

Decision 25-03-011 March 13, 2025

**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.

Investigation 22-10-007

**MODIFIED PRESIDING OFFICER'S DECISION  
RESOLVING ORDER INSTITUTING INVESTIGATION OF  
TC TELEPHONE AND ORDER TO SHOW CAUSE**

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**MODIFIED PRESIDING OFFICER'S DECISION  
RESOLVING ORDER INSTITUTING INVESTIGATION OF  
TC TELEPHONE AND ORDER TO SHOW CAUSE**

**Summary**

This Modified Presiding Officer's Decision rejects TC Telephone's Appeal of the Presiding Officer's Decision on the grounds that TC Telephone has failed to carry its burden of proving that the findings and conclusions in the Presiding Officer's Decision were either unlawful or erroneous. Accordingly, this Modified Presiding Officer's Decision affirms the Presiding Officer's Decision as follows:

This Modified Presiding Officer's Decision finds that TC Telephone LLC (TC Telephone) over-collected \$8,157,469.39 from the California LifeLine Fund in violation of the Moore Universal Telephone Service Act, Commission General Orders 153 and 96-B, Resolutions T-17321 and T-17687, and Decisions 92-11-063, 94-10-046, and 00-10-028. TC Telephone must reimburse the over-collected \$8,157,469.39 sum plus interest in the amount of \$1,631,494.

This Modified Presiding Officer's Decision also finds that TC Telephone must pay \$28,000 to the State's General Fund that is outstanding from a prior settlement agreement between TC Telephone and the Commission's Consumer Protection and Enforcement Division.

This Modified Presiding Officer's Decision further finds that the Commission should revoke TC Telephone's remaining Certificate of Public Convenience and Necessity, U-4410-C, and that TC Telephone's members and officers should be prohibited from participating in any Commission programs.

Finally, this Modified Presiding Officer's Decision finds that the Commission's Communications Division must continue with its investigation of

TC Telephone's reimbursement claims for May to October 2020 and determine the amounts to which TC Telephone is entitled.

This proceeding is closed.

## **1. Background**

### **1.1. Factual and Procedural Background**

#### **1.1.1. The California Universal LifeLine Telephone Service Program**

The California Universal LifeLine Telephone Service Program is a public-purpose program established by the Moore Universal Telephone Service Act.<sup>1</sup> Its purpose is to ensure universal telephone service throughout California via the provision of discounted, affordable basic telephone service to low-income households. General Order (GO) 153 establishes the structure and rules of the LifeLine Program. As the administrator of the LifeLine Program, the Commission is responsible for ensuring that it is implemented in a manner that is "equitable, non-discriminatory, and without competitive consequences for the telecommunications industry in California."<sup>2</sup>

Discounts for basic telephone service are funded through the Commission's Universal LifeLine Trust Fund, or the LifeLine Fund. California telecommunications providers collect a LifeLine surcharge on the bills of all end-users of intrastate telecommunications services and remit them to the Commission's LifeLine Fund. The funds are then used to reimburse LifeLine service providers for the discounts they provide to LifeLine customers. To

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<sup>1</sup> The Act is codified at Public Utilities (Pub. Util.) Code §871 *et seq.* (Added by Stats, 1987, Ch. 163, Sec. 2. Effective July 16, 1987.)

<sup>2</sup> *Id.*

recover the costs associated with providing discounted services, LifeLine service providers must file monthly claims for reimbursement with Commission staff, specifically the Communications Division, detailing the eligible services they provided at a discount. Communications Division reviews these claims to determine the appropriate amount reimbursable to the provider. Only an eligible telecommunications carrier or a carrier approved by the Commission can participate in the LifeLine Program.<sup>3</sup>

The California LifeLine Program for Basic Residential Telephone Services was set up to offer discounts for qualifying low-income customers for two types of local calling plans: Flat Rate Service and Measured Rate Service. For LifeLine customers, Flat Rate Service offers unlimited local calling for a recurring rate of roughly \$5 per month. In contrast, Measured Rate Service subscribers in the LifeLine Program are limited to 60 untimed local calls per month for half the rate of Flat Rate Service. Once the customer reaches 60 calls, the service provider can charge “\$0.08 per call for each local call in excess of 60 calls per month” per GO 153 guidelines.<sup>4</sup> Thus, while Flat Rate Service customers in the LifeLine program can make an unlimited number of calls for a flat fee, customers on a Measured Rate Service plan pay a slightly lower fee but are charged on a per-call basis after the first 60 calls. The benefit of Measured Rate Service accrues to customers who have low call volumes and do not trigger significant additional

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<sup>3</sup> See Resolution T-17002 which sets forth the requirements with which eligible telecommunications carriers must comply.

<sup>4</sup> GO 153, effective December 1, 2011, pursuant to D.10-11-033, Appendix A at 35.

usage-based charges beyond the 60-call limit covered by Measured Rate Service's lower base rate.

There are also differences in the way the Commission subsidizes Flat Rate Service and Measured Rate Service. While service providers for both services may receive up to the Specific Support Amount for monthly recurring charges, most recently set at \$14.85, Measured Rate Service providers may receive additional reimbursements based on call usage. Measured Rate Service providers do not provide any additional service for this additional subsidy.<sup>5</sup>

### **1.1.2. TC Telephone**

TC Telephone operated in California under a Certificate of Public Convenience and Necessity (CPCN) that the Commission approved on July 08, 2004.<sup>6</sup> Under this operating authority and utility identification number U-6875-C, TC Telephone provided limited facilities-based and resold local exchange services as a competitive local carrier, resold landline telephone services as a Competitive Local Reseller, and limited facilities-based and resold long-distance services as a non-dominant interexchange carrier. Additionally, the Commission granted TC Telephone a wireless registration under utility identification number

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<sup>5</sup> In December 2020, the Commission adopted D.20-10-006 which eliminated Measured Rate Service from the LifeLine program, finding it to be "an outdated element of the Program that dates back to the 1980s, when tariffs for local, long-distance and international calls varied, and flat rate service was less common." (at 19, and Ordering Paragraph 3.)

<sup>6</sup> D.04-07-014. We use the past tense because TC Telephone ceased operation on November 6, 2020. (TC Telephone's Opening Brief at 5.) In addition, TC Telephone claims the Commission revoked TC Telephone's CPCNs at the December 15, 2022 public voting meeting. (TC Telephone's Opening Brief at 13.)

U-4410-C on April 15, 2011. TC Telephone provided resold wireless services as a Cellular Retail Reseller under this operating authority.

On October 29, 2009, the Commission approved TC Telephone's application to provide wireline service for LifeLine customers as an eligible telecommunications carrier within the AT&T/Pacific Bell Telephone Company service territories,<sup>7</sup> and TC Telephone began its LifeLine service with a customer base entirely on the Flat Rate Service plan. In 2013, TC Telephone began providing Measured Rate Service to its customers. Between 2013 and 2019, TC Telephone's Measured Rate Service customer base grew while its Flat Rate Service customer base shrunk until it disappeared altogether.<sup>8</sup> The dramatic shift from Flat Rate Service to Measured Rate Service can be seen in the following table:

<b>Month-Year</b>	<b>Flat Rate Service</b>	<b>Measured Rate Service</b>
Dec-2009	280	0
June-2013	685	0
July-2013	535	147
August-2013	458	333
October-2013	386	1198
November-2013	340	1449
December-2014	140	870
December-2015	58	607
December-2016	42	1523

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<sup>7</sup> Resolution T-17321.

<sup>8</sup> CPED Staff Report at 10.

<b>Month-Year</b>	<b>Flat Rate Service</b>	<b>Measured Rate Service</b>
December-2017	31	3471
December-2018	1	5786
December-2019	0	6945 <sup>9</sup>

This trend line appeared suspicious to CPED and potentially violative of GO 153, Appendix A, Element 10, which requires that LifeLine providers offer all the service elements of the LifeLine Fund, and these service elements include “customer choice of local Flat-Rate Service or Measured-Rate Service.” Staff’s suspicions that TC Telephone was no longer offering a Flat Rate Service plan were confirmed when it (1) reviewed TC Telephone’s July 2019 Response to the Communications Division’s Data Request in which TC Telephone’s list of residential wireline service plans, both LifeLine and non-LifeLine, were Measured Rate Service plans;<sup>10</sup> and (2) reviewed TC Telephone’s customer-facing business website and noted that it exclusively advertised Measured Rate Service plans.<sup>11</sup>

In Response, TC Telephone admits that it did not actively market the Flat Rate Service, but did provide this service to at least “a *de minimis* number of customers” until October 2018.<sup>12</sup> Flat Rate Service was offered as an option in TC Telephone’s tariff, but the fact that the majority of customers opted for the

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<sup>9</sup> *Id.*, at 12.

<sup>10</sup> *Id.*, at 9, Attachment 1 (TC Telephone Service Plans) thereto.

<sup>11</sup> *Id.*, Attachment 2 (TC Telephone Webpage 7.12.2019).

<sup>12</sup> TC Telephone Response to OII at 4.

Measured Rate Service is something that TC Telephone attributes to an artifact from prior management.<sup>13</sup> TC Telephone also admits that by 2019 its customers were all enrolled on Measured Rate Service but denies that there was any effort to switch customers from Flat Rate service to Measured Rate Service under the new ownership, as the current owners have no way of knowing why customers switched from Flat Rate Service to Measured Rate Service between 2013 and 2019.<sup>14</sup>

### **1.1.3. Concern Over the Size of TC Telephone's Reimbursement Claims**

In September 2018, California's Department of Finance contacted the Commission out of concern for TC Telephone's increasing LifeLine reimbursement claims.<sup>15</sup> Pursuant to GO 153, LifeLine providers are allotted reimbursements for only 60 untimed calls per customer yet with TC Telephone's approximately 5,400 customers (as of September 2018), the maximum number of claimable calls would be 324,000 (5400 customers x 60 calls), yet TC Telephone reported nearly six times this number of calls in its September 2018 claim, or about 1.86 million calls.<sup>16</sup> The Communications Division investigated and determined that TC Telephone had been reporting and seeking claims on a per-minute basis, rather than on a per-call basis, as required by GO 153 and Resolution T-17321. Specifically, in the claim form's column for reporting the

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<sup>13</sup> *Id.*, and footnote 5, which references Tariff Sheet Nos. 48-52.

<sup>14</sup> *Id.*, at 6.

<sup>15</sup> CPED Staff Report at 13.

<sup>16</sup> *Id.*

number of calls made by MRS customers that month, TC Telephone listed the number of minutes customers were on the calls. If for 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. By this practice, the Communications Division concluded that TC Telephone would then be reimbursed for 200 calls, or ten times the appropriate amount.<sup>17</sup> After the Communications Division advised CPED of its concerns, CPED conducted an investigation and issued its Staff Report "Investigation of TC Telephone" on September 30, 2022.

## **1.2. Procedural Background**

On October 11, 2022, the Commission initiated this investigation to determine whether Respondent, TC Telephone LLC (TC Telephone) violated any provisions of GO 153<sup>18</sup> and 96-B,<sup>19</sup> Resolutions T-17321<sup>20</sup> and T-17687,<sup>21</sup> Decisions 92-11-063, 94-10-046, 00-10-28, and Rule 1.1, when it collected fees out

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<sup>17</sup> *Id.*

<sup>18</sup> Procedures for the Administration of the Moore Universal Telephone Service Act. Section 9.1.1 states: "Any California LifeLine Service Provider that provides California LifeLine may submit a claim for the reimbursement of its California LifeLine-related costs and lost revenues."

<sup>19</sup> Contains General Rules, Energy Industry Rules, Telecommunications Industry Rules, and Water Industry Rules.

<sup>20</sup> Resolution T-17321 revised GO 153 to reflect revisions to the California LifeLine Program as adopted in Decision 10-11-033.

<sup>21</sup> Resolution T-17687 clarified rules in GO 153 regarding carrier reimbursement of Universal LifeLine Telephone Service cost so that carriers are not permitted to seek reimbursement on a per minute basis for lost revenues from the LifeLine fund.

of the LifeLine Fund from customers participating in the Universal LifeLine Program.

The OII set forth a preliminary scoping memo pursuant to Rule 7.1(c) to which TC Telephone was ordered to file a response.

After being granted an extension of time, on December 9, 2022, TC Telephone filed its response to the preliminary scoping memo contained in the OII.

The Prehearing Conference (PHC) was held on February 28, 2023, and PHC statements were filed in advance of the hearing. Based on the PHC statements and the comments made by counsel at the hearing, the parties were ordered to meet and confer to agree, if possible, on the factual record and exhibits for the Commission to consider in resolving the OII, determine if there were any undisputed material facts, and if an evidentiary hearing would be needed.

After the completion of the meet and confer process, the parties filed the following pleadings:

- Response of TC Telephone to Administrative Law Judge Directive to Submit Table of Undisputed Facts, dated March 16, 2023;
- Response of TC Telephone to Administrative Law Judge Directive to Submit Supplemental Documents for Evidentiary Record, dated March 17, 2023;
- Motion of the Consumer Protection and Enforcement Division for Leave to File a Confidential Portion Under Seal [of] its Status Update, dated March 17, 2023; and

- The Consumer Protection and Enforcement Division's status Update Pursuant to the Administrative Law Judge's Order (Public Version), dated March 17, 2023.

On July 6, 2023, TC Telephone filed its Opening Brief.

On July 10, 2023, CPED filed its Amended Opening Brief.

On July 14, 2023, TC Telephone filed its Motion to Submit Late-Filed Documents for Inclusion in the Evidentiary Record.

On July 18, 2023, CPED filed its Objection to TC Telephone's Motion to Submit Late-Filed Documents for Inclusion in the Evidentiary Record.

On July 24, 2023, CPED and TC Telephone filed their respective Reply Briefs.

On March 22, 2024, the parties appeared for oral argument before the Assigned Administrative Law Judge.

This decision grants the Motion of TC Telephone to Submit Late-Filed Documents for Inclusion in the Evidentiary Record, and the Motion of CPED to File a Confidential Portion Under Seal of its Status Update are granted.

### **1.3. Submission Date**

This matter was submitted on March 22, 2024, following the conclusion of the oral argument.

## **2. Jurisdiction and Burden of Proof**

Pub. Util. Code § 873 tasks the Commission with the duty to oversee the LifeLine program and to make changes on an annual basis as necessary to designate a class of LifeLine service necessary to meet minimum communications needs, set the rates and charges for that service, develop eligibility criteria, and assess the degree of achievement of universal service.

Moreover, D.14-01-036 states that “Commission staff has authority to investigate California LifeLine providers and participants in order to detect and prevent program waste, fraud and abuse.” In addition, “Commission staff has authority to remedy any instances of waste, fraud, and abuse of the program by LifeLine providers and by participants.”<sup>22</sup>

As this proceeding was initiated as a result of CPED’s investigation, CPED bears the burden of proof which must be met by a preponderance of the evidence.<sup>23</sup>

### **3. Issues Before the Commission**

The issues to be determined or otherwise considered are:

- Did TC Telephone’s LifeLine Program reimbursement claims violate the Moore Universal Telephone Service Act, Commission GOs 153 and 96-B, Resolutions T-17321 and T-17687 and D.92-11-063, D.94-10-046, D.00-10-028, and any other applicable laws and regulations?
- If violations are found, what additional amounts in surcharges, user fees, interest, and penalties should be paid by TC Telephone?
- Should the Commission impose an additional penalty for TC Telephone’s failure to comply with Rule 1.1?

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<sup>22</sup> D.14-01-036, Ordering Paragraphs 31 and 32. The Commission continues to exercise its authority over the Lifeline program. (*See, e.g.*, D.20-02-004 and D.20-10-006.)

<sup>23</sup> *See* D.57597, \*8 (Opinion): “Proceedings instituted on the Commission’s own motion such as this case, are basically disciplinary in nature because the penalties that might result from the Commission’s decision may result in suspension or revocation of operative rights granted by the State. The burden of proof is upon the staff to prove the charges made.”) Evidence Code §115 (“Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.”).

- Should the Commission compel TC Telephone to pay in full \$28,000 for an outstanding balance from a previous Commission-approved settlement between TC Telephone and CPED?
- Should the Commission reject TC Telephone's outstanding May to October 2020 claims?
- Should the Commission revoke TC Telephone's operating authority, including their two CPCNs, U-6874-C, and U-4410-C?
- Should the Commission consider other actions against TC Telephone, including a prohibition against some or all of the members and officers of TC Telephone from benefiting from or participating in any Commission program for a period of at least ten years?
- In addition to monetary penalties, should the Commission impose other corrective measures and remedies on TC Telephone for its conduct during the Commission's investigation?

#### **4. Discussion**

##### **4.1. Rules of Statutory Interpretation**

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:

The applicable principles of statutory construction are well settled. In construing statutes, we must determine and effectuate legislative intent. 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.<sup>24</sup>

If a statute contains technical words, then Civil Code § 1645 instructs that “[t]echnical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.”<sup>25</sup>

However, if a statute is susceptible to more than one reasonable interpretation, its meaning should be determined in light of its legislative intent. (*California Manufacturers Association v. Pub. Util. Commission* (1979) 24 Cal. 3d 836, 846.) If there is any suggestion of ambiguity, *California Manufacturers* instructs us that consideration should be given to the consequences that will flow from a particular interpretation:

Words must be construed in context, and statutes must be harmonized, both internally and with each other, to the extent possible. (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973) [10 Cal.3d 222](#), 230 [110 Cal.Rptr. 144, 514 P.2d 1224]; *Select Base Materials v. Board of Equal.*, *supra*, at p. 645; *Johnstone v. Richardson* (1951) 103 Cal.App.2d 41, 46 [229 P.2d 9].) Interpretive constructions which render some words surplusage, defy common sense, or lead to mischief or absurdity, are to be avoided.” (*Fields v. Eu* (1976) [18 Cal.3d 322](#), 328 [134 Cal.Rptr. 367, 556 P.2d 729]; *Sanchez v. South Hoover Hospital* (1976) [18 Cal.3d 93](#), 98 [132 Cal.Rptr. 657, 553 P.2d 1129]; *Stanley v. Justice Court* (1976) 55 Cal.App.3d 244, 253 [127 Cal.Rptr. 532]; *Watkins v. Real Estate Commissioner* (1960) 182 Cal.App.2d 397, 400 [6 Cal.Rptr. 191]. (24 Cal.3d at 844.)

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<sup>24</sup> The Commission has adhered to these statutory rules. (See, e.g., D.98-12-067 and D.97-11-020.

<sup>25</sup> See *Cooper Companies, Inc. v. Transcontinental Insurance Co.* (1995) 31 Cal.App.4<sup>th</sup> 1094, 1101.

As such, in interpreting the words of a statute, the Commission must consider whether its interpretation will effectuate the purpose behind California's Universal LifeLine Telephone Service program.

**4.2. By Obtaining Per-Minute Reimbursement Claims,  
TC Telephone Violated the Per-Call  
Reimbursement Standard in GO 153 and  
Resolution T-17321**

Resolution T-17321 contains a section entitled "Instructions for California LifeLine Report and Claim Form." Point three of these instructions states that LifeLine service providers "may only claim those costs and lost revenues identified in the body of GO 153. Utilities shall not claim any costs or lost revenues that are prohibited by GO 153."<sup>26</sup> The following are the list of costs and revenues identified in GO 153, Section 9.2.1., that are recoverable from the LifeLine Fund:

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 forth in Section 9.3.10, 9.3.12 and 9.3.13 of this General Order. (Italics added.)<sup>27</sup>

The word "untimed" also appears in another section of GO 153, Section 8.1.5.4.: "Subscribers of California LifeLine Measured-Rate Service shall receive 60 *untimed* local calls per month." (Italics added.)

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<sup>26</sup> Resolution T-17321, Attachment AS at 38.

<sup>27</sup> GO 153 at 22.

As the only recoverable calls identified by GO 153 are “untimed calls,” a provider such as TC Telephone should not be seeking reimbursement for per-minute calls as those do not fit within the plain meaning of the word “untimed” which does not include a temporal component. The Commission’s interpretation is consistent with the plain meaning of “untimed” which means “not timed; not regulated with respect to time.”<sup>28</sup>

Yet from July 2013 to April 2020, TC Telephone acted contrary to the plain language of the governing law by seeking reimbursement for timed calls that are not allowed by GO 153. As proof, we can examine TC Telephone’s workpapers, that all providers are required to submit in accordance with Resolution T-17321, Attachment B-8 (“Instructions for California LifeLine Report and Claim Form”). Lines 5 and 5.5 of the template lists “Untimed Calls”, and instructs the provider seeking reimbursement to demonstrate, unambiguously, how the claim was derived with columns for “calls”, “count”, “rate,” and the “amount” claimed.<sup>29</sup> But in the sample TC Telephone Claim form from 2018, rather than list the number of calls under the count column, TC Telephone listed the number of call minutes (1,453,714).

#### **4.2.1. TC Telephone’s Response**

With respect to the reimbursement claim for per-minute calls between January 2018 and April 2020, TC Telephone asserts that it submitted reimbursement claim forms exactly as had been done since 2013 by TC

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<sup>28</sup> *Collins Dictionary*.

<sup>29</sup> *Id.*, at 15.

Telephone's prior owner (Travis Graff),<sup>30</sup> and that the reimbursement approach was based on written guidance from Commission staff.<sup>31</sup> TC Telephone further claims that it wasn't until the Commission issued Resolution T-17687 that the Commission clarified the prior ambiguity in the reimbursement rules and stated that "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."<sup>32</sup> In TC Telephone's view, it had no reason to believe its reimbursement practices were improper as they had the imprimatur of Commission staff and even the Commission acknowledged that the law was unclear, and that Resolution T-17687's proscription only applied on a prospective basis.

As further support for its position that its reimbursement practices were proper, TC Telephone notes that

GO 153 makes clear that the Commission intended to allow every utility to seek reimbursement from the ULTS Fund for the lost revenues it incurs to provide the first sixty calls for measured rate service customers for \$0.00. Petitioner's Exhibit 10 (D.00-10-028), at p. 115. No definition for the term "calls" or "untimed" appears in GO 153 or any Commission decision that TCT could find. Resolution T-17687 provides no definition."<sup>33</sup>

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<sup>30</sup> Per TC Telephone, the transfer of control from Travis Graff to the current owners (James Adam, Robert Costello, and Chris Wastson) was approved in D.20-02-015.

<sup>31</sup> TC Telephone's Response to OII at 8, and footnote 18 (email from Jonathan Lakritz dated May 10, 2013); and TC Telephone's Opening Brief at 6-7, referencing emails and correspondence from Commission staffers Ms. Tina Lee and Robert Wullenjohn.

<sup>32</sup> TC Telephone's Response to OII at 8, and footnotes 19 and 20 (Resolution T-17687 at 3 and 4).

<sup>33</sup> *Id.*, at 9.

TC Telephone focuses on GO 153, Sections 9.2.1 and 9.3.1 (the rules for carrier reimbursement), and argues that carriers are allowed to recover lost revenue from untimed calls associated with California's LifeLine Measured Rate Service and TC Telephone provides such a service to its customers. In its view, if TC Telephone provides Measured Rate Service to non-LifeLine customers, it would charge its full approved tariffed rate. But as TC Telephone does not charge anything for the first 60 calls made by a LifeLine subscribing customer, TC Telephone reasons that it has lost revenue in the amount of the per-minute rate in its tariff that it would have charged a non-LifeLine customer. TC Telephone concludes by asserting that since "GO 153 states that carriers are allowed to recover all actual costs directly attributable to providing service not reimbursed elsewhere and that would not be incurred in the absence of the [LifeLine] program[,]” its claim for per-minute call reimbursement was appropriate.

Finally, TC Telephone attempts to find support for its position by quoting the following passage from D.00-01-028: “we adopt the policy of reimbursing all utilities for the lost revenues and other reasonable costs they incur to provide ULTS [Universal Lifeline Telephone Service].”<sup>34</sup> According to TC Telephone, because its basic tariff service charged per-minute rates, and it paid per-minute rates to underlying carriers, “it believed its lost revenues must be calculated on a per-minute basis.”<sup>35</sup>

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<sup>34</sup> *Id.*, at 10.

<sup>35</sup> *Id.*, at 11.

#### **4.2.2. Discussion**

We first dispense of TC Telephone's attempt to rely upon the opinions and/or alleged guidance from Commission staff. The guidance of a staffer cannot bind the Commission since the question of what is required by either a statute, decision, or general order lies within the province of the five Commissioners to decide. In the *Order Modifying Resolution ROSB-002 and Denying Rehearing of Resolution, as Modified*,<sup>36</sup> the Commission explained the distinction between staff and Commission authority:

Generally, the commission has stated that powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of a public trust and cannot be surrendered or delegated to subordinates in the absence of statutory authorization. (*Bagley v. City of Manhattan Beach* (1976) 18 Cal. 3d 22, 24; *California School Employees Association v. Personnel Commission* (1970) 3 Cal. 3d 139, 144; *Schechter v. County of Los Angeles* (1968) 258 Cal.App.2d 391, 396.) Public agencies, however, may delegate the performance of ministerial tasks, including the investigation and determination of facts preliminary to agency action (*California School Employees, supra*, at p. 144), functions relating to the application of standards (*Bagley, supra*, at p. 25), and the making of preliminary recommendations and draft orders (*Schechter, supra*, at p. 397) Moreover, an agency's subsequent approval or ratification of an act delegated to a subordinate validates the act, which becomes the act of the agency itself." \*3-4.

Thus, the guidance from a staffer would not become binding on the Commission unless and until the Commission approves or ratifies the opinion.

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<sup>36</sup> Application of Union Pacific Railroad Company and BNSF Railway Company for Rehearing of Resolution ROSB-002, D. 09-05-020; A. 08-12-004; 2009 Cal. PUC LEXIS 250 (May 7, 2009).

Similarly, as to whether or not a staffer's opinion could be binding on the Commission, the Commission has answered this question in the negative in a number of different factual scenarios. For example, in *Moores v. PG&E Co.* [D.92-04-022] (1992) 43 Cal.P.U.C.2d 629 [not published in full], 1992 Cal. PUC LEXIS 345, at \*18-19, the Commission explained:

We are of the opinion that the prior determination of the Commission staff is not binding on this Commission simply because it was a staff determination and not a Commission determination. No formal proceedings were undertaken, no evidentiary hearings were held, no witnesses were examined and subjected to cross-examination, and no decision was issued by this Commission.

Even beyond the context of a complaint proceeding, the Commission has advised that regulated entities must not rely on staff to offer legal opinions or interpretations when there has been an order from the Commission requiring compliance. For example, in *Universal Marine Corporation v. San Pedro Marin*, [Decision (D.) 90334, at 17 (*slip op.*)] (1979) 1 Cal. P.U.C.2d 404 [not published in full], the Commission offered the following pronouncement after a staff member told an applicant that a certificate of public convenience and necessity was necessary before a certificate could be issued:

The record shows that San Pedro commenced the transportation...under the color of authority from its prior attorney and a member of the Commission's staff. While advice given by the staff to the public is intended to be helpful, it does not bind the Commission, nor can it be considered as Commission action or

policy since the Commission can only act as a body and in a formal manner.<sup>37</sup>

We also reject TC Telephone's attempt to shield itself from responsibility 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.<sup>38</sup> Similarly, Rule 1.1 requires that any person transacting business before the Commission "agrees to comply with the laws of this State[.]" To comply, a person must know the laws that are applicable to the business that is subject to the Commission. Here, that would be the decisions, rules, statutes, and general orders that were adopted to implement the Moore Universal Telephone Service Act. Thus, it is no defense that an illegal practice had been carried on by TC Telephone's prior owner and that the current owners were unaware of the illegality.

Next, we address TC Telephone's defense that the applicable LifeLine Fund laws did not contain a definition of either "call" or "untimed," and it was, therefore, reasonable to insert a temporal component into these words. First, TC Telephone's position flies in the face of the settled rule of statutory interpretation. As we have demonstrated above, the plain meaning of the word

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<sup>37</sup> See also Resolution G-3372, wherein after CAB had advised customer that PG&E bills were not inconsistent with its tariffs, the Commission stated that "[s]uch informal advice provided by staff is not binding upon the Commission which issues formal opinions only through its decisions and resolutions." (at 10, footnote 1.)

<sup>38</sup> *People v. Snyder* (1982) 32 Cal.3d 590, 592- 593 ("It is an emphatic postulate of both civil and penal law that ignorance of a law is no excuse for a violation thereof....The rule rests on public necessity; the welfare of society and the safety of the state depend upon its enforcement."); and *Lambert v. California* (1957) 355 U.S. 225, 228 ("The rule that 'ignorance of the law will not excuse' [citation omitted] is deep in our law, as is the principle that of all the powers of local government, the police power is 'one of the least limitable.'")

“untimed” does not have a temporal component so it would not be reasonable to accept TC Telephone’s rationale for inserting one. Second, “call” is not a word that is used in a vacuum but instead must be read in conjunction with the word “untimed.” Thus, the word “call” also lacks the requirement that it has a time component. Third, even if we were to accept TC Telephone’s position that “call” was uncertain, the word would have to be subject to two *reasonable* interpretations to be considered ambiguous.

TC Telephone’s position that its interpretation was reasonable has been dispelled by the Commission’s adoption of Resolution T-17687. The Commission deemed the Resolution necessary because it had learned that certain carriers’ LifeLine customers switched to a Measured Rate Service plan, and that these carriers sought reimbursement from the LifeLine Fund on a per-minute basis for charges on each call under the Measured Rate Service plan. While Resolution T-17687 is styled as a clarification, the Commission makes its position clear as to what the law *has always been* regarding reimbursable LifeLine Fund claims. First, the Resolution states that “[t]he 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.” In so stating, the Resolution confirmed that “untimed” as used in GO 153 means ‘there is no charge per minute.’<sup>39</sup> Second, the Resolution found that:

[P]ast 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

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<sup>39</sup> *Id.*

language of GO 153 Section 8.1.5.4, which refers to billing under the Measured 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.<sup>40</sup>

Tellingly, Resolution T-17687 did not give any LifeLine service providers a pass for improperly seeking reimbursement from the LifeLine Fund before the Resolution was adopted. At best, Resolution T-17687 acknowledged that it was “apparent that language in D.00-10-028 and GO 153 Section 8.1.5.4 was not sufficiently clear for all ULTS providers.” Resolution T-17687 might have been charitable with its use of the phrase “for all ULTS providers” since CPED found that TC Telephone is the only LifeLine Measured Rate service provider that sought reimbursement on a per-minute basis.<sup>41</sup> In fact, Resolution T-17687 compared the LifeLine reimbursement for AT&T’s and TC Telephone’s Measured Rate service for 2019 and found that AT&T’s total claims were \$80,130, whereas TC Telephone’s claims were \$5,663,907.<sup>42</sup>

Resolution T-17687 also explained why reading the LifeLine Fund laws to permit reimbursement for per-minute calls was contrary to, and would defeat the purpose behind the law:

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

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<sup>40</sup> *Id.*, at 3.

<sup>41</sup> CPED Staff Report at 32.

<sup>42</sup> Resolution T-17687 at 6, cited in CPED Staff Report at 33.

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.<sup>43</sup>

Accordingly, it would not be reasonable to accept TC Telephone's position that a "call" can be reimbursed on a per-minute basis since to do so would frustrate the purpose behind the LifeLine Fund and saddle low-income subscribers with higher surcharges.

Finally, we address the language that TC Telephone has quoted from D.00-10-028 as seeming support for per-minute call reimbursement: "we adopt the policy of reimbursing all utilities for the lost revenues and other reasonable costs they incur to provide ULTS."<sup>44</sup> There is no language in D.00-10-028 that the "lost revenues and other reasonable costs" included calls being charged on a per-minute, and such a reimbursement would be contrary to the requirement that the costs be "reasonable." As per-minute calls are not permitted to be reimbursed from the LifeLine Fund, such calls would not, therefore, be considered reasonable.

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<sup>43</sup> Resolution T-17687 at 4.

<sup>44</sup> D.00-10-028 at \*126.

In conclusion, we find that by obtaining per-minute reimbursement claims, TC Telephone violated the per-call reimbursement standard in GO 153 and Resolution T-17321.

**4.3. TC Telephone Violated Commission  
Decisions 92-11-063 and 94-10-046 and GO 153  
When it Sought Reimbursement for Calls Beyond  
a Subscriber's First 60 Calls**

In D.92-11-063<sup>45</sup> the Commission addressed the legality of LifeLine provider's ability to recover reimbursement from the LifeLine Fund for Measured Rate Service calls beyond the first 60 calls in a month. While the focus was on Pacific Bell,<sup>46</sup> the Commission's language applied to all LifeLine service providers:

Telephone utilities are allowed to claim from the ULTS [Universal LifeLine Telephone Service] Fund the amount of lost revenue and incremental costs incurred as a result of the ULTS program." "The ULTS program does not subsidize measured rate calls for ULTS customers for calls in excess of 60 calls per month."<sup>47</sup>

Two years later, in D.94-10-046, the Commission affirmed its position when it ordered Pacific Bell to stop seeking reimbursements beyond the 60-call allowance for Measured Rate Service: "Within 45 days of the effective date of the Commission's decision adopting the Settlement, Pacific shall cease seeking

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<sup>45</sup> *Order to Show Cause* issued in OII 83-11-05 (In the Matter of the Audit Report on Pacific Bell's Universal LifeLine Telephone Program).

<sup>46</sup> *Id.*, Audit Report accompanying Order to Show Cause at 8: "Nowhere in the decision [D.86-02-021] was there any statement that allowed PacBell to seek reimbursement from the ULTS fund for measured-rate calls beyond the 60 untimed call allowance."

<sup>47</sup> *Id.*, at 1, and Audit Report accompanying Order to Show Cause at 8.

reimbursement for lost revenue due to Measured ULTS local calls beyond the 60-call allowance.”<sup>48</sup>

Like Pacific Bell before it, TC Telephone also seeks reimbursement beyond the 60-call allowance. In TC Telephone’s claim form from 2018, it added under the “Calls” column a line entitled “60+” then added “752,528” under the “Count” column, and claimed a recovery amount of “\$112,879.20.”<sup>49</sup> The 60+ line does not appear in the GO 153 claim form sample and there is no language in GO 153 that permits such a reimbursement. As such, “Subscribers 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.” As the cost of calls over the first 60 is the responsibility of the customer, not the LifeLine Fund, TC Telephone errs in its attempt to obtain such a reimbursement.

#### **4.3.1. TC Telephone’s Response**

TC Telephone disputes that it violated D.92-11-063 and D.94-10-046. First, it claims the decisions were issued over 22 years before the current TC Telephone owners were involved with the company, “so they were unaware of it.”<sup>50</sup> Second, if they were aware, the decision was “not an order of general applicability. It applied to Pacific Bell only and clearly states that there would be workshops held

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<sup>48</sup> D.94-10-046, Appendix B at 1, Terms of the Settlement #2.

<sup>49</sup> CPED Staff Report at 19.

<sup>50</sup> TC Telephone Response to OII at 13.

to determine if any changes to GO 153 were needed to extend the findings to the industry generally.”<sup>51</sup>

#### **4.3.2. Discussion**

We find that TC Telephone reads D.92-11-063 and D.94-10-046 too narrowly in its attempt to limit their application to Pacific Bell. Both decisions grew from the Commission’s Order Instituting Investigation (OII) 83-11-05 which was opened to implement Assembly Bill 1348’s requirement that the Commission provide affordable local telephone service for the needy, the invalid, the elderly, and rural customers. With D.84-04-053, the Commission established a Universal LifeLine Telephone Service Fund to implement a program to provide eligible subscribers basis telephone LifeLine service. OII 83-11-05 generated a number of decisions not limited to Pacific Bell. For example, D.84-11-028 provided a call allowance of 30 untimed local calls. D.86-02-021 increased the measured rate allowance from 30 to 60 untimed local calls per month. In reaching these decisions, Pacific Bell, General Telephone, the Commission’s staff, and other telephone providers submitted comments. As such, OII 83-11-05 served as the anchor proceeding for the Commission to adopt the number of reimbursable untimed calls per month, and its decisions were not specific to Pacific Bell.

The focus of D.92-11-063 and D.94-10-046 was Pacific Bell, who had been the subject of an audit report over concern that Pacific Bell had overcharged the Universal LifeLine Telephone Service Fund. Yet, in making its determination of an overcharge, the Commission in D.92-11-063 utilized the standards for monthly

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<sup>51</sup> *Id.*; and TC Telephone’s Opening Brief at 10.

untimed call amounts that it adopted to apply to *all* LifeLine service providers: “Telephone utilities are allowed to claim from the Universal Lifeline Telephone Service fund (ULTS fund or Fund) the amount of lost revenue and incremental costs incurred as a result of the ULTS program.”<sup>52</sup> Similarly, D.94-10-046 addressed “calls made by ULTS customers beyond the measured rate call allowance” in the context of a Pacific Bell settlement. The reference to the measured rate call allowance was not something unique to Pacific Bell but was the standard applicable to all LifeLine service providers.

Accordingly, we find that TC Telephone violated Commission Decisions 92-11-063 and 94-10-046 and GO 153 when it sought reimbursement beyond a subscriber’s first 60 calls.

**4.4. Between January 2018 and March 2020, TC Telephone Improperly Over-Collected \$8,157,469.39 from the LifeLine Fund**

Because of its practices of claiming recovery for calls at per-minute rates and for customer calls beyond their first 60, TC Telephone over-collected \$8,157,469.39 from the LifeLine Fund. Coincidentally, or perhaps not, the over-collection was pronounced between January 2018 through April 2020 when both TC Telephone’s customer volume and Measured Rate Service rates were at their highest.<sup>53</sup> We accept CPED’s measure of calculating the over-collection because we find it to be reasonable. First, staff estimated a reasonable level of subsidy on a per-customer basis at \$30/customer per month, which is slightly higher than

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<sup>52</sup> D.92-11-063 at \*4.

<sup>53</sup> CPED Staff Report at 24.

what AT&T and TC Telephone charge to customers for unlimited calls on unsubsidized Flat Rate plans.<sup>54</sup> If TC Telephone received an average subsidy of \$40 per customer per month, its total monthly over-collections would be \$10 x the number of customers in that month. Next, staff determined the average per-customer subsidy (usage + SSA), subtracted the average monthly per-customer subsidy TC Telephone received to arrive at a per-customer overcharge. Next, staff multiplied the average per-customer over-charge by the number of customers in that month, which is taken from TC Telephone's reported monthly weighted average. Finally, the monthly over-charges for each month from January 2018 through March 2020 were totaled to arrive at \$8,157,469.39.<sup>55</sup>

The conclusion that TC Telephone over-collected sums from the LifeLine Fund is supported by a comparison between claims made by AT&T and other service providers<sup>56</sup> offering Measured Rate Service to LifeLine customers. CPED notes that AT&T's claims for untimed call reimbursement ranged from \$5,000-\$6,000 per month for providing Measured Rate Service to approximately 25,000 customers, resulting in a monthly reimbursement rate of \$0.20-\$0.24 per customer for untimed calls. In contrast, TC Telephone's monthly claims for untimed calls reached \$989,819 in March 2020 while serving only 8353 customers, resulting in a recovery level of over \$118 per customer. The other service

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<sup>54</sup> *Id.*, at 26.

<sup>55</sup> *Id.*, at 25 and Attachment 5 thereto.

<sup>56</sup> The other California LifeLine service providers are Cox Communications, Blue Casa, Frontier CA, Frontier Citizens, Consolidated Communications of California Company, and Charter Communications. (CPED Staff Report at 26, footnote 46.)

providers' usage-based claims for March 2020 were \$0.00. The size of TC Telephone's LifeLine Fund reimbursement claims can only be the result of its unauthorized practices of seeking recovery for calls at per-minute rates and for customer calls beyond their first 60.

#### **4.4.1. TC Telephone's Response**

TC Telephone repeats its argument that it submitted reimbursement claim forms on a per-minute basis according to the existing practice of the prior owner of TC Telephone, was "based on written guidance from a senior staff person. The Commission reviewed and processed TC Telephone's claim forms, including workpapers submitted with them, for seven years between 2013 and 2020."<sup>57</sup>

#### **4.4.2. Discussion**

We incorporate by reference the discussion above at Section 4.2.2. as to why TC Telephone's position is legally deficient.

#### **4.5. TC Telephone Violated GO 96-B, Rules 5.1 and 7.1, When It Added New Definitions in Its Tariff that Changed Its Rates**

GO 96-B, Rule 5.1 (Matters Appropriate to Advice Letters), states that "[a] utility may seek a rate increase by means of an advice letter only if use of an advice letter for this purpose is authorized by statute or Commission order." GO 96-B, Rule 7.1 (Matters Appropriate to Tier 1 Advice Letter), states the following matters that may be filed under Tier 1 include "an editorial change to the text of a tariff that does not affect a rate, charge, term, or condition under the tariff." TC Telephone used its Tier 1 Advice Letter to change rates without the Commission's authorization. When TC Telephone filed its Tier 1 Advice Letter 56

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<sup>57</sup> TC Telephone's Response to OII at 23.

on April 30, 2020, along with supplemental Advice Letters 56 A-D, it added new definitions for “call or calls” and “untimed calls” which were not present in its prior Advice Letter 54:

Calls or Calls: Use of the Company’s service or facilities to send or receive communications. Calls are measured and billed *on a per-minute basis with a minimum of three minutes*.

Untimed Calls: the first sixty Calls made by an ULTS customer each month. Each *untimed Call is timed* and rated as three minutes regardless of actual call duration.<sup>58</sup>

The Cover Sheet to Advice Letter 56 asserts that the changes are of an administrative and corrective nature:

In addition to the administrative changes, this advice letter makes other textual changes to remove or revise rules, definitions, or other terms of service to reflect current Commission orders and resolutions as well as policies of the new ownership. These changes do not increase rates in TC telephone’s existing tariff.<sup>59</sup>

The assertion is remarkable since no Commission order or resolution authorized the placement of a temporal component on “call” or “untimed call.” In fact, Resolution T-17687, which was dated March 26, 2020, and issued on April 3, 2020 (which was 27 days before TC Telephone filed Advice Letter 56), expressly contradicts TC Telephone’s assertion regarding the Commission’s position on appropriate reimbursement claims from the LifeLine Fund. TC Telephone was well aware of Resolution T-17687 and fought rigorously to maintain its illegal per-minute reimbursement protocol, filing seven measures to

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<sup>58</sup> CPED Staff Report at 38, and footnote 65.

<sup>59</sup> *Id.*, at 39, and Attachment 6 thereto.

overturn the Resolution and related Commission decisions.<sup>60</sup> TC Telephone claimed that without per-minute claim reimbursement, it would effectively go out of business.<sup>61</sup>

With these new definitions, TC Telephone began claiming recovery for timed calls for the first 60 calls from the LifeLine Fund on a 3-minute basis starting in April 2020,<sup>62</sup> in effect making a change in its rates that the Commission never authorized.

#### **4.5.1. TC Telephone's Response**

TC Telephone argues that GO 96-B, Rule 7.1 allows Uniform Regulatory Framework (URF) carriers to change rates or terms via Tier 1 Advice Letter. It cites Rule 7.1(5) which states; "A change by an URF Carrier to a rate, charge, term, or condition of a retail service (except for Incumbent Local Exchange Carrier (ILEC) Basic Service rate). Changes to terms and conditions for Basic Service that do not conflict with law or the Commission's decisions or orders are permitted." Given this exception, TC Telephone asserts that Rule 7.1 prohibiting rate or term increase via Tier 1 Advice Letters applies only to non-URF carriers.

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<sup>60</sup> For example, on April 10, 2020, TC Telephone simultaneously filed both an Application for Rehearing and an Emergency Stay. On July 15, 2020, TC Telephone simultaneously filed an Application for Expedited Limited Rehearing of D.20-06-023 which denied the Motion for Stay, and a Petition for Writ of Review of D.20-06-023 in the California Court of Appeal. On September 4, 2020, TC Telephone filed a Request for Stay pending Court of Appeal decision on TC Telephone's appeal. On November 16, 2020, TC Telephone filed an Application for Rehearing on D.20-10-006. All of these filings were denied. (CPED Staff Report at 36.)

<sup>61</sup> CPED Staff Report at 35, footnote 62.

<sup>62</sup> *Id.*

As additional support for its position, TC Telephone calls attention to the fact that AT&T has used Tier 1 Advice Letters to signal a rate increase: “TC Telephone confirmed that other carriers have filed tariff changes characterized as increases to rates in a Tier 1 advice letter. As an example, the Commission’s records show that AT&T Corp. filed Advice Letters 4292, 4293, 4331, 4342, 4343, and 4361 as Tier 1 advice letters.”<sup>63</sup> TC Telephone claims that “AT&T’s Tier 1 advice letters seeking rate increases demonstrate that it is a routine practice for the Commission to consider and approve rate increases via Tier 1 advice letters.”<sup>64</sup>

With respect to GO 96-B, Rule 5.1’s prohibition against using an advice letter to increase rates unless authorized to do so by the Commission or statute, TC Telephone asserts that Advice Letter 56 was not a rate increase. Instead, and in conformity with Rule 5.1, TC Telephone claims Advice Letter 56 was drafted “to conform the tariffs to the requirements of a statute or Commission order.”<sup>65</sup> Since Resolution T-17687 clarified the “going forward” rules for LifeLine Fund reimbursements, TC Telephone inserted the definition of “call” as having a three-minute duration. TC telephone justifies this explanation by claiming that “call” must have some duration so it determined that since the average hold time for a

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<sup>63</sup> TC Telephone’s Response to OII at 16, and Exhibit D (printout of a search of AT&T Corp.’s advice letter filings on the Commission’s website) thereto.

<sup>64</sup> *Id.*, at 17.

<sup>65</sup> *Id.*

LifeLine connection was three minutes it decided to define a call as having a three-minute hold time.<sup>66</sup>

Even if it filed the advice letter under the wrong tier, TC Telephone asserts that is no basis to impose a monetary penalty. Instead, TC Telephone cites to D.07-01-024 for the proposition that the appropriate response is for staff to reject the advice letter without prejudice and allow the filing party the opportunity to correct the error.<sup>67</sup> TC Telephone asserts that is what happened here as it engaged in a series of communications with Commission staff regarding Advice Letter 56, which staff suspended and gave directions on how it should be revised. TC Telephone claims that it complied with all of staff's directions so there is no reason to impose a monetary penalty and cites *Pacific Bell v. Public Utilities Commission* (2000) 79 Cal.App.4<sup>th</sup> 269, 282 as support for its position.

Finally, TC Telephone invokes the filed-rate doctrine as support that tariff provisions have repeatedly been upheld by courts even if a tariff provision was procured through a bribe or through fraud.<sup>68</sup> Based on this doctrine, TC Telephone claims that neither agencies nor courts may permit deviation from a carrier's approved tariff rates, terms, and conditions.

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<sup>66</sup> *Id.*, at 18

<sup>67</sup> TC Telephone Response to OII at 19.

<sup>68</sup> TC Telephone Opening Brief at 16-17, citing to *H.J. Inc. v. Northwestern Bell Tel. Co* (8<sup>th</sup> Cir. 1992) 954 F.2d 485; *Sun City Taxpayers' Association v. Citizens Utils. Co.* (2d Cir. 1995) 45 F.3d 58; *Taffet v. Southern Co.* (11<sup>th</sup> Cir. 1992) 967 F.2d 1483, 1489; *American Tel. & Tel. Co. v. FCC* (2d Cir. 1973) 487 F.2d 865; and *Marcus v. AT&T Corp* (2d Cir. 1998).

#### **4.5.2. Discussion**

We first address TC Telephone's Rule 7.1 arguments. It is true that Rule 7.1(5) permits an URF Carrier to change a rate, charge, term or condition of retail service by a Tier 1 Advice Letter, but to do so the change must "not conflict with law or the Commission's decisions or orders[.]" By inserting the new definitions of "call or calls" and "untimed calls," TC Telephone has revised its tariff in a manner that conflicts with GO 153, Resolution T-17321, and Resolution T-17687 since none of these laws permitted reimbursement for per-minute charged calls. Thus, TC Telephone may not rely on Rule 7.1(5) to justify its tariff changes made in Advice Letter 56.

Nor is TC Telephone's position supported by its reference to the AT&T Advice Letters. TC Telephone does not claim that AT&T was attempting to change rates to permit per-minute call charges or to seek reimbursement from the LifeLine Fund for calls above the 60 per month limits so the AT&T Advice Letters are irrelevant.

We next address TC Telephone's Rule 5.1 arguments. First, TC Telephone claims that Rule 5.1's prohibition against using the Tier 1 Advice Letter to affect a rate increase is inapplicable because Advice Letter 56 did not increase rates. We reject TC Telephone's position. By inserting a temporal component into the words "call or calls" and "untimed calls" TC Telephone was memorializing its intent to charge its LifeLine subscribers at rates beyond what the Commission

has previously allowed in order to increase its reimbursement from the LifeLine Fund.<sup>69</sup>

We also reject TC Telephone's attempt to rely on the filed rate doctrine to prevent the Commission from rejecting the changes made via Advice Letter 56. In *Marcus, supra*, the court explained that the filed rate doctrine is derived from the tariff-filing requirements of the Federal Communications Act of 1934, and "forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority."<sup>70</sup> *Sun City, supra*, explained the types of lawsuits the filed rate doctrine was designed to prevent:

The filed rate doctrine bars suits against regulated utilities grounded on the allegation that the rates charged by the utility are unreasonable. Simply stated, the doctrine holds that any "filed rate"--that is, one approved by the governing regulatory agency--is per se reasonable and unassailable in judicial proceedings brought by ratepayers.<sup>71</sup>

Thus, actions by ratepayers against regulated agencies regarding approved rates are prohibited by the filed rate doctrine.

TC Telephone fails to credibly explain how the filed rate doctrine applies to the Commission. This is a federal defense designed to protect regulated utilities from ratepayers when the rates have been approved by the governing

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<sup>69</sup> As we have determined that TC Telephone did not violate Rule 1.1 and should not be subject to an additional penalty, we need not address the applicability, if any, of *Pacific Bell v. Public Utilities Commission*.

<sup>70</sup> 138 F.3d at 58.

<sup>71</sup> 45 F.3d at 62.

federal agency. The filed rate doctrine has nothing to do with a state agency such as the Commission that seeks to penalize a regulated entity that has submitted an Advice Letter to revise a tariff in a manner contrary to state law. We reject TC Telephone's attempt to interject a doctrine that is best left with the federal courts to interpret and apply.

#### **4.6. TC Telephone's Errors in the April 2020 Reimbursement Claim**

TC Telephone submitted its April 2020 claim on May 6, 2020 and sought reimbursement in the amount of \$1,039,565.30.<sup>72</sup> In their review, the Communications Division found several errors and asked TC Telephone to revise and refile their claim. These errors included, but are not limited to, those related to non-reimbursable charges for service connections and conversions and for calls above the first 60. TC Telephone refiled their claim on August 20, 2020. Upon closer inspection of TC Telephone's amended claim, the LifeLine Program's Third-Party Administrator found that the claim was overstated and contained incorrect information. The Communications Division found the following errors in TC Telephone's revised claim, in addition to per-minute and over 60 charges: (a) 183 customers that did not have active California LifeLine phone numbers; (b) 6945 calls associated with customers that did not have active California LifeLine phone numbers; (c) 11 conversions where customers upgraded from basic Measured Rate Service to "feature-rich" Measured Rate Service; and (d) three customers in which reimbursement was claimed for

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<sup>72</sup> CPED Staff Report at 45.

performing connections and conversions services in the same month.<sup>73</sup> After TC Telephone amended its April 2020 claim a second time and claimed \$247,464.87, the Communications Division reimbursed TC Telephone for that amount.

#### **4.6.1. TC Telephone's Response**

TC Telephone contends that the 6,945 calls were not “non-active.” Instead, the calls were associated with LifeLine customers who were on TC Telephone's network for a partial month, not the full month.<sup>74</sup> TC Telephone claims not to be aware of any rule in GO 153 or other Commission orders stating that LifeLine providers will not be reimbursed unless the LifeLine customer remains on the carrier's network for a full month.

#### **4.6.2. Discussion**

Our review of the record does not reveal if a LifeLine customer must be on the network for an entire month to be considered active. But as TC Telephone has already resubmitted this claim and has been reimbursed \$247,464.87, we consider this issue moot.

#### **4.7. TC Telephone's Reimbursement Claims for May to October 2020**

For the months of May to October 2020, TC Telephone submitted reimbursement claims totaling \$5,604,174.81 and are broken down monthly as follows: May (\$863,837.77), June (\$998,374.81), July (\$981,883.27), August (\$1,038,054.13), September (\$867,199.54), and October (\$854,825.29).<sup>75</sup> In their review, the Communications Division and the LifeLine Third Party

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<sup>73</sup> *Id.*, at 44.

<sup>74</sup> TC Telephone's Response to OII at 28.

<sup>75</sup> TC Telephone's Opening Brief at 17, footnote 72, and Exhibit 3 thereto.

Administrator found the same types of errors that were found in the April 2020 reimbursement claim and ordered TC Telephone to amend the claims and to seek reimbursement on a per-call rather than on a per-minute basis. On December 16, 2020, the Communications Division denied TC Telephone's claim and ordered that the claims be amended.<sup>76</sup> TC Telephone resubmitted these claims on February 5, 2021, under protest, with the ordered adjustments bringing TC Telephone's May to October 2020 claim down from \$5,604,174.81 to approximately \$1.67 million.<sup>77</sup> The Communications Division denied these claims pending the conclusion of CPED's investigation.<sup>78</sup>

#### **4.7.1. TC Telephone's Response**

TC Telephone claims that, at a minimum, it is owed the \$1,674,856.83 since it revised the claims at the staff's behest.<sup>79</sup>

#### **4.7.2. Discussion**

As the Communications Division's investigation has not yet been completed, we will instruct it to complete its investigation and make a determination as to the appropriate reimbursement amount for TC Telephone's claims for May to October 2020. The Communications Division shall deduct any claims based on per-minute calls and for calls above the 60 call monthly limit.

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<sup>76</sup> CPED Staff Report at 50 and Attachment 10 thereto.

<sup>77</sup> CPED Staff Report at 50.

<sup>78</sup> *Id.*, at 47, footnote 75, and 50.

<sup>79</sup> TC Telephone's Opening Brief at 17.

#### **4.8. The Outstanding \$28,000 Balance TC Telephone Owes from the Prior Settlement**

In August 2018, CPED issued Citation Forfeiture Numbers 1308-1426 totaling \$119,000 in penalties for 119 instances of TC Telephone's violation of third-party verification requirements in accordance with Resolutions UEB-001, UEB-002, Pub. Util. Code § 2889.5 and Code of Federal Regulations 64.1120(c)(3)(iii). In September 2019, CPED and TC Telephone submitted an amended proposed settlement agreement which directed TC Telephone to make a total payment of \$76,000, with the first \$10,000 due within 30 days of the approval of the settlement agreement, another \$10,000 due within 60 days of the approval of the agreement, and the rest to be paid in \$5,600 installments due on the first day or first business day of each calendar month. The Proposed Settlement Agreement was approved by Resolution ALJ-373 on December 5, 2019. However, TC Telephone stopped paying the monthly installments provided for in the approved Settlement Agreement in August 2020 and has an outstanding balance of \$28,000 owed to California's General Fund.<sup>80</sup>

##### **4.8.1. TC Telephone's Response**

TC Telephone states it does not dispute that it owes \$28,000 but as it is not operational it has no assets so it will need to set up a payment plan.<sup>81</sup>

##### **4.8.2. Discussion**

There does not appear to be any dispute here so TC Telephone shall be required to make the \$28,000 payment.

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<sup>80</sup> CPED Staff Report at 49-50.

<sup>81</sup> TC Telephone's Opening Brief at 18.

#### **4.9. The Competing Interest Claims**

##### **4.9.1. CPED**

CPED asks that the Commission impose an interest penalty of \$1,631,494 on the over-collection amount of \$8,157,469. CPED calculates this interest payment from the period since the overcollection occurred (2021) to the start of this proceeding (2022) at 10% simple interest.<sup>82</sup> As legal justification, CPED cites the D.98-12-075 factors, *i.e.* harm caused by the violation; utility's conduct in preventing the violation; the amount of the fine or penalty that will achieve deterrence based on the utility's financial resources; the fine or penalty imposed under comparable circumstances; and totality of the circumstances and the public interest.<sup>83</sup>

##### **4.9.2. TC Telephone's Response**

TC Telephone denies that the Commission should impose an interest penalty since it submitted its reimbursement claims in accordance with the staff's directions.

Additionally, TC Telephone claims it should receive interest on the invoices totaling \$1,674, 856.83 for its May to October 2020 claims. The interest claim is based on TC Telephone's reading of GO 153, Section 9.10.3.

##### **4.9.3. Discussion**

We agree with CPED's request that TC Telephone should be required to pay interest on the over-collection it received from the LifeLine Fund. First, TC Telephone's actions are the result of failing to learn the proper reimbursement

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<sup>82</sup> CPED Amended Opening Brief at 19.

<sup>83</sup> *Id.*, at 18-19.

practices and receiving money to which it was not entitled. As it enjoyed any interest from those illegally received funds, TC Telephone should pay interest. Second, TC Telephone's actions justify the imposition of an interest penalty. When the problem was brought to TC Telephone's attention, rather than comply it embarked on a six-month series of legal maneuvers at the Commission and in the California Court of Appeal to continue seeking reimbursement from the LifeLine Fund on a per-minute basis. Third, TC Telephone's actions were contrary to precedent when it sought reimbursement for calls over the 60-call-per-month allowance that the Commission confirmed in D.92-11-063 and D.94-10-046.

We reject TC Telephone's request for interest on its outstanding May to October 2020 claim amount. As noted above, staff has not completed its review of this claim so we cannot tell what the final approved amount will be. Further, the claim for interest that TC Telephone is relying on, GO 153, Section 9.10.3, is inapplicable. Section 9.10.3 states that "[i]nterest shall be paid to, or received from, California LifeLine Service Providers that submit timely true-up claims, from the date of the period being claimed." TC Telephone fails to demonstrate that there has been a true-up of its May to October 2020 reimbursement claims so it may not rely on Section 9.10.3 to obtain interest.

#### **4.10. Rule 1.1**

Any party appearing before the Commission is obligated to comply with Rule 1.1 of the Commission's Rules of Practice and Procedure which states:

Any person who signs a pleading or brief, enters an appearance, offers testimony at a hearing, or transacts business with the Commission, by such act represents that he or she is authorized to

do so and agrees to comply with the laws of this State; to maintain the respect due to the Commission, members of the Commission and its Administrative Law Judges; and never to mislead the Commission or its staff by an artifice or false statement of fact or law.

The Commission has determined that a person subject to the Commission's jurisdiction can violate Rule 1.1 without the Commission having to find that the person intended to disobey a Commission rule, order, or decision. Instead, in D.01-08-019, the Commission ruled that intent to violate Rule 1.1 was not a prerequisite but that "the question of intent to deceive merely goes to the question of how much weight to assign to any penalty that may be assessed. The lack of direct intent to deceive does not necessarily, however, avoid a Rule 1 violation." As the Commission later explained in D.13-12-053, where there has been a "lack of candor, withholding of information, or failure to correct information or respond fully to data requests," the Commission can and has found a Rule 1.1 violation.<sup>84</sup> In fact, a Rule 1.1 violation can be found where a party fails to comply with a request from Commission staff for data even before a formal proceeding has been opened.<sup>85</sup>

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<sup>84</sup> *Final Decision Imposing Sanctions for Violation of Rule 1.1 of the Commission's Rules of Practice and Procedure* at 21. This standard was affirmed in *Pacific Gas and Electric Company v. Public Utilities Commission* (2015) 237 Cal.App.4<sup>th</sup> 812, 848. See also D.09-04-009 at 32, Finding Of Fact 24 (Utility was "subject to a fine for its violations, including noncompliance with Rule 1.1, even if the violations were inadvertent..."); D.01-08-019 at 21 Conclusion Of Law 2 ("The actions of Sprint PCS in not disclosing relevant information concerning NXX codes in its possession in the Culver City and Inglewood rate centers caused the Commission staff to be misled, and thereby constitutes a violation of Rule 1."); and D.94-11-018, (1994) 57 CPUC 2d, at 204 ("A violation of Rule 1 can result from a reckless or grossly negligent act.").

<sup>85</sup> See discussion, *infra*, at Section 4.4.

CPED alleges that TC Telephone violated Rule 1.1 in the following instances: first, by improperly including per-minute call counts and calls above 60 in its claim form line item for allowable untimed calls;<sup>86</sup> second, by falsely stating in Advice Letter 56 and in related correspondence with the Commission that the changes in the tariff did not affect LifeLine rates;<sup>87</sup> and third, by filing the Amended April to August 2020 claims that contained non-active phone numbers and other false information.<sup>88</sup>

#### **4.10.1. TC Telephone's Response**

With respect to the charge that improperly sought reimbursement for per-minute calls, TC Telephone argues that there is no basis for a Rule 1.1 finding since it was acting based on prior business practices and at the guidance of senior Commission Staff.

With respect to the charge that Advice Letter 56 falsely claimed that the changes in the tariff did not amount to a rate increase, TC Telephone attributes the dispute to a “genuine misunderstanding” as to the term “rates.”<sup>89</sup> TC Telephone understood the term to mean the amount to be assessed for usage, and since the changes in the advice letter did not change the per-minute amount previously charged, there was no violation.<sup>90</sup> Similarly, TC Telephone asserts that the addition of the definition of the term “call” was done after Resolution

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<sup>86</sup> CPED Staff Report at 21-23.

<sup>87</sup> *Id.*, at 39-43.

<sup>88</sup> *Id.*, at 44-46.

<sup>89</sup> TC Telephone' Opening Brief at 14-15.

<sup>90</sup> TC Telephone's Response to OII at 25-26.

T-17687's clarification that LifeLine reimbursement should be billed on a per-call basis rather than a per-minute basis.<sup>91</sup>

Finally, with regard to the inclusion of "non-active" calls, TC Telephone claims that the calls were not "non-active" and that neither the Staff Report nor CPED's Briefings state otherwise. this allegation is nothing more than a misunderstanding of a staff's disallowance.<sup>92</sup>

#### **4.10.2. Discussion**

In light of the state of the record, we find that TC Telephone did not engage in conduct that would rise to the level of a Rule 1.1 violation. As for the claim that TC telephone improperly included per-minute calls and calls above the 60 monthly limit per subscriber, there is evidence in the record that TC Telephone's actions were driven in part by the advice it received from the Commission staff and from the fact that the claim submissions prior to the change of company ownership had not been rejected.

With respect to the allegation that Advice Letter 56 contained false charges about not affecting rates, the definitions of "call or calls" and "untimed calls" appear to follow the practice that TC Telephone followed in how it submitted its LifeLine reimbursement claims. So from TC Telephone's perspective, it may not have thought that the new definitions changed the rates.

Finally, as for including non-active phone numbers, we have not identified a rule that says a LifeLine subscriber must be on the service providers account for the entire month to be considered active.

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<sup>91</sup> *Id.*, at 26.

<sup>92</sup> TC Telephone's Opening Brief at 17-18.

Because of these uncertainties, we do not find that TC Telephone's conduct violated Rule 1.1.

#### **4.11. Additional Fines or Penalties**

As TC Telephone is no longer conducting business and the Commission has already revoked one of its CPCNs, the only other action to take right now is for the Commission to revoke the other CPCN and for TC Telephone's officers and members be precluded from participating in any Commission program. TC Telephone does not object to this additional action.

#### **5. Category of Proceeding**

This matter has been categorized as adjudicatory. Hearings are not necessary.

#### **6. Appeal or Review of Presiding Officer's Decision**

The presiding officer's decision in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code. Pursuant to Rule 14.4 of the Commission's Rules of Practice and Procedure, any party may file an appeal of the presiding officer's decision within thirty (30) days of the date the decision is served. In addition, any Commissioner may request review of the presiding officer's decision by filing a request for review within thirty (30) days of the date the decision is served.

On July 19, 2024, TC Telephone filed its *Appeal* of the Presiding Officer's Decision.

On August 5, 2024, CPED filed its *Response* to TC telephone's *Appeal*.

#### **7. TC Telephone's Appeal**

Pursuant to Rule 14.4(c), a party who appeals a Presiding Officer's Decision must demonstrate that the Presiding Officer's Decision was either

unlawful or erroneous. As we will demonstrate, TC Telephone has failed to carry its burden of proof under either standard.

**7.1. TC Telephone fails to demonstrate that the Presiding Officer's Decision was Unlawful.**

**7.1.1. Retroactive Versus Prospective Application of Resolution T-17687**

TC Telephone asserts that Resolution T-17687 issued substantive clarification of the rules for LifeLine lost revenue reimbursements which were only to apply on a prospective basis. As support, TC Telephone quotes the following language from Resolution T-17687: "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. 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." Since, in TC Telephone's view, Resolution T-17687's clarification was only meant to apply prospectively, it was proper for TC Telephone to seek reimbursement for multi-minute calls that occurred prior to March of 2023, the date in which Resolution T-17687 was issued.

But the Presiding Officer's Decision already took the cited language from Resolution T-17687 into account in rejecting TC Telephone's prospective-application argument.<sup>93</sup> What Resolution T-17687 said was that language in D.00-10-028 and GO 153 Section 8.1.5.4. was "not sufficiently clear for all ULTS providers." That some ULTS providers were not interpreting and following the

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<sup>93</sup> See discussion, *supra*, at 4.2.2.

law correctly because of some apparent misunderstanding of the law's intent does not lead to the conclusion that the law itself was unclear. Instead, when the applicable laws are considered as a whole, the only reimbursement allowed was for untimed calls. (*See* GO 153, Sections 9.2.1. ["A California LifeLine Service Provider may recover...lost revenue from *untimed* calls associated with California LifeLine Measured Rate Service"], 8.1.5.4. ["Subscribers of California LifeLine Measured-Rate Service shall receive 60 *untimed* local calls per month"], and D.00-10-028 [In authorizing the recovery of "lost revenues and other reasonable costs," the Commission never stated it was authorizing the recovery of calls on a per-minute basis].) In sum, as Resolution T-17321 provided that reimbursement could only be for those costs and lost revenues identified in GO 153, which *never permitted* the recovery of timed calls, there is no law that TC Telephone can point to that would support its position that the Moore Universal Telephone Service Act permitted the recovery of timed calls.

Having concluded that the law has always been that an ULTS provider could only seek reimbursement for untimed calls, we also reject TC Telephone's claim that Resolution T-17687's clarification only applied on a prospective basis. Resolution T-17687 never said that its clarification of the law for some ULTS providers was only intended to apply on a prospective basis. On the contrary, when read as a whole and in context with the other laws discussed above, Resolution T-17687 made it clear that it has always been the law that only untimed calls would be reimbursed under the Moore Universal Telephone Service Act.

Nor does Resolution T-17687's clarification amount to retroactive ratemaking. As TC Telephone acknowledges, "retroactive rulemaking entails making a substantive rule change [and] applying it to acts or events that occurred prior to the rule change."<sup>94</sup> Here there has not been a substantive rule change but a reminder of the rules the ULTS providers must follow if they expect to receive reimbursement for a properly documented claim *i.e.*, the submission of costs for untimed calls. As such, the rules against retroactive ratemaking are inapplicable here.

**7.1.2. The Return of \$8.1 Million in LifeLine Reimbursements Does Not Violate Due Process.**

TC Telephone cites to a body of case law for the proposition that statutes, ordinances, and regulations must be sufficiently clear to give a person fair warning of the conduct prohibited, and that penalizing a person for violating an unclear law amounts to a denial due process.<sup>95</sup> We have no objection to the concept that TC Telephone cites but it is inapplicable here. As we explained above, the law has always been clear that only untimed calls would be reimbursed, and the Commission never found that the language in question was unclear.

Furthermore, the fact that some Commission staffers thought that the reimbursement rules were not always clear does not bind the Commission. The Presiding Officer's Decision gave no weight to the opinions of staff

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<sup>94</sup> *Appeal* at 8.

<sup>95</sup> *Id.*, at 9.

administering the LifeLine program because their opinions cannot bind the Commission.<sup>96</sup>

### **7.1.3. The Applicable Sections of GO 153**

TC Telephone claims that the Presiding Officer's Decision errs by applying the wrong section of GO 153 to determine that lost revenues cannot be claimed on a per-minute basis for customer calls. Instead of relying on GO 153, Section 8.1.5.4., TC Telephone argues that the Commission should rely on the reimbursement rules in GO 153, Section 9.<sup>97</sup>

But none of the provisions of Section 9 support TC Telephone's claim that it was entitled to recover lost revenues from calls billed on a per minute basis. TC Telephone cites Sections 9.2.1., 9.3.11., 9.3.12., and 9.3.13., yet read together they support the Presiding Officer's Decision that the only reimbursable calls are untimed, rather than per-minute, calls. (*See, e.g.* Sections 9.2.1. and 9.3.1. which both reference lost revenue from "untimed calls.") Nowhere do any of these Sections say that lost revenues from per-minute calls are reimbursable.

## **7.2. TC Telephone Fails to Demonstrate that the Presiding Officer's Decision was Erroneous.**

### **7.2.1. The Theory for Calculating Interest on the \$8.1 Million**

We reject TC Telephone's claim that the Presiding Officer's Decision relied on an erroneous factual rationale for assessing an interest penalty. While TC Telephone asserts that the Presiding Officer's Decision speculated that TC Telephone enjoyed any interest from the LifeLine reimbursements, that was not

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<sup>96</sup> *See* discussion, *supra*, at 4.2.2.

<sup>97</sup> *Id.*, at 12-13.

the primary rationale for imposing interest. Instead, as TC Telephone was not entitled to reimbursement for the over collection, simple interest of 10% per year until paid was assessed from the period since the overcollection occurred to the start of this proceeding. Regardless of whether TC Telephone enjoyed the interest that may have accrued from the \$8.1 million, the fact remains that the Commission was entitled to impose an interest payment calculated for the period of time that TC Telephone was paid monies to which it was not entitled. As it is not uncommon for the Commission to assess a penalty for a continuing offense (*see* Pub. Util. Code §2108), we see no reason why an interest penalty cannot continue to be assessed for the period of time a respondent holds onto improperly reimbursed funds.

We next reject TC Telephone's assertion that the Presiding Officer's decision has imposed interest to penalize TC Telephone for pursuing its legal remedies in the court of appeal. Exercising one's appellate rights, however permissible, does not stop the accrual of interest penalties on the underlying sum that TC Telephone improperly collected. Even *Lent v. California Coastal Commission* (2021) 62 Cal.App.5<sup>th</sup> 812, which TC Telephone relies upon, undermines TC Telephone's position. In *Lent*, the Court reasoned that the trial court did not punish the plaintiffs for exercising their right to defend themselves in the Coastal Commission's enforcement proceeding. Instead, the Lents were punished because they continued to violate the law by refusing to remove the unpermitted structures. Similarly, the interest calculation from the Presiding Officer's Decision was based on the time that TC Telephone received and held onto to monies to which it was not entitled.

We also reject TC Telephone's claim that the \$1.63 million interest penalty is excessive. TC Telephone argues that rather than calculating the penalty at the 10% interest rate, GO 153 includes a provision that allows for the imposition of interest on overpayments that is limited to the Federal 3-Month Paper Rate, which would have varied between 0.04% up to 2.8% from 2018 to March of 2020. In support, TC Telephone cites Section 13.4 of GO 153.

But TC Telephone misconstrues this provision. Section 13.4 states:

California LifeLine Service Providers that promptly reimburse the California LifeLine Fund for an overpayment of California LifeLine claims found by a Commission audit shall pay interest on the amount of overpayment based on the Three-Month Commercial Paper Rate, unless there is malfeasance on the part of the such entity, in which case the rate of interest shall depend on the law and circumstances existing at the time the malfeasance is discovered.

To get the benefit of the Three-Month Commercial Paper Rate, a California LifeLine Service Provider must "promptly reimburse the California LifeLine Fund for an Overpayment[.]"

Yet TC Telephone never reimbursed the \$8.1 million in overpayments, so TC Telephone does not get the benefit of the lower interest rate established by the Three-Month Commercial Paper Rate. Instead, Section 13.4 states that if there is "malfeasance on the part of the such entity," then the interest rate shall depend on the law and circumstances existing at the time the malfeasance (*i.e.* the performance of an untruthful act) is discovered. Here, when TC Telephone's malfeasance was discovered, the interest rate was 10% per year for unpaid judgments per California Code of Civil Procedure §685.010 and California

Constitution Article XV, §1. Thus, calculating the interest penalty at the 10% rate was in accordance with California law.

We must also address the two arguments that TC Telephone has advanced to support its claim that the interest determination is excessive. First, as TC Telephone correctly notes, one of the factors that D.98-12-075 requires the Commission to consider is the utility's ability to pay the penalty. TC Telephone claims that it has already suffered a catastrophic loss by being forced to exit the market and cease operations. But TC Telephone fails to establish that it cannot repay either the \$8.1 million reimbursement or the \$1,631,494 interest penalty.

Second, TC Telephone argues the interest penalty is not proportionate to its conduct. We also reject this argument. The law has been consistent that TC Telephone could only get reimbursement for untimed calls rather than calls billed on a per minute basis, yet TC Telephone received reimbursement for calls billed on a per-minute rate. Given these circumstances, a simple interest determination on the amount reimbursed, coupled with TC Telephone's refusal to reimburse any of the overpaid sums, is justified.

**7.2.2. Adding a Line to The LifeLine Claim Forms to Permit Recovery for More than 60 Calls Per Month**

TC Telephone challenges the Presiding Officer's Decision that faults it for adding a line to the LifeLine claim forms so it could seek reimbursement for lost revenues for calls beyond a customer's first 60 calls per month. TC Telephone said it engaged in this conduct after being instructed to do so by a "senior

Commission staffer.”<sup>98</sup> TC Telephone further claims that it was entitled to rely on the staff instructions because D.00-10-028 authorized staff to make changes to the claim form.

But Commission staff were not authorized to alter the permissible types of reimbursement claims. As TC Telephone acknowledges, D.00-10-028 authorized staff to make *administrative* revisions to the procedures, forms, and timeless associated with the submittal of ULTS claims, and the examples that TC Telephone cites in its *Appeal* confirm the administrative limitations on staff’s authority. In this instance, the change to the claim form was neither administrative nor ministerial. On the contrary, the claim form was changed to allow for the reimbursement of calls in excess of the 60 call per month limit in violation of the applicable law. At no time did D.00-10-028 grant staff such authority to make a *substantive* modification to the LifeLine claim form and alter the types of permissible reimbursement claims.

### **7.2.3. The Filed-Rate Doctrine**

TC Telephone asserts that the Presiding Officer’s Decision erred by holding that the filed-rate doctrine was inapplicable, thus denying TC Telephone the opportunity to recover \$5,604,174.81. But TC Telephone misunderstands and misapplies the filed-rate doctrine to this dispute. As the Commission explained in its Decision 92-07-078:

The filed-rate doctrine forbids a federally regulated utility from charging different rates from those properly filed with the appropriate federal agency. *Nantahala Power & Light Co. v. Thornburg*, (1986) 476 U.S. 953, 964; and *Arkansas Louisiana Gas Co. v. Hall*, (1981)

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<sup>98</sup> *Id.*, at 18.

453 U.S. 571, 577. A corollary of this doctrine is that state commissions "may not conclude in setting retail rates that the FERC-approved wholesale rates are unreasonable."<sup>99</sup>

As the filed-rate doctrine was designed to act as a protective measure to prevent a federally regulated utility from charging rates that were different from those properly filed with a federal agency, TC Telephone fails to show that the doctrine applies to prevent a state agency such as the Commission from opining on the legality of the terms in TC Telephone's tariff.

There is an even more troubling aspect to TC Telephone's argument. Accepting TC Telephone's position would mean that the Commission is prevented from examining a regulated entity's rates, a result which would be contrary to the Commission's duty to ensure that rates and services are just and reasonable. (*See* Pub. Util. Code § 451, *et. seq.*) Even when the Commission acknowledged the filed-rate doctrine's existence, the Commission noted that it was not so broad to prevent the Commission from fulfilling its investigative functions: "The doctrine does not preclude a state agency from reviewing whether a utility made reasonable purchasing decisions, even though it may not review the FERC-approved wholesale rate."<sup>100</sup> Accordingly, the filed-rate doctrine does not insulate TC Telephone from any investigation that the Commission may conduct pursuant to its authority under the LifeLine program into how a provider determined its published and filed rates.

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<sup>99</sup> D.92-07-078 (*Opinion in Application of Pacific Gas and Electric Company for Authority to Adjust its Electric Rates Effective November 1, 1991*;) and D.92-10-058 (*Ordering Denying Rehearing of Decision 92-07-078*).

<sup>100</sup> *Id.*, at 19.

#### **7.2.4. Oversight of Underpaid LifeLine Claim Forms**

TC Telephone does not dispute the Presiding Officer's Decision directed Communications Division staff to complete their review of unpaid LifeLine claim forms for May through October 2020 and to make a determination as to the appropriate reimbursement amount. Instead, TC Telephone argues that it is legal error not to provide TC Telephone with a mechanism to seek review if it disagrees with Staff's determination of the amounts owed. As such, TC Telephone filed a *Motion to Open a Phase 2* for the resolution of its unpaid claim forms.

We deny TC Telephone's request. Like TC Telephone, we have reviewed GO 153 and have not found a provision that expressly gives a respondent the ability to seek review of a staff decision on a request for reimbursement for a LifeLine claim. But nothing in GO 153 prevents TC Telephone from communicating with the Commission staff about its reimbursement determination. In addition, there is nothing in GO 153 that prevents TC Telephone from availing itself of other review options provided by the Commission's Rules of Practices and Procedure or the Public Utilities Code if it is dissatisfied with staff's reimbursement determination. Accordingly, TC Telephone's *Motion for a Phase 2* is denied.

#### **8. Assignment of Proceeding**

Matthew Baker is the assigned Commissioner and Robert M. Mason III is the assigned Administrative Law Judge and Presiding Officer in this proceeding.

#### **Findings of Fact**

1. TC Telephone received a Certificate of Public Convenience and Necessity from the Commission on July 8, 2004 (U-6875-C).

2. TC Telephone received an additional Certificate of Public Convenience and Necessity from the Commission on April 15, 2011 (U-4410-C).

3. On October 29, 2009, the Commission approved TC Telephone's application to provide wireline service for LifeLine customers.

4. Initially, TC Telephone's LifeLine customers were enrolled under the Flat Rate Service plan.

5. In 2013, TC Telephone began providing Measured Rate service to its customers.

6. By December 2019, all of TC Telephone's LifeLine customers were enrolled in the Measured Rate Service plan.

7. In September of 2018, the California Department of Finance contacted the Commission about the size of TC telephone's LifeLine reimbursement claims.

8. Commencing in 2013, TC Telephone submitted LifeLine reimbursement claims on a per-minute basis rather than on a per-call basis.

9. Commencing in 2013, TC Telephone submitted LifeLine reimbursement claims for calls above the 60 untimed calls per customer per month.

10. TC Telephone still owes the Commission \$28,000 from the settlement reached between CPED and TC Telephone.

### **Conclusions of Law**

1. It is reasonable to conclude that TC Telephone's per-minute reimbursement claims violated GO 153 and Resolution T-17321.

2. It is reasonable to conclude that TC Telephone violated Commission Decisions 92-11-063 and 94-10-046 and GO 153 when it sought reimbursement for calls beyond a subscriber's first 60 calls per month.

3. It is reasonable to conclude that between January 2018 and March 2020, TC Telephone Over-Collected \$8,157,469.39 from the LifeLine Fund.

4. It is reasonable to conclude that the Commission never allowed per-minute reimbursement claims for Measured Rate Service from the LifeLine Fund.

5. It is reasonable to conclude that TC Telephone violated GO 96-B, Rules 5.1 and 7.1, when it added new definitions into its tariff that changed rates for LifeLine subscribers.

6. It is reasonable to conclude that TC Telephone was properly reimbursed in the amount of \$247,464.87 for its April 2020 claim.

7. It is reasonable to conclude that TC Telephone should pay interest in the amount of \$1,631,494 on the over-collection of \$8,157,469.

8. It is reasonable to conclude that TC Telephone's claim for interest on its \$1,674,856.83 claim should be denied.

9. It is reasonable to conclude that TC Telephone still owes the Commission \$28,000 from the settlement reached between CPED and TC Telephone.

10. It is reasonable to conclude that TC Telephone did not violate Rule 1.1.

11. It is reasonable to conclude that TC Telephone's remaining CPCN should be revoked.

12. It is reasonable to conclude that TC Telephone's officers and directors should be prohibited from participating in any Commission program.

13. It is reasonable to conclude that that TC Telephone's appeal of the Presiding Officer's Decision should be denied.

14. Investigation 22-10-007 should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. TC Telephone LLC (TC Telephone) shall reimburse the California LifeLine Fund in the amount of \$8,157,469.39, plus interest in the amount of \$1,631,494, by check or money order, payable to the California Public Utilities Commission (Commission) and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 30 days from the date that this decision is issued. TC Telephone shall write on the face of the check or money order "For deposit to the California LifeLine Fund pursuant to Decision 25-03-011."

2. TC Telephone LLC (TC Telephone) shall pay \$28,000, by check or money order, payable to the California Public Utilities Commission (Commission) and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102, within 30 days from the date that this decision is issued. TC Telephone shall write on the face of the check or money order "For deposit to the state General Fund pursuant to Decision 25-03-011."

3. All money received by the California Public Utilities Commission's Fiscal Office pursuant to Ordering Paragraph 1 shall be deposited or transferred to the California LifeLine Fund.

4. All money received by the California Public Utilities Commission's Fiscal Office pursuant to Ordering Paragraph 2 shall be deposited or transferred to the State of California General Fund.

5. TC Telephone LLC's officers and members are prohibited from participating in any Commission program.

6. The Commission's Communications Division shall complete its review of TC Telephone LLC's (TC Telephone) May to October 2020 reimbursement claims no later than three months after this decision is issued and shall advise TC Telephone of the reimbursement findings and reasons for any denials.

7. The Commission's Communications Division shall revoke TC Telephone LLC's remaining Certificate of Public Convenience and Necessity.

8. TC Telephone LLC's *Motion for Phase 2* is denied.

9. TC Telephone LLC's *Appeal* is denied.

10. Investigation 22-10-007 is closed.

This order is effective today.

Dated March 13, 2025, at Santa Clara, California

ALICE REYNOLDS  
President  
DARCIE L. HOUCK  
JOHN REYNOLDS  
KAREN DOUGLAS  
MATTHEW BAKER  
Commissioners