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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: May 14, 2011

Subject: Office of Consumer Service's 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. The Commission requested that interested parties provide a list of issues and file a notice of appearance by January 3, 2011. Four months later the Commission held a scheduling conference and issued a subsequent Interim Scheduling Order on April 14, 2011 requesting initial proposals and recommendations for resolution to be filed in less than two weeks on April 26, 2011. The Office of Consumer Services (Office) filed comments on that date, as did the Division of Public Utilities (Division), Salt Lake Community Action Program (SLCAP), CenturyLink, and TracFone. The Commission then held a Technical Conference on April 28, 2011 to discuss the proposals. In its May 2, 2011 Amended Interim Scheduling Order the Commission set a deadline of May 12, 2011 for parties to "respond to the filings made Thursday, April 28, 2011" and to comment on the Division's recommendation to establish a committee. In these comments, the Office will clarify its position, consistent with its oral comments on April 28th, and respond to certain positions raised by other comments including the proposal for a committee.

Clarification of Position

In the Office's initial proposal, we discussed concerns about the current method of self-certification and suggested that a requirement for documentation be imposed. We also raised concerns about the Department of Community and Culture (DCC) continuing the certification and verification of standalone applications (as opposed to those made in conjunction with requests for energy assistance), given DCC's indication that it does not have sufficient resources to handle the anticipated increase in workload. However, we also identified unanswered questions associated with our proposal. After the filing of proposals, we were able to have additional discussions with certain parties which led to a refinement of our position.

The Office's primary change from its initial proposal is to support third party certification and verification, as recommended by some parties. We are sensitive to the concerns about privacy raised by SLCAP. We also recognize that some existing wireline Lifeline providers are not in favor of resuming the certification and verification responsibilities and some providers may not readily have the capabilities to do so. However, consistent with our initial proposal, the Office continues to strongly advocate that the Commission must take appropriate steps to determine the most cost-effective alternative for third party administration, even if this means separate contracts for outreach, certification for applicants in conjunction with energy assistance, and certification for standalone applicants.

Response to Other Parties

The Office has the following responses to issues raised by the Division:

- The Office could support the Division's desired process for verification in concept, but is concerned about how long it would take to implement. Therefore, while we could work towards it in the longer term, the Office recommends a current focus on a method that could be implemented more quickly.
- The Division discussed a proposal that all ETCs pay into the USF through an "applicable surcharge rate." The Office's concern with this proposal is simply the question of how, when and by whom such a surcharge would be determined. The Division may be the entity with the most expertise on the subject and the Office would look forward to a more detailed proposal.
- The Office strongly agrees with the Division's idea to have a database, funded by the USF, to check against "double dipping." Further, the Office believes that with the Commission's willingness to pursue this option, it could be accomplished quite quickly.
- The Office generally agrees with the Division's comments on communication and outreach, but believes that these efforts will not significantly increase participation. The Office continues to advocate for more active efforts on the part of the regulatory community to oversee and participate in Lifeline outreach.

The Office has the following responses to issues raised by SLCAP:

- The Office agrees in concept with SLCAP's proposal to continue and increase coordination of Lifeline applications with applications for other services. To this end, the Office explicitly supports a process that continues DCC's process for joint certification. However, the Office believes that expanding this coordination to other applications for assistance is beyond the scope of this docket and beyond the oversight of the Commission. Nonetheless, the Office is supportive of this coordination as a long-term goal and would urge the Commission to be receptive to any future accommodations that would be necessary to cooperate with such efforts.
- SLCAP suggested that the annual verification should include a percentage of all participants. The Office proposed a similar process and offers an additional clarification. This percentage for verification should include all participants that came into the system through a joint application for energy assistance. Although energy assistance applications are certified each year, if applicants from prior years are not in the pool for annual verification then the system would have no method for identifying applicants who apply for energy assistance for a limited period but remain on Lifeline much longer – with or without ongoing qualification.
- The Office agrees with SLCAP that there should be no reimbursement for Lifeline outreach that is in the form of an advertisement for a specific company or program. The Office is not certain whether it agrees with SLCAP's proposal for minimum standards for Lifeline outreach. The Office suggests that this is an item that requires additional discussion to ensure all parties can further explain their positions and possibly come to some level of agreement.
- SLCAP (and the Office in its initial proposal) proposed that any rules must apply equally to all ETCs. The Office still supports this in concept, with the understanding that flexibility may be wise because wireless and wireline Lifeline offerings are not absolutely analogous.

The Office has the following responses to issues raise by CenturyLink:

- CenturyLink suggested that the current process is working. However, the Office notes that the current process is not designed to accommodate the new circumstance of competing Lifeline processes and cannot be used without modification. Thus, all parties will need to work together toward establishing a new process with the goal of meeting the needs of all providers, maintaining as much efficiency as possible, and providing the maximum access to eligible customers.
- CenturyLink proposed that certification and verification be conducted by a third party state agency, going so far to suggest that if an agency is not willing then we could pursue a legislative solution. The Office prefers that this work be conducted by a willing party and suggests that third party administrators other than state agencies also be considered. The Office is concerned about the timing and potential for unintended consequences of pursuing legislative solutions.

The Office has the following responses to issues raised by TracFone:

- TracFone recommends delaying any rulemaking or changes until after the FCC has completed its work on the subject. The Office opposes such delay. It is the responsibility of the Commission, as the responsible agency, to establish procedures necessary to both facilitate the provision of Lifeline services and, to the extent possible, prevent the fraudulent use of these services. Our experience with FCC processes is that they are lengthy and at times extremely protracted. Utah should move forward with its best efforts, but establish a system that can potentially evolve to accommodate the outcome of the FCC process to the extent it is found to be in the public interest for Utah customers.
- The Office opposes TracFone's proposal for the state to establish a database to which each provider has access. This would appear to have all of the costs that would be associated with third party certification and verification without the benefits. It does not solve the problem of preventing "double dipping" nor does it adequately address privacy concerns.
- The Office is concerned about the TracFone's suggestion that state rules should not interfere with any company's individual Lifeline advertising. While the Office supports the Federal guidelines in general, the Office has observed certain national television advertisements for some Lifeline programs that are quite troubling. Advertisements that focus on the provision of a free phone without citing the Lifeline program or the low-income requirements are not appropriate. Utah should take whatever steps are necessary to ensure that all Lifeline advertisements provide basic information about the program.

Comments on Proposal for a Committee

At the conclusion of its initial proposal, the Division proposed that "a committee be established to research, investigate, discuss and recommend a final proposal to the areas addressed." The Commission requested that parties comment on this proposal.

The Office would be willing, to the extent that the timeline and schedule permit, to participate in such a committee. However, parties have already pointed out that a committee that includes all participants may be too large to be effective and a committee that includes less than all participants is subject to criticism. In the Office's experience, committees, task forces and working groups are rarely effective in influencing the implementation of constructive changes. Unanimous resolution is nearly impossible to achieve; and, many of these efforts have not resulted in specific Commission action. For these reasons, the Office prefers not to move forward with a committee.

Instead, the Office proposes the following alternative. The Office believes that some issues that have been raised would benefit from discussion and collaborative work, while others would not. Consequently, we are proposing technical conferences for the collaborative issues and other processes for other issues.

Certification and Verification

- The Office proposes that the issue of a third party administrator be explored by a subset of participants through meetings with potential state agencies and certain potential providers. These efforts may also best be pursued by issuing an RFP. The Office does not believe that all participants to this docket should participate in this analysis. It is our experience that some Lifeline providers have tried to go outside of the process to look for agency solutions, which would be in conflict with this analysis. It is also our experience that some potential third party administrators closely guard the specifics of their business model and would not be willing to share such information even under the most carefully crafted protective order. Thus, this subgroup should not include any telecom providers. However, the analytical results would be available to all interested parties.
- After the research on potential third party administrators is complete, the results should be presented to the Commission followed by a comment period and a ruling from the Commission.

Database to Detect Double Dipping

- The Commission has enough information already to move forward on the creation of a database to check against double dipping. The Commission should enter into a contract for establishing a database and require data submission from all ETCs.

Outreach and Advertising

- A technical conference should be scheduled to flesh out issues of outreach and advertisement requirements. Some issues would require a ruling from the Commission and specific rules.
- This work could be done on a parallel path with joint efforts for increased outreach.

Calculation of Costs

- The Commission should order the DPU to work on the calculation of costs to determine lifeline eligibility and verification. Their work should be presented to the Commission followed by a comment period and a ruling from the Commission.

Rulemaking

- To facilitate quick implementation of certain elements of the process, rules may need to be done in multiple segments.
- The Office recommends that the Commission move forward relatively quickly with rules governing data submission for the database to detect double dipping and outreach and advertisement requirements.
- The Office suggests that rules implementing the certification, verification, and calculation of costs should be pursued after the research is presented, a comment period is allowed, and the Commission makes a determination regarding which methodology best accomplished the public interest.