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To: Public Service Commission  
From: Office of Consumer Services  
Michele Beck, Director  
Cheryl Murray, Utility Analyst  
Date: March 21, 2014  
Subject: Rule 746-341 Lifeline/Link-up Rule Amendment. Docket No. 14-999-06

On February 13, 2014, the Public Service Commission (Commission) issued a Notice of Rulemaking docket and Comment Period for proposed revisions to Rule 746-341, the Lifeline/Link-up Rule. The Commission offered interested parties the opportunity to provide comments on the draft proposed Rule by Friday, March 21, 2014 prior to the Commission submitting the proposed Rule to the formal rulemaking process.

I. Background

The Commission states that it is “opening Docket No. 14-999-06 as a docket for state and federal Lifeline programs rulemaking amendments (Utah Admin. Code R746-341 *et seq.*)”. The proposed changes are extensive and significant and range from providing clarity around various definitions in the Rule to specifying the duties of the Responsible Agency and eligible telecommunication companies (ETCs). As a result of our review of the proposed Rule changes the Office offers the following comments and suggestions on a limited number of those changes.

## II. Discussion

The Office recognizes the necessity of updating the Rule to comport with the current Federal Communications Commission' (FCC) requirements. However, we believe there are areas in the proposed Rule where additional information would be helpful.

1. R746-341-3. Eligibility Requirements 2. D. False Certification Penalties. This section of the Rule describes the consequences for a Lifeline telephone service participant who does not qualify and has falsely self-certified and participated in the Lifeline program.

Under the current Rule the application form is required to contain:

“a statement that if the applicant is later shown to have submitted a false self-certification for the Lifeline program, the applicant will be responsible to pay the difference between the lifeline service rate and the otherwise applicable service rate”

Under the proposed Rule the penalty payment provision is unchanged but includes the further explanation that the penalty payment will be for the length of time the participant subscribed to Lifeline telephone service for which the participant was not eligible.

Office Comments: Although the added clarification is appropriate, the Office notes that there is no indication of how the applicant is informed of the penalty for false certification, as it is no longer required as a statement in the application. Additionally, the procedure for determining how long the participant was ineligible for the Lifeline program is not defined. The Office asserts that applicants should be made aware of the potential for penalties prior to beginning Lifeline service. The Office recommends that the statement included in current rules be reinstated in the proposed rules.

2. R746-341-4. Duties of the Responsible Agency. Section D explains the de-enrollment process and the steps the Responsible Agency shall take regarding sending notice to Lifeline participants that have been determined to no longer be eligible for the program. The participant will be informed that Lifeline service will be discontinued unless the participant can verify his continuing eligibility within 30 days. If the participant does not provide verification within thirty days the Responsible Agency will notify the relevant ETC to discontinue Lifeline telephone service.

The proposed Rule further states: “Ineligible applicants may reapply for the Lifeline program, but must do so by submitting a completed application to the responsible agency. An ineligible customer may not reapply through any ETC’s initial verification processes.”

Office Comments: Proposed modifications in this section of the Rule create two issues for the Office. First, the proposed Rule does not identify any process for a participant to dispute a finding of ineligibility. As in our prior comments<sup>1</sup> the Office continues to assert that removing all references to dispute resolution leaves a void in terms of protecting participants. Second, there is no indication of how the “ineligible participant” is notified that he may reapply but only through the Responsible Agency.

There is no requirement for a second notice alerting the participant that Lifeline telephone service has been discontinued and explaining the process for reapplying. The Commission may intend for the reapplication issue to be addressed in the initial letter from the Responsible Agency but that is not specified in the proposed Rule. The Office recommends that the Commission either establish a second notice or a requirement to include the reapplication process in the initial letter.

3. R746-341-5. Duties of ETCs. As noted above once a federal Lifeline telephone service participant has been deemed ineligible he must go through the Responsible Agency to reapply. B.1. states that each federal ETC shall process only initial applications for new Lifeline service from customers who have not been determined ineligible by the Responsible Agency.

Office Comments: Applicants can choose among a number of federal Lifeline telecommunications providers and the number of ETCs is growing. If a participant is de-enrolled for ineligibility by one ETC it would be a simple matter to reapply through a different ETC.

ETCs are required to check the National Lifeline Accountability Data Base (NLAD) when enrolling new customers (initial application). The NLAD may identify customers who have been de-enrolled due to ineligibility. However, if that information is not contained in the NLAD the Office questions how an ETC would know that an applicant has previously been de-enrolled and must apply only through the responsible agency.

4. Finally, the Office notes that at 2.C.d a reference is made to the current Federal Poverty Guidelines. In earlier areas of the Rule where a reference is made to criteria or requirements that may, or are likely to change, the terms, *then applicable* or *then in effect* are used. The use of the word current may be construed to refer to effective as of the date the Rule is enacted. The Office suggests that using terms such as, “then applicable” or “then in effect”, may be more appropriate where the Federal Poverty Guidelines are subject to change.

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<sup>1</sup> Office comments submitted on February 13, 2014 in response to prior proposed rule amendment. Docket

### III. Office Recommendation

The Office recommends that before the proposed Rule is published the Commission should include information addressing:

- 1) how the Lifeline applicant is informed of the penalty for false certification of eligibility;
- 2) the dispute resolution process for a finding of ineligibility;
- 3) how a participant found to be ineligible is notified that he may only reapply for Lifeline service through the Responsible Agency; and
- 4) how the ETC determines that an applicant has been found ineligible by the Responsible Agency and therefore can only be reinstated in the federal Lifeline program by the Responsible Agency.<sup>2</sup>

The Office further recommends that the Commission consider changing the word “current” in section 2.C.d to “then applicable” or “then in effect”.

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No. 14-999-06, submitted under Docket No. 14-341-01.

<sup>2</sup> As noted in our comments this information may be contained in the NLAD and therefore unnecessary in the Rule.