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Communications Division

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Consumer Programs Branch

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Reply Comments of Joint Consumers on Resolution T-17321

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Pursuant to Rule 14.5 of the Rules of Practice and Procedure, Joint Consumers¹ submit these reply comments on Draft Resolution T-17321. Several of the parties that filed opening comments agree that the draft General Order (G.O.) reflects the hard work and dedication of Commission staff. However, each party expresses concerns over certain aspects of the draft G.O. There are some areas where Joint Consumers are in agreement with the concerns of the other parties. For example, Cox and the Small LECs/SureWest make the same observation as Joint Consumers that the definitions of Application Date and Service Start Date should be revised to clarify that the customer credits reach back to the Application Date. Another similarity is AT&T's discussion of the definition of Basic Service and the need to revisit the definition once the Commission completes its work in R.09-06-019.²

Carriers Address Similar Issues As Joint Consumers But With Different Solutions

Carriers also comment on the same issues or sections of the draft G.O. as Joint Consumers, but from a different perspective. For example, Verizon describes the definition of surcharge in Section 2.52 as inaccurately limited to those fees collected by California LifeLine Service Providers. Joint Consumers make similar comments about the failure of Section 3 to include all carriers that offer intrastate telecommunications services. While Joint Consumers do not necessarily agree with Verizon's interpretation of the draft G.O., we do agree that changes to the G.O. should not narrow the requirement to collect and remit surcharges. All carriers must collect and remit surcharges for public purpose programs on intrastate telecommunications services, except for LifeLine service. Therefore, the current definition at Section 2.52 should be revised, as well as Section 3 and Section 10.³

Small LECs/SureWest also discuss surcharges, and, specifically the requirement to show a credit for the public purpose programs surcharges on the LifeLine bill in Section 8.6. Joint Consumers do not agree with the Small LEC's claim that because carriers cannot charge the

¹ "Joint Consumers" include The Utility Reform Network, Greenlining Institute and National Consumer Law Center. For opening comments, only National Consumer Law Center and The Utility Reform Network filed as "Joint Consumers." Greenlining Institute filed separately with the Disability Rights Advocates. However, for ease of discussion, these reply comments refer to both sets of opening comments as "Joint Consumers."

² AT&T, in its comments however, went further to suggest that Appendix A should not be referenced in the definition of Basic Service. Joint Consumers do not agree.

³ Both Section 3 and Section 10 should be revised to include reference to all Carriers and remove the limiting reference to just California LifeLine Service Providers. Even though G.O. 153 focuses on rules for the LifeLine program, the requirement to collect surcharges should be described accurately.

LifeLine customer a surcharge (as set forth in Section 10.5.1 and 8.1.9), it is inappropriate to show the surcharge on the bill as a credit. The point of the bill disclosures is to indicate the discounts the customer receives by virtue of being a LifeLine customer. One of the “discounts” is the exemption from the LifeLine surcharge (and several other surcharges.) The LifeLine customer should be provided enough information to understand the full value of the discount.

Like the Joint Consumers, Small LECs/SureWest comment on the definition of Local Call in Section 2.35, but only to note that the Resolution said there would be no definition and the draft G.O. retains a definition. Joint Consumers, instead, raise concerns with the definition of Local Call in Opening Comments as being too wireline centric. We recommend retaining the definition but revising it to remove the concept of “local exchange” and instead use the more generic term “designated geographic area,” or at a minimum, the Commission should explicitly defer this issue to the new LifeLine rulemaking R.11-03-013.

Small LECs/SureWest also suggest that the definition of Incumbent Local Exchange Carrier in Section 2.32 reference the federal definition in Section 251(h) of the Telecommunications Act. While Joint Consumers do not object to the use of that definition, the mere reference to the federal code section without the accompanying language makes the G.O. too dependent on other sources of information. Perhaps including both a reference to the Telecommunications Act and the specific language from the Act would be helpful. Even if the Commission adopts Small LECs/SureWest’s definition of ILEC, the last sentence of the current definition, designating the ILEC in a service area as the Carrier of Last Resort, should be retained.

Carriers’ Comments Raise Additional Issues

The carriers’ opening comments also address issues that Joint Consumers did not include in their comments. For example, most of the carriers discuss edits to the draft G.O. that the carriers claim were not authorized by the Commission’s decision in D.10-11-033. Cox, Verizon and AT&T object to the requirement to provide verbal disclosure that LifeLine customers may be audited. Cox, AT&T, and the Small LECs/SureWest object to small changes to the in-language requirements. As a general matter, Joint Consumers addressed this issue in opening comments by noting that the Commission gave Staff broad discretion to administer the LifeLine program. Staff has been exercising this discretion mostly through the LifeLine working group.

The Commission did not change its policy in D.10-11-033 and, in fact, created an implementation schedule that left significant discretion to Staff. Therefore, the fact that D.10-11-033 may have been silent on specific changes to disclosures and processes of the program should not prevent Staff from moving forward.

An example of this authority is the change proposed for Section 4.6.2, requiring carriers to inform customers of their right to request forms and information in a language other than English. Cox, AT&T and the Small LECs/SureWest argue that because D.10-11-033 didn't discuss the in-language requirement the change cannot be made here. Joint Consumers disagree and urge the Commission to adopt the proposed requirement. Section 6.1.1.1 already requires the third party administrator to provide forms in a language of preference. This requirement would be much less effective if customers did not know to specify a language of preference up front.

Cox, Verizon and AT&T also claim that the Staff had no authority through D.10-11-033 to require LifeLine carriers' customer service representatives to tell the customer they may be subject to an audit. On this point, Joint Consumers agree that the risk of confusion and information overload by adding one more piece of information to the required verbal disclosures outweighs the benefits. Unlike the in-language requirement, which must be disclosed up-front to be useful, the audit information could be included on the written material and on the annual notice because an audit would only happen later in the process. Joint Consumers do not support the elimination of the requirement in the current Sections 4.4.1.1.1. and 4.5.1.1.1. that the auditing disclosure be included on the form itself. It is essential that disclosure about the audit process must remain in the G.O. in some form. Therefore, if the language about audits is not included in the instructions for the Certification and Verification forms, then it must be disclosed via the customer service representative.⁴

One area where staff can not stray from the four corners of D.10-11-033 is reimbursement to the carriers from the Fund. So, for example, Cox requests that the Commission add language to Section 9.3.1 that would reimburse carriers from the state Fund for any lost subsidy as a result of California's broader interpretation of "household" than the federal program. This request is premature. First, while the concern about the potential conflict on this

⁴ If the verbal disclosure remains in the G.O., Joint Consumers also support Verizon's proposal that this requirement move to Section 4.1 where it is more appropriately categorized as a notice.

issue between the federal and state programs was first raised during the workshop process, this proposal was not discussed during the proceeding in R.06-05-028 nor fully vetted in the workshop process. Second, and most importantly, the FCC is in the process of reviewing its rules for the federal LifeLine program, including this specific issue.⁵ Finally, Joint Consumers note that during the workshop carriers did not indicate that the federal program has refused to reimburse carriers with multiple households in a dwelling unit even though thousands exist currently in California. While Joint Consumers support language in the G.O. that allows multiple households per dwelling unit, it is unclear what type of liability the Fund would have for reimbursing carriers any federal money it may lose. Joint Consumers recommend that this issue be explicitly added to the LifeLine docket and that the Commission wait to see what the FCC does on this issue in order to determine how to handle specific known conflicts, if any.

Verizon, Cox, and the Small LECs/SureWest raise additional concerns regarding the breadth of items that could be included in a claim for reimbursement from the Fund. Even though the Commission capped the reimbursement from the Fund, it is still clearly concerned about carriers being improperly reimbursed through false claims or administrative errors. Small LECs/SureWest propose an overly-broad clause of “any additional administrative costs” to be included in Section 9.4.10. Joint Consumers disagree. The Commission was very clear in D.10-11-033 that its intent was to limit administrative cost reimbursement for a number of reasons. If the Small LECs/SureWest believe a certain category of reasonable expenses is left out of Section 9.4.10, then it should request that category be added.⁶

AT&T and Cox point out that the draft G.O. does not include two categories of expenses that were previously included in the G.O, relating to processing service orders, answering billing inquiries, and other costs listed in workpapers. Joint Consumers agree with Cox that if these provisions were accidentally left out of the draft G.O. because these expense categories were in a different section of the current G.O. they should be included. However, it is clear from D.10-11-033 that the Commission’s intent was to limit reimbursement, especially for tasks that the third party administrator and call center contractor should be doing. Therefore, the Staff is within its authority to recommend eliminating these categories of expenses.

⁵ 2011 Lifeline and Link Up NPRM, 26 FCC Rcd at 2805-10, paras.106-125.

⁶ Joint Consumers note that the Commission provided for additional reimbursement to rate-of-return local exchange carriers through different methodologies. D.10-11-033 at p. 91, O.P. 21.

Finally, Joint Consumers note that the Small LECs/SureWest recommend changes to Section 9.3.2.regarding payment of the SSA. Joint Consumers agree with the goal of the proposed changes to clarify the payment of the SSA. However, the language proposed by Small LECs/SureWest is too broad. The language should include some limitation of the type of “discounts” included in the SSA amount. So, for example, it should say, “the portion of the SSA necessary to reimburse the carrier for discounts as specified in Section 8 of the G.O. provided to LifeLine subscribers, whichever is lower.”

Joint Consumers appreciate the opportunity to provide further comment on these issues and urge the Commission to make the necessary changes to the draft G.O.. There is still work to be done with the program to ensure that LifeLine customers of all technologies will be treated equally and fairly. We look forward to working with the Commission on these issues.

Sincerely,

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