



**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)

**REPLY COMMENTS OF COX CALIFORNIA TELCOM, LLC, DBA COX  
COMMUNICATIONS (U-5684-C) ON ASSIGNED COMMISSIONER AND  
ADMINISTRATIVE LAW JUDGE’S RULING REQUESTING COMMENTS ON  
WORKSHOPS AND FEDERAL COMMUNICATIONS COMMISSION’S THIRD  
REPORT AND ORDER, ISSUING DATA REQUESTS, DATED SEPTEMBER 22, 2016**

Pursuant to the Commission’s Rules of Practice and Procedure (“Rules”), and the Assigned Commissioner and Administrative Law Judge’s Ruling Requesting Comments on Workshops and Federal Communications Commission’s Third Report and Order, Issuing Data Requests, dated September 22, 2016 (“AC-ALJ Ruling”), Cox California Telecom, L.L.C., *dba* Cox Communications (U-5684-C) timely submits these reply comments.

**I. The Commission Should Prioritize Issues and Promptly Implement the FCC’s Rules.**

Unless the Federal Communications Commission (“FCC”) grants an extension, the new and modified federal Lifeline rules adopted in the FCC Lifeline Order<sup>1</sup> that have not already taken effect, will become effective on December 2, 2016. Based on a discussion at the workshop conducted on October 14, 2016 (“October Workshop”), Cox understands that the Commission will be filing a petition with the FCC requesting an extension of time to comply with the FCC rules concerning only eligibility criteria and the benefit portability freeze (“CPUC Petition”).

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<sup>1</sup> Lifeline and Link Up Reform and Modernization, WC Docket 11-42, *Third Report and Order, Further Report and Order and Order on Reconsideration*, 31 FCC Rcd 3962 (as amended) (hereafter “FCC Lifeline Order”).

Cox supports the Commission seeking this extension and remains hopeful that the FCC will act promptly to grant the Commission's petition well in advance of the December 2, 2016 deadline.

At this time we do not know how, when or if the FCC will act on such a request. If the FCC does not timely grant such petition or the pending petition of the United States Telecom Association ("USTA"), or alternatively, if the Commission does not align the California program with the FCC rules by December 2, 2016, then California LifeLine providers will need to continue to comply with California LifeLine rules and therefore will not be able to recover the federal benefit for some of their LifeLine customers. If this occurs, then the Commission must take steps<sup>2</sup> to either allow providers to increase the LifeLine rate for such LifeLine customers (enough to recover the discontinued federal benefit) or to enable the state LifeLine fund to reimburse providers for the federal benefit.<sup>3</sup>

Even if the FCC grants the CPUC Petition (or the USTA petition), the Commission still needs to act promptly to both prioritize consideration of issues directly related to implementing certain FCC rules and adopt a decision so that impacted stakeholders can commence their efforts to implement the new rules. As discussed at the October Workshop, the California LifeLine Administrator ("CLA") will need to modify its processes, California LifeLine providers will need to make multiple modifications to their processes (e.g. IT development to implement

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<sup>2</sup> If the Commission is required to take immediate action, Cox anticipates that an Assigned Commissioner's ruling will be issued *prior* to December 2, 2016, as there is not sufficient time for the Commission to adopt a decision at the November 10 meeting, with the understanding that the Commission will still need to ratify the findings in such ruling via a formal Commission decision adopted in December. See, Decision 06-11-017, Decision Ratifying The Assigned Commissioner's Ruling Temporarily Suspending Portions of General Order 153 Relating to the Annual LifeLine Verification Process.

<sup>3</sup> At a minimum, if the FCC does not timely grant the CPUC Petition (or the USTA petition), then the Commission will need to suspend rules in GO 153 and any applicable Commission decision that require California service providers to obtain and/or apply federal Lifeline support, or calculate LifeLine reimbursement claims based on federal LifeLine support that such providers are not eligible to obtain due to compliance with the California Lifeline program rules.

modified eligibility criteria, benefit portability freeze, de-enrollment requirements, and training for customer representatives, among others), and the CLA will need to conduct joint testing with the California LifeLine providers to ensure that all changes transition efficiently and without error. The CLA cannot implement new processes until *all* LifeLine service providers have conducted and completed joint testing with the CLA. The Commission should anticipate it will take a *minimum* of six months and could reasonably take up to nine months or more to implement new rules, depending on the number and complexity of the rule changes.

Additionally, customer education efforts will be critical to minimizing confusion and adverse impact on LifeLine customers and applicants. Customers impacted by modified eligibility criteria should be notified far enough in advance so they may make other arrangements (i.e. prepare to file income-based applications for instance).

In light of the anticipated length of the implementation period, and the numerous, complex, and often inter-related matters that need to be addressed, the Commission must address eligibility and benefit portability freeze issues first, followed by the other issues that will have the then-most imminent impact on LifeLine customers and applicants, as well as stakeholders. Opening comments make clear that issues related to the National Verifier, the role of the California LifeLine Administrator, revising the re-certifications process,<sup>4</sup> changes to definition of minimum communication needs, on-going availability and support for voice, and most broadband related issues<sup>5</sup> do not have immediate impact on consumers, the CLA or providers, and therefore, can and must wait to be considered. In fact, in some cases, the issues cannot be

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<sup>4</sup> Cox supports the Commission ensuring that the re-certification process is aligned with the federal process (i.e. aligning the renewal periods) and submits there is no need to otherwise modify the re-certification process at this time (i.e. to allow providers to complete the re-certifications for their customers).

<sup>5</sup> ORA Comments, p. 25.

fully vetted until other actions first occur (i.e. USAC releasing the plan on National Verifier, legislative changes to the Moore Act).

**II. Not Aligning with Federal Requirements will result in there being two Lifeline programs, which will be confusing to consumers, difficult to manage, create additional costs and undue burdens and possibly result in more than one LifeLine rate.**

Both ORA and Joint Consumers submit proposals that would result in California LifeLine rules diverging from the federal rules in numerous instances. For example, ORA proposes that the current public assistance programs be maintained until December 1, 2021.<sup>6</sup> ORA also proposes that California LifeLine subscribers enrolled under the California-specific income-eligibility criteria (between 135% - 150% of federal poverty level) be allowed to renew under such criteria (and some of these customers could renew for a period of two-years from their next re-certification date).<sup>7</sup> Similarly, Joint Consumers urge the Commission to maintain the status quo on eligibility criteria and to adopt a bridge plan.<sup>8</sup> Joint Consumers submit that there is no need to mirror the FCC's re-certification process.<sup>9</sup> And both ORA and Joint Consumers respectively recommend that the Commission adopt a benefit portability transfer rule that is distinct from the federal rule.<sup>10</sup>

The California LifeLine program is not completely independent of the federal program, nor should it be. By aligning the California LifeLine program rules with the federal program, California LifeLine customers enjoy the benefit of greater discounted service. Notably, ORA and Joint Consumers do not substantively address the multitude of issues that would need to be

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<sup>6</sup> Id., pp. 2, 11.

<sup>7</sup> Id., pp. 2, 10, 11.

<sup>8</sup> Joint Consumer Comments, p. 2, 3, 7.

<sup>9</sup> Id., p. 14.

<sup>10</sup> For example, ORA would have the freeze apply only to wireless carriers, and Joint Consumers would have the Commission adopt a different rule for voice services included in a bundled offering.

resolved as a result of the Commission adopting rules that diverge from the federal rules, nor do they show that their proposals are consistent with the Moore Act, necessary or outweigh the benefits that will result from having federal and state rules aligned.

**A. Not Aligning With Federal Requirements Will Have a Financial Impact on the California LifeLine Fund, the CLA and California LifeLine Service Providers.**

ORA and Joint Consumers advance proposals that, if adopted, would cause California LifeLine providers to forego otherwise available federal Lifeline support. As Cox and other carriers' comments highlight, if state and federal requirements differ, some existing California LifeLine customers and new applicants will not qualify for federal support, and thus, California LifeLine providers will not be eligible to receive federal Lifeline support for such customers. If this were to happen, then the Commission will be required to either (a) make such support available from the California LifeLine fund; or (b) permit California LifeLine subscribers not eligible for federal support to pay such amount (i.e. currently \$9.25) in addition to the otherwise applicable California LifeLine voice service rate. To effectuate this latter option, Cox agrees with AT&T that the Commission will be required to eliminate or temporarily waive the existing rule that allows LifeLine providers to change their LifeLine rates annually - on January 1 of each year.

Cox appreciates Joint Consumers recognizing this issue and proposing that the Commission allow service providers to recover the federal support amount from the California LifeLine fund.<sup>11</sup> To the extent the Commission deems it necessary and reasonable to have a rule that does not align with the FCC rule, then Cox agrees that allowing California LifeLine

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<sup>11</sup> Joint Consumers Comments, p. 2. However, Joint Consumers also contemplate that LifeLine subscribers will not be eligible for federal support and be required to pay the additional \$9.25 in lost federal support. *Id.*, p. 9.

providers to recover federal support from the California fund would have the least impact on LifeLine subscribers and create fewer problems because it will allow each provider to maintain a single LifeLine rate. However, in this case, as Joint Consumers point out, the Commission will be required to provide supplemental support for approximately 81,000 consumers that are currently enrolled under California-specific criteria<sup>12</sup> which equates to an additional \$9,000,000 annually in California LifeLine funding. This amount does not account for new subscribers enrolling under any California-specific criteria. Moreover, this amount does not include the unknown amount of implementation costs that carriers will incur and be reimbursed for in adhering to this and other requirement,<sup>13</sup> or the additional costs that the CLA would incur.

In addition to eligibility criteria, the Commission adopting rules related to re-certification, a benefit portability transfer freeze, and/or de-enrollment rules that do not align with the federal rules would likely result in California service providers not being eligible for federal support for impacted LifeLine customers. Other than Joint Consumers' comments noted above, none of the comments recommending that the Commission adopt rules that diverge from the federal rules address the loss of funding due to California-specific rules. The California LifeLine program is successful, in part, due to the availability of federal funding and the Commission should adopt rules to ensure such support remains available to California. With the LifeLine surcharge already set at just less than 5%,<sup>14</sup> the Commission should find that substantively increasing the size of the California LifeLine fund will not be equitable to non-LifeLine consumers.

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<sup>12</sup> Id., pp. 7-8

<sup>13</sup> See GO 153, Rule 9.2.1.

<sup>14</sup> See Resolution T-17519.

**B. Diverging from federal rules is not consistent with Section 885(b) and other Moore Act Requirements.**

Parties recommending that the Commission adopt California-specific requirements do not establish that their proposals are consistent with the Moore Act. While Cox agrees that the Commission should consider rules that will make LifeLine service available to as many eligible consumers as possible, it must also follow the Legislature's guidance on how to do so.

Section 885(b) directs the Commission to adopt rules to ensure receipt of any available federal funds. Parties proposing California-specific rules did not discuss this requirement. Similarly, Section 871.5 requires the Commission to adopt a funding mechanism that is equitable and in the public interest, among meeting other criteria. To comply with this requirement, the Commission should consider the burden of the LifeLine surcharge amount that non-LifeLine subscribers would be required to contribute to fund the LifeLine program for California-specific requirements (a burden that will add millions of dollars annually to the size of the fund). The Moore Act requires the Commission to strike a balance in addressing the needs of both LifeLine and non-LifeLine subscribers.

While it may result in a relatively small number of current LifeLine customers being transitioned off the California LifeLine program, aligning California rules with the FCC rules is consistent with the Moore Act to serve as many consumers as possible in an equitable manner. In adopting its modified eligibility criteria, the FCC gave serious consideration to comments advancing alternate proposals but ultimately adopted its rules to "improve the program for consumers, Lifeline providers, and other participants." In revising the list of eligible programs, the FCC "first look[ed] to the federal assistance programs *most used by low-income consumers* who enroll in the Lifeline program. In choosing to focus on the programs most utilized by Lifeline subscribers, we [FCC] will ensure continued access to Lifeline through well-established

and often-used avenues.”<sup>15</sup> Further, the FCC considered that the impact of eliminating state-specific criteria and recognized that a relatively small percentage of consumers eligible for federal support are enrolled in state-specific assistance programs.<sup>16</sup> The FCC also concluded it was best to rely “on highly accountable programs that demonstrate limited eligibility fraud, Lifeline will greatly reduce the potential of waste, fraud, and abuse occurring due to eligibility errors.”<sup>17</sup>

In making its determination, the FCC struck a balance between the need to keep costs of the fund down against providing as many consumers as possible with LifeLine service. The Moore Act requires the Commission to undertake the similar type of balancing, and in doing so, the Commission should conclude that aligning federal and state criteria is reasonable.

For the Commission to adopt rules that differ from the FCC, there would need to be a significant showing that California-specific rules are necessary to comply with the Moore Act, that such rules provide a substantive benefit to low-income subscribers without burdening consumers that pay surcharges which fund the California LifeLine fund, and such rules do not conflict with the FCC rules. ORA and Joint Consumers failed to make such a showing for any of their proposals.

**C. Proposals that do not align with federal rules are also not consistent with Sections 871.5 or 878.5.**

Section 871.5 requires the Commission to administer the California LifeLine program in a nondiscriminatory manner and without competitive consequences in the telecommunications industry, among meeting other criteria. Additionally, the Legislature recently adopted legislation

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<sup>15</sup> FCC Lifeline Order, ¶ 170. Emphasis added.

<sup>16</sup> Id., n. 437. Cox understands that 3.8% of current California LifeLine customers enroll under California-specific criteria.

<sup>17</sup> Id., ¶ 172.

that directs the Commission to adopt a benefit portability freeze by January 15, 2017. Both ORA and Joint Consumers recommend *against* the Commission adopting a benefit portability freeze that aligns with the FCC's rule. However, neither party establishes that their respective proposals are consistent with Sections 871.5 or 878.5.

For example, ORA proposes a benefit portability freeze applicable only to wireless carriers but it does not demonstrate that this proposal is reasonable or lawful.<sup>18</sup> Both the FCC's rule and recently enacted Section 878.5 require a single portability transfer freeze applicable to all LifeLine providers. Creating an exception for wireline carriers would disadvantage such carriers since they would not be in compliance with FCC rules, and thereby, may not be eligible to seek federal support for the given customers. As such, a wireless-specific portability freeze does not comply with either Section 871.5 or 878.5.

Moreover, as ORA points out not aligning with the federal rules for wireless carriers could mean that customers of some wireless carriers would have separate windows for transferring service.<sup>19</sup> However, the same would be true if the Commission did not adopt the same port freeze rule on *all* California LifeLine service providers. Rather than serve to harmonize California and federal rules, a portability freeze specific to only wireless carriers would be discriminatory, have competitive consequences for wireline LifeLine providers, be contrary to the FCC's rules and be incredibly difficult to operationalize.

Similarly, proposals that would increase the number of exceptions to the FCC's benefit portability freeze should be rejected. The proposed exceptions were not shown to be necessary<sup>20</sup>

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<sup>18</sup> ORA Comments, p. 21.

<sup>19</sup> *Id.*, p. 18.

<sup>20</sup> For example, Joint Consumers suggest that the Commission not subject LifeLine customers to the freeze if they wish to change to a less expensive plan. However, if there is alignment between federal and state program rules, then federal support will remain available and some LifeLine consumers will not be required to pay such amount as part of a LifeLine rate.

or consistent with federal law. For example, Joint Consumers ask the Commission to not subject California LifeLine customers subscribing to a bundle with voice service and broadband service (where both services are eligible for federal support) to the 12-month freeze adopted by the FCC. Joint Consumers would allow the customer “to break up their bundle.”<sup>21</sup> That approach is not consistent with the FCC’s rules or the terms on which bundled service offerings are generally available.<sup>22</sup> A California-specific port freeze that is not aligned with the FCC’s rule,<sup>23</sup> like the one proposed by Joint Consumers, would, require carriers to forego federal support, and thereby, the Commission should align its rules with the FCC’s rule.

Since the benefit portability freeze will impact LifeLine consumers in a new way, as discussed at the October Workshop, Cox supports the development of guidelines that California LifeLine service providers must follow to inform LifeLine applicants about the portability freeze, as well as the exceptions.

**D. Parties proposing California-specific rules do not address related operational requirements and resulting costs which would be recovered from the California LifeLine program fund.**

In addition to the problems already identified above, if the Commission does not adopt rules aligning with the federal program, the CLA and all California LifeLine providers will incur significant costs related to developing, implementing and maintaining systems and processes to administer the California-specific criteria and corresponding rules. The more exceptions to federal requirements that the Commission adopts will magnify costs that would need to be reimbursed, as well as the timeframe needed to implement such exceptions. Specifically, Cox understands that the CLA will be required to implement additional functionality at an additional

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<sup>21</sup> Joint Consumers Comments, p. 18.

<sup>22</sup> 47 C.F.R. § 54.411(a).

<sup>23</sup> See ORA Comments, pp. 22-23.

cost, and service providers will seek reimbursement of their implementation costs from the LifeLine fund.<sup>24</sup>

For example, any proposal that would create a group of “grandfathered customers” or California-specific customers necessitates, in operational terms, that California service providers and the CLA will need to develop, implement and maintain systems and processes for a relatively small subset(s) of LifeLine customers. Exceptions for grandfathered or California-specific customers in the context of eligibility criteria, re-certification process and timing, benefit portability freeze (including exceptions to the freeze), to name a few, will make administration of the California Lifeline program overly complex and very burdensome to implement and extremely costly to develop, implement and maintain.

### **III. Conclusion.**

For all the reasons set forth above, Cox recommends that the Commission promptly adopt rules to align California LifeLine eligibility requirements with the federal requirements, and to otherwise implement new and modified FCC Lifeline rules.

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Respectfully submitted,

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<sup>24</sup> GO 153, Rule 9.2.1.