

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : August 21, 2015

**To : The Commission
(Meeting of August 27, 2015)**

**From : Sindy Yun, PU Counsel IV, Legal Division
Charles Christiansen, Supervisor, Communications Division
Angel AhSam, PURA IV, Communications Division
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Subject: Filing of Comments and Reply Comments in Response to the Federal Communications Commission's Second Further Notice of Proposed Rulemaking to Modernize the Federal Lifeline Program

RECOMMENDATION: The California Public Utilities Commission (CPUC) should file comments (and reply comments, if necessary) in response to the Federal Communications Commission's (FCC) Second Further Notice of Proposed Rulemaking¹ in WC Docket No. 11-42 *et al.* (2nd FNPRM). In the 2nd FNPRM, the FCC seeks comments on many issues regarding the modernization of the federal Lifeline program.² Comments and Reply Comments are due on August 31, 2015 and September 30, 2015, respectively.

¹ See *Lifeline and Link Up Reform and Modernization, et al., WC Docket No. 11-42, et al., Second Further Notice of Proposed Rulemaking, Order on Reconsideration Second Report and Order, and Memorandum Opinion and Order*, FCC 15-71 (rel. June 22, 2015) (2nd FNPRM).

² In 2012, the FCC adopted a comprehensive Lifeline reform order to modernize the federal Lifeline program -*Lifeline and Link Up Reform and Modernization, et al., WC Docket No. 11-42, et al.* (rel. Feb. 6, 2012).

The Communications Division (CD) recommends that the CPUC file comments on the following key issues:

1. Establishing minimum service standards for *both* voice and broadband Internet access services (BIAS);
2. Strategies to strengthen the FCC's waste, fraud, and abuse prevention efforts such as using a national third-party verifier to determine consumer eligibility;
3. Increasing competition in the federal Lifeline program's marketplace by streamlining the eligible telecommunications carrier (ETC) approval process and encouraging states to increase Lifeline monetary contributions for their own state programs;
4. Allowing federal ETCs to opt-out/get out of their obligation to provide federal Lifeline service;
5. Modifying the federal Lifeline program's de-enrollment rules and establishing additional license control transfer rules; and
6. Revising the federal Lifeline program's enrollment processes and procedures.

In the 2nd FNPRM, the FCC proposes several fundamental changes³ to the federal Lifeline program and encourages states to increase their monetary contributions for their own state programs to make the federal Lifeline supported services more affordable for low-income consumers. The FCC also proposes to preempt or limit states' authority to administer the federal Lifeline program in many aspects, including enrollment process, eligibility criteria, federal Lifeline provider designation process, and ability to impose additional obligations on BIAS.⁴

Staff recommendations focus on the following three main points:

1. Staff recommends that the CPUC discuss California's experience in response to the FCC's request for input from the states and their unique perspective on its proposals. With more than 31 years of experience

³ The FCC's proposals include changes to Lifeline program administration, enrollment process, eligibility criteria and federal Lifeline provider designation process.

⁴ See *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24 (rel. Mar. 12, 2015) (*Open Internet Order*).

and expertise in administering the California LifeLine Program and almost a decade's worth of utilizing a California LifeLine Administrator, the CPUC is uniquely positioned to provide meaningful information to the FCC;

2. Staff recommends the CPUC request that the FCC preserve California's authority and flexibility to administer the federal Lifeline program in conjunction with the California LifeLine Program. The CPUC should inform the FCC that, absent this authority and flexibility, California cannot bear the cost to implement the FCC's proposed changes; and
3. Staff recommends that the CPUC discuss how the FCC's proposed fundamental changes to the federal Lifeline program may potentially impact the California LifeLine Program.

BACKGROUND: In 1985, the FCC established the federal Lifeline program to provide discounted monthly telephone service to eligible low-income households. In 2012, the FCC updated the program to allow consumers to receive federal Lifeline discounts on all residential voice telephony service plans, including bundled service packages comprising both voice and BIAS.

To receive federal universal service fund (USF) support, a carrier must be designated as an ETC. The Telecommunications Act of 1996 (the 1996 Act) provides states with the primary authority to grant ETC designations. ETCs are required to offer federal Lifeline service. In 1997, the CPUC established ETC procedures and guidelines,⁵ which were subsequently revised in 2006.⁶ As of August 15, 2015, the CPUC has designated 48 common carriers as ETCs in California, including a number of wireless providers.

In 1984, the CPUC created its own state program,⁷ the California LifeLine Program, pursuant to the Moore Universal Service Telephone Act,⁸ to provide discounted telecommunications services to eligible low-income consumers. Under federal law, states have the flexibility to develop their own programs (including enrollment and eligibility processes) that best accommodates their low-income consumers based on each state's available resources, eligibility criteria, local conditions, laws, and budgetary limits, as long the state's processes and rules are not inconsistent with the federal Lifeline

⁵ Resolution T-16086.

⁶ Resolution T-17002.

⁷ D.84-04-053.

⁸ PU Code § 871 *et. seq.*

rules.⁹ This flexibility enables states to incorporate their unique characteristics and allows California's qualified low-income consumers to receive discounts from both the California and federal Lifeline programs.

The goal of the California LifeLine Program is to make high quality, residential telephone service affordable to all qualified California households through discounts on eligible telecommunications services. The California LifeLine Program is funded by a surcharge, currently set at 3.800%, which is assessed on telecommunications carriers' and interconnected Voice over Internet Protocol (VoIP) service providers' revenues collected from end-users for intrastate telecommunications services.

The CPUC oversees both federal and state programs in California. The California LifeLine Administrator, under the CPUC's oversight and supervision, handles the enrollment process and has the sole responsibility for determining eligibility for both programs. Consumers and providers that participate in the federal and/or state program must comply with California's eligibility requirements and enrollment processes.¹⁰ As of July 31, 2015, approximately 2.2 million households received the California LifeLine discounts from 52¹¹ different telecommunications carriers throughout the state.

DISCUSSION AND RECOMMENDATIONS:

In the 2nd FNPRM, the FCC requests comment and quantifiable data from the states based on their unique perspective on the issues.¹² The FCC would like to continue to work on federal-state partnerships as it streamlines and enhances the federal Lifeline program. The FCC aims to learn from the states' experience, expertise, and requirements to

⁹ 47 U.S.C. §254(f).

¹⁰ To become a California LifeLine provider, a carrier must generally demonstrate the following per D.14-01-036:

- a) It has a valid, active operating authority issued by the CPUC;
- b) It is current in its remittance of CPUC User Fees and public purpose program surcharges;
- c) Its proposed offerings meet the CPUC's California LifeLine service elements;
- d) Its disclosures, schedule of rates and charges, and terms and conditions are thorough and consistent with state and federal rules;
- e) Its marketing and selling methods are consistent with D.14-01-036 and 47 C.F.R. §54.405(b); and
- f) Its provisioning process is consistent and in compliance with the California LifeLine Administrator's enrollment process, validation checks, transmission requirements, and efforts to prevent waste, fraud, and abuse.

¹¹ Three approved California LifeLine wireless telephone service providers have not launched yet as of August 15, 2015. Otherwise, there would be a total of 55 California LifeLine telephone service providers.

¹² See 2nd FNPRM, ¶ 64.

determine whether a national Lifeline eligibility verifier and other national rules should be established.¹³ We note that the FCC cited repeatedly to the California LifeLine Program, identifying specific elements of our program and asking commenters if those elements should be implemented on a national scale.

A. Establishing Minimum Service Standards for *Both* Voice and Broadband Internet Access Services and Redefining Eligibility Criteria

In the 2nd FNPRM, the FCC concludes that broadband access to the Internet that is not via a dial-up connection “is necessary for even basic communications in the 21st Century” and “basic participation in our society and economy.”¹⁴ Given the lack of meaningful improvements in the available federal Lifeline offerings,¹⁵ the FCC proposes to establish minimum service standards for both voice and BIAS to achieve the following objectives:

- Receive value for the federal government’s universal service fund dollars;
- Ensure the availability of robust services for low-income households;
- Ensure low-income households receive affordable but reasonably comparable services to those services provided in urban areas;
- Ensure low-income students and consumers with disabilities are provided with affordable, reliable, and quality BIAS; and
- Remove any incentive for providers to offer minimal, non-innovative services that benefit themselves more than consumers.¹⁶

The FCC proposes to redefine the federal Lifeline program’s eligibility criteria to “target the Lifeline subsidy to those low-income consumers most in need of support” that would apply nationwide.¹⁷ The FCC also seeks comment on revising the list of qualifying public assistance programs and on eliminating the income-based qualification method.

¹³ *Id.*, ¶¶ 40, 63, 64, 67-69, 103, 128, 176, and 196-197.

¹⁴ *Id.*, ¶¶ 4-5.

¹⁵ *Id.*, ¶16.

¹⁶ *Id.*, ¶ 34.

¹⁷ *Id.*, ¶ 112.

RECOMMENDATION:

1. Consistent with the CPUC's previously submitted comments to the FCC in support of the federal Lifeline broadband pilot, the CPUC should support the inclusion of BIAS in the federal Lifeline program.
2. The CPUC should discuss California's experience, program requirements, and quantifiable data, as applicable. The California LifeLine Program has minimum service elements, eligibility criteria, provides additional discounts to Deaf and Disabled Telecommunications Program participants and/or for teletypewriter users, and includes various service offerings from the California LifeLine providers.
3. The CPUC should recommend that the FCC adopt more permissive rather than restrictive eligibility criteria to allow more households to qualify for the program. The California State Legislature has directed the CPUC to offer high quality basic telephone service at affordable rates to the greatest number of low-income households in California.
4. Consistent with previously submitted comments to the FCC, the CPUC should continue to support states' authority to establish their own eligibility criteria and additional standards as long as they are consistent with the federal requirements.
5. The FCC should maintain and adhere to the current definition of Lifeline in Part 54 C.F.R. § 54.401(1) that Lifeline is: a non-transferable retail service offering for which qualifying low-income consumers pay reduced charges as a result of the application of the Lifeline support described in § 54.403. A retail service is one that is offered to any prospective customer, regardless of income level. Reliance on this definition would address minimum service standards for voice service and BIAS as well prices for these services. This approach relies on the competitive market to develop services to meet Lifeline customer needs.
6. As it sets Lifeline broadband service standards, the FCC should keep in mind broadband Internet availability. In some instances, particularly in rural and tribal communities, the only offering available may be at speeds below that experienced in urban areas. While this Internet service at slows speeds may be inadequate, CD staff's position is that if there is only one service available, the FCC should not deprive a qualified low-income consumer of federal support simply because the service does not meet service levels. CD staff is concerned that making standardized service levels that are not available on a retail level will not attract additional providers.

B. Using a Third-Party Verifier on a National Basis to Determine Consumer Eligibility and Leveraging Efforts via Coordinated Enrollment/Outreach

The FCC proposes “to remove the responsibility of conducting the eligibility determination from the Lifeline providers,” and instead use a trusted third-party.¹⁸ This proposal to transfer responsibility of eligibility determinations and other functions aims to achieve the following:

- Remove waste, fraud, and abuse;
- Create more efficiencies in program administration;
- Bring dignity to the program; and
- Reduce administrative burdens on providers;

The FCC seeks comment on numerous questions related to the scope, costs, and timeline for the processes, services, features, functions, etc. to be provided or performed by this trusted third-party. The FCC also seeks comment on how the third-party administrator should be funded.

With the 2nd FNPRM, the FCC continues its quest since 2004 to take advantage of the existing eligibility databases of qualifying public assistance programs to coordinate enrollment between those programs and the federal Lifeline program. The FCC had a previously stated goal of having an automated means of determining federal Lifeline eligibility using the eligibility databases of Medicaid, Supplemental Nutrition Assistance Program, and Supplemental Security Income. The FCC seeks comment on coordinating enrollment and outreach with other programs and government agencies and on its “inquiry regarding whether a third-party should perform consumer eligibility determinations rather than Lifeline providers.”¹⁹

The FCC also seeks comment on its proposal to use an electronic-based system (e.g., online portal, unique identifier, personal information number (PIN), or physical media like a debit card) to provide federal Lifeline discounts directly to the participants.

¹⁸ *Id.*, ¶ 63.

¹⁹ *Id.*, ¶ 92.

RECOMMENDATION:

1. The CPUC should discuss California's experience and requirements, and provide quantifiable data, as applicable. The California LifeLine Program uses a third-party administrator under the CPUC's supervision. The administrator handles the enrollment process and has the sole responsibility for determining eligibility for both the state and federal programs. Additionally, the CPUC should share its experience in coordinating enrollment of the energy and telecommunications discount programs with each other and with other public assistance programs.
2. The CPUC should support an option for states to opt-in to a national third-party enrollment process. States should be allowed, but not required, to participate in the national process. Additionally, for states that prefer to not use the national administrator, the CPUC should support the position that states need not justify its preference or prove that their administration and enrollment process are comparable or as robust as the specifications adopted by the FCC. This opt-in route should apply to states and territories that do not solely rely on ETCs to determine the eligibility of low-income households. The cost of implementing a national third-party administrator could be substantial and may not be a cost-effective solution for California.
3. The CPUC should point out that the FCC does not have sufficient data to fundamentally alter the distribution method of federal reimbursements from ETCs to consumers. The CPUC should support the FCC's proposal to gather and share information regarding the potential costs, specifications, requirements, and processes to change the distribution method.
4. The CPUC should support the FCC's efforts to set minimum service standards for Lifeline voice service to improve the robustness of the federal Lifeline offerings. Under the existing framework whereby federal Lifeline providers need only compete among themselves, federal Lifeline participants will always have a limited choice of service offerings since federal Lifeline providers do not have any incentive to offer services that are comparable to services offered in the general retail market.
5. The CPUC should support the FCC's continued efforts to discuss with other government agencies that are in charge of administering public assistance programs that qualify for Lifeline discount and explore the possibility of leveraging each other's resources. The FCC's proposal for coordinated enrollment with other public assistance programs requires further analysis and data. The CPUC should recommend that the FCC share with the states information that it has obtained from other government agencies to facilitate

sound decision-making. The CPUC should support coordinated outreach with other public assistance programs.

C. Allowing ETC Providers to Get Out of Their Mandatory Obligation to Provide Federal Lifeline Services, Revising the Process to Become a Federal Lifeline Provider, and Encouraging States to Increase Their Monetary Contributions

The FCC currently requires ETCs to offer federal Lifeline service throughout their ETC-designated service areas. The FCC seeks “additional comment on whether the Commission should relieve ETCs of the obligation to provide Lifeline supported service, pursuant to their ETC designation, in specific areas where there is a sufficient number of Lifeline providers.”²⁰ The FCC seeks comment regarding an acceptable number of providers, the method for defining an appropriate geographic area, and any appropriate conditions to protect the public interest.

The FCC also proposes several fundamental changes (e.g., administration, enrollment process, eligibility criteria, and federal Lifeline provider designation process) to the federal Lifeline program. In addition, the FCC encourages states to increase their monetary contributions for their own state programs to make the federal Lifeline supported services more affordable, but also seeks to preempt or limit states’ authority over ETC designation process, program administration, enrollment process and eligibility criteria in providing discounted voice telephony services and BIAS to low-income households in their respective states.

The FCC proposes to alter the process by which common carriers may become federal Lifeline providers to increase the number of federal Lifeline providers and the robustness of the federal Lifeline offerings. The FCC seeks comment on what a revised designation process may entail.

RECOMMENDATION:

1. Consistent with previously submitted comments to the FCC,²¹ the CPUC should continue to oppose allowing federal Lifeline providers that are also incumbent local exchange carriers, to opt out of their obligation to provide federal Lifeline service to low-income households. Incumbent local exchange carriers are carriers

²⁰ *Id.*, ¶ 125.

²¹ See Comments of the California Public Utilities Commission and the People of the State of California in Response to Further Notice of Proposed Rulemaking in Lifeline/Link-Up Reform Proceeding; FCC 12-11 (rel. Feb. 6, 2012), at pp. 8-10, filed April 2, 2012.

of last resort (COLRs) in California and COLRs are required to offer both retail basic service and California LifeLine service. Additionally, the CPUC should express concerns that if ETCs are relieved of the obligation to offer federal Lifeline service, telecommunications carriers in California that are required to provide basic service and California LifeLine service would not be able to extend/offer federal Lifeline discounts to their customers. Absent the availability of the federal Lifeline discounts for carriers providing basic service and California LifeLine service, consumers would potentially end up paying more out of pocket for basic service. The CPUC's process for non-ILEC requests to relinquish their ETC designation and exit the market in California is consistent with 47 U.S.C. § 214(e)(4), whereby the exiting ETC must demonstrate that there is at least one other ETC in the service area and receive approval to exit. This requirement should apply to all non-ILEC ETCs, regardless of technology used to provide the supported service.

2. The CPUC should discuss California's experience and requirements. The California LifeLine Program has ensured that California's eligible low-income households have choices of services from various California LifeLine providers while ensuring that the services meet minimum communications needs.
3. The CPUC should express concerns regarding potentially increasing states' monetary contributions for their own state programs to fund the FCC's proposals in light of the recent FCC *Open Internet Order*²² whereby the FCC has classified BIAS as interstate for regulatory purposes and has barred states from imposing any new universal service fund contributions on broadband for the time being. In addition, California's draw from the federal LifeLine fund has been decreasing from \$305 million (year 2005) to \$137 million (year 2014). The California LifeLine Program's budget for fiscal year 15-16 is about \$346 million.
4. With regard to BIAS Lifeline participation and the deployment of facilities, the CPUC should suggest that efforts be made to leverage the federal Positive Train Control (PTC) unfunded mandate into a means to facilitate the deployment of broadband facilities along rail lines that often traverse sparsely populated areas. Not only would this approach augment rail safety, it would address communications, public safety, and economic development in unserved and underserved areas of the country. The railroads need not be actual BIAS providers but could qualify for federal high-cost support to deploy broadband facilities in rail beds and rights of way and either lease out or go in partnership with qualified broadband providers.

²² FCC 15-24 GN Dkt. No. 14-28 (rel. March 12, 2015), ¶¶ 431-432.

5. The CPUC should oppose the FCC's proposal to streamline the ETC designation process solely for attracting more ETC applicants. Eliminating or relaxing prudent standards for ETC qualifications may increase the likelihood of waste, fraud, and abuse in the program, as well as potential exploitation of low-income consumers. The current process addresses two types of carriers: facilities-based and resellers. Since issuance of the CPUC's 2012 Lifeline Order, California has received only a few facilities-based ETC applications. Rather, the majority of applicants have been wireless resellers who do not control their own facilities. Some of these ETC applicants lacked technical and financial experience to operate as a telephone company absent FCC Lifeline support, and were not offering retail service on a common carrier basis at the time of requesting ETC designation. California questions the underlying motivations of a common carrier not actively advertising, marketing, and providing retail service as soon as possible, regardless of ETC designation status. In addition to comportsing its ETC review with federal rules, California applies a broader review process that includes performing its own independent due diligence review of wireless resellers in addition to ETC's federal compliance plan.

6. The CPUC should explain its process for evaluating ETC designation requests, pointing out that the CPUC receives no federal funding for ETC designation work and performs the ETC designation work using the CPUC's general budget. Absent authority to impose state universal service charges on BIAS services, the CPUC asks that the FCC provide funding to the states to implement state ETC designation obligations. The CPUC should also describe California's experience and observed trends in federal Lifeline plan offerings. The ETC review process reflects FCC requirements as well as California LifeLine Program requirements contained in General Order 153. The analysis includes price comparisons, review of the approved federal compliance plans including the applicant's financial capacity to offer lifeline services and technical abilities to offer telecommunications service; and a due diligence review of the corporate entity, owners, principals, executives, and affiliates each applicant to assess whether there are behaviors that indicate that the entity should not be granted ETC status.

D. Modifying De-Enrollment Rules and Establishing Additional Rules for Transfer of Control Situations

The FCC proposes to modify its de-enrollment rules in the following three ways:

- Adopt additional requirements to allow federal Lifeline participants to de-enroll themselves from the federal Lifeline program in a quick and efficient manner ;

- Treat text message(s) as “usage” for prepaid services – potentially lowers the risk of de-enrollment; and
- Reduce the non-usage interval from 60 to 30 days for prepaid services – potentially raises the risk of de-enrollment.

The federal Lifeline program has neither the requirements nor the mechanisms that allow participants to terminate their federal Lifeline discounted services by themselves. The FCC seeks comment regarding how it can allow subscribers to de-enroll from the program themselves.

The FCC also seeks comment on its proposals to expand the types of activities that constitute “usage” and to reduce the non-usage period. Currently, the FCC requires ETCs to de-enroll a participant if he/she does not use/activate their LifeLine service for a consecutive 60-day period. A participant establishes usage by completing an outbound call, answering an incoming call from a party other than the ETC or ETC’s agent/rep, purchasing minutes to add to the existing service plan, or directly responding to an ETC’s attempt to seek confirmation of the consumer’s desire to retain the federal Lifeline discounts.²³ Failure to demonstrate usage in the specified time interval results in de-enrollment.

Additionally, the FCC posed myriad proposals and questions regarding additional rules for transfer of control situations. The FCC aims to minimize disruption in service to participants while achieving these additional benefits: a) ensuring all relevant authorities and consumers are aware of the transaction; b) ensuring participants have the opportunity to choose alternative providers; c) ensuring federal funding is not wasted and abused; and d) ensuring providers comply with the rules.

RECOMMENDATION:

1. The CPUC should discuss California’s experience and requirements. The California LifeLine Program has a consumer-driven de-enrollment process, authentication requirements, and processing timeframes for various types of transactions. The CPUC also has existing rules and processes for withdrawal of service and transfer of assets and/or control.
2. The CPUC should support inclusion of text message(s) as “usage” for federal Lifeline discounted prepaid services.
3. The CPUC should express concerns regarding the FCC’s proposal to augment states’ and/or territories’ obligations to administer the federal Lifeline program

²³ 47 C.F.R. § 54.407(c)(2).

based simply on limited anecdotal evidence or on insufficient data, and because it may be costly to implement.

4. The CPUC should support the FCC's proposal to implement reliable and timely procedures to address consumers' requests and concerns. The CPUC should recommend that the FCC's proposal to decrease the non-usage interval from 60 to 30 days as a basis for de-enrollment requires further analysis. The CPUC should request from the FCC any available information/data regarding volume and/or percentage of consumers who have been de-enrolled for non-usage and have reapplied within a year of de-enrollment. Having this type of information available, especially by the various points in time, would facilitate sound decision-making.
5. The CPUC should support all efforts by the FCC to make the federal Lifeline program more transparent and accessible to the states and territories for notification and for consumer awareness and protection purposes.
6. The CPUC should recommend that if BIAS providers are included in the Lifeline program, they should be subject to the same notification process if they intend to relinquish ETC designation.

E. **Revising Enrollment Forms and Approach for Evaluating Eligibility Documentation, Reimbursement Method, and Audit Procedures**

The FCC seeks comment on its proposal to adopt standardized enrollment forms for use by all consumers, ETC, states, and territories. This would be a significant departure from current FCC policy which provides states with the flexibility to develop their own enrollment process, including enrollment forms, that best accommodates their low-income consumers based on each state's available resources, eligibility criteria, local conditions, laws, and budgetary limits. The FCC also seeks comment regarding other requirements to strengthen the integrity of electronic signatures and to increase consistency and uniformity in enrollment practices.

With its proposal for standardization in the federal Lifeline program's enrollment process, the FCC aims to save time when evaluating enrollment forms, to better interface with the third-party administrators, to facilitate program administration and coordinated enrollment with other government agencies, and to ease compliance checks.

The FCC also proposes to revise its approach for evaluating eligibility documentation submitted during the federal Lifeline program enrollment process by requiring a photo and/or other information. The additional information would enable the administrator to check for the validity and currency of the eligibility documentation. The FCC also seeks

comment on other ways to strengthen the integrity of the enrollment process and eligibility review to ensure only qualified consumers received the federal Lifeline services.

Currently, the FCC reimburses ETCs based on the claim information that they submit to the Universal Service Administrative Company (USAC), the Administrator of the federal universal service's fund. The FCC proposes to alter the flow and basis of information when calculating reimbursements for the federal Lifeline program by using the federal Lifeline participant information that USAC already has in National Lifeline Accountability Database (NLAD). Additionally, the FCC seeks comment regarding other ways to use NLAD data and mechanisms by which to fund the functions and services provided by NLAD.

USAC's responsibilities include auditing new ETCs within the first year of receiving federal Lifeline reimbursements. The FCC found that it may "not be the best use of USF resources to audit every Lifeline provider within the first year of its operations."²⁴ The FCC seeks comment on its proposal to delay the first audit "until such time it is useful to audit the Lifeline provider" and numerous questions pertaining to audit scope, deadlines, timeframes, notifications, and thresholds.²⁵

RECOMMENDATION:

1. The CPUC should express concerns regarding the FCC's proposal to augment states' and territories' obligations to administer the federal Lifeline program based simply on limited anecdotal evidence and insufficient data and because it may be costly to implement. The FCC's proposal for standardized forms and processes would also limit or eliminate the states' flexibility to develop an enrollment process, including enrollment forms, that incorporates the unique characteristics of their State. It is also unclear whether the FCC would fund the costs to implement its standardization proposals. The CPUC should recommend that the FCC allow the states and territories to opt-in to using the standardized enrollment forms and processes.
2. The CPUC should discuss California's experience and requirements. The California LifeLine Program has a reimbursement process similar to the FCC's proposed reimbursement method, standardized enrollment forms, and guidelines for reviewing eligibility documentation and enrollment, and for implementing electronic signature requirements.

²⁴ 2nd FNPRM, para. 219.

²⁵ *Id.*

3. The CPUC should support the FCC's efforts to strengthen the integrity of the eligibility documentation review.
4. The CPUC should oppose a funding mechanism for NLAD's functions and services that is based on contributions from states and territories.
5. The CPUC should support an option for states and territories to opt-in to NLAD's existing and future functions and services. States should be allowed to opt-in, but not be required to participate. Additionally, for states that prefer to not participate in the NLAD, the CPUC should support the position that states need not justify its preference or prove that their administration and enrollment process are comparable or as robust as the specifications adopted by the FCC. This opt-in route would apply to states and territories that do not wholly rely on ETCs to determine the eligibility of low-income households.
6. The CPUC should support all efforts by the FCC to make the federal Lifeline program more transparent and accessible to states and territories for auditing and implementation purposes.

F. Legal Authority to Support Lifeline Broadband Service

The FCC proposes to add BIAS to the federal Lifeline program as a supported service for eligible low-income households. The federal universal service statute, 47 U.S.C. § 254, defines universal service as “an evolving level of telecommunications service.”²⁶ Since the FCC has classified BIAS as a “telecommunications service,” the FCC states that including BIAS as a supported service for Lifeline purposes is consistent with Congress's principles for universal service.²⁷ The FCC further states that defining BIAS as a supported Lifeline service is consistent with the criteria in 47 U.S.C. § 254(c)(1)(A)-(D).²⁸

The FCC also seeks comment on other sources of authority that could allow the FCC to adopt rules to provide support for BIAS in the Lifeline program. The FCC asks how it should view § 706 of the 1996 Act.²⁹

²⁶ 47 U.S.C. § 254(c)

²⁷ 2nd FNPRM, §§ 61-62.

²⁸ *Id.*

²⁹ *Id.*

RECOMMENDATION:

1. The CPUC should support including BIAS as a federal Lifeline supported service because doing so would be permitted under 47 U.S. C. § 254 and 47 U.S.C. § 1302.
2. 47 U.S. C. § 254 provides the FCC with authority to add BIAS to the federal Lifeline program. Classifying BIAS as a supported Lifeline service furthers the universal service principles that Congress espoused in 47 U.S.C. § 254(b), which shall serve as the basis for the “preservation and advancement of universal service.” Sections 254(b) and 254(c) make clear that Congress’s universal service goals are not only to include traditional voice service, but to include advanced and information services with the evolution of technology.³⁰ In the 2nd FNPRM, the FCC notes that “[b]roadband is essential to participate in society” and that “broadband is necessary for even basic communications in the 21st century, and offers improved access to and quality of education and health services, improved connectedness of government with society and the ability to create jobs and prosperity.”³¹
3. 47 U.S.C §1302 (§ 706 of the 1996 Act) also grants the FCC with affirmative legal authority to define BIAS as a supported Lifeline service.³² Section 706(a) directs the FCC to take actions that “shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to *all Americans*.”³³ Section 706(b) furthers states the FCC “shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market” if it finds that advanced telecommunications is not being deployed to all Americans in a reasonable and timely fashion.³⁴ In the 2nd FNPRM, the FCC notes that only “approximately 13 percent of

³⁰ 47 U.S.C. § 254(b) states that “[a]ccess to *advanced telecommunications and information services* should be provided in all regions of the Nation” and 47 U.S.C. § 254(c) states that “[c]onsumers in all regions of the Nation, including *low-income consumers* and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and *advanced telecommunications* and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.

³¹ 2nd FNPRM, ¶¶ 4-5.

³² In *Verizon v. FCC*, the D.C. Circuit Court of Appeals struck down the anti-discrimination and anti-blocking rules, but upheld the FCC’s finding and concluded that § 706 furnished the FCC with the requisite affirmative authority to adopt regulations for BIAS.

³³ 47 U.S.C. § 1302(a) (emphasis added).

³⁴ 47 U.S.C. § 1302(b).

Americans with annual household income of less than \$30,000 per year are smartphone-dependent” and “are less likely to own some other type of computing device or have home broadband access.”³⁵ The FCC states that “it has become clear that broadband access is critical if low-income consumers are to fully participate in our society.”³⁶

4. The CPUC should also support classifying BIAS as a Lifeline supported service because it is consistent with and furthers California’s universal service principles adopted by the Legislature. PU Code § 709 states that the policies of the State for telecommunications are to assure “the continued affordability and widespread availability of high-quality telecommunications services to *all Californians*” and “to encourage the development and deployment of new technologies,” and “to assist in bridging the digital divide by *encouraging expanded access to state-of-the art technologies* for rural, inner city, *low-income* and disabled Californians.”³⁷ Furthermore, in PU Code § 871.7, the Legislature specifically directed the CPUC, “to the extent that the incorporation is feasible, that it promote equity of *access to high-speed communications networks, the Internet, and other services* [into the California LifeLine Program] to the extent those service provide social benefits.”³⁸
5. Issues of Concern - In *In the Matter of Protecting and Promoting the Open Internet*, GN Docket No. 14-28³⁹ (*Open Internet Order*), the FCC reclassified BIAS as a common carrier “telecommunications service.” In the *Open Internet Order*, the FCC made clear and reaffirmed its longstanding conclusion that BIAS is jurisdictionally interstate for regulatory purposes. The FCC stated that although BIAS traffic may include an intrastate component, BIAS is interstate jurisdictionally for regulatory purposes.⁴⁰ But, the FCC further noted that “[n]otwithstanding the interstate nature of BIAS, states of course have a role with respect to broadband” and “[f]inding that this service is jurisdictionally interstate does not itself preclude all possible state requirements regarding that service.”⁴¹

³⁵ 2nd FNPRM, ¶ 7.

³⁶ *Id.*

³⁷ PU Code § 709(a), (c) and (d) (emphasis added).

³⁸ See PU Code § 871.7(c).

³⁹ *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, FCC 15-24 (rel. Mar. 12, 2015) (*Open Internet Order*).

⁴⁰ *Id.*, ¶ 431, citing NARUC Broadband Data Order, 25 FCC Rcd at 5054, para. 8 n.24 (citing GTE Order, 13 FCC Rcd at 22475, ¶ 16).

⁴¹ *Id.*, fn 1276, citing as an example of an explicit role for the states in the NARUC Broadband Data Order, 25 FCC Rcd at 5054-55, ¶ 9 (“Given the specific federal recognition of a State role in broadband

The FCC, while reclassifying BIAS as a telecommunications service, also exercised broad forbearance to exempt BIAS from many Title II common carrier regulations. The FCC however retained provisions to protect the public, including authority to protect consumers, enforcement authority and customer privacy protections.

If the FCC deems BIAS to be a supported service and the FCC's preemption order precludes states from imposing obligations on BIAS, the FCC needs to clarify who – whether FCC and/or states – will retain authority to protect consumers, ensure customer privacy and enforce non-compliance/violations of Lifeline rules. Under the current California Lifeline program, these issues/provisions are handled/resolved at the state level. The CPUC should advocate that states are better suited to address their consumer complaints and inquiries.

As to the issue of funding/contribution for universal service support, BIAS providers do not contribute to the federal Lifeline program. In the *Open Internet Order*, the FCC declined to require BIAS providers to contribute to the federal universal service fund. The FCC held that “we preempt any state from imposing any new USF contributions on broadband – at least until the Commission rules on whether to provide for such contributions.”⁴² The CPUC should support classifying BIAS as a supported service, and recommend that the FCC resolve the contribution issue for BIAS before including it in the Lifeline program. The CPUC should point out that Section 254(b) requires “all providers of telecommunications service . . . [to] make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.”⁴³ Since BIAS is now a telecommunications service, and BIAS providers are telecommunications carriers under federal law,⁴⁴ they should be required to contribute to the universal service fund.

Lastly, the CPUC should discuss that classifying BIAS as a Lifeline-supported service raises issues for California under its state law. PU Code § 710 prohibits the CPUC from exercising regulation over VoIP and IP-enabled services “except as required or expressly delegated by federal law or expressly directed to do so by statute.”⁴⁵ To the extent that

data collection, we anticipate that such State efforts will not necessarily be incompatible with the federal efforts or inevitably stand as an obstacle to the implementation of valid federal ‘polic[i]es.’”)

⁴² *Open Internet Order*, ¶ 432.

⁴³ See 47 U.S.C. § 254(b)(1)(4).

⁴⁴ See 47 U.S.C. § 153(51) and (54).

⁴⁵ PU Code § 710(c) states that the prohibition does not supersede any of the following: The Emergency Telephone Users Surcharge Law, The Digital Infrastructure and Video Competition Act of 2006, the CPUC's authority to implement and enforce Sections 251 and 251 of the 1996 Telecommunications Act, the CPUC's authority to require data and other information pursuant to PU Code § 716 and the CPUC's authority to address disputes regarding intercarrier compensation, the CPUC's authority to enforce

BIAS is considered an IP-enabled service, the CPUC could be prohibited from exercising regulation over BIAS.⁴⁶ The CPUC should recommend that the FCC clarify the scope of states' authority over BIAS if it is included in the Lifeline program.

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backup power system requirements, the CPUC's authority over pole attachments, and the Warren-911 Emergency Assistance Act.

⁴⁶ Neither the CPUC nor a court has yet determined the scope of the prohibition on regulation in PU Code § 710, nor the reach of any of its exceptions.