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Opening Comments of Joint Consumers on Draft Resolution T-17321

THE UTILITY REFORM NETWORK

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Introduction

Pursuant to California Public Utilities Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure of the California Public Utilities Commission (“the Commission”), The Utility Reform Network and National Consumer Law Center (collectively referred to as Joint Consumers) file these Opening Comments on Draft Resolution T-17321 (“Draft Resolution”).

The Commission has made it a priority to adapt its LifeLine telephone program to changes in the marketplace. Most recently, in November of last year, the Commission ordered several significant changes to the program. Some of these changes are reflected in the revisions to General Order (G.O.) 153 as proposed in the Draft Resolution. Staff should be commended for its diligent work on this painstaking process. However, to ensure that the time and effort dedicated to this process benefits the intended participants in the LifeLine program, the Commission must carefully consider these changes.

Joint Consumers urge the Commission to consider the comments set out below and make the recommended changes to the General Order. Joint Consumers note that there are concerns about the process and procedure for the LifeLine program as described in the G.O. and there is inconsistency and a lack of clarity regarding the integration of alternative technologies into the program. Perhaps most noticeably absent from the Draft Resolution is discussion that other related Commission dockets may also impact the General Order.

The Draft Resolution does not resolve some uncertainty about the integration of wireless technology and other non-traditional carriers.

As discussed above, one of the top policy goals of this Commission has been to open up the LifeLine program to providers of wireless and Voice over Internet Protocol (VoIP) services. In D.10-11-033, the Commission set out a timeframe and procedural roadmap for making changes to the LifeLine program, including a Phase 2 implementation process for wireless issues. At the same time, the Commission allowed non-traditional carriers to participate in the program immediately if those carriers could meet a set of conditions. Subsequently, as discussed above, the Commission opened a Rulemaking to consider the “unresolved issues,” which Joint Consumers can only assume, based on comments to that Rulemaking, will relate to participation of non-traditional carriers in LifeLine and other related issues, thereby eliminating the Phase 2 process contemplated in D.10-11-033.¹ The procedural process has been shifting and with such

¹ See R.11-03-013, Order Instituting Rulemaking on Revisions to the California LifeLine Program, at p. 10.

complicated issues it is unfortunate that this has resulted in the Draft Resolution being inconsistent in its treatment of non-traditional carriers, making some but not all of the changes to the G.O. to accommodate their participation.

Some definitions do not clearly apply to non-traditional carriers.

For example, several key definitions that appear multiple times in the G.O. remain very “wireline-centric,” making them potentially inapplicable to wireless or VoIP providers. Most critical may be the definition of “Local Call” (Section 2.35) which references the wireline concepts of “local exchange” and “calling station.” This definition then feeds several other definitions, including “Basic Service” (Section 2.7.) The Basic Service definition not only continues to reference “local” service, it also requires the service be furnished to a “customer’s residence,” a concept that may not be applicable to wireless service. The definition of Basic Service is then used multiple times in other definitions as well as throughout the G.O. As discussed below, the definition of Basic Service may change as a result of related dockets, but the Draft Resolution makes no mention of this, leaving the definitions to stand on their own. Additionally, the definitions of Flat Rate Service (Section 2.27) and Measured Rate Service (Section 2.36) also reference both Basic Service and local calls.

In their previous comments and proposed edits to the G.O., Joint Consumers tried to move the language away from wireline-based definitions by, for example, introducing the concept of a “designated geographic area” instead of “local exchange.” While that language may not have been the ideal solution, the G.O. not only rejects the proposal but does not address the problem that these definitions are too wireline-specific and do not give proper guidance to the carriers or to staff.

It is important to note that while several of the definitions retain their references to wireline-only conventions, the definition of Service Connection Charge (Section 2.47) attempts to accommodate Non-Traditional carriers more explicitly by referencing “non-regulated residential service provided by a Non-Traditional Carrier.” Because the G.O. makes a distinction in this definition only between Basic Residential Telephone Service and a non-regulated residential service, it suggests that perhaps the rest of the references to Basic Service do not apply to wireless or other Non-Traditional Carriers. Because of this confusing interpretation, this reference in Section 2.47 should either be deleted or extended to other provisions. However, in considering whether to use this language in other sections, Joint Consumers caution that “non-

regulated residential service” is too broad of a description and could include much more than just the wireless or VoIP carriers’ most “basic” or inexpensive plans. This could result in significantly higher charges to the LifeLine customer than traditional wireline LifeLine charges.

The G.O. does not adequately protect consumers of non-traditional carriers.

The Commission should review other sections of the G.O. with wireless service in mind. For example, in Section 8.1.4.2, the G.O. states that subscribers will pay “no more than ½ their California LifeLine Providers Flat Rate Service.” But as the G.O. defines “Flat Rate Service” it may be that some providers will not have a Flat Rate Service. It may be better to use the defined term “Regular Rates” or the term “Basic Service.” Although, as discussed above, the term Basic Service as currently drafted is also problematic for wireless carriers. Joint Consumers understand that in the CHCF-B docket the Commission is considering ways to redefine “basic service” to make it directly applicable to non-traditional carriers.² Presumably, once that work is complete the new elements of basic service will appear in Appendix A to the G.O., although the wording of the definition in Section 2.7 will still have to be revised.

There is a similar issue in Section 4.2.4 where the G.O. states that the customer will incur “Basic Service rates and charges” until completion of the application. But the term Regular Rates may be more appropriate here, to include all services, plans and technologies.

Section 5.5.4 and 5.6 uses the term Basic Residential Service in the context of converting customers back to a non-discounted service when they are no longer eligible for the program. Here too, this use of the term only works if the definition of Basic Residential Service is revised either here, in the CHCF-B docket, or in the LifeLine OIR. If the non-traditional carrier does not have a clear “basic service” plan, there is a risk for LifeLine customers of non-traditional carriers that they will be converted to significantly more expensive plans.

The Commission must monitor the terms and conditions of LifeLine service for non-traditional carriers.

The Draft Resolution and changes to the General Order include a requirement, as ordered in D.10-11-033, that the Non-Traditional Carriers and those carriers that do not file tariffs must file a Schedule of Rates and Charges with the Commission for LifeLine service (Sections 3.4 and 3.5). However, there is no requirement that these same carriers file, or at least make publically available, the terms and conditions for the LifeLine service even though Joint Consumers

² See R.09-06-019, ALJ Ruling April 27, 2011

suggested this requirement in its redline edits and during the workshop. Section 3.4 and 3.5 states that carriers not filing tariffs or Non-Traditional carriers shall ensure that their schedule of rates and charges filed with the Commission “reflect the requirements set forth in this General Order.” But this could still be interpreted to only require the rates and charges to be compliant, and not other elements of the program.

The failure to explicitly include the filing of terms and conditions, as proposed by the Joint Consumers in earlier comments, will make it more difficult to access information about the LifeLine service offerings. There is no requirement to disclose additional information elsewhere. This lack of disclosure represents poor public policy for the LifeLine consumer because it limits informed choice. It is also troubling for ratepayers because they will be subsidizing a service that could change constantly or contain terms that are unfair. Even though the Commission’s Decision didn’t specify that terms and conditions should be filed, in the past the Commission has given staff broad authority to administer this program, including making significant changes related to the G.O. Following that same policy, this issue is within the jurisdiction of the Staff to revise.³

Several sections in the General Order assume that the Commission and/or customer have access to some type of description of terms and conditions. For example, Section 5.2.1.1 requires LifeLine providers to file information about the income limits for applicants and Section 7.6 requires providers to file the conditions of discontinuance and restoration of service. The wording of these sections seems to assume that this information will be in the Schedule of Rates and Charges, but that should be explicitly discussed in the Draft Resolution and clarified for providers.

Another area of uncertainty is the application of a Measured Rate service to wireless carriers. This issue was discussed during the workshop and the subject of comments on the LifeLine OIR. In R.11-03-013, the Commission made it clear that it intended to retain a Measured Rate service option for LifeLine customers.⁴ However, the definition of Measured Rate in the draft is wireline-focused and does not clearly apply to wireless customers. Apart from the wireline-focused terms, the definition potentially allows any traditional wireless plan

³ D.07-05-030 (R.04-12-001) May 3, 2007 at p. 33. (Discussing the implementation of long term strategies for income verification, the Commission states, “We do not intend to micro-manage the LifeLine program ... We want to give staff the latitude, in conjunction with the Working Groups, to develop creative and successful solutions.”)

⁴ See R.11-03-013, Order Instituting Rulemaking on Revisions to the California LifeLine Program at pp. 8-10.

that includes a “bucket of minutes” to be considered “measured rate” service unless that term is carefully defined.⁵ The interpretation of a wireless plan as “measured rate” needs to be clarified because a wireless carrier could invoke Section 9.3.1 that allows for the recovery of “lost revenue” from the Fund for Measured Rate service.⁶

Finally, another area of uncertainty involves the collection of LifeLine surcharges. The G.O. contains many rules that are only applicable to those non-traditional service providers who will become California LifeLine service providers. However, the duty to collect and remit the LifeLine surcharge, as required in Section 3 of the G.O., applies to all non-traditional service providers. Currently the G.O. requirement that discusses the requirement to collect the LifeLine surcharge only applies to those carrier that file tariffs (Section 3.1). While the exact scope of this requirement is currently being litigated before the Commission,⁷ it is uncontroverted that this requirement applies to more carriers than only those filing tariffs (a category of carrier that is shrinking by the day). The Draft Resolution should discuss this issue and make it clear that this requirement is broader and the definitive description of this requirement is under consideration by the Commission.

Conclusion

Joint Consumers respectfully request that the G.O. be revised as outlined above.

Sincerely,

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⁵ Even the Commission staff has made analogies between the ILEC’s wireline Measured Rate service and wireless carrier plans with usage charges. *See* T-17284 (May 5, 2011) at pp. 7-9 (comparing Virgin Mobile’s proposed LifeLine plan with AT&T’s Measured Rate service to determine whether the wireless service offers comparable local usage.

⁶ Draft Resolution at p. 6.

⁷ *See* D.10-05021 at pp. 1-2 (modifying I.09-12-016 to address the Commission’s denial of Eligible Telecommunications Carrier designation to TracFone Wireless, Inc, based on TracFone’s failure to collect public purpose program surcharges and user fees); *see also* Order Instituting Investigation into the Operations of TracFone Wireless, Inc., I.09-12-016, at pp. 1-7.