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DEPARTMENT OF COMMERCE
Office of Consumer Services

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To: Utah Public Service Commission
From: The Office of Consumer Services
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Date: June 8, 2011

Subject: Office of Consumer Services' Responsive Comments
Docket No. 10-2528-01

In the Matter of the Resolution of Certain Issues Related to the Designation
of a Common Carrier as an Eligible Telecommunications Carrier

Background

In the past year, several wireless providers have filed applications to become an Eligible Telecommunications Carrier (ETC) for the sole purpose of providing Lifeline services. As a result of the first of these proceedings, the Public Service Commission (Commission) opened this docket to further explore certain issues related to this ETC status. In the May 2, 2011 Amended Interim Scheduling Order the Commission established the deadline of June 8, 2011 for parties to respond to any issues raised in the previous technical conferences or in previous filings, if desired. The Office of Consumer Services (Office) addresses three such issues in this memo.

Lifeline Outreach and Advertising

Many parties have proposed different ideas and requirements for Lifeline outreach and advertising. The Office responds to two specific issues.

TracFone stated in its Initial Proposal filed in this proceeding on April 26, 2011, that it "does not support mandatory outreach requirements that specify how ETCs must advertise because such requirements would interfere with an ETC's marketing strategy as it competes with other ETCs for Lifeline subscribers." TracFone in its May 25, 2011 comments further states that "ETCs should be able to craft their advertising and

marketing efforts in response to the dictates of the marketplace and to actively and creatively promote the availability of their Lifeline programs.” The Office continues to advocate, consistent with the position advanced by other parties in this proceeding, that Company-specific advertising should not qualify for any reimbursement from the state USF. Although the Office does not advocate stringent mandatory outreach requirements, we do propose that details for the Lifeline program and its low-income requirements should be required in any Lifeline advertisement to ensure that customers have clear information about the nature and purpose of the program.

The Division of Public Utilities (Division) in its May 24, 2011 memo “recommends continuing with the current DCC outreach that is in place, but strongly suggests augmenting the program with media marketing of TV commercials and radio spots through a private contract.” The Office concurs that the current outreach activities of the DCC should be continued. The Office also recommends that additional media marketing be considered. However, this type of media campaign can be costly. Therefore, the Office recommends that an examination of the costs and benefits be conducted, with an opportunity for stakeholder comment, before any commitments for additional media marketing are pursued. Also, the Office recommends that a demographic study be conducted prior to any media campaign to ensure that marketing funds are maximized in reaching eligible customers.

Proposal for Internet-Based Lifeline Application

The Division included a proposal for the Lifeline application and verification procedure that would eventually include an internet-based automated process. In its May 24, 2011 memo, the Division stated: “In the larger scope, the Division believes a more efficient and effective system can be developed using an internet interface where the applicant could complete the information online with immediate feedback to the applicant and their chosen ETC(s).” While the Office supports work toward more efficient processes, we are concerned that an application solely reliant on an internet process will present a barrier to some or many low-income applicants. As stated in the FCC/NARUC/NASUCA Working Group Report on Lifeline¹, “Web resources may be most useful to educate those who do the outreach. Despite the apparent narrowing of the digital divide between high- and low-income households, it appears that the Internet may be more useful for educating those who come in contact with eligible consumers, as opposed to a tool for directly reaching eligible consumers.”

Thus, the Office recommends that as the Commission, the Division, and other interested parties move forward on work toward a longer-term solution for applications and verification, while internet-based systems may play an important role, other methods must continue to exist to serve low-income customers with limited or no internet access.

¹ Report of the FCC/NARUC/NASUCA Working Group on Lifeline and Link-Up: “Lifeline Across America”, 2007, page iii. Available at: <http://www.lifeline.gov/LLLURreport.pdf>. The Office is a member of the National Association of State Utility Consumer Advocates (NASUCA), an organization consisting of 44 consumer advocates in 40 states and the District of Columbia.

Commission Actions and Expected Outcomes from this Docket

At the June 1, 2011 Technical Conference, the Hearing Officer essentially stated that current Commission rules allow for self-certification and appeared to indicate a likelihood that the pending applications for ETC status would be granted subject to current requirements.

The Office believes that if ETC status is granted, such status should be based upon the same conditions for all prepaid wireless providers. Since current rules allow self-certification, those are the binding requirements. However, the Office notes two important issues that should be taken into consideration. First, the Commission has stated that such providers must pay into the state USF. A method for calculating the basis for such payments has not yet been determined and must be done before prepaid wireless Lifeline providers can operate in a manner that is compliant with Commission Order. Second, Utah law currently requires that prepaid wireless pay 911 fees (see Utah H.B. 303, effective July 1, 2011, enacting Utah Code Section 69-2-5.7). ETC status should be conditioned on compliance with Utah law.

The Office also advocates that allowing operation under rules that allow self-certification should be an interim policy, as supported by certain other parties to this docket. As clearly demonstrated in these proceedings to date, allowing self-certification for prepaid wireless providers raises many issues that have not been resolved, particularly since the applications for wireline providers are each individually verified. The Commission indicated in its Supplement to Agency Action issued March 14, 2011 that it was interested in “whether additional rulemaking proceedings and/or additional reporting requirements are necessary to implement the determinations made in these proceedings.” The Office recommends that the Commission continue the process of remedying the problems that have been identified in this docket. The Commission should implement a system to prevent the duplicate provision of service and work towards a more efficient system for certification and verification. While certain parties have committed to continue informal work on these issues, such work does not substitute for a process that ends in Commission action.

Finally, the Office notes that it would be a regrettable lost opportunity if the issue of expanded Lifeline outreach is not further addressed. First, some Commission rules must be changed in order to be consistent with the public interest². Second, the eligible Lifeline customers would be better served by a coordination of advertising and outreach.

² For example, the rules should be modified such that Company-specific advertising is not eligible for state USF reimbursement. Also, additional rules should be implemented making the inclusion of basic information about Lifeline program description and eligibility a requirement for any Lifeline advertising in Utah.