



Total Call will file a separate application requesting such state support.” Id. at 5, ¶¶ 11(B)-(C). The Settlement Stipulation is signed by Total Call, the Division of Public Utilities (“Division”), and the Office of Consumer Services (“Office”).

On April 4, 2013, the Commission held a duly-noticed hearing. At the hearing, Cheryl Murray of the Office represented that Betsy Wolf of SLCAP authorized her to represent to the Commission that SLCAP does not oppose the Stipulation. See Transcript of Hearing at 17, lines 1-2. Similarly, Casey Coleman of the Division represented that URTA was involved in settlement discussions and it was his understanding that URTA did not object. Neither SLCAP nor URTA appeared at the hearing. The Administrative Law Judge for the Commission took judicial notice of the Stipulation. Nathaniel Law, General Counsel and representative for Total Call, testified that the Stipulation is just and reasonable in result. See id. at 17, lines 15-18. Both the Division and Office testified the Stipulation is just and reasonable in result, and they each recommended the Commission approve it. See Transcript of Hearing at 13, lines 24-25; id. at 14, lines 1-2; id. at 15, lines 19-22, and id. at 16, lines 15-17. “[A]ll of the [p]arties [to the Stipulation] agree that this Stipulation as a whole is just and reasonable in result and in the public interest.” Exhibit #1 at 6, ¶ 2. No one opposed the Stipulation.

FINDINGS, CONCLUSIONS AND ORDER

As set forth by statute and as previously noted by the Commission in other orders, settlements of matters before the Commission are encouraged at any stage of the proceedings.<sup>1</sup>

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<sup>1</sup> See Utah Code Ann. § 54-7-1 (2010). See also *In the Matter of the Notice of Rocky Mountain Power of Intent to File a General Rate Case*, Docket No. 11-035-200 (Report and Order; Sept. 19, 2012), at 26; and *In the Matter of the Application of Questar Gas Company to Adjust Rates for Natural Gas Service in Utah*, Docket No. 04-057-04 (Report and Order; Feb. 6, 2006), at 26.

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The Commission may approve a settlement proposal after considering the interests of the public and other affected persons, if it finds the settlement proposal in the public interest.<sup>2</sup> With this background in mind, and based on our consideration of the evidence before us, the testimony and recommendations of the parties, and the applicable legal standards, we find approval of the Settlement Stipulation to be in the public interest. Accordingly, the Commission approves the Stipulation.

DATED at Salt Lake City, Utah, this 8<sup>th</sup> day of April, 2013.

/s/ Melanie A. Reif  
Administrative Law Judge

Approved and confirmed this 8<sup>th</sup> day of April, 2013, as the Order Approving Settlement Stipulation of the Public Service Commission of Utah.

/s/ Ron Allen, Chairman

/s/ Dave R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
D#243177

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<sup>2</sup> See Utah Code Ann. § 54-7-1(2)(a). See also *Utah Dept. of Admin. Services v. Public Service Comm'n*, 658 P.2d 601, 613-14 (Utah 1983).

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Notice of Opportunity for Agency Review or Rehearing

Pursuant to Utah Code Ann. §§ 63G-4-301 and 54-7-15, a party may seek agency review or rehearing of this order by filing a request for review or rehearing with the Commission within 30 days after the issuance of the order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission fails to grant a request for review or rehearing within 20 days after the filing of a request for review or rehearing, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a Petition for Review with the Utah Supreme Court within 30 days after final agency action. Any Petition for Review must comply with the requirements of Utah Code Ann. §§ 63G-4-401, 63G-4-403, and the Utah Rules of Appellate Procedure.

CERTIFICATE OF SERVICE

I CERTIFY that on the 8<sup>th</sup> day of April, 2013, a true and correct copy of the foregoing, was served upon the following as indicated below:

By Electronic-Mail:

Robert Yup ([roberty@totalcallusa.com](mailto:roberty@totalcallusa.com))  
Total Call Mobile, Inc.

Kira M. Slawson ([kslawson@blackburn-stoll.com](mailto:kslawson@blackburn-stoll.com))  
Brett N. Anderson ([bretta@blackburn-stoll.com](mailto:bretta@blackburn-stoll.com))  
Stanley K. Stoll ([stans@blackburn-stoll.com](mailto:stans@blackburn-stoll.com))  
Blackburn & Stoll, LC

Betsy Wolf ([bwolf@slcap.org](mailto:bwolf@slcap.org))  
Salt Lake Community Action Program

Patricia Schmid ([pschmid@utah.gov](mailto:pschmid@utah.gov))  
Justin Jetter ([jjetter@utah.gov](mailto:jjetter@utah.gov))  
Paul Proctor ([pproctor@utah.gov](mailto:pproctor@utah.gov))  
Assistant Utah Attorneys General

By Hand-Delivery:

Division of Public Utilities  
160 East 300 South, 4<sup>th</sup> Floor  
Salt Lake City, Utah 84111

Office of Consumer Services  
160 East 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84111

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Administrative Assistant

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# **Exhibit #1**



CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11.<sup>1</sup>

2. The Universal Service Order provides that only ETCs designated by a state public utilities commission (“State Commission”) shall receive federal universal service support. Under 47 U.S.C. § 214(e), a State Commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an ETC for a service area designated by the State Commission. The FCC defines a service area as a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms.

3. To be designated as a federal ETC under the Federal Act, a carrier must: (1) be a common carrier; (2) demonstrate an intent and ability to provision the supported services set forth in 47 C.F.R. § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its universal service offerings and the charges therefore, using media of general distribution. 47 U.S.C. § 214(e); Universal Service Order, 12 FCC Rcd at 8791.

4. The FCC's supported services set forth in 47 C.F.R. § 54.101(a) are:
- a. voice grade access to the public switched telephone network or its functional equivalent;
  - b. minutes of use for local service provided at no additional charge to end users;

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<sup>1</sup> See *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (“Lifeline and Link Up Reform Order”).

- c. access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and
- d. toll limitation services to qualifying low-income consumers.

5. In areas served by a rural telephone company, 47 U.S.C. § 214(e)(2) further requires the Commission to determine that the designation of an additional ETC is in the public interest.

6. On November 14, 2012, Total Call filed a Petition seeking Designation as an ETC in the State of Utah, Docket Number 12-2561-01. Total Call seeks designation throughout Sprint's coverage area, as identified by wire centers in Exhibit 7 to its Petition.

7. Total Call, the DPU, and the OCS engaged in settlement discussions in an attempt to resolve their differences regarding issues raised by Total Call's Petition. Utah Rural Telecom Association (URTA), and Salt Lake Community Action Program (SLCAP) were invited to participate.

8. The Parties have now reached agreement on the issues raised in this docket, as set forth herein. The Parties agree this Stipulation should have no legal effect outside of the instant docket.

### **AGREEMENT**

WHEREFORE, based on their review of all discovery, testimony and exhibits submitted and upon their settlement discussions, the Parties hereby stipulate and agree as follows:

- 1. Total Call is a wireless reseller of Sprint PCS's (Sprint) network.

2. Total Call seeks ETC designation for the limited purpose of providing federal universal service low-income Lifeline service in Utah. Total Call will not be seeking universal service high-cost support in its service area, nor will Total Call seek to provide universal service low-income Link Up service.

3. Total Call's Lifeline program furthers the statutory goal that basic service be available and affordable to all citizens of the state of Utah.

4. Total Call's Lifeline product offering will offer an additional choice of providers offering service for low-income consumers, which represents a benefit for those consumers and is in the public interest.

5. Total Call is a commercial mobile radio service ("CMRS") provider, and a common carrier as defined by 47 U.S.C. § 332(c)(1)(A).

6. Total Call provides each of the supported services set forth in 47 C.F.R. § 54.101(a) and it has shown an intent and ability to offer those services once designated throughout its requested service areas.<sup>2</sup>

7. Total Call submitted its Amended Compliance Plan on May 17, 2012. Total Call's Amended Compliance Plan outlines the measures it will take to implement the conditions imposed by the FCC.<sup>3</sup> The FCC approved Total Call's Compliance Plan, as amended, on May 25, 2012.

8. Total Call will make available Lifeline service to qualifying low-income consumers. Total Call will not offer Link Up to qualifying low-income consumers.

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<sup>2</sup> With respect to toll limitation, in its Lifeline and Link Up Reform Order, the FCC stated that toll limitation would no longer be deemed a supported service in the case of ETCs. See Lifeline and Link Up Reform Order at ¶¶ 49 and 367. Nonetheless, Total Call's offerings inherently allow Lifeline subscribers to control their usage because of the prepaid nature of Total Call's Lifeline plans. Total Call's service is not offered on a distance-sensitive basis and local and domestic long distance minutes are treated the same. The nature of Total Call's service and plans act as a toll limitation. Total Call will not seek reimbursement for toll limitation service.

<sup>3</sup> See Lifeline and Link Up Reform Order.

9. Total Call shall make available five (5) different Lifeline plan choices, the details of which are provided in Exhibit 2 to its Petition. Total Call agrees that it will seek the \$9.25 federal reimbursement from the Universal Service Administrative Company (“USAC”).

10. The Parties stipulate and agree that designating Total Call as an ETC in the wire centers set forth in Exhibit 7 to its Petition serves the public interest, convenience and necessity, as defined in 47 U.S.C. § 214(e)(2).

11. The Parties stipulate and agree that Total Call shall provide its ETC Lifeline universal service offerings in Utah pursuant to this Stipulation (including attachments). The Parties recommend that Total Call’s provision of its universal service offering as an ETC be governed by the following additional requirements:

- A. Total Call will use a Utah-specific fact sheet that provides customers with concise and complete information about the services they will receive. Such fact sheet is attached hereto as Attachment 1. Total Call agrees to promptly update the fact sheet anytime it changes its Utah Lifeline program offerings.
- B. Total Call is not currently seeking any Utah USF funding.
- C. If Total Call seeks Utah USF funding in the future, Total Call will file a separate application requesting such state support.
- D. Total Call will comply with all state service quality and consumer protection requirements.
- E. Total Call acknowledges that approval of its Petition will be conditioned upon the verified payment of all applicable state and local regulatory fees, including, but not limited to, universal service fees, emergency services, and relay services

- F. Total Call agrees to adopt any changes to the certification and verification process developed within Docket No. 10-2528-01.
- G. Total Call meets the requirements for federal ETC designation.
- H. Upon implementing any changes to its Lifeline offerings, Total Call will timely file a notice with the DPU and OCS describing the changed plans.

### **GENERAL PROVISIONS**

1. The Parties stipulate to the admission into evidence in this docket of Total Call's Petition and pre-filed Testimony and exhibits. This stipulation to the admission of the Testimony does not represent an agreement by the Parties as to any positions taken in such Testimony.

2. Not all Parties agree that each aspect of this Stipulation is warranted or supportable in isolation. Utah Code Ann. § 54-7-1 authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties are not able to agree that each specific component of this Stipulation is just and reasonable in isolation, all of the Parties agree that this Stipulation as a whole is just and reasonable in result and in the public interest.

3. All negotiations related to this Stipulation are confidential, and no Party shall be bound by any position asserted in negotiations. Except as expressly provided in this Stipulation, and in accordance with Utah Admin. Code R746-100-10.F.5, neither the execution of this Stipulation nor the order adopting it shall be deemed to constitute an admission or acknowledgment by any Party of the validity or invalidity of any principle; nor shall they be construed to constitute the basis of an estoppel or waiver by any Party; nor shall

they be introduced or used as evidence for any other purpose in a future proceeding by any Party except in a proceeding to enforce this Stipulation.

4. The Parties agree that no part of this Stipulation or the formulae and methodologies used in developing the same or a Commission order approving the same shall in any manner be argued or considered as precedential in any future case except with regard to issues expressly called-out and resolved by this Stipulation. This Stipulation does not resolve and does not provide any inferences regarding, and the Parties are free to take any position with respect to any issues not specifically called-out and settled herein.

5. The Parties request that the Commission hold a hearing on this Stipulation. Total Call, the DPU, and the OCS shall, and other Parties may make one or more witnesses available to explain and offer further support for this Stipulation. The Parties shall support the Commission's approval of this Stipulation. As applied to the DPU and the OCS, the explanation and support shall be consistent with their statutory authority and responsibility.

6. The Parties agree that if any person challenges the approval of this Stipulation or requests rehearing or reconsideration of any order of the Commission approving this Stipulation, each Party will use its best efforts to support the terms and conditions of this Stipulation. As applied to the DPU and the OCS, the phrase "use its best efforts" means that they shall do so in a manner consistent with their statutory authority and responsibility. In the event any person seeks judicial review of a Commission order approving this Stipulation, no Party shall take a position in that judicial review proceeding in opposition to the Stipulation.

7. Except with regard to the obligations of the Parties under the four immediately preceding paragraphs of this Stipulation, this Stipulation shall not be final and binding on

the Parties until it has been approved without material change or condition by the Commission.

8. This Stipulation is an integrated whole, and any Party may withdraw from it if it is not approved without material change or condition by the Commission or if the Commission's approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission's approval of this Stipulation is rejected or materially conditioned by a reviewing court, the Parties agree to meet and discuss the applicable Commission or court order within five business days of its issuance and to attempt in good faith to determine if they are willing to modify the Stipulation consistent with the order. No Party shall withdraw from the Stipulation prior to complying with the foregoing sentence. If any Party withdraws from the Stipulation, any Party retains the right to seek additional procedures before the Commission, including presentation of testimony and cross-examination of witnesses, with respect to issues resolved by the Stipulation, and no party shall be bound or prejudiced by the terms and conditions of the Stipulation.

9. This Stipulation may be executed by individual Parties through two or more separate, conformed copies, the aggregate of which will be considered as an integrated instrument.

WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this \_\_\_ day of \_\_\_\_\_, 2013.

**FOR TOTAL CALL MOBILE, INC.:**

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Hideki Kato  
Chief Operating Officer  
Total Call Mobile, Inc.  
1411 W. 190<sup>th</sup> Street, Suite 700  
Gardena, CA 90248  
(310) 818-4300 (Phone)  
(310) 818-4310 (Fax)

**FOR THE UTAH DEPARTMENT OF  
PUBLIC UTILITIES:**

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Chris Parker  
Director  
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160 E 300 S, 5<sup>th</sup> Floor  
P.O. Box 140857  
Salt Lake City, UT 84114-6751

**FOR THE UTAH OFFICE OF  
CONSUMER SERVICES:**

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MICHELE BECK  
Director  
Office of Consumer Services  
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Salt Lake City, UT 84114-6782

**ATTACHMENT 1**

Utah-specific Fact Sheet

## IMPORTANT INFORMATION ABOUT YOUR TOTAL CALL MOBILE WIRELESS LIFELINE SERVICE

TOTAL CALL MOBILE Lifeline Service is brought to you by TOTAL CALL MOBILE, INC. ("Total Call") and includes the provision of a free "base-level" E911 compliant wireless handset and mobile phone service. This government sponsored Lifeline service is subject to continuing eligibility and annual recertification. Only one Lifeline subsidy per household is allowed; your participation in this program requires that you do not receive Lifeline subsidy on any other phone, either wireless or wireline. If you no longer receive the low-income assistance or your income exceeds the qualifying amount, you must notify TOTAL CALL. As a recipient of Lifeline service you may not give away or sell this phone.

- Your enrollment in the program will be for 12 months. (Unless your eligibility status changes, you select a different carrier, or there is no activity on your phone for 90 consecutive days.)
- You will receive a minimum of 150 free minutes each month (Lifeline Plan 1). This offer may increase depending on the Plan option you choose but will not decrease without prior notice. Total Call will inform you of any changes. You must follow the procedures described in the "Getting Started" booklet and Lifeline Terms and Conditions to begin using Lifeline service on your phone.
- Unused free minutes will not carry over to the following month.
- Minutes will be charged for both outgoing and incoming calls.
  - Note: Calls to directory assistance and time you are on hold will also count as minutes used.
  - Emergency calls to 911 will not count against your minutes
  - Calls to Total Call customer service will not count against your minutes.
  - Partial minute usage is rounded up to the nearest minute.
  - Text messages are charged against Plan minutes at one minute per incoming or outgoing text.
- To contact Total Call customer service, please dial 611 from your Total Call handset or dial Total Call's toll-free number 1-800-550-5265. You can also contact Total Call customer service representatives via the "Contact Us" page on Total Call's website [www.totalcallmobile.com](http://www.totalcallmobile.com).
- Emergency calls to 911 CAN be made even if you have NO remaining minutes.
- Additional minutes and text messages can be added by calling Total Call customer service, or via Total Call's website.
  - Purchase additional minutes at \$0.10 per minutes
  - Purchase additional text messages at \$0.05 per text message
- You may also purchase Total Call 30-day retail plans at a discount: 1000 Talk & 1000 Text (Lifeline Plan 3), Unlimited Talk & Text (Lifeline Plan 4), and Unlimited Talk, Text & Data (Lifeline Plan 5).
- At the end of 12 months Total Call will contact you to verify that you are still eligible for Lifeline support to continue to receive free minutes monthly.
- Access to the internet is available on Total Call's Lifeline Plan 5. There is no internet access on Total Call's Lifeline Plan 1 (150 Minute Plan), Lifeline Plan 2 (250 Minute Plan), Lifeline Plan 3 (1000 Talk & 1000 Text), and Lifeline Plan 4 (Unlimited Talk & Text). You are advised to carefully review the availability of this feature in your Total Call Lifeline Service Guide and Terms and Conditions.
- If you have purchased additional airtime and have remaining minutes and days of service at the end of your Lifeline eligibility, you will be subject to the terms and conditions of Total Call's retail wireless services.

YOU ARE ENCOURAGED TO READ THE "GETTING STARTED" BOOKLET AND LIFELINE TERMS AND CONDITIONS CAREFULLY FOR COMPLETE DETAILS REGARDING YOUR TOTAL CALL MOBILE LIFELINE SERVICE.