

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking Regarding  
Revisions to the California High Cost Fund  
B Program.

R.09-06-019  
(Filed January 18, 2009)

**OPENING COMMENTS  
OF THE DIVISION OF RATEPAYER ADVOCATES ON  
ASSIGNED COMMISSIONER'S AMENDED SCOPING MEMO  
AND SOLICITATION OF COMMENTS REGARDING REVISIONS  
TO "BASIC TELEPHONE SERVICE" REQUIREMENTS**

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## I. INTRODUCTION AND SUMMARY

Pursuant to the Assigned Commissioner's Amended Scoping Memo and Solicitation of Comments regarding revisions to the "Basic Telephone Service" requirements issued May 10, 2010 (ASM), the Division of Ratepayer Advocates (DRA) respectfully submits these Comments.

In Decision (D).96-10-066, the Commission adopted a comprehensive definition of "basic telephone service" in the context of traditional incumbent local exchange circuit-switched wireline service. In the ASM, the Commission amended the scope of Rulemaking (R.)09-06-019 and R.06-05-028 and directed that all issues relating to the revisions in the definition and requirements of "basic telephone service" shall be addressed in R.09-06-019.<sup>1</sup> Specifically, the ASM requests comments on revisions to the definition and requirements of "Basic Telephone Service" (as set forth in the "Straw Proposal") to reflect (a) the diversity of available telephone service technologies and (b) the minimum fitness standards applicable to prospective service providers seeking to qualify for B-Fund or LifeLine support payments.<sup>2</sup>

DRA applauds the Commission for heeding various parties' Comments regarding the efficiencies of a comprehensive review of the definition of "basic service," in contrast with the previously-contemplated redefinition solely for the purpose of conducting a pilot reverse auction. As DRA has already explained in this docket, its predecessor docket, and the Public Purpose Programs docket (R.06-05-028), a reverse auction is both inappropriate and unworkable.

Nonetheless, the Commission must undertake a comprehensive relook at the definition of what constitutes "basic service" to accommodate differing technologies' ability to offer LifeLine service to their customers. Legitimate reasons may exist for

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<sup>1</sup> ASM at 2, 4. In R.06-05-028, the Commission reviewed the telecommunications public policy programs, including the California LifeLine Program (LifeLine). In R.09-06-019, the successor proceeding to R.06-05-028, the Commission explored ways to reform and update the California High-Cost-B Program (B Fund) to ensure availability of "basic telephone service" for customers residing in designated high-cost regions.

<sup>2</sup> See ASM, Attachment A at 2.

different “basic service” definitions to accommodate the capabilities of the various technologies. What is crucial here, however, is that the Commission not degrade the current definition for wireline service in order to shoehorn in other technologies.

## **II. DISCUSSION**

### **A. Revisions to the Existing 17 Elements Defining “Basic Service” for Wireline and Wireless Service Providers**

Through enactment of Public Utilities (P.U.) Code Section 871.7(d), the Legislature directed the Commission to consider the following factors regarding the “feasibility” of redefining universal telephone service: (i) technological and competitive neutrality; (ii) equitable distribution of the funding burden; and (iii) benefits that justify the costs.<sup>3</sup> In D.96-10-066, the Commission established similar factors in determining whether a communications service should be added or deleted from “basic service.”<sup>4</sup>

While DRA still believes that the Commission should undertake further consideration of “basic service” revisions in R.06-05-028, where the Commission is addressing other LifeLine program reforms, and disagrees with the ASM that a reverse auction is an “appropriate goal,”<sup>5</sup> DRA generally supports the ASM’s stated goal of competitive neutrality for “basic service.” The Commission, however, should not diminish consumers’ current levels of basic service in the name of “competitive neutrality.” DRA’s recommendations below reflect the goals of maintaining or improving the current level of service and being technology neutral to the extent possible while ensuring that the B Fund and LifeLine programs meet consumers’ needs.

#### **1. Provision of “local exchange” service**

One of the most crucial characteristics of this element of basic service is a customer’s ability to make and receive local, single-party calls. “Two-way voice” seems to be much broader and cover all existing voice technologies. All service providers

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<sup>3</sup> See Comments of the Division of Ratepayer Advocates on the Order Instituting Rulemaking on Telecommunications Public Policy Programs (filed in R.06-05-028, 7/28/2006) at 24.

<sup>4</sup> D.96-10-066, Appendix B, § (4)(D)(3).

<sup>5</sup> ASM at 3.

should be able to comply with this requirement in either the same or a “functionally equivalent” manner regardless of a provider’s business model or technical network architecture. DRA thus agrees with the ASM’s tentative conclusion.

## **2. Access to all interexchange service providers offering service in a local exchange**

The proposed language appears to be designed to achieve technological neutrality and, as such, is acceptable to DRA. As the ASM notes, the federal and state requirements for equal access arose in world where “local” service was not bundled with “long distance” service. In that environment, these rules guaranteed that customers would be able to use the long distance service provider of their choice without dialing extra digits or being forced to use the long distance provider their local service provider had chosen.

However, today’s market choices for these services are substantially different for customers of wireless and Voice over Internet Protocol (VoIP) services. Customers understand that if they select a particular wireless service provider, e.g. AT&T, Verizon, or Sprint, their calls will automatically be delivered to that wireless service provider’s network. Also, the distinction between “local” and “long distance” calls is increasingly irrelevant; many plans offer buckets of minutes regardless of where one uses them, others offer unlimited plans on the same basis, and wireless “local calling areas” can be the size of several states. While it makes sense to keep the equal access requirement for wireline service providers, it does not make sense for wireless or VoIP. As DRA has noted in prior Comments, it may be necessary to have slightly differing definitions of “basic service” in order to accommodate the differing technological capabilities.

## **3. Ability to place calls**

DRA recommends that this element of basic service should apply to all service providers, and therefore supports the ASM’s tentative conclusion. As a practical matter, *every* communications technology should provide this functionality in any event.

#### **4. Ability to receive “free” unlimited incoming calls**

The ASM correctly points out that many wireless providers’ calling plans do not offer “free” or “unlimited” incoming calls;<sup>6</sup> rather, they count against a customer’s bucket of calling plan minutes, although some of the unlimited calling for a flat fee wireless plans are functionally equivalent to the wireline requirement. Customers have come to expect free unlimited calls as part of basic service and need a sufficient amount of free incoming minutes to prevent diminution of basic service. Although DRA does not yet have a specific recommendation as to what number of minutes would be sufficient, it is an important question to resolve, and DRA may address it in Reply Comments.

#### **5. “Free” touch tone dialing**

The proposed language appears to be acceptable and designed to achieve technological neutrality. DRA has no additional recommendation for this element of basic service at this time, but may reply to other parties’ Comments.

#### **6. Unlimited access to emergency services (911/E911)**

DRA supports retaining this element of basic service. The access to emergency service that landlines deliver is the gold standard for safety and reliability. DRA understands that the FCC has mandated specific 911/E911 compliance requirements for wireless and “interconnected” VoIP providers, which are the same requirements that providers must satisfy to meet the Commission’s requirements of basic service.<sup>7</sup> Recently, the FCC also has taken steps to impose E911 obligations on providers of “interconnected” VoIP services.<sup>8</sup> However, because VoIP service works differently from traditional phone service, providers should inform VoIP consumers that VoIP 911 service may also work differently from traditional 911 services. For instance, VoIP 911 calls may not connect to Public Safety Answering Point (PSAP), and VoIP 911 service may

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<sup>6</sup> *Id.*, Attachment A at 4.

<sup>7</sup> *Id.* at 5. See FCC Public Safety and Homeland Security Bureau, 9-1-1 Service, <http://www.fcc.gov/pshs/services/911-services/Welcome.html>

<sup>8</sup> See FCC Public Safety and Homeland Security Bureau, Voice over Internet Protocol (VoIP) and 911, <http://www.fcc.gov/pshs/services/911-services/voip/Welcome.html>

not work during a power outage or when the Internet connection fails or becomes overloaded.

There is no substitute for 911 and especially for E911 basic service. Therefore, DRA supports the ASM's tentative conclusion to require that any wireless and VoIP service providers must satisfy the mandated compliance requirements for free and unlimited access to emergency services *at least* at the level mandated by the FCC and in R.07-04-015.<sup>9</sup>

**7. Access to local directory assistance and access to foreign “Number Plan Areas” (NPAs)**

The proposed language appears acceptably designed to achieve technological neutrality. DRA believes that Directory Assistance is needed to maintain basic service levels. However, most service providers offer local and/or national Directory Assistance services. The relevance of the “geographical area” language in the current definition actually relates to the non-charged Directory Assistance call allowance which the Commission formerly mandated. DRA has no additional recommendation for this element of basic service at this time, but may reply to other parties' Comments.

**8. Lifeline rates and charges for eligible customers**

DRA agrees with the ASM's tentative conclusion, as any Carrier of Last Resort (COLR) must offer Lifeline rates and services.<sup>10</sup> The Commission's consideration of Lifeline rates, subsidy issues, and modifications to the Lifeline Program is best addressed in R.06-05-028.

A threshold issue regarding the expansion of the Lifeline program is whether the Commission can legally add wireless and VoIP providers to the program under the Moore Universal Telephone Service Act (the Moore Act), P.U. Code section 871 *et seq.*, and the Commission's regulations for the program set forth in General Order (G.O.) 153.

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<sup>9</sup> ASM, Attachment A at 5.

<sup>10</sup> The ASM does contain a technical misstatement: the current LifeLine program does not explicitly exclude wireless service providers from offering LifeLine service; it is that the wireless service providers' business models generally do not conform to the current wireline-centric definition.

DRA will address this issue in full detail in R.06-05-028, but notes here that while adding these additional services to the LifeLine program is consistent with the legislative intent behind the Moore Act, the Commission should take appropriate action to ensure that the legislature amends the Moore Act so that it clearly reflects the current telecommunications environment.

Originally enacted in 1987, the Moore Act’s purpose is to provide low-income households in California with access to affordable basic residential telephone service. Because wireline service was the prevalent technology in the late 80s, the statute refers to “residential” service throughout. It does not specifically mention wireless or VoIP service. However, P.U. Code section 871.7(b) contemplates the advent of new technologies,<sup>11</sup> and the legislature expressly urged the Commission to initiate a proceeding to expand the reach of LifeLine service (section 871.7(c)).<sup>12</sup> Pursuant to section 871.7(d)(1), the LifeLine program also must be technologically neutral.<sup>13</sup>

In sum, the Moore Act does not state that wireline service providers are the only providers that can provide LifeLine service. However, DRA recommends that the statute be amended to include wireline, wireless, and VoIP service providers to ensure a seamless, statutorily-explicit expansion of the LifeLine program. DRA looks forward to providing more extensive comments on this issue in R.06-05-028.

## **9. Customer choice of flat or measured service**

The ASM proposes that, to be competitively neutral, the Commission must modify the basic service definition to eliminate the requirement of unlimited incoming calls at a “flat rate” within a “local exchange.”<sup>14</sup> Yet customers have come to expect a choice of

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<sup>11</sup> See P.U. Code § 871.7(b) (“Factors such as competition and technological innovation are resulting in the convergence of a variety of telecommunications technologies offering an expanded range of telecommunications services to users that incorporate voice, video, and data.”)

<sup>12</sup> See *id.* § 871.7(c) (“It is the intent of the Legislature that the commission initiate a proceeding investigating the feasibility of redefining universal telephone service by incorporating two-way voice, video, and data service as components of basic service.”)

<sup>13</sup> See *id.* § 871.7(d)(1) (defining the term “feasibility” as, *inter alia*, “consistency with. . . technological and competitive neutrality”).

<sup>14</sup> ASM, Attachment A at 7.

flat or measured rate service, at least for wireline customers. Since some wireless providers currently offer unlimited calling plans, which are functionally equivalent to wireline flat rate service, there is a precedent for non-wireline service providers to be able to comply with this requirement.<sup>15</sup> Additionally, since many wireless calling plans are functionally “measured” service, wireless service providers should not have a problem with this aspect of the requirements. However, wireless “measured” service is unlikely to be functionally equivalent to the current wireline call allowance/ZUM zones 1-3 rate structure. DRA therefore recommends that the Commission retain this requirement.

**10. Free provision of one directory listing per year as provided for in D.96-02-072**

DRA supports the ASM’s conclusion that “[t]here is a public value in customers generally being able to locate phone numbers of residences and businesses in a telephone directory.”<sup>16</sup> Wireless and VoIP companies generally do not publicize their customers’ telephone numbers in directory listings. However, it is important to maintain this element of basic service for people who rely on print directories. As stated in the ASM, service providers that do not engage in publishing directories of telephone subscribers may enter into agreements with an incumbent local exchange carrier (ILEC) or other directory publishers to include their customers’ listing information, should a customer desire to be included in the printed directory. DRA therefore supports the ASM’s tentative conclusion, and agrees that this listing service should be free to the customer.

**11. “Free” white pages telephone directory**

Similar to the discussion under element #10 above, this element of basic service is important to maintain for people who rely on print directories and it should remain free to maintain current levels of basic service. Wireless and other residential telephone service providers that do not engage in publishing directories of telephone subscribers may enter into agreements with an ILEC or other directory publishers to obtain White Pages for

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<sup>15</sup> DRA does not have a specific recommendation as to what constitutes a reasonable allowance of minutes, short of an unlimited calling plan, but may address this question in Reply Comments.

<sup>16</sup> ASM, Attachment A at 8.

their customers.<sup>17</sup> DRA agrees with the ASM’s tentative conclusion to maintain this requirement, including customers not being charged for directories. One option the Commission could consider is to retain the requirement, but also permit customers to “opt out” of receiving printed directories if the customer does not want one.

**12. Access to operator services**

DRA supports the ASM’s tentative conclusion that the Commission should continue to require this element in the definition of “basic service” without change.

**13. Voice grade connection to public switched telephone network**

DRA supports the ASM’s tentative conclusion that the Commission should retain this element without change.

**14. “Free” access to 800 or 800-like toll-free services**

DRA supports the ASM’s tentative conclusion that this requirement should be retained as an element of basic service.<sup>18</sup> Often wireless companies charge for 800 calls and/or subtract the time from a customer’s monthly minutes. Similar to element #4, customers have come to expect these calls to be free, and it would diminish current basic service levels if wireless companies do not provide toll free access or count these calls against the customer’s allowance of minutes. All service providers should provide this element for safety and economic reasons.

**15. One-time free blocking for information services and one-time billing adjustments for charges incurred inadvertently, mistakenly, or without authorization**

DRA supports the ASM’s tentative conclusion that the “general protections that this service offers continue to be relevant.”<sup>19</sup> The Commission should retain this requirement.

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<sup>17</sup> *Id.* at 9.

<sup>18</sup> *Id.* at 10.

<sup>19</sup> *Id.*

**16. Access to telephone relay service as provided for in P.U. Code Section 2881**

Access to telephone relay service must continue to be available by any and all phone service providers to meet the needs of the deaf or hearing impaired. DRA disagrees with the ASM that “it is redundant to list” relay service as an element of basic service.<sup>20</sup> Pursuant to P.U. Code section 2881(f), the relay requirement only applies to “telephone corporations” subject to the Commission’s jurisdiction.<sup>21</sup> The Commission should keep this requirement as an explicit component of basic service, so that all providers – including those other than “telephone corporations” -- must provide access to telephone relay service to their customers.

**17. Free access to customer service for information about Universal LifeLine Telephone Service (ULTS) service activation, service termination, service repair and bill inquiries**

DRA supports the ASM’s tentative conclusion that the Commission should retain this element of basic service. Free access to customer service for information about the above-referenced services should be a required element of basic service.

**B. Comments on Minimum Fitness Standards for Wireless and Non-Certificated Entities (including VoIP Providers)**

The Commission should ensure that service quality and minimum fitness standards for wireless and non-certificated entities are comparable to wireline standards so that all customers can choose among a variety of high quality telecommunications services. Currently, wireless registrants only provide the Commission with limited contact information, and VoIP providers are not subject to any Commission-mandated minimum requirements regarding fitness to provide COLR service.<sup>22</sup> Minimum standards should include provision of enhanced 911, live customer service, technical expertise to operate

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<sup>20</sup> *Id.* at 10.

<sup>21</sup> *See* P.U. Code § 2881(f) (“The commission may direct any telephone corporation subject to its jurisdiction to comply with its determinations and specifications pursuant to this section.”)

<sup>22</sup> ASM, Attachment A at 11.

as a communications service provider, and the use of backup power supplies.<sup>23</sup> Thus, DRA generally supports the ASM's recommendation that, if the Commission expands eligibility for B-Fund and/or LifeLine support payments to include wireless and/or VoIP providers, the Commission should also expand existing service quality and fitness standards to accommodate these categories of service providers.<sup>24</sup>

**C. Comments on Service Quality and Consumer Protection Standards for Non-URF ILECS, LECS, CLECS, Wireless, and Non-Certificated Entities (including VoIP Providers)**

DRA recommends that the following minimum service quality standards should apply for intermodal service providers seeking to offer basic service and/or seeking Commission support either through the B-Fund program or the LifeLine program.

**1. Service quality requirements for wireline and CLECs**

Wireline service providers and competitive local exchange carriers (CLECs) that wish to offer basic service and/or seek Commission support either through the High Cost Fund B program or the LifeLine program must adhere to the G.O. 133-C service quality standards for General Rate Case (GRC) ILECs.

**2. Annual outage reporting for wireless and VoIP**

Designated service providers must submit an annual outage report that provides detailed information on any outage lasting at least 30 minutes and potentially affecting 10% of their customers in a designated service area.

**3. Operator answering standards for wireless and VoIP**

G.O. 133-C specifies operator answering standards for the ILECs subject to the Uniform Regulatory Framework (URF). The Commission should extend comparable

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<sup>23</sup> See, e.g., Comments of the Division of Ratepayer Advocates in Response to Assigned Commissioner's Ruling Soliciting Comments on Reverse Auction Design Issues and Denying Motion of TURN (6/24/2008) at 5-10.

<sup>24</sup> ASM, Attachment A at 11.

rules to all wireline service providers, as well as to wireless and non-certificated entities, such as VoIP service providers that wish to offer basic service and/or seek subsidy support either through High Cost Fund B program or the LifeLine program.

DRA recommends that the following Operator Answering Requirements apply to wireless and VoIP:<sup>25</sup>

- Description. A measurement of time for the operator to answer within 60 seconds 80% of calls to the carrier for billing and non-billing inquiries, and for trouble reports. This measurement excludes any group of specialized business account representatives established to address the needs of a single large business customer or a small group of such customers. A statistically valid sample of the answering interval is taken to obtain the percentage of calls answered within 60 seconds. A customer must be presented with the option on an interactive voice response (IVR) or automatic response unit (ARU) system to speak with a live agent, preferably in the first set of options.
- Measurement. An average answer time of a sample of the answering interval on calls to the carrier that is representative of the measurement period.
- Minimum Standard Reporting Level. 80% answered within 60 seconds when speaking to a live agent or 80% answered within 60 seconds when speaking to a live agent after completing an IVR or ARU system. If measurement data of average answer time is used, it will be converted to the percent answered within 60 seconds.
- Reporting Unit. Each traffic office serving the designated territory.
- Reporting Frequency. Compiled quarterly and reported annually on February 15 for percent answered within 60 seconds.

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<sup>25</sup> These requirements are based on the current G.O. 133-C requirements, but G.O 133-C currently does not include any operator answering requirements for wireless and VoIP.

#### **4. Maps of service territory**

In order to create technological neutrality that provides comparable service quality protections, wireless service providers need to provide detailed street level coverage maps or guarantee coverage in their designated service areas.

#### **5. Complaint reporting**

Intermodal service providers seeking to offer basic service, and seeking Commission support either through the B-Fund program or the LifeLine program, should provide to the Commission statistics on complaints filed with the service provider on the following:

- Total number of subscribers
- Total number of complaints
- Number of specific complaint types, including
  - a. Billing disputes
  - b. 1<sup>st</sup> party cramming
  - c. 3<sup>rd</sup> party cramming
  - d. Service quality
  - e. Dead zones/dropped calls

#### **6. Third party billing block option**

In addition, DRA recommends that the Commission require all communications service providers to provide customers the cost-free option to block Third Party Billing at any time. Service providers seeking to offer basic service and seeking subsidy support either through the B-Fund program or the LifeLine program should also be required to inform customers that the blocking option exists at the point of sale.

### **III. CONCLUSION**

With the caveats set forth above, DRA is encouraged by the Commission's initial attempt to update the definition of basic service to accommodate different technologies.

The Commission's efforts towards "competitive neutrality," however, must not reduce consumers' current levels of basic service under the existing wireline model.

Respectfully submitted,

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May 28, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON ASSIGNED COMMISSIONER’S AMENDED SCOPING MEMO AND SOLICITATION OF COMMENTS REGARDING REVISIONS TO “BASIC TELEPHONE SERVICE” REQUIREMENTS** to the official service list in **R.09-06-019** by using the following service:

**E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on **June 3, 2010**, at San Francisco, California.

/s/ CHARLENE D. LUNDY  
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