

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

In the Matter of the Petition of American
Broadband & Telecommunications Company
for Designation as an Eligible
Telecommunications Carrier for the Purpose
of Offering Lifeline Service on a Wireless
Basis

DOCKET NO. 15-2579-01
ORDER APPROVING SETTLEMENT
STIPULATION AND APPLICATION
FOR DESIGNATION AS AN
ELIGIBLE
TELECOMMUNICATIONS CARRIER

ISSUED: July 16, 2015

BACKGROUND

On March 2, 2015, American Broadband & Telecommunications Company (American Broadband) filed an application for designation as an eligible telecommunications carrier.¹ On March 2, 2015, the Commission issued an action request to the Division of Public Utilities (Division) to review the application and make a recommendation by April 1, 2015.² On March 10, 2015, the Commission issued a notice of filing and scheduling conference.³ On April 9, 2015, the Commission issued a scheduling order and notice of hearing.⁴ On May 29, 2015, the Division filed a recommendation that the Commission suspend testimony in this docket due to settlement discussions between the parties.⁵ The Commission then suspended the scheduling order and noticed a hearing on the settlement stipulation.⁶

¹ See Petition of American Broadband & Telecommunications Company for Designation as an Eligible Telecommunications Carrier for the Purpose of Offering Lifeline Service on a Wireless Basis, filed March 2, 2015.

² See Action Request, dated March 2, 2015.

³ See Notices of Filing and Scheduling Conference, issued March 10, 2015.

⁴ See Scheduling Order and Notice of Hearing, issued April 9, 2015.

⁵ See Division Memorandum, filed May 29, 2015.

⁶ See Order Suspending Scheduling Order, and Notice of Hearing, issued June 1, 2015. The hearing was thereafter rescheduled at the parties' request. See Notice of Rescheduled Hearing, issued July 1, 2015.

On July 13, 2015, American Broadband filed an executed stipulation and settlement agreement (Settlement Stipulation or Stipulation),⁷ a copy of which is attached as Exhibit #1.⁸ The Settlement Stipulation clarifies that “American Broadband seeks ETC designation for the limited purpose of providing universal service low-income Lifeline service in Utah. American Broadband will not be seeking universal service high-cost support in its service area, nor will American Broadband seek to provide universal service low-income Link Up service.”⁹ “American Broadband is not currently seeking any Utah USF funding. If American Broadband seeks Utah USF funding in the future, American Broadband will file a separate application requesting such state support.”¹⁰ The Settlement Stipulation is signed by counsel for American Broadband, the Division, and the Office of Consumer Services (Office).¹¹

On July 14, 2015, the Commission held a hearing on the Settlement Stipulation. At the hearing, David Shaw, legal counsel, appeared for American Broadband, along with Michael Dover and Jeff Ansted, who appeared telephonically. Patricia Schmid, assistant attorney general, appeared on behalf of the Division and was accompanied by Casey J. Coleman. Robert Moore, assistant attorney general, appeared on behalf of the Office and was accompanied by Cheryl Murray. Mr. Ansted, president and CEO of American Broadband, testified that the Settlement Stipulation is just and reasonable, and in the public interest. Mr. Coleman, utility technical consultant with the Division, testified the Stipulation is just, reasonable, and in the public

⁷ See American Broadband and Telecommunications Company Stipulation and Settlement Agreement, filed July 13, 2015.

⁸ See attached Exhibit #1.

⁹ *Id.* at 4, ¶ 2.

¹⁰ *Id.* at 6, ¶ 12(B).

¹¹ *Id.* at 10.

interest. Ms. Murray, utility analyst with the Office, testified the Settlement Stipulation is in the public interest and recommended Commission approval of it. “[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.”¹² 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.¹³ 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.¹⁴ 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.

Further, we approve American Broadband’s application for designation as an eligible telecommunications carrier, subject to the terms of the Stipulation.

DATED at Salt Lake City, Utah, this 16th day of July, 2015.

/s/ Melanie A. Reif
Administrative Law Judge

¹² Exhibit #1 at 7, ¶ 2.

¹³ See Utah Code Ann. § 54-7-1 (LexisNexis 2010).

¹⁴ See *id.* § 54-7-1(2)(a).

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Approved and confirmed this 16th day of July, 2015, as the Report and Order of the Public Service Commission of Utah.

/s/ Thad LeVar, Chair

/s/ David R. Clark, Commissioner

/s/ Jordan A. White, Commissioner

Attest:

/s/ Gary L. Widerburg
Commission Secretary
DW#267538

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 16th day of July, 2015, a true and correct copy of the foregoing, was served upon the following as indicated below:

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Administrative Assistant

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Exhibit #1

BEFORE THE UTAH PUBLIC SERVICE COMMISSION

Petition of American Broadband and Telecommunications Company for Designation as an Eligible Telecommunications Carrier in the State of Utah

Docket No. 15-2579-01

AMERICAN BROADBAND AND TELECOMMUNICATIONS COMPANY STIPULATION AND SETTLEMENT AGREEMENT

STIPULATION AND SETTLEMENT AGREEMENT

American Broadband and Telecommunications Company (“American Broadband” or the “Company”), the Division of Public Utilities (“DPU”), and the Office of Consumer Services (“OCS”) (collectively the “Stipulating Parties” or the “Parties”), through their undersigned representatives, enter into this Stipulation and Settlement Agreement (“Stipulation”) regarding the Petition filed by American Broadband in the instant docket. The Parties submit this Stipulation for approval by the Public Service Commission of Utah (the “Commission” or the “PSC”) pursuant to the Commission’s Rules of Practice and Procedure, Utah Admin. Code R. 746-100-10.

PRELIMINARY STATEMENT

1. On May 8, 1997, the Federal Communications Commission (“FCC”) issued its Universal Service Report and Order, 12 FCC Rcd 8776 (1997) (“Universal Service Order”) implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the “Federal Act”). The FCC provided further guidance on Eligible Telecommunications Carrier (“ETC”) designation in its Lifeline and Link Up Reform Order released February 6, 2012,

Federal-State Joint Board on Universal Service, 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 12-11.¹

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 provide 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;

¹ 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”).

- b. minutes of use for local service provided at no additional charge to end users;
- 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, the provision at 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 March 2, 2015, American Broadband filed a Petition seeking Designation as an ETC in the State of Utah ("Petition"), Docket Number 15-2579-01. American Broadband's Petition states that it seeks designation throughout the T-Mobile USA ("T-Mobile") and Sprint PCS ("Sprint") wireless coverage area, which comprises the wire centers set forth on Exhibit D to the Petition. Petition at 14.

7. Other than the DPU and the OCS, which are afforded participation by Rule, no party has sought to participate in this docket and the deadline for filing a petition to intervene has expired.

9. 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. American Broadband is a wireless reseller of the T-Mobile and Sprint PCS networks.

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

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

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

6. American Broadband 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 as an Eligible Telecommunications Carrier throughout its requested service areas.²

² 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, American Broadband's offerings inherently allow Lifeline subscribers to control their usage because of the prepaid nature of American Broadband's Lifeline plans. American Broadband's service is not offered on a distance-sensitive basis and local and domestic long distance minutes are treated the same. The nature of

7. American Broadband meets the requirements for Federal ETC designation.

8. American Broadband submitted its Compliance Plan to the FCC on April 27, 2012.

In that filing, American Broadband committed to implement and comply with the Compliance Plan and employ certain procedures and operations set forth in the Compliance Plan for its provision of prepaid wireless Lifeline service. In May 2012, American Broadband received approval from the FCC of its Compliance Plan (the "Compliance Plan") for the provision of prepaid Lifeline wireless service, which was submitted as Exhibit B to the Petition.

9. American Broadband will make available Lifeline service to qualifying low-income consumers. American Broadband will not offer Link Up to qualifying low-income consumers.

10. American Broadband will make available four (4) different Lifeline plans, equivalent to 250 voice minutes per month free and 250 text messages per month free (after application of the federal Lifeline discount) in all served areas except Tribal lands, or 500 voice minutes per month and 500 text messages per month for \$10.70 per month (after application of the federal Lifeline discount) in all served areas except Tribal lands, or 4,000 voice minutes per month and text messaging at no cost for \$34.25 per month (after application of the federal Lifeline discount) in Tribal lands only, or the ability to apply the federal Lifeline discount of \$9.25 per month to American Broadband's non-Lifeline offerings in all served areas except Tribal Lands and \$34.25 per month in Tribal lands. Additional minutes purchased by the Lifeline customer will be available for voice and text. American Broadband agrees that it will seek the \$9.25 per

American Broadband's service and plans act as a toll limitation. American Broadband will not seek reimbursement for toll limitation service.

customer, per month federal reimbursement from the Universal Service Administrative Company (“USAC”), and the \$34.25 per customer, per month federal reimbursement from USAC for tribal customers³.

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

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

A. American Broadband will use a Utah-specific fact sheet that provides customers concise and complete information about the services they will receive. Such fact sheet is attached hereto as Attachment 1. American Broadband agrees to promptly update the fact sheet anytime it changes its Utah Lifeline program offerings.

B. American Broadband is not currently seeking any Utah USF funding. If American Broadband seeks Utah USF funding in the future, American Broadband will file a separate application requesting such state support.

D. American Broadband will comply with all state service quality and consumer protection requirements.

³ See “Lifeline Worksheet,” FCC Form 497, April 2012 Edition, for reimbursement rates for non-Tribal low-income subscribers, and Tribal low-income subscribers.

E. American Broadband acknowledges that approval of the 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. American Broadband agrees to adopt any changes to the certification and verification process developed within Docket No. 10-2528-01.

G. Upon implementing any changes to its Lifeline offerings, American Broadband will timely file a notice with the DPU and OCS describing the changed plans.

H. If American Broadband intends to expand the area in which it offers Lifeline services in Utah, American Broadband will timely file a notice with the Commission, DPU and OCS identifying and requesting approval for the expanded service area.

GENERAL PROVISIONS

1. The Parties stipulate to the admission into evidence in this docket of American Broadband'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 (2013) authorizes the Commission to approve a settlement so long as the settlement is just and reasonable in result. While the Parties may not be 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 R. 746-100-10.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 methods 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. The Parties will 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 reasonable efforts to support the terms and conditions of this Stipulation. As applied to the DPU and the OCS, the phrase “use its best reasonable 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 (4) 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 (5) 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 (2) 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.

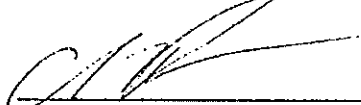
Dated this 1st day of July, 2015.

FOR AMERICAN BROADBAND AND
TELECOMMUNICATIONS COMPANY



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ATTACHMENT 1

Utah-specific Fact Sheet

DRAFT

IMPORTANT INFORMATION ABOUT YOUR AMERICAN BROADBAND AND TELECOMMUNICATIONS COMPANY LIFELINE SERVICE

AMERICAN ASSISTANCE is brought to you by AMERICAN BROADBAND and includes the provision of a free E911 compliant wireless handset with a free voicemail account and custom calling features such as caller ID and call waiting. This government sponsored Lifeline telephone service is subject to your continuing eligibility and annual recertification. Only one Lifeline subsidy per household is allowed; your participation in this program requires that you or anyone in your household do not receive a Lifeline subsidy on any other phone, either wireless or wireline. If you no longer participate in the low-income assistance program under which you originally qualified or if your income exceeds the qualifying amount, you must notify American Broadband immediately. As a recipient of Lifeline service you may not give away or sell this phone; Lifeline service is non-transferrable.

- 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 60 consecutive days. Your enrollment may be renewed based on your yearly re-certification of Lifeline eligibility.
- You will receive a minimum of 250 free nationwide minutes each month, at no charge, depending on the Plan you choose. This offer may increase but will not decrease. American Broadband will inform you of any changes. (You must qualify and follow the procedures provided to you by American Broadband to receive free minutes and elect a Plan.)
- Unused minutes in any 30-day month do not carry over to the next month.
- Minutes will be charged for both outgoing and incoming calls. Available minutes can be used for voice or text as set forth below.
 - There is no charge for calls to directory assistance, however the duration of the call, including time you are on hold, will count as minutes used.
 - Emergency calls to 911 will not count against your minutes and can be made even if you have no remaining minutes.
 - Calls to American Broadband customer service using 611 will not count against your minutes.
 - Partial minute usage is rounded up.
 - Text messages are charged at one minute per three (3) incoming or outgoing texts.
- To contact an American Broadband customer service representative, please dial 611 from your American Broadband handset or dial American Broadband's toll-free number 1-866-966-2628.
- Additional minutes can be added by calling American Broadband customer service or visiting a local Utah retailer. Additional minutes are available for thirty (30) days from purchase, and will not carry over into the next month. Additional minutes can be used for voice or texts as follows:

• Purchase 100 voice minutes for \$6.99	• Purchase 100 texts for \$2.99
• Purchase 250 voice and 250 texts for \$9.99	• Purchase 300 texts for \$4.99
• Purchase 500 voice and 500 texts for \$19.99	• Purchase 500 texts for \$7.99
• Purchase 1000 voice and 1000 texts for \$29.99	• Purchase 1000 texts for \$12.99
- At the end of 12 months American Broadband will contact you to verify that you are still eligible for Lifeline support to continue to receive free minutes monthly. You must respond to American Broadband or you will automatically be de-enrolled from the Lifeline program.
- 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 American Broadband's retail wireless services.
- Your wireless Lifeline service from American Broadband is governed by American Broadband's Lifeline Terms and Conditions of Service, which will be provided to you upon service initiation, and are available at: <http://www.americanassistance.com/terms-and-conditions>

YOU ARE ENCOURAGED TO READ ALL MATERIALS PROVIDED TO YOU CAREFULLY FOR COMPLETE DETAILS REGARDING YOUR AMERICAN BROADBAND WIRELESS LIFELINE SERVICE.