State of California **Public Utilities Commission**
San Francisco

M E M O R A N D U M

Date : March 16, 2012

To : The Commission
(Meeting of March 22, 2012)

From : Sindy J. Yun
Public Utilities Counsel IV

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Subject: Filing of Comments in response the Federal Communications Commission's Further Notice of Proposed Rulemaking for Reform of the Federal Lifeline and Link Up Programs

RECOMMENDATION: The CPUC should file comments with the Federal Communications Commission (FCC) in response to its Further Notice of Proposed Rulemaking (*FNPRM*) on Lifeline and Link Up reform and modernization.[1] The *FNPRM* seeks further focused comment on a number of issues related to the Lifeline program, including establishing an eligibility database, advancing broadband availability through digital literacy training, limiting section 251 resale of Lifeline-supported services, adding the federal Women, Infants and Children (WIC) program to the list of qualifying programs for Lifeline, establishing eligibility for homeless veterans, determining whether eligible telecommunications carriers (ETCs) should be required to apply the Lifeline discount on all of their voice and data packages, and determining whether ILECS should have the ability to opt out of the Lifeline program. Comments are due April 2, 2012 and Reply due May 1, 2012.

BACKGROUND: Lifeline low-income support is one of four funding streams that flow from the federal Universal Service Fund (USF), along with high-cost, rural health, and schools and libraries distributions. The federal Lifeline program provides low-income customers with discounts on the monthly cost of telephone service for a single telephone

[1] *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training;* WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23; (FCC 12-11); Further Notice of Proposed Rulemaking; rel. February 6, 2012 (*FNPRM*).

line in their primary place of residence. [Prior to the FCC's Report and Order (*Lifeline Reform Order*) released on February 6, 2012[2] (which is discussed below), the federal program also included the Link Up program which subsidized the cost of initial installation of service for Lifeline customers.] In order to offer the federal Lifeline service discount, a service provider must be designated as an "eligible telecommunications carrier" (ETC). In California, the CPUC determines whether a carrier is qualified as an ETC for operation in California.

In order to qualify for the federal Lifeline discount, a subscriber must demonstrate that the subscriber's household has income at or below 135% of the Federal Poverty Guideline or that the subscriber is enrolled in one of several federal means-tested government assistance programs, such as Medicaid.

More than 40 states, including California, have their own low-income universal service support programs. For states that do not have their own state programs, the FCC sets the criteria for consumer eligibility, certification, and verification of continued eligibility for the federal Lifeline and Link Up discounts. States with their own low-income programs may establish criteria for their own state programs, as long as the criteria are consistent with federal law and FCC requirements. California has adopted its own criteria for the state LifeLine discounts.

In the FCC's recent *Lifeline Reform Order*, the FCC made fundamental reforms to the federal Lifeline Program to help eliminate waste, fraud and abuse, to update the program in light of changes in telecommunications technology and market conditions, and to control the costs of the program. Among other changes, the *LifeLine Reform Order*:

- Establishes a set support subsidy of $9.25 for non-tribal Lifeline subscribers;
- Eliminates the Link Up discount for all Lifeline subscribers except for residents on Tribal lands served by carriers receiving federal high cost support;
- Codifies the prohibition on individuals or households receiving more than one Lifeline subsidy at a given time; but recognizes that more than one "household" may reside in single residential building with the same physical address;
- Requires all states to utilize, at a minimum, the federal program income and program eligibility criteria and certification process;
- Orders creation of a national duplicates database of Lifeline subscribers (National Lifeline Accountability Database) to help prevent a customer from receiving a Lifeline discount simultaneously from more than one carrier;

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[2] *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training;* WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23; (FCC 12-11);Report and Order; rel. February 6, 2012 (*Lifeline Reform Order*).

- Establishes a Pilot Program to provide Lifeline discounts on monthly broadband Internet access service for low income Lifeline subscribers; and
- Constrains the growth of the $2.1 billion low-income fund by $200 million in 2012 and by an estimated $2 billion over the next three years.

DISCUSSION AND RECOMMENDATIONS:

In this Further Comment Round, the FCC has asked commenters to address the following reform proposals:

Section XII. A. Establishing an Eligibility Database

The FCC concludes that **"**establishing a fully automated means for verifying consumers' initial and ongoing Lifeline eligibility from governmental data sources would both improve the accuracy of eligibility determinations and ensure that only eligible consumers receive Lifeline benefits, and reduce burdens on consumers as well as ETCs."[3] The database would consist of a list of people who are enrolled in the various means-tested programs, such as Medicaid, that automatically qualify that person for Lifeline service. The FCC envisions an ETC directly accessing the database to determine customer eligibility. The FCC further concludes "that it is important to accelerate the adoption of a widespread, automated means of verifying program eligibility" and it directs the Wireline Bureau and the federal Lifeline administrator, the Universal Services Administrative Company (USAC), to take all necessary actions so that, as soon as possible and no later than the end of 2013, there will be an automated means to determine Lifeline eligibility for, at a minimum, the three most common means-tested programs through which consumers qualify for Lifeline.[4] In the *FNPRM,* the FCC seeks further comment on the establishment of such an eligibility database.

To ensure that it has sufficient information to implement such a solution, the FCC seeks focused comment on the issue. The FCC seeks comment on:

- whether federal benefit databases under development across states and at the national level can be leveraged to assist in checking for Lifeline eligibility;
- whether a state-specific or national eligibility database approach is more reliable, efficient, or imposes greater costs on the states and ETCs;
- ways to mitigate the potential cost on states if the FCC were to mandate the creation of Lifeline eligibility databases at the state level or the transmission of state eligibility data to a national database;
- whether the federal Universal Service Fund (USF) should be used to assist states in implementing their own eligibility databases and/or facilitate the transfer of state eligibility data to a federal database;

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[3] *FNPRM* at para. 403.

[4] *Id*.

- the implementation and ongoing costs of those Lifeline databases that are currently in operation at the state level;
- whether the FCC should condition receipt of federal Lifeline funds on state implementation of an eligibility database; and
- the federal or state privacy requirements implicated in the establishment of a national or state eligibility database.[5]

Recommendation: The CPUC should raise concerns regarding the privacy and cost implications of such a database, especially if the FCC were to adopt a national database. Also, the CPUC should oppose a national eligibility database if the result would mean subscribers would have to contact the FCC to seek recourse for any eligibility disputes.

California residents have a state constitutional right of privacy. Providing carriers with access to a list of the governmental means-tested programs in which a California Lifeline applicant is enrolled, including access to the applicants' social security number, could violate the applicant's privacy right. If the FCC does adopt such a system, the carrier should be required to get express approval from the applicant to access this program information.

The cost of implementing and updating such a centralized database could be substantial. Is this a cost effective solution? The federal government should not mandate state participation unless federal funding is provided for all or a substantial portion of the state costs.

States are closer to the subscriber and the subscriber's local carrier. Subscribers should not have to contact the FCC in order to seek help with eligibility-related disputes or problems. If a Lifeline applicant or subscriber has to seek solutions at the federal level, the process will be more burdensome for the applicant or subscriber.

Section XII. B. Advancing Broadband Availability for Low-Income Americans through Digital Literacy Training

In the *Lifeline Reform Order,* the FCC established a goal of ensuring the availability of broadband[6] service for low-income Americans[7] and adopted a Lifeline Broadband Pilot Program to assess how best to modernize the Lifeline program to address affordability of broadband service. In the *FNPRM* the FCC states that "…barriers to broadband adoption also include lack of digital literacy, and a perception that the Internet is not relevant or useful."[8] The FCC then notes that there are numerous programs and entities currently providing digital literacy training. However, in the *FNPRM,* the FCC seeks comment on

[5] *Id*., at paras. 404-407.

[6] The FCC uses the term "broadband" to mean Internet access service.

[7] *Id*., at para. 416.

[8] *Id.,* at para. 416. The National Broadband Plan (NBP) defined digital literacy as the skills needed to "us[e] [information and communications technology] to find, evaluate, create and communicate information," while recognizing that digital literacy is an evolving concept.

the use of universal service funding to address the barrier that lack of digital literacy creates to increased broadband adoption among low-income Americans.[9]

Recommendation: The CPUC should urge the FCC to wait until after completion of the Broadband Pilot Program before it decides whether to use Universal Service Fund (USF) monies to pay for digital literacy training. The CPUC was one of the first entities to recommend that the FCC institute a Broadband Pilot Program to determine the cost of paying for computers and monthly Internet access service for low-income subscribers prior to determining whether to permanently adopt such a program. The same rationale should apply to the funding of digital literacy training. As the FCC notes, there are numerous entities now providing such training. Also, many computer manufacturers offer free training when a customer purchases the manufacturer's computer. Before deciding whether telecommunications customers also should pay to fund such training for low-income customers via the federal USF, the approximate cost and benefits of such a program should be known. Additionally, the FCC should include digital literacy training as part of the Lifeline Broadband Pilot Program.

Section XII. C. Limits on Resale of Lifeline-Supported Services

Pursuant to section 251(c)(4) of the Communications Act of 1934 (as amended), incumbent LECs have the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. In 1996, the Commission concluded that all retail services are subject to this resale obligation.[10] Some telecommunications carriers are offering Lifeline-supported services directly to consumers through resale arrangements with incumbent LECs. The FCC has not required the reseller to be an ETC in order to resell the Lifeline service, but in its 2004 Lifeline Report and Order, the FCC required non-ETCs that provide Lifeline-supported service to eligible consumers through resale arrangements with the incumbent LECs to comply with all Lifeline/Link Up requirements, including certification and verification of subscribers.

The FCC further notes that in "situations where both the wholesaler and the reseller are ETCs, there is a risk that both the wholesaler and the reseller could seek reimbursement from the Fund for the same subscriber. Because ETCs submit line counts to USAC for reimbursement without identifying customer information, there is no way for USAC to determine whether both the wholesale provider and the ETC-reseller are seeking reimbursement from the Fund for the same subscriber.[11] In order to protect the program and reduce waste and abuse, in the Fund, the FCC proposes to allow ETCs to receive Lifeline support from the Fund only when they provide Lifeline service directly to subscribers. It seeks comment on this proposal.

[9] *Id.*, at paras. 416-447.

[10] *Id.*, at para.448.

[11] *Id.*, at para 449.

<u>Recommendation</u>: The CPUC should support the FCC's proposal that if both wholesaler and reseller are ETCs, then only the ETC directly serving the lifeline subscriber should be able to seek reimbursement from the Fund.

The FCC also asks whether it could relieve incumbent LECs of any section 251(c)(4) obligations they may have to resell Lifeline-discounted services by forbearing, on its own motion, from applying those obligations to the resale of Lifeline-discounted services. The FCC also seeks further comment on the competitive effect if the Commission were to forbear from the resale requirement of section 251(c)(4) as it applies to Lifeline-discounted services sold to non-ETC providers.

<u>Recommendation</u>: This issue needs further analysis by staff. Staff recommends that the CPUC review comments filed on this issue on April 2, 2012, and then file comments May 1, 2012, in the Reply round.

<u>Section XII. F. Adding Women, Infants, and Children Program to the Eligibility Criteria</u>

The FCC states that it has been urged by several commenters that it add the federal Special Supplemental Nutrition Assistance Program for Women, Infants, and Children (WIC), administered by the Department of Agriculture, to the list of qualifying federal assistance programs for Lifeline. It seeks comment on whether adding WIC to the eligibility criteria will advance its goal of ensuring universal availability of phone service to low-income consumers.[12]

<u>Recommendation</u>: The CPUC should support adding WIC to the list of qualifying federal assistance programs for Lifeline.

<u>Section XII.G. Establishing Eligibility for Homeless Veterans</u>

The FCC seeks comment on measures that would enable veterans who lack any income, but are not otherwise enrolled in a qualifying program, to demonstrate eligibility for Lifeline.[13]

<u>Recommendation</u>: Staff has no recommendation at this time. The issue raises the question of how someone without income would be able to pay a telephone bill. Staff recommends that staff review comments filed on April 2, 2012 on this issue and then perhaps file May 1, 2012 in the Reply round.

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[12] *Id.*, at para. 483.

[13] Id., at paras. 486-487.

<u>Section XII. H. Mandatory Application of Lifeline Discount to Bundled Service Offerings</u>

In the *Lifeline Reform Order,* the FCC adopted a federal policy permitting ETCs in all states to allow qualifying low-income consumers to apply Lifeline discounts to all residential service plans that provide voice telephony service, including bundled service packages combining voice and broadband, or packages containing optional calling features.[14] In the *FNPRM,* the FCC seeks comment on whether to further revise its rules <u>to require</u> ETCs to permit subscribers to apply their Lifeline discount on any bundle that includes a voice component.[15] It also seeks comment on the extent to which specific states mandate that ETCs allow the application of Lifeline discounts to expanded service plans.[16]

<u>Recommendation</u>: Staff recommends further analysis of this issue and recommends that the CPUC comment on this issue in the Reply round should the CPUC adopt a position on this issue.

<u>Section XII. J. Eligible Telecommunications Carrier Requirements</u>

Among the issues on which the FCC seeks comment in this part is the suggestion by AT&T that the FCC allow incumbent wireline Lifeline providers to choose whether to participate in the federal Lifeline program. AT&T argues that wireline telephone companies are no longer the dominant provider of voice services.

<u>Recommendation</u>: The CPUC should oppose the AT&T proposal as premature in the context of the current state of the telecommunications market. ILECs are still carriers of last resort in California.

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[14] *Id.,* at para.315.

[15] *Id.,* at para. 490.

[16] *Id.,* at para. 491.