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| Order Instituting Rulemaking to Update the California Universal Telephone Service (California LifeLine) Program . | Rulemaking 20-02-008<br>(Filed February 27, 2020) |

# OPENING COMMENTS OF THE UTILITY REFORM NETWORK, THE GREENLINING INSTITUTE AND THE CENTER FOR ACCESSIBLE TECHNOLOGY ON THE PROPOSED DECISION OF COMISSIONER SHIROMA

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**LIST OF RECOMMENDED CHANGES:**

- Clarify that the California-Only Eligibility criteria as defined in D.18-02-006 (R.11-03-013) should apply here and would allow carriers to receive a subsidy commensurate with the subsidy that it would have received from the federal program if that customer had established eligibility under the federal standards.
- Clarify that customers will not be charged a conversion charge for switching tiers of service, regardless of whether the customer is upgrading or downgrading service.
- Require LifeLine providers to track on a monthly basis, and report on a quarterly basis, the numbers and percentage of customers that switch from one tier of service to another due to non-payment of a co-pay.
- Cap co-payments for wireless service plan at $10 per month, or require Tier 3 advice letter and Commission review through resolution process to approve co-payments.
- Extend bridge funding for measure rate plan customers transitioning to flat rate plan from six months to twelve months.
- Provide additional information about the Program Assessment.

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## I. INTRODUCTION

In accordance with Rule 14.3 of the Commission's Rules of Practice and Procedure, the Center for Accessible Technology, The Greenlining Institute, and The Utility Reform Network ("Joint Consumers") submit these opening comments regarding the *Proposed Decision Establishing Specific Support Amounts and Minimum Service Standards for California LifeLine and Authorizing Replacement of Federal Support for Wireline Participants.* ("Proposed Decision").

Joint Consumers strongly support the Commission's goal to improve the Program to meet customers' needs while also meeting its "obligations to conserve the Program fund."[1] This balance is necessary to support the Commission's universal service goals, especially in light of the fact that the burden to fund the Program, as well as other public purpose programs, is "borne by fewer ratepayers" due to the surcharge base relying on fewer and fewer voice service customers.[2] Joint Consumers also understand that the PD's current efforts to find the appropriate balance are anticipated to be in place for a relatively short term, until a Program Assessment can be completed and the Commission can conduct a broad holistic review of all elements of the LifeLine Program.[3] The PD notes that this Program Assessment is underway.[4] Joint Consumers would appreciate additional information on the status of the Program Assessment as the work in this docket continues.

Until this assessment is complete, Joint Consumers understand the need to develop a structure for considering California subsidy amounts based on the information available. In evaluating the appropriate level of subsidy to provide support to California LifeLine customers,

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[1] Proposed Decision at p. 6.
[2] Proposed Decision at p. 6.
[3] *See* Assigned Commissioner's Scoping Memo and Ruling, issued on April 13, 2020, at p. 4.
[4] Proposed Decision at p. 7.

Joint Consumers also appreciate the Commission's recognition that "retail market pricing is not our benchmark," and its commitment to using the state's bulk purchasing power to secure volume discounts for Program participants.[5] Joint Consumers similarly support the goal of ensuring that the state subsidy supports a Program that offers service beyond that provided by the federal program alone, and make recommendations to clarify this as the intent of the additional subsidy offerings. We note, however, that the PD is silent on those customers who establish eligibility under California-only criteria. It is our understanding that the state will make up whatever subsidy levels that a provider who serves a California-only customer would have received from the federal program if that customers had established eligibility under the federal standards, and we recommend that this be clarified.

Overall, Joint Consumers respectfully recommend the following modifications to the Proposed Decision in furtherance of the Program goals as noted above.

## II. DISCUSSION

### A. The Requirement That Wireless Providers Offer A Minimum Level of Data As Part Of Their Service Offerings Is Appropriate.

1. <u>The Proposed Decision's Wireless Data Requirement Is Consistent With The California Governor's Executive Order On Broadband.</u>

Joint Consumers support the PD's requirement that wireless LifeLine providers must offer service plans that include a minimum level of broadband service.[6] The tier structure adopted in OP 1 is consistent with the Commission's statutory duty to "[d]esignate a class of lifeline service necessary to meet minimum communications needs,"[7] including "the ability to originate and receive calls and the ability to *access electronic information services*" (emphasis

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[5] Proposed Decision at p. 9.

[6] Proposed Decision at p. 29, Ordering Paragraph 1. As previously noted in this proceeding, Joint Consumers strongly support the goal of providing increased data allowances for LifeLine offerings.

[7] Cal. Pub. Util. Code § 873(a)(1).

added).[8] Furthermore, as the Commission noted in its recently issued *Proposed Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California*, Governor Newsom's recent Executive Order N-73-20[9] directs the Commission to take immediate steps to bridge the digital divide and increase the availability of broadband.[10] The service tier structure adopted in OP 1 will increase low-income households' access to broadband and help bridge the digital divide.

2. The Proposed Decision's Wireless Data Requirement Is Consistent with Wireless Providers' Participation In The Lifeline Program Being Voluntary.

The wireless data requirement, including the limitation on imposing co-pays for customers in a Basic or Standard tier, is consistent with past decisions holding that the Commission need not have rate jurisdiction over a communications provider to regulate that provider's voluntary participation in the LifeLine Program:

> The Commission previously recognized that it does not need rate jurisdiction over wireless, VoIP, and other non-traditional carriers to regulate their voluntary participation in the California LifeLine Program. A non-certificated, fixed-VoIP service provider may voluntarily choose to participate in the Program and receive the California LifeLine reimbursements, but that participation would require that the fixed-VoIP service provider abide by the Program rules. Because participation would be voluntary, the Commission concluded that it is not exercising jurisdiction over these non-traditional carriers, but rather, is operating pursuant to the Public Utilities Code to administer the Program.[11]

There are no jurisdictional concerns implicated by requiring providers that voluntarily participate in the LifeLine Program to follow the rules for the LifeLine Program, and such a requirement is

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[8] Cal. Pub. Util. Code §873(b). The Commission has clear Legislative authority to ensure that Californians have access to robust advanced services including broadband. TURN Reply Comments, May 26, 2020, at p. 14-15 (Citing Cal. Pub. Util. Code §§ 709, 275, 276, 277, 280, 281).
[9] *Available at* https://www.gov.ca.gov/wp-content/uploads/2020/08/8.14.20-EO-N-73-20-text.pdf.
[10] R.20-09-001, Order Instituting Rulemaking Regarding Broadband Infrastructure Deployment and to Support Service Providers in the State of California at p. 3 (Sept. 18, 2020). The OIR further notes that "[t]he Commission has comprehensive jurisdiction over the deployment of high-quality advanced communications services to all Californians." *Id*.
[11] D.16-10-039 at pp. 10-11 (citations omitted); *see also*, D.14-01-036 at p. 103.

completely within the authority of the Commission.[12]

3. The Proposed Decision's Wireless Data Requirement Is Consistent With California's Power to Protect The Public Health, Safety, And Welfare.

Since the inception of our federal form of government, a state's essential "police power" has included the ability to act to protect "the lives, limbs, health, comfort and quiet of all persons … within the State."[13] These police powers were not created by the COVID-19 pandemic or California's wildfires, nor were these emergencies the first to generate a need for state action. However, those events have recently highlighted the reality that low-income households do not have sufficient access to the affordable broadband service that is critical to allow them to work remotely, engage in distance education, participate and contribute to their communities, and access health and emergency information.[14] Especially at this critical juncture, it is appropriate for California to exercise its police power to require carriers to offer a minimum set of services at a set price and for a specific subsidy level, to ensure that all Californians including low income communities, communities of color, and rural communities, are connected with affordable and robust services. While Joint Consumers acknowledge that wireless broadband is not a substitute for wireline in-home broadband,[15] a wireless data requirement is an appropriate way to quickly and temporarily meet LifeLine participants' need for improved broadband offerings during this difficult time.

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[12] Joint Consumers note that despite the Commission's creating rules for participation by fixed-VoIP service providers in 2016, participation by fixed-VoIP providers in the LifeLine program has been minimal. D.16-10-039 at pp. 10-11. Joint Consumers urge the Commission to consider ways to encourage VoIP participation in the LifeLine program as this proceeding moves forward.
[13] *Slaughter-House Cases* (1873) 83 US 36, 62, quoting *Thorpe v. Rutland & Burlington Railroad Co.* (1855) 27 Vermont 149. Police power, including authority to protect health and safety of citizens, is unquestionably an area of traditional State control. *Raich v Gonzalez,* 500 F3d 850, 866-67 (9th Cir., 2006).
[14] *See* Proposed Decision at p. 5.
[15] *See* TURN Reply Comments on the Straw Proposal at p. 4; GLI/ CforAT Reply Comments on the Straw Proposal at p. 3. *See also,* TURN Post-Workshop Reply Comments (R.18-07-006) (dated June 4, 2019) at p. 18 (noting functionality, speed, and cost differences between mobile and wireline broadband).

## B. FCC Actions May Affect The Commission's Calculations For The SSA

The Proposed Decision would enact a new Set Support Amount (SSA) and Minimum Service Standard (MSS) for 2020-2021, based on the FCC's 2018 Market Report and the Report's discussion of minimum voice and data customer needs.[16] Further, the Proposed Decision makes assumptions about available federal program subsidy levels that will directly influence the affordability of the resulting California program plan offerings. However, the FCC has not yet decided on its MSS for mobile broadband offerings in 2020-2021. The FCC's Wireless Competition Bureau, charged with establishing a federal Lifeline MSS each year commensurate with retail customer usage, has recommended a mobile broadband minimum service standard of 11.75 GB per month.[17] Last year when the FCC's Wireless Competition Bureau recommended a mobile broadband minimum service standard, the FCC overruled that proffered standard and instead adopted a lower standard.[18] This year appears to be no different, and FCC Chairman Pai has already circulated a draft order that would establish a lower minimum service standard of 4.5 GB per month.[19] Additionally, providers are advocating that the FCC maintain the current mobile broadband minimum service standard of 3 GB per month.[20]

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[16] Proposed Decision at p. 7.

[17] FCC, Wireless Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount, WC Docket 11-42, DA 20-820 (Rel. July 31, 2020), retrieved from https://docs.fcc.gov/public/attachments/DA-20-820A1.pdf (last viewed September 21, 2020).

[18] *See generally,* In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42, FCC 19-116, Order (Rel. November 19, 2019).

[19] FCC, FCC Chairman Pai Circulates Order to Ensure Predictable Increases in Minimum Standard for Lifeline Mobile Broadband Service (dated July 30, 2020), retrieved from https://www.fcc.gov/document/chairman-pai-proposes-lifeline-minimum-service-standard-order (last viewed September 21, 2020).

[20] *See e.g.,* Jon Reid, "Wireless Carriers Fight Pai's Solution for Easing Lifeline Costs," Bloomberg, dated August 18, 2020, retrieved from https://news.bloomberglaw.com/tech-and-telecom-law/wireless-carriers-fight-pais-solution-for-easing-lifeline-costs (last viewed September 23, 2020) ("Lifeline carriers want the FCC to maintain the current data rules, with no increase. They argue that the current 3 GB requirement is sufficient for consumers to stay connected").

It is unclear when a final requirement will be established. This delay in setting the federal standards creates uncertainty for providers—and therefore LifeLine customers.

Currently, the vast majority of California LifeLine customers are using less than 3 GB per month of data even during the COVID pandemic.[21] To balance customers' actual usage with the need to conserve the LifeLine Fund, to continue to encourage LifeLine providers to participate in the Program, and to provide a clearer path forward for the California Program, Joint Consumers recommend revising the Proposed Decision and modifying the wireless SSA and MSS tiers to better strike a balance among the various proposals.

The Proposed Decision notes the wireless carriers' "counter proposal" to include a minimum service standard at 4GB based on a $14.85 state subsidy, but, instead, sets a 6GB minimum standard (the "Standard Tier") as a basis for providing $14.85. In doing so, the Proposed Decision does not address the uncertainty regarding the standard that will qualify for the $9.25 federal subsidy nor does it provide an option for a customer co-pay to make up for any reduced federal subsidy.[22] For 4 GB per month (the "Basic Tier"), the Proposed Decision offers a lower state subsidy and anticipates a possible reduction of the federal subsidy, again without allowing for a customer co-pay.[23] The Proposed Decision fails to acknowledge the risk that if the carriers do not get the full $9.25 federal subsidy, they may attempt to reduce costs in other ways resulting in lower participation. Additionally, the Proposed Decision could have the

[21] NaLA Opening Comments on the Scoping Memo at p. 4 (suggesting that LifeLine customers are accustomed to a "data diet" without providing support for that assertions).

[22] TURN previously raised a concern that this proposal relied on the providers receiving $9.25 in federal subsidy, and that providers may pass on any lost federal subsidy to their customers in the form of a co-pay. TURN Reply Comments on the Staff Proposal (August 6, 2020) at p. 6. While Joint Consumers continue to share this concern, the Proposed Decision appears to prohibit co-pays for these lower tiers.

[23] The Proposed Decision should be clarified as to whether it is requiring these plans to be offered at no co-pay to receive the subsidy or whether it is only recommending that the plans "*should* be available to participants at no cost," without requiring carriers to offer these services for free. *See* Proposed Decision at p. 11.

unintended effect of failing to support service offerings at the Basic and/or Standard Tier levels because it does not require LifeLine providers to offer service plans for all authorized tiers.[24] Under this proposal, providers may choose not to market the Basic or Standard Plan, and instead may focus on efforts to enroll customers in an Upgrade Plan so that the provider may receive the full federal and state subsidy and charge customers a co-pay.[25]

In order to better support a robust set of services and choices for LifeLine customers, Joint Consumers recommend modifying the Basic and Standard Plans Wireless SSA and MSS to better reflect the record and strike the balance between the Proposed Decision and the wireless carriers' proposal.[26]

For the Basic and Standard tiers, Joint Consumers propose modifying the Proposed Decision to establish service standards based on an incremental requirement above today's California requirement and the still-undetermined FCC MSS.[27] As was made clear in the record of this proceeding, the wireless providers are offering bundled voice, text, and data services in other states, meeting the FCC's current data MSS including 3 GB, while receiving only the $9.25 federal subsidy each month.[28] Since the FCC subsidy is sufficient to support voice and text services, and 3 GB of data, California's additional subsidy should support an additional increment of service. Thus, the Joint Consumers' recommended modification would support the

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[24] Proposed Decision at p. 12 (noting reliance on competition to ensure customers will have sufficient choice, without discussing subsidy levels).
[25] GLI/CforAT Opening Comments, July 30, 2020, at p. 6 (expressing concern about upselling expensive bundles and urging Commission adopt protections). It appears that carriers must be prepared to offer, but do not have to market or advertise, the Basic Plan as a default if a customer cannot afford the co-pays that may come with the Upgrade or Family plans. Proposed Decision at p. 14.
[26] *See e.g.* NaLA Opening Comments on the Staff Proposal (July 30, 2020) at p. 2.
[27] Joint Consumers note that our proposed modifications are only to the mobile broadband MSS. Joint Consumers' proposal maintains and supports the MSS for mobile broadband speed at the FCC MSS without throttling. Proposed Decision at p. 11.
[28] NaLA Opening Comments on the Scoping Memo at p. 2. Providers do not receive state funding in addition to federal funding in the majority of states.

Proposed Decision's requirement to offer unlimited voice and text, as well as propose additional data per month from today's status quo.

This incremental approach reduces the risk that providers will be asked to substantially increase service offerings even as they receive a reduced level of federal subsidy, which might result in reduced provider and customer participation.[29] Instead, Joint Consumers' approach would create offerings that consider both the adopted federal standard and the available federal subsidy. In maintaining a 3 GB standard as the lowest supported tier, this proposal recognizes that even in the current pandemic environment, the usage of most California LifeLine customers is well below 6 GB.

**Table 1: Wireless SSA and MSS**

| Tier | Plan | California SSA | Federal Subsidy | Mobile Voice & Text (monthly) | Mobile Broadband Speed | Mobile Broadband Allowance (monthly) | Co-pay |
|---|---|---|---|---|---|---|---|
| 1A | Basic | $12.85 | $5.25 | Unlimited | FCC MSS | **3 GB** | $0.00 |
| 1B | Basic | $12.85 | $9.25 | Unlimited | FCC MSS | **The higher of:**<br>• **3GB, or**<br>• **FCC MSS + 1 GB** | $0.00 |
| 2A | Standard | $14.85 | $5.25 | Unlimited | FCC MSS | **4 GB** | $0.00 |
| 2B | Standard | $14.85 | $9.25 | Unlimited | FCC MSS | **The higher of:**<br>• **4 GB, or**<br>• **FCC MSS + 3 GB** | $0.00 |
| 3 | Upgrade | $14.85 | $9.25 | Unlimited | FCC MSS | 12 GB | Tier 2 AL with $10 cap, or Tier 3 AL[30] |
| 4 | Family Plan (Line 1) | $14.85 | $9.25 | Unlimited | FCC MSS | 12 GB | Tier 2 AL with $10 cap, or Tier3 AL |

[29] NaLA Opening Comments on the Scoping Memo at p. 3; Tracfone Opening Comments on the Scoping Memo at p. 6.

[30] *See infra.* Joint Consumers are proposing a cap of the allowable co-pay amount at $10 or else a requirement for carriers to submit a Tier 3 Advice Letter process with a resolution approving co-pays.

Joint Consumers do not take this position lightly. Joint Consumers have generally advocated for increased data allowances for wireless LifeLine offerings, especially during the pandemic. However, with the uncertainty surrounding the FCC's MSS, the delay of the FCC's announcement even as we approach the December deadline, the difficulty that the providers may have in satisfying a large increase in the MSS, as well as the relatively low levels of current customer usage, Joint Consumers believe the tiers of service in our proposal reflect the record of this proceeding to date and will benefit LifeLine subscribers as well as customers who pay the surcharge. The proposed revised tiers of service more fully consider possible subsidy levels and require providers to offer a more robust service offerings to Californians in exchange for state support. The offered subsidy levels, whether or not a provider receives $9.25 federal subsidy, would range from $18.10 to $24.10 for Basic or Standard Plans, which is a significant subsidy per month per customer even if it does not match a provider's retail rates and should be sufficient to support interest in the program from both providers and consumers.[31]

### C. The Commission Should Clarify Co-Payment Prohibitions and Provide a Cap

The Proposed Decision should be revised to more clearly prohibit wireless LifeLine providers from imposing co-pays on the Basic and Standard plans. The Proposed Decision is unduly vague when it states that the "Basic Plan and the Standard Plan *should* be available to participants at no cost,"[32] even as it states elsewhere in the document an intent of the Commission to ensure that customers receive access to these plans for free and notes a "$0.00" co-payment in the table provided in Attachment 1.[33] Joint Consumers propose language that will

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[31] Proposed Decision at p. 9 (rejecting TracFone's request that the subsidy be based on making the provider "whole" relative to its retail rates).
[32] Proposed Decision at p. 11.
[33] Proposed Decision at pp. 13-14 (reference to the "underlying "no cost" plan and to co-pays only in the context of the Upgrade and Family plans, *see also* the chart in Attachment 1).

clarify the Proposed Decision and support the intent that customers have a choice of a "free" service offering.[34]

For upper-tier service where co-pays are authorized, the Proposed Decision properly acknowledges that Joint Consumers, and other parties, have urged the Commission to ensure that any such co-pays will be affordable for LifeLine customers and commensurate with the increased benefits of each plan.[35] However, the Proposed Decision errs by leaving this affordability determination to the Commission Staff through an advice letter process for approval of the terms and conditions of each plan offering.[36] The Proposed Decision states that this review will include "several factors" and be in alignment with the Commission's docket on affordability (D.20-07-032).[37] However, the Proposed Decision errs by failing to provide specific and concrete guidelines and criteria for Staff to apply to ensure staff conducts a *ministerial* review and approval of these Advice Letters and any proposed co-payments.[38]

Because Staff review and approval of Advice Letters must be limited to "ministerial acts," Joint Consumers recommend that the Proposed Decision set a cap on co-pays for the service offerings approved for the coming year. The Proposed Decision is clear that carriers are not required to establish co-pays, but that co-pays are an option to support additional choices of more robust broadband offerings. [39] To ensure the affordability of such offerings, supported by a

[34]NaLA Reply Comments, August 6, 2020, at pp. 2-3; Tracfone Reply Comments, August 6, 2020 at p. 4.
[35] Proposed Decision at p. 13; *See, also*, Straw Proposal at p. 13 (emphasis added) (intent of Family Plans is to provide "*affordable* phone service to families who have higher data needs"); *See* TURN Opening Comments, July 30, 2020, at pp. 2, 6.
[36] Proposed Decision at p. 13.
[37] Proposed Decision at p. 13.
[38] D.09-05-0202 (Public agencies may delegate performance of ministerial tasks to a subordinate); D.07-09-018 (The job for industry division staff in review a Tier 1 or Tier 2 advice letter is ministerial); Resolution T-17677 (12/5/19) ("However, the issue of what is considered an affordable low-income broadband plan is a policy issue that should be addressed in a proceeding").
[39] Proposed Decision at pp. 7, 8, 12 (Proposed Decision focuses, in part, on providing consumer choices without raising subsidy levels).

generous state subsidy, a federal subsidy, and a small co-pay by the customer, Joint Consumers urge the Commission to establish a cap on co-pays to guide the ministerial review of any Advice Letters by Commission Staff.

The record includes proposals and data from the parties that allow the Commission to strike the proper balance in setting a cap that ensures that consumers have choices of affordable, yet robust, service. For example, CETF suggests that its data and experience supports a $10-20 range for low income rates for broadband services.[40] Public Advocates notes that wireline carriers offer unsubsidized "low income" plans that offer significant bandwidth capabilities for about $10 a month.[41] Public Advocates acknowledges that more affordability research and analysis should be done, but also notes that the marketplace and market analysis suggests low-income consumers struggle to pay more than $10 a month out of pocket.[42] The wireless carriers urge the Commission to provide more subsidy funding for higher-tier plans to avoid co-pays, but also acknowledge that co-pays may be necessary and they propose these charges could be anywhere between $8 and $25, in addition to the additional subsidy funding.[43] Joint Consumers urge the Commission to give little weight to the carriers' higher estimates as they provide little data to support these higher co-pays. And, while Joint Consumers have proposed that the

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[40] CETF Reply Comments, August 6, 2020, at p. 2.
[41] Public Advocates, Supplement Comments, June 22, 2020 at p. 4 ($10-$20 for carriers' low income fixed broadband offerings). Joint Consumers also note that the Commission requires CASF wireline recipients to offer a $15/month "low income" plan as part of the minimum standards to receive full funding of their proposed projects and to satisfy the requirement that customers in the plan area have access to an affordable service. D.18-12-018, Appendix 1, Section 6.
[42] Public Advocates Opening Comments on Straw Proposal, July 30, 2020 at p. 8 (citing *Broadband for America's Future: A vision for the 2020s*, Jonathan Sallet, the Benton Institute for Broadband & Society, published October 2019, viewed July 17, 2020, p. 65-66).
[43] TracFone Opening Comments, July 30, 2020, at p. 4 (Tier 3, two Unlimited Plans with the same minimum service standards, but where one is offered at no-cost to a customer and the Fund pays $36.85 per month, and the other is offer at $20-25 co-pay to a customer and the Fund pays $16.85 per month). See also, Assurance Opening, July 30, 2020, at p. 6, (carriers "may" impose a monthly service charge on Tier 3); NaLA Opening, July 30, 2020, at p. 3 (could only suggest copays between $8-15 would be "likely" with insufficient subsidy under Straw Proposal).

Commission conduct a more thorough affordability analysis before setting a specific co-pay,[44] if the Commission is going to allow carriers to charge co-pays upon approval of this Proposed Decision, and receive full subsidy from the state and federal programs, then the Commission must adopt a reasonable co-pay based on this record to ensure affordability for LifeLine consumers and protection of the Fund. Joint Consumers urge the Commission to revise the Proposed Decision to adopt a specific cap on customer co-pays of $10 a month.

In the alternative, if the Commission decides to allow flexibility for the providers to set a higher co-pay,[45] while avoiding legal error, the Commission should adopt a Tier 3 Advice Letter requirement and resolution for approval of terms and conditions that include a customer co-pay for LifeLine service. For those LifeLine providers that do not seek a co-pay, the Commission could continue to require only a Tier 2 Advice Letter filing. The requirement that the Commission approve Tier 3 advice letters through a resolution, would allow for review of any proposal that goes beyond the limits of ministerial Staff review.[46]

Joint Consumers support the Proposed Decision's proposal to require wireless carriers to retain wireless customers on the Program who have trouble making co-pays by switching them to a plan without co-pays and with no conversion fee.[47] Carriers have not properly documented any costs incurred to switch customers among plans to support any calls for reimbursement when a customer switches plans within the same provider. Joint Consumers urge revisions to the Proposed Decision to clarify that customers will also have the ability to switch back to the higher tier plans upon request with no fees. Joint Consumers further propose that the carriers or the

[44] TURN Reply Comments, August 6, 3020 at p. 9 (no co-pay for "lower tier" plans and more analysis on affordable co-pays for upper tier plans).
[45] Proposed Decision at p. 13 (rejects idea of a cap as impractical and suggests it is important to provide "flexibility" to providers to offer a variety of plans).
[46] General Order 96-B Section 5.3 (General Rules).
[47] Proposed Decision at p. 13-14; Joint Consumer Reply Comments, August 6, 2020, at pp. 9-10.

Third Party Administrator be required to track and report the number of customers that are switched to different plans, or removed from the Program, for nonpayment for the next year as one way to gather data regarding the affordability of co-pays.[48] The Proposed Decision should be revised to capture this proposal.

**D. The Commission Should Extend the Proposed Bridge Funding for Measured Service Customers**

Joint Consumers support the PD's determination to eliminate subsidies for measured-rate wireline service and move current measured-rate customers to an alternative service; these customers can be transitioned to flat-rate plans with their existing carriers or they can select a different form of service such as wireless. At the same time, Joint Consumers recognize that this transition will result in increased bills for customers who move from measured-rate wireline service to flat-rate wireline service.[49] Because of our concern for the impacts of a mandated transition on these customers, Joint Consumers appreciate the PD's clear requirement that customers cannot be charged any conversion fees,[50] and that any transition must be managed without disruption of customer service and without pressure to upsell the customer or mislead the customer to leave the LifeLine Program.[51] We also strongly support the allocation of a bridge funding bill credit of $2.00 per month for these measured-rate customers to soften the impact of the transition.[52] In light of the ongoing COVID-19 pandemic and the increased importance of telecommunications access, and given that measured-rate customers are largely legacy customers who have likely been accustomed to their existing service (and accompanying low bills) for a

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[48] Proposed Decision at pp. 23-24; TURN Opening Comments, July 30, 2020, at p. 10.
[49] *See* Proposed Decision at p. 21. ("Measured rate participants currently [pay] between 0-$4.73 for Program service plans, while flat rate participants currently pay between $6.47-$13.36").
[50] Proposed Decision at p. 20.
[51] Proposed Decision at p. 20.
[52] Proposed Decision at p. 21. The Proposed Decision notes that these "transition bill credits will not be provided to customers who transition to wireless service plans or who receive lower bills." *Id.*

long time, Joint Consumers recommend that this transition period be extended beyond the six-month period specified in the PD and instead be made available for one year for those customers who move to fixed-rate wireline service and do not have a lower bill than they had on measured rate service. This would be consistent with the PD's treatment of replacing $2.00 of the federal subsidy decline for one year as well as other actions take to support customers in light of ongoing concerns about the COVID-19 pandemic.[53]

In addition to the increased bill credits, Joint Consumers recommend that the PD be modified to make clear that carriers have an obligation to inform their existing measured-rate customers of the monthly charge associated with the service they would be transitioned to, as well as their ability to select an alternative form of service, such as wireless. They should also be provided with information on how to locate service options, such as a link to the California LifeLine Program website[54] and the phone number for the California LifeLine Call Center.[55] This information should be included in the notice that the providers are required to give their measured rate-customers,[56] and the carriers should provide detailed information of the language they propose to use to inform the customers in the Tier 2 Advice Letters required by the PD.[57] By including this information in the notice, customers will be given the opportunity and the information necessary to make an informed decision about their LifeLine service.

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[53] Proposed Decision at p. 23.
[54] https://www.californialifeline.com/en
[55] As noted on the Commission website, this number for service in English is 1-866-272-0349. *See* https://www.cpuc.ca.gov/General.aspx?id=2129.
[56] Proposed Decision at p. 20.
[57] Proposed Decision at pp. 20, 21.

## III. CONCLUSION

Joint Consumers generally support the Proposed Decision, and respectfully suggest adoption with the modifications set forth herein.

Dated: September 24, 2020


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**APPENDIX:**

Proposed Modifications to the Proposed Decision

**Findings of Fact:**

14. Reimbursing wireline providers for providing a $2.00 transition bill credit per participant that transitions from a measured rate plan to a flat rate plan for the first ~~six~~twelve months after the transition would cost the Program an estimated ~~$75,000~~$150,000, less the costs for any customers who select wireless service or who otherwise have a lower bill following the transition.

X. A Program Assessment is underway to identify opportunities to overcome barriers to participation and renewals, and to make California LifeLine more attractive to eligible households, as set out in the Scoping Memo issued on April 13, 2020. [External Contractor] has been retained to conduct the Program Assessment, and a report is anticipated [in Q3 2021 or as appropriate].

**Conclusions of Law:**

6. Co-payments for wireless service plans subsidized by the Program should be affordable and should not be allowed for the Basic and Standard Plans and should be capped at $10/month for the Upgrade and Family Plan for December 1, 2020 through November 30, 2021.

12. Wireless providers should be required to file a Tier 2 advice letter to request the Communications Division's review of terms and conditions of the proposed Family Plans and/or Upgrade Plans~~, including the affordability of out- of-pocket costs for participants and any consequences of non-payment of co- payments~~. The Tier 2 advice letter shall include the web address for the provider's California LifeLine web page.

13. Wireless providers who elect to offer service plans that require co-payment by participants should structure their plans as a "bolt-on" layer over a Standard Plan, so that if a participant does not make a co-payment, they will remain on the underlying Standard Plan and will not be charged a conversion charge or other fees to move from a plan that requires co-payment to the Standard Plan or to move back to the customer's original plan once payment is made.

18. The Program should allow wireline providers to temporarily claim the standard flat rate SSA of $14.85 for measured rate participants between December 1, 2020 and ~~February 28, 2021~~ November 30, 2021.

21. Each provider should file a Tier 2 advice letter to implement the transition of participants from measured rate plans to flat rate plans, including its plan to notice the participants about the expected bill impacts of the transition to flat rate plans during the ~~six~~twelve-month transition period and thereafter. The advice letter will include detail about the notice, which shall be sent at least 30 days prior to the initial transition to flat rate as well as between 30-60 days prior to expiration of transition bill credit, and shall include information on the monthly charge associated with the service they would be transitioned to, as well as their ability to select an alternative form of service, such as wireless. They should also be provided with information on how to locate service options, such as a link to the California LifeLine Program website and the phone number for the California LifeLine Call Center.

23. The Commission should reimburse wireline providers for providing a $2.00 transition bill credit per participant that transitions from a measured rate plan to a flat rate plan and does not receive a lower bill for the first ~~six~~twelve months after the transition.

X. The California Only Eligibility criteria as defined in D.18-02-006 (R.11-03-013), should apply here and would allow carriers to receive additional subsidy to make up for any lost federal subsidy resulting from reliance on California Only criteria.

If the revision to COL 6 up above is not adopted, Joint Consumers propose this additional COL:

X. Wireless providers should be required to file a Tier 3 advice letter to request the Commission's review and approval through the resolution process of terms and conditions of the proposed Family Plans and/or Upgrade Plans that include out-of-pocket costs for participants and any consequences of non-payment of co-payments.

**Ordering Paragraphs:**

2. A wireless provider shall file a Tier 1 advice letter by October 29, 2020 for any Basic Plan or Standard Plan it seeks to offer on December 1, 2020. A wireless provider shall file a Tier 2 advice letter at least 60 days prior to the proposed effective date for any proposed Upgrade Plan or Family Plan it seeks to offer without out-of-pocket service costs or co-pays for the customer. [A wireless provider shall file a Tier 3 advice letter at least 90 days prior to the proposed effective date for any proposed Upgrade Plan or Family Plan it seeks to offer that includes out-of-pocket costs or co-pays for the customer, and subsequent Tier 3 advice letters for updates and changes to the out-of-pocket costs or co-pays that result in an increase in such costs to the customer.[58]] Wireless providers shall notify their customers of service plan changes at least 30 days prior the effective date of service plan changes. ~~The Tier 1 or Tier 2~~ Each advice letters shall include the web address for the provider's California LifeLine web page. In addition to existing filing requirements, providers shall also send a copy of ~~the Tier 1 or Tier 2~~ each

[58] This revision is proposed if the Commission does not cap the co-pays at $10 as revised in COL 6 and OP 3.

advice letter~~s~~ to the California LifeLine Section of the California Public Utilities Commission's Communications Division at CaLLAdviceLetter@cpuc.ca.gov including this decision number.

3. General Order 153 is revised as follows . . . (c) clarify that wireless providers may not charge customers or claim conversion reimbursement for customers who transition from an Upgrade Plan or Family Plan to a Standard Plan or who transition from a Standard or Basic Plan to an Upgrade Plan or Family Plan, (d) clarify that wireline providers may not charge customers . . . ~~and~~ (e) . . . ; and (f) clarify that wireless providers may not charge customers a co-pay or other out of pocket service costs that exceed $10.

5. The California Universal Telephone Service Program fund is authorized to reimburse wireline providers for providing a $2.00 transition bill credit per participant that transitions from a measured rate plan to a flat rate plan for the first ~~six~~twelve months after the transition. The $2.00 bill credit shall not impact the Specific Support Amounts calculation and shall not be included in the lost revenue calculation.

X. LifeLine providers shall track on a monthly basis and report on a quarterly basis the numbers and percentage of LifeLine customers that are switched from one LifeLine offering to another due to nonpayment and the numbers and percentage of LifeLine customers that are in arrearage due to non-payment of a co-pay.

X. LifeLine customer arrearage information regarding co-pays, including tracking and reporting customers who either move to a tier with no co-pay or leave the carrier because of nonpayment of a copay is one piece of relevant data to support an affordability analysis of co-pays.

X. For a LifeLine customer who qualifies for service by California-only eligibility criteria, carriers shall receive a subsidy commensurate with the subsidy that it would have received from the federal program if that customer had established eligibility under the federal standards.

**Attachment 1** (to the Proposed Decision)

California LifeLine Specific Support Amounts (SSA) and Minimum Service Standards (MSS)
Effective December 1, 2020 – November 30, 2021

**Table 1: Wireless SSA and MSS**

| Tier | Plan | California SSA | Federal Subsidy | Mobile Voice & Text (month) | Mobile Broadband Speed* | Mobile Broadband Allowance (month) | Co-pay |
|---|---|---|---|---|---|---|---|
| 1A | Basic Plan | $12.85 | $5.25~~-9.25~~ | Unlimited | FCC MSS | ~~4 GB~~3 GB | $0 |
| 1B | Basic Plan | $12.85 | $9.25 | Unlimited | FCC MSS | The higher of:<br>• 3GB, or<br>• FCC MSS + 1 GB | $0 |
| 2A | Standard Plan | $14.85 | $5.25~~-9.25~~ | Unlimited | FCC MSS | ~~6GB~~4 GB | $0 |
| 2B | Standard Plan | $14.85 | $9.25 | Unlimited | FCC MSS | The higher of:<br>• 4 GB, or<br>• FCC MSS + 3 GB | $0 |
| 3 | Upgrade Plan ** | $14.85 | $9.25 | Unlimited | FCC MSS | 12 GB | Tier 2 AL with $10 cap, or Tier 3 AL, review for affordability |
| 4 | Family Plan (Line 1) *** | $14.85 | $9.25 | Unlimited | FCC MSS | 12 GB | Tier 2 AL with $10 cap, or Tier3 AL, review for affordability |

* Mobile broadband speed MSS applies to the entire mobile broadband allowance amount.
** Upgrade Plan terms and conditions are subject to Tier 2 advice letter review. An Upgrade Plan is an addition to a Standard Plan. If a participant fails to make Upgrade co-payments, the participant's plan reverts to the Standard Plan.
*** Family Plan additional lines do not receive a California LifeLine subsidy. Family Plan Line 1 terms and conditions are subject to Tier 2 advice letter review. A Family Plan is an addition to the Standard Plan. If a participant fails to make Family Plan co-payments, Family Plan Line 1 reverts to the Standard Plan.