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Decision 20-02-004 February 6, 2020

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 AUTHORIZING THE PROGRAM FUND TO REPLACE FEDERAL SUPPORT FOR WIRELINE PARTICIPANTS

Summary

In 2016, the Federal Communications Commission reduced federal Lifeline support levels for service plans that do not meet its minimum broadband service standards beginning on December 1, 2019. This decision authorizes the California Universal Telephone Service Program to replace $2.00 per month of reduced federal support for wireline participants from December 1, 2019 through November 30, 2020.

1. Background

Until December 1, 2019, California Universal Telephone Service Program (California LifeLine or Program) participants that met federal eligibility requirements received a $9.25 federal monthly subsidy in addition to support from the Program fund.

In 2016, the Federal Communications Commission (FCC) made the following changes to federal Lifeline support levels, shifting support from voice services to broadband services[1]:

- Reduced federal monthly support from $9.25 to $7.25 for service plans that do not meet its broadband service standards on December 1, 2019.
- Reduced federal support from $7.25 to $5.25 service plans that do not meet its broadband service standards on December 1, 2020.
- Eliminated federal support for service plans that do not meet its broadband service standards on December 1, 2021.

In comments on September 10, 2019, AT&T Services, Inc. (AT&T), the Joint Consumers and the Small Local Exchange Carriers (LECs) urged the California Public Utilities Commission (Commission) to address whether California LifeLine will make up federal reductions in support for voice services.[2]

On November 19, 2019, the FCC released an order to uphold its decision to reduce federal support for Lifeline service plans that do not meet its minimum standards, and to reduce the federal Lifeline broadband minimum service

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[1] Lifeline and Link Up Reform and Modernization et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (2016) (2016 Lifeline Order).

[2] AT&T, Center for Accessible Technology, The Utility Reform Network and The Greenlining Institute (Joint Consumers) and the Small LECs filed comments on September 10, 2019, in response to rulings dated August 20, 2019 and August 28, 2019, requesting comments on whether to extend California LifeLine funding for participants that only meet California eligibility criteria and other program issues. The Small LECs include Calaveras Telephone Company (U 1004 C), Cal-Ore Telephone Co. (U 1006 C), Ducor Telephone Company (U 1007 C), Foresthill Telephone Co. (U 1009 C), Happy Valley Telephone Company (U 1010 C), Hornitos Telephone Company (U 1011 C), Kerman Telephone Co. (U 1012 C), Pinnacles Telephone Co. (U 1013 C), The Ponderosa Telephone Co. (U 1014 C), Sierra Telephone Company, Inc. (U 1016 C), The Siskiyou Telephone Company (U 1017 C), Volcano Telephone Company (U 1019 C), and Winterhaven Telephone Company (U 1021 C).

standard from 8.75 gigabytes to 3 gigabytes for mobile service plans for December 1, 2019 through November 30, 2020.[3]

On November 21, 2019, the assigned Commissioner issued a ruling seeking parties' input on whether the California LifeLine fund should make up for the reduction of federal support for wireline Program participants from December 1, 2019 through November 30, 2020. Parties filed and served comments on December 10, 2019[4] and reply comments on December 20, 2019.[5]

The monthly average number of Program participants during the three-month period of July through September 2019 was 1,547,171; of these participants, 249,403 received wireline services and 1,297,768 received wireless services.[6]

The Commission's staff reviewed advice letters, filed by Program providers before December 11, 2019 in response to reduced federal subsidies, and found the following trends.

Wireline providers:

- No wireline providers plan to decrease voice services options.
- Eleven wireline providers will increase rates for Program participants unless the Commission replaces the $2.00 reduction in federal subsidies.

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[3] Lifeline and Link Up Reform and Modernization et al., Order, FCC-19-116 (2019).

[4] National Lifeline Association, AT&T, Joint Consumers, Public Advocates Office, TruConnect Communications, Inc. and Small LECs filed and served comments on December 10, 2019.

[5] The Joint Consumers, Small LECs, Consolidated Communications of California Company, Cox California Telecom, L.L.C., AT&T, and Public Advocates Office.

[6] Monthly Program participation numbers are made available to the public on the Commission's website at https://www.cpuc.ca.gov/General.aspx?id=1100.

- Six wireline providers will claim an increase in the Program subsidized support amount to cover the $2.00 decrease in federal subsidies.
- One wireline provider did not indicate any changes to Program service offerings or rates.

Wireless providers:

- No wireless providers plan to recover from participants the $2.00 decrease in federal subsidies.
- Seven wireless providers will raise their data plans to 3 gigabytes to meet the federal minimum service standards.
- One wireless provider will provide a promotional plan through May 31, 2020 that will include 5.75 gigabytes of data.
- Two wireless providers will not change existing plans and will absorb the $2.00 decrease in federal subsidies.

2. Issue Before the Commission

The issue before the Commission is whether the Program should replace $2.00 per month of reduced federal support for some or all Program participants from December 1, 2019 through November 30, 2020.

3. Whether to Replace One Year of Reduced Federal Support for Some or All Program Participants

3.1. Party Positions

The Joint Consumers urged the Commission to avoid setting precedent for the Program replacing reduced federal subsidies before a thorough review of Program subsidy levels. The Joint Consumers recommended that the Commission require Program providers to absorb the reduction of federal subsidies through November 30, 2020 rather than authorize the Program to cover these costs.

Similarly, Public Advocates Office asserted that the Commission should not make up the reduction in federal funding without first investigating the costs related to providing Program services. Public Advocates Office estimated that based on October 2019 participation levels, replacing reduced federal support for all participants would cost the Program over $40 million for one year. Public Advocates Office also cautioned the Commission against undermining the FCC's intent to challenge service providers to improve service plans by replacing $2.00 federal subsidy reduction without strings. Instead, Public Advocates Office recommended providing a $2.00 incentive for Program providers to meet the new federal minimum standards.

On behalf of wireless providers, the National Lifeline Association (NLA) and its California members,[7] Virgin Mobile USA, L.P. (Virgin Mobile) and TruConnect Communications, Inc. (TruConnect) each urged the Commission to replace reduced federal subsidies for wireless providers, in addition to wireline providers, to support technology neutrality. NLA argued that, without Commission action, higher wireline participant costs could drive participants to switch to wireless plans.

The Small LECs and AT&T strongly supported the use of the Program fund to replace the $2.00 reduction in federal subsidies for wireline participants. The Small LECs noted that many of their most vulnerable customers continue to rely wireline voice services, especially among elderly consumers, migrant labor populations, and consumers in isolated communities. Many of the Small LECs' customers live in parts of the state that have limited wireless access, making their

[7] NLA members in California include Telrite Corporation d/b/a Life Wireless, i-wireless, LLC, Boomerang Wireless, LLC, TruConnect Communications, Inc., AmeriMex Communications Corp. dba SafetyNet Wireless, Global Connection Inc. of America d/b/a Stand Up Wireless, and American Broadband and Telecommunications Company.

wireline connection the only reliable means of voice communication and access to vital services.

3.2. Discussion

Parties generally raised three categories of considerations: (i) ensuring access to voice services at affordable rates across the state; (ii) protecting the Program fund; and (iii) avoiding competitive consequences for the telecommunications industry in California. We will discuss each point one at a time below.

3.2.1 Ensuring Access to Affordable Voice Services Across the State

The Moore Universal Telephone Service Act (Moore Act) requires the Commission to ensure access to high quality basic telephone service at affordable rates to the greatest number of California residents.[8] This Program was designed to ensure that telephone service remains affordable for low-income Californians consistent with the Moore Act. Over time, the Commission expanded Program technology options to provide participants with more options for affordable telephone service.[9] In this decision, we affirm our commitment to the Moore Act and its mandate to ensure access to affordable voice services across the state.

Recent wildfires and public-safety power shutoff events underscored the importance of ensuring that all Californians can access voice services for safety purposes. In August 2019, the Commission adopted D.19-08-025 to ensure that Californians keep vital communications services in the wake of a disaster. The Commission defined the disruption of the delivery or receipt of communications service when a disaster has occurred in terms of loss of voice services: "(1) loss

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[8] California Public Utilities Code Section 871 et seq.

[9] *See* Decision (D.) 16-10-039 at 3-5.

of dial tone; (2) no connection or otherwise non-functioning service; and (3) cannot make or receive a voice call because the disaster has rendered the service nonfunctional and is unable to make a 9-1-1 call."[10]

Accordingly, the Commission must address the federal reduction in support for voice services. We will launch a stakeholder process for identifying the appropriate level of Program-funded support for voice services going forward, in light of policy goals for increasing program participation and access to broadband services. In the meantime, the Commission must ensure that Program participants will have access to voice services at affordable rates between December 1, 2019 and November 30, 2020.

Fortunately, based on the Commission's staff review of advice letters in response to reduced federal subsidies, we expect that wireless participants will continue to have affordable options for high-quality voice services for the next twelve months. None of the wireless Program providers have filed advice letters to charge participants for the decrease in federal subsidies.

On the other hand, we remain concerned that wireline participants will not have options to avoid rate increases unless the Program fund makes up for the federal subsidy reduction. Eleven wireline Program providers filed advice letters with plans to require current and new participants to pay higher rates for voice services unless the Commission authorizes the Program fund to replace reduced federal subsidies.

Wireline Program participants will not be able to avoid these rate increases by switching to a different wireline carrier, as most participants are only served by the carrier of last resort in their geographic area and do not have an

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[10] D.19-08-025 at Conclusion of Law 32.

alternative wireline provider. In general, wireline service providers mirror the rates, terms, and conditions of the carriers of last resort in a specific service territory. Further, as the Small LECs have noted, wireline participants in rural areas may not have access to reliable wireless service, further reducing alternatives for high quality affordable options.

3.2.2 Protecting the Program Fund

We agree with consumer advocates that decisions to commit substantial amounts from the Program fund should not be made lightly. Based on July to September 2019 monthly average participation levels, replacing $2.00 per month in reduced federal subsidies for all of the roughly 1.55 million California LifeLine participants could cost the Program around $37 million for one year. When federal subsidies for service plans that do not meet its broadband standards are reduced by another $2.00 on December 1, 2020, the cost for the Program to make up the difference for another year could be around $74 million or more.

Accordingly, we have begun a stakeholder process to thoroughly review and reassess Program subsidy levels and the potential impact of replacing reduced federal subsidies on the Program fund. However, we expect that this process will take several months to complete. Meanwhile, we must determine what actions are necessary to ensure access to voice services across the state through November 30, 2020.

We affirm that any action that we take with respect to this one-year period should have no precedential weight for determining whether to authorize the Program fund to replace any reduction in federal subsidies for any or all Program participants going forward.

3.2.3 Avoiding Competitive Consequences for the Telecommunications Industry in California

The Moore Act, in Public Utilities Code Section 871.5, requires the Commission to implement the California LifeLine program "in a way that is equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California."

Three parties, NLA, Virgin Mobile and TruConnect, argued that this requirement prevents the Commission from authorizing the Program fund to replace reduced federal subsidies for wireline participants without also replacing reduced federal subsidies for wireless participants.

We disagree. The Moore Act does not require the Commission to adopt a one-size-fits-all approach.[11] In D.14-01-036, the Commission determined that different Program rules for wireline and wireless services were warranted because of differences in regulation. In recognition of these differences, the Commission adopted service rates, service elements and subsidy levels that varied between wireline and wireless services.[12]

Public Utilities Code section 876 requires wireline carriers to offer California LifeLine service. Further, Public Utilities Code section 874 limits how much wireline carriers can charge for California Lifeline service plans. Wireless carriers, on the hand, are not subject to the same requirements because Section 332 of the Telecommunications Act of 1996 preempts the Commission from regulating wireless rates or entry. Wireless carriers have no obligation to

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[11] *See* D.14-01-036 at 46-47.

[12] *See* D.14-01-036 at Attachment D, Appendix A-1 and Appendix A-2.

offer Program services and have full control over how much they can charge for Program service plans.

In D.14-09-014, the Commission affirmed D.14-01-036 and determined that setting caps on the monthly rate for wireline services without setting a rate cap for wireless services was consistent with the Moore Act's requirements administer the Program fairly, equitably and without competitive consequences. The Commission determined that there was no unlawful discrimination, defined as (a) drawing an unfair line or strike an unfair balance between similarly situated entities, and (b) where there is no rational basis for the different treatment for those similarly situated. The Commission found no argument or evidence in the record to demonstrate that wireline and wireless providers are similarly situated for purposes of proving unlawful discrimination. Further, the Commission concluded that there was a rational basis for treating wireline and wireless providers differently.

> In addition to federal law prohibiting wireless rate regulation, the reimbursement and rate mechanisms in the Decision rationally take into account the differences in business models between wireless and wireline LifeLine providers while attempting to keep the Fund size reasonable. The result does not violate statutory mandates for non-discrimination. (D.14-09-014 at 5-6.)

Similarly, we find no argument or evidence in the record to demonstrate that wireline and wireless providers are similarly situated for purposes of the issue before us. Further, there is a rational basis for treating wireline and wireless providers differently. Different approaches are necessary for the Commission to meet its obligations to provide access to affordable telecommunications services to Californians in all geographic regions of the state.

As we review California LifeLine subsidy levels with stakeholders over the next several months, we will consider whether to set different subsidy levels for different types of Program service plans. We will provide stakeholders with opportunities to recommend appropriate subsidy levels to foster robust enrollment levels and competition among providers, while balancing these interests with protection of the Program fund.

We look forward to considering stakeholders' proposals to adjust Program subsidy levels and requirements. We may consider Public Advocates Office's suggestion to incentivize improved service plans with higher incentive levels. We may also consider Virgin Mobile's request for the Commission to remove the current obligation for wireless Program providers to offer a stand-alone voice service plan option in this assessment.

4. Comments on Proposed Decision

The proposed decision of Administrative Law Judge (ALJ) Wang in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on January 21, 2020 by Consolidated Communications of California Company and Small LECs, and reply comments were filed on January 27, 2020 by Joint Consumers.

5. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner, and Katherine Kwan MacDonald and Stephanie S. Wang are the assigned Administrative Law Judges in this proceeding.

Findings of Fact

1. In 2016, the FCC issued an order that changed eligibility requirements for the federal Lifeline program and stepped down support for service plans that do not meet its broadband service standards beginning on December 1, 2019.

2. On November 19, 2019, the FCC released an order to uphold the decision above and reduce the federal Lifeline broadband minimum service standard to 3 gigabytes for mobile service plans for December 1, 2019 through November 30, 2020.

3. On November 21, 2019, the assigned Commissioner issued a ruling seeking parties' input on whether the Program fund should make up for the $2.00 reduction of monthly federal support for wireline Program participants from December 1, 2019 through November 30, 2020.

4. Several Program service providers filed advice letters in November and December 2019 to indicate changes to Program service plans in response to the new federal minimum service standards for the full $9.25 monthly subsidy.

Conclusions of Law

1. The Moore Act requires the Commission to ensure access to high quality basic telephone service at affordable rates to the greatest number of California residents.

2. The Commission should ensure that Program participants across the state will have access to high quality voice services at affordable rates between December 1, 2019 and November 30, 2020.

3. Replacing the $2.00 of reduced monthly federal support for wireline participants without replacing this amount for wireless participants will not violate the Moore Act's requirements to implement the Program in a way that is equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California.

4. The Program fund should replace the $2.00 reduction of monthly federal support for wireline Program service plans between December 1, 2019 and November 30, 2020.

5. The Program fund should require any wireline carrier that receives replacement funds for the $2.00 reduction of monthly federal support to apply all of such replacement funds to reduce the monthly bills of Program participants.

6. The Program fund should not replace the $2.00 reduction of monthly federal support for any period where the wireline carrier recovered all or a portion of the $2.00 reduction through increases to Program participant bills.

O R D E R

IT IS ORDERED that:

1. The California Universal Telephone Service Program fund is authorized to replace the $2.00 reduction of monthly federal support for wireline Program service plans from December 1, 2019 through November 30, 2020.

2. Rulemaking 11-03-013 remains open.

This order is effective today.

Dated February 6, 2020, at Bakersfield, California.

LIANE M. RANDOLPH
MARTHA GUZMAN ACEVES
CLIFFORD RECHTSCHAFFEN
GENEVIEVE SHIROMA
Commissioners

President Marybel Batjer,
being necessarily absent, did not
participate.