

**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) R. 04-12-001
Affects The Universal Lifeline Telephone)
Service Program.)
_____)

**COMMENTS OF THE UTILITY REFORM NETWORK
AND NATIONAL CONSUMER LAW CENTER
ON DRAFT DECISION OF ALJ JONES**

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I. INTRODUCTION

On March 4, 2005, Administrative Law Judge (ALJ) Karen Jones issued a Draft Decision (DD) regarding the Order Instituting Rulemaking Into Implementation of Federal Communications Commission Report and Order 04-87, As It Affects the Universal Lifeline Telephone Service Program (referred to as the “Draft Decision”). Pursuant to Article 19 of the Commission’s Rules and Procedures, the Utility Reform Network (TURN) and the National Consumer Law Center (NCLC) respectfully submit these joint comments on the DD.

The Commission has been forced to undertake an extremely difficult task in adopting measures to satisfy the FCC’s Lifeline/Link-up requirements so that California may continue to receive federal funding, while striving to ensure that our state continues to maintain the highest ULTS participation rate in the country. TURN and NCLC support several aspects of the DD, including the requirement that ETCs and non-ETCs will follow the same certification procedure; the adoption of program eligibility through self-certification; the adoption of self-certification for verification of income and program-eligible consumers; the establishment of a third party administrator (TPA); the establishment of a mechanized system (including web-based) for certification and verification, and adoption of safeguards to protect customers’ personal information.

As a procedural matter, the DD defers decision on numerous complicated implementation issues to a Commission-sponsored workshop format. However, the DD does not provide enough guidance for these workshops nor enough resources to properly

address the issues. We recommend changes to the appropriate Ordering Paragraph to increase the number of days and the topics covered in the workshop.

While we believe that these changes to the ULTS program move us closer to striking the balance between compliance with the FCC rules and the goals of California's universal service policy, we remain deeply concerned that the DD does not go far enough to remove barriers for those living in a cash economy and California's sizable non-English speaking populations (*DD at p.16*). We are also deeply concerned that the lack of clarity of the FCC's Order concerning the timing of certification will pose a major barrier to income-eligible ULTS and Link-Up consumers. (*DD at pp. 20-21*).¹ We therefore make suggestions to strengthen the DD on both of these issues. We are also concerned about the fate of the highly successful ULTS marketing program in light of the DD's grant of unmitigated authority to the Telecommunications Division to ultimately combine the third party administration and marketing functions. We recommend changes to the Ordering Paragraph regarding this issue to mitigate possible negative consequences for both programs. Finally, while we agree with the DD to defer the issue of automatic enrollment to another proceeding (*DD at p.40 and Conclusions of Law 14*), the Findings of Fact misstate the relationship between program-based eligibility and automatic enrollment. We have proposed clarifying language.

¹ As the Draft Decision also points out, the federal and state exemption of the deposit requirement for ULTS customers would be placed out of the reach of income-eligible ULTS consumers.

II. TURN AND NCLC SEEK CLARITY ON THE WORKSHOP SCHEDULES AND AGENDAS.

The DD leaves many issues concerning the details for implementation of the revised ULTS to a workshop setting. The revised timeline in the DD lists only one workshop on the implementation of the Commission order scheduled for April 20, 2005 and what appears to be a drafting workshop for revising and updating the Order scheduled for June 8, 2005. (*DD at p.7 and Ordering Paragraph 12*). Yet the DD also defers to the Telecommunications Division, the number and length of workshops needed. (*DD at p.41*).

The following topics have been deferred to workshops: timing of certification for income-eligible ULTS and Lifeline customers (*DD at p.21*); privacy procedures, mechanisms, and safeguards (*DD at p.31*); structure of the web-based system (*DD at p.32*); the ULTS application forms (*DD at p.36*); transition issues (*DD at p.41*) and other implementation issues (*DD at p.41*).

The issues identified for workshop discussion are complicated, interrelated, and will take some time to work through. For example, issues such as the web-based system cover a broad range of decisions from how qualifying programs will interface with the TPA to issues related to ease of use, languages, privacy and access sites. Additionally, the critical issue of privacy pervades the implementation issues and could take most of a day's workshop to discuss. The security and privacy issues listed in Ordering Paragraph 12 should specifically cover model data handling and security guidelines; the procedures for the handling, retention and disposal of documents containing personal information of ULTS applicants and recipients; standards to minimize personal information disclosure

between the TPA and the ETCs and non-ETCs; and the TPA's duties regarding identity theft. The issue of the ULTS application form covers more than which languages the forms must be available in; it also covers literacy level, accommodation for the disabled, and privacy issues with regard to information collected, among other things.

There are also implementation issues that have not been identified in the DD that still need more clarity. For example, the DD focuses on the front-end implementation of the enrollment of ULTS eligible households but does not clarify how the appeals process would work where a customer is deemed ineligible for ULTS.² Who notifies the consumer that they have been denied eligibility? How does the consumer appeal? This is an important implementation issue that merits time on a workshop agenda.

The Commission and staff should do everything it can to mitigate the negative impacts of these new requirements, including dedicating enough resources and time to these issues on the front-end to avoid problems during implementation. The DD should be very explicit as to the minimum agenda for these workshops, allowing Staff to add topics as they develop. We recommend that the DD Ordering Paragraph 12 be modified to require at least two workshops before the end of June. We also recommend that a new Ordering Paragraph be added that states that the Telecommunications Division will schedule additional workshops if needed to facilitate implementation and roll-out of the new ULTS program. A final agenda should also be distributed well in advance of the workshop.

The topics addressed in the implementation workshop will affect many more stakeholders than just those who are parties to this proceeding. A complete redesign of

² This issue was touched upon in our discussion on keeping current ULTS participants in the program. (*TURN/NCLC Reply at 24*).

the ULTS program should not be attempted without detailed input from those organizations on the frontlines of ULTS outreach. The DD should be very explicit in its direction to Telecom Division to reach out to other affected agencies, organizations and groups and to invite them to these workshops. For example, the discussion on the web-based system should also involve the partner qualifying programs as well as CBOs and other organizations that will be involved in the outreach efforts. We propose adding a new Ordering Paragraph that explicitly addresses this.

III. THE DD IGNORES RECORD EVIDENCE AND FAILS TO ADDRESS THE CASH ECONOMY.

The record is clear that a strict income documentation and certification requirement will have a disproportionate negative impact on undocumented workers and consumers operating in what is essentially a cash economy. (*LIF Reply at p.4, Greenlining Reply at pp.1-2, TURN Opening at p.2.*) The DD inadequately addresses this issue, fails to consider all the evidence on the record, and further fails to support its conclusions regarding undocumented workers.

The DD claims that the record is inadequate to develop effective, substantive proposals to address the concerns unique to a cash economy,

Greenlining believes that a certification program would disproportionately impact California's most vulnerable consumer, such as undocumented immigrants, limited-English speakers, the poor, and other underserved communities. While Greenlining encourages the Commission to "work diligently to avoid losing eligibility for continued federal funding," it makes no concrete proposal for how to accomplish that. Nor has any other party provided a concrete proposal for alternative ways to retain federal funding. (*Draft Decision at p.9*)

This statement ignores the proposal made by Latino Issues Forum (LIF) in its Opening Comments, and supported (with additional recommendations) by TURN/NCLC in their Reply Comments. These groups suggested a broad and vital role for community based organizations in helping consumers, particularly low income and limited English speaking consumers, sign up for the ULTS program. (*TURN/NCLC Reply at pp. 25-26; LIF Opening at p.13*). Their proposals are concrete and, as discussed below, would allow the Commission to retain its federal funding. The DD improperly rejects these proposals out of hand.

The DD's failure to properly address this issue may be explained by the fact that the DD does not appear to understand fully the proposals presented by LIF and TURN/NCLC. The DD seems to suggest that the proposals at issue puts the CBOs in competition with the TPA to sign subscribers up to the program. This is not the case.

In its Opening Comments, LIF proposes,

The Commission should allow flexibility in its approach to verification to permit community based organizations in whom language minority communities and immigrants without documentation have trust and confidence to fill out necessary ULTS paperwork, with the CBO verifying on behalf of the applicant his/her income based on check stubs/social security receipts etc. . . . The CBO partners, many of whom have expertise in dealing with this population, should be given latitude in determining what would constitute acceptable income documentation for persons in a cash economy. (*LIF Opening at p.13*)

As support for its proposal, LIF also points to the Commission's decision to include CBOs more formally in the CARE program. TURN/NCLC echoed this proposal in their Reply Comments, finding that such CBO involvement would satisfy the FCC's rules, but should be "closely monitored and with limits." In addition, TURN and NCLC proposed

random audits of participant CBOs as a means of reducing the risks of fraud and abuse. (*TURN/NCLC Reply at p.26*).

The DD appears to reject what it interprets as the TURN/NCLC and LIF proposal by stating that, “While we believe there is a role for CBOs in the certification/verification process, we will have a single entity – the TPA—to be responsible for the certification and verification process.” (*Draft Decision at p.34, see also Finding of Fact 31*). This Finding of Fact and the text of the DD is in error. TURN and NCLC did not suggest that CBOs supplant or compete with the TPA to sign people up for the program. Instead, TURN and NCLC suggested that the TPA treat a certification from a CBO as to an individual’s eligibility as if it is coming directly from the individual pursuant to the income certification requirements. The TPA will still be performing its vital role, but instead of just looking at tax returns or pension benefits statements, it will also accept and review the certification by a CBO on behalf of an individual that, by virtue of its relationship with or service to the individual, the CBO can confirm the individual meets the income eligibility requirements.

The DD further mischaracterizes the proposal on the record when it states,

We are concerned that TURN’s proposal to accept letters from employers or local organizations familiar with the family’s financial situation would result in those organizations serving as de facto certifying agents. The TPA itself would not have the opportunity to review the documentation and would simply have to accept the word of the entity writing the letter. (*Draft Decision at p.15*)

No one but the TPA would be certifying or verifying eligibility under the TURN/NCLC proposal. Further the TPA would not have to “accept the word” of the CBO if, as TURN and NCLC proposed in its Reply Comments, it had a program of audits in place to ensure the CBO was using proper criteria to judge eligibility.

Further, contrary to the DD's conclusion, the TURN/NCLC proposal is consistent with the FCC's Rules. The DD cites to CFR Section 54.410(b)(ii) as support for rejecting the TURN/NCLC proposal, but that is an error of law for two reasons. First, Section 54.410(b)(ii) only applies to those states where state Lifeline support is not mandated. California has mandated state Lifeline support through ULTS and, therefore, citation to that section is in error. Second, even if the DD cited to the proper section, Section 54.410(b)(i), the TURN/NCLC proposal still would not violate FCC rules for proper income certification.

The cited CFR section requires eligible telecommunications carriers, or in this instance the TPA, to certify that they have proper procedures in place to verify income and that "to the best of his/her knowledge" they were presented with documentation to support a particular application. The TURN/NCLC proposal would have the TPA accept the CBO's confirmation of the income documentation, along with the consumer's self-certification, therefore enabling the TPA to certify its own compliance pursuant to CFR Section 54.410(b)(i). (*See also*, 47 C.F.R. §54.410(b)(iii), FCC Lifeline/LinkUp Order at ¶32).

While the FCC clearly requires states to adopt documentation requirements, it is also very careful to give states with their own programs, like California, the flexibility to design their criteria and certification processes. (*FCC Lifeline/Linkup Order at ¶29; See also, TURN/NCLC Reply Comments at p. 25*). The Commission is already taking advantage of this flexibility in choosing to have a TPA as the certifying entity. It should also take the initiative to "develop certification procedures that best accommodate their own Lifeline participants based on the available resources of ETCs and state

commissions, each state’s eligibility criteria and local conditions.” (*Id.*) In light of California’s unique circumstances and high percentage of undocumented workers, the DD could adopt the LIF and the TURN/NCLC proposal to use CBOs, along with TPA and subscriber certification, and also be in compliance with the FCC’s Rules.

Another example of the DD’s attempts to address the issue of undocumented workers, and its failure to fully consider the record, is its discussion of the program-based eligibility component. The DD states,

At the same time, LIF, TURN, Blue Casa, La Curacao and Greenlining point out that many low-income people, particularly undocumented immigrants, live in a cash economy, and they have no proof of income. . . . We will examine how adoption of program based eligibility, in conjunction with the income certification that we have adopted, could meet the needs of these constituencies. (*Draft Decision at p.16*)

However, the DD never examines the effect of program eligibility on undocumented workers. In particular, despite comments from several consumer groups, the DD never addresses the fact that those who have trouble documenting income would also have trouble applying for other forms of government assistance and hence not be able to satisfy program eligibility criteria. (*TURN/NCLC Reply at p.9*) TURN and NCLC strongly support the adoption of a program based eligibility component for many of the reasons stated in the DD. However, adding a program-based eligibility component does not go far enough to address the concern of those in a cash economy.

California’s unique circumstances make it vital for this Commission to address the problems of undocumented workers. TURN, NCLC, LIF and others placed sufficient evidence in the record that an income documentation requirement will potentially cause many, otherwise eligible subscribers, to drop out of the ULTS program. Program

eligibility is an insufficient solution, and the DD does not support its finding that program eligibility will be enough. The DD should be revised to reconsider CBO involvement and adopt the TURN/NCLC proposal.

IV. THE DRAFT DECISION PREMATURELY CONCLUDES THAT INCOME ELIGIBLE CONSUMERS MUST PRESENT DOCUMENTATION OF THEIR HOUSEHOLD INCOME PRIOR TO ENROLLMENT IN LIFELINE.

In interpreting the FCC's Rules, the Draft Decision Conclusion of Law 7 states, "Consumers qualifying under an income-based criterion must present documentation of the household income prior to enrollment in Lifeline." Yet the DD also makes a Finding of Fact which states, "Establishment of telephone service should not be delayed pending enrollment in ULTS." (*Finding of Fact 11*). To support this Finding of Fact, the DD directs staff to file two petitions for Waiver or Clarification with the FCC on this very timing issue. (*DD at p.21*).

We recommend that the Commission withhold Conclusion of Law 7 pending the outcome of the two petitions or in the alternative clarify Conclusion of Law 7 to state that this interpretation of the FCC's Rules should be challenged. Further the DD should have an ordering paragraph regarding the timing and filing of the Request for Waiver. Much is at stake. The very ability of an eligible household to connect to local phone service would be hamstrung by the time lag that would occur under this current interpretation of the FCC's Rules.

V. THE DRAFT DECISION ERRS IN ITS DETERMINATION THAT TELECOMMUNICATIONS DIVISION SHOULD BE GIVEN UNFETTERED DISCRETION TO COMBINE THE THIRD PARTY ADMINISTRATION AND MARKETING/OUTREACH FUNCTIONS.

The DD errs in its determination that Telecommunications Division should be given unfettered discretion to combine the third party administration and marketing/outreach functions. The DD suggests, without citation, that there will be sufficient economies of scale to justify such a drastic change. (*DD at p.35*). Neither the DD, nor the record, supports such an open-ended allowance of authority on such an important issue. The current success of the marketing/outreach efforts is evident in the drastic difference between the participation rates among the states. California's high level of participation among eligible households can be attributed to, at least in part, the strong marketing and outreach efforts by the vendor and its contract CBOs. TURN and NCLC are particularly concerned about any proposal that has the potential to drastically affect the way the marketing and outreach function operates.

TURN and NCLC do not believe the alleged overlap of functions between the TPA and marketing functions is patently obvious, and the DD does not provide enough detail to support its allegation. If the TPA is to meet its requirements, the vendor must be highly specialized and professional on the issues it will face including document retention, privacy of information, database management, etc. The marketing function, on the other hand, will necessarily require a very different set of skills, including multilingual capabilities, outreach contacts and personal relationships with groups around the state. TURN and NCLC are concerned that if the Commission and Telecommunications Division tries to create a "jack-of-all-trades" to fit this combined approach, it will end up getting a "master of none." Naturally, the two functions will

need to be coordinated and seamless to the customer, but that does not suggest an automatic efficiency to be gained from combining the two functions. Especially with the upcoming changes to the ULTS program, marketing and outreach are an extremely vital function. At a minimum, Telecommunications Division should be directed to take additional public comment and/or hold a workshop to justify any decision to combine these functions into one entity.

VI. THE COMMISSION’S FINDING OF FACT REGARDING AUTOMATIC ENROLLMENT IS IN ERROR BECAUSE IT MISSTATES THE RELATIONSHIP BETWEEN PROGRAM ELIGIBILITY AND AUTOMATIC ENROLLMENT.

While TURN and NCLC support the DD’s Conclusion of Law 14, “The issue of automatic enrollment should be deferred to a separate Commission proceeding,” we find the DD Finding of Fact 40 misstates the relationship between program eligibility and automatic enrollment. Automatic enrollment is a means of “one-stop” enrollment into a number of assistance programs for the eligible low-income consumer (*TURN/NCLC Reply at pp.9-10*). The mere existence of program eligibility for ULTS does not necessarily translate into a substantial number of program-eligible households enrolling into ULTS. Much will depend on outreach, marketing and the ease of use and access to mechanized systems for enrolling program-eligible households. It is conceivable that the enrollment of program-eligible households will be disappointingly low. If that is the case after a reasonable ramp-up period, automatic enrollment should once again be explored, as well as the expansion of the list of eligible programs. TURN and NCLC recommend that the DD Finding of Fact 40 be deleted and replaced with a statement that focuses on the lack of time and record to explore this option now.

VII. CONCLUSION

For the reasons set forth above, TURN and NCLC urge the Commission to adopt the changes to the Draft Decision set forth in these Opening Comments.

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