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BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Operations and Practices of TC Telephone to Determine Whether Respondents Violated the Laws, Rules, and Regulations of this State Governing the California Universal LifeLine Program.	I.22-10-007

TC TELEPHONE APPLICATION FOR REHEARING OF DECISION 25-03-011 REGARDING THE ORDER TO SHOW CAUSE AGAINST TC TELEPHONE

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Pursuant to Rule 16.1 of the Commission's Rules of Practice and Procedure, TC Telephone ("TCT") hereby files its Application for Rehearing of Decision 25-03-011 ("D.25-03-011" or "decision") regarding the Order to Show Cause against TC Telephone.[1] As grounds therefor, TCT states that D. 25-03-011 is based on factual and legal errors. The Order errs on two foundational legal issues. First, it errs by retroactively applying an alternative calculation methodology for Lifeline that was proposed by staff and approved by the Commission in Resolution T-17687 and then clawing back reimbursements to TC Telephone. Second, D.25-03-011 ignores the plain language of Resolution T-17687 that the alternative calculation methodology be applied only prospectively. Finally, the Order errs by asserting that the Commission is not bound by staff decision processing Lifeline reimbursements despite the Commission's delegation of authority for such actions in General Order 153 and the substantial length of time that staff approved the reimbursements. TC Telephone also notes other legal errors regarding the erroneous assessment of interest and imposition of an excessive fine. Other than the issues identified herein, TC Telephone expressly states that it is not appealing other aspects of D.25-03-011. For the reasons set forth below, D.25-03-011 is contrary to law, constitutes an abuse of discretion and is arbitrary and capricious in violation of Cal. Pub. Util. Code § 1757(a).

I. BACKGROUND

In January 2021, the Consumer Protection and Enforcement Division ("CPED") opened a formal investigation ("OSC") to determine whether TC Telephone LLC ("TC Telephone") violated Commission Rules. The topic of the investigation was not disclosed to TC Telephone. CPED issued two sets of data requests to which TC Telephone responded promptly and to the

[1] Decision 25-03-011 was issued on March 14, 2025. Rule 16.1 (a) permits Applications for Rehearing to be filed within 30 days after the date that the Commission mails the order or decision. This Application is timely filed.

best of its ability, given that the carrier had to exit the market in November 2020 due to the lack of reimbursement from the Commission for Lifeline services provided. TC Telephone remained in periodic contact with CPED staff throughout the investigation. On October 6, 2022, the California Public Utilities Commission ("Commission") issued an Order to Show Cause ("OSC") whether TC Telephone's Lifeline reimbursement calculations violated Commission rules and decisions.[2]

TC Telephone submitted a response to the OSC on December 9, 2022, providing record evidence that it had a good faith basis for its lost revenue reimbursement claims between 2018 and March 2020 based on written guidance from: 1)three Commission Lifeline staffers, who acted under delegated authority from the Commission, 2)the Commission's Lifeline claim forms, and 3) the text of General Order 153. Thereafter, the record shows that TC Telephone made a good faith effort to comply with Resolution T-17687, issued on March 26, 2020, by filing a revision to conform its tariff to the Resolution and submitting reimbursement claim forms between April and October 2020 based on that approved tariff. At the direction of staff, TC Telephone revised the April to October 2021 claim forms to a substantially lower lost revenue reimbursement amount even though such revisions did not conform to TC Telephone's tariff. TC Telephone's revised claim forms remain unpaid despite unrebutted record evidence that TC Telephone provided Lifeline service to qualified customers[3] and that its May to October 2020 claims were revised to comply with staff's requirements. [4]

Decision 25-03-011 was issued on March 13, 2025. It correctly noted that TC

[2] Response of TC Telephone to Administrative Law Judge Directive to Submit Table of Undisputed Facts (March 16, 2023), at Exhibit 4.
[3] OSC Order at p. 2 ("These services included residential telephone service to qualified low-income households subsidized by California and federal LifeLine programs including MRS and Flat Rate").
[4] OSC Order at p. 44 ("CD directed TC Telephone to amend the claims [for May through August 2020] in accordance with GO 153, D.00-10-028, and Resolution T-17687. To obtain swift LifeLine Fund reimbursement, albeit at lower levels, TC Telephone did so under protest and submitted the revised claims on September 25, 2020. TC Telephone followed CD's format for September and October 2020 claims.")

Telephone's outstanding reimbursement claim forms from May through October 2020 must be processed, and provided staff three months to do so.[5] TC Telephone notes that the evidentiary record supports full payment for these claims because these claim forms were revised to remove per-minute lost revenue reimbursement for calls 1-60 and for 60+ calls[3] despite having earlier gotten written direction from two senior Commission staffers that such lost revenues were reimbursable.[6]

The Decision is based on legal and factual errors on other issues. Neither the record nor the law support the decision's penalty TC Telephone to repay $8.1 million in Lifeline reimbursements received from 2018 to 2020. The weight of evidence demonstrates that the Commission's Lifeline reimbursement rules during that period were unclear, as explicitly acknowledged by Resolution T-17687, and as repeated numerous times by Commission staff. To impose a claw back penalty in the face of unclear rules violates the "plain language" rule of interpretation for Commission decisions and due process. Further, the decision erroneously imposes an interest penalty on the claw back amount based on legally and factually faulty bases, and in violation of due process because the penalty is imposed for a period (2021 and 2022) during which there was no ruling (even preliminary) that TC Telephone might be required to repay the Lifeline reimbursements. Unless the Commission issues a final order determining that TC Telephone should repay the Lifeline reimbursements, it cannot be subject to a penalty for not having done so.

II. LEGAL ERRORS IN D.25-03-011

The purpose of an Application for Rehearing is to alert the Commission as to legal error, in order to permit the Commission to correct it expeditiously.[7] As discussed in detail below, the

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[5] D.25-03-011, at p.60.
[6] *See* TC Telephone OSC Response, Exhibit F and Table of Undisputed Facts, Exhibit 8.
[7] *See* Rule 16.1.

Commission should reverse the holding in D.25-03-011 that a claw back of $8.1 million in Lifeline reimbursements from 2018 to 2020 is justified or legal. This holding constitutes legal error and should be reversed.

A. D.25-03-011 Improperly Applies Substantive Change in Reimbursement Method Retroactively

D.25-03-011 orders a claw back of $8.1 million allegedly over collected by TC Telephone as reimbursement for lost revenues incurred while providing Lifeline telephone service to eligible customers between 2018 and March 2020.[8] TC Telephone's reimbursement claim forms calculated reimbursement on a per-minute basis for the first sixty customer calls each month and sought reimbursement for calls above the first 60 calls each month.[9] The unrebutted record shows that the rules for Lifeline lost revenue reimbursements were unclear during that time. The Commission itself stated that the rules were unclear and therefore issued as Resolution T-17687 on March 26, 2020 to clarify the rules for lost revenue reimbursements. Resolution T-17687 stated:

> It is apparent that language in D.00-10-028 and GO 153 Section 8.1.5.4 ***was not sufficiently clear*** for all ULTS providers.[19] Going forward, ULTS providers will only be permitted to seek reimbursement from the ULTS fund for lost revenues associated with Measured Rate Service on a per call basis, not per minute.[10]

Prior to March of 2020 TC Telephone followed clear written guidance from a senior staffer, which corroborated TC Telephone's calculation methodology.[11]

Resolution T-17687 for the first time clarified that reimbursements for lost revenues could not include recovery for multi-minute calls for the first sixty customer calls each month. Resolution T-16787 explicitly applied only *prospectively*, as it stated, "*Going forward*, ULTS

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[8] D.25-03-011, at p. 2.
[9] Table of Undisputed Facts, at Exhibit 20.
[10] Resolution T-17687, at p. 3.
[11] TC Telephone Response to OSC (December 09, 2022) Exhibit F (Lakritz email).

providers will only be permitted to seek reimbursement from the ULTS fund for lost revenues associated with Measured Rate Service on a per call basis, not per minute."[12]

The decision, however, dismisses the clear language in Resolution T-17687, "[w]hile Resolution T- 17687 is styled as a clarification, the Commission makes it position clear as to what the law *has always been* regarding reimbursable LifeLine Fund claims."[13] But several undisputed facts make clear that Resolution T-17687, requiring per-call reimbursement, was not a restatement of existing law. The evidence shows that the clarification in Resolution T-17687 resulted in a new reimbursement methodology.

First, the Commission's Lifeline staff manager stated in a letter to TC Telephone "CD [communications Division] will process payments to the Company on a per-minute basis until the Commission addresses in a public process the question of whether an ***alternative*** basis should be used."[14] Mr. Wullenjohn's letter made clear that staff was applying the Commission's existing rules for Lifeline reimbursements on a per-minute basis and that any other approach (such as the per-call rules set forth in Resolution T-17687) was an ***alternative*** – *i.e.* new approach. The Merriam Webster Dictionary defines the term alternative as "something which can be chosen instead."[15]

The Commission is required to consider all evidence in the record.[16] D.25-03-011 errs by disregarding unrebutted, material, evidence on the crucial issue in the claw back. The Decision simply dismisses the evidence that Lifeline staff confirmed in writing the existing Lifeline

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[12] Resolution T-17687, at p. 3 and TC Telephone Supplement, Attachment 13 dated March 24, 2020 and Attachment 14 dated June 19, 2020.
[13] D.25-03-011, at p. 20 (emphasis in original).
[14] Response of TC Telephone, LLC (U-6875-C) to the Order Instituting Investigation and Order to Show Case, at Exhibit 8 (Dec. 9, 2022).
[15] https://www.merriam-webster.com/dictionary/alternative.
[16] Public Utilities Code §1757(a)(4) specifies that the findings in the Commission's decisions must be supported by substantial evidence in light of the <u>whole</u> record, reinforcing the obligation to consider all relevant evidence.

reimbursement rules and noted that any change to those rules would have to be done through official Commission action. Staff drafted Resolution T-17687, which was reviewed and approved by the Commission, resulting in a new "alternative" for reimbursements.

Second, the long period of time (seven years) over which Lifeline staff consistently applied the Lifeline rules allowing reimbursement on a per-minute basis underscores that Resolution T-17687 issued a new rule. California case law holds that a legislative interpretation issued in close proximity to the enacted of a statute can reasonably be interpreted as a restatement of what the legislature intended. In *Salazar v. Diversified Paratransit, Inc*. the Court examined whether the California Legislature's interpretation that a statute-imposed liability on an employer for sexual harassment carried out by a non-employee on an employee should have retroactive effect. The Court held that "if the amendment was enacted soon after controversies arose as to the interpretation of the original act, it is logical to regard the amendment as a legislative interpretation of the original act—a formal change—rebutting the presumption of substantial change."[17] The legislative clarification was issued only two months after a court first interpreted the statute.

Here, Resolution T-17687 established a new per-call reimbursement approach after seven years of staff consistently applying a per-minute reimbursement approach. Nonetheless, D.25-03-011 purports that the imposition of a per-call reimbursement methodology for Lifeline in Resolution T-17687 was merely a re-statement of "the law *has always been.*"[18] But Lifeline staff had applied the Lifeline rules to allow per-minute reimbursements for seven years. During that time, if the Commission had believed staff was mistaken, it would surely have issued an immediate restatement or clarification of the rules. But the Commission never acted on its own

[17] Salazar v. Diversified Paratransit, Inc., (2004) 117 Cal. App. 4th 318, 325, 11 Cal. Rptr. 3d 630, 635-636.

[18] D.25-03-011, at p. 20.

accord at all. Instead, staff drafted Resolution T-17687 and presented it to the Commission for review and approval to begin requiring Lifeline reimbursements to be calculated on a per-call basis. That staff described the per-call rule as "an alternative."[19] Clearly, staff viewed the per-call reimbursement method as substantive because it required Commission approval (in the form of Resolution T-17687) to affect such approach.

D.25-03-011 asserts that TCT is asking for "a pass for improperly seeking reimbursement from the LifeLine Fund before the Resolution was adopted."[20] This assertion is incorrect. TC Telephone is asking that the Commission enforce the existing reimbursement rule applied by Lifeline staff. The fact that the Commission adopted an alternative reimbursement methodology subsequent to March 2020 does not change the rule in effect prior to March 2020. Thus any per-minute reimbursements prior to when Resolution T-17687 was issued, cannot be clawed back retroactively pursuant to the explicit language in the Commission's decision. The clarification in T-17687 imposes new or different liabilities based on past conduct and thus is a retroactive change. California Courts have made clear that when determining whether the application of a law or rule is prospective or retroactive, the analysis must consider the effect of a law on a party's rights and liabilities, not the label that is applied to a clarification or change.[21] Here, after seven years of submitting reimbursement requests on a per-minute basis, the Commission issued a formal resolution changing the methodology to per-call. Despite D.25-03-011's characterization of this change as simply a re-statement of the rule as it has always been, the effect is to force TC Telephone to repay $8.1 million dollars. Clearly TC Telephone's rights and liabilities have been drastically changed by Resolution T-17687 retroactively, and labeling the rule change in T-1787 as a non-substantive re-statement is legal error because it results in

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[19] *See* TC Telephone Response to ALJ Directive to Submit Table of Undisputed Facts (March 16, 2023), Exhibit 8 (Letter from R. Wullenjohn to J. Adam, Aug 09, 2019).
[20] D.25-03-011, at p. 21.
[21] *Elsner v. Uveges*, (2004) 34 Cal. 4th 915, 936-937.

substantial detriment to TC Telephone.

The theory against applying a statute retroactively is that parties affected have no notice of a new law affecting conduct already past.[22] The California Supreme Court has stated that " 'the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." ' "[23]

Even though D.25-03-011 asserts that Resolution T-17687 merely re-stated the rules as they had always been, the clear evidence in the record demonstrates that is incorrect. It is well established that "[w]here an unmistakable substantive change in the law has occurred, however, the court is not bound to accept a legislative statement that an amendment merely clarifies and restates the original statutory terms."[24] The California Supreme Court has stated that " 'the "principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal." '[25]

D.25-03-011 errs legally by applying a substantive rule clarification that on its face applies only prospectively to a period prior to the clarification. Retroactive application of the substantive rule change in Resolution T-17687 violates due process, the "plain language rule," and constitutes retroactive ratemaking/rulemaking. (See Section C below).

B. Decision 25-03-011's Disregard of Explicit Prospective Only Application of Resolution T-17687 Violates the Plain Language Rule

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[22] *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 793; *Myers v. Phillip Morris Companies, Inc*. 28 (year) Cal.4th xxx, 840-841 (*quoting Landfraf v. USI Film Products* (1994) 511 U.S. 244, 265.

[23] *Landgraf v. USI Film Products*, supra, 511 U.S. at p. 265; accord, Hughes Aircraft Co. v. U.S. ex rel. Schumer (1997) 520 U.S. 939, 946

[24] Salazar, at 330-331 (*citing Riley v. Hilton Hotels Corp*. (2002) 100 Cal.App.4th 599 [123 Cal. Rptr. 2d 157], citing *California Emp. etc. Com. v.* [*331] *Payne* (1947) 31 Cal.2d 210, 214 [187 P.2d 702]; *Jarvis v. Cory* (1980) 28 Cal.3d 562, 570 [170 Cal. Rptr. 11, 620 P.2d 598]: "[W]here a declaration is in irremediable conflict with a statute's substantive provisions, courts will not blindly bow to the Legislature's stated interpretation.")

[25] *Salazar*, at 330.

D.25-03-011 notes it is well settled that the plain language of a statute or order must be applied in interpreting a statute.[26] The decision states, "A number of rules govern exercises in statutory construction, the most important of which being the plain-meaning rule, was summarized by the Court in *Lennane v. Franchise Tax Bd***.** (1994) 9 Cal. 4th 263, 268:

> To ascertain intent, we look first to the words of the statute, giving them their usual and ordinary meaning. If there is no ambiguity in the language of the statute, then the Legislature is presumed to have meant what it said, and the plain meaning of the language governs. Where the statute is clear, courts will not interpret away clear language in favor of an ambiguity that does not exist.[27]

D.25-03-011 acknowledges that the Commission adheres to this interpretation rule.[28] For example, in D. 03-04-058, the Commission held that "under the principles of statutory construction, the Commission must first interpret Rule 1 according to its plain language."[29] Similarly, in D.10-10-007, the Commission applied the plain language rule to interpret the scope of two orders granting Certificates of Public Convenience and Necessity ("CPCNs") to a carrier.[30]

Nonetheless, D.25-03-011 violates the "plain language" rule, by applying the alternative calculation methodology set forth in Resolution T-17687, which explicitly applied only "going forward".[31] Applying the new calculation method retrospectively, D.25-03-011 then orders a claw back of $8.1 million that TC Telephone was reimbursed for lost revenues by providing cost-free telephone service to Lifeline customers between 2018 and 2020. The Decision further violates the "plain language" rule because it disregards explicit language in Resolution T-17687 that that the language in prior Commission orders regarding reimbursement of lost revenues

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[26]D.25-03-011, at p. 12-13.
[27] *Id*., at p. 13.
[28] *Id.*, at p.13, n.24.
[29] D.03-04-058, at p. 15 (Apr. 17, 2003) (mimeo).
[30] D.10-10-007, at p.14 (Oct. 14, 2010) (Interpreting the "plain language of D.03-01-061 and D.07-04-045" to conclude that NextG as a telephone corporation".)
[31] Resolution T-17687, at p. 3.

(D.00-10-028 and GO 153) “was not sufficiently clear”[32] and that Resolution T-17687 was intended to serve as a clarification of the reimbursement rules. Despite this plain and explicit language, D.25-03-011 asserts that Resolution T-17687 did nothing more than state “what the law *has always been* regarding reimbursable LifeLine Fund claims.”[33]

After ignoring the plain language of Resolution T-17687, the Decision then goes on a scavenger hunt to justify its conclusion that TC Telephone over-collected Lifeline reimbursements. The justification in D .25-03-011 is the absence of any statutory language or prior Commission decisions providing that lost revenues could be reimbursed on a per-minute basis, or that reimbursement was due for calls above 60 each month from 2018 to March 2020.[34] Yet D.25-03-011 ignores that the statute also does not preclude obtaining reimbursement for lost revenues on a per-minute basis for multi-minute calls in the first sixty customer calls each month. The Commission’s rules implementing the Lifeline statute were supposed to provide such details, and as discussed above, even the Commission itself concedes that its reimbursement rules were unclear.

Commission staff noted that the rules were unclear, and after deciding that they lacked authority to issue a substantive clarification[35] they drafted a resolution (eventually issued as Resolution T-17687) to do so. Only substantive changes to the Lifeline rules require that staff prepare a resolution for Commission approval, so the fact that staff prepared a resolution makes clear that Resolution T-17687 was a substantive clarification.[36] If the clarification that per-minute reimbursements for lost revenues would no longer be allowed had been an administrative

[32]D.25-03-011, at 20-23.
[33] D.25-03-011, at 20 (emphasis in original).
[34] D.25-03-011, at 26.
[35] TC Telephone Response to ALJ Directive to Submit Table of Undisputed Facts (March 16, 2023), Exhibit 8 (Letter from R. Wullenjohn to J. Adam, Aug 09, 2019).
[36] Decision 00-10-028, at p. 186 (Oct. 5, 2000).

or ministerial change, Commission staff could have done so under their own authority.[37]

Clarifying the Lifeline reimbursement rules to bar per-minute reimbursements for lost revenues falls within the type of changes the Commission has identified as substantive. In D.00-10-028 the Commission held that "[w]e define substantive changes as ones . . . that affect the amount and types of costs and lost revenues that utilities may recover from the ULTS Fund."[38]

Thus, Resolution T-17687 established a substantive "alternative" to the Lifeline rules. TC Telephone cannot fairly be charged with following a process that was so unclear that the Commission had to issue a resolution to explain it, after overseeing staff who approved TC Telephone's claim forms monthly for seven years. The Resolution on its face applies only prospectively. Interpreting Resolution T-17687 as a non-substantive document that merely codified "already clear" rules violates the plain language rule. Further, to apply the substantive rule clarification in Resolution T-17687 retroactively despite explicit language in the Resolution that it applies only prospectively, violates the plain language rule.

Similarly, the decision disregards plain language in holding that TC Telephone violated two Commission decisions from the 1990s. The decision asserts that TCT acted contrary to two Commission Decisions (D.92-11-063 and D.94-10-046) when it claimed recovery for calls beyond customers' first 60 calls.[39] While the decision asserts that these two decisions apply to all Lifeline carriers,[40] on their face the decisions applied only to Pacific Bell. Indeed, D.94-10-046 approved a settlement agreement specific to Commission staff and Pacific Bell.[41] The Commission ordered that workshops be held to determine whether GO 153 should be revised to extend Lifeline procedures "in a generic sense."[42] To the best of TCT's knowledge, no such

[37] D. 00-10-028, at pp. 189-91.
[38] D.00-10-028, at p. 185.
[39] D.25-03-011, at p. 38.
[40] *Id.*, at p. 25-26.
[41] D.94-10-046, at p. 13, Ordering Paragraph 3.
[42] *Id.*, at p. 9, 13, Ordering Paragraph 4.

workshop was held. It is clear that no modifications to GO 153 were made that clarified lost revenue could not be requested for multi-minute calls beyond 60 per month for Lifeline customers.

C. D.25-03-011 Applies Substantive Rule Change Retroactively Violates Bar Against Retroactive Ratemaking in Section 728

Section 728 of the California Public Utilities Code commands that whenever the Commission finds, after a hearing, that the rates charged by a carrier, or the rules or practices affecting those rates are insufficient, unlawful, unjust, unreasonable, discriminatory, or preferential, the commission shall determine the just, reasonable, or sufficient rate, rules or practices "to be thereafter observed and in force."[43] This doctrine is closely related to the due process bar on retroactive rulemaking.

Retroactive ratemaking entails applying a rate or rule to a date prior to the issuance of a final Commission decision.[44] The Commission has acknowledged that it must comply with the rule against retroactive ratemaking, which requires the Commission to adopt rates that apply prospectively.[45] Retroactive rulemaking entails making a substantive rule change an applying it to acts or events that occurred prior to the rule change. For example, in D. 21-03-006, the Commission declined to change the rules for CASF award recipients to require them to provide open access to competitors because such change would have constituted retroactive rulemaking.[46]

Here the decision is applying an alternative reimbursement calculation method set forth in Resolution T-17687, issued on March 26, 2020, to determine the rate that TC Telephone was

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[43] Cal. Pub. Util. Code §728.
[44] Cal. Pub. Util. Code §728.
[45] Pub. Util. Code, §728; *see also*, D. 09-01-037, at p. 15, fn 45 (Jan. 29, 2009) (mimeo) (*citing Southern Cal. Edison Co. v. Public Utilities Com.* (1978) 20 Cal.3d 813, 816; Pacific Tel. & Tel. Co. v. Public Util. Com. (1965) 62 Cal.2d 634, 650-651.).
[46] D. 21-03-006, at p. 14 (March 4, 2021) (mimeo).

allowed to charge Lifeline customers. TC Telephone mirrored AT&T's Lifeline tariffed rate of 25 cents per minute. However, D.25-03-011 limits TC Telephone to collect only 25 cents per connection, regardless of how many minutes the call lasted, and bars TC Telephone from collecting anything for customer calls above 60 each month. Thus, the application of the new reimbursement methodology established on March 26, 2020 to calls from 2018 to March 2020 affected the rates TC Telephone was allowed to charge for a period prior to the new rule.

This is the definition of retroactive ratemaking and rulemaking and therefore constitutes legal error.

D. D.25-03-011 Violates Due Process For Penalizing Violation of Vague Rule

The decision penalizes TC Telephone by imposing an $8.1 million claw back of Lifeline reimbursements despite the unrebutted evidence that both the Commission and Communications Division staff viewed the reimbursement rules as unclear. It is well settled that states, ordinances and regulations "must be sufficiently clear to give a person fair warning of the conduct prohibited."[47] California courts have warned that imposing penalties for violations of vague rules undermines justice. In *Cranston v. City of Richmond*, the California Supreme Court held:

Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application."[48]

Despite the weight of contrary record evidence, and even the Commission's own words,

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[47] *525-655 Hyde St, Cnml Props. V. City of Oakland's Dep't of Hous. & Cmty Dev. Rent Adjustment Program*, (2018) 2018 Cal. Super. LEXIS 35929, *14 *(citing Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 230-231; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308-309).
[48] *Cranston v. City of Richmond*, (1985) 40 Cal. 3d 755, 763.

D.25-03-011 holds that the rules on Lifeline reimbursement were always clear.[49] The Commission included explicit language in Resolution T-17687 acknowledging that the language in D.00-10-028 and GO 153 "was not sufficiently clear," and Commission staff written statements that the rules were unclear. In an email dated May 10, 2013, Jonathan Lakritz stated:

> "As with many policies established over decisions spanning a decade or more, the rules are not always clear…. For the time being if you follow what other carriers do we will timely process your claims… For first 60 untimed calls--a carrier may file for lost revenues but are limited to the measured rate charged by the underlying ILEC…For calls in excess of first 60--a carrier can only charge lifeline customers $0.08/minute. Carriers may claim lost revenues for the difference between the rate charged $0.08/minute and the carrier's retail rate capped by the underlying ILEC's rate…The claims staff have noted that our current claim form does not have specific lines for all the types of untimed calls (less than 31 or more than 60). I ask that you work with them on preparing your claim in advance of submitting your claim so we can timely process your claims."[50]

TC Telephone notes that the rule for reimbursement for calls above 60 each month remained unclear even after Resolution T-17687 because it did not address that issue.

The decision errs legally by imposing a claw back penalty for a violation of unclear rules that no reasonable person could have understood to bar lost revenues for multi-minute calls. Because TC Telephone paid for service on a per-minute basis and could have charged on a per-minute basis for customers other than Lifeline,[51] it was completely reasonable to believe that it could recover its per-minute lost revenues for the first sixty calls each month.

E. D.25-03-011 Creates Impossible Process for TC Telephone to Follow

D.25-03-011 errs legally because it impermissibly creates a rule that was impossible for TCT to comply with. Specifically, the "law never requires impossibilities."[52] In order to have

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[49] D.25-03-011, at p. 20.
[50] See, TC Telephone OSC Response, Exhibit F (Email from J. Lakritz dated May 10, 2013). TC Telephone notes that Mr. Lakritz's instructions were consistent with its interpretation of GO 153 rules for reimbursement of lost revenues. TC Telephone fully explained the basis for its interpretation in its Response to the OSC at pages 9-11 and hereby incorporates that material by reference.
[51] *See* TC Telephone Response to OSC, at p. 10, n.22.
[52] Civ. Code § 3531.

Lifeline Staff accept and process its claim forms, it was instructed to keep calculating Lifeline reimbursements as it always had, unless or until the Commission clarified the rule.[53] D.25-03-011, however, claims that TC Telephone should not have relied on staff direction. D.25-03-011 errs legally by making TCT choose either to disregard staff's instructions on the way in which Lifeline claims should be submitted, or to proceed consistent with staff's instructions only to be stripped of $8.1 million in Lifeline reimbursements retroactively. Until the Commission approved an alternative approach to calculating Lifeline reimbursements in T-17687, TC Telephone followed the written directions of staff, which was based on the existing reimbursement rules. It had no other way to submit claim forms that would be accepted by Staff other than to follow their directions.

F. D.25-03-011 Errs By Repudiating Staff Reimbursement Determinations Made Under Delegated Authority for Substantial Period of Time

The CPUC has clear statutory authority to delegate responsibilities to staff, including those requiring judgment and discretion. This delegation extends to administrative tasks such as reviewing and processing advice letters, as well as approving service plans under the Lifeline program. In this case, the staff's review and approval of Lifeline reimbursement claim forms over a seven-year period falls squarely within the scope of delegated authority.

The Commission delegated oversight responsibility for the Lifeline program to staff in General Order 153.[54] Under this delegated authority, Lifeline staff in the Communications Division reviewed TC Telephone's Lifeline reimbursement claim forms, requested modifications to those forms, approved those forms and arranged for payment for those claims every month for seven years. While D.25-03-011 disavows the Lifeline staff's review and approval of TC

[53] Response of TC Telephone, LLC (U-6875-C) to the Order Instituting Investigation and Order to Show Case, at Exhibit 8 (Dec. 9, 2022).
[54] General Order 153, Section 2.17.

Telephone's claim forms, such holding is legal error.

While the Commission cites several cases for the general proposition that it is not bound by staff interpretations of law, the situation here is easily distinguishable. First, staff was not giving TC Telephone a legal interpretation. Rather, they were reviewing TC Telephone's claim forms according to the existing Commission rules as they understood it. Second, the Lifeline staff were expressly delegated authority to interpret and administer the Lifeline rules. Delegated staff actions within their authority are valid and enforceable. Third, the staff application of Lifeline reimbursement rules was carried out consistently for seven years.

It is well established that California Courts give significant weight to consistent administrative interpretations and practices, particularly when they have been relied upon for an extended period. Such practices are generally upheld unless clearly erroneous. The California Supreme Court held that "[w]hen an administrative interpretation is of long standing and has remained uniform, it is likely that numerous transactions have been entered into in reliance thereon and it could be invalidated only at the cost of major readjustments and extensive litigation."[55] The rule of construction based on the Supreme Court's seminal holding was set forth by the Court of Appeal in *Castaneda* v. *Holcomb.*[56] "our courts have stated that consistent administrative construction of a statute over many years, particularly when it originated with those charged with putting the statutory machinery into effect, is entitled to great weight [citations omitted], and courts will generally not depart from such a construction unless it is clearly erroneous [citations omitted]."

The unrebutted record shows that the determinations of Lifeline staff approving TC Telephone's calculation methodology over a seven-year period delegated authority must be upheld by the Commission under the holding in *Whitcomb*. Given such a long history, TC

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[55] *Whitcomb Hotel, Inc.* v. *Cal. Emp. Com.* (1944) 24 Cal.2d 753, 757.
[56] *Castaneda v Holcomb* (1981) 114 Cal. App.3d 939, 945-946.

Telephone reasonably relied on staff's oversight and processing decisions regarding the correct method and procedure for calculating and requesting reimbursements. The cases cited in D.25-03-011 do not support its repudiation of the lengthy line of Lifeline staff decisions. These cases are outlined below.

1. *California School Employees Assn. v. Personnel Commission*

The staff decision in *California School Employees Assn. v. Personnel Commission*[57], was not upheld because the Personnel Commission acted without jurisdiction. Under the applicable provisions of the California Education Code (§§ 13742-13745), the governing board of the school district had exclusive jurisdiction to dismiss employees, while the Personnel Commission's role was limited to reviewing the governing board's actions on appeal. In this case, the Personnel Commission dismissed the employee before the governing board had taken any action, thereby exceeding its jurisdiction. The court emphasized that the statutory framework clearly delineated the roles of the governing board and the Personnel Commission. The governing board was responsible for initiating disciplinary actions, including dismissals, while the Personnel Commission's authority was appellate in nature. The Personnel Commission's premature action violated this statutory scheme, rendering its decision invalid.

Here, the Lifeline staff had an express delegation to interpret and apply the Lifeline rules, and to review and approve (or disapprove) Lifeline reimbursements under GO 153. Lifeline staff acted within its delegated authority, so this case does not support D.25-03-011's repudiation of the Lifeline staff's written directions to TC Telephone on calculation methodologies or their approval of TC Telephone's claim forms.

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[57] *California School Employees Assn. v. Personnel Commission*, 30 Cal. App. 3d 241 (1970) 3 Cal. 3d 139, 144.

2. *Schecter v. County of Los Angeles*

The staff decision in *Schecter v. County of Los Angeles*[58] was not upheld because the court found that the Board of Supervisors' interpretation of the commission's rule constituted an improper delegation of the commission's authority to its staff member. Specifically, the case involved a dispute over job classifications in the sheriff's department. The civil service commission's chief staff member had recommended certain job classifications, which the commission rejected in favor of its own classifications. The Board of Supervisors refused to adopt the commission's classifications, arguing that the commission's role was limited to accepting or rejecting the staff's recommendations without exercising independent discretion. The court rejected this argument, holding that the commission was required to exercise its own discretion in approving a final order and could not merely act as a "rubber stamp" for staff decisions. The court emphasized that while the commission could rely on its staff to investigate, report facts, and make recommendations, the ultimate decision-making authority rested with the commission itself. Delegating this discretionary authority to staff would violate the principle that a delegated power may not be redelegated unless explicitly authorized by law.

Here, the Commission does not refute that Lifeline staff had explicit delegated authority to direct carriers how to calculate Lifeline reimbursements and to approve or disapprove claim forms, pursuant to GO 153. When Staff decided that an alternate calculation methodology was needed, they drafted a resolution, which was approved by the Commission as Resolution T-17687. That resolution applied only prospectively, thus the Lifeline staff's prior decisions approving TC Telephone Lifeline claim forms under the then-existing rules must be upheld. This case does not require otherwise.

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[58] *Schecter v. County of Los Angeles* (1968) 258 Cal.App.2d 391, 396.

3. *Moores v. PG&E Co*. (D.92-04-022)

The staff decision in D.92-04-022[59] was not upheld because the delegation of decision-making authority to staff was deemed unauthorized and improper. Specifically, the Board's approach to proceed without resolving factual issues and delegating their resolution to unappointed and unelected staff was found to lack authorization. This practice raised concerns about accountability, as it left property owners vulnerable to potentially indefinite and unchecked demands from staff, without clear mechanisms for review or resolution.

Here, the Commission does not refute that Lifeline staff had explicit delegated authority to direct carriers how to calculate Lifeline reimbursements and to approve or disapprove claim forms, pursuant to GO 153. When Staff decided that an alternate calculation methodology was needed, they drafted a resolution, which was approved by the Commission as Resolution T-17687. That resolution applied only prospectively, thus the Lifeline staff's prior decisions approving TC Telephone Lifeline claim forms under the then-existing rules must be upheld. This case does not require otherwise.

4. *Universal Marine Corporation v. San Pedro Marin (D.90334)*

The staff decision in D. 90334[60] was not upheld because the appellate court determined that the party challenging the decision failed to meet procedural requirements necessary to address deficiencies in the administrative record. Specifically, the court noted that portions of the transcript from the hearing were unintelligible, but the party did not file an affidavit asserting the transcript's incompleteness as required. This failure to comply with procedural rules meant that the appellate court could not find the record deficient as a matter of law, and thus, the staff decision was not upheld.

Here, the Commission does not refute that Lifeline staff had explicit delegated authority

[59] *Moores v. PG&E Co*. [D.92-04-022] (1992) 43 Cal.P.U.C.2d 629.
[60] *Universal Marine Corporation v. San Pedro Marin*, [Decision (D.) 90334, (1979) 1 Cal. P.U.C.2d 404.

to direct carriers how to calculate Lifeline reimbursements and to approve or disapprove claim forms, pursuant to GO 153. When Staff decided that an alternate calculation methodology was needed, they drafted a resolution, which was approved by the Commission as Resolution T-17687. That resolution applied only prospectively, thus the Lifeline staff's prior decisions approving TC Telephone Lifeline claim forms under the then-existing rules must be upheld. This case does not require otherwise.

Unlike the cases summarized above, TC Telephone is not asserting that the Commission accept Lifeline staff instructions that varied from a clear law or rule. Rather, it is asserting that the rule, as applied by staff repeatedly for seven years, was that carriers could seek reimbursement on a per-minute basis.[61] The Commission then adopted an alternative reimbursement methodology in Resolution T-17687. The Commission is required to enforce the rules in existence during 2018 to March 2020 and it may not retroactively apply the new alternative reimbursement rules promulgated by the Commission in Resolution T-17687 on March 26, 2020.

Rather, staff administering the Lifeline program are authorized to make administrative decisions that keep the Lifeline program functioning. Seven years of staff approvals of claim forms were subsequently confirmed by official Commission processes that resulted in the issuance of reimbursement checks. As discussed above, D.00-10-028 explicitly delegated to staff the authority to make administrative revisions regarding Lifeline reimbursements. D.00-10-28 held that administrative revisions are "ones that affect . . . the procedures, forms, and timelines associated with utilities' submittal of their ULTS claims…[62]

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[61] *See* TC Telephone Response to ALJ Directive to Submit Table of Undisputed Facts (March 16, 2023), Exhibit 5 (Email from J. Lakritz to T. Graff, May 10, 2013).
[62] D.00-10-028, at p. 189.

D.00-10-028 enumerated specific examples of modifications that would constitute an administrative revision to the ULTS program:

- Content of the ULTS Claim Form and surcharge remittance form.[63]

It is legal error to disregard Lifeline staff's repeated, written direction to TC Telephone to submit reimbursement claims that included lost revenue due to multi-minute calls for the first 60 customer calls each month and calls above 60 and to now impose a claw back of the moneys that the Lifeline staff deemed allowable for more than seven years. To allow such claw back sets a disturbing precedent and poses a significant risk of chilling carrier willingness to participate in programs such as Lifeline if claim forms submitted and approved years ago could be subject to claw back and penalties.

Relatedly, the decision errs by asserting that TC Telephone attempted to "shield" itself from liability by relying on staff opinions "because to allow it to do so would run afoul of the long-accepted maxim that ignorance of the law is no excuse."[64] That maxim has no bearing here. As discussed above, ***the law was unclear***. The Commission acknowledged in Resolution T-17687 that the language in D.00-10-028 and GO 153 "was not sufficiently clear" so the Commission had to issue a substantive clarification.[65] In the face of unclear rules, TC Telephone followed written direction from the staff authorized to administer the program on how to submit claims for lost revenues. Such is not ignorance of the law, but adherence to the authority of Lifeline staff. The decision also finds that Rule 1.1 of the Commissions' Rules of Practice and Procedure require carriers to know the contents laws, statues and Commission orders.[66] Again, the Commission orders were unclear, and TC Telephone followed the written directions of staff

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[63] D.00-10-028, at p. 189-90.
[64] D.25-03-011, at p. 19.
[65] Resolution T-17687, at p. 3.
[66] D.25-03-011, at p. 19-20.

administering the Lifeline program. In the face of unrebutted evidence about the uncertain state of the Lifeline reimbursement rules, it is legal error to require a claw back of TC Telephone's lost revenue reimbursements between 2018 and 2020.

G. Retroactive Claw Back Disincentivizes Carrier Participation in Lifeline

D.25-03-011 insists that TC Telephone should be financially liable for relying on staff approvals of its Lifeline reimbursement claims for seven years. Refusing to stand behind staff directions and approvals, despite the Commission exercising oversight of those staff decisions, discourages carriers from providing Lifeline service. The idea of a safe harbor for service providers engaging in the LifeLine program with the CPUC has been the topic of much debate in R.20-02-008 as it relates to the processes and procedures for California subscribers who cannot provide their social security number ("SSN") at the time of enrollment in the Lifeline program. A proposed decision has been issued, and several service providers have voiced their extreme concern with the staff proposal that carriers be required to accept customers without SSNs but would be subject to a claw back of Lifeline claims for those customers if the Commission's Third-Party Administrator determination that such customers were eligible for Lifeline were later determined to be wrong.

AT&T stated in its opening comments "[w]e are concerned that Commission Staff is not recommending a safe harbor for service providers, deeming it unnecessary at this time.11 But given the uncertainty in the timeline for the phased approach and the many as yet unknown aspects of the Staff Proposal, a safe harbor is needed now. This is especially true considering the Staff Proposal admits "[t]he TPA's Customer Service Representatives [] cannot practically be expected to accurately validate thousands of different identity documents"12 and discloses that they review a total average of 2,972 forms daily or 11,171 forms weekly.13 Therefore, the Commission should not follow the Staff Proposal's recommendation and, instead, adopt a safe harbor to protect service providers against all potential financial liabilities. Such protection should extend to the time the Commission or the TPA notifies the service provider, in writing, that the TPA has since determined that the customer without an SSN, is not LifeLine-eligible."[67]

Assurance Wireless stated in its opening comments, "[t]he Staff Proposal, however, does not resolve Assurance's concerns with a Commission mandate that would compel all providers to enable the enrollment of applicants without an SSN. Instead, the Staff Proposal creates a wholly separate enrollment track that would require providers to process, review and collect a fluid set of unfamiliar and unverifiable "identity documents" without any safe harbor. Thus, Assurance opposes the Staff Proposal in its current form."[68] Assurance also went on to state "Without a safe harbor for providing service to applicants that do not have SSNs - a concept which is inexplicably rejected by the Staff Proposal3 - Assurance will, at a minimum, be compelled to direct any such applicant to the Commission's on-line application system. It simply cannot responsibly provide such applicants with devices or service through its third-party agents as it has no way independent reliable way of protecting the Program or its operations from possible duplicate applications."[69]

The Proposed Decision declined to explicitly provide a safe harbor, but stated that it would adopt the suggestion of the Small Local Exchange Carriers (Small LECs)[70] to shield carriers from unfair claw backs. The Small LECs suggested that carriers not be required to repay

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[67] *See* Opening Comments of AT&T on the Administrative Law Judge's Ruling Requesting Comments on Staff Proposal on Enrollment for Individuals without Social Security Numbers in R.20-02-008, at p.3 (May 10, 2024).
[68] Assurance Wireless USA, LP's Opening Comments on the Staff Proposal for Individuals without Social Security Numbers in R.20-02-008, at p. 2 (May 10, 2024).
[69] *Id.,* at p. 3.
[70] The Small LECs consist of Calaveras Telephone Company; Cal-Ore Telephone Co.; Ducor Telephone Company; Foresthill Telephone Co.; Happy Valley Telephone Company; Hornitos Telephone Company; Kerman Telephone Co.; Pinnacles Telephone Co.; The Ponderosa Telephone Co.; Sierra Telephone Company, Inc.; The Siskiyou Telephone Company; Volcano Telephone Company; and Winterhaven Telephone Company.

Lifeline reimbursements so long as they took reasonable steps to determine customer eligibility, in addition to the TPA verification.

While the Proposed Decision has not been issued, it provides a thoughtful framework that ensures carriers are not penalized for following the TPA's direction regarding customers without an SSN. The same approach should be applied to TC Telephone. It followed Lifeline staff's directions for seven years in good faith. It should not now be penalized by having the Commission reject the staff's approval of TC Telephone claim forms.

H. D.25-03-011 Errs By Applying Incorrect Section of GO 153

The decision holds that a claw back of TC Telephone's Lifeline reimbursements between 2018 and March 2020 is justified because it misconstrued the definition of an "untimed" call.[71] The decision finds that the plain meaning of "untimed" means there is no temporal component (or duration) allowed for the first sixty customer calls each month[72] and therefore the decision deduces that a per-minute reimbursement is disallowed This holding is legal error because it is contrary to the approach in the staff report for calculating calls, which assigned a duration to calls. In the Staff Report attached to the Order to Show Cause, staff assumes each call is one minute long. "If each month a customer made 20 calls lasting 10 minutes each, TC Telephone would report that as 200 calls (20 calls x 10 minutes), rather than 20 calls."[73] Staff argued that TC Telephone should have reported 20 "calls" at the tariffed rate of $0.25 per minute (meaning that staff equated a call with a one-minute duration).

The decision also errs by applying the wrong section of GO 153 to determine that lost revenues could not be claimed on a per-minute basis for customer calls. Section 8.1.5.4 of GO

[71] D.25-03-011, at p. 20.
[72] *Id.*
[73] OSC, at Attachment A, at p.13.

153[74] provides that "[s]ubscribers of California LifeLine Measured-Rate Service shall receive 60 untimed local calls per month. The California LifeLine Service Provider shall charge $0.08 per call for each local call in excess of 60 calls per month." TC Telephone did exactly that – it provided 60 calls (regardless of duration) each month to its Lifeline customers for no charge; after that it charged 8 cents per minute. The language in Section 8 establishes the customer-facing rules for charges. It does not address how a carrier may seek reimbursement for lost revenues on those calls. Reimbursement rules are set forth in a separate Section 9.

Section 9.2.1 of GO 153[75] provides that "[a] California Lifeline Service Provider may recover from the California Lifeline Fund up to the SSA, California Lifeline non-recurring charges (Service Connection Charges, Service Conversion Charges, lost revenue from untimed calls associated with California Lifeline Measured Rate Service), applicable taxes/surcharges, interest (if applicable), one-time Implementation Costs, other amounts expressly delineated, and administrative expenses as set for thin Section 9.3.11, 9.3.12 and 9.3.13 of this General Order." Section 9.3.1 provides that "[l]ost revenues caused by providing Subscribers with (i) California LifeLine Service Connection Charges, (ii) California LifeLine Service Conversion Charges, (iii) untimed calls relating to California LifeLine Measure Rate Service, (iv) California LifeLine service for separate households at a given physical address, and (v) California LifeLine service for a second TTY line under Section 4.2.3 not recoverable from the federal Lifeline program."

Even though from the customer's perspective, the duration of a call was irrelevant, it is not irrelevant to the calculation of lost revenues. TC Telephone incurred a per-minute charge for voice services purchased for resell to Lifeline customers. Sections 9.2.1 and 9.3.1 of GO 153 explicitly allow carriers to recover "lost revenue from untimed calls associated with California

[74] This discussion refers to the version of GO 153 in effect at the time of TC Telephone's Lifeline reimbursement claims.
[75] This discussion refers to the version of GO 153 in effect at the time of TC Telephone's Lifeline reimbursement claims.

Lifeline Measured Rate Service …." Thus, the language of GO 153 was reasonably interpreted to permit recovery of lost revenues on a per minute basis.

The decision errs by rejecting this plain language interpretation of GO 153 and instead points to Resolution T-17687, which held that allowing for per-minute recovery of lost revenues was contrary to the purpose of the Lifeline program.[76] Resolution T-17687, however, was not issued until March 2020 and applied only prospectively. It is legal error to apply a term from Section 8 regarding customer charges to disallow reimbursement of lost revenues. It is further legal error for the decision to determine that per-minute reimbursements for lost revenues were not allowed based on application of Resolution T-17687, which post dates TC Telephone's claim forms. The decision also errs by stating that allowing reimbursement for lost revenues on a per-minute basis "would … saddle low-income subscribers with higher surcharges." Lifeline services are not subject to surcharges,[77] thus any payments from the Lifeline fund could not cause them to pay higher surcharges.

III. D.25-03-011 ERRS BY ORDERING INTEREST ON $8.1 MILLION CLAWBACK

Based on a recommendation from CPED, raised for the first time in its Opening Brief,[78] the decision orders TC Telephone to pay an excessive 10% annual penalty for 2021-22 totaling $1.631,494 in interest on the $8.1 million it was reimbursed. This holding is legal error for numerous reasons.[79] First, the question of whether TC Telephone should replay the $8.1 million is still an open legal question and it is unjust and violative of due process to assess a penalty before it has been determined whether TC Telephone should replay any Lifeline reimbursement.

[76] D.25-03-011, at p. 22.
[77] *See* D.22-10-021, at p. 76 (October 20, 2022).
[78] D.25-03-011, at p. 37; CPED Opening Brief, at p. 19.
[79] Although TC Telephone will not provide a detailed discussion due to length, CPED's sudden attempt to impose an interest penalty so late in the proceeding appears to be prohibited prosecutorial vindictiveness. *See Lent* discussed above.

A. D.25-03-011 Relies on Erroneous Legal Theories to Assess Interest

The decision relies on an erroneous basis for assessing an interest penalty. The decision speculates, without any record evidence at all, that TC Telephone "enjoyed any interest" from the Lifeline reimbursements.[80] There is no evidence that TC Telephone deposited reimbursements in an interest-bearing account nor what interest might have been available. This is legal error because Commission decisions must be based solely on the evidentiary record.[81]

Second, the decision assesses interest charges on TC Telephone because it exercised its legal rights to challenge what it viewed as a legally erroneous decision in Resolution T-17687. The decision criticizes TC Telephone for "a six-month series of legal maneuvers at the Commission and in the California Court of Appeal."[82] Penalizing a carrier for exercising its legal rights is a clear violation of due process.[83] In *Lent*, the court noted that administrative agency staff complained about the time and effort they had expended in communicating with the alleged violator, and noted, "[t]o punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort.[84] If a prosecutor or investigator increases a penalty or charge "in apparent response to the defendant's exercise of a procedural right, the defendant has made an initial showing of an appearance of vindictiveness." Imposing an interest penalty, in part, on TC Telephone's purported "legal maneuvers" appears to run afoul of due process, as noted in *Len*t.

Third, the decision asserts that interest should be assessed because TC Telephone's claims for lost revenues for multi-minute calls and for calls above 60 per month were supposedly

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[80] D.25-03-011, at p. 38.23
[81] Cal. Pub. Util. Code §1757(a)(4) ("(4) The findings in the decision of the commission are not supported by substantial evidence in light of the whole record.
[82] D.25-03-011, at p. 38.
[83] *Lent v. Cal. Coastal Com'n*, 2018 Cal. Super. LEXIS 2810, at *73-74 (May 24, 2018).
[84] *Id.*, (*citing United States v. Goodwin* (1982) 457 U.S. 368, 378-80.

"contrary to precedent."[85] As explained in detail above, TC Telephone's reimbursement requests were not contrary to Commission precedent. The Commission itself noted that the language in its reimbursement rules in D.00-10-028 and GO 153 prior to March 2020, "was not sufficiently clear" and issued a substantive clarification barring per-minute reimbursements for lost revenues.[86]

Penalizing TC Telephone for rules that were not clear is legal error. California case law makes clear that a statute, ordinance or regulation "must be sufficiently clear to give a person fair warning of the conduct prohibited".[87] Penalizing a carrier for failing to comply with a vague regulation or rule is a violation of due process. "Regulation that either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process of law, i.e., fairness. People must have notice of what is required of them so that they may act accordingly."[88] As discussed above, California courts have warned that imposing penalties for violations of vague rules is unjust and may lead to arbitrary and discriminatory treatment.

B. Assessing $1.63 Million in Interest Penalty is Excessive

CPED urged the Commission to impose "an Interest Penalty of $1,631,494 on TC Telephone for the period of 2021 and 2022, [89] calculated at a 10% interest rate.[90] The decision adopted the interest penalty and thereby errs legally because the penalty is excessive. GO 153 includes a provision that allows for imposition of interest on overpayments, but such interest is

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[85] D.25-03-011, at p. 38.
[86] Resolution T-17687.
[87] *525-655 Hyde St, Cnml Props. V. City of Oakland's Dep't of Hous. & Cmty Dev. Rent Adjustment Program*, (2018) 2018 Cal. Super. LEXIS 35929, *14 *(citing Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 230-231; *Zubarau v. City of Palmdale* (2011) 192 Cal.App.4th 289, 308-309).
[88] *Menefield v. Board of Parole Hearings*, (2017) 13 Cal. App. 5th 387, 390 (citing Cranston v. City of Richmond (1985) 40 Cal. 3d. 755, 763).
[89] CPED Opening Brief, at p. 18.
[90] CPED Opening Brief, at p. 19.

limited to the Federal 3-Month Paper rate.[91] During the period from 2018 to March of 2020, the 3-month paper rate varied between 0.04% up to 2.8%.[92] Imposing a 10% penalty on TC Telephone's Lifeline reimbursements during that period (even if they were an overpayment) is excessive and constitutes legal error.

Relying on the factors in D.98-12-075, CPED argued that the excessive penalty is warranted to deter and punish TC Telephone.[93] The decision does not explicitly address the factors in D.98-12-075 but appears to have adopted CPED's argument in its entirety. Imposing a $1,631,494 million penalty is far in excess of what is needed to penalize or deter TC Telephone. As the record clearly demonstrated, TC Telephone was forced to exit the market due to the withheld reimbursements from the May through October 2020 claim forms and its CPCN was revoked on December 15, 2022.[94]

But the interest penalty is excessive for additional reasons. D.98-12-075 includes other factors that must also be considered when imposing a penalty. One of those factors is the ability of the utility to pay the penalty. The third factor to be considered under D.98-12-075 is the financial resources of the utility. The Commission must ensure against excessive fines or penalties:

Effective deterrence ... requires that the Commission recognize the financial resources of the public utility in setting a fine, which balances the need for deterrence with the constitutional limitations on excessive fines. Some California utilities are among the largest corporations in the United States and others are extremely modest, one-person operations. What is accounting rounding error to one company is annual revenue to another. The Commission intends to adjust

[91] General Order 153, Section 13.4.
[92] *See* https://www.federalreserve.gov/releases/cp/rates.htm.
[93] CPED Opening Brief, at p. 20.
[94] TC Telephone has been penalized enough. It's CPCN was revoked in Resolution T-17774 (Table of Undisputed Facts #34).

fine levels to achieve the objective of deterrence, without becoming excessive, based on each utility's financial resources.[95]

The Commission further explained that penalty should be proportionate to the conduct of the utility, but to not be so high as to put a carrier out of business "or otherwise impacting the entity in a catastrophic way.[96] On these two factors alone, the interest penalty is excessive. The rules for Lifeline reimbursements for lost revenues were unclear (as Resolution T-17687 explicitly concedes), the weight of evidence shows that TC Telephone worked with staff for years following their written direction and modifying claims as instructed. TC Telephone has already suffered a catastrophic loss by being forced to exit the market and cease operations. Imposing a $1,631,494 million interest penalty on top of an $8.1 million claw back under these circumstances is excessive and punitive and constitutes legal error.

IV. CONCLUSION

For all of the foregoing reasons, TC Telephone has demonstrated that the decision is based on factual and legal errors that should be corrected. Specifically, the decision should be modified to remove the claw back of $8.1 million in reimbursements paid to TC Telephone and the associated $1,631,494 million interest penalty.

Signed and dated this 11th day of April, 2025 at Walnut Creek, CA.

Respectfully,

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[95] D.19-10-033, at p. 15 (Oct. 15, 2019) (*citing* D.01-08-019 at 13).
[96] D.19-10-033, at p. 12.