

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

**COMMENTS OF THE NATIONAL CONSUMER LAW CENTER AND AARP
ON THE STAFF REPORT ON PUBLIC POLICY PROGRAMS**

I. Introduction

On April 14, 2006, the Telecommunications Division e-mailed the *Staff Report on Public Policy Programs* (Staff Report) for comment. The National Consumer Law Center participated in the recent Universal Lifeline Telephone Service (ULTS) certification and verification proceeding, R.04-12-001, and along with AARP, appreciates the opportunity to offer our comments on the scope of the review and the issues to consider.¹ We note upfront that parties were given less than seven days to comment on the Staff Report, which makes more deliberative and detailed comments on such a complex, critical yet vast topic near impossible. Due to the limited time provided to review and comment on the Staff Report, these comments are focused on highlighting issues that need further clarification and proposing additional issues to consider in moving forward with a comprehensive review of the Universal Service Public Policy Programs.

II. Discussion

The Staff Report highlights just how critical a comprehensive review of the Universal Service Public Policy Programs is in light of the rapidly transforming telecommunications technologies and marketplace. In 2002, the Commission, in D.02-10-060, concluded that expanding the definition of basic telephone service to include

¹ Comments prepared by Olivia Wein, staff attorney for NCLC, on behalf of NCLC and AARP.

broadband was not feasible due to the effect on the fund from the resulting cost.² However, telecommunications technologies are emerging at a rapid clip and telecommunications devices and services such as cell phones blur the traditional lines of phone service. Just this week Sprint announced a service that provides Global Positioning System (GPS) locator capabilities, targeted to parents.³ Wireless phones commonly offer vertical features such as caller id as a standard feature. Wireless phone services also offer advanced features such as text messaging and Internet access and even non-traditional telecommunications such as the ability to take pictures that can then be sent to another wireless handset or an email account. Consumer telecommunication expectations follow the introduction of telecommunications capabilities and with time these additional features become more commonplace and as is documented in the research and reports of the Pew Internet & American Life Project, there are differences in expectations and use depending on age, income and education.⁴ Cell phones are also changing the way local and long distance calling is handled and priced ranging from prepaid service to family plans with packages of minutes (often within an interstate or national region) allowing several wireless phones with their own phone numbers to share in one calling plan.

One of the universal services goals concerns “access to new services and technologies as they become available in order to avoid inferior access to information by

² Staff Report at 3 *citing* D.02-10-060.

³ Rob Pegoraro, “Watch Out, Kids: With GPS Phones, Big Mother is Watching” Washington Post (April 19, 2006).

⁴ *See e.g.*, “Pew Internet Project Data Memo Re: Cell Phone Use” (April 2006) available at www.PewInternet.org, John Horrigan and Lee Rainie, “The Internet’s Growing Role in Life’s Major Moments” (April 19, 2006) available at www.PewInternet.org, Susannah Fox, “Digital Divisions: There are clear differences among those with broadband connections, dial-up connections, and no connections at all to the Internet” (October 5, 2005) available at www.PewInternet.org, Susannah Fox and Mary Madden, “Data Memo re: Generations Online” (December 2005) available at www.PewInternet.org.

some groups.”⁵ While the focus of the ULTS program has traditionally been limited to local landline telephone service, the way we are using telecommunications to communicate and function in society has transformed.⁶ The Internet is becoming a common means of communicating and staying in touch with family, friends, members of the community (e.g., through email and instant messaging). It has also transformed how we participate in civic matters (e.g., contacting our elected officials and participating in agency proceedings). More and more Americans are turning to the Internet to find information about health, jobs, products and services. The Internet is changing how consumers engage in commerce (e.g., on-line banking, shopping) and the workforce (e.g., telecommuting). Advanced technologies have also improved access for those with limited mobility, vision and hearing. The Deaf and Disabled Telecommunications Program (DDTP) and the California Teleconnect Fund (CTF), especially, require a fresh look at the advanced services that have become commonplace since the programs were created. As noted in the Staff Report one of the reasons the DDTP budget has remained constant “may be attributable to the fact that some costs have declined as participants have found other, less expensive and/or more preferable ways to communicate such as text messaging and video relay system that are not offered by the program.”⁷

We are very concerned about the growing divide between landline Plain Old Telephone Service (POTS) and the ever expanding and evolving telecommunication

⁵ Staff Report at 2.

⁶ See e.g., John Horrigan and Lee Rainie, “The Internet’s Growing Role in Life’s Major Moments” (April 19, 2006) available at www.PewInternet.org, Susannah Fox, “Digital Divisions: There are clear differences among those with broadband connections, dial-up connections, and no connections at all to the Internet” (October 5, 2005) available at www.PewInternet.org.

⁷ Staff Report at 23.

technologies. The Digital Divide is now more than just whether or not someone can access the Internet, the growth in broadband applications is further broadening the gap between the haves and the have nots.⁸ Yet, we are also very concerned about the continued viability of the Universal Services Public Policy Program funds. We look forward to working with the Commission to find an appropriate balance between these two driving forces.

A. More Discussion and Clarification is Needed on Many Issues

1. Technological Neutrality

One of the premises in “The Scope of the Program Review and Issues to Consider” appears to be that the Public Purpose Programs be fully technologically neutral.⁹ What is not clear is just what that means and what the consequences are for the different interpretations. For example, would making available the same amount of ULTS funding to the various service providers (e.g., the ILECs, the CLECs, the wireless carriers, etc.) satisfy the technological neutrality requirement because all technologies would be eligible for the same amount of state universal service funds? Does the interpretation of “technologically neutral” mean that the consumer is entitled to choose from an array of technologies for basic service, all at the same price? We encourage the Commission to add technological neutrality to the list of issues to discuss. The definition of this term has broad implications on the cost of the program and the array of services that can be covered under basic services.

2. Bundled Services

⁸ Susannah Fox, “Digital Divisions: There are clear differences among those with broadband connections, dial-up connections, and no connections at all to the Internet” (October 5, 2005) available at www.PewInternet.org.

⁹ Staff Report at pp. 27, 30 and Section V.A.7, p.30.

The Staff Report contains a brief discussion on bundled service and raises two issues on the matter.¹⁰ The issue of bundled services raises many questions that we urge the Commission to consider. For example, while the AT&T California bundled service package described in the Staff Report¹¹ costs 1 cent less than the average Lifeline customer's bill, could a bundled package cost more than traditional basic service? What are the protections from disconnection if the full bill is not paid? Will basic service be somehow separated out in the billing so that payment of that component can protect connection to basic services? Would disconnection notices have to state the amount that must be paid in order to retain basic service? Could a bundled package contain non-telecommunications services? Are there protections from aggressive marketing of a more expensive bundled package instead of promotion of the basic services option? Is the list of services covered in basic services¹² a floor and not a ceiling? Would the effect of allowing bundled services be to expand the range of services/features for some ULTS customers whose carriers offer bundled services and not others whose carriers do not offer bundled services?

3. Eligible Telecommunication Carrier (ETC) status

It is not clear from the Staff Report why some CLECs and the major wireless companies have not sought an ETC designation. The Staff Report notes that many of the wireless companies have requested and received ETC designation in other states.¹³ As the current ULTS program is structured, an ETC designation helps relieve the costs to the

¹⁰ Staff Report at 7 and V.B.9-10 at p.32.

¹¹ Staff Report at 7.

¹² Staff Report at 5-6.

¹³ Staff Report at 10.

fund. A discussion of the barriers to these companies in applying for and receiving ETC designations would be helpful in the overall review of the structure of the Universal Service Public Policy Programs.

B. Additional Issues to Consider

1. The Interplay Between Consumer Protections and the Comprehensive Review of the Universal Services Program

We urge the Commission to explore the interplay between the existing and any proposed program changes with consumer protections such as disconnection protections, adequate notice and dispute resolution and appeals process. As is highlighted above in our questions regarding bundled services, these rights are critical to the ability of low-income households to maintain essential phone service.

2. Should Automatic Enrollment be Implemented?

The Commission, in its April 7, 2005 decision adopting new ULTS certification and verification processes, deferred the issue of automatic enrollment to the proceeding taking a comprehensive look at the universal service program.¹⁴ Automatic enrollment allows a consumer participating in a qualifying means-tested program to automatically be enrolled in another assistance program such as ULTS. The FCC encourages states to adopt automatic enrollment as a means of certifying consumers for Lifeline and Link-Up assistance. The new ULTS certification and verification will be handled by a CertA (Third-Party Administrator) who is an agent of the Commission. Thus, automatic enrollment would entail the electronic exchange of participant information between various agencies administering qualifying programs and the CertA. There are issues that will need

¹⁴ D.05-04-026 at 41.

to be addressed such as privacy concerns and the feasibility and cost of the data exchanges, but other states have dealt with these issues in implementing automatic enrollment.¹⁵

3. What Are the Privacy Protections and Are They Adequate?

In the review of the implementation of the Public Policy programs and any proposals to modify these programs, we urge the Commission to also examine consumer privacy protections. Any entities handling sensitive consumer information must be required to protect that information from theft and misuse.

4. Explore the Use of Technologies Such as the Web-Based System to Facilitate Participation in These Programs

One of the issues that consumer groups pressed for in the recent ULTS certification and verification proceeding was the ability to use the Web-Based System to facilitate enrollment into ULTS, especially for consumers with disabilities. While the development of the web-based system for ULTS has not yet been developed, it appears that the function of the web-based system will be for informational purposes. We encourage the Commission to broaden the list of implementation issues to look at how technologies such as the web can facilitate participation in the Public Purpose Programs through enrollment and verification.

5. Other possible issues

In addition to the expansion of issues proposed above there are other issues that we think are worth exploring including:

¹⁵ Massachusetts, New Jersey, New York and Texas have implemented automatic enrollment for low-income assistance programs.

- Is there a role for municipal wireless Internet service in expanding access to advanced services?
- Is there a role for Community Voice Mail to help the homeless find work, housing and move out of homelessness by providing access to free voicemail?¹⁶
- Is there a role for soft dial tones so that even those without active phone service can still call 911 for emergency assistance?
- Should other funds supplement the universal service fund such as fines, penalties, unclaimed utility deposits?

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April 20, 2006

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¹⁶ For more information, see www.cvm.org.