
BEFORE THE UTAH PUBLIC SERVICE COMMISSION

Petition of Assist Wireless, LLC for
Designation as an Eligible
Telecommunications Carrier in the State of
Utah

Docket No. 17-2597-01

**ASSIST WIRELESS, LLC
STIPULATION AND SETTLEMENT
AGREEMENT**

STIPULATION AND SETTLEMENT AGREEMENT

COMES NOW, Assist Wireless, LLC (“Assist Wireless” 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 Assist Wireless in this 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 Code § 54-7-1.

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;
 - b. minutes of use for local service provided at no additional charge to end users;

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”).

- 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 May 18, 2017, Assist Wireless filed a Petition seeking Designation as an ETC in the State of Utah ("Petition"), Docket Number 17-2597-01. Assist Wireless's Petition states that it seeks designation throughout wireless coverage area of its national wireless network providers, which comprises the wire centers set forth on Exhibit 1 to the Petition.

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 this 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. Assist Wireless provides wireless service through an agreement with national wireless network providers.

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

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

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

6. Assist Wireless 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

7. Assist Wireless meets the requirements for Federal ETC designation.

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, Assist Wireless's offerings inherently allow Lifeline subscribers to control their usage because of the prepaid nature of Assist Wireless's Lifeline plans. Assist Wireless's service is not offered on a distance-sensitive basis and local and domestic long distance minutes are treated the same. The nature of Assist Wireless's service and plans act as a toll limitation. Assist Wireless will not seek reimbursement for toll limitation service.

8. Section 214(e)(1)(A) of the federal Communications Act requires that a carrier must use its own facilities or a combination of its own facilities and resale of another carrier's facilities in order to provide universal service supported services. This requirement has come to be known as the "own facilities requirement." In its *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (FCC rel. Feb. 6, 2012) ("*Lifeline Reform Order*"), the FCC decided to forbear from applying the federal Communications Act's own facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions. One of those conditions was: "the carrier must file, and the Bureau must approve, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary." *Lifeline Reform Order* at ¶368. Assist Wireless submitted its Compliance Plan to the FCC on June 29, 2012. However, that Compliance Plan has not been acted upon by the FCC. An approved Compliance Plan is not required here, though, since Assist Wireless does not seek forbearance from the "own facilities" requirement. Assist Wireless will instead provide Lifeline services through a network using a combination of Assist Wireless' own facilities and elements provided by national wireless carriers. This network will be used for all calls to and from Assist Wireless' Lifeline customers in Utah.

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

10. Assist will make available eight (8) different Lifeline-assisted plans to Utah Lifeline

consumers.³ These plans include 500 minutes and 500 text messages at no cost; or 500 minutes and 1500 text messages for \$1.00 monthly; or 1000 minutes and unlimited text messages for \$5.00 monthly; or 50 minutes, 100 text messages, and 500MB of data at no cost; or 1000 minutes, unlimited text messages, and 500MB of data for \$25.00 monthly; or unlimited minutes and text messages and 500MB of data for \$26.00 monthly; or unlimited minutes and text messages and 1 GB of data for \$30.00 monthly; or unlimited minutes and text messages and 2GB of data for \$40.00 monthly. All plans include application of the federal Lifeline discount. Eligible tribal applicants can further receive the tribal Lifeline discount. Additional minutes, text, and data will be available for purchase by Lifeline customers. Assist Wireless agrees that it will seek the \$9.25 per 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 customers.⁴

11. The Parties stipulate and agree that designating Assist Wireless as an ETC in the wire centers set forth in Exhibit 1 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 Assist Wireless shall provide its ETC Lifeline universal service offerings in Utah pursuant to this Stipulation (including attachments). The Parties recommend that Assist Wireless’s provision of its universal service offering as an ETC be governed by the following additional requirements:

A. Assist Wireless will use a Utah-specific fact sheet that provides customers

³ See Exhibit 2, “Proposed Lifeline Offerings,” summarizing the Company’s retail wireless rate plans to which Assist seeks to apply the Lifeline discount.

⁴ See “Lifeline Worksheet,” FCC Form 497, July 2016 Edition, for reimbursement rates for non-Tribal low-income subscribers, and Tribal low-income subscribers.

concise and complete information about the services they will receive. Such fact sheet is attached hereto as Attachment 1. Assist Wireless agrees to promptly update the fact sheet anytime it changes its Utah Lifeline program offerings.

B. In its petition, Assist Wireless also seeks Utah USF funding. However, pursuant to the Order Bifurcating Proceedings and Notice of Scheduling Conference issued herein on June 13, 2017, the PSC bifurcated this docket so that the immediate proceeding will adjudicate Assist Wireless's request for designation as an Eligible Telecommunications Provider for the purpose of receiving federal Lifeline support for its Utah customers. After the PSC makes effective rules governing wireless providers' eligibility for state Lifeline support, it will use those rules to adjudicate Assist Wireless's request for state support.

D. Assist Wireless will comply with all state service quality and consumer protection requirements and the CTIA Consumer Code.

E. Assist Wireless 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. Assist Wireless agrees to adopt any changes to the certification and verification process developed within Docket No. 10-2528-01, as well as any other Commission approved changes.

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

H. If Assist Wireless intends to expand the area in which it offers Lifeline

services in Utah, Assist Wireless 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 Assist Wireless'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 (2017) 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 Code Ann § 54-7-1, 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

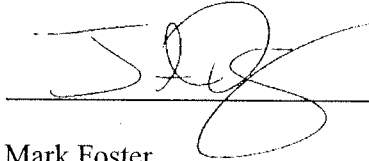
Commission's approval is rejected or materially conditioned by a reviewing court. If the Commission rejects any part of this Stipulation or imposes any material change or condition on approval of this Stipulation or if the Commission's approval of this Stipulation is rejected or materially conditioned 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 ___ day of August, 2017.

FOR ASSIST WIRELESS, LLC



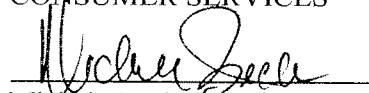
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ATTACHMENT 1

Utah-specific Fact Sheet

DRAFT

IMPORTANT INFORMATION ABOUT YOUR ASSIST WIRELESS AND TELECOMMUNICATIONS COMPANY LIFELINE SERVICE

ASSIST LIFELINE is brought to you by ASSIST WIRELESS 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 Assist Wireless 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 30 consecutive days. Your enrollment may be renewed based on your yearly re-certification of Lifeline eligibility.
- Assist offers eight plans. These offers may increase but will not decrease. Assist Wireless will inform you of any changes. You must qualify and follow the procedures provided to you by Assist Wireless to receive free minutes and elect a Plan. These plans include:
 - 500 minutes and 500 text messages at no cost.
 - 500 minutes and 1500 text messages for \$1.00 monthly.
 - 1000 minutes and unlimited text messages for \$5.00 monthly.
 - 50 minutes, 100 text messages, and 500MB of data at no cost.
 - 1000 minutes, unlimited text messages, and 500MB of data for \$25.00 monthly.
 - Unlimited minutes and text messages and 500MB of data for \$26.00 monthly.
 - Unlimited minutes and text messages and 1 GB of data for \$30.00 monthly.
 - Unlimited minutes and text messages and 2GB of data for \$40.00 monthly.
- 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.
 - 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 Assist Wireless customer service using 611 will not count against your minutes.
 - Partial minute usage is rounded up.

- Text messages will be charged as provided in the particular plans. Text messages will be charged for both outgoing and incoming text messages. If a plan provides for a limited number of text messages, then customers who have reached that limit will be unable to text further unless they purchase additional text messages as outlined below. To contact an Assist Wireless customer service representative, please dial 611 from your Assist Wireless handset or dial Assist Wireless's toll-free number 1- 1-855-392-7747.
- Additional minutes can be added by calling Assist Wireless 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 \$4.00
 - Purchase 200 voice minutes for \$8.00
 - Purchase 400 voice minutes for \$11.00
 - Purchase 1000 voice minutes for \$20.00
 - Purchase 1000 texts for \$5.00
 - Purchase 2000 texts for \$10.00
 - Purchase 4000 texts for \$16.00
 - Purchase 100 voice minutes and 1000 texts for \$7.00
 - Purchase 250 voice minutes and 2500 texts for \$13.00
 - Purchase 500 voice minutes and 5000 texts for \$19.00
 - Purchase 100MB data for \$4.00
 - Purchase 100MB data for \$16.00
 - Purchase 100MB data for \$20.00
- At the end of 12 months Assist Wireless will contact you to verify that you are still eligible for Lifeline support to continue to receive free minutes monthly. You must respond to Assist Wireless 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 Assist Wireless's retail wireless services.
- Your wireless Lifeline service from Assist Wireless is governed by Assist Wireless's Lifeline Terms and Conditions, which will be provided to you upon service initiation, and are available at: <https://www.assistwireless.com/privacy-terms>.

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