

M e m o r a n d u m

Date: May 26, 2010

To: The Commission
(Meeting of June 3, 2010)

From: Edward Randolph, Director
Office of Governmental Affairs (OGA) — Sacramento

Subject: **AB 2213 (Fuentes) – Moore Universal Telephone Service Act.
As Amended: April 27, 2010**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: SUPPORT

SUMMARY OF BILL:

This bill attempts to update the low-income residential service statute (the Moore Universal Telephone Service Act; PU Code 871 et seq.) to allow eligibility for technologies other than traditional wireline service to provide LifeLine service. In particular the bill gives the Commission more flexibility to expand LifeLine participation by deletion of references to “basic” telephone service and by changing the term “residential” to “household”.

Sec. 1 of the bill adds legislative findings as follows:

- (1) That alternative technologies are now “available in California and could be used to offer low-income citizens access to affordable, reliable, and high-quality basic telephone service.”
- (2) If alternative technologies are used to provide lifeline, the technologies should provide comparable access to emergency and community services as traditional landline telephone service and the Commission shall ensure that low-income consumers using alternative technologies continue to have access to reliable, high-quality, and affordable voice telecommunications services.

Sec. 2 of the bill amends PU Code Sec.871.5 (b) – a current statement of Legislative findings – to remove the word “basic” from this finding as follows –

“(b) The Moore Universal Telephone Service Act has been, and continues to be, an important means for achieving universal service

by making basic telephone service affordable to low-income households through the creation of a lifeline class of service.”

Sec. 3 of the bill amends PU Code Sec. 872 which currently defines “residential”. The amendment replaces the definition of “residential” with a definition of “household”. Household would be defined as the principal place of residence.

Sec. 4 of the bill amends PU Code Sec. 878 which currently provides that a lifeline telephone service subscriber shall be provided with one single party line at his or her principal place of **residence**. As amended by the bill PU Code Sec 878 would thus provide that a lifeline telephone service subscriber shall be provided with one lifeline subscription per **household**, as defined by the commission, at his or her principal place of residence.

SUMMARY OF SUPPORTING ARGUMENTS FOR RECOMMENDATION:

The legislation amends provisions of the Moore Universal Telephone Service Act in an attempt to permit the Commission to broaden the LifeLine program to allow customers the option of using non-wireline service technologies to participate in the California LifeLine Telephone Program and receive discounted telephone service. These changes would allow the Commission to expand the technology alternatives available to low-income consumers to receive discounted voice telecommunications services.

The Commission has defined “basic” telephone service (D. 96-10-066) in such a way as to exclude provision by wireless carriers (these carriers cannot provide all the required elements of “basic” service.) Plus wireless service is not provisioned as “residential” or “business” service, as is traditional wireline service.

By removing the term “basic”, from the Moore Act findings in Sec. 871.5 (b) this bill removes the restriction on providing discounts for only “basic” telecommunications services.

The Commission should support this effort. The bill, however, needs additional amendments to remove all statutory barriers to expanding lifeline service.

SUMMARY OF SUGGESTED AMENDMENTS:

The following amendments to the Moore Act are necessary to permit the Commission to expand the LifeLine program to wireless services.

1. PU Code Section 873(a):

The term “residential” is also used in Section 873 (a) which states as follows:

873(a) The Commission shall annually do all of the following:

- (1) Designate a class of lifeline service necessary to meet minimum **residential** communications needs.
- (2) **Set the rates and charges for that service.**

(b) Minimum **residential** communications needs includes, but is not limited to, the ability to originate and receive calls and the ability to access electronic information services. (Emphasis added.)

The term “residential” should be removed from these two subsections or modified to conform to the proposed changes in Section 871.5 in AB 2213.

Sec. 873(a)(2) presents a more serious problem . The Commission has limited jurisdiction over wireless carriers. Under federal law, the Commission cannot regulate rates of wireless carriers, but retains authority to regulate terms and conditions of wireless service.¹ Because the Commission cannot regulate wireless service rates, subsection 873(a) (2) would either need to be amended, or removed .

2. PU Code Section 874:

PU Code Section 874 limits what carriers can charge for LifeLine service. Section 874 states as follows:

- (a) In a residential subscriber’s service area where measured service is not available, the lifeline telephone service rates shall not be more than 50 percent of the rates for basic flat rate service, exclusive of federally mandated end user access charges, available to the residential subscriber.
- (b) In a residential subscriber's service area where measured service is available, the subscriber may elect either of the following:
 - (1) A lifeline telephone service measured rate of not more than 50 percent of the basic rate for measured service, exclusive of federally mandated end user access charges, available to the residential subscriber.
 - (2) A lifeline flat rate of not more than 50 percent of the rates for basic flat rate service, exclusive of federally mandated end user access charges, available to the residential subscriber.

¹ The Commission cannot regulate wireless rates under 47 U.S.C. section 332(c) (3) (Omnibus Budget Reconciliation Act of 1993 (Budget Act)).

The terms “residential” and “subscriber’s service area” should also be removed from this section to conform to the changes proposed in Section 871.5. Additionally, wireless service is a form of measured service because the rates are assessed on a “per-call” basis, which calculates the call based on the total minutes of use, similar to that of a measured wireline service. Under subsection (b), the rates for LifeLine measured services cannot be more than 50% of either the basic rate of measured service or flat rate service. In order to comply with this subsection, wireless carriers would have to establish a basic rate for either measured rate or flat rate service, and then the LifeLine rate would be derived from the basic rate(s).

DIVISION ANALYSIS (Energy Division):

The Commission has opened Rulemaking 06-05-028 the purpose of which is to conduct a comprehensive review of the CPUC’s Telecommunications Public Policy Programs, including Universal Lifeline Telephone Service. The Commission mailed a draft decision on the LifeLine program in February 2009, but was subsequently withdrawn. A new draft decision is expected by June 2010, which will address allowing discounted telephone service for low-income customers through use of alternative technologies.

AB 2213 as amended April 27, 2010, moves the Commission closer to being able to add wireless or other non-wireline service providers to the LifeLine program. However it does not get us there.

The proposed legislation with our suggested amendments will give the Commission flexibility to allow discounts on alternative technologies and services to be available to low-income consumers through the LifeLine program. Current law limits the LifeLine discounts to basic residential service, whereas, the modifications proposed in this legislation would remove these restrictions. The California LifeLine program currently allows low-income discounts for flat and measured rate basic local residential wireline services only.

Low-income consumers who are eligible for LifeLine discounts today cannot apply these discounts to telecommunications services offered by wireless or VoIP providers because of the restrictions imposed by law on the LifeLine program. The Commission has an open proceeding to consider changes to the LifeLine program, some of which may not be consistent with current law. The proposed changes in this bill will open the door for the Commission to better address access of various telecommunications services to low-income consumers at affordable rates.

PROGRAM BACKGROUND:

The California LifeLine Program provides discounted basic local landline residential telephone service to households. Currently about 1.9 million households receive LifeLine discounts. Discounts include: reduced basic phone service rates (LifeLine rates from \$5.47 - \$6.84 depending on the carrier), a \$10.00 installation charge or

conversion charge ceiling, no deposit requirements, free toll restriction/toll blocking, and no federally mandated end user access charges. Eligibility is based on income. Eligible LifeLine customer must earn less than 150% of the federal poverty guideline, or participate in one of 12 approved (means tested) public assistance programs.

Funding for the LifeLine program is through an all-end-user surcharge assessed on the customer's billings for intrastate telecommunications services, except that the surcharge is not assessed on the basic service charges of the bills of LifeLine customers. The ULTS surcharge rate is 1.150% and has remained the same since April 1, 2007.

The LifeLine program budget for fiscal year 2009/2010 is \$331.3 million: \$300 million to reimburse carriers for customer discounts and administrative expenses, and \$31 million for the marketing contractor, the third party administrator contractor (approves customer's eligibility) and staff and the Administrative Committee expenses. For fiscal year 2010/2011 staff expects the budget to increase by about \$90 million to account for the potential increases in carrier reimbursements because of basic service rate deregulation effective January 2011 and potentially higher LifeLine customer participation if LifeLine discounts for wireless services or other non-wireline services are added to the program.

A number of other states allow wireless participation in their LifeLine programs. For example, Texas saw about a 10% increase in program participation when wireless companies were allowed to participate. Prepaid wireless carriers such as TracFone have a large presence in several states. Although many of these carriers are certificated to offer service, they claim subsidy only from the federal Lifeline/Linkup program

The federal Lifeline/Linkup program provides discounts for wireless providers, similar to those provided by state programs. For example, the fed pays \$10 per participant claimed by the wireless carrier, along with a maximum \$30 per new customer to cover installation costs. The \$10 is broken out by \$6.50 to cover the End User Common Line (EUCL) charge, and \$3.50 for basic service that must be passed on to the customer.

A wireless provider can offer a set number of minutes for free each month (in the case of prepaid cell phone providers), or apply the pass-through subsidy on a monthly basis.

LEGISLATIVE HISTORY:

None.

FISCAL IMPACT:

None.

STATUS:

AB 2213 is in the Senate Rules Committee awaiting policy committee referral.

SUPPORT/OPPOSITION:

Support: Division of Ratepayer Advocates (DRA)
 Sprint (if amended)
 The Utility Reform Network (TURN) if amended

Opposition: None on file.

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BILL LANGUAGE:

BILL NUMBER: AB 2213 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY APRIL 27, 2010

INTRODUCED BY Assembly Member Fuentes

FEBRUARY 18, 2010

An act to amend Sections 871.5, 872, and 878 of the Public Utilities Code, relating to telecommunications.

LEGISLATIVE COUNSEL'S DIGEST

AB 2213, as amended, Fuentes. Moore Universal Telephone Service Act.

The Moore Universal Telephone Service Act established the Universal Lifeline Telephone Service (ULTS) program in order to provide low-income households with access to affordable basic residential telephone service.

This bill would replace the definition of "residential" in the Moore Universal Telephone Service Act with a definition of "household" and would make conforming changes.

Existing law requires that a lifeline telephone service subscriber be provided with one single party line at his or her principal place of residence.

This bill would instead require that a lifeline telephone service subscriber be provided with one lifeline subscription, as defined by the commission, at his or her principal place of residence.

Existing law makes any public utility, as defined, and any corporation other than a public utility, that violates the Public Utilities Act, or that fails to comply with any part of any order, decision, rule, direction, demand, or requirement of the commission, guilty of a crime.

Because the provisions of this bill are within the act and require action by the commission to implement its requirements, a violation of these provisions would impose a state-mandated local program by expanding the definition of a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The Legislature finds and declares all of the

following:

(a) Ensuring that all state residents have access to affordable, reliable, and high-quality basic ~~local~~ telephone service is a longstanding policy of the state.

(b) To help achieve this policy, the Legislature enacted the Moore Universal Telephone Service Act that created a lifeline class of telephone service for low-income citizens.

(c) Technologies beyond traditional landline telephones are now available in California and could be used to offer low-income citizens access to affordable, reliable, and high-quality basic telephone service.

~~—(d) If alternative technologies are used to provide lifeline telephone services, the technologies should provide voice telecommunications services at the same level of reliability and quality as traditional landline services and provide the same level of access to emergency and community services as traditional landline services.~~

~~—(e) In Decision 06-08-030, the Public Utilities Commission established a uniform regulatory framework for the large and mid sized incumbent local exchange carriers that granted those telephone corporations broad pricing freedoms concerning almost all telecommunications services, new telecommunications products, bundles of services, promotions, and contracts.~~

~~—(f) In developing new lifeline rates after the uniform regulatory framework decision, the commission must ensure that low income ratepayers continue to have access to affordable telephone services.~~

(d) If alternative technologies are used to provide lifeline telephone service, the technologies should provide comparable access to emergency and community services as traditional landline telephone service, and the commission shall ensure that low-income consumers using alternative technologies continue to have access to reliable, high-quality, and affordable voice telecommunications services.

SEC. 2. Section 871.5 of the Public Utilities Code is amended to read:

871.5. The Legislature finds and declares all of the following:

(a) The offering of high-quality basic telephone service at affordable rates to the greatest number of citizens has been a longstanding goal of the state.

(b) The Moore Universal Telephone Service Act has been, and continues to be, an important means for achieving universal service by making ~~basic~~ telephone service affordable to low-income households through the creation of a lifeline class of service.

(c) Every means should be employed by the commission and telephone corporations to ensure that every household qualified to receive lifeline telephone service is informed of and is afforded the opportunity to subscribe to that service.

(d) The furnishing of lifeline telephone service is in the public interest and should be supported fairly and equitably by every telephone corporation, and the commission, in administering the lifeline telephone service program, should implement the program in a way that is equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California.

SEC. 3. Section 872 of the Public Utilities Code is amended to

read:

872. As used in this article, "household" means a residential dwelling that is the principal place of residence of the lifeline telephone service subscriber, and excludes any industrial, commercial, or other nonresidential building.

SEC. 4. Section 878 of the Public Utilities Code is amended to read:

878. A lifeline 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 telephone service.

An applicant for lifeline telephone service may report only one address in this state as the principal place of residence.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.