Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into Implementation of Federal Communications Commission Report and Order 04-87, As It Affects The Universal Lifeline Telephone Service Program.	Rulemaking _____

ORDER INSTITUTING RULEMAKING

I. Summary

By this order, we institute a rulemaking into the implementation of the Federal Communications Commission's Report and Order, FCC No. 04-87 (Lifeline/Link-Up Order or Order), as it affects our Universal Lifeline Telephone Service (ULTS) program. In its Order, the FCC requires all states to document customers' income qualification for their income-based Lifeline/Link-Up programs. At the present time, the California ULTS program, which is based on income eligibility, allows participants to self-certify their income, with no process in place for documentation of customers' income.

In order to comply with the FCC's order, and to preserve the $330 million annual support from the federal Lifeline/Link-Up programs, the Commission must adopt a process to certify participants' income. The primary goal of this Order Instituting Rulemaking (OIR) is to take the steps needed to preserve the $330 million annual support from the federal Lifeline/Link-Up programs.

In addition, we recognize that some program participants do not have information available to document their income. We request parties to comment

on how ULTS should serve these low-income households that otherwise would qualify for ULTS but are unable to provide the required income documentation.

We also indicate that we would like to explore the possibility of implementing automatic enrollment for the ULTS program.

II. Background

On June 22, 2004, the FCC released the Lifeline/Link-Up Order modifying the requirements for eligible telecommunications carriers (ETCs) to receive federal Lifeline/Link-Up funds. The Lifeline/Link-Up Order was intended to improve telephone subscribership and the effectiveness of the low-income support mechanism.

The Federal Lifeline program provides low-income customers with discounts of up to $10.00 from the monthly cost of telephone service for a single telephone line in their principal residence.[1] The Federal Link-Up program provides low-income customers with 50% discounts, to a maximum of $30.00, from the initial costs of installing telephone service.[2]

In its Order, the FCC expands the federal default eligibility criteria to include an income-based criterion. Furthermore, the Order requires states, like California, that operate their own income-based Lifeline programs to document low-income customers' income qualification.

Under the FCC's rules, states and territories have the authority to establish their own Lifeline/Link-Up programs that provide additional support to low-income consumers which incorporate the unique characteristics of each state. Some state and territories, however, have elected to use the federal criteria as

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[1] 47 C.F.R. § 54.401(a)(2).

[2] 47 C.F.R. § 54.411(a)(1).

their default standard. These are known as "federal default states." California has established its own program, the Universal Lifeline Telephone Service (ULTS) program.

Currently, California's ULTS is a $570 million program. Of this amount, approximately $330 million is financed by federal Lifeline/Link-Up funds and $240 million is from an all-end-user surcharge assessed on consumers' intrastate telephone bills. California, however, could lose the $330 million of federal Lifeline/Link-Up funds if California does not implement the FCC's new program eligibility requirements by June 2005.

III. Income-Based Eligibility Requirements

A. Income-based eligibility in federal default states

The Lifeline/Link-Up Order added an income-based criterion for participation in Lifeline/Link-Up in federal default states, if the ETC customer's household income is at or below 135% of the Federal Poverty Guideline ("FPG").[3] Each ETC must certify, under penalty of perjury, that a customer is qualified for Lifeline/Link-Up based on: 1) Customer self-certification, under penalty of perjury, of his/her qualification, and 2) Income document(s) supporting the income level of the customer.

ETCs in states that do not mandate state Lifeline support must implement certification procedures to document consumer income-based eligibility for Lifeline prior to that consumer's enrollment. Acceptable documentation of income eligibility includes:

- prior year's state, federal, or tribal tax return,

[3] The FCC stated that adding an income-based standard likely would capture some low-income customers who are not eligible for Lifeline/Link-Up because they no longer participate in the qualifying assistance program.

- current income statement from an employer or paycheck stub,
- Statement of benefits from Social Security, Veterans Administration,
- Statement of benefits from retirement/pension, Unemployment/Workmen's Compensation,
- federal or tribal notice letter of participation in Bureau of Indian Affairs General Assistance,
- a divorce decree
- child support document, or
- other official document.

B. Income-based Requirements in States with Their Own Lifeline/Link-Up Program

The FCC requires all states, including federal default states, to adopt procedures to document income-based eligibility for Lifeline/Link-Up. However, states like California that operate their own Lifeline/Link-Up programs have the flexibility to develop their own certification procedures, including the determination of what constitutes acceptable documentation to certify consumer eligibility under an income-based criterion. However, a state's procedures must include the following elements:

- States that develop their own certification procedures must establish a certifying entity(s), whether it is a state agency or an ETC.[4]
- Customers must self-certify, under penalty of perjury, that the presented documentation accurately represents their annual household income.[5]

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[4] See ¶ 29 of the Lifeline/Link-Up Order. Unless otherwise indicated, all subsequent references to numbered paragraphs refer to the Lifeline/Link-Up Order.

[5] See ¶ 32.

- Consumers must self-certify, under penalty of perjury, the number of individuals in their households.[6]
- ETCs must certify that they are complying with Lifeline income certification procedures and that, to the best of their knowledge, documentation of income was presented.[7]
- States must establish a process to verify customers' continued eligibility for the ULTS program. Verification procedures may include random beneficiary audits, periodic submission of documents, or annual self-certification.[8]

IV. Automatic Enrollment

In its Order, the FCC encourages all states to adopt automatic enrollment as a means of certifying that consumers are eligible for Lifeline/Link-Up. The FCC made this suggestion on the basis of a recommendation by the Federal-State Joint Board on Universal Service (Joint Board). On December 21, 2000, the FCC requested that the Joint Board review the Lifeline/Link-Up program for all low-income customers. The Joint Board issued its *Recommended Decision* on April 2, 2003. In its *Recommended Decision*, the Joint Board recommended several changes to improve the effectiveness of the low-income support mechanism; automatic enrollment was one of those changes.

In its *Recommended Decision*, the Joint Board observes that participation in Lifeline/Link-Up increased in states that employed automatic enrollment, aggressive outreach, and intrastate multi-agency cooperation. The FCC agrees with the Joint Board that automatic enrollment may facilitate participation in Lifeline/Link-Up. However, the FCC reiterates the Joint Board's conclusion that

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[6] Ibid.

[7] 47 C.F.R. §54.410(b)(i).

[8] See ¶ 33.

implementation of automatic enrollment could impose significant administrative, technological, and financial burdens on states and ETCs. The FCC recognizes the benefits of automatic enrollment, but also recognizes that requiring automatic enrollment may deter ETCs from participating in the Lifeline/Link-Up program because of the technical requirements associated with interfacing with government agencies or third party administrators.

The FCC declines to require states to adopt automatic enrollment at this time, but encourages those states that currently do not employ automatic enrollment to consider states that operate automatic enrollment as a model for future implementation.

We ask parties to provide information on how automatic enrollment works in other states and to comment on whether it is feasible to implement automatic enrollment in California.

V. California's ULTS Program

The Commission established the ULTS program in 1984 in compliance with the Moore Universal Telephone Service Act. ULTS is an income-based program providing discounted basic telephone services to qualifying low-income households. Eligibility is based on a consumer's self-certification declaring, under penalty of perjury, that his/her household income meets the ULTS income guidelines. This self-certification is required on initiation of service, and annually thereafter. The ULTS eligibility criteria currently employed in California is consistent with sections 54.409 and 54.415 of the FCC's rules,[9] thereby, eligible for the Lifeline/Link-Up funding.

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[9] 47 C.F.R. § 54.409(a) provides "[t]o qualify to receive Lifeline service in a state that mandates state Lifeline support, a consumer must meet the eligibility criteria established by the state

Footnote continued on next page

ULTS discounted services are provided by incumbent local exchange carriers (ILECs)[10] and competitive local exchange carriers (CLECs)[11] which, in turn, receive reimbursement from the ULTS fund net of payments from the federal Lifeline/Link-Up programs. ULTS currently serves over 3.3 million low-income households with an annual cost in excess of $570 million.

VI. Preliminary Scoping Memo

The Lifeline/Link-Up Order requires states to document the income eligibility of qualifying households. If the California Public Utilities Commission (Commission) does not adopt the new federal certification guidelines, California could lose over $330 million of annual Federal Lifeline/Link-Up support. This OIR focuses primarily on the narrow issue of revising our income eligibility criteria to conform to the Lifeline/Link-Up Order in order to preserve the federal funding. To this end, we propose the following rule changes:[12]

- Certification occurs when an individual is applying to enroll in ULTS.[13] At certification, customers must self-certify, under penalty of perjury, as to the number of individuals in their household, that they meet the ULTS income guidelines, and that the presented documentation

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commission for such support. The state commission shall establish narrowly targeted qualification criteria that are based solely on income or factors directly related to income." 47 C.F.R. § 54.415(a) provides for similar criteria for Link-Up eligibility.

[10] All 21 ILECs are designated as ETCs and have been receiving federal Lifeline/Link-Up support for their ULTS customers. They serve over 90% of the total ULTS customers.

[11] The 24 CLECs that had received or are receiving reimbursements from the ULTS program are not ETCs. Since these CLECs are not eligible for the federal Lifeline/Link-Up support, they have been reimbursed wholly by ULTS.

[12] The Telecommunications Division will be directed to revise General Order GO 153, Procedures for Administration of the Moore Universal Telephone Service Act, to reflect rule changes adopted in this rulemaking. TD will also be directed to conduct a working group to revise the comprehensive list of recoverable costs and required supporting worksheets due to these rule changes.

[13] See ¶ 23.

accurately represents their annual household income. The income documentation must be reviewed by the certifying entity.

- Verification occurs annually after a customer has already been certified and enrolled in ULTS. The process verifies a customer's continued eligibility for ULTS.[14] At verification, customers must self-certify, under penalty of perjury, as to the number of individuals in their household and that they meet the ULTS income guidelines.

To implement the above rule changes, we also propose that:

- The Commission's Telecommunications Division (TD) will designate a certifying agent to perform the functions of certification and verification statewide.

The FCC's Order specifies that a certifying agent is to be responsible for certifying customers' eligibility to participate in ULTS based on customers' self-certifications supported by income documents. As such, the certifying agent plays a crucial role in shaping ULTS enrollment. We believe that a single entity should perform the certification/verification functions statewide. This way we can ensure that proper documents are received, review of income documentation is consistent, customers' sensitive and personal data are kept confidential, and our rules and procedures are properly followed. Having a single certifying entity, under the direction of TD, would alleviate our concerns and minimize fraud and abuse of the program. Furthermore, this independent third-party arrangement would allow ULTS customers to move or to change service provider within California without re-certification. However, any party that believes that the carriers that provide ULTS service should serve as certifying agents should explain why they believe that approach is preferable to using an outside certifying entity.

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[14] Ibid.

In addition, we would like to explore the possibility of implementing automatic enrollment. Parties should explore the models adopted in other states, as well as other models.

In this OIR, we seek comments on the following:

- Should the Commission adopt a certification process as outlined above in conformance with the FCC's income documentation requirement in order to continue to receive federal Lifeline/Link-up funding?
- If yes, what should constitute acceptable income documents?[15]
- If California does not conform to the FCC's income documentation requirement and is no longer eligible for continued federal funding, how should the Commission cover the shortfall caused by the loss of federal Lifeline/Link-Up support? Also, what safeguards should the Commission implement to minimize fraud and abuse of the program?[16]
- Should the Commission adopt the verification process outlined above in conformance with the FCC's verification requirement in order to continue to receive federal Lifeline/Link-up funding?
- Alternatively, should the Commission adopt other verification measures such as random beneficiary audits and/or periodic submission of documents?
- Should the Commission designate a single entity as certifying agent?
- Alternatively, instead of designating a single entity as certifying agent should each carrier serve as certifying agent for its customers?

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[15] Since participation in the ULTS program is based on income, recommended income documents should provide some proof of income. Parties should also consider recommended income documents for individuals living on tribal lands.

[16] In paragraph 28 of the Lifeline/Link-Up Order, the FCC points out that "the Florida PSC [Public Service Commission] notes that California's Lifeline program, which utilizes self-certification of income-based eligibility, appears to have more households receiving the Lifeline discount than the Current Population Survey of Households data would indicate are eligible for the discount."

- Should the Commission adopt some sort of automatic enrollment for the Lifeline/Link-Up program? If so, please give specific information on how the program has been implemented in other states and how it would work in California.

We recognize that our proposed rule changes will likely result in excluding low-income households with no income documentation. Therefore, we also request parties to comment on how ULTS should serve low-income households that are unable to provide appropriate income verification.[17]

Parties that propose that ULTS should continue to provide assistance to low-income households that attest they would otherwise qualify but are unable to provide income documentation should provide the Commission with detailed proposals including an estimate of the cost of their proposed recommendation. Parties should also recommend safeguards that the Commission should implement to minimize fraud and abuse of the program. In their comments, parties should also identify the number of households that could be adversely affected by a policy that limits ULTS support to only those households that are able to provide the required income documentation.

VII. Category of Proceeding

Rule 6(c)(2) of our Rules of Practice and Procedure[18] provides that an OIR "shall preliminarily determine the category" of the proceeding. This rulemaking is preliminarily determined to be quasi-legislative, as that term is defined in Rule 5(d). Our intention is to solicit comments on our proposed rule changes.

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[17] This may include children and/or parents domestically functioning as separate households and have no income, or undocumented immigrants.

[18] Unless otherwise indicated, all subsequent citations to Rules refer to the Commission's Rules of Practice and Procedure.

We do not anticipate holding evidentiary hearings since we do not foresee the need to receive testimony regarding adjudicative facts.[19]

VIII. Respondents

For purposes of this proceeding, all California ILECs and CLECs that receive reimbursement from the ULTS fund will be named respondents. These entities will be maintained on the service list throughout the course of this proceeding.

IX. Official Service List

The assigned Administrative Law Judge (ALJ) will establish the initial service list for this proceeding by ruling on or before January 3, 2005. We plan to disseminate this OIR to provide broad public notice. The Executive Director shall serve copies of the OIR on: respondents to this proceeding as described above; committee members of the ULTS Trust Administrative Committee, Telecommunications Access for the Deaf and Disabled Administrative Committee and the Low Income Oversight Board; parties on the service lists of R.98-09-005 (the ULTS/GO 153 OIR); I.04-02-007 (The VOIP proceeding); National Indian Justice Center; and Richard Heath & Associates, contractor for the ULTS Marketing/Outreach program and the ULTS Call Center. The Executive Director shall also serve electronically, a Notice of Availability[20] of the OIR on jurisdictional telecommunications utilities, for which e-mail addresses are on file with the Commission, informing them that this OIR is available at:

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[19] Rule 8(f)(1) defines "adjudicative facts" as facts which answer questions such as who did what, where, when, how, why or with what motive or intent.

[20] See Rule 2.3 regarding service, generally, includes use of a Notice of Availability in lieu of service of documents. This provision applies to documents in excess of 75 pages but may also be used with the permission of the ALJ.

http://www.cpuc.ca.gov/static/industry/telco/index.htm. For incumbent and competitive local exchange carriers whose e-mail addresses are not on file with the Commission, the Executive Director shall send those carriers, by regular mail, copies of the Notice of Availability of the OIR.

We invite broad participation and those who seek party status or wish to monitor this proceeding may do so by taking the steps described below:

- We shall assign party and non-party status in accordance with our usual conventions which recognize three categories of interested persons: Appearance (full party status, with all attendant rights and obligations, including service on all other parties and the state service category); State Service (non-party state employees who serve as recipients of service for their state agencies or for state officials); and Information Only (non-parties who do not receive full service but do receive all Commission-generated documents, such as rulings, proposed decisions and final decisions).

- In order to be placed on the initial official service list, interested persons should contact the Commission's Process Office by FAX (415/703-2823) or e-mail (ALJ_Process@cpuc.ca.gov) (Note, there is an underscore mark between "ALJ" and "Process"), no later than the close of business on December 15, 2004, and provide the following information:
    1. Name and organization represented, if any
    2. Address
    3. Telephone number
    4. E-mail address, if available
    5. Specify whether you should be assigned to the appearance, state service, or information only category.

The initial official service list will be posted on the Commission's website at www.cpuc.ca.gov and will be updated periodically. Parties should check the website before making subsequent filings.

X. Schedule

In accordance with Rule 6(c)(2), we adopt the following preliminary schedule for the filing of opening and reply comments in this rulemaking. We see no need for evidentiary hearings. Any interested party who believes that hearings are required shall request hearings in their opening comments and indicate the nature of any evidence they would present were hearings to be held. Failure to make such a request in opening comments will be deemed a waiver of any request for hearings.

Objections to the preliminary categorization of this rulemaking or to the preliminary schedule shall be filed no later than ten days after the issuance of this rulemaking and a courtesy copy shall be provided to the assigned ALJ by e-mail.

Date	# of Days from Issuance of OIR	# of Days (from Commission Decision)	Events
12/2/2004	0		Commission issues OIR
1/14/2005	43		Parties file comments
1/28/2005	57		Parties file reply comments
3/22/2005	110		Draft decision mailed for comment
4/21/2005	140		Commission adopts decision
5/5/2005	154	14	TD conducts working group revising/updating GO 153 consistent with Commission orders.
5/19/2005	168	28	TD issues Request for Proposal or Invitation for Bid for the role of certifying agent.
8/23/2005	264	124	TD issues draft resolution adopting revised GO 153 and approving certifying agent contract.
9/22/2005	294	154	Commission adopts TD resolution.
10/28/2005	330	190	Contract approved by the Department of General Services
11/16/2005	349	209	Certifying Agent contract begins
5/1/2006	515	375	Kickoff of the new certification/verification process by all parties including the certifying agent, carriers and consumers.

The above schedule also includes timeline and administrative tasks that must be completed before the implementation of the new certification/verification process. Pursuant to the Lifeline/Link-Up Order,[21] states that operate their own income-based program are required to implement measures to certify income of consumers and measures to verify consumers' continued eligibility within one year from its publication in the Federal Register. The Lifeline/Link-Up Order was published in the Federal Register on June 22, 2004. Thus, the deadline for the commencement of our new certification/verification process is June 22, 2005. However, if we designate a certifying agent in lieu of having carriers certify and verify customers' eligibility for ULTS, we will not be able to meet the FCC's deadline because the state's contracting process requires until May 1, 2006 to get the certifying process in place. Therefore, if we do determine that it is preferable to use an outside certifying agent, we will direct the Legal Division to petition the FCC to request an extension of time to implement the Lifeline/Link-Up Order.

XI. Public Advisor

Any person or entity interested in participating in this rulemaking as a party and who is unfamiliar with the Commission's procedures should contact the Commission Public Advisor's Office in Los Angeles at (213) 576-7056, or in San Francisco at (415) 703-2074 or (415) 703-2032 (TDD), or at (800) 299-6846 (TTY).

XII. Ex parte Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications.

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[21] 47 C.F.R. §54.410(c)(i).

Pursuant to Rules 7(a)(4) and 7(d), ex parte communications will be allowed in this proceeding without any restrictions or reporting requirements until the assigned Commissioner makes an appealable determination of category as provided for in Rules 6(c)(2) and 6.4. Following the Assigned Commissioner's determination, the applicable ex parte communication and reporting requirements shall depend on such determination unless and until the determination is modified by the Commission pursuant to Rule 6.4 or 6.5.

O R D E R

Therefore, **IT IS ORDERED** that:

1. A rulemaking is instituted on the Commission's own motion for the purpose of implementing the Federal Communications Commission's Report and Order, FCC No. 04-87 (Lifeline/Link-Up Order), as it affects the Universal Lifeline Telephone Service (ULTS) program.

2. All incumbent local exchange carriers and competitive local exchange carriers that receive reimbursement from the ULTS fund shall be respondents in this proceeding.

3. The Executive Director shall cause this Order Instituting Rulemaking (OIR) to be served on: the respondents to this proceeding; committee members of the ULTS Trust Administrative Committee, Telecommunications Access for the Deaf and Disabled Administrative Committee and the Low Income Oversight Board; parties on the service lists of R.98-09-005 (the ULTS/GO 153 OIR); I.04-02-007 (the VOIP proceeding); National Indian Justice Centers; and Richard Heath & Associates, contractor for the ULTS Marketing/Outreach program and the ULTS Call Center.

4. The Executive Director shall serve electronically a Notice of Availability of the OIR on jurisdictional telecommunications utilities, for which e-mail addresses are on file with the Commission, informing them that this OIR is available at: http://www.cpuc.ca.gov/static/industry/telco/index.htm. For incumbent and competitive local exchange carriers whose e-mail addresses are not on file with the Commission, the Executive Director shall send those carriers, by regular mail, copies of the Notice of Availability of the OIR.

5. The assigned Administrative Law Judge (ALJ) shall issue a ruling to establish the initial official service list for this proceeding on or before January 3, 2005.

6. The category of this rulemaking is preliminarily determined to be "quasi-legislative" as that term is defined in Rule 5(d) of the Commission's Rules of Practice and Procedure.

7. The preliminary schedule for this rulemaking is set forth herein. Consistent with the preliminary schedule, parties shall file comments by January 14, 2005 and reply comments by January 28, 2005. All comments shall be filed with the Commission's Docket Office and served in accordance with the Commission's Rules of Practice and Procedure and this Order.

This order is effective today.

Dated _____, at San Francisco, California.