

**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.

Rulemaking 09-06-019

(Filed June 18, 2009)

**REPLY COMMENTS OF THE GREENLINING INSTITUTE AND THE NATIONAL
CONSUMER LAW CENTER ON THE ALTERNATE PROPOSED DECISION OF
COMMISSIONER FLORIO ADOPTING BASIC TELEPHONE SERVICE REVISIONS**

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Introduction

Pursuant to Rule of Practice and Procedure 14, the Greenlining Institute and the National Consumer Law Center (“collectively Greenlining/NCLC”) file these Reply Comments on the Alternate Proposed Decision of Commissioner Florio Adopting Basic Telephone Service Revisions (“APD”). Greenlining/NCLC also support the reply comments filed today by the Center for Accessible Technology and The Utility Reform Network.

I. The APD Maintains Essential Basic Service Elements in a Technologically Neutral Manner.

Many parties argue that the APD should be rejected in favor of the Proposed Decision of President Peevey because the APD is not technology neutral, but rather requires service elements that are most appropriate to traditional wireline service.¹ Parties state that the parameters of the technology they use would not allow them to meet many of the elements of the APD, or that the cost to do so would be prohibitive. One of the purposes for which the Commission proposed to revise the basic service definition was to specifically allow for application to various technologies. However, from the initiation of this proceeding, the Commission established that the revised definition must “[p]reserve standards necessary to provide essential universal service needs.”² Thus, the Commission should not view technology neutrality as a requirement of

¹ See e.g. Opening Comments of Pacific Bell Telephone Company d/b/d AT&T California (“AT&T Comments”), pp. 1-2; Opening Comments of Verizon California (“Verizon Comments”), pp. 1-2; Comments of CTIA – The Wireless Association (“CTIA Comments”), pp. 1-2.

² APD, p. 12; see also Assigned Commissioner’s Amended Scoping Memo and Solicitation of Comments Regarding Revisions to the “Basic Telephone Service” Requirements, filed on May 10, 2010, p. 2.

“settling for the lowest common denominator of service standards.”³ Rather, essential standards of basic service must be maintained, but re-defined in a more generic, technology neutral manner.⁴ In many instances, the APD provides flexibility for non-traditional technologies.⁵ The provision of stand-alone service, discussed in Section III below, is one example.

II. The Basic Service Standard Should Not Be Diminished In Order to Facilitate LifeLine Offerings by Service Providers.

A number of parties criticize the standards required by the APD, stating that they are so difficult to achieve, that they will prevent or dissuade non-traditional service providers from offering LifeLine service.⁶ Some of these parties cite the large number and rapid increase of wireless-only low-income households as evidence that LifeLine eligible, low-income customers currently choose wireless options, without the provision of current basic service elements.⁷ These parties state that the proposed basic service definition is unfair for low-income customers, as it will deny them the option of wireless and non-traditional service providers.

First, in its reply comments filed today, TURN demonstrates the fallacy of the statistics these parties cite. In any case, just as in the discussion of technology neutrality, the prospect of wireless LifeLine should not result in the lowering of standards of basic service or eliminating long-established principles of essential universal service needs. As discussed above, many of the elements described in the APD allow flexibility for various technologies. As the APD acknowledges, there is a different docket to specifically discuss the carriers’ LifeLine offerings.⁸ The definition of basic service, including all its essential elements, should not be held hostage to the effort needed to develop wireless LifeLine and should move forward in this proceeding with the APD.

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³ *Id.*, p. 13.

⁴ *See* Comments of the Division of Ratepayer Advocates, p. 1.

⁵ The reply comments of The Utility Reform Network and the Center for Accessible Technology, filed today, also discuss the potential flexibility of certain basic service elements, such as service quality standards and 911 requirements.

⁶ *See* AT&T Comments, pp. 1, 5; CTIA Comments, pp. 5-11; Comments of Cricket Communications, Inc. (“Cricket Comments”), pp. 3-4; Comments of Nexus Communications, Inc. (“Nexus Comments”), pp.1-2.

⁷ *See* AT&T Comments, p. 3, CTIA Comments, p. 4.

⁸ *See* APD, p. 3.

III. The APD's Exemption Process Addresses the Concerns Raised About Stand-Alone Basic Service.

Greenlining/NCLC strongly support the APD's approach to stand-alone basic service which includes an exemption process for "elements that the carrier currently bundles with basic service everywhere it provides basic service" and that are not offered "at a rate separate from the bundled service rates anywhere it provides service."⁹ This exemption process addresses the concerns raised by carriers that it will not be feasible to "create a stripped down basic service plan that offers voice only."¹⁰ We note with some interest, the near widespread chorus from the carriers that wireless and Voice over Internet Protocol (VoIP) customers have come to expect features such as Caller ID, voicemail, and call waiting with their service and that these features are "standard," "essential" and "an integral part of their services."¹¹ Thus it is entirely conceivable that the exemption process envisioned in the APD will enable such features to be a part of the basic service offering of wireless and VoIP carriers. We agree with the Division of Ratepayer Advocate's (DRA) assessment that "[t]he evolution of new devices and networks is not a reasonable excuse for the elimination of the functions and features guaranteed to consumers via the basic service elements."¹² The APD's focus on providing an exemption process is a reasonable approach to balancing the requirement for quality basic service regardless of technology and the wireless and VoIP products that include Caller ID, voicemail and call waiting types of features.

IV. Tariffing Requirements Are Not Onerous and Do Not Constitute Rate Regulation.

Several parties take issue with the requirements that all basic service providers file tariffs describing their basic service offerings. For example, Verizon states that "[w]ireless and cable companies do not tariff their services, so this would be a dramatic and burdensome change in business."¹³ In contrast, AT&T states that tariffing is "unnecessary for wireless and VoIP providers that are not regulated like wireline companies and make their service offerings and

⁹ See Comments of The Utility Reform Network, the Center for Accessible Technology, Greenlining and NCLC, filed August 7, 2012, p. 11, citing APD, pp. 11, 54 and Ordering Paragraph 2.

¹⁰ See AT&T Comments, p. 4; *see also* Verizon Comments, pp. 4-5; Cricket Comments, p. 8; Nexus Comments, p. 5.

¹¹ See AT&T Comments, p. 4; Verizon Comments, pp. 4-5; Cricket Comments, pp. 8-9; Nexus Comments, p. 5.

¹² Comments of the Division of Ratepayer Advocates, p. 2.

¹³ Verizon Comments, p. 2. Verizon also states that requiring tariffs undermines technology neutrality. On the contrary, this makes the current tariff rules (applicable only to wireline basic service providers) more broadly applicable so that it is both technology neutral and competitively neutral. Further, all service providers should be equally able to file tariffs with the Commission, no matter what technology they use in providing service.

plans readily available to consumers online and in retail locations.”¹⁴ It seems much less burdensome to provide a tariff to one specified Commission, as opposed to countless unknown customers.

AT&T states that the tariffing requirement is pre-empted by Section 332 of the Telecommunications Act, which prohibits the states from regulating the rates wireless carriers charge.¹⁵ However, the APD tariffing requirement is directed not at rates, but at ensuring that the terms and conditions of a basic service offering meet the definition.¹⁶ Greenlining/NCLC agree that there can be no rate review of the wireless offerings. The purpose of the tariffing requirement is to allow the Commission, prospective customers and other interested parties to monitor basic service offerings. Moreover, this requirement allows the Commission to better monitor competition in telecommunications. The tariffing requirement meets important basic service needs and Commission goals of bolstering competition, consumer protection, nondiscrimination, and quality of service.

V. CTIA Mischaracterizes the Intent of AB 2213 in Replacing the Definition of “Residential” with “Household.”

Greenlining/NCLC take issue with CTIA’s explanation for why the Legislature replaced the definition of “residential” with “household” in AB 2213. CTIA avers that “the intent of the legislature is clear – to sever the concept of basic telephone service from one which is tied to the residential dwelling unit rather than the individuals in the residence”¹⁷ This interpretation overlooks the plain reading of the new definition of “household” inserted into Cal. Pub. Util. Code §872 by AB 2213: “As used in this article, “household” means a residential dwelling that is the principal place of residence of the lifeline service subscriber, and excludes any industrial, commercial, or other nonresidential building.”¹⁸ AB 2213 goes on further to clarify: “A landline telephone service subscriber shall be provided with one lifeline subscription, as defined by the commission, at his or her principal place of residence, and no other member of that subscriber’s family or household who maintains residence at that place is eligible for lifeline service.”¹⁹ The Legislature was responding to the need to modernize aspects of the California Lifeline program,

¹⁴ AT&T Comments, p. 13.

¹⁵ *See id.*, pp. 13-14.

¹⁶ *See* APD, p. 10, Ordering Paragraphs 6, 8, Appendix A, General Requirement (a).

¹⁷ CTIA Comments, p. 4.

¹⁸ AB 2213, Sec.3.

¹⁹ AB 2213, Sec. 5.

in part, in light of the wireless telephone companies' historic position that "wireless telephone service is not a residential, service, so the Lifeline program is only available to landline customers."²⁰ In replacing "residential from Cal. Pub. Util. Code §871.5 with "household" in §872, the legislature was simply allowing non-wireline service to qualify for LifeLine; however, in no way was the legislature addressing the definition of basic service. There is no absolutely no evidence of legislative intent to that purpose. Thus, CTIA's selective reading and characterization of AB2213 should not be relied upon.

Conclusion

The APD provides a basic service definition describing the communications needs essential for participation in society. The APD provides enough specificity such that service providers will be able to determine what is required for basic service, yet provides sufficient flexibility to allow for technological neutrality. The Commission should approve the APD.

Dated: August 13, 2012

Respectfully submitted,

/s/

Enrique Gallardo

*On Behalf of the National Consumer Law Center
and the Greenlining Institute*

²⁰ AB2213 Assembly Committee Bill Analysis 5/11/2010.