

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
(Filed March 24, 2011)

**OPENING COMMENTS OF THE CENTER FOR ACCESSIBLE
TECHNOLOGY, THE GREENLINING INSTITUTE, AND THE UTILITY
REFORM NETWORK ON THE PROPOSED DECISION OF COMMISSIONER
PICKER**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the Commission’s Rules of Practice and Procedure, the Center for Accessible Technology, the Greenlining Institute and The Utility Reform Network (herein after referred to as “Joint Consumers”) file these opening comments on President Picker’s *Proposed Decision Adopting Revisions to Modernize and Expand the California LifeLine Program by Allowing Voluntary Participation by Fixed Voice Over Internet Providers Without a Certificate of Public Convenience and Necessity* (“Proposed Decision.”)

Joint Consumers support the Proposed Decision with the necessary clarifications and minor revisions discussed below.¹ This Proposed Decision should be viewed in the context of the ongoing Commission efforts to update and improve the California LifeLine program and in light of changes in technology, customer demands, and related federal rules. The development of rules that allow providers of Voice Over Internet Protocol (VoIP) services to offer discounted LifeLine services and receive the related subsidy funding will help to ensure that the program continues to meet the communications needs of California low income customers.

In Opening Comments, Joint Consumers supported the adoption of rules that allow entities without Certificates of Public Convenience and Necessity (“CPCN”) or franchises to participate in the LifeLine program, “*as long as those rules strictly uphold the principles of Affordability, Service Quality, Equity, and Value.*”² This Proposed Decision strikes the right balance between promoting new technology and innovation for LifeLine customers while, at the same time, developing rules and guidelines that will protect consumers and the integrity of the program. We further support the Commission’s commitment to “monitor the California LifeLine

¹ Appendix A contains the Joint Consumers’ proposed revisions to the text of the Proposed Decision and to the Conclusions of Law, Findings of Fact and Ordering Paragraphs.

² Joint Consumers’ Opening Comments on ALJ Ruling, April 2, 2015, at p. 1-2 (emphasis added).

marketplace” and to take further action if it determines consumer needs are not being met, services are unaffordable, or the goals of the program are not being achieved.³

In order for the Commission to ensure that these program goals are achieved and customers benefit from this change in the rules, Joint Consumers urge certain revisions to the Proposed Decision that remove unsupported and unnecessary legal assumptions, clarify that bundled services will be subject to consumer-friendly rules, revise requirements to prevent discrimination and redlining, and require further disclosures when a carrier exits the program.

II. DISCUSSION

A. Unsupported and Erroneous Legal Assumptions Should be Stricken

The record supports a finding that the Commission has the authority to allow voluntary participation in the LifeLine program by fixed-VoIP carriers, even if these providers do not hold CPCNs. The Proposed Decision appropriately conditions the fixed-VoIP participation on the requirement that, “the service provided meets both initial and ongoing program requirements,” and the provider is also required to “meet ongoing administrative obligations of the Program.”⁴ It is critical that the Commission have clear authority to enforce all LifeLine rules and requirements, including consumer protection rules, on all provider participants, regardless of the technology platform used to provide the service.⁵ This authority is necessary to ensure that the goals of the program are realized, minimum communications needs of California consumers are met regardless of income, and consumers have access to service choices through competition.

While the Proposed Decision supports the Commission’s authority to administer this program and enforce program rules in a technologically neutral way, it goes too far to find that

³ Proposed Decision at p. 15.

⁴ Proposed Decision COL 10,11.

⁵ Joint Consumers’ Opening Comments on ALJ Ruling, April 2, 2015, at p. 7.

fixed-VoIP service providers are not “telephone corporations” pursuant to Section 234 of the Public Utilities Code. This is an unnecessary finding that is not supported by the record or statutes and regulations. The Commission does not need to address the issue of regulatory classification of VoIP service if it is creating a framework of voluntary participation in the program by VoIP providers. Parties addressed the scope of the Commission’s authority over VoIP LifeLine providers and, predictably, some VoIP carriers such as AT&T relied on Section 710 and vague language in previous Commission decisions to argue that VoIP providers are not telephone corporations.⁶ They further argued that the Commission had no legal authority to enforce its rules vis-a-vis VoIP providers, even while supporting the Commission’s proposals to expand the program and provide subsidy money to VOIP providers.⁷ Joint Consumers disagreed with the carrier arguments, pointing to “the overly narrow and restrictive approach taken by AT&T and Verizon in defining Commission authority.”

Like the carriers’ arguments themselves, the Proposed Decision’s discussion of the regulatory classification of these services is wholly unsupported and incorrect. The Proposed Decision fails to address or acknowledge the comments from Joint Consumers and ORA that oppose the carriers’ self-serving arguments and support a finding that VoIP providers are telephone corporations. While Joint Consumers continue to maintain that this outcome would be correct, at a minimum, the Proposed Decision should be revised in accordance with additional consumer comments that demonstrate the unsettled state of this issue, which need not be resolved in the context of voluntary participation by providers in the Lifeline program.

⁶ AT&T Opening Comments on ALJ Ruling, April 2, 2015 at p. 2-4.

⁷ AT&T Opening Comments on ALJ Ruling, April 2, 2015 at p. 2-4; Verizon Opening Comments on ALJ Ruling, April 2, 2015 at p. 3; Joint Consumers’ Reply Comments, April 27, 2015 at p. 2-5.

The Proposed Decision further errs by presenting an overly broad and simplistic interpretation of Public Utilities Code Section 710 that suggests the statute serves to “prohibit[s] the CPUC from exercising regulatory jurisdiction or control over VoIP services.”⁸ This incorrect interpretation of Section 710 fails to acknowledge the numerous exceptions in the statute where the Commission maintains broad authority, including federal delegation of authority, backup power, DIVCA, emergency services, and pole attachments, among others.

Therefore, Joint Consumers urge the Commission to find legal error in the stated assumption that VoIP providers are not telephone corporations and the overly broad statements regarding the scope of Section 710 on Commission jurisdiction. To avoid uncertainty and confusion in interpretation of the Commission’s intent, and to reflect the record, Joint Consumers urge revisions to the Proposed Decision to mirror the more accurate statement already found in Conclusion of Law 6, “Pub. Util. Code §710(a) does not prevent the Commission from regulating California LifeLine fixed-VoIP services where participation by the non-certificated fixed VoIP service provider is strictly voluntary.” The sentence in the text at page 10 should either be deleted or revised to reflect COL 6. Further, the discussion on page 16 and COL 21 should be revised to delete reference to the assumptions regarding the regulatory classification of VoIP.

B. The Proposed Decision Must be Clarified to Ensure Consumer Complaints are Handled Effectively

The Proposed Decision acknowledges the Commission’s commitment to “public safety and consumer protection” and, to that end, adopts rules that “adequately protect all California

⁸ Proposed Decision at p. 10.

LifeLine participants” including rules regarding the resolution of customer complaints.⁹ The Proposed Decision anticipates that customer complaints might include disputes regarding almost any aspect of the LifeLine program and requires fixed-VoIP LifeLine providers to follow several existing complaint resolution processes.¹⁰ Joint Consumers agree that rules for VoIP participation must include a comprehensive and meaningful process to receive and resolve VoIP LifeLine customer complaints.

The Proposed Decision, however, is silent on the proper handling of a complaint from a customer with a bundle of services that includes fixed-VoIP LifeLine. Both the federal and state LifeLine rules require that LifeLine providers allow customers to subscribe to additional services, including bundles, to protect choice for low-income customers.¹¹ However, while acknowledging that providers may offer additional services such as long distance, custom calling services, and broadband as part of LifeLine package,¹² the Proposed Decision does not address how best to protect customers who sign up for these additional services at the same time as their LifeLine service if they have complaints about poor service quality or poor customer service. Carriers benefit from rules that support the sale of bundled services to LifeLine customers; therefore, these carriers must also be willing to comply with Commission regulations, including complaint handling practices, for this bundle of services. The *voice element* of the bundle should be viewed as the “driver” for applicable Commission protections and regulations.

⁹ Proposed Decision at p. 18.

¹⁰ Proposed Decision at p. 18-19.

¹¹ Proposed Decision at p. 14; See also, D.14-01-036 at p. 36, “All plans, including bundled service plans, promotional service plans, and family plans, that meet or exceed the minimum service elements and are consistent with California LifeLine rules shall be eligible for the California LifeLine discounts” 47 CFR §54.401.

¹² Proposed Decision at p. 15.

The rules should be amended to clarify that customers who purchase their California LifeLine service as part of a bundle will still have the option to use the listed complaint handling mechanisms in the Proposed Decision for all services within the bundle.¹³ Moreover, LifeLine customers of VoIP bundled services should also receive disclosure of complaint resolution information including the requirement that any resolution of these processes must comply with federal and state law.¹⁴ Joint Consumers also note that the requirement for VoIP providers to respond to data requests by Commission staff should specify that this requirement covers data regarding all services that are being marketed and/or sold as part of a LifeLine bundle including broadband.¹⁵

This Commission must craft these rules in the context of the other issues pending in this docket regarding treatment of bundled services, including customers' rights beyond complaint handling once they purchase a bundle.¹⁶ Joint Consumers proposed several protections for customers who purchase bundled services from VOIP LifeLine providers including a limitation to one-year term contracts to correspond to LifeLine eligibility determinations, billing protections that clearly show how the LifeLine discount is being applied across the bundle of services,¹⁷ and application of certain traditional voice-only rules such as rules protecting different payment methodologies, disconnection for nonpayment, and certain customer disclosures.¹⁸ Although the Proposed Decision attempts to present a comprehensive list of rules applicable to LifeLine VoIP providers, it does not address these proposals. Before it allows

¹³ See, FOF 10, COL 26 -29, OP 16.

¹⁴ Proposed Decision at p. 18.

¹⁵ Proposed Decision at p. 19; COL 29.

¹⁶ ALJ September 22, 2016 Ruling at 9.

¹⁷ This is particularly important now with changes in rules at the FCC level regarding subsidies for broadband and different rules applicable to broadband versus voice.

¹⁸ Joint Consumers' Opening Comments, April 4, 2015, at p. 19-20.

carriers to market bundles to vulnerable LifeLine providers, the Commission must ensure strong rules are in effect.

C. Rules Must be Revised to Prevent Potential for Redlining and other Forms of Discrimination in LifeLine Service Offerings

The draft rules require fixed-VoIP carriers to file a Tier 3 Advice Letter to demonstrate financial and operational fitness to offer service to California consumers. In the Advice Letter, companies must commit to, “provide California LifeLine fixed VoIP services throughout the designated service area(s).”¹⁹ As drafted, the rule appears only to require the provider to offer LifeLine to everyone in the area where the carrier has agreed to offer LifeLine. Therefore, the rule addresses the risk of discrimination against individual customers in a specific geographic area, but it does not go far enough to prevent discrimination and unfair marketing and sales tactics. These practices, if left unchecked, could result in geographic redlining of entire communities as well as the risk of creating service “deserts” where the carrier declines to offer its LifeLine services in isolated communities within the company’s larger serving area.

California Public Utilities Code §453 prohibits discrimination by public utilities.²⁰ The proposed rules should be revised to require a fixed-VoIP provider offer LifeLine services throughout its serving footprint in California in compliance with this statutory obligation. This requirement is critical to ensure that all customers of these fixed-VoIP providers have LifeLine as an option. It would be detrimental if a fixed-VoIP customer who finds themselves LifeLine

¹⁹ Proposed Decision at 12 and Ordering Paragraph 6.

²⁰ Pub. Util. Code §453: “(a) No public utility shall, as to rates, charges, service, facilities, or in any other respect, make or grant any preference or advantage to any corporation or person or subject to any corporation or person to any prejudice or disadvantage.” ... (c) No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.”

eligible--either because of a loss of a job or other changed circumstances or because they are just learning about the program—would not have LifeLine service as an option and might have to change carriers. Moreover, it is not unduly burdensome to LifeLine providers to offer the discounts throughout their service territory because the proposed required service elements and rules for fixed VOIP LifeLine closely match to the companies’ existing residential service offerings²¹ requiring participants only to apply a billing discount for LifeLine services. Any efforts or investment by VoIP providers to participate in the program, such as coming into compliance with service quality standards, complaint handling, and customer disclosure, as well as connections with the Third Party Administrator, likely would be very similar whether the carrier is planning to serve a hundred people or a thousand people. As such, the rules should be revised to require carriers to, “Commit to provide California LifeLine fixed-VoIP services throughout the company’s designated service area in California (identify service area- map, zip codes list, geographic area list).”

D. Proposed Decision Errs by Failing to Protect Consumers When VoIP Providers Exit the Market

The Proposed Decision includes a set of requirements to be met if a fixed VoIP LifeLine participant decides to withdraw from the program or transfer customers to another carrier. The loss of a LifeLine provider in the marketplace could have direct and significant impacts on vulnerable LifeLine customers. These negative impacts are especially troubling if the customers have limited options for LifeLine services or if the only options are services that are unaffordable or do not meet the customers’ needs.

²¹ Proposed Decision at p. 15.

Joint Consumers support the language in the Proposed Decision that is intended to give customers adequate notice of a carrier withdrawal or transfer. But notice is only useful if a customer can do something based on the information contained in the notice, such as shopping for a new carrier. It appears that the rules are written with the assumption that where a fixed-VoIP carrier withdraws from service there will be adequate customer choice to allow a LifeLine customer to quickly and easily find a substitute service that meets the customer's needs. But this should not be an unwritten assumption. The rules for both withdrawal of service and transfers should be revised to require the provider submitting the required Tier 2 Advice Letter to demonstrate that there are adequate options for impacted customers who will have to find new LifeLine services.²²

Further, the Proposed Decision should be revised to clarify that other Commission rules and statutory mandates regarding withdrawal of service continue to apply in addition to the rules set forth here. For example, under many circumstances involving a withdrawal or transfer of service, Public Utilities Code Section §§851 or 854 apply, giving the Commission authority to review the requested transaction. Further, the Commission has CLEC Exit and Mass Migration rules that might also be relevant to the situation where a fixed-VoIP carrier decides to exit the market.²³ The Commission should revise the rules proposed here to clarify that if withdrawal or transfer from the LifeLine program accompanies a withdrawal from the market all together, relevant requirements from state statutes, Mass Migration rules, and relevant General Orders will still apply.

²² This demonstration of alternatives can be limited to those areas of the company's service territory where it has existing LifeLine customers and not throughout its serving territory.

²³ See, D.06-10-021 addressing CLEC voluntary exits from the local exchange service market and D.10-07-024 (addressing CLEC involuntary exits and procedures for end user migrations).

III. CONCLUSION

Joint Consumers agree that LifeLine customers benefit from broad participation in the LifeLine program by providers using a variety of technology platforms. However, the Commission must have clear, comprehensive, and enforceable rules governing the participation of non-certificated carriers to ensure that the state's most vulnerable customers are protected. Joint Consumers support the Proposed Decision, with the minor changes discussed above. Moreover Joint Consumers urge the Commission to commit to monitoring the marketplace to ensure that these fixed-VoIP services are meeting the needs of California's LifeLine customers and supporting the program's universal service goals.

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Respectfully submitted,

/S/

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Appendix A

Changes to the text

Page 10

We recognize that Pub. Util. Code § 710 imposes limitations on the CPUC's ~~prohibits the CPUC from exercising~~ regulatory jurisdiction or control over VoIP services. In recognizing this limitation ~~prohibition~~, we do not mandate...

Page 12:

Commit to provide California LifeLine fixed-VoIP services throughout the company's designated service area(s) (identify service area - map, zip codes list, geographic area list);

Page 16:

Under the current and now effective statutory language of § 270, the Commission is authorized to disburse California LifeLine funds to entities that are not telephone corporations. ~~including non-certificated, fixed-VoIP service providers that voluntarily choose to provide California LifeLine services~~

Page 21 (Section 5.8):

Add sentence at end of section that states, "These rules are not intended to preempt or replace existing or future laws and regulations applicable to fixed-VoIP providers addressing the withdrawal of service or transfer of customers beyond the LifeLine program.

Conclusions of Law

21. Pub. Util. Code § 270(b) permits the Commission to disburse California LifeLine funds to entities that are not telephone corporations. ~~including non-certificated fixed-VoIP service providers that voluntarily choose to provide California LifeLine services.~~

26. Authorized California LifeLine fixed-VoIP providers should resolve any customer complaints, including complaints regarding any service sold as part of a LifeLine bundle, utilizing the Commission's Consumer Affairs Branch informal resolution process, the Administrative Law Judge Division's expedited complaint process, the Commission's formal complaint processes, and Safety and Enforcement Division's investigation process via an Order Instituting Investigation

29. Authorized California LifeLine fixed-VoIP providers should be required to respond to CD's data requests regarding any service sold as part of a LifeLine bundle or package of services, including phone bills and administrative expenses, written and verbal communications with consumers, business operations processes and methods, all aspects of enrollment processes and methods, California LifeLine related complaints and trouble tickets, privacy compliance with CPNI rules and breaches, and California LifeLine Program related usage/plan information.

Ordering Paragraphs

6. The provider's commitment to provide California LifeLine fixed-Voice over Internet Protocol services throughout the company's ~~designated~~ service area(s);

16. California LifeLine Fixed-Voice over Internet Protocol Providers without a Certificate of Public Convenience and Necessity shall provide complaint resolution information to their customers. Providers must use the following California Public Utilities Commission resolution processes to resolve consumer Complaints regarding any service sold as part of a LifeLine bundle or package of services.

19. A California LifeLine fixed-Voice over Internet Protocol Providers without a Certificate of Public Convenience and Necessity shall comply with this decision's requirements to withdraw California LifeLine service and/or to exit from the California LifeLine Program...

a) The California LifeLine Fixed-Voice over Internet Protocol Provider without a Certificate of Public Convenience and Necessity shall file a Tier 2 advice letter with the Communications Division and obtain approval prior to withdrawing any of its California LifeLine services and/or exiting from the California LifeLine Program. The Tier 2 advice letter shall identify the LifeLine providers and LifeLine service offerings in the areas where the company currently serves LifeLine customers and is requesting to withdraw.