

BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA



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

R.11-03-013
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**OPENING COMMENTS OF THE CENTER FOR ACCESSIBLE TECHNOLOGY,
THE GREENLINING INSTITUTE, AND THE UTILITY REFORM NETWORK TO
SEPTEMBER 22, 2016 RULING REQUESTING COMMENTS ON WORKSHOPS AND
FEDERAL COMMUNICATIONS COMMISSION'S THIRD REPORT AND ORDER**

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Pursuant to Rule 11.1 of the Commission’s Rules of Practice and Procedure, the Center for Accessible Technology (CforAT), The Greenlining Institute (Greenlining), and The Utility Reform Network (TURN) (hereinafter referred to as “Joint Consumers”) file this response to the September 22, 2016 Ruling Requesting Comments On Workshops And Federal Communications Commission’s Third Report And Order (“Ruling”).

I. INTRODUCTION

In order to support state policy goals regarding access to affordable and reliable telecommunications services for all Californians, the Commission must respond and adapt to the recent changes adopted by the Federal Communications Commission (“FCC”) to the federal Lifeline program, while also maintaining its commitment to California’s own telecommunications goals and obligations as set forth in the Moore Universal Telephone Service Act and general principles of universal service.¹ As Joint Consumers have consistently noted, the Commission’s administration of the California LifeLine program should be consistent with the principles of affordability, quality of service, equity, and value.

As a subsidized service, LifeLine must remain *affordable*, regardless of how quickly the rates for other services are increasing. LifeLine must provide *high quality service* regardless of the technology used by the provider, or the Commission risks not satisfying its social goals. LifeLine must ensure that low-income customers are being treated with *equity* as compared to other Basic Service customers. For example, program participants cannot be relegated to a lesser-quality service merely because it is discounted. Finally, the program must be designed and administered to provide *value*, not only to the participants but also to the Californians paying the surcharge to support the program. While other considerations such as customer choice,

¹ See Pub. Util. Code § 871 *et seq.*

technology neutrality and carrier support are also important, these elements can be achieved through the core principles of affordability, service quality, equity and value.²

The Commission should preserve the California LifeLine program as an independent complement to the federal program. Among the many significant changes to the federal program, the FCC's recent Order eliminates federal support for some California households that need such support to be able to afford telephone service. The loss of this subsidy and customer confusion about the changes in eligibility will cause some customers who desperately need assistance to drop off the program. To maintain program participation and prevent customer confusion, the Commission should provide supplemental funding for customers who are no longer eligible for the federal subsidy at least until the Commission has had time to conduct additional analysis and take more detailed comments on the impacts of developing a more robust state only program. Such interim supplemental funding is consistent with the Commission's goals and legislative mandate and will not impose an undue burden on ratepayers.

Joint Consumers also comment on several additional issues raised by the Ruling. At this time, and in light of recent state legislation, we encourage the Commission to move forward to create a benefit transfer freeze that is coordinated, but does not mirror, the FCC's rules. The California rules should clarify and expand the current FCC exceptions and processes to ensure that California low-income customers are not chained to a LifeLine service that does not meet their needs. Joint Consumers offer similar comments regarding the renewal process for current LifeLine customers. While we recognize the state program is having operational issues with renewals, we encourage the Commission to maintain the state-specific program and to move forward with some of the proposed additional changes. We also encourage the Commission to put rules in place to protect customers purchasing bundled service through the LifeLine program

² Joint Consumers Opening Comments on Scoping Memo at pp. 1-2 (May 28, 2013).

to ensure that those customers do not lose voice telephone capability or emergency services if there is a problem with their LifeLine bundle. Finally, Joint Consumers note that the Ruling addresses a far-reaching and comprehensive set of topics. Joint Consumers highlight some issues that we encourage the Commission to not lose sight of but to address them in a subsequent phase of this proceeding.

II. THE COMMISSION SHOULD PRESERVE THE CALIFORNIA LIFELINE PROGRAM AS AN INDEPENDENT COMPLEMENT TO THE FEDERAL PROGRAM.

While Joint Consumers support making the LifeLine program easy and efficient for providers, the Commission must not lose sight of the policy goals of the program which indicate that the primary concern is to benefit of LifeLine customers, not providers. Based on the FCC Order and the anticipated carrier comments on the Ruling, Joint Consumers predict that the Commission will be urged to relinquish control for much of its state program to the FCC. While this would make for a simpler program, it would not make for a better one, and it would neglect the state's independent policy goals. Instead, as Joint Consumers describe below, we suggest that the Commission should maintain many, although not all, of its state-specific program rules.

As Joint Consumers have previously noted, the California LifeLine program is separate from the federal program, and it should not be considered simply as an extra subsidy or windfall that is merely tacked onto the federal subsidy.³ Additionally, California LifeLine customers generally have fewer choices and have specific needs that must be considered to accommodate the fact that often times they are elderly, limited English speaking, disabled, or transient. These considerations may require stronger and more robust protections than the FCC can provide as the administrator of a much larger, more diverse, nationwide

³ *Id.* at p. 14.

program.⁴ For example, differences between the federal and California programs may require differences in administration and provider involvement, including provisions that limit the requirements for a Social Security Number, maintain support for voice service, or allow for reimbursement of the nonrecurring activation charge. There is no reason that the Commission should abandon its current positions and past successes in the name of administrative convenience.

III. THE NEW FEDERAL RULES WILL MAKE IT MORE DIFFICULT FOR CALIFORNIA TO REACH ITS UNIVERSAL SERVICE GOALS UNLESS THE COMMISSION TAKES ACTION.

California established its LifeLine program in 1984 to provide "high-quality basic telephone service at affordable rates to the greatest number of California residents;"⁵ in order to keep telephone service affordable to low-income households, California has continued to set eligibility standards in keeping with this goal. Historically, as detailed below, all customers who participate in the California program have also had access to subsidies via the federal Lifeline program. The FCC's recent Lifeline Order⁶ changed federal LifeLine eligibility standards, removing access to the federal subsidy for a small but significant subset of California LifeLine households and thus potentially making phone service unaffordable for many Californians. Customers in this eligibility "donut hole" may be forced to abandon phone service or make the tough choice of foregoing other essentials in order to remain connected through their LifeLine services.

⁴ *Id.* at p. 15.

⁵ Cal. Pub. Util. Code § 875.1, subd. (a).

⁶ Fed. Comm. Comm'n., Third Report and Order, Further Report and Order, and Order on Reconsideration, In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42 (April 27, 2016) ("FCC Order")

A. The FCC’s Order Eliminates Federal Support for California Households Potentially Making the Service Unaffordable.

The Commission has previously determined that some households, including those making under 150% of the federal poverty level, and those with a household member enrolled in TANF, NSLP, or LIHEAP, need the federal subsidy of \$9.25 **and** the California subsidy in order to afford telephone service.⁷ The FCC’s changes to its eligibility requirements create a category of households that still need that combined subsidy to ensure affordability, but who will not be able to obtain the federal portion because they no longer qualify.

Prior to this order, California households enjoyed expanded access to federal LifeLine subsidies due to relaxed income requirements and more program eligibility options. The FCC’s recent decision no longer allows states to broaden access to federal Lifeline through certain state-specific eligibility criteria.⁸ The Order also removes the Low–Income Home Energy Assistance Program (“LIHEAP”); National School Lunch Program (“NSLP”); and Temporary Assistance for Needy Families Program (“TANF”) from the list of programs that can serve to establish LifeLine Program eligibility.⁹ Many households who currently qualify for both federal and state LifeLine subsidies will lose their federal subsidy as a result of this decision, through no fault of their own and based on no change in their circumstances. Unless there is a grant of an extension of time, the new eligibility criteria will take effect on December 2, 2016.¹⁰ After that date, California households making 135%-150% of the federal poverty line or those that qualified for LifeLine through LIHEAP, TANF and NSLP will lose federal subsidies.¹¹

⁷ See D. 14-01-036 at pp. 37-38.

⁸ FCC Order at ¶ 212 et seq.

⁹ *Id.* at ¶ 188.

¹⁰ FCC, Lifeline and Link Up Reform and Modernization; Announcement of Effective Date, 81 FR 67922 (October 3, 2016).

¹¹ FCC Order at ¶¶ 188, 212.

As discussed above, the Commission has determined that the federal subsidy of \$9.25, combined with the California subsidy is necessary for some low-income California households to have access to affordable service. The loss of the federal subsidy in no way means that the circumstances of those households has improved so that they can instantly afford to pay an additional \$9.25 a month. As Joint Consumers explained in previous comments, significant numbers of LifeLine participants are already very confused about the administration and operation of the program, many not even knowing the name of their current carrier. Therefore, any effort to explain to customers that they are losing access to a federal subsidy while retaining access to a state subsidy will further cause confusion. Joint Consumers believe that this increase in price and the accompanying confusion will undoubtedly cause a substantial number of the customers in the LifeLine “donut hole” to drop out of the LifeLine program. Given racial wealth and income gaps in California, it is safe to assume that households of color will be disproportionately impacted by this loss of service.¹² Similarly, seniors and people with disabilities, who rely heavily on the LifeLine program, will also be disproportionately impacted.¹³ Therefore, Joint Consumers urge the Commission to maintain these customers’ full subsidy as an interim measure.

B. To Maintain Program Participation And Prevent Customer Confusion, The Commission Should Provide Supplemental Funding For Customers Who Are No Longer Eligible For The Federal Subsidy.

Once off the program, many customers will be unlikely to return. Because of the difficulty (and cost) of bringing customers into the program, the Commission should immediately take steps to ensure that those customers do not drop off of the LifeLine program while the Commission works to fully resolve the issues raised in the ruling. Joint Consumers

¹² May 2013 Opening Comments on Scoping Memo at p. 10.

¹³ *Id.* at pp. 11-12.

renew their request that the Commission develop a bridge plan, including supplemental funding, to allow customers to continue to receive service at the same level of support that they currently receive while the state considers appropriate steps to harmonize the state and federal programs and policies for the long term.¹⁴ Such funding would be consistent with the Commission's goals and Legislative mandate, and Joint Consumers' preliminary estimates indicate that such funding would not impose an undue burden on ratepayers. Further, staff provided data that show only a small portion of current households, approximately 80,000, would be impacted by this change and need additional support from the state Fund.

1. Supplemental Funding is Consistent with the CPUC's Goals and Legislative Mandate.

Under Section 709(a) of the California Public Utilities Code, the legislature made a commitment to "assuring the continued affordability and widespread availability of high-quality telecommunications services to all Californians." In implementing this Legislative mandate, the Commission has long held a universal service goal of 95%.¹⁵ The loss of federal subsidies will potentially more than double the cost of wireline and wireless service for California households in the eligibility "donut hole." This unexpected price increase threatens to undermine the Commission's universal service and affordability goals, putting phone service out of reach for struggling families. To avoid this outcome, the Commission should provide supplemental funding to carriers to cover the loss of federal subsidies as those carriers then pass through the subsidy in the form continued discounts on phone service.

¹⁴ Response of the Center for Accessible Technology et al. to Motion to Modify the Schedule, July 29, 2016 at p. 3-4.

¹⁵ See D.94-09-065.

2. *Bridge Funding Will Not Impose An Undue Burden On Ratepayers.*

Joint Consumers asked Commission staff for specific data regarding the number of customers who will lose eligibility for the federal subsidy, in order to calculate the financial impact of providing supplemental funding for ratepayers. That data recently provided by staff shows that approximately 80,000 current California LifeLine customers would be impacted by the FCC's changes in eligibility because either these customers have a household income that falls between 135% and 150% of federal poverty levels or they are relying on an eliminated program for eligibility, or both. We believe the cost of maintaining the current level of support for LifeLine subscribers in the "donut hole" while developing long-term policy is small in comparison to the aggregate benefits of affordable phone service for impacted families.¹⁶ In addition to the benefits provided, interim funding also prevents the program from incurring costs of trying to re-recruit customers who may still be eligible but who drop off the program during the transition. Keeping Californians connected to LifeLine while the Commission formulates a response to the FCC decision will maintain California's commitment to universal service while minimizing subscriber losses and easing the transition as the Commission revises the California LifeLine program.

C. The Commission Should Provide Supplemental Funding For Customers Who Are No Longer Eligible For The Federal Subsidy

The availability of the federal subsidy was a critical factor in the Commission's calculation of the financial support necessary to make telephone service affordable for California's most disadvantaged populations.¹⁷ Given the importance of phone service as a tool

¹⁶ Joint Consumers received more specific data from staff on the numbers of impacted households only the day before these comments were due and therefore cannot provide detailed estimate of costs at this time, but will endeavor to provide additional estimates and analysis in reply comments.

¹⁷ The Commission has chosen to supplement federal LifeLine funds for over thirty years in order to make LifeLine service affordable for California residents. *See, D.14001-036 at p. 51.* The Commission

for upward mobility, community participation, and employment, it is imperative for the Commission to protect the customers at risk of losing federal LifeLine coverage. Joint Consumers urge the Commission to provide supplemental funding to cover the loss of federal support while the Commission and other stakeholders determine how to proceed with the California LifeLine program in light of the FCC's changes.

D. The Commission Should Waive Restrictions On Activation Subsidies And Port Freezes For Customers Seeking To Change Service Because Of Price Increases Caused By A Loss Of The Federal Subsidy

While the loss of the federal subsidy may cause some customers to abandon the LifeLine program entirely, others may respond to the potential increase of \$9.25 a month by seeking a lower cost plan.¹⁸ Joint Consumers are hopeful that some providers will respond to the FCC's creation of the LifeLine "donut hole" by adjusting prices to reduce or eliminate the price increase caused by ineligibility for the federal subsidy. Eligible participants facing a \$9.25 increase will likely seek out a more affordable LifeLine option, for example, by switching from wireline to wireless.

Assuming that some customers look for alternative service, it is likely that some of these customers may have to consider a number of providers before finding one that meets their needs. For example, a LifeLine customer switching from wireline to a less expensive wireless service may need to try several different wireless providers before finding a provider whose coverage allows the customer to use their phone in their home. If the Commission imposes a benefit transfer freeze on those customers, that freeze could make it more difficult for customers to

also considers the availability of federal subsidies in determining the total support amount available to reimburse participating LifeLine carriers. *See id.* at pp. 38, 62-63.

¹⁸ Joint Consumers are hopeful that the LifeLine market will adjust to reduce the financial burden on those customers who are no longer eligible for the federal subsidy. However, we recognize that there will also be an opportunity for unscrupulous providers to maintain \$9.25 charge to drive customers to other plans or bundles.

switch to a service that meets the customer's needs and that the customer can afford. Similarly, any limit on the number of times a customer may receive a discount or waiver for activation charges could make it more difficult for current LifeLine customers to switch. Accordingly, to mitigate the impact of these FCC changes on those customers who will lose their federal subsidy, the Commission should, at least in the short term, waive benefit transfer freezes and limits on activation charges for current LifeLine customers who are seeking to change service because of price increases caused by a loss of the federal subsidy.

IV. COMMISSION SHOULD WORK TO IMPROVE THE CURRENT RENEWAL PROCESS WHILE UNDERSTANDING HOW CHANGES AT THE FEDERAL LEVEL WILL IMPACT THE THIRD PARTY ADMINISTRATOR

The Ruling requests comment on two issues related to the renewal process for current California LifeLine participants. First, the Ruling asks for further comments on the proposals presented by staff during the April 2016 workshop. Second, it requests comments on coordinating California LifeLine renewals with changes to the federal LifeLine program.

A. Commission Should Not Hand Over Renewal Authority to USAC

As an initial matter, Joint Consumers agree with the Ruling's tentative conclusion that California can maintain its renewal process at least until the implementation of the National Verifier in California.¹⁹ Although the timeline for implementation of the National Verifier is tentative and uncertain, full implementation will take several years.²⁰ In light of California's robust Third Party Administrator process, Joint Consumers are confident that California will be one of the last states to fully employ the national database, if required to do so at all.²¹

¹⁹ Ruling at p. 9 (Q.4.1.16)

²⁰ FCC Order at para 164, FCC set "expectation" that by December 31, 2019 LifeLine eligibility will be determined by the National Verifier in all states.

²¹ While some discussion within the FCC Order could be read to preempt state commission eligibility process, many other provisions anticipate ongoing work by states to determine eligibility. Compare, for

Furthermore, as the Ruling suggests, any type of national database would be deployed only to determine eligibility for federal Lifeline benefits, leaving a separate question regarding the need for a California-specific renewal process for California LifeLine benefits. Therefore, this Commission must be sure that it has a robust and accurate renewal process in place at least until there is more clarity and understanding of the structure of the National Verifier System and a clear design of any California-only eligibility and program offerings.²² If it is the FCC's intention to maintain the status quo in opt-out NLAD states until the National Verifier is operational, then it would be "legally permissible" to continue with the California TPA process in the interim. There have already been so many changes to this program that have caused disruption for customers, that Joint Consumers urge the Commission to move forward with improvements and continue administration of the renewal process rather than hasten toward another dramatic change.

Joint Consumers are not familiar enough with the intricacies of the eligibility process for the federal program to describe all the changes necessary for the state to "mirror" the federal renewal program or to evaluate at this time whether such mirroring is an appropriate goal. However, there may be some elements of the federal processes that could inform the Commission's revisions to its own renewals. The biggest difference between the two programs appears to be that the FCC puts the burden on the National Verifier, state commission, or carrier

example: Para 164 (eligibility will be determine by NV in all states) with CFR Section 54.510 (including state commissions in the eligibility process).

²² This is separate from the question 4.1.10 on page 8 of the Ruling of whether the Commission should load participants' information into the National Verifier database. Unless the Commission receives a waiver or extension of that requirement, either through its own application or a pending petition for reconsideration, Joint Consumers believe that paragraph 164 requires the Commission to "provide existing subscriber information to USAC by December 1, 2016, and ongoing thereafter." While California may have to populate the USAC database, that requirement does not preempt California from having its own TPA processes.

to query the necessary databases to confirm re-certification. The participating customer would only get a form to complete and submit if the other avenues for verification were unavailable.²³ In California, the burden is on the customer to self-certify and finalize the renewal through a form that is automatically sent (but not always received or returned by) the customer. As discussed below, Joint Consumers encourage the Commission to minimize the burden on consumers and consider changes to its state processes that would allow for a more streamlined and automatic renewal process.

The FCC's new rules also appear to keep the same "service initiation date" for a customer's participation in the program regardless of whether the customer changes providers during his or her participation, and the renewal date is the original service initiation date when the customer was determined to be eligible for the discount by the National Verifier.²⁴ It is Joint Consumers' understanding that in California, the customer's anniversary date changes when a participant changes providers. Finally the FCC has a 65-day process, from the first reminder to the last deadline, for renewals, while California's current period is over 100 days, leading to confusion and missed deadlines.²⁵ During the workshop held in April, staff proposed shortening the time frame for renewals in light of the showing that the vast majority of customers who successfully renew do so within the first 50 days of the process.²⁶ As discussed below, Joint Consumers support the proposal to shorten the renewal period.

²³ §54.410(d) and (f)(3)(iii)

²⁴ FCC Order, Para 418

²⁵ 47 CFR §54.410(f).

²⁶ Workshop Day 1 p 38.

B. Commission Must Attend to Problems with the Current Renewal Process

Unfortunately, as Joint Consumers have commented previously,²⁷ there is broad agreement that the current renewal process is not effective at reaching and successfully re-certifying wireless LifeLine customers. The October 2016 Xerox Report to the LifeLine Administrative Committee shows that wireless carriers' renewal rate is an unacceptable 23.3%.²⁸ Sadly, this rate is not much different than the rate last year at this time, despite new procedures implemented by Xerox at the beginning of 2016 intended to address problems in the renewal process.²⁹ While the status of Xerox's changes have not been clearly documented, based on the Working Group call discussions and the workshop presentation in May, Joint Consumers understand that Xerox implemented a new IVR voicemail system that allows customers to call into an 800# and renew their application by phone once they have received their unique identifying PINs. Further, Xerox has been sending out text messages to wireless LifeLine customers with reminders to renew. Beyond the low renewal rate, Joint Consumers do not have data or information to understand whether these changes have made any impact.

In March, carriers submitted comments in this proceeding urging the Commission to implement additional changes to the process. These changes included additional avenues for customers to retrieve their PIN, a "warm transfer" to an IVR or web system via text or email, and improvements that would make the LifeLine website more mobile friendly. At the April workshop, staff proposed similar improvements to the website and text messaging methods, as well as modifications to the renewal process that would shorten the overall timeframe for the

²⁷ Joint Consumers Reply Comments on Scoping Ruling, March 30, p.14-18

²⁸ Xerox Presentation, Administrative Committee Program Review, August 10, 2016. While wireline renewal rates are much higher, the October 2016 report does show wireline renewals also dropping to 71.99%.

²⁹ See, Workshop Presentation Day 1.

process from 105 days to 45 days, while allowing rejected customers to re-apply earlier in the process.

Joint Consumers support many of the carrier and staff proposals. We urge the Commission to consider changes that alleviate the burden on consumers to initiate the renewal process. In addition, in previous comments and again here, we urge the Commission to ensure that LifeLine participants have a neutral source of information about the renewal process separate from their carriers, and that the Commission create a “bright line between program administration and marketing by the LifeLine provider.”³⁰ Further, at this time, Joint Consumers urge the Commission to review proposals to improve the wireless renewal process in the context of coordinating with new federal processes. It would not be a prudent investment of ratepayer surcharge money to make significant and costly changes to the TPA processes, such as creating a mobile friendly website or warm transfer capability, unless the Commission is confident that it will be able to use those processes for several years into the future.

While the Commission should work to improve its renewal process, the differences between the FCC and the California renewal processes are relevant to the extent a LifeLine participant is receiving both federal and state discounted services. They are also relevant to ensure coordination between the two programs so that the TPA and the carriers can provide the most effective and efficient processes to support customer renewals and to save ratepayer surcharge funding. However, Joint Consumers tentatively conclude that there is no need for the Commission to “mirror” exactly the FCC recertification process.

³⁰ Joint Consumer Reply Comments on Scoping Memo, March 30, page 17

V. A BENEFIT TRANSFER FREEZE IS APPROPRIATE ONLY IF IT SERVES TO PROTECT CUSTOMERS IN ADDITION TO PROTECTING CARRIERS' INTERESTS

The Ruling sets out a series of questions about the implementation of a benefit transfer freeze, including whether the Commission should implement a 60 day freeze for either federal or California discounted voice telephone services, and, if so, when such a freeze should take effect.

As the Ruling notes, this is not a new issue. The FCC has had a benefit freeze in place since 2014 for federal discounted services; although the Commission has not had to implement a freeze at the state level because it has opted out of the NLAD. Moreover, Joint Consumers and other parties have filed comments on this issue previously before this Commission.³¹

With the adoption of the new rules, the FCC appears to require that all state programs must participate at some level in the National Verifier system³² and, as a result, California might now be subject to the requirement to implement a benefit transfer freeze for federal discounted services.³³ Moreover, the California Legislature recently adopted AB 2570 which states, “The commission shall adopt a portability freeze rule for the lifeline program by January 5 2017.”³⁴ Therefore, the Commission may now be obligated to implement a benefit freeze in order to comply with both the FCC Rules and current California. The remaining questions, therefore, must focus on the timing and design of such a benefit freeze.

The effective date for changes to the federal benefit transfer rules is December 2, 2016. However, as discussed above, the implementation of the National Verifier in California is likely

³¹ See, Joint Consumers Opening Comments on Scoping Memo, March 4 at page 17-18 and Reply Comment, March 30, at p. 10-13.

³² See FCC Order Para 164 requiring California and other NLAD “opt out states” to begin to provide subscriber information to USAC by December 1, 2016. The exact extent and intent of the FCC to preempt state programs is discussed elsewhere in these comments.

³³ However, 47 CFR §54.710 clearly anticipates that the “National Verifier, state Lifeline administrator, or other state agency” can be “responsible for the initial determination of a subscriber’s program [or income] based eligibility” suggesting that California’s TPA is not preempted.

³⁴ Chapter 577, September 24, 2016, add Public Utility Code §878.5

to be years away. It appears that the state will only be obligated to implement a freeze for federal discounts if and when the Commission links into the National Verifier system. At the same time, however, AB 2750 creates a state-mandated deadline of January 15, 2017 for the Commission to implement some type of benefit freeze.

In previous comments, Joint Consumers have stated that “a short administrative freeze of 15-30 days to allow the eligibility process to complete before the customer signs up for service with a new carrier may have merit; however, neither consumers nor the program will benefit from a longer freeze of 60 days or more as advocated by carriers.”³⁵ Joint Consumers still believe that a short benefit transfer freeze for carrier-to-carrier transfers could be useful for program administration, as long the freeze is of limited duration and has several customer-friendly exceptions. Joint Consumers agree with the discussion in the Ruling that California’s program structure does not motivate customers to switch providers multiple times in a month to make up for poor quality of the plans or limited minutes, thus suggesting that an onerous, harsh, and limiting benefit transfer freeze is unnecessary.

Even so, customer churn (turnover among carriers) still appears to be a problem for the California program.³⁶ Churn may be attributed, at least in part, to the success of the program in providing a wide variety of plans and carriers. Because there are many options, LifeLine customers are not stuck with their current plan and can shop for options that may meet their needs at a price they can manage. On the other hand, some parties suggest that the churn has been motivated by reimbursement of the nonrecurring activation fee and the lure of a free phone.³⁷ The program’s rules granting reimbursement have dramatically changed over the past

³⁵ Joint Consumers Reply Comments on Scoping Memo, March 30, p. 10

³⁶ See, Xerox August 2016 Presentation to Administrative Committee, page 7-8.

³⁷ See for example, Opening Comments of Tru Connect on Scoping Memo, March 4, 2016, at p. 4.

year in part to limit the motivation for churn.³⁸ Joint Consumers note that if these changes successfully limit churn, and the Commission does not fully participate in the National Verifier process, then it may only be necessary to design a limited benefit freeze to satisfy the new statutory obligation.

The Ruling requests comment on the “implications” for various stakeholders of a 60 day discount transfer freeze, including whether it would deter fraud, promote investment and create benefits. Joint Consumers have already commented on these issues, describing significant levels of customer confusion regarding many aspects of the program and placing in doubt claims by the carriers that customer wrongdoing makes a benefit freeze necessary.³⁹ There is no question that a benefit freeze would impact customer choice and place a barrier in front of customers seeking service that meets their needs. However, a short freeze, along with meaningful exceptions to allow customers to more easily change providers, may also reduce some customer confusion during the eligibility process, protect against aggressive marketing, and support the TPA eligibility process. Moreover, presumably a freeze would reduce Fund costs by limiting activation charge reimbursements and any type of transaction fees charged by Xerox.

The Ruling also asks about the “likely” program and administrative costs of a freeze, as well as whether the Commission should adopt a different freeze than the federal rules require. Joint Consumers do not have enough data to comment on the specific costs of implementing and enforcing the freeze, but it is clear that such a freeze will not be free. This is especially true if the TPA continues to manage the program and is required to adapt its current processes to keep track of a separate 60 day freeze period for each participant and provide that data in real time to

³⁸ See, Ruling at p. 3-4.

³⁹ Joint Consumers Reply Comments on Scoping Memo, March 30, p. 10-11

customers and carriers. Because the Commission has changed and capped the activation charge reimbursement, the cost savings of implementing a benefit transfer freeze are less clear.

While it might be complicated for California to implement a different benefit freeze from the FCC's requirements, it may also be critical to mitigate the harm that could be created from some of the more onerous FCC policies. In previous comments, Joint Consumers explicitly opposed any transfer freeze longer than 30-60 days because of potential customer confusion, limits to customer choice and lack of reliable information about plans and options.

Unfortunately, in its recent order, the FCC has found a 12 month port freeze for broadband services to be reasonable.⁴⁰ While the intent of the FCC to preempt state commission eligibility processes is unclear, Joint Consumers urge the Commission to find alternatives to a 12 month benefit freeze for both federal and state discounted broadband services. At a minimum, the Commission should clarify that for customers purchasing bundles for either federal or state discounted services, the different benefit transfer freezes apply to the different elements of the bundle. The freeze for voice services, even if part of a bundle, should be 60 days maximum. Therefore, a customer could break up their bundle and transfer just the voice within 60 days.

Any benefit transfer freeze must ensure that there is clear and adequate recordkeeping by the TPA of the status and timing of a customer freeze; clear and adequate customer education regarding the freeze; and, a strong list of exceptions describing circumstances in which a customer can transfer carriers without losing benefits.

Currently the FCC has four exceptions applicable to both the 60 day and the 12 month freeze, but they do not go far enough. Joint Consumers agree with the suggestion in the Ruling that customers should be able to change carriers without penalty in the event of a carrier violation of state rules, in addition to federal rules. This policy would effectively serve as an

⁴⁰ FCC Order at Para 389.

enforcement mechanism for state program rules. Second, the freeze should focus on carrier-to-carrier transfers. If the customer makes an affirmative attempt to cancel his or her service, including a phone call or email to both the losing and gaining carrier, then the customer should be able to switch even during an otherwise-applicable freeze period. Third, Joint Consumers strongly support the ongoing application of the California rule that allows customers to cancel within the first 14 days of service. There is no violation of federal rules if this right of cancellation only applies to state discounted services. However, Joint Consumers urge a broad interpretation of the current federal exceptions as described in federal regulations to find that a right of cancellation and ability to transfer service exists if the service is not delivered as promised to the customer or if service quality is inadequate so as to trigger the federal exception that the carrier has “otherwise failed to provide service”⁴¹; we believe that these conditions can be interpreted as within the current exceptions.

Finally, Joint Consumers urge the Commission to add an exception allowing customers to cancel and transfer to another provider if the carrier makes a “material change” in their service offering. The FCC acknowledged that, “changes that lower the quality or speed of service, lower the offering’s usage allowance or increase the service’s price are presumptively material changes to the terms or conditions of service.”⁴² Yet the stated exceptions to the freeze as codified in §57.411 do not list this “material change” circumstance. A reasonable interpretation of the FCC’s Order would prohibit a carrier from making a material change to a contract during the 60 day (or even 12 month) waiting period so that a customer would be grandfathered into their plan for that time period if the carrier wanted to otherwise make changes to the plan. The

⁴¹ 47 CFR §54.411(c)(2).

⁴² FCC Order, Para 391

Commission should make clear that a material change to an offering would be prohibited during a freeze period, or in the alternative, such a change would trigger an exception to the freeze rules.

Finally, the Ruling asks about the need for a freeze for wireline service. Joint Consumers agree there has not been a documented problem with churn in wireline. At this time, Joint Consumers do not see a need to implement a benefit freeze for wireline voice customers, nor do we believe that such a freeze would promote any sort of administrative efficiency. While there may be an issue with competitive fairness between wireline and wireless LifeLine, the two services are sufficiently distinct that the potential for harm to wireless providers or customers if wireline is not required to implement the freeze will be minimal.

VI. THE COMMISSION SHOULD ENSURE THAT CUSTOMERS WHO PURCHASE BUNDLES DO NOT LOSE TELEPHONE SERVICE

The Ruling asks for input regarding “bundled plans” and LifeLine support.⁴³ Joint Consumers have not changed our position that customers participating in the LifeLine program should be able to purchase stand-alone LifeLine service while also having the option to add additional non-LifeLine, non-California subsidized services to their bill at the customer’s discretion.⁴⁴ Additionally, Joint Consumers propose the following rules, which Joint Consumers have previously offered:

- A LifeLine carrier cannot require purchase of additional services or bundled services as a condition of receiving LifeLine services.
- Bills must list charges for LifeLine services and other purchased services separately, and any notices or other documents about the subscriber’s account must clearly indicate whether the document relates to the subscriber’s LifeLine service, bundled services, or both.

⁴³ Ruling at p. 9.

⁴⁴ Joint Consumers Opening Comments on Scoping Memo at p. 30.

- If a customer is not able to make a full payment for the LifeLine and bundled services, any payment will be applied to current and past due charges for LifeLine service before being applied to current and past due charges for bundled services.⁴⁵

These rules, along with the discussion above that the 60 day benefit transfer rule will apply to voice services in a bundle, will ensure that the LifeLine program collects and spends surcharge money in the most cost-effective, productive, and fair manner, and only subsidize those services that are in keeping with the statutory LifeLine goals.

VII. THE COMMISSION MUST PRIORITIZE CERTAIN ISSUES TO ENSURE LIFELINE PARTICIPANTS ARE PROTECTED; OTHER ISSUES CAN BE ADDRESSED IN A PHASE 3

Like the December 24 Scoping Memo, this Ruling is comprehensive. The Ruling requests comment on a wide variety of issues and offers parties an opportunity to have input on all aspects of the program. However, because the time frame for these comments was necessarily short, Joint Consumers did not address each and every question in the Ruling. Further, many aspects of the FCC's LifeLine rules and the impact of those rules on California's LifeLine administration are unsettled, and Joint Consumers believe we need further data and information to comment. Despite the OMB ruling setting deadlines for several of the new CFR sections, the implementation dates for many of the FCC Order requirements also remains unclear. Therefore, while certain issues must be addressed by the Commission in the short term, as discussed above, other issues can and should be addressed at a later time. This does not mean that Joint Consumers believe these issues to be less important, just that there is less urgency to address them.

⁴⁵ *Id.*

- ***Retain Voice subsidy***

The FCC puts a long term plan and schedule in place to phase out federal Lifeline support for voice services that will impact most parts of California.⁴⁶ Joint Consumers strongly oppose the elimination of the subsidy for voice-only services and urges the Commission to create state program that will continue to offer discounted voice service. However, the FCC's rules call for the availability of a LifeLine supported voice service until December 2021. Therefore, while there is urgency on this issue, Joint Consumers urge the Commission to take comprehensive comments on this issue and bring stakeholders together to design a state-specific subsidy for voice-only services.

- ***Recommendations regarding the assignment of a unique number to each participant. (3.D)***

Joint Consumers have generally been very supportive of this proposal because we believe it will allow the TPA to sign up customers without SSNs, facilitate pre-registration processes⁴⁷ and minimize release of personal information. However, the Commission must stabilize the program and determine how best to coordinate with the FCC before embarking on this project.

- ***Coordination with other California Public Purpose Programs (4.1.8)***

Joint Consumers have also been supportive of this effort, including increased reliance on CBOs to help clients sign up for multiple programs simultaneously.⁴⁸ If properly implemented, the results will be a significant customer benefit; however, this is a significant undertaking and

⁴⁶ FCC Order, Para 63-66.

⁴⁷ See Joint Consumer Comments on Scoping Memo, March 4, at p. 37-41

⁴⁸ See, Joint Consumer Opening Comments on Scoping Memo, March 4, pg 3, 32 (to calculate eligibility); pg 54, (coordination with CBOs and between programs)

must include input from a wide variety of stakeholders representing all the Commission regulated utilities.

- ***Expansion of the California state-specific LifeLine benefits to include broadband as a minimum service element (4.1.12 through 4.1.15; 4.3 all)***

The Ruling asks a number of questions regarding LifeLine support for broadband services, including whether California LifeLine should “require some [Broadband Services] to receive full California LifeLine support.”⁴⁹ Joint Consumers are generally in favor of California’s support for broadband services for low-income households. However, Joint Consumers respectfully suggest that these questions, while important, are premature. Discussions of the impact of changes to the federal program to add broadband are just beginning. Large policy questions about the necessary types of broadband, levels of service, service quality, and issues regarding surcharge support for broadband must be addressed before the Commission should agree to broaden the supported services to include broadband. As the Ruling notes, many carriers already provide broadband as part of their state supported LifeLine service. The Commission data requests will hopefully confirm whether carriers intend to continue to offer such a benefit to their existing plans.

Joint Consumers do, however, urge the Commission to distinguish between (1) separate interconnected VoIP services offered by a provider and (2) general broadband services that a customer can use for VoIP services. The Commission should treat interconnected VoIP as telephone service and not broadband. Joint Consumers note that President Picker’s recent Proposed Decision in this proceeding addresses VoIP services. Joint Consumers will address those issues in their comments on the Proposed Decision.

⁴⁹ Ruling at p. 19.

- ***Changes to the ETC Designation Process and the new LifeLine Broadband Provider (page 6)***

The FCC Order preserves state authority to designate ETCs that offer both voice and broadband services, but it also makes changes regarding the development of a LifeLine Broadband Provider. Joint Consumers are also aware, although the Ruling does not discuss, that there have been requests for the Commission to streamline its ETC review process. Joint Consumers urge the Commission to provide further opportunities for parties to comment on how, if at all, the Commission's current ETC designation process should change to accommodate changes in the rules.

- ***Consumer Education (4.1.20)***

The Ruling requests comment on whether the Commission should conduct consumer education regarding the upcoming changes to the LifeLine program. Joint Consumers agree that consumer education is critical at this stage where thousands of LifeLine participants will be impacted by these changes. This education will not only serve to benefit the participants, but also help with the administration of the program. We urge staff to work with the carriers and existing community based organizations that work with the Commission to educate consumers on the more immediate and short term impacts, such as the eligibility issues discussed above. While Joint Consumers believe it would be appropriate for the federal program to shoulder some of the burden of education, historically the FCC has not prioritized consumer education in its budget or operations for Lifeline.

In previous comments, Joint Consumers have addressed long term and ongoing issues with the lack of neutral consumer education and information about the program and the lack of a

clear distinction between consumer education and marketing.⁵⁰ We encourage the Commission to take up these long-term efforts, including mechanisms for funding of a third party education project, in a subsequent phase.

There are other issues still pending before the Commission that Joint Consumers urge the Commission to include in upcoming phases of this proceeding but need not address immediately. For example, the Commission should begin work on implementation of a state-specific program that does not require participants to provide a Social Security Number.⁵¹ There are likely to be thousands of California consumers who are not participating in the program because of the requirement to provide the last four digits of the SSN.

This Commission should also address the issue of affordability. This issue was raised in the December ACR and Joint Consumers provided extensive comments in March.⁵² The Commission is relying on this docket to provide critical input on the issue of affordability to the Competition OIL.⁵³

VIII. CONCLUSION

Joint Consumers appreciate the opportunity to provide additional comments on many critical issues facing the LifeLine program. We urge the Commission to prioritize those comments that will have a direct and potentially detrimental impact on LifeLine participants and to implement mitigating measures to protect those consumers. We further urge the Commission to address issues that might threaten the independence of the California program and to ensure state-specific consumer benefits remain in place. Many of the other

⁵⁰ Joint Consumers Opening Comments on Scoping Memo, March 4, pg. 12, 53.

⁵¹ *See*, Joint Consumer Opening Comments on Scoping Memo, March 4, p. 39-41.

⁵² *See*, Joint Consumer Opening Comments on Scoping Memo, March 4, p. 24-32.

⁵³ *See*, I.15-11-007, Order Instituting Rulemaking, Ordering Paragraph 2.

issues listed in the Ruling, while critical for the long term success of the program, can be addressed at a later date with thorough stakeholder input.

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Respectfully Submitted,

/S/

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On behalf of the Center for
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