STATE OF CALIFORNIA EDMUND G. BROWN JR., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

FILED
7-11-17
02:04 PM

July 11, 2017 Agenda ID #15845
Quasi-Legislative

TO PARTIES OF RECORD IN RULEMAKING 11-03-013:

This is the proposed decision of Commissioner Martha Guzman Aceves. Until and unless the Commission hears the item and votes to approve it, the proposed decision has no legal effect. This item may be heard, at the earliest, at the Commission's August 10, 2017 Business Meeting. To confirm when the item will be heard, please see the Business Meeting agenda, which is posted on the Commission's website 10 days before each Business Meeting.

Parties of record may file comments on the proposed decision as provided in Rule 14.3 of the Commission's Rules of Practice and Procedure.

/s/ DARWIN E. FARRAR
Darwin E. Farrar
Acting Chief Administrative Law Judge

EDF:lil

Attachment

Decision **PROPOSED DECISION OF COMMISSIONER GUZMAN ACEVES**
(Mailed 7/11/2017)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding Revisions to the California Universal Telephone Service (LifeLine) Program.	Rulemaking 11-03-013 (Filed March 24, 2011)

DECISION SUSPENDING LIFELINE ELIGIBILITY CRITERIA PROVISIONS OF DECISION 17-01-032 UNTIL THE LATER OF NOVEMBER 1, 2017 OR A FURTHER EXTENSION DATE GRANTED BY THE FEDERAL COMMUNICATIONS COMMISSION

Summary

This decision temporarily suspends portions of Decision 17-01-032 that revised LifeLine eligibility criteria for the California LifeLine Program (California LifeLine) until November 1, 2017. This does not suspend or alter the addition of the Veterans and Survivors Pension Benefit Program as a qualifying program for LifeLine eligibility to California LifeLine. This decision ratifies the May 24, 2017 Assigned Commissioners Ruling and extends the statutory deadline of this proceeding to October 23, 2017.

This proceeding remains open.

Procedural Background

On January 25, 2017, the California Public Utilities Commission (Commission) issued Decision (D.) 17-01-032 modifying California LifeLine to harmonize it with elements of the federal Lifeline program that changed as the result of the Federal Communications Commission's (FCC) *In the Matter of*

Lifeline and Link Up Reform and Modernization et al., WC Dkt. Nos. 11-42, 09-0197, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. April 27, 2016) (2016 Lifeline Modernization Order). D.17-01-032 addressed the reimbursement of service connection/activation charges for California LifeLine wireless telephone services, implemented a 60-day benefit portability freeze for California LifeLine, added a California LifeLine enrollment request freeze, and modified the California LifeLine eligibility criteria to harmonize with recently modified federal Lifeline eligibility criteria.

On May 24, 2017, the Assigned Commissioner issued an *Assigned Commissioner Ruling Notifying California LifeLine Providers of the California LifeLine Annual Income Limits and Specifying that Revised Eligibility Criteria Shall Become Effective November 1, 2017* (ACR). The ACR notified providers of the changes to the California LifeLine income limit. The ACR also specified that the changes to the eligibility criteria, made by D.17-01-032, would become effective on November 1, 2017 unless the Commission took subsequent action. Neither the ACR nor this decision makes any change to the addition of the Veterans and Survivors Pension Benefit Program that was adopted in D.17-01-032.[1]

Background

The Commission designed California LifeLine to ensure that high quality basic telephone service remains affordable for low-income Californians consistent with the Moore Universal Telephone Service Act (Moore Act). Public Utilities (Pub. Util.) Code Section (§) 871.7(a) specifically provides:

---

[1] D.17-01-032 added the Veterans and Survivors Benefit Program as a qualifying program for California LifeLine effective December 2, 2016.

> The Moore Universal Telephone Service Act, enacted in 1987, was intended to offer high quality basic telephone service at affordable rates to the greatest number of California residents, and has become an important means of achieving universal service by making residential service affordable to low-income citizens through the creation of a lifeline class of service.

Pub. Util. Code § 709 enjoins us to focus the Commission's efforts on affordability and availability, economic growth and investment, state-of-the-art services, bridging the digital divide, assuring competitive choices, and fair treatment of consumers regardless of telecommunications technologies.

The Commission consistently adopted policies to preserve consumer choice and reinforce the principles of competition, as well as to ensure just and reasonable prices for low-income households. California has the largest number of federal Lifeline participants of any state, representing approximately 17 percent of the nation's federal Lifeline subscribers.

Most California LifeLine participants receive both state and federal Lifeline support. Most California LifeLine landline and wireless telephone service plans combine both state and federal discounts. A California LifeLine participant gets minutes of use (unlimited incoming calls/outgoing local calls for landline; for wireless, at least 501 minutes for $5.75 in California LifeLine monthly support and at least 1,000 minutes for the full California LifeLine monthly support of $13.75) as a part of the California LifeLine minimum service elements. The participant may also get text and data from the California LifeLine service provider.

On December 1, 2016, the FCC granted in part and denied in part the Commission's request for a waiver of the December 2, 2016 effective date of the federal Lifeline program's eligibility criteria. As relevant here, the FCC granted the Commission until October 31, 2017 to implement the revised federal eligibility criteria and until June 1, 2017 to implement the federal benefit portability rules.[2]

Party Positions

On April 25, 2017, the assigned Commissioners issued a joint ruling advising parties of their intent to place a proposed decision delaying implementation of the revised eligibility criteria for California LifeLine until November 1, 2017, at the earliest. Parties were given the opportunity to file comments on the ruling. On May 1, 2017, the Office of Ratepayer Advocates (ORA); Cox California Telecom, LLC, DBA Cox Communications, (U-5684-C) (Cox); Tracfone Wireless, Inc. (U-4231-C) (TracFone); the Utility Reform Network; The California LifeLine Coalition (Telrite Corporation dba Life Wireless, i-wireless, LLC,Boomerang Wireless, LLC, TruConnect Communications, Inc., and AmeriMex Communications Corp. dba SafetyNet Wireless) (Wireless Coalition); the Center for Accessible Technology, and the Greenlining Institute ("Joint Consumers"); and Pacific Bell Telephone Company d/b/a AT&T California (U 1001 C), AT&T Corp. (U 5002 C),Teleport Communications America, LLC (U 5454 C), and AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U 3060 C), AT&T Mobility Wireless Operations Holdings, Inc. (U 3021 C), and Santa Barbara Cellular Systems, Ltd. (U 3015 C) (collectively referred to as "AT&T") filed comments on the joint ruling.

Tracfone opined that parties should have an opportunity to comment on a proposed decision to delay implementation and that the Commission should

[2] Because the FCC made clear that all states would be required to include the Veterans and Survivors Pension Benefit Program as a qualifying program for the federal Lifeline program by December 2, 2016, the Commission added the program and no changes to this addition are proposed by this decision.

avoid actions resulting in additional costs on carriers and consumers. Tracfone expressed concern that delay could result in the loss of the federal subsidy for some consumers. Cox asks the Commission to gather data and utilize it when proposing future changes and to do so promptly to avoid unnecessary disruption in the program. AT&T essentially focused on the effect of creating California-only eligibility criteria starting November 1, 2017 and did not comment on a delay of implementing the eligibility criteria prior to that time.

The Joint Consumers share the assigned Commissioners' concerns about the negative impact the more restrictive eligibility criteria will have on low-income Californians and current Program participants. The Joint Consumers support state-specific eligibility criteria in addition to the new set of federal criteria through at least November 1, 2017 and potentially beyond.

ORA supports delaying the implementation of eligibility changes to the California LifeLine because it would give the Commission time to evaluate the impacts of this change on low-income customers, on the Program participants and ratepayers. ORA further asserts that delaying implementation will allow the Commission time to determine how to restructure California LifeLine so that the Commission continues to fulfill its statutory duty of providing low-income households access to the California LifeLine.

Revised Eligibility Criteria

The 2016 Lifeline Modernization Order revised the federal lifeline eligibility criteria to remove these federal assistance programs:

- Low-Income Home Energy Assistance Program (LIHEAP),
- National School Lunch Program (NSLP), and
- Temporary Assistance for Needy Families (TANF).

The FCC also removed state-specified eligibility criteria, but added the Veterans Pension benefit or Survivors Pension benefit as a qualifying program for federal Lifeline eligibility. The FCC revised 47 CFR § 54.409 (a)(2) to read:

> The consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from one of the following federal assistance programs: Medicaid; Supplemental Nutrition Assistance Program; Supplemental Security Income; Federal Public Housing Assistance; or Veterans and Survivors Pension Benefit.

The FCC amended the income-based criterion for eligibility by aligning the federal Lifeline program with the Internal Revenue Service's definition of gross income in determining whether the household was at or below 135 percent of the Federal Poverty Guideline (FPG). The Commission petitioned for a Temporary Waiver to implement the changes regarding federal lifeline eligibility criteria and the 12-month broadband portability freeze for Broadband Internet Access Service (BIAS). As relevant here, the FCC granted the Commission until October 31, 2017 to implement the revised federal eligibility criteria. However, the FCC required all states to include the Veterans and Survivors Pension Benefit Program as a qualifying program for the federal Lifeline program by December 2, 2016.

D.17-01-032 revised California LifeLine eligibility criteria as follows:

- Adopted the federal definition for income 47 CFR § 54.400(f) - "Income" as gross income as defined under Internal Revenue Code, 26 USC § 61, for all members of the household. This means all income actually received by all members of the household from whatever source derived, unless specifically excluded by the Internal Revenue Code, Part III of Title 26, 26 USC §101 et seq.;

- Adopted the Veterans and Survivors Pension Benefit program and add it to the list of qualifying public assistance programs for California LifeLine as of December 2, 2016, General Order (GO) 153 § 5.1.5;
- Removed Section 8, LIHEAP, TANF, California Work Opportunity and Responsibility to Kids (CaLWORKs), Stanislaus County Work Opportunity (StanWORKs), Welfare-to-Work (WTW), Greater Avenues for Independence (GAIN), National School Lunch Program (NSLP), Women, Infants and Children Program (WIC), and Healthy Families Category A from the list of qualifying public assistance programs for California LifeLine, GO 153 § 5.1.5;
- Adopted the income-based criterion, which requires a household income to be at or below 135 percent of the FPG for the corresponding household size;
- Communications Division (CD) ceased annual adjustment of the California LifeLine income limits for inflation based on the Federal Consumer Price Index - Urban Areas; and
- CD is no longer required to provide California LifeLine service providers notice of changes to the California LifeLine income limits, but may, at its discretion, publish an administrative letter to provide notice of changes to the California LifeLine income limits.

The Commission directed CD to work with California LifeLine Service Providers and the California LifeLine Program Administrator (Program Administrator) to develop administrative guidelines implementing the changes to the eligibility criteria.

Discussion

CD, the California LifeLine service providers, and the Program Administrator have been focused on planning and implementing the two new types of freezes (benefit portability and enrollment) for California LifeLine. The Commission recently adopted Resolution T-17564, which ordered staff to implement both freezes by June 1, 2017. The commitment to implement both freezes to meet this deadline necessitated a reallocation of resources away from implementing the more restrictive eligibility criteria. Therefore, staff and the Program Administrator need sufficient time to implement the changes to the eligibility criteria.

For decades, California LifeLine enabled consumers to freely select their California LifeLine service providers and submit requests to participate in California LifeLine without restrictions. Given the significant departure from these decades-long California LifeLine policies and the millions of consumers who will be affected by the two new Program freezes, staff and the Program Administrator anticipate an increased volume in contacts with LifeLine participants. Delaying the implementation of the more restrictive eligibility criteria will help to alleviate the strain on the Consumer Affairs Branch and the Program Administrator call center resources. Giving them more time to cope with the anticipated surge in demand for their assistance will better prepare them when the restrictive eligibility criteria take effect.

Approximately 81,395 California LifeLine subscribers may become ineligible for California LifeLine service as a result of the more restrictive eligibility criteria. Given that the FCC granted California's request to temporarily delay implementation until November 1, 2017, there is no reason to put California LifeLine access at risk for these low-income Californians. The Commission can use the intervening time to further evaluate the feasibility of offering a more inclusive program to serve those who fall in between the eligibility gaps of the revised federal program. In addition, the FCC may further California requests to delay implementation beyond November 1, 2017.

This decision makes no change to the addition of the federal Veterans and Survivors Pension Benefit Program. In addition, this decision simply delays implementation of the revised eligibility criteria at least until the later of

November 1, 2017 or a later implementation date granted by the FCC.

Extension of Statutory Deadline

For cases filed prior to January 1, 2016, Pub. Util. Code § 1701.5(a) provides that ratesetting cases must be resolved within 18 months of the date the scoping memo is issued unless the Commission makes findings why that deadline cannot be met and issues an order extending the 18-month deadline for a period not exceeding 60 days.[3] On December 24, 2017, an *Amended Scoping Memorandum and Ruling of the Assigned Commissioner and Presiding Officer's Ruling* was issued. The statutory deadline of June 24, 2017 was extended by D.17-06-019 to August 23, 2017.

This decision places substantive issues of the eligibility criteria before the Commission. In order to provide the parties sufficient time review the final decision and time to exercise their due process rights should they so desire, an extension of time is necessary. The assigned Commissioners also intend to issue a Scoping Memorandum shortly, setting forth the scope of issues and procedural schedule for this rulemaking. Therefore, a 60-day extension of the statutory deadline, until October 23, 2017, is necessary.

Comment on Proposed Decision

The proposed decision of the Assigned Commissioner Guzman Aceves was mailed to the parties in accordance with § 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on_____. Reply comments were filed on _______.

---

[3] This proceeding was filed on March 24, 2011.

Assignment of Proceeding

Commissioner Martha Guzman Aceves is the assigned Commissioner for non-voice over internet protocol California LifeLine issues and Katherine Kwan MacDonald is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Order Instituting Rulemaking Regarding Revisions to the California Universal Telephone Service (LifeLine) Program 11-03-013 was filed on March 24, 2011.

2. On April 27, 2016, the FCC issued its 2016 Lifeline Modernization Order, FCC 16-38, making significant changes to the federal Lifeline program.

3. On January 16, 2014, the Commission modified the Program by adopting California LifeLine wireless telephone service elements for the first time in D.14-01-036.

4. On May 24, 2017, the assigned Commissioners issued *Assigned Commissioner Ruling Notifying California LifeLine Providers of the California LifeLine Annual Income Limits and Specifying that Revised Eligibility Criteria Shall Become Effective November 1, 2017.*

5. In 2004, California designed its own eligibility determination and enrollment process as required by the FCC.

6. In 2005, the Commission transferred the responsibilities for eligibility determination and enrollment process from the California LifeLine service providers to a third-party administrator.

7. The 2016 Lifeline Modernization Order revised the eligibility criteria for federal Lifeline by removing LHIEAP, NSLP, and TANF. The FCC also removed state-specified eligibility criteria, but added the Veterans and Survivors Pension Benefit Program as a qualifying program.

8. The Commission filed with the FCC a Petition for Temporary Waiver to implement changes regarding the federal Lifeline eligibility criteria and the 12-month benefit portability freeze for BIAS.

9. The FCC granted in part and denied in part the Commission's Petition for Temporary Waiver to implement the changes regarding the federal LifeLine eligibility criteria and the 12-month benefit portability freeze for BIAS.

10. The statutory deadline for resolving this ratesetting proceeding was extended by D.17-06-017 to August 23, 2017.

11. A 60-day extension, until October 23, 2017, of the statutory deadline is necessary to provide sufficient time for to issue a final decision and provide for due process rights.

Conclusions of Law

1. The Moore Act was intended to offer high quality basic telephone service at affordable rates to the greatest number of California residents, and has become an important means of achieving universal service by making residential service affordable to low-income citizens through the creation of a lifeline class of service.

2. Pub. Util. Code § 709 enjoins us to focus the Commission's efforts on affordability and availability, economic growth and investment, state-of-the-art services, bridging the digital divide, assuring competitive choices, and fair treatment of consumers regardless of telecommunications technologies.

3. The Commission should delay implementation of the revised eligibility criteria removing LHIEAP, TANF, CalWORKS, StanWORKS, WTW, GAIN, NSLP, WIC, and Healthy Families Category A from the list of qualifying programs to the California Lifeline at least until the later of November 1, 2017 or a further extension date granted by the FCC. If a further extension is requested

by California and granted by the FCC, a notification will be sent to the service list for this proceeding with the extension date.

4. The Commission should delay implementation of the revised the income-based criterion, which requires a household to be at or below 135 percent of the FPG for the corresponding household size at least until the later of November 1, 2017 or a further extension date granted by the Federal Communications Commission.

5. The Commission should provide CD staff with the discretion to work with the stakeholders, California LifeLine service providers, and the Program Administrator to implement the changes adopted by this Decision.

6. The Commission should monitor the impact of our new eligibility rules and those newly adopted by the FCC on California LifeLine participants and service providers.

7. Pursuant to the Commission's authority under Pub. Util. Code § 1701.5(a) the statutory deadline should be extended for a period of 60 days beyond the August 23, 2017 deadline to October 23, 2017.

O R D E R

IT IS ORDERED that:

1. Implementation of the revised eligibility criteria removing Low-Income Home Energy Assistance Program, National School Lunch Program, Temporary Assistance for Needy Families, California Work Opportunity and Responsibility to Kids, Welfare to Work, Greater Avenues for Independence, National School Lunch Program, Women, Infants, and Children Program, and Healthy Families Category A from the list of qualifying programs to the California LifeLine

Program shall be delayed at least until the later of November 1, 2017 or a further extension date granted by the Federal Communications Commission.

2. Implementation of the revised the income-based criterion, which requires a household to be at or below 135 percent of the Federal Poverty Guideline for the corresponding household size shall be delayed at least until November 1, 2017.

3. The statutory deadline in this proceeding, August 23, 2017, is extended until October 23, 2017.

4. Rulemaking 11-03-013 remains open.

This order is effective today.

Dated ______________________________, at San Francisco, California.