates in California rose 16.3% between 1997 and 2010 with almost 6 million Californians having incomes below the federal poverty line).

⁴¹ The Moore Act provides: “The Legislature finds and declares all of the following: (a) The offering of high-quality basic telephone service at affordable rates to the greatest number of citizens has been a longstanding goal of the state. (b) The Moore Universal Telephone Service Act has been, and continues to be, an important means for achieving universal service by making basic telephone service affordable to low-income households through the creation of a lifeline class of service. (c) Every means should be employed by the commission and telephone corporations to ensure that every household qualified to receive lifeline telephone service is informed of and is afforded the opportunity to subscribe to that service. (d) The furnishing of lifeline telephone service is in the public interest and should be supported fairly and equitably by every telephone corporation, and the 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.” (Pub. Util.

(continued on next page)

customers to avoid paying large up-front rates and fees involved in initiating regular basic service, including the service connection/activation fees and deposits. Once a customer receives his or her eligibility determination from the TPA, along with a unique identifier, the customer can then sign up for service with a carrier that has a plan which best meets an individual customer's needs. Alternatively, if a customer is found to not be eligible for discounted LifeLine service, that customer can then shop around for a non-LifeLine service offering. This proposed pre-registration option would also address the concerns that Sprint raised in its Motion, and DRA addressed in its Response to Sprint's Motion.⁴²

Second, a pre-registration option would improve the LifeLine program by helping to create a more "competitive market" for LifeLine. Under the current pre-qualification system, a customer signs up for LifeLine after selecting a carrier. While a customer could switch carriers after receiving approval for the LifeLine discounted rate, having to reapply for Lifeline certification and wait while paying full charges creates a disincentive to switch carriers after establishing LifeLine service. Under the proposed pre-registration option, an individual would first find out if he/she is eligible for the LifeLine discount, and then could shop around for the LifeLine plan that best serves his/her needs.

DRA also urges the Commission to investigate whether the current pre-qualification program has led to the unintended consequence of an alarming decline in the number of people enrolled in the LifeLine program.⁴³ Given the severity of the economic recession, which began five years ago (shortly after the Commission adopted D.08-08-029), and the drop in LifeLine enrollment numbers, the Commission should look into and determine how many Californians who requested LifeLine service ultimately did not sign up for LifeLine service.

(continued from previous page)
Code, § 871.5.)

⁴² Sprint filed its Motion on April 5, 2013 in this docket, and DRA filed its Response on April 22, 2013.

⁴³ TURN Motion to Extend the Rate Freeze for California LifeLine Service and Order a Corresponding Freeze to Subsidy Amount Granted Carriers, R.11-03-013, 6/12/12, at 5.

e. Should California continue to support non-recurring or connection charges through the Life Line program?

California should continue to support these non-recurring or connection charges through LifeLine. Although the federal program has stopped supporting these charges through the Lifeline Link-Up Program, service connection/activation fees can represent a significant cost barrier to LifeLine customers. As a policy matter, removing this element of LifeLine support could decrease LifeLine subscribership and leave more Californians without needed telecommunications services. Limited cash flow for initiating telephone service is a barrier for low income individuals, as DRA discussed in answer to question 2b above, and the Commission may compromise its LifeLine goals and the intent of the Moore Act⁴⁴ if it discontinues its support of non-recurring connection charges.⁴⁵

f. Is outreach about the LifeLine program adequate or effective for all Californians, including those with special needs and non-English speaking Californians? What changes should be made, if any, to the outreach and information programs relevant to LifeLine? Should in-language marketing be required?

DRA notes that since the Commission has allocated over \$10 million for Lifeline outreach and marketing⁴⁶ in California, the LifeLine program should not have problems reaching customers with special needs or limited English proficient consumers. However, DRA believes that the Commission should further review its allocation of the current outreach funds. Some Community Based Organizations (CBOs) have stated to Commission staff during the LifeLine working group calls and LifeLine advisory committee meetings that LifeLine outreach tends to ignore the rural areas of the state.⁴⁷ CBOs in the rural areas have asserted that the Commission funnels most of the outreach

⁴⁴ See Pub. Util. Code, § 871.5.

⁴⁵ TURN Motion to Extend the Rate Freeze for California LifeLine Service and Order a Corresponding Freeze to Subsidy Amount Granted Carriers (June 12, 2012) at 5.

⁴⁶ Resolution T-17376. Approval of Fiscal Year 2013-2014 Universal Lifeline Telephone Service Trust Fund Budget in Compliance with Public Utilities Code Section 273(a), at 6.

⁴⁷ LifeLine Working Group Calls.

money to urban areas (San Francisco, Los Angeles, and Sacramento), and largely overlooks the rural areas of the state where the real low-income customers reside. DRA recommends the Commission ensure that the marketing firm conducting the program outreach allocates outreach resources to urban and rural areas in a balanced manner to ensure that rural customers are also informed of the LifeLine program. The Commission may want to solicit the comments of CBOs, Social Agencies, and Government Agencies to determine if what specific deficiencies exist and recommendations for changes in allocations to more effectively target outreach.

g. Does Public Utilities Code 710 raise any issues about LifeLine eligibility for VoIP providers? If so, should VoIP eligibility to participate in LifeLine be referred to a second phase of this proceeding to ensure accountability to program rules and requirements?

DRA does not believe that a discussion of Public Utilities Code Section 710 (Section 710) is germane to the issue of LifeLine eligibility for VoIP providers under the Commission's current treatment of VoIP at this point in time. This is because other sections of the Public Utilities Code, together with the Commission's treatment of VoIP, currently prevents VoIP providers from participating in the California LifeLine program. Public Utilities Code Section 270 (Section 270) discusses which entities may receive money from the LifeLine fund and states, in relevant part:

- (a) The following funds are hereby created in the State Treasury:
... (3) The Universal Lifeline Telephone Service Trust
Administrative Committee Fund. . .
- (b) Moneys in the funds are the proceeds of rates and are held in trust for the benefit of ratepayers and to compensate **telephone corporations** for their costs of providing universal service. Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act or upon supplemental appropriation.⁴⁸

⁴⁸ Pub. Util. Code, § 270(b) (emphasis added).

Thus, Section 270(b) clearly states that funds in the Universal Lifeline Telephone Service Trust Administrative Committee Fund (LifeLine Fund) may only be used to compensate *telephone corporations*.⁴⁹ The Commission has not yet deemed VoIP providers to be telephone corporations under Section 234 of the Public Utilities Code.

The Commission opened a proceeding in 2004 (R.04-02-007) to consider the appropriate regulatory framework that should apply to VoIP.⁵⁰ In closing the proceeding in D.06-06-010 without making adopting a regulatory framework for VoIP, the Commission stated:

Our investigation centered on determining the appropriate regulatory framework for VoIP. Since the FCC has determined that it is charged with that role and is exercising its authority, we conclude that it is premature for us to assess what our regulatory role over VoIP will be and to address the issues raised in this investigation.⁵¹

Since it issued D.06-06-010 and closed the VoIP proceeding, the Commission opened R.11-01-008, a rulemaking to add California VoIP service providers to the category of voice service providers who are required to fund California public purpose programs, including the California LifeLine program.⁵² After the Commission opened R.11-01-008, the Legislature passed Assembly Bill (AB) 841, codified as Public Utilities Code Section 285, which requires interconnected VoIP providers to contribute to the universal service

⁴⁹ The Public Utilities Code defines a “telephone corporation as, “... every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state.” (Pub. Util. Code, § 234(a).)

⁵⁰ D.06-06-010, Opinion Closing Proceeding, at 1.

⁵¹ *Id.* at 3.

⁵² R.11-01-008 at 1.

funds, including the LifeLine Fund.⁵³ As a result, the Commission closed R.11-01-008 in D.13-02-022 because AB 841 obviated the need for the Commission’s proceeding.⁵⁴ In R.11-01-008, CPSD had asked the Commission to expand the scope of the rulemaking “ . . . to extend to VoIP telecommunications service providers the consumer protection rules applicable to other telecommunications service providers already considered to be telephone corporations for purposes of the California Public Utilities Code.”⁵⁵ In denying CPSD’s request, the Commission reasoned that the Legislature’s recent enactment Senate Bill (SB) 1161, codified as Section 710, had “ . . . effectively resolved all of the matters suggested for resolution by the CPSD motion.”⁵⁶ The Commission never made a determination in R.11-01-008 that VoIP providers are telephone corporations as defined in Section 234 of the Public Utilities Code, and has not done so in any subsequent decision, ruling, order, or pronouncement.

Because only telephone corporations may receive LifeLine Funds pursuant to Section 270(b), and because the Commission has not deemed VoIP providers to be telephone corporations under Section 234, VoIP providers are currently not eligible to receive LifeLine funds, and therefore, may not participate in the LifeLine program at this point in time. If the Commission wishes to consider possible VoIP participation in the LifeLine program, DRA recommends examining this issue in a later phase of this proceeding.

⁵³ Public Utilities Code Section 285 requires the Commission to collect and remit surcharges from interconnected VoIP service providers on their California intrastate revenues in support of the following public purpose program: High-Cost Fund-A, High-Cost Fund-B; LifeLine; Deaf and Disabled Telecommunications Program (DDTP); California Teleconnect Fund (CTF); and the California Advanced Services Fund (CASF).

⁵⁴ D.13-02-022 at 3.

⁵⁵ *Id.*

⁵⁶ *Id.* at 4.

- 3. Should the Commission extend the Cap on LifeLine Rates & SSA subsidies?**
- a. How should the Commission respond to the TURN Motion filed June 12, 2012 (along with the responses by other stakeholders)? The Commission issued D.12-07-022 granting a limited rehearing of D.10-11-033.**
- i. How should the Commission address those factors identified in D.00-12-028 (and not addressed in D.10-11-033), and how should their potential effect on wireless providers in California be addressed?⁵⁷**
- ii. How should the incorporation of the study entitled “Affordability of Telephone Service 2010, Survey of Households” and telephone affordability in general be addressed?**

The Commission conducted the “Affordability of Telephone Service 2010, Survey of Households” (Affordability Study or Study) in compliance with D.08-09-042⁵⁸ and SB 780, codified as Public Utilities Code Section 739.3 to inform regulatory proceedings in large part about parameters for rate shock and affordability.⁵⁹ In addition, D.08-09-042 required a statewide affordability study “to gather information on which to base its future telephone regulation policies”.⁶⁰

While DRA supported the need to conduct an affordability study, the Affordability Study is of less value today as a result of significant changes to the Commission’s LifeLine rate policies that the Commission adopted in D.10-11-033 as well as changes to the telecommunications industry overall. The Commission has stated that “... the LifeLine rate mechanism must reflect the *current* dynamic

⁵⁷ DRA will address this question in Reply Comments.

⁵⁸ D.08-09-042 stated: “The Commission will request an appropriation from the Legislature to conduct such an Affordability Study during the 2009-2010 fiscal period as part of its ongoing evaluation of the California Lifeline program in Rulemaking (R.) 06-05-028.” (D.08-09-042 at 56, Ordering Paragraph 7.)

⁵⁹ D.08-09-042, Sept. 24, 2014, at. 3-4.

⁶⁰ Staff Report to the California Legislature, Affordability of Basic Telephone Service, September 30, 2010, at 1

telecommunications marketplace”.⁶¹ The telecommunications industry has seen substantial changes since this study was conducted in 2010, including consolidation and concentration of market share.

For example, before implementation of D.10-11-033, the LifeLine rate was tied to the basic service rate and capped. Currently, the basic service rate floats (no cap) and it may be geographically de-averaged. These changes reduce the usefulness of the Affordability Study today. Furthermore, as of July 2013, absent Commission action in this docket, the LifeLine program is scheduled to change from a fixed-rate system to a subsidy/voucher system, which further reduces the usefulness of the Affordability Study. Finally, the Commission stated in D.12-07-022 that it did not rely upon the findings of the Affordability Study in making its policy determinations to move away from a fixed LifeLine rate, deregulate basic rates, and allow geographic rate de-averaging. Rather, the Commission stated that its use of the 2010 Affordability Study was limited to viewing it as “a reality check”.⁶² The Commission relied on the Affordability Study to answer the threshold question of whether telephone costs were affordable rather than as a basis for its findings of affordability that supported the adoption of the SSA.⁶³

- c) Is it in the public’s interest to extend a customer rate freeze for a set period of time (beyond June 30, 2013)? What would be rationale for the Commission to, in effect, re-regulate rates? How should the Commission address concerns that carriers will shift price burdens onto low-income consumers rather than claim government subsidy.**

The Commission should extend the LifeLine customer rate freeze is in order to give it adequate time to consider the proposals from the parties in response to the ACR’s request for detailed comments on a number of policy and other issues. It would be confusing for LifeLine subscribers and service providers, and administratively awkward

⁶¹ D.12-07-022, at 18-19 (emphasis added).

⁶² D.10-11-033, foot note 5, at 8; *see also* D.12-07-022 at 8-10.

⁶³ *Id.* 8.

for the Commission, to allow the rate freeze to lapse, and then potentially re-impose it, with or without additional program changes. The prudent course is to continue with the status quo until the Commission can deliberate on the options placed before it and render a decision that is based upon a full evidentiary record.

The Commission's core economic assumption upon which it based its Uniform Regulatory Framework (URF) decision to deregulate basic rates was that competition, whether "intermodal" or otherwise, would act to restrain incumbent pricing behaviors.⁶⁴ The URF incumbent local exchange carriers' (ILEC) pricing behavior demonstrates that the core assumption upon which the Commission based the URF decision to deregulate basic rates is fatally flawed.⁶⁵ Prices for residential service by the URF incumbent local exchange carriers (ILECs) have moved in only one direction -- up. If there were a functional competitive marketplace for these public utility communication services, which are essential to allow Californians to effectively participate in society, there would not be a consistent pricing pattern of rate increases for the almost seven years since the Commission issued the URF decision. Given these facts, DRA recommends that "re-regulation" of basic rates is not only warranted, but is essential for both public policy and legal reasons.

For all these reasons, DRA believes that the Commission should return to a statewide LifeLine rate for wireline service. Prior to the adoption of D.10-10-034, there was a set LifeLine rate for wireline service providers, and this program worked well.

Furthermore, as DRA discussed above, a statewide rate for a minimum level of wireless LifeLine service is feasible and may be a desirable approach, particularly when coupled with a SSA, to provide choice for income eligible customers who find that wireless service best meets their basic communications service needs. Since the

⁶⁴ D.06-08-030 at 2.

⁶⁵ DRA internal tracking shows that Verizon has increased its basic telephone rates from \$16.85 in 2006 to \$22 in 2013, a 31% increase; AT&T increased its basic rate from \$10.84 in 2008 to \$23 in 2013, a 112% increase. (See Telecommunications Advice Letter 12632, 3/15/2013; Telecommunications Advice Letter 32208, 4/18/08.

Commission cannot compel wireless service providers to offer LifeLine service, requiring those carriers who choose to participate in the California LifeLine program to offer a “bare-bones” fixed rate LifeLine option while also permitting them to offer more robust service packages with an SSA voucher would not harm LifeLine customers and potentially could provide them with a greater range of service choices. If the Commission chooses this approach, it will also need to adopt consumer protection measures, such as Rule 12, to ensure that carriers do not upsell LifeLine customers from a basic LifeLine fixed rate to a service package that has more bells and whistles, but also costs more money.

- i. Please comment on TURN’s argument that LifeLine rates could increase to \$10.50 (under AT&T’s \$21.00 basic service package) which assumes the carrier will maximize the rate the customer pays (limited only by 50% of the basic rate from the Moore Act), and claim less from the federal and state LifeLine funds.**

As TURN noted in its motion to extend the rate freeze for California LifeLine service and a subsidy freeze for carriers, “[g]iven the rise in basic service rates over the past two years for some of the URF LECs, most LifeLine customers will likely see increases in their rates for LifeLine service after the current freeze expires.”⁶⁶ DRA agrees with TURN that absent a rate freeze for LifeLine service, Lifeline rates will likely increase as AT&T and other carriers of last resort (COLRs) raise their unregulated basic rates.

DRA internal tracking shows that Verizon has increased its basic telephone rates from \$16.85 in 2006 to \$22 in 2013⁶⁷, a 31% increase; AT&T increased its basic rate from \$10.84 in 2008⁶⁸ to \$23 in 2013⁶⁹, a 112% increase. These numbers clearly show a

⁶⁶ Motion of the Utility Reform Network to extend the Rate Freeze for California Lifeline Service and Order a Corresponding Freeze to Subsidy Amount Granted Carriers, June 12, 2012 at 1.

⁶⁷ Telecommunications Advice Letter 12632, 3/15/2013.

⁶⁸ Telecommunications Advice Letter 32208, 4/18/08.

pattern by the carriers of increasing their basic residential telephone rate with little regard for the low-income populations of California. DRA discussed this troubling trend in its *Report on Rate Increases of Verizon, AT&T, SureWest and Frontier California Following Adoption of the Uniform Regulatory Framework in Decision 06-08-030* (2008 Report) released on July 29, 2008.⁷⁰ DRA stated in its 2008 Report that URF carriers have continually increased their rates for a wide range of services⁷¹ since the price deregulation of telephone service for these companies in California. Carriers have continued to raise rates since the DRA issued its 2008 Report five years ago.

To protect the California Lifeline customer from potential bill shock from the increasing basic rates from URF carriers, the Commission should extend the current rate cap for LifeLine customers. At a minimum, the Commission should extend the rate cap during the pendency of this proceeding while it considers the proposed changes to the LifeLine program. However, it is important to note that if the Commission wishes to consider re-regulating or capping the LifeLine rate, it also must consider re-regulating the basic rate or amending the Moore Act to delink the LifeLine rate from the basic rate.

c. Should the Commission consider a state-wide LifeLine basic service rate (or maximum) for all carriers? How would this apply to wireless providers?

DRA did not support the SSA methodology adopted in D.10-11-033. DRA believed that adopting an SSA was not a prudent course of action for the following reasons: 1) the current findings at the time failed to show that the SSA was more beneficial to LifeLine customers than the then current fixed LifeLine rate methodology; 2) the Commission failed to effectively consider the impact of the SSA on LifeLine

(continued from previous page)

⁶⁹ Telecommunications Advice Letter 41714, 1/2/2013.

⁷⁰ See http://www.dra.ca.gov/uploadedFiles/Content/Hot_Topics/2008_Report_on_Rate_Increases.pdf

⁷¹ Such as Call Waiting, Three-Way Calling, etc.

customers; and 3) the Commission failed to consider the impact of the SSA on non-LifeLine customers and the LifeLine fund.⁷²

The current URF regulatory framework has deregulated basic rates, and since by statute the LifeLine rate is tied to the basic rate, the Commission decided in D.10-11-033 to move away from a fixed statewide LifeLine rate. However, it is clear that there are benefits to a state-wide Lifeline basic service rate including making it easier to market to LifeLine customers. Furthermore, the SSA model, which currently is set at \$11.85, does not clearly demonstrate to LifeLine customers what their actual bills would be since carriers may change their LifeLine rate annually and the SSA amount changes annually as well. However, a set LifeLine rate would clearly articulate to a LifeLine customer what their actual out of pocket expense would be.⁷³ This is extremely important for low income customers who need to pre-plan and budget every dollar, and sometimes, every penny.

As previously noted, if the Commission supports DRA's position to adopt a fixed LifeLine rate, the Commission must also consider re-regulating the basic rate or amending the Moore Act to de-link the LifeLine rate from the basic rate. With regard to a statewide LifeLine rate for wireless service providers, DRA believes that it is premature to consider this issue. The Commission should first focus on whether to adopt a statewide rate for wireline service providers before considering this issue for wireless service providers.

⁷² Opening Comments of the Division of Ratepayer Advocates on the Proposed Decision Adopting Forward Looking Modifications to the Moore Universal Telephone Service Act, April 8, 2009.

⁷³ DRA articulated this concern about the marketing failings of the SSA model in its Comments on the Proposed Decision Adopting Forward Looking Modifications to the Moore Universal Telephone Service Act, April 8, 2009.

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

DRA has already stated in the record in this proceeding that the Commission should adopt TURN's recommendation that the Commission freeze the subsidy to carriers providing LifeLine service.⁷⁴ One aspect of the subsidy payment that is quite clear is that the larger the difference between the LifeLine rate and the retail rate of basic service, the larger the subsidy that will the carrier will receive from the LifeLine fund.⁷⁵ Therefore, if a carrier's unregulated basic service rate increases, then the gap between LifeLine rates and retail rates will increase as carriers are "made whole" for the difference, possibly providing the carriers with a potential windfall.⁷⁶ DRA recommends that the Commission reevaluate this process since the rising rates of the ILECS have demonstrated that competition has not provided an incentive for the carriers to keep basic rates at an affordable level. The SSA rises in concert with increases in basic rates, and it provides no disincentive to constrain increases in basic rates. In fact, DRA believes that the converse may be true – the SSA may provide the URF ILECs with the incentive to increase basic rates.

⁷⁴ Response of the Division of Ratepayer Advocates on the Motion of the Utility Reform Network for Clarification of Lifeline Rates, August 31, 2010.

⁷⁵ Response of the Division of Ratepayer Advocates on the Motion of the Utility Reform Network for Clarification of Lifeline Rates, August 31, 2010 at 2.

⁷⁶ Ibid.

i. Should the Commission reconsider its decision to eliminate bad debt reimbursement for carriers?

The Commission correctly eliminated bad debt reimbursement in D.10-11-033.⁷⁷ As the Commission pointed out in D.10-11-033, although most businesses experience bad debt losses, expecting LifeLine customers to fully reimburse LifeLine carriers for these losses is not consistent with the fiscal efficiency goals of the program.⁷⁸ DRA sees no merit the Small local exchange carriers' (LECs) arguments that carriers should be able to hold onto a deposit from Lifeline applicants as insurance in case customers fail to pay their bills.⁷⁹ DRA agrees with the Commission that Small LEC carriers always have the option to file a General Rate Case if they wish to have the Commission properly analyze whether a request to recover a bad debt is legitimate.⁸⁰ Although the Commission granted limited rehearing on this issue, DRA sees no reason for the Commission to reconsider its decision at this time.⁸¹

ii. Should the Commission consider the use of geographic de-averaging of basic rates when computing the SSA?

DRA will respond to the use of geographic de-averaging of basic rates when computing the SSA in reply comments. But, more importantly, the Commission should revisit the methodology for calculating the SSA. Currently, the SSA is set annually as 55% of the highest URF carrier of last resort (COLR) rate. The current SSA methodology provides an incentive for the URF COLRs to raise their basic rates. If URF COLRs raise their basic rates, not only does this increase revenues from non-LifeLine customers, it also increases the SSA. This is related to DRA's recommendation on capping Lifeline rates stated elsewhere in these comments.

⁷⁷ D.10-11-033, at 92.

⁷⁸ *Id.*

⁷⁹ D.12-07-022, Order Modifying Decision 10-11-033, Granting Limited Rehearing, and Denying Rehearing in Other Respects, at 14.

⁸⁰ *Id.* at 14.

III. CONCLUSION

DRA appreciates the opportunity to comment on the questions contained in the ACR and Scoping Memo concerning the California LifeLine program. DRA continues to strongly support LifeLine and the Commission's work to cost-effectively improve program benefits such that all Californians have affordable telecommunications services that meet their needs and urges the Commission to adopt DRA's recommendations.

Respectfully Submitted,

/s/ LINDSAY M. BROWN

LINDSAY M. BROWN

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-1960
Email: Lindsay.Brown@cpuc.ca.gov

May 28, 2013

(continued from previous page)
⁸¹ D.12-07-022, at 15.