

Decision 03-01-035 January 16, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Consider
Modifications to the Universal Lifeline Telephone
Service Program and General Order 153.

Rulemaking 98-09-005
(Filed September 3, 1998)

**OPINION DENYING FONES4ALL'S AMENDED PETITION
TO MODIFY DECISION 00-10-028 AND MODIFYING
ULTS ADMINISTRATIVE EXPENSE PROCESS**

TABLE OF CONTENTS

Title	Page
OPINION DENYING FONES4ALL'S AMENDED PETITION TO MODIFY DECISION 00-10-028 AND MODIFYING ULTS ADMINISTRATIVE EXPENSE PROCESS.....	1
1. Summary	2
2. Background.....	3
3. FONES4ALL's Proposal.....	7
3.1 Parties' Positions.....	10
3.2 Discussion.....	17
3.2.1 ULTS Marketing Program.....	17
3.2.2 Recovery of Administrative Costs	26
4. Other issues raised in ACR.....	33
4.1 "Finder's Fee" Proposal.....	33
4.2 Auto Enrollment Proposal.....	36
4.3 Rules for disconnection due to non-payment of long distance balances	38
5. Comments on Draft Decision.....	39
6. Assignment of Proceeding.....	39
Findings of Fact	39
Conclusions of Law.....	42
ORDER.....	42
Appendix A – General Order 153	

**OPINION DENYING FONES4ALL'S AMENDED PETITION
TO MODIFY DECISION 00-10-028 AND MODIFYING
ULTS ADMINISTRATIVE EXPENSE PROCESS**

1. Summary

We renew our commitment to ensuring that our state's low-income residential subscribers have access to affordable telephone service, through the Universal Lifeline Telephone Service (ULTS) program. Currently, approximately 3.7 million Californians¹ receive the ULTS discount offered under the program, but we have yet to reach our goal of a 95% penetration rate for each residential customer group. The issue before us is how best to reach those households that currently are without basic telephone service. We are well aware that marketing of ULTS service is a key element to reaching the unserved.

We analyze and reject FONES4ALL's proposal that would compensate Competitive Local Exchange Carriers (CLECs) for marketing of the ULTS program. We reject FONES4ALL's proposal because it violates the requirements of § 253(b) of the Telecommunications Act of 1996 (Act) and § 871.5(d) of the Public Utilities Code. Both Federal and State law mandate that universal service programs be conducted in a "competitively neutral manner." Having individual carriers market on their own behalf violates those requirements.

We also reject FONES4ALL's proposal on policy grounds. While FONES4ALL has developed some safeguards as part of its pilot project, those safeguards are inadequate to prevent carrier abuse. Carriers could be

¹ Resolution T-16594, p. 3, fn. 5 (October 11, 2001).

compensated for “churn”² rather than for getting new customers on the network. The pilot project could also encourage carriers to sign up ineligible customers, in order to receive the higher reimbursement amount. We find that it would be costly and, potentially invasive of the privacy rights of ULTS customers, for the Commission to attempt to monitor the activities of carriers to identify and eliminate program abuses.

We conclude that industry-wide ULTS marketing through a single entity is the appropriate vehicle for a coordinated, competitively neutral way to reach potential ULTS customers. We believe that a centralized marketing effort conducted by a contractor selected by the Commission, will prove to be the most effective and cost-efficient way to market ULTS service.

We recognize that FONES4ALL raises a legitimate issue, namely that it may prove to be costly and time-consuming for small CLECs to perform the detailed incremental cost studies necessary to bill for particular functions relating to the ULTS program. Instead we set an annual cost factor per ULTS customer (\$1.85/customer per month for fiscal year 2002-2003) and allow CLECs the option of using the cost factor or of calculating their incremental costs. This simplifies the reimbursement process for both CLECs and for the Telecommunications Division.

2. Background

The ULTS program provides affordable basic exchange telephone service to low-income residential subscribers. The statewide ULTS program provides basic telephone service at the rate of \$5.34 per month for flat rate service, and

² The term “churn” is used to describe subscribers who frequently change telephone carriers. It is especially prevalent in the long distance industry where carriers woo customers with checks or airline mileage benefits.

\$2.85 for measured rate service,³ and excludes the surcharges or taxes that are generally applicable to basic telephone service.

The ULTS program, which was first established by statute in 1987, was revised in 1996, by Decision (D.) 96-10-066 to ensure that all local telephone companies, including competitive entrants, would provide ULTS as part of their offering of basic telephone service. Further, in that decision the Commission adopted a “competitively neutral” ULTS cost recovery subsidy program available to both Incumbent Local Exchange Carriers (ILECs) and CLECs. The 1996 revision to the ULTS program permits both CLECs and ILECs to recover the costs related to provisioning ULTS service.

The 1996 decision also made a significant change regarding the costs of marketing ULTS service. Prior to 1996, the ILECs, as the monopoly providers of basic telephone service, were responsible for educating the public regarding the availability of ULTS. Based on concerns that ILEC marketing would not be competitively neutral, the Commission prohibited carriers from recovering marketing costs from the program, and established a ULTS Marketing Board (ULTS-MB) to be responsible for all marketing efforts.

In D.00-10-028, the Commission again adopted numerous significant modifications and clarifications to the ULTS program. One modification was to limit the amount of “lost revenues” that utilities may recover from the ULTS Fund. Lost revenues consist of the excess of the utility’s regular tariffed rates and charges for basic residential service over the lower ULTS rates.

³ Those rates are actually ULTS price ceilings, i.e., for ULTS, a CLEC is required to charge \$5.34 per month (one half of Pacific’s tariffed rate for flat rate service) or 50% of its own regular tariffed flat rate for basic local service, whichever is less.

Lost revenues also include those administrative costs that are 1) incremental to the ULTS program, and 2) not recovered elsewhere by the utility. TD was ordered to conduct a workshop to develop a comprehensive list of those cost elements that carriers can recover from the ULTS Fund. TD conducted a workshop on January 31, 2001 and developed a list of specific costs and lost revenues that utilities may recover from the ULTS Fund. The Commission approved the comprehensive list in Resolution T-16591, dated February 21, 2002.

FONES4ALL filed its Petition to Modify D.00-10-028 on March 14, 2001 claiming that under the reimbursement mechanism adopted in D.00-10-028, carriers are limited to recovering the difference between the serving ILEC's standard residential rate and the ULTS rate, plus the incremental costs of serving ULTS subscribers and certain other costs. According to FONES4ALL, this reimbursement plan does not adequately compensate carriers for serving ULTS customers.

Pursuant to an Administrative Law Judge's (ALJ) ruling issued on October 30, 2001, FONES4ALL was required to submit information in support of its Petition to Modify. On November 19, 2001, FONES4ALL filed an appeal of the ALJ's Ruling. FONES4ALL made its Supplemental filing on December 19, 2001, accompanied by a motion asking that its confidential cost and line count information be covered by a protective order.

FONES4ALL filed an Amended Petition on April 16, 2002. On April 19, 2002, an Assigned Commissioner's and Administrative Law Judge's Ruling (ACR) was issued requesting comments on FONES4ALL's proposal and raising

some additional issues. Opening comments were filed on May 20, 2002,⁴ and Reply Comments, on June 4, 2002.⁵ In its Comments, FONES4ALL made some further modifications to the proposal in its Amended Petition. For purposes of this decision, we will analyze FONES4ALL's latest proposal.

In order to implement Senate Bill 669 (Stats. 1999, Ch. 677), the Commission issued a series of decisions associated with the ULTS program. Decision 01-09-044 amended the charters of the ULTS Trust Administrative Committee (ULTS-AC) and the ULTS Marketing Board (ULTS-MB) revising their purposes from administrative and advisory, to purely advisory. This decision also directed the Commission's Telecommunications Division to assume the administrative functions of the two boards. Therefore, those two boards have no

⁴ Opening Comments were filed by FONES4ALL; Joint Comments of AT&T Communications of California, Inc., Cox California Telcom, L.L.C. dba Cox Communications, WorldCom, Inc., and The Utility Reform Network (The Coalition); Verizon California Inc. (Verizon); The Office of Ratepayer Advocates (ORA); Roseville Telephone Company (Roseville); Calaveras Telephone Company, Cal-Ore Telephone Co., Ducor Telephone Company; Evans Telephone Company, Foresthill Telephone Co., Happy Valley Telephone Company, Hornitos Telephone Company, Kerman Telephone, Pinnacles Telephone Co., The Ponderosa Telephone Co., Sierra Telephone Company, Inc., The Siskiyou Telephone Company, The Volcano Telephone Company, Winterhaven Telephone Company (Small LECs); Latino Issues Forum and the Greenlining Institute (LIF/Greenlining); and the Universal Lifeline Telephone Service Administrative Committee of the California Public Utilities Commission (ULTS-AC). The ULTS-AC filed its comments with a motion to accept late-filed comments.

⁵ Reply Comments were filed by FONES4ALL; The Coalition; Verizon; ORA; Roseville; Small LECs; LIF; Z-Tel Communications, Inc. (Z-Tel); Mpower Communications Corp. (Mpower); Latino Initiatives for the Next Century, Salud Financiera, William C. Velasquez Institute, CADEF-Central American Development and Educational Foundation, Workforce Development Center, Education for the Entertainment Arts: At-Risk Youth Program of the Hollywood Entertainment Museum, Pacifica Hospital of the Valley, and St. Mary's Clinic (Latino Initiatives for the Next Century, et al.); and I-Trax, Inc. (I-Trax). I-Trax filed its comments with a motion to accept late-filed comments.

management or control over the ULTS program monies and no longer pay claims effective October 1, 2001. Decision 02-04-059 merged the ULTS-AC and the ULTS-MB into one board and revised the charter of the ULTS-AC to include the ULTS-MB as a component program of the ULTS-AC. In their comments, some parties make reference to the ULTS-MB, but that organization no longer exists as a separate entity. Oversight for the ULTS marketing effort now rests with the Commission, rather than an outside board.

3. FONES4ALL's Proposal

FONES4ALL endorses adoption of the pilot project proposed in its April 16, 2002, Amended Petition, with a number of modifications, which are indicated below. According to FONES4ALL, in the case of a reseller, receipt of the difference between the ILEC's rate and the ULTS rate adds nothing to its revenue stream beyond the basic wholesale discount, which does not come close to meeting the costs that FONES4ALL actually incurs in providing ULTS service to its subscribers.

The cost recovery schedule proposed by FONES4ALL is as follows:

- CLECs serving between 1 and 5,000 total subscribers shall be reimbursed for lost revenues by the ULTS Fund at a rate of at least \$50 per ULTS subscriber, less the end-user contribution received by the carrier directly from the ULTS subscriber;⁶

⁶ Under the Pilot Project, participating carriers would be reimbursed at the stepped down rates across the **entire customer base**, rather than merely applying the stepped down rate to only the customer base above the triggering threshold, as was the case under the mechanism proposed in FONES4ALL's original Petition for Modification. In other words, under the revised proposal, the carrier would not be reimbursed at the \$50 rate for the first 5,000 customers in perpetuity. Rather, once the carrier hits, for instance, the 5,001 customer threshold, the reimbursement rate for **all customers** would drop to the lower applicable rate, in this example, from \$50 per month to \$40 per month, for customers 1 through 5,001.

- When the number of total subscribers served by the CLEC reaches between 5,001, and up to 10,000, the CLEC shall be reimbursed by the ULTS Fund for lost revenues at a rate of at least \$40 per subscriber for all subscribers, less any charges received by the carrier directly from the ULTS subscriber;
- When the number of total subscribers served by the CLEC reaches between 10,001, and up to 20,000, the CLEC shall be reimbursed by the ULTS Fund for lost revenues at a rate of at least \$30 per subscriber for all subscribers, less any charges received by the carrier directly from the ULTS subscriber;
- When the number of total subscribers served by the CLEC goes above 20,000, the CLEC shall be reimbursed by the ULTS Fund for lost revenues at a rate equal to two times the tariffed rates and charges of the ILEC serving the area in which the customer resides, less any charges received by the carrier directly from the ULTS subscriber.⁷

FONES4ALL believes that the Commission program providing recovery of the incremental cost of serving ULTS subscribers does not afford carriers with the ability to recover the full cost of furnishing such service. FONES4ALL asserts that measuring the incremental cost of providing ULTS service is extremely difficult, especially for a small carrier that does not have spare personnel and other resources to undertake time-and-motion studies and other procedures required to accurately determine which of its costs are incremental to the ordinary costs of provisioning service to residential subscribers. Moreover, a new carrier, such as FONES4ALL, does not have any “ordinary” costs of service that can serve as a baseline. Consequently, it is almost impossible for such a carrier to determine its incremental costs.

⁷ Additional recovery for taxes, incremental costs, and other items would be available only for carriers serving 20,001 or more ULTS subscribers.

FONES4ALL proposes a 3-year pilot project to incent CLECs to seek out new ULTS customers. The FONES4ALL proposal, with the most recent changes, includes the following provisions:

- A cap of 5% of total amount of the ULTS Fund per fiscal year that may be used to reimburse CLECs under FONES4ALL's pilot project⁸;
- Protections to prevent companies from forming multiple CLECs in order to game the pilot project;
- A rule that CLECs participating in the pilot project demonstrate a growth rate of at least 20% in ULTS subscribership every six months.
- A requirement that if a carrier does not grow at the prescribed rate, that carrier will automatically be governed by the ULTS reimbursement rules applicable to non-participating carriers.
- A rule that no carrier may remain at the same pilot project reimbursement level for more than one year, until a carrier reaches the 20,000 total customer level;
- A rule that a CLEC participating in the pilot project may claim no more than its tariffed rate for basic local service, as filed with the Commission as of April 1, 2001 (the date that lost revenue rules of D.00-10-028 went into effect) for its existing ULTS customer base; only new ULTS customers enrolled by the carrier after the date of the adoption of the pilot project will be subject to the pilot project's reimbursement rates.
- A rule that provides that participating CLECs will not be eligible to collect the pilot project reimbursement rates for "ULTS migrations," that is, subscribers who have been ULTS subscribers in the preceding 60 days at the same premises. Instead, existing ULTS subscribers who migrate to another carrier would be reimbursed at the ILEC rate, plus the average

⁸ FONES4ALL's Amended Petition proposed a 10% cap on the amount of the fund that could be used in a fiscal year to fund the pilot project.

CLEC monthly cost of operational expenses for the preceding 12 months.

FONES4ALL's proposal includes two incentive proposals for carriers not eligible to participate in the pilot project:

1. Reimbursement by the ULTS Fund for "marketing" expenses, with the total amount of the ULTS Fund available for such marketing reimbursement being capped at \$2 million per fiscal year; or
2. The Commission's proposed "Finder's Fee" pilot project, the cost of which would be capped at \$2 million per fiscal year to the ULTS Fund.

3.1 Parties' Positions

FONES4ALL, Z-Tel, I-Trax, Mpower and Latino Initiatives for the Next Century, et al. filed in support of FONES4ALL's pilot project. FONES4ALL defends its proposal indicating that its proposal provides the necessary safeguards to protect the ULTS Fund from being depleted and provides safeguards that will prevent any carrier from gaming the ULTS program. FONES4ALL asserts that its proposal removes all subjectivity from the Commission's review of operating expenses claimed by eligible carriers by obviating the need for the Commission to review operational expense claims for participating CLECs.

FONES4ALL claims that adoption of the pilot project will further state public policy, as delineated in Section 709 of the Public Utilities Code, to provide universal service to all Californians through broader consumer choice, as well as achieving the Legislature's goals of promoting broader competition and telecommunications choice for ULTS-eligible consumers. FONES4ALL urges that the results of the new pilot programs be compared to the results achieved by the ULTS-MB. According to FONES4ALL, while the ULTS-MB has spent millions of dollars since it came into existence, conducting studies of the ULTS-eligible population, developing marketing programs and operating a call center, it is

unclear how many ULTS customers have actually been added through its efforts. FONES4ALL asserts that the number of ULTS-eligible households that do not currently have telephone service has remained relatively constant since 1996. According to FONES4ALL, while the outreach functions performed by the ULTS-MB have done a good job of retaining ULTS-eligible customers, the program has a poor track record of enrolling new ULTS-eligible households.

FONES4ALL asserts that its pilot project will lead to concrete and ascertainable results, namely, more new ULTS customers, in contrast to the activities of the ULTS-MB. FONES4ALL believes that adoption of the protections it proposes as part of its pilot project will ensure that the ULTS outreach goals of the Commission are met, while preventing the pilot program from in any way compromising the integrity of the ULTS Fund, or necessitating any increase in ULTS surcharges being imposed on California ratepayers.

FONES4ALL asserts that implementation of the pilot project will allow participating CLECs to recover their much higher initial operational and customer acquisition costs, while at the same time forcing them to become more efficient as they gain more customers. FONES4ALL responds to the criticism that the reimbursement amount it proposes is “excessive” saying that the pilot project eliminates any reimbursement of participating carriers for administrative expenses and instead combines reimbursement for lost revenues and administrative expense into one lump sum, thereby mooting the concerns expressed in the ACR regarding the lack of guidelines to govern TD’s review of the reasonableness of those expenses.

Both Latino Initiatives for the Next Century et al. and Z-Tel support adoption of FONES4ALL’s pilot project, saying that it will go a long way toward promoting the availability of competitive choice and enhance service quality for low-income subscribers who are eligible to participate in the ULTS program, but

who have not been made aware of it, and may not ever be made aware of it without the implementation of the pilot program. They indicate that the pilot program will provide incentives to telephone companies to seek out and serve ULTS customers and point out that the FONES4ALL proposal includes a package of protections that address the concerns raised by several of the initial commenters and that will ensure that participants are not able to take advantage of the ULTS Fund.

Mpower asserts that FONES4ALL should be applauded for its ingenuity in coming up with an abuse-proof program that will, if successful, increase ULTS subscribership in the state to a substantial portion of the more than approximately 300,000 households in California that qualify for ULTS but are not currently availing themselves of it. According to Mpower, many commenters simply seem to be willing to accept current ULTS penetration as sufficient and do not seem to be concerned with bridging the ULTS gap.

I-Trax⁹ believes that the pilot project will provide many low income families with the basic telecommunications capabilities they require. Expanded ULTS subscribership will allow I-Trax to improve the quality of health care available to low income people who are eligible to participate in the ULTS program, but who are presently without telephone service. I-Trax points to the need for telephone connectivity for physicians to report the results of diagnostic tests to patients, to allow patients to access basic healthcare information, and to access emergency care through the 911 system.

⁹ I-Trax describes itself as a technology-enabled population health management company whose mission is to provide disease management services to assist physicians, patients and the entire healthcare community.

A number of parties--the Coalition, Verizon, ORA, Roseville, Small LECs, LIF/Greelining, and the ULTS Administrative Committee (ULTS-AC)—stated their opposition to FONES4ALL's proposal. According to Verizon, FONES4ALL has not established that it is unduly burdensome for the typical CLEC to measure the incremental cost of providing ULTS service. If the Commission were to determine, based on an adequate factual record, that a reasonable number of CLECs have such difficulties, Verizon would not necessarily object to the establishment of presumptively reasonable rates. However, if the Commission were to establish such rates, it should set them so that the fund size does not increase without providing customers with a commensurate benefit. Verizon asserts that although California's ULTS program is a worthy program that benefits millions of low-income individuals who would otherwise not be able to afford basic telephone service, it comes at a price tag that cannot be ignored. In 2002-2003 the program is estimated to cost ratepayers more than \$284 million. Verizon concludes that the Commission and the utilities share a fiduciary responsibility to ensure that the ULTS program does not become an arbitrage opportunity for CLECs at the ratepayers' expense.

According to Roseville and the Small LECs, the ACR paints an inaccurate picture of the Commission's successful efforts to ensure every Californian has access to basic service. According to a study released by the Federal Communications Commission (FCC) on April 23, 2002, the penetration rate for basic service among low income households in California increased to 91.3% in March 2001 (FCC Report, Table 4). Furthermore, from March 1997 to March

2001, the penetration rate among low income households increased approximately 3.6%¹⁰ from 87.7% to 91.3% (FCC Report, Table 3).

Roseville and the Small LECs conclude that the Commission has made, and continues to make, substantial progress toward fulfilling its penetration goal for low income households. Therefore, it is not necessary to undertake the substantial reforms to the ULTS program contemplated by the FONES4ALL petition.

In addition, Roseville and the Small LECs indicate that FONES4ALL's proposed pilot program would not further the public interest, since it would be duplicative of the marketing and outreach efforts of the ULTS-MB. They urge the Commission to focus its ULTS marketing efforts on the ULTS-MB. Since neither the ULTS-MB nor the contractor Richard Heath & Associates (RHA) stands to profit by encouraging ULTS customers to switch from one carrier to another, they are likely to focus their efforts more squarely on the ultimate goal of the ULTS program—to ensure that every Californian who wants basic phone service has it.

According to Roseville and the Small LECs, the outreach efforts under FONES4ALL's pilot program are not likely to be as effective as the efforts consistently provided by the ULTS-MB. Unlike the ULTS-MB, FONES4ALL's primary incentive is to increase its own customer base, and thereby its profits. As a resale provider, FONES4ALL can increase its customer base most easily by taking ULTS customers from ILECs. It is not under the same directive of the ULTS-MB to seek out only those without basic telephone service.

¹⁰ This actually represents a 4.1% increase in the penetration rate; 3.6% represents the change in percentage points.

Roseville and the Small LECs assert that FONES4ALL's proposed compensation scheme is arbitrary and self-serving. The scale of monthly "per subscriber" payments which the FONES4ALL pilot program would put in place, bears no relation to the actual cost of serving those subscribers, and appears to be wholly arbitrary. A CLEC is encouraged to maintain a smaller subscriber base to take advantage of higher "per ULTS customer" subsidies. Similarly the attractiveness of these large subsidies could generate an artificial demand for ULTS subscribers, causing a number of CLECs to enter the pilot program. This would further drain the ULTS fund for a benefit that is duplicative at best. Such churn of existing ULTS subscribers does not further the Commission's goal of increasing the penetration rate of basic service among those households who do not currently have such service. Also, carriers could have an incentive to improperly enroll ULTS subscribers to receive the subsidies.

The Coalition recommends that the Commission maintain the ULTS program as it currently exists and address any shortcomings with minor revisions to the existing rules. The Coalition asserts that the marketing responsibilities should remain in the hands of the ULTS-MB to ensure the dissemination of competitively-neutral information. The Coalition finds that FONES4ALL's proposal would only serve to deplete the ULTS fund to the detriment of ratepayers.

LIF/Greenlining complains that the criticisms that FONES4ALL makes of the ULTS-MB should be leveled straight at the Commission itself. The Commission has failed to process a contract for ULTS outreach that it entered into with Richard Heath & Associates in about June 2001. Although the full Commission approved the contract in December 2001, the contract still sits in bureaucratic limbo in the Commission's Telecommunications Division (TD). The \$5 plus million dollars that was earmarked for ULTS outreach remains unspent.

LIF/Greenlining believes the Commission would be unable to monitor FONES4ALL and other CLECs to ensure that the ULTS Fund is not being misspent, gamed or abused.

According to LIF/Greenlining, FONES4ALL does not explain how the Commission will ensure that ULTS marketing funds, even capped, will not be spent in a self-serving manner, which is precisely why ULTS marketing was taken in-house by the Commission rather than permitting carriers to market themselves. Also, while proposing to cap marketing expenses to a purportedly modest \$2 million and overall charges against the fund to 5% of the fund, FONES4ALL does not explain why such charges will not ultimately erode the fund. If other carriers are ultimately permitted to charge the ULTS fund with rates that double or quadruple charges carriers currently receive from the ULTS fund, the fund will be jeopardized both in terms of its ability to reach individual unserved customers and in terms of political risk. LIF/Greenlining believes there exists the enormous potential for gamesmanship and depletion of the ULTS fund for the three-year pilot project, for service that has, and can be, provided for a fraction of the cost.

ORA echoes the concerns of other parties that FONES4ALL's proposed pilot project runs the risk of placing undue financial burden on the ULTS Fund without commensurate benefits. Assuming that FONES4ALL provides service to 20,000 ULTS customers, ORA calculates that the cost to the ULTS Fund for just these 20,000 customers would be \$4,636,800 more expensive than Pacific Bell and \$3,060,000 more expensive than Verizon. And ORA points out that other CLECs would also participate in the program. ORA finds that the money could better be spent on outreach and marketing through the existing ULTS program. Further, ORA asserts that FONES4ALL's proposed pilot project violates the Commission's goal of competitive neutrality.

3.2 Discussion

First, we examine the penetration rate for telephone service in California. According to the FCC,¹¹ the annual average percentage of households with telephone service was 97.0% in July 2001, up from 91.7% in November 1983. We are pleased that the overall penetration rate has improved. However, we have yet to reach the goal of a 95% subscriber rate *for each residential customer group*,¹² which is the goal established by the ULTS-AC.

While FONES4ALL states that the penetration rate has not improved in recent years, the FCC data presented by Roseville and the Small LECs and that cited above clearly indicate that the telephone penetration rate in California has been improving. One factor which could have an impact on the penetration rate is the Commission rule that precludes telephone companies from leveraging basic service in order to collect charges for non-basic service. This should serve to reduce telephone service terminations.

The question before us is how best to achieve that 95% goal for all residential customer groups. How can we most effectively market the existence of ULTS service to those unreached consumers? To answer this question, we will examine the FONES4ALL proposal and our ULTS marketing program.

3.2.1 ULTS Marketing Program

First, the reimbursement mechanism that is the heart of FONES4ALL's pilot project includes reimbursement to CLECs for marketing ULTS service.

¹¹ Federal Communications Commission, Industry Analysis and Technology Division, Wireline Competition Bureau, "Trends in Telephone Service," Table 17.2, May 2002.

¹² Charter of the Universal Lifeline Telephone Service Trust Administrative Committee, §2.2, Rev./D.02-05-056.

FONES4ALL makes it clear in its Supplemental Filing that it is engaged in marketing and outreach efforts:

...FONES4ALL field representatives who understand the ULTS program conduct door-to-door canvassing in neighborhoods to explain how the program works. In addition, FONES4ALL conducts multi-cultural notification placement, forges alliances with community based organizations, and has a presence at a number of community events such as cultural festivals and fairs to make potential subscribers aware of ULTS.¹³

We need to determine whether we should change our current rules which preclude using the ULTS Fund to subsidize individual carriers marketing of ULTS service. In making that determination, we will review our original rationale for industry-wide marketing of ULTS, as described by ULTS-AC in its filing. The Commission's industry-wide marketing program for low-income households is necessitated by decisions made by Congress and the California Legislature to foster the evolution of advanced telecommunications services by permitting and facilitating the creation of an open, diverse and competitive telecommunications market. In 1994 the California Legislature adopted legislation which directed the Commission to open all telecommunications markets to competition by January 1, 1997,¹⁴ and it also directed the Commission to ensure that the goals of universal service continue as competition develops.¹⁵

Aware that the goal of universal service might be difficult to achieve in a competitive environment, the Legislature also charged the Commission as well as

¹³ Supplement to Petition by FONES4ALL Corporation for Modification of Decision No. 11-10-028, December 19, 2001, at 12.

¹⁴ Stats. 1994 ch. 1260 (AB 3606, Moore).

¹⁵ Stats. 1994 ch. 278 (AB 3643, Polanco).

the carriers it regulates to employ “every means...to ensure that every person qualified to receive lifeline telephone service is informed of and is afforded the opportunity to subscribe to that service.” This requirement was affirmed by the California Legislature in Pub. Util. Code § 871.5(d). In § 871.5(d), the Legislature required the Commission to implement a universal service telephone program “in a way that is equitable, nondiscriminatory, and without competitive consequences for the telecommunications industry in California.”

On the national front, the federal Telecommunications Act of 1996 (Act) made the goal of an open and competitive local marketplace a nationwide policy. Recognizing that universal service programs could be anti-competitive, however, Congress said that states could impose “requirements necessary to preserve and advance universal service” but only on a “competitively neutral basis.”¹⁶

The Commission affirmed this dual Federal/state mandate in D.96-10-066, dated October 25, 1996, as follows:

[T]he ULTS program should not subsidize the marketing efforts of each carrier who offers basic service to low income customers. ...It makes no sense to have multiple marketing campaigns conducted by each carrier who is trying to sign up the same customers, especially when the marketing expense of each carrier is subsidized by the ULTS program. ... In addition, multiple marketing efforts tend to indirectly subsidize the carrier’s overall marketing strategy. ... Such advertising also promotes the name of a particular carrier at the expense of ratepayers. It also indirectly subsidizes the marketing of other services, such as lucrative toll and enhanced services.... Having individual carriers continue to market the ULTS program may lead to abuses of a subsidized marketing system.

¹⁶ 47 USC § 253(b).

We believe that in a competitive environment, a single entity should be responsible for the marketing of ULTS services. The advantage of this approach is that no particular carrier is directly benefited by ULTS marketing activities. Instead, potential customers are free to choose which carrier they want to call. A single entity also limits the size of the ULTS marketing expenses. Instead of ratepayers having to subsidize multiple ad campaigns, there could be a single budget for marketing expenses. A third advantage is that the entity can specifically target the ULTS marketing to customer groups which have lower subscribership rates.¹⁷

In compliance with the Congressional and legislature mandates, the Commission approved a Commission-directed marketing program for lifeline telephone service and created the ULTS-MB as the advisory body responsible for ULTS marketing. In D.96-10-066, as cited above, the Commission gave its reasons why individual carriers should not be reimbursed for ULTS marketing activities.

For the Commission to approve the reimbursement plan in FONES4ALL's pilot project, we would have to determine that individual CLECs, such as FONES4ALL, should be allowed to engage in marketing activities. However, we first need to determine whether FONES4ALL's proposal violates § 253(b) of the Act or Pub. Util. Code § 871.5(d).

One aspect of the pilot program is that only CLECs are allowed to participate; it is not available to ILECs. In addition, FONES4ALL's marketing focuses on getting more customers for the company, and therefore, increasing the company's revenue. The Commission concluded in D.96-10-066 above that the best way to market ULTS in a competitive environment is through a single entity,

¹⁷ Opinion, 68CPUC2d 524, 639.

so that no one carrier is advantaged by marketing activities. All of the reasons discussed above for creating a single ULTS marketing entity, and in not allowing carriers to be compensated for their marketing efforts, still exist today. And the legal mandate of competitive neutrality has not changed since that 1996 decision. We find that FONES4ALL's proposal violates the requirements of § 253(b) of the Act and Pub. Util. Code § 871.5(d) that the ULTS program be administered in a competitively neutral manner.

A Commission-selected contractor charged with conducting ULTS marketing would focus only on its mandated task of educating California's underserved populations about ULTS to further the Commission's goal of increasing basic service subscribership among low income households. An outside contractor would operate in a competitively neutral manner and would have no incentive to steer prospective ULTS participants toward a particular carrier, to the detriment of another. An outside contractor will not profit by encouraging ULTS customers to switch from one carrier to another. By design, it is more likely to focus its efforts more squarely on the ultimate goal of the ULTS program –to ensure that every Californian who wants basic phone service has it.

We find that ULTS marketing, in order to be competitively neutral, should be conducted by organization(s) that have no vested interest in a customer's choice of carrier. A contractor selected by the Commission and managed by TD, meets that criterion, while CLECs do not.

In addition to the legal issues relating to ULTS marketing, we should also explore the policy implications of the FONES4ALL proposal. Parties assert that FONES4ALL's proposal would lead to abuses, at the expense of ratepayers. One potential abuse would be that the ULTS program would be paying for churn, as customers are encouraged to change carriers so that the new carrier can claim they have a "new" customer. Also, the monetary incentive presented in

FONES4ALL's proposal could encourage carriers to sign up ineligible customers for the ULTS program.

FONES4ALL indicates that the safeguards it proposes as part of the pilot project address all the concerns raised by other parties relating to gaming, fraud and abuse. FONES4ALL's proposed safeguards include a cap on the total amount of ULTS funding available under the pilot program. FONES4ALL states that the pilot project will preclude abuse, gaming and fraud by ensuring that: (1) only the enrollment of new ULTS customers will entitle participating carriers to the pilot project's reimbursement mechanism; (2) participating carriers will not be allowed to collect a given reimbursement rate for more than one year, and therefore must grow; and (3) carriers will be precluded from establishing multiple "shell" companies to take advantage of the pilot project's terms.¹⁸ However, if we examine those safeguards, we find that they do not address the major problem areas.

First, FONES4ALL indicates that a cap of 5% of the amount of the ULTS funds available would eliminate any possibility that ratepayers who support the ULTS Fund through surcharges on their monthly phone bills will be put at risk as a result of the FONES4ALL project. In the budget for 2002-2003, 5% would amount to 13 million dollars, which is not an insignificant amount. Since our ULTS surcharge is set to recover only the amount needed to administer the program, we cannot say with certainty that adding 5% of our total budget would not necessitate an increase in the surcharge amount.

¹⁸ Reply Comments of FONES4ALL in Support of Assigned Commissioner's and Administrative Law Judge's Ruling Responding to FONES4ALL's Petition to Modify Decision No. 00-10-028 and in Support of FONES4ALL's Amended Petition to Modify Decision No. 00-10-028, R.98-09-005, June 4, 2002 at 5-6.

FONES4ALL points out that to be eligible for reimbursement under its proposal, “the carrier being reimbursed will have been required to demonstrate affirmatively to the Commission that a *new* ULTS customer is *actually receiving telephone service*.”¹⁹ FONES4ALL does not say exactly *how* the carrier would make that demonstration, nor does FONES4ALL respond adequately to parties’ assertion that the Commission would need to develop a costly, personnel-intensive way to monitor the data carriers provide, in an effort to ensure that carriers are not abusing the rules of the pilot project. And any Commission monitoring program developed could prove to be more costly than the benefits received, since the Commission would need additional staff to perform the monitoring function.

The pilot program includes a rule that only new ULTS customers, those who have not received ULTS service within the past 60 days at the same premise, would be eligible for the pilot project. Without an extensive monitoring system, and potentially invasive contacts with ULTS customers, it would be difficult for the Commission staff to ascertain whether carriers are including only those “new” ULTS customers as described above. Without some method to verify that, there is room for abuse, and we do not want to adopt a program that does nothing but promote churn, with carriers having an incentive to steal each other’s customers and pass them off as “new.” The same holds true for unscrupulous carriers who sign up customers who are not eligible for ULTS service. If the financial incentive is significant enough, a carrier could decide to sign up ineligible consumers, in the interest of its own bottom line. The pilot project, as presented by FONES4ALL, has \$13 million in incentives for CLECs to thwart the

¹⁹ Id. at 4.

rules and attempt to garner a significant share of the project budget. We do not mean to imply that all CLECs would behave in that manner, but with strong incentives and inadequate or nonexistent monitoring of CLEC activities, some could be tempted to “bend” the rules.

The ACR asked for comment on whether it is duplicative to have marketing conducted by both CLECs and the ULTS-MB, and also requested comment on what CLECs can accomplish that the ULTS-MB cannot. Verizon indicates that it believes that it would be duplicative to have CLECs and the ULTS-MB engage in marketing activities and asserts that the ULTS Fund, and ultimately ratepayers, should not have to bear the expense of each individual CLEC’s ULTS marketing efforts. There could be multiple CLECs vying for, and directing their marketing efforts at, the same customers. Reimbursing every CLEC for marketing ULTS service to customers is a misuse of the ULTS Fund.

The Coalition states that carriers always have the right to conduct marketing activities; however, they do not have the right to receive reimbursement from the ULTS program for such activities.

Roseville and the Small LECs indicate that, at best, CLECs operating under the FONES4ALL proposal would duplicate the effort and focus of the ULTS-MB. Like the ULTS-MB, FONES4ALL apparently utilizes bilingual representatives and has connections to Community Based Organizations (CBOs) and community events. While FONES4ALL is within its rights to seek out customers from underserved neighborhoods, there is simply no reason for California ratepayers to subsidize FONES4ALL’s separate, yet duplicative, outreach and marketing efforts. Roseville and the Small LECs assert that the outreach efforts under FONES4ALL’s pilot program are likely to be inferior to the efforts consistently provided by the ULTS-MB. CLECs are not under the same directive as the ULTS-MB to seek out only those without basic telephone service, and can increase their

customer base most easily by taking ULTS customers away from ILECs. Moreover, Roseville and the Small LECs assert that CLECs under the proposed pilot program could never duplicate the ULTS-MB's broad-based view of California's ULTS needs.

The ULTS-AC states the issue is not whether it is duplicative for both the Commission and carriers to market ULTS service to low income households, but whether the expenses of marketing by carriers should be subsidized by ULTS funds collected from other customers. ULTS-AC enumerates a variety of reasons that the expense of individual carriers' marketing efforts should be borne by the carriers themselves and should not be subsidized by surcharges paid by customers. A highly compelling reason not to subsidize individual carrier marketing activities is the Act's requirement that state universal service surcharges and subsidies must operate on a "competitively neutral basis." (47 USC § 253(b).) ULTS-AC notes that it would be difficult, if not impossible, to design a carrier-administered marketing effort that would treat all carriers equally and not be biased in favor of the carrier engaged in the marketing activity. It would be difficult, if not impossible, to design a carrier-administered marketing effort that would not violate the federal requirement for competitive neutrality.

The ULTS-AC points out that in its 1996 opinion, the Commission noted that marketing by a single entity "limits the size of the ULTS marketing expenses.²⁰ Devoting ULTS funds to duplicative marketing would increase the total paid for marketing. Being less well focused, that would result in a less efficient and less productive expenditure of ULTS funds.

²⁰ D.96-10-066 dated October 25, 1996 (Opinion, 68CPUC2d 524, 639).

In addition, we are concerned that CLEC marketing efforts could overlap and duplicate each other, as various carriers market service to the same target population of potential customers. This would not be an efficient or cost-effective method of marketing.

We find that having CLECs market ULTS service is clearly duplicative of marketing efforts by a Commission-selected contractor and conclude that marketing funded by the ULTS should be the exclusive providence of the Commission's contractor. This brings us to the issue of the contracts.

We are disturbed with TD's failure to process the contracts and get them in place in a timely fashion. Those contracts represent the Commission's total marketing effort for ULTS, and we require TD to hasten in getting those contracts implemented. Within 15 days of the effective date of this order, TD shall provide an update on its progress in getting the contracts in place to those on the service list for this proceeding.

3.2.2 Recovery of Administrative Costs

D.00-10-028 outlined the administrative expenses that carriers can recover from the ULTS Fund. Ordering Paragraph 18 reads as follows:

The ULTS Fund shall reimburse utilities for the reasonable costs and lost revenues they incur to provide ULTS to the extent that such costs and lost revenues meet all of the following criteria: (i) directly attributable to the ULTS program, (ii) would not be incurred in the absence of the ULTS program, and (iii) not recovered by the utility from other sources, such as the rates paid by ULTS customers, the utility's general rates, or the federal programs.

As noted in the ACR, D.00-10-028 does not provide guidelines to assist TD to make the determination that a particular carrier's costs are reasonable. The ACR acknowledged the need to develop guidelines so that TD's review will be ministerial, and less contentious. Parties were asked to comment on several

specific questions relating to requests from carriers for reimbursement of administrative expenses associated with the ULTS program, including one question that asked whether the Commission should revisit the idea of having a set fee for administrative expenses per ULTS customer, rather than requiring small CLECs to perform time and motion studies to determine their incremental costs of various functions relating to provisioning of ULTS service.

In its comments, the Coalition makes the point that CLECs that provide ULTS service under the current guidelines are, in general, under-reporting their administrative costs and operating expenses associated with providing the service, due to the burden of conducting detailed cost studies that could “prove” their costs to TD staff. The Coalition believes that adoption of a simpler ministerial approach to reimbursement for operating expense would be less costly for CLECs and less costly for the Commission to administer and review.

The Coalition proposes that the Commission adopt the average operating expenses of the largest ILECs—Pacific and Verizon—as the best proxy for reasonable operating expenses of other carriers. Verizon recommends that the Commission establish a rebuttable presumption that requests that deviate too far from the mean are unreasonable. The Commission could hold workshops to determine how far from the mean a request can be before it is presumed to be unreasonable.

Roseville and the Small LECs point out that although D.00-10-028 does not provide any explicit guidance on how to interpret the “reasonableness” of ULTS costs sought to be recovered under General Order (GO) 153, Resolution T-16591 spells out clearly the types of expenses that are appropriate for recovery. The Commission’s reasonable obligations should be co-extensive with the mandates

of this list, set forth in the modifications to GO 153, attached as Appendix A to the resolution.²¹ According to this list, for example, carriers can recover for “the incremental costs incurred” in dealing with ULTS certification, re-certification, or eligibility issues.

Roseville and the Small LECs ask the Commission not to rely on the average ULTS rate of other CLECs. If other CLECs were to flock to the ULTS-exclusive business, relying on the average costs of CLECs could be misleading. According to Roseville and the Small LECs, the ILEC rate limitation currently imposed more accurately reflects a reasonable cost of serving a ULTS customer for a given service area. However, Roseville and the Small LECs conclude that if the Commission is looking for the best barometer of reasonableness, the only true measure is actual costs associated with a delimited and easily ascertainable set of administrative functions.

ULTS costs associated with providing local service must be incremental to the provision of basic service for the purpose of filing for reimbursement from the ULTS-AC. A local telephone company, regardless of whether its customer base is 100% ULTS subscribers, will only be reimbursed in accordance with this principle. One example includes time spent by service representatives. Rule 8.3.10 lists the following as falling within the scope of reimbursable items:

The demonstrably incremental costs associated with the time spent by utility service reps to (i) notify residential customers about the availability of ULTS, (ii) ask residential customers if they are eligible to participate in the ULTS program, (iii) obtain verbal certification from residential customers regarding their eligibility to participate in the ULTS program, (iv) inform enrolled customers that they must return the signed self-certification form within 30 days of being

²¹ Appendix A also includes modifications to the instructions for the ULTS Report and Claim Form, which are necessitated by the change to GO 153.

admitted into the ULTS program, and (v) inform enrolled customers of the yearly re-certification requirement.

The items listed in Rule 8.3.10 are quite specific, and do not include all the time spent discussing phone service with the customer. It does not include time spent obtaining information about the customer's name and address for service and billing purposes. It does not include getting information from the customer about the appropriate directory listing, or if the customer will request non-published service. It does not include time spent discussing the various feature options available to customers, or describing the blocking options available. It does not include the time spent discussing the customer's choice of toll carrier. This list is merely illustrative of the type of customer representative functions that cannot be charged to the ULTS program, and is not intended to be all-encompassing.

While we believe that Resolution T-16591 provides clear guidelines on the costs that carriers may recover, we acknowledge that it could be costly and time-consuming for a small CLEC to perform time and motion studies of the incremental costs of various functions attributed to the ULTS program. The Coalition suggests that we allow CLECs to claim a set amount for each ULTS customer and recommends that we use the average of the two largest ILECs, while Roseville and the Small LECs warn against using the average rate for the CLECs. We plan to use the ILEC rate, but rather than the rate for the two largest companies, we will use the average for all 21 ILECs, which has the benefit of including the experience of smaller ILECs, as well as the two largest ILECs. Including smaller ILECs in the calculation will give a broader base, rather than basing our calculation on the largest ILECs who, presumably, would have lower rates due to economies of scale.

In other words, we will allow a CLEC the option of receiving its reimbursement for ULTS administrative expenses based on the incremental costs delineated in T-16591. However, if a CLEC believes that it is too costly and burdensome to accurately calculate those incremental costs, the CLEC may exercise the option of using the cost factor we developed based on the average incremental operating expense per customer per month excluding any zero claims filed by the ILECs and approved by TD. However, in the interests of making this as simple as possible for TD, once a CLEC exercises the cost factor option, that selection will remain in effect for the entire fiscal year (FY).

The initial cost factor will be set based on ILEC costs for calendar year 2001 shown in Table 1 below:

Table 1: Operating Expenses²² Per ULTS Customer

Month and Year	21 ILEC Average Cost (A)	21 ILECs Total ULTS Customers (B)	8 CLECs Average Cost (C)	8 CLECs Total ULTS Customers (D)	Fones4All Average Cost (E)	Fones4All Total ULTS Customers (F)
09-00	\$0.65	2,650,464	\$2.03	33,523	\$7,576.97	63
10-00	\$1.07	3,243,424	\$1.96	59,737	\$183.64	303
11-00	\$0.67	3,123,679	\$1.01	51,263	\$131.18	461
12-00	\$0.96	3,127,175	\$0.82	53,751	\$111.41	690
01-01	\$0.78	3,127,186	\$0.65	53,933	\$57.08	913
02-01	\$1.07	3,151,484	\$0.86	45,313	\$48.20	1,157
03-01	\$3.51	3,149,127	\$0.97	46,746	\$33.23	1,599
04-01	\$3.26	3,179,160	\$0.72	54,846	\$28.11	1,872
05-01	\$4.25	3,178,040	\$0.75	50,076	\$26.08	2,150
06-01	\$2.25	3,007,523	\$6.59	55,819	\$21.23	2,316
07-01	\$1.03	3,045,256	\$1.08	57,052	\$28.53	2,463
08-01	\$1.18	3,070,441	\$0.98	48,742	\$15.10	2,638
09-01	\$2.58	3,119,682	\$1.00	54,282	\$18.65	2,715
10-01	\$0.49	3,174,541	\$1.50	53,373	\$15.93	2,866
11-01	\$0.70	3,062,272	\$1.62	53,274	\$12.04	2,995
12-01	\$1.07	3,084,578	\$1.87	54,581	\$11.25	3,116
01-02	\$0.72	3,018,685	\$2.44	45,526	\$11.13	3,273

(A)(C)(E) are the average operating expense claim per ULTS customer for the group of carriers.
 (B)(D)(F) are the total number of ULTS customers for the group of carriers.
 The above data are based on claims filed by carriers.

For FY 2002-2003, the cost factor is set at \$1.85 per ULTS customer per month. By April 15, 2003 and each year thereafter, TD shall adjust this cost factor to be applied in the coming FY based on the incremental operating expense claimed by the ILECs during the previous calendar year and the formula identified in our adopted § 8.13.1 of GO 153. Any CLEC that wants to exercise this option for the current FY, must notify TD within 30 days of the effective date

²² Operating expenses include data processing expense, customer notification expense, accounting expense, service representative costs, legal expenses, and administrative costs associated with the deferred payment plan.

of this order. Beginning in FY 2003, each CLEC must notify TD before the FY begins if it chooses to receive its incremental operating expense based on this cost factor. We order that GO 153 be modified as shown in Appendix A to implement this change.

In addition, we would like to assist TD in resolving any outstanding claims for administrative costs from FONES4ALL or other CLECs. We will allow CLECs with pending claims the option of using the \$1.85 adopted in this order for FY 2002-2003, rather than basing reimbursement on the incremental costs delineated in T-16591. This will enable FONES4ALL and other CLECs to receive reimbursement for those claims that TD has previously denied and will eliminate the need for TD to determine the reasonableness of the amounts claimed. Any CLEC that wishes to exercise this option should notify TD within 30 days of the effective date of this order.

By giving CLECs a choice, we have eliminated CLECs' concerns about the difficulties of measuring their incremental costs of providing ULTS service. A CLEC can choose to use the adopted cost factor, rather than measuring its own incremental costs. Since our \$1.85 is based on the average of each ILEC's average costs, it takes the experience of both large and small ILECs into account, and is a fair approximation of average costs a CLEC will incur. There is nothing in the record to indicate that the functions performed by CLECs differ from those of the ILECs. This will serve to simplify the process for both CLECs that select the cost factor option, as well as the TD, which is charged with reviewing the reasonableness of carrier claims. For those carriers that opt for the cost factor option, this will remove all subjectivity from the Commission's review of their operating expenses.

4. Other issues raised in ACR

The ACR raised several issues, in addition to requesting comment on FONES4ALL's Petition to Modify. Each of those issues are addressed in the following sections.

4.1 "Finder's Fee" Proposal

The ACR proposed a system whereby carriers would be compensated on a one-time basis for getting new customers on the ULTS program, by what was termed a "Finder's Fee." This would supplement the activities of the Commission's marketing activities, in an attempt to see if the "hands-on" direct-contact approach that FONES4ALL describes would be an effective way to reach Californians.

The responding parties were unanimous in their agreement that the Commission should not adopt the Finder's Fee program. The ULTS-AC expresses concern that it is unlikely that a Finder's Fee process administered by carriers would reach unserved population groups, particularly those speaking languages other than English, as effectively and thoroughly as the Commission's already-planned and-approved education and marketing program is able to do.

The ULTS-AC also sees the likelihood of dissipation of the ULTS funds through abuse.

ORA opposes any program that would pay the utilities a Finder's Fee for obtaining new ULTS subscribers, given the administrative complexity of applying this to the telecommunications area. It would be difficult to ensure that telecommunications carriers would get paid only for enrolling new people in the program, rather than being compensated for churn. Any Finder's Fee program that pays carriers to obtain new ULTS customers will require the Commission to develop a system to track and verify who the carriers are claiming to have enrolled, both to be sure the carriers do not have an incentive to enroll ineligible

people and to ensure that they do not get paid for enrolling the same people over and over.

FONES4ALL acknowledges that the Commission's Finder's Fee proposal presents a number of difficult implementation issues. While a Finder's Fee may provide carriers with incentives to get ULTS customers connected, it will not begin to compensate carriers for their ongoing costs in providing high quality service to this difficult-to-serve customer segment. In addition, the Commission would need to implement safeguards against precisely the type of duplicitous behavior of marketers and others that was identified in the ACR. FONES4ALL proposes that the Finder's Fee program should be limited to carriers with more than 20,000 customers, based on the fact that small carriers with fewer than 20,000 subscribers who meet the other eligibility criteria of FONES4ALL's proposed pilot project, will be eligible for one ULTS incentive, and accordingly, such carriers should not be able to receive more than one Commission incentive to serve ULTS customers.

The Coalition refers to the ACR's statement that the Commission established a "capitation" fee of \$12 to reimburse CBOs for expense incurred to help enroll low-income clients in the CARE program. The Coalition points out that in the telecommunications markets where competitive alternatives exist, a customer could have various options for telephone service. The CARE program, on the other hand, is administered by the monopoly utility. The administrative task of ensuring that telecom carriers are not attempting to improperly generate revenue by gaming the system would be more difficult, time consuming and expensive than it is with respect to the CARE program.

Also, the Coalition asserts that a Finder's Fee creates a powerful and perverse incentive for carriers to enroll ineligible customers. For those reasons, the Coalition cautions against adoption of a Finder's Fee for carriers. The

Coalition concludes that given the absolute absence of any strong support for the Finder's Fee proposal, and the presence of strong opposition from a number of parties, the Commission would be ill-advised to implement such a proposal, even on a pilot basis, at this time.

Verizon concurs that the Finder's Fee would prove to be administratively burdensome, and is not convinced that it would improve ULTS subscription. Verizon concludes that it would be difficult to evaluate the success of the pilot Finder's Fee project because it would be hard to determine whether changes in subscribership rates were due to the Finder's Fee or other influences, such as the marketing efforts of the ULTS-MB.

Roseville and the Small LECs believe that the Finder's Fee program would cause fraudulent enrollment to increase dramatically. Such a system would also generate incentives to "churn" subscribers. To avoid this problem, a long period of non-service would have to be established; Roseville and the Small LECs believe that a six-month minimum period without basic service should be required for a carrier to receive a Finder's Fee. Roseville and the Small LECs assert that the only way to prevent abuses of a Finder's Fee program would be an aggressive enforcement effort, which would cost more than its likely worth. The administrator of the program would often be faced with having to prove whether the carrier knew that a particular customer did not meet ULTS criteria. Further, verifying the fraud itself would require the Commission to intrude into the privacy of ULTS subscribers.

LIF/Greenlining concurs with Verizon that any kind of project for signing up new ULTS customers should be competitively neutral and perhaps designed by the ULTS-MB. LIF/Greenlining also express concerns that the Commission would have to create a complex tracking/monitoring system that could be costly.

LIF/Greenlining and other parties pointed out that the ULTS-MB is poised to begin work with CBOs on outreach and marketing.

After reviewing parties' comments, we will not adopt the Finder's Fee proposal at this time. Parties point to the potential for abuse if we provide incentives for unscrupulous carriers or their agents to sign up ineligible consumers for ULTS service. Parties also assert that the Finder's Fee proposal would promote churn. While requiring that a consumer be without service for an extended period (such as the 6 months proposed by Roseville/Small LECs) could prevent churn, we do not want to embark on a program that encourages consumers to be without telephone service for an extended period. The magnitude of any monitoring/enforcement program we instituted to minimize fraud and abuse would be an enormous strain on Commission resources, and probably not worth the effort. We find that the Finder's Fee proposal shares some of the same problems with a lack of proper safeguards as FONES4ALL's pilot project.

We cannot use the "California Alternative Rates for Energy" (CARE) program as our model, since the underlying market for energy is regulated rather than competitive.

4.2 Auto Enrollment Proposal

The ACR made a third proposal to assist in getting more low-income customers signed up for the ULTS program: namely automatic enrollment of customers who are eligible for the low-income program for electric and gas customers, which is referred to as the CARE program. Senate Bill 2, Chapter 11 in 2001, orders the Commission to examine methods to improve CARE enrollment and participation. The bill proposes that the Commission examine whether any customer who has signed up for the ULTS program should be automatically signed up for the CARE program. The ACR proposed to adopt the

reverse, namely, any energy customer enrolled in the CARE program would be automatically enrolled in the ULTS program.

ORA listed some of the advantages of automatic enrollment:

- Simplified process for applicants
- Reduced repetition for applicants
- Simplified or reduced need for outreach

ORA also raised some concerns relating to automatic enrollment:

- Privacy concerns—to what extent can information about program participants be shared
- Different programs have different eligibility requirements—CARE has an income eligibility limit that is higher than ULTS, so not everyone receiving CARE would be eligible for ULTS.
- Different definitions of household—for CARE all people in a particular dwelling unit make up one household because that is how electricity and gas accounts are generally metered. Under ULTS, a single dwelling unit may have more than one ULTS-eligible household.
- Data matching problems—accounts could be in different names.
- Technical considerations—sharing information between agencies or companies could be technically difficult because of differences in database software or structure.

ORA recommends that the issue of auto-enrollment be addressed in the context of the Commission's CARE and ULTS proceeding, R.01-08-027.

LIF/Greenlining recognizes that automatic enrollment clearly raises certain privacy, data and cost issues, but believes it is worth pursuing, and suggests using R.01-08-027 as the proper vehicle. LIF/Greenlining concurs with ORA that auto enrollment provides the potential for expanding ULTS enrollment particularly among the elderly and underserved. Roseville and the Small LECs do not take a position on automatic enrollment at this time, but also support further exploration of the proposal. Roseville and the Small LECs also encourage

the Commission to identify the possible impact on the ULTS fund that may occur through changing eligibility standards.

We appreciate all the comments and concerns raised by parties. We agree that this idea is still in its infancy, but it needs further examination. Indeed, in D.02-07-033, we concluded that we would not include ULTS in the automatic enrollment program for CARE at the present enrollment program for CARE at the present time. If we decide to explore the issue of automatic enrollment for ULTS sometime in the future, we will open a separate rulemaking in order to explore the issue fully.

4.3 Rules for disconnection due to non-payment of long distance balances

The ACR indicated that some former telephone customers have had their telephone service disconnected due to nonpayment of long distance balances or are unable to establish service due to a poor credit history. The ACR noted that these former customers may not be aware that since May 2001 carriers may not disconnect basic telephone service for failure to pay non-basic telephone charges. The ACR asked for comment on whether the ULTS-MB is the best vehicle to disseminate that information to customers.

LIF/Greenlining, Verizon and Roseville and the Small LECs all support the proposal that the Commission's marketing contractor include the Commission's disconnect policy in all educational and outreach materials. Additionally, Verizon supports the proposal that all LECs provide the disconnect policy to their customers on an annual basis. Roseville and the Small LECs note that a recent affordability study filed with the Commission by Pacific and Verizon has shown that many of the California households that lack basic service cite their long distance debts as the reason. Educating these individuals about their rights

to receive local phone service is a responsibility that falls naturally to the ULTS-MB.

We believe that this is just the type of information that should be included in outreach information supplied by the Commission's marketing contractor. Many former customers with long distance debt may not now have telephone service because they believe that that debt precludes them from basic telephone service. In our effort to ensure that all eligible households are connected to the telephone network, we will order the TD to ensure that the Commission's marketing contractor include information on the Commission's disconnect policy in their written outreach materials. The contractor should also train all the CBOs involved in their outreach effort about the disconnect policy as well. In the event that the disconnection rule changes in our Consumer Protection Rulemaking, R.00-02-004, TD shall inform the contractor of the change in the rule.

5. Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Public Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed on December 20 and 23, 2002, and late-filed reply comments, on January 7, 2003. We have reviewed the comments and taken them into account, as appropriate, in finalizing this order.

6. Assignment of Proceeding

Geoffrey Brown is the Assigned Commissioner and Karen Jones is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. FONES4ALL's pilot project includes reimbursement for marketing and outreach efforts.

2. Pub. Util. Code § 871.5(d) requires the Commission to implement a universal service program “without competitive consequences for the telecommunications industry in California.”

3. Section 253(b) of the Telecommunications Act of 1996 requires that states implement universal service programs on a “competitively neutral basis.”

4. FONES4ALL’s pilot project is only available to CLECs; the option is not available to ILECs.

5. The best way to market ULTS in a competitive environment is through a single entity so that no one carrier is advantaged by marketing activities.

6. A Commission-selected marketing contractor would operate in a competitively neutral manner and would have no incentive to steer prospective ULTS participants toward a particular carrier.

7. A Commission-selected marketing contractor does not stand to profit by encouraging ULTS customers to switch from one carrier to another.

8. The safeguards proposed by FONES4ALL do not address the major problem areas of its pilot project.

9. Any monitoring system set up to ensure that carriers are not abusing the rules of the pilot project could prove to be more costly than the benefits received, since the Commission would need additional staff to perform the monitoring function.

10. If the financial incentive is significant, a carrier could decide to sign up ineligible consumers, in the interest of its own bottom line.

11. FONES4ALL’s pilot project has \$13 million in incentives for CLECs to thwart the rules and attempt to garner a significant share of the project budget.

12. CLEC marketing efforts could prove to be duplicative if various CLECs focus on the same target population.

13. Having CLECs market ULTS service is duplicative of marketing efforts by the Commission-selected marketing contractor.

14. Resolution T-16591 gives clear guidelines of the ULTS-related costs that carriers may recover.

15. It could be costly and time consuming for a small CLEC to perform time and motion studies of the incremental costs of various functions attributed to the ULTS program.

16. Calculating an average cost factor based on the average for all 21 ILECs has the benefit of including the experience of both small and large ILECs.

17. For FY 2002-2003, the cost factor is set at \$1.85 per ULTS customer per month.

18. Giving CLECs a choice in the method for claiming ULTS administrative expenses eliminates CLECs' concerns about the difficulties of measuring their incremental costs of providing ULTS service.

19. Use of the cost factor will serve to simplify the process for both CLECs that take the cost factor option, as well as the TD, which is charged with reviewing the reasonableness of carrier claims.

20. The magnitude of any monitoring/enforcement program instituted to monitor fraud and abuse associated with the "Finder's Fee" proposal would be an enormous strain on Commission resources, and probably not worth the effort.

21. The "Finder's Fee" proposal suffers from the same lack of adequate safeguards as FONES4ALL's pilot project.

22. The automatic enrollment proposal has potential but further examination is needed.

23. The Commission's rules prohibit disconnection of basic telephone service for failure to pay long distance charges.

Conclusions of Law

1. FONES4ALL's pilot project violates § 253(b) of the Telecommunications Act of 1996.
2. FONES4ALL's pilot project violates § 871.5(d) of the Public Utilities Code.
3. ULTS marketing, in order to be competitively neutral, should be conducted by an organization that has no vested interest in a customer's choice of carrier.
4. ULTS marketing should be the exclusive providence of the Commission-selected marketing contractor.
5. CLECs should have the option of using the cost factor developed by the Commission, rather than calculating their incremental costs as delineated in T-16591.
6. Information on the Commission's rules for disconnection due to non-payment of long distance balances should be included in the outreach information supplied by the marketing contractor.

O R D E R

IT IS ORDERED that:

1. FONES4ALL's amended petition to modify Decision 98-10-028 is hereby denied.
2. Within 15 days of the effective date of this order, the Telecommunications Division (TD) shall report to the parties in Rulemaking (R.) 98-09-005 on its progress in implementing the contracts for marketing Universal Lifeline Telephone Service (ULTS).
3. For the current fiscal year on a going-forward basis, a Competitive Local Exchange Carrier (CLEC) may opt to receive the \$1.85 per ULTS customer per month for their reimbursement of incremental operating expenses. Any CLEC

that elects to exercise this option shall notify TD within 30 days of the effective date of this order.

4. For pending claims for administrative expenses for prior fiscal years, a Competitive Local Exchange Carrier (CLEC) may opt to receive the \$1.85 per ULTS customer per month for their reimbursement of incremental operating expenses. Any CLEC that elects to exercise this option shall notify TD within 30 days of the effective date of this order.

5. By April 15, 2003 and each year thereafter, TD shall adjust the cost factor to be applied in the coming Fiscal Year (FY) based on the incremental operating expense claimed by the Incumbent Local Exchange Carriers during the previous calendar year and the formula identified in Section 8.13.1 of General Order (GO) 153.

6. Beginning in FY 2003-2004, each Competitive Local Exchange Carriers must notify TD before the FY begins if it chooses to receive its incremental operating expense based on the cost factor developed by TD.

7. GO 153 shall be modified as shown in Appendix A to implement this change in the reimbursement process for ULTS claims.

8. TD shall include a requirement in the ULTS marketing contract that the Commission-selected marketing contractor include information on the Commission's disconnection policy for non-payment of long distance charges in its written outreach materials.

9. TD shall include a requirement in the ULTS marketing contract that the marketing contractor train all of the Community Based Organizations involved in its outreach effort about the Commission's disconnection policy.

10. The June 4, 2002 motion of the Universal Lifeline Telephone Service Administrative Committee to accept late-filed comments, is hereby granted.

11. The June 5, 2002 motion of I-Trax, Inc. to accept late-filed comments, is hereby granted.

12. The November 19, 2001 appeal by FONES4ALL of the Administrative Law Judge Ruling requiring FONES4ALL to submit information relevant to its petition to modify D.00-10-028, is hereby denied.

13. The December 19, 2001 motion of FONES4ALL for confidential treatment of its cost and line account information, is hereby granted.

This order is effective today.

Dated January 16, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
LORETTA M. LYNCH
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

APPENDIX A
GENERAL ORDER 153

The following sections are added to General Order 153:

- 8.13 For the recovery of incremental operating expenses, a competitive local exchange carrier (CLEC) has the option of receiving its reimbursement based on a cost-factor developed by TD. Once this option is exercised, it shall remain in effect for the entire fiscal year (FY).
- 8.13.1 This cost-factor shall be determined by the average incremental operating expense per customer per month excluding any zero claims filed by the ILECs and approved by TD.
- 8.13.2 For Fiscal Year (FY) 2002-2003, the cost-factor is set at \$1.85 per ULTS customer per month. By April 15, 2003 and each year thereafter, TD shall adjust this cost-factor to be applied in the coming FY based on the incremental operating expenses claimed by the ILECs during the previous calendar year and the formula identified in Section 8.13.1 of this General Order.
- 8.13.3 Each CLC must notify TD before the FY begins if it chooses to receive its incremental operating expenses based on this cost-factor.

Instructions for the ULTS Report and Claim Form

- 3.a Competitive local exchange carriers (CLECs) may opt-in to receive their reimbursement of incremental operating expenses, which include data processing (lines 16/26), customer notification (17/27), accounting (18/28), service representative (19/29) and legal (20/30), based on a cost-factor developed by TD.
- 3.b For details of this cost-factor, please see General Order 153, Section 8.13.

(END OF APPENDIX A)