

Decision 18-08-027 August 23, 2018

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking Regarding  
Revisions to the California Universal Telephone  
Service (LifeLine) Program.

Rulemaking 11-03-013

**DECISION MODIFYING BENEFIT PORTABILITY FREEZE FOR THE  
CALIFORNIA LIFELINE PROGRAM**

**Summary**

This Decision modifies the policy and requirements for the California Universal Telephone Service's (California LifeLine) benefit portability freeze. The California Public Utilities Commission reduces the benefit portability freeze's duration from 60 days to up to 24 hours and eliminates the exceptions to the California LifeLine benefit portability freeze.

**1. Background**

On April 27, 2016, the Federal Communications Commission (FCC) issued *In the Matter of Lifeline and Link Up Reform and Modernization et al.*, WC Dkt Nos. 11-42, 09-197, *Third Report and Order, Further Report and Order, and Order on Reconsideration*, FCC 16-38 (rel. April 27, 2016) (2016 Lifeline Modernization Order) making significant changes to the federal Lifeline program, including as relevant here, implementing a federal benefit portability freeze. Subsequently, the California Legislature passed Assembly Bill (AB) 2570, now codified as Public Utilities (Pub. Util.) Code § 878.5, which required the California Public

Utilities Commission (Commission) to adopt a benefit portability freeze rule for the California LifeLine Program (California LifeLine or the Program). On January 25, 2017, the Commission issued Decision (D.) 17-01-032 that implemented a benefit portability freeze.<sup>1</sup>

The Commission adopted the policy of a 60-day portability freeze for the Program as follows:

1. California LifeLine participants must remain with the same California LifeLine service provider for 60 days in order to continue to receive California LifeLine discounts unless the California LifeLine participant qualifies for at least one of the exceptions to the benefit portability freeze;
2. After 60 days, the California LifeLine participant may choose to switch to a different California LifeLine service provider or remain with the same California LifeLine service provider; and
3. The 60-day benefit portability freeze duration applies to consumers with approved eligibility status who are receiving California LifeLine discounted telephone services. A California LifeLine participant who has completed the 60-day benefit portability freeze duration would no longer be subject to the benefit portability freeze unless the California LifeLine participant switched to another California LifeLine service provider, at which time, the 60-day benefit portability freeze duration would begin anew.

The Commission also adopted certain exceptions to the 60-day benefit portability freeze duration if:

1. The subscriber changes residence;
2. The provider ceases operation or otherwise fails to provide service;

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<sup>1</sup> See D. 17-01-032 at 22-32.

3. The provider has imposed late fees for non-payment related to the supported service(s) greater than or equal to the monthly end-user charge for service;
4. The provider is found to be in violation of the FCC's rules during the benefit year and the subscriber is impacted by such violation; and
5. The provider is found to be in violation of one or more of the Commission's or the Program's rules and the California LifeLine participant was impacted by such violation.

On December 1, 2017, the FCC issued *Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking and Notice of Inquiry*, WC Dkt Nos. 17-287, 11-42, 09-0197, FCC 17-155 (rel. December 1, 2017) (2017 Lifeline Reconsideration Order) which eliminated the federal Lifeline benefit portability freeze for voice and broadband services. The FCC stated that it was eliminating the benefit portability freeze to encourage competition and to decrease administrative burdens. The FCC concluded that the benefit portability freeze ultimately failed to yield improved service offerings and instead, disadvantaged consumers by unnecessarily restricting consumer choice, diminishing service providers' motivation to offer competitive service offerings, and preventing consumers from obtaining the services that they need.<sup>2</sup> The 2017 Lifeline Reconsideration Order states that the record evidence does not show that a 12-month benefit portability freeze is necessary to ease market entry, and instead could discourage new providers from entering the federal Lifeline

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<sup>2</sup> See 2017 Lifeline Reconsideration Order, ¶¶ 34-38.

market. The elimination of the federal Lifeline program's benefit portability freeze became effective on March 19, 2018.<sup>3</sup>

On March 16, 2018, the assigned Commissioner issued the *Assigned Commissioner Ruling Temporarily Modifying 60-Day Benefit Portability Freeze and Requesting Comment on the Benefit Portability Freeze for the California LifeLine Program* (ACR). The ACR temporarily reduced the duration of the benefit portability freeze from 60 days to up to 24 hours and suspended the exceptions to the California LifeLine benefit portability freeze. The ACR also sought comments on the following:

1. Should California LifeLine retain the 60-day benefit portability freeze?
2. Should the 60-day benefit portability freeze be modified, and if so, what modifications should the Commission consider?
3. Should the 60-day benefit portability freeze be eliminated, and if so, what legal obstacles does the Commission face?
4. Are there administrative issues that California LifeLine service providers would face if the Commission modified or eliminated the 60-day benefit portability freeze?
5. Does changing or eliminating the 60-day benefit portability freeze impact the California LifeLine Program's Administrator, and if so, how?
6. Are there other aspects the Commission should consider related to the 60-day benefit portability freeze in determining whether to retain, modify or eliminate the freeze?

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<sup>3</sup> *Id.* at ¶ 40; *See also*

<https://www.federalregister.gov/documents/2018/01/16/2018-00152/bridging-the-digital-divide-for-low-income-consumers-lifeline-and-link-up-reform-and-modernization>.

## **2. Party Positions**

On April 5, 2018, Virgin Mobile USA, L.P. d/b/a Assurance Wireless (Assurance), Cox California Telecom, LLC (Cox), the Office of Ratepayer Advocates (ORA), TracFone Wireless, Inc. (TracFone), Q Link Wireless, LLC (QLink), Telrite Corporation, i-Wireless, LLC, Boomerang Wireless, LLC, AmeriMex Communications Corp., American Broadband and Telecommunications Company, Global Connection Inc. of America, and TruConnect Communications, Inc. (collectively, the Joint Wireless Commenters), and the Center for Accessible Technology, The Utility Reform Network, and The Greenlining Institute (collectively the Joint Consumers), filed comments responding to the ACR. On April 10, 2018, Joint Consumers, ORA, TracFone, QLink, and Pacific Bell Telephone Company d/b/a/ AT&T California (U1001 C) and its affiliates AT&T Corp. (U5002), Teleport Communications America, LLC (U5454 C), AT&T Mobility LLC (New Cingular Wireless PCS, LLC (U3060 C), AT&T Mobility Wireless Holdings, Inc. (U 3021 C) and Santa Barbara Cellular Systems, Ltd. (U2015C) (collectively referred to hereinafter as AT&T) filed reply comments.

Cox asks the Commission to align the state and federal Lifeline programs to benefit consumers, staff, California LifeLine Administrator, and service providers by eliminating the Program's benefit portability freeze. Cox reasons that eliminating the benefit portability freeze ensures service providers' receipt of both state and federal Lifeline support and decreases consumers' confusion of the rules. Cox acknowledges that the Commission cannot ignore Pub. Util. Code § 878.5 and urges the Commission to take steps to have the Legislature eliminate this requirement.

AT&T, Assurance, and ORA responded that a benefit portability freeze of up to 24 hours is the only feasible alternative given the legal effect of the FCC eliminating the benefit portability freeze and the existence of Pub. Util. Code § 878.5. These parties ask the Commission to work with the California Legislature to eliminate the portability requirement contained in Pub. Util. Code § 878.5 to ensure that both state and federal Lifeline support are not jeopardized and that California LifeLine participants can continue to receive the federal Lifeline benefits. AT&T and ORA advise the Commission that it should seek a waiver for a portability freeze of up to 24 hours from the FCC until such time as a legislative change can be made to Pub. Util. Code § 878.5.

TracFone, QLink, Joint Wireless Commenters, and the Joint Consumers support restoring the duration of 60 days for the benefit portability freeze. The Joint Consumers support the 60-day duration benefit portability freeze and state that it has allowed service providers to provide better devices to California LifeLine participants, mitigated problems due to high levels of churn and increased efficiency in the eligibility process. They further assert that the 60-day freeze should be maintained for two years to provide sufficient data. The Joint Consumers ask the Commission to continue providing supplemental funding to make up for any lost federal funds during this two-year period. Joint Wireless Commenters state that the 60-day benefit portability freeze has benefitted consumers since implementation. TracFone contends that the Commission lacks the authority to eliminate the benefit portability freeze rule because Pub. Util. Code § 878.5 expressly mandates the adoption of a portability freeze. TracFone further argues the Commission cannot render the portability freeze ineffective by reducing its duration or imposing other limitations. TracFone argues that the FCC implemented the 60-day portability freeze to limit waste in competitive

markets where churning reduces the incentive for federal Lifeline providers to participate in the program. TracFone asserts that without the 60-day benefit portability freeze it may not be economically viable for carriers to provide a free handset or device to California LifeLine participants.

TracFone argues that California has considerable independence in how it administers the California LifeLine Program and states that it has the authority to continue the 60-day benefit portability freeze. TracFone maintains that California has the authority to apply the 60-day benefit portability freeze to both the state and federal benefits as a proper exercise of its authority to administer federal Lifeline consistent with the needs of California. The Joint Consumers assert that California LifeLine can maintain the 60-day benefit portability freeze without risking federal support because it is a National Lifeline Accountability Database opt-out state.

Finally, TracFone and Assurance request that the Commission require participants requesting an exception to the 60-day benefit portability freeze provide evidence of their eligibility, such as proof of a change of address. The Joint Consumers disagree with changing the requirements to be eligible for an exception. Instead, they urge the Commission to collect data over a two-year period before considering changes to the Program's benefit portability freeze.

### **3. Discussion**

This Decision sets the Program's benefit portability freeze at up to 24 hours.<sup>4</sup> Additionally, this Decision also eliminates the exceptions to the

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<sup>4</sup> This Decision makes permanent the temporary benefit portability freeze that was established by the ACR.

California LifeLine benefit portability freeze.<sup>5</sup> We take these actions to ensure that eligible telecommunications carriers in California continue to qualify for federal Lifeline support, which was approximately \$234 million in 2016.<sup>6</sup>

Enabling California's low-income households to maximize their support from both the state and federal programs is in the public interest and consistent with Pub. Util. Code § 875(b).<sup>7</sup> Additionally, evidence does not show that a 60-day benefit portability freeze markedly improved the California LifeLine Program or the participants' experiences. Lastly, actual results demonstrate that the existence of the 60-day benefit portability freeze failed to yield a significant decrease in the volume of inter-carrier transfers.

To compare the effects of pre- and post-implementation of the 60-day benefit portability freeze, Commission staff analyzed the following areas: participation rates, volume of new application requests, volume of inter-carrier transfers, number of wireless telephone service providers, and number of service offerings with data allocation.<sup>8</sup>

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<sup>5</sup> This Decision also permanently eliminates the exceptions to the 60-day benefit portability freeze that was suspended by the ACR.

<sup>6</sup> See FCC's Monitoring Reports, <https://www.fcc.gov/general/federal-state-joint-board-monitoring-reports>, specifically, the 2017 Monitoring Report, Table 1.9 at 18.

<sup>7</sup> Pub. Util. Code § 875(b) states "the Commission may, in a separate proceeding, establish procedures necessary to ensure that the lifeline telephone service program qualifies for any federal funds available for the support of those programs."

<sup>8</sup> The pre-freeze period comprises September 2016 to May 2017. The post-freeze period comprises June 2017 to February 2018.

### **3.1. Participation Rates and Levels**

The Program's monthly average participation rate dropped to 64%<sup>9</sup> during the post-freeze period (compared to 72% during the pre-freeze period). The monthly average number of California LifeLine participants considerably dropped to 1,807,586, during the post-freeze period (compared to 2,058,939 during the pre-freeze period).

### **3.2. Monthly Average of New Application Requests**

The monthly average of new application requests decreased to 278,645 while the 60-day benefit portability freeze was in effect (compared to 321,783 during the pre-freeze period).

### **3.3. Volume of Inter-Carrier Transfers**

The volume of inter-carrier transfers decreased to 867,425 (compared to 1,029,239 pre-freeze) during the post-freeze period. However, the proportion of inter-carrier transfers to the California LifeLine participation level remained consistent (6% during the pre-freeze period vs. 5% during the post-freeze period). Moreover, the percentage of transfers occurring after 7 days was 6% pre-freeze versus 5% post-freeze. Transfers occurring after 30 days<sup>10</sup> showed no difference.

### **3.4. Number of Wireless Telephone Service Providers**

Data shows that reducing the benefit portability freeze from 60 days to up to 24 hours did not deter wireless telephone service providers from participating

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<sup>9</sup> This was calculated using the California Department of Finance's estimate of 2,842,594 eligible households.

<sup>10</sup> Transfers after 30 days and 60 days are included in the count of transfers occurring after 7 days.

in the California LifeLine Program. Recently, the Commission authorized three new wireless telephone service providers as California LifeLine service providers to offer pre-paid wireless telephone services.

**3.5. Number of Service Offerings with Data Allowance from Wireless Telephone Service Providers**

Table 1: Summary of Wireless Data Plans

<b>Wireless Data Plans</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
Plans with no Data at \$0 to Participants	23	25	26	27
Total Plans with Data at \$0 to Participants	10	22	41	44
Total Plans with Data for additional cost to Participants	18	31	44	51
<b>Grand Total</b>	<b>51</b>	<b>78</b>	<b>111</b>	<b>122</b>

This information shows that the Program generally experienced an increase in the number of wireless service offerings with data allowance from 2015 to 2018. It also supports ORA's statement that the "asserted benefits [by TracFone, QLink, and Joint Wireless Commenters] could be attributed to increasing market competition...and would have occurred" irrespective of the existence of the 60-day benefit portability freeze.<sup>11</sup> During the post-freeze period, there was also a negative impact on household participation (see "Participation Rates and Levels") and on interest (see "Monthly Average of New Application Requests") in the Program.

**3.6. Conclusion**

In light of the staff analysis provided above, we find it reasonable and in the public interest to reduce the 60-day benefit portability freeze to up to

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<sup>11</sup> See Reply Comments of the Office of Ratepayer Advocates on Assigned Commissioner's Ruling Temporarily Modifying 60-Day Benefit Portability Freeze and Requesting Comment on the Benefit Portability Freeze for the California LifeLine Program, April 10, 2018, at 3.

24 hours for the California LifeLine Program. The FCC initially reasoned that it was eliminating the benefit portability freeze to encourage competition and to decrease administrative burdens. Ultimately, the FCC concluded that the benefit portability freeze failed to yield improved service offerings and instead, disadvantaged consumers by unnecessarily restricting consumer choice, diminishing service providers' motivation to offer competitive service offerings, and preventing consumers from obtaining the services that they need.<sup>12</sup>

California implemented the benefit portability freeze, in part, to harmonize the California LifeLine Program with the federal Lifeline program, to ease administrative burdens, and to comply with Pub. Util. Code § 878.5. We acknowledge that a legislative change is necessary to completely eliminate the benefit portability freeze, but we remain concerned that failure to harmonize the California LifeLine Program with the federal Lifeline program at this juncture may jeopardize \$234 million in federal support.

We disagree with TracFone's contention that the Commission lacks the authority to modify the duration of the benefit portability freeze. Pub. Util. Code § 878.5 requires the Commission to adopt a benefit portability freeze, which the Commission accomplished in January 2017. However, Pub. Util. Code § 878.5 does not mandate, but instead provides that the Commission *consider* a 60-day duration.<sup>13</sup> Accordingly, the Commission has the discretion to modify the

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<sup>12</sup> See 2017 Lifeline Reconsideration Order, ¶¶ 34-38.

<sup>13</sup> Pub. Util. Code § 878.5 states that "the Commission shall adopt a portability freeze rule for the lifeline program by January 15, 2017. The Commission shall *consider* including all of the following in the rule: (a) A 60-day duration of the portability freeze; (b) A period of time when a subscriber would be able to terminate lifeline service without penalty . . ." (emphasis added).

duration of the benefit portability freeze. We therefore modify the 60-day benefit portability freeze instituted by D.17-01-032 to up to 24 hours.

Consistent with the ACR and this Decision, California LifeLine service providers shall remove references to the 60-day benefit portability freeze and the exceptions in their marketing or consumer education materials. California LifeLine service providers shall also send an e-mail to [CaLLmarketing@cpuc.ca.gov](mailto:CaLLmarketing@cpuc.ca.gov) confirming that they have removed references to the 60-day benefit portability freeze and exceptions in their marketing or consumer education materials. Neither the California LifeLine Administrator nor California LifeLine service providers need to educate consumers about the benefit portability freeze duration now lasting up to 24 hours. Staff is responsible for ensuring compliance with Program rules. Staff has the discretion to refer matters of non-compliance to the Commission's Utility Enforcement Branch for possible enforcement action.

Lastly, the Commission agrees with parties' general conclusion that a legislative change would be required to eliminate the benefit portability freeze. The Commission may work towards a legislative solution.

#### **4. Public Meetings**

The federal Lifeline program is moving away from supporting traditional telephone service or voice communications and moving toward supporting only broadband internet access service (broadband service). It is not clear, however, to the Commission that Californians will be best served by a Program that does not allow a participant to choose from wireline telephone service, wireless telephone service, and broadband service as their means of communication. Additionally, the FCC appears to be in the policy trajectory of focusing or limiting the federal Lifeline program to distinct types of service providers,

geographic regions, and types of low-income households. The Commission seeks to thoughtfully determine what the future of the California LifeLine Program should be to effectively serve California LifeLine participants. We have begun holding a series of public meetings and invite all stakeholders to participate in shaping the future of the California LifeLine Program. The Commission began these meetings with a live webcast on July 11, 2018. This was followed by a two-day workshop in Sacramento on August 6-7, 2018.

We will host additional public meetings at a later time. Details about future public meetings will be available at <http://cpuc.ca.gov/General.aspx?id=3045>.

## **5. Comments on Proposed Decision**

The proposed decision of the assigned Commissioner Guzman Aceves was mailed to the parties in accordance with § 311 of the Pub. Util. Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. On August 8, 2018, the Joint Wireless Commenters and the Joint Consumers. Reply Comments were filed on August 13, 2018, by TruConnect Communications, Inc. No changes were made to the decision in response to comments and reply comments.

## **6. Assignment of Proceeding**

Martha Guzman Aceves is the assigned Commissioner and Katherine Kwan MacDonald is the assigned Administrative Law Judge in this proceeding.

### **Findings of Fact**

1. On April 27, 2016, the FCC issued the 2016 Lifeline Modernization Order making significant changes to the federal Lifeline program including implementing a benefit portability freeze.

2. The California Legislature passed AB 2570, codified as Pub. Util. Code § 878.5, which required the Commission to adopt a benefit portability freeze rule.

3. On January 25, 2017, the Commission issued D.17-01-032 that implemented a 60-day benefit portability freeze.

4. D.17-01-032 also adopted certain exceptions to the 60-day benefit portability freeze period.

5. On December 1, 2017, the FCC issued the 2017 Lifeline Reconsideration order, which eliminated the federal Lifeline benefit portability freeze for voice and broadband services.

6. The FCC concluded that the benefit portability freeze failed to yield improved service offerings and instead, disadvantaged consumers by unnecessarily restricting consumer choice, diminishing service providers' motivation to offer competitive service offerings, and preventing consumers from obtaining the services that they need.

7. The 2017 Lifeline Reconsideration Order states that the record evidence does not show that a 12-month benefit portability freeze is necessary to ease market entry.

8. On March 16, 2018, the assigned Commissioner issued the ACR temporarily reducing the duration of the benefit portability freeze from 60 days to up to 24 hours and suspended exceptions to the benefit portability freeze.

9. The ACR sought comments on the duration of the benefit portability freeze, implementation considerations, legal obstacles to modification of the freeze and other aspects the Commission should consider related to the 60-day benefit portability freeze.

10. Commission staff analyzed participation rates, volume of new applications, volume of inter-carrier transfers, number of wireless telephone service providers and the number of service offerings with data allocation during the period before the freeze and after implementation of the 60-day benefit portability freeze.

11. Evidence does not show that a 60-day benefit portability freeze markedly improved California LifeLine or participants' experiences.

12. Results of staff analysis show that the 60-day benefit portability freeze failed to yield a significant decrease in the volume of inter-carrier transfers.

13. The monthly average of new application requests decreased while the 60-day benefit portability freeze was in effect.

14. The Commission recently authorized three new wireless telephone service providers to offer California LifeLine service.

15. The Program experienced a general increase in the number of wireless service offerings with data allowance.

16. The Commission will hold a series of public meetings to allow all stakeholders to participate in shaping the future of the California LifeLine Program.

17. Commission staff is responsible for ensuring compliance with the Program rules.

### **Conclusions of Law**

1. The Commission should take actions to ensure that eligible telecommunications carriers in California continue to receive federal Lifeline support.

2. Enabling California's low-income households to maximize their support from both state and federal programs is in the public interest and consistent with Pub. Util. Code §878.5.

3. Reducing the benefit portability freeze from 60-days to up to 24 hours is reasonable and in the public interest.

4. Failure to harmonize California LifeLine program requirements with the federal Lifeline program requirements could jeopardize approximately \$234 million in federal support.

5. Pub. Util. Code § 878.5 asks the Commission to consider a 60-day portability freeze but does not specify the time period of the benefit portability freeze.

6. The Commission has the discretion to set or modify the duration of a benefit portability freeze.

7. California LifeLine service providers should remove references to the 60-day benefit portability freeze and the exceptions thereto from their marketing or consumer education materials.

8. California LifeLine service providers should send an e-mail to [CaLLmarketing@cpuc.ca.gov](mailto:CaLLmarketing@cpuc.ca.gov) confirming that they have removed references to the 60-day benefit portability freeze and to the exceptions thereto from their marketing or consumer education materials.

9. Commission staff have the discretion to refer matters on non-compliance with the Program rules to the Commission's Utility Enforcement Branch.

10. Complete elimination of the benefit portability freeze requires a legislative change.

**O R D E R**

**IT IS ORDERED** that:

1. The California Universal Telephone Service Program's benefit portability freeze duration shall be up to 24 hours and the exceptions to the benefit portability freeze duration adopted in Decision 17-01-032 at Ordering Paragraph 14 are eliminated.

2. Within 10 days from the effective date of this Decision, California LifeLine service providers shall remove all references and exceptions to the 60-day benefit portability freeze from their marketing or consumer education materials and shall e-mail [CaLLmarketing@cpuc.ca.gov](mailto:CaLLmarketing@cpuc.ca.gov) to confirm their removal.

3. Staff may refer any instances in which California LifeLine service providers do not comply with the Program's benefit portability freeze duration to the Commission's Utility Enforcement Branch.

4. Rulemaking 11-03-013 shall remain open.

This order is effective today.

Dated August 23, 2018, at San Francisco, California.

MICHAEL PICKER  
President  
CARLA J. PETERMAN  
LIANE M. RANDOLPH  
MARTHA GUZMAN ACEVES  
CLIFFORD RECHTSCHAFFEN  
Commissioners