

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Consumer Programs Branch**

**RESOLUTION T- 17687
March 26, 2020**

R E S O L U T I O N

Resolution T-17687: Clarifying Carrier Reimbursement for the California LifeLine Program and D.00-10-028.

Summary

This Resolution clarifies Decision (D.) 00-10-028 and the related provisions of General Order (GO) 153, regarding the rules for carrier reimbursement of Universal LifeLine Telephone Service (ULTS) costs. We clarify that D.00-10-028 and GO 153 were intended to provide reimbursement to ULTS providers that provide Measured Rate Service on a per call basis, not a per minute basis. For ULTS providers offering Measured Rate Service, on a going forward basis we direct staff to calculate provider reimbursement on a per call basis.

One of our goals, as embodied in the Moore Universal Telephone Service Act (Public Utilities Code Section 871, et seq.), is to ensure access to affordable telephone service by every household, in an equitable and non-discriminatory way.¹ A critical component to that oversight is ensuring that LifeLine telephone service is financially supported in a fair and equitable way. When it becomes apparent that certain ULTS providers are seeking reimbursement of costs in an unfair and inequitable way, it is incumbent upon us to clarify GO 153 and applicable decisions.²

Background

GO 153 Section 8.1.5 permits ULTS providers to offer a “Measured Rate Service” plan to California LifeLine customers. GO 153 defines “Measured Rate Service” as “Local telephone service satisfying the requirements of Basic Residential Telephone Service for which there is a usage-based charge for some or all local calls.” Measured Rate Service

¹ Public Utilities Code Section 871.5(c) and (d).

² D.00-10-028, at p.111. “[T]he fundamental purpose of the ULTS program [is] providing affordable telephone service to low-income households.”

is a telephone service plan that allows carriers to offer 60 untimed³ calls at a price floor of \$2.50 and a price ceiling of \$3.66 per month, and then \$.08 per call after 60 calls.⁴ Measured Rate Service is not offered by wireless carriers,⁵ and most wireline carriers today no longer offer it.⁶

A prior version of GO 153, as modified by D.86-02-021, stated that ULTS customers subscribing to measured local service (1) receive 60 untimed local calls per month, and (2) pay \$.10 per call for the first 10 local calls in excess of the monthly allowance and \$.15 for each additional local call. Decision 94-09-065 changed the rate to \$.08 for all local calls in excess of 60 per month, and D.00-10-028 modified GO 153 to its current form.⁷ The Commission stated that carriers should be reimbursed for these changes.⁸

The Commission has learned that certain carriers' LifeLine customers switched to a Measured Rate plan, and that these carriers seek reimbursement from the ULTS fund on a per minute basis for charges on each call under the Measured Rate plan. Some carriers charge as much as \$.25 per minute for each call. The Commission was recently contacted by the California Department of Finance regarding large dollar amount claims for reimbursement under the "untimed local calls" provision of GO 153 Sections 8 and 9.⁹

Discussion

The Commission never explicitly stated that ULTS providers should seek reimbursement, or be permitted to obtain reimbursement, for the Measured Rate Service plan described above, on a per minute basis. However, some carriers have sought such reimbursement in the past. Certain carriers may be engaging in a form of arbitrage because of what appears to be a lack of clarity in D.00-10-028 and GO 153, seeking reimbursement amounts calculated in a way that was not contemplated by earlier decisions or the GO.

³ "Untimed" means there is no charge per minute.

⁴ G.O. Section 8.1.5.4.

⁵ D.10-11-033, p.17.

⁶ AT&T is one of the few carriers to offer a legacy Measured Rate Service plan, and does not seek reimbursement for costs on a per minute basis for these LifeLine customers. AT&T informed Commission staff: "Prior to D.86-02-021, Measured Rate Lifeline customers were given an allowance of 30 untimed calls which were not recoverable from the fund (and continues not to be recoverable to this date). Per our tariff, local untimed calls 61 and over are provided at 8 cents per call. Similar to calls 0-30, 61 and over calls cannot be claimed under lost revenue. In other words, the CPUC allows for recovery only untimed calls 31-60."

⁷ D.00-10-028, p.17.

⁸ Id., p.18.

⁹ Section 8 defines the plans that may be offered; Section 9 defines how carriers will be reimbursed.

GO 153 clearly allows ULTS providers to seek reimbursement for the reasonable cost of providing LifeLine service. However, certain carriers are encouraging their LifeLine customers to switch to a Measured Rate Service which would result (if the customer was not enrolled in LifeLine) in those customers paying high monthly bills due to the expensive per minute charge for each call. Since these customers' bills are capped at \$3.66 per month for the first 60 calls and \$.08 per call above 60 calls pursuant to LifeLine rules, the customers do not pay the charges of \$.20 per minute that are billed by these carriers to the ULTS fund. It is likely that these customers do not know they are subscribed to an expensive rate plan. Instead, the ULTS fund pays those charges – which means higher surcharges for all California telephone customers.

We find this practice to be unfair and inequitable, and unsustainable with regards to the ULTS fund. We therefore order that this practice be stopped. 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.

While it is clear that ULTS providers may seek reimbursement for reasonable costs and lost revenues associated with provision of LifeLine service, past Commission decisions have not adopted or allowed the practice of billing the ULTS fund on a per minute basis for Measured Rate Service. Such an interpretation is inconsistent with the language of GO 153 Section 8.1.5.4, which refers to billing under the Measure Rate Service on a per call basis, and makes no mention of a per minute basis. Such an interpretation is also inconsistent with D.00-10-028, which contemplated that Measured Rate Service charges to customers would be calculated on a per call basis over 60 calls per month.

For example, in D.00-10-028, we stated:

[I]n order to reduce the need to amend GO 153 in the future, the Commission also proposed to revise GO 153 to (1) exclude from GO 153 the number of free local calls included in the monthly allowance or the price for each local call in excess of the monthly allowance; and (2) state that the Commission may periodically revise (i) the number of free local calls provided to ULTS measured service customers, and (ii) the rate that utilities may charge ULTS measured service customers for local calls in excess of the monthly allowance.

Carriers should have a reasonable degree of certainty about what costs they may or may not recover from the ULTS Fund.¹⁰ 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. Moreover, it appears that certain carriers are encouraging their customers to switch to an expensive Measured Rate plan that they would not otherwise want, for the purpose of seeking high reimbursements from the ULTS fund. If these LifeLine customers did not receive state subsidies, it is highly unlikely that they would remain on a plan that bills them for each minute used, because their monthly bills would be much higher than a typical flat rate plan. Instead, the ULTS fund is reimbursing some carriers for exorbitant costs.

We therefore find that it is fair and equitable to limit reimbursement to a per call basis for Measured Rate Service plans, which was our intention consistent with past decisions. Calculating reimbursement on a per minute basis has resulted in high dollar amount claims, which results in an unfair and inequitable burden of support on other carriers and higher surcharges for California telephone subscribers.

Comments

Public Utilities Code section 311(g)(1) requires that a draft resolution be served to all parties, and be subject to a public review and comment period of 20 days of Daily Calendar notification. A draft of today's resolution was distributed for comment to the service providers and parties on the LifeLine Distribution List on January 30, 2020.

The Draft Resolution was subsequently held until the March 26, 2020 Commission Meeting and the deadline for comments was extended to March 4, 2020. On March 4, 2020, the Public Advocates Office and AT&T submitted comments supporting the Resolution. TC Telephone submitted comments opposing the Resolution.

AT&T's Comments

AT&T supports Resolution T-17687 because it clarifies and reinforces uniform application of existing Commission rules for reimbursement of untimed calls from the LifeLine program.¹¹

¹⁰ D.00-10-028, at p.109.

¹¹ AT&T Comments at page 1.

Staff's Response

Staff agrees with AT&T's comments.

Public Advocates Office's Comments

The Public Advocates Office supports the Draft Resolution because it correctly affirms that reimbursement for measured rate service is on a per call basis, not a per minute basis.¹² In summary, the Public Advocates Office states:

- A. GO 153 already requires that measured rate service provides untimed local calls, and that providers charge on a per-call basis. Commission Decisions, such as D. 94-09-065, which found that customers must be charged \$0.08 per call after exceeding their allotted free calls on measured rate service, have reflected this.¹³
- B. TC Telephone's reimbursement claims violate GO 153 by claiming on a per-minute basis, and the Draft Resolution should bolster its finding that per-minute claims are unreasonable using data from AT&T and TC Telephone's claims, as submitted to the Commission. Public Advocates Office further states that it is within the Commission's authority to require TC Telephone to return the millions of dollars that it sought from the LifeLine Fund.¹⁴

Data from AT&T and TC Telephone's claims, as submitted to the Commission, were acquired by the Public Advocates Office in a February 20, 2020 data request and incorporated into the Public Advocates Office's comments. The Public Advocates Office provided a comparison of AT&T and TC Telephone's claims because these are the only two service providers that offer measured rate service. However, TC Telephone claims measured rate service are on a per-minute basis while AT& claims measured rate service on a per-call basis. (See Tables 1 and 2 below.)

Table 1: Comparison of AT&T and TC Telephone Reimbursement Billing Methodology for Measured Rate Service in December 2019

¹² PAO Comments at page 1.

¹³ PAO Comments at pages 1-2.

¹⁴ PAO Comments at page 4.

AT&T (25,068 Measured Rate Customers)				TC Telephone (6,945 Measured Rate Customers)			
Number of Calls	Rate	Calls	Billed to and Paid by LifeLine	Number of Calls	Rate	Minutes	Billed to and Paid by LifeLine
1-30	\$0.00/Call	Unknown	\$0.00	1-60	\$0.25/Minute	1,213,595	\$303,398.75
31-40	\$0.10/Call	22,216	\$2,221.50	60+	\$0.25/Minute	1,604,840	\$401,210.00
41-60	\$0.15/Call	22,252	\$3,337.80	Customer Payments 60+	\$0.08/Call	245,603 (Calls)	\$19,648.24
Total	N/A	N/A	\$5,559.30	N/A	N/A	N/A	\$684,960.51

Table 2: 2019 LifeLine Reimbursements for Measured Rate Service

Month	AT&T	TC Telephone
January	\$8,234	\$427,982
February	\$8,310	\$376,610
March	\$6,540	\$457,053
April	\$7,426	\$456,811
May	\$6,858	\$486,402
June	\$6,970	\$259,694
July	\$6,479	\$244,171
August	\$6,167	\$610,901
September	\$6,028	\$560,856
October	\$5,564	\$560,799
November	\$5,995	\$537,667
December	\$5,559	\$684,961
Total	\$80,130	\$5,663,907

C. Draft Resolution T-17687 is consistent with Pub. Util. Code § 871.5(d) which requires LifeLine service to be furnished fairly and equitably.¹⁵

Staff Response

Staff agrees that reimbursing carriers for measured rate service on a per-minute basis has proven to be unreasonable and imprudent in practice. The data the Public Advocates Office obtained and submitted in its comments illustrate the extent to which ratepayer dollars are being inequitably spent as a result of this billing practice.

However, it was never the intent of the Commission LifeLine Program to reimburse service providers on a per minute basis, because doing so results in unfair, inequitable,

¹⁵ PAO Comments at page 4.

and unsustainable results that are incompatible with the goals stated in the Moore Universal Telephone Service Act. For these reasons, it is necessary for the Commission to clarify that going forward, reimbursements for Measured Rate Service shall be calculated on a per-call basis.

The Public Advocates Office also requests “TC Telephone to return the millions of dollars that it sought from the LifeLine fund,”¹⁶ Staff notes that this Resolution only affects claims on a “going-forward basis.”

TC Telephone’s Comments

TC Telephone opposes Draft Resolution T-17687 because it is TC Telephone’s view that Draft Resolution T-17687 is a revision of GO 153 not a clarification. TC Telephone’s comments state:

- A. Resolution T-17687 is not a clarification of GO 153, but a revision of it, which cannot be done through the Resolution process. Revisions of GO 153 and longstanding Commission practices (Staff has accepted per-minute claims for years) must be conducted through a rulemaking or other proceeding. To do so through a Resolution denies TC Telephone due process.¹⁷
- B. Rules for carrier reimbursement for LifeLine services are set forth in Section 9 of GO 153, and allow carriers to recover “lost revenue from untimed calls associated with California LifeLine Measured Rate Service.” TC Telephone would charge non-LifeLine customers for Measured Rate Service at a price of \$0.25 per minute, and TC Telephone pays underlying carriers on a per-minute basis. Given that Section 8 of GO 153 prohibits TC Telephone from charging this to the customer, the lost revenue must be reimbursed by the LifeLine Fund.¹⁸
- C. GO 153 defines Measured Rate service as “Local telephone service satisfying the requirements of Basic Residential Telephone Service for which there is a usage-based charge for some or all local calls.” Usage-based charges imply that the charges must be based on minutes, not the number of calls.¹⁹
- D. The assertion that “certain carriers are encouraging their customers to switch to an expensive Measured Rate Plan that they would not otherwise want, for the purpose of seeking high reimbursements from the ULTS fund” is not supported

¹⁶ PAO Comments at page 4.

¹⁷ TC Telephone Comments at pages 1-2.

¹⁸ TC Telephone Comments at pages 2-3.

¹⁹ TC Telephone Comments at pages 3-4.

by evidence in the Resolution.²⁰

E. TC Telephone will be substantially harmed by the Resolution.²¹

Staff Response

Staff disagrees with TC Telephone's comments because the Resolution contains no legal error.

This Resolution does not change GO 153 or override any existing Decisions or Resolutions. Rather, the Resolution clarifies that the LifeLine Program will only reimburse Measured Rate Service claims on a per-call basis, not a per-minute basis. The Commission has never stated, via General Order, Decision, or Resolution, that Measured Rate Service should be reimbursed on a per-minute basis. This is consistent with the language of GO 153 Section 8.1.5.4, which refers to billing for Measured Rate Service on a per call basis, and does not mention a "per minute basis" basis for reimbursement.

TC Telephone next argues that it is legal error to prevent it from recovering "lost revenues" under Section 9 of GO 153. However, lost revenues must be calculated on a reasonable basis in a fair and equitable way.²² Calculating lost revenues on a per-minute basis results in high claims that jeopardize the health of the ULTS fund and distributes costs to ratepayers in an unfair way.

Next, TC Telephone acknowledges that "calls" are never defined in the General Orders. Staff finds no "plain meaning" of a "usage-based charge," because the number of calls and the number of minutes are both measurements of usage.

TC Telephone further argues that there is no record for the statement that "certain carriers are encouraging their customers to switch to an expensive Measured Rate Plan that they would not otherwise want, for the purpose of seeking high reimbursements from the ULTS fund." Staff has revised the Resolution to reflect that Staff is unaware of why LifeLine participants have chosen to switch from Flat Rate plans to Measured Rate plans. Staff notes that in TC Telephone's claims prior to 2013, all of TC Telephone's customers received Flat Rate Service. But from 2013-2017, TC Telephone's number of Flat Rate subscribers fell while TC Telephone's number of Measured Rate subscribers increased. Today, all of TC Telephone's subscribers on LifeLine are on Measured Rate Service. In addition, TC Telephone has continued to increase its rates in recent months from \$.10 per minute to \$.25 per minute, so that TC Telephone collected \$5.66 million in the last year to serve about 7,000 customers.

²⁰ TC Telephone Comments at page 4.

²¹ TC Telephone Comments at page 5.

²² Public Utilities Code Section 871.5(c) and (d).

Finally, Staff informed TC Telephone of its concerns about TC Telephone's claim practices in early 2019. In addition, Staff again informed TC Telephone of these concerns in advance of publishing this Draft Resolution. In the event that TC Telephone chooses to no longer offer LifeLine service, the Commission has adopted mass migration rules that provide for a process to transition LifeLine participants to another LifeLine provider, so that the LifeLine customers will continue to be served. The LifeLine Program was not designed or intended to permit unfair, inequitable, and unsustainable claims to be made on the LifeLine fund. Therefore, Staff recommends approval of this Draft Resolution prohibiting carriers from claiming reimbursement from the LifeLine Fund for Measured Rate Service on a per-minute basis.

Findings

1. A fundamental purpose of the LifeLine program is providing affordable telephone service to low-income households.
2. Public Utilities Code Section 871.5 requires LifeLine telephone service to be fairly and equitably supported by every telephone corporation, and administered in an equitable and nondiscriminatory way.
3. GO 153 Section 8.1.5 permits ULTS providers to offer a "Measured Rate Service" plan to California LifeLine customers.
4. GO 153 defines "Measured Rate Service" as "Local telephone service satisfying the requirements of Basic Residential Telephone Service for which there is a usage-based charge for some or all local calls."
5. Measured Rate Service currently is a telephone service plan that allows carriers to offer a service plan of 60 untimed calls at a price floor of \$2.50 and a price ceiling of \$3.66 per month, and then \$.08 per call after 60 calls, subject to possible future Commission modification if necessary.
6. Some ULTS providers have sought reimbursement for Measured Rate Service plan costs on a per minute basis in the past.
7. Reimbursement claims for Measured Rate Service plan costs on a per minute basis resulted in high dollar amount claims, which threatens the health of the ULTS fund and also results in higher surcharges for all California telephone customers.

8. GO 153 permits carriers that provide a Measured Rate Service plan to seek reimbursement for the costs associated with providing that service, but those costs must be reasonable.
9. It is unreasonable to claim reimbursement for Measured Rate Service plan costs on a per minute basis.
10. A draft of today's Resolution was distributed for comment to the service providers and other parties on the LifeLine Distribution List on January 30, 2020. Comments were submitted by AT&T, the Public Advocates Office, and TC Telephone.

THEREFORE, IT IS ORDERED that:

1. We clarify that General Order 153 and past applicable decisions were intended to provide reimbursement to Universal LifeLine Telephone Service providers that provide Measured Rate Service on a per call basis, not a per minute basis.
2. We direct the Communications Division to disallow claims for reimbursement for Measured Rate Service plan costs that are made on a per minute basis.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on March 26, 2020 the following Commissioners voting favorable thereon:

/s/ ALICE STEBBINS

Alice Stebbins
Executive Director

MARYBEL BATJER
President

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