

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Petition of AirVoice Wireless, LLC d/b/a AirTalk Wireless for Designation as an Eligible Telecommunications Carrier in the State of Utah and to Participate in the Utah Universal Service Fund	Docket No. 22-2635-01
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STIPULATION AND SETTLEMENT AGREEMENT

AirVoice Wireless, LLC d/b/a AirTalk Wireless (“AirVoice” 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 AirVoice 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 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, 2012.¹

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”).

2. The Universal Service Order provides that only ETCs designated by a state public utility 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 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 intent and ability to advertise its universal service offerings and the charges thereof, 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 Telephony Service, consisting of: voice grade access to the public switched telephone network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; 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 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 State Commission to determine that the designation of an additional ETC is in the public interest.

6. On March 22, 2022, AirVoice filed a Petition seeking Designation as an ETC in the State of Utah (“Petition”), Docket Number 22-2635-01. AirVoice seeks designation that is statewide in scope, to allow the Company to provide Lifeline service wherever its underlying facilities-based providers have wireless coverage, as identified by zip codes in Exhibit 3 of the Petition.

7. AirVoice’s Petition sought designation as a wireless ETC in the State of Utah for the purpose of receiving (1) federal universal Lifeline support for qualifying Utah customers; (2) federal enhanced tribal universal service Lifeline support for qualifying Utah customers; and (3) Lifeline support from the Utah Universal Service Fund (“UUSF”) for qualifying customers.

8. On May 13, 2022, AirVoice filed Direct Testimony of Henry Do in support of its Petition.

9. AirVoice commits that it will pay all state and local regulatory fees required by applicable laws of the State of Utah, including but not limited to UUSF and 911 fees.

10. 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.

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

AGREEMENT

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

1. AirVoice is a commercial mobile radio service (“CMRS”) provider, and a common carrier as defined by 47 U.S.C. §332(c)(1)(A).

2. AirVoice provides prepaid wireless telecommunications services to consumers by using the underlying wireless networks of AT&T Mobility LLC and T-Mobile USA, Inc. (its “Underlying Carriers”) on a wholesale basis.

3. AirVoice seeks ETC designation for the purpose of receiving (1) federal universal Lifeline support for qualifying Utah customers; (2) federal enhanced tribal universal service Lifeline support for qualifying Utah customers; and (3) Lifeline support from the UUSF for qualifying customers.

4. AirVoice provides the supported services set forth in 47 C.F.R. § 54.101(a), and the Company has shown an intent and ability to offer those services once designated as an ETC throughout its requested service areas.²

5. AirVoice meets the requirements for federal ETC designation.

6. In its Lifeline and Link Up Reform Order, the FCC granted forbearance from the “own-facilities” requirement contained in Section 214(e)(1)(A) of the Federal Act to carriers seeking Lifeline-only ETC designation. As a condition of this forbearance, AirVoice filed a Compliance Plan with the FCC, which the FCC approved on December 26, 2012. The FCC approved AirVoice’s Revised Compliance Plan on December 23, 2021. A copy of the Revised Compliance Plan is attached to AirVoice’s Petition as Exhibit 2.

7. AirVoice also satisfies the requirements for receiving State Lifeline support from the UUSF.

8. AirVoice's Lifeline product offering will offer service to qualifying low-income Utah customers that meets or exceeds both the FCC's Lifeline minimum service standards and the Commission's UUSF plan requirements set forth in Utah Administrative Code R746-8-403, which represents a benefit for those consumers and is in the public interest.

9. AirVoice shall initially make available the following Lifeline plan options: 1,000 voice minutes, unlimited text messages, and 4.5 gigabytes (GB) of data per month for non-tribal customers, or unlimited talk, text, and data for Tribal customers, each at a net cost of \$0.00 after application of Lifeline and UUSF support. Customers will also be able to purchase additional minutes or data as needed. AirVoice agrees that it will seek the full amount of federal USF reimbursement from the Universal Service Administrative Company ("USAC"), currently \$9.25 for eligible subscribers and an additional \$25.00 for eligible residents of federally recognized tribal lands ("Tribal" customers), and UUSF support.

10. AirVoice's Lifeline product offering will offer an additional choice of local providers offering a high-quality service for low-income consumers, which represents a benefit for those consumers, and furthers the statutory goal that basic service be available and affordable to all citizens of the state of Utah, and is in the public interest.

11. The Parties stipulate and agree that designating AirVoice as an ETC in the zip codes set forth in Exhibit 3 of the Petition serves the public interest, convenience, and necessity, as defined in 47 U.S.C. § 214(e)(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.

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

- A. AirVoice 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. AirVoice will provide the fact sheet to prospective new customers, each new customer at the time of enrollment, and to existing customers upon request. AirVoice will also make the fact sheet available for download by posting it on the Company's website. AirVoice agrees to promptly update the fact sheet anytime the Company changes its Utah Lifeline program offerings.
- B. AirVoice will receive \$3.50 per qualifying line per month pursuant to Utah Admin. Code R746-8-403 and Utah Code Ann. §54-8b-15.
- C. AirVoice will comply with all applicable state service quality and consumer protection requirements and the CTIA Consumer Code.
- D. AirVoice acknowledges that approval of the Petition and ongoing receipt of UUSF funds are 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.
- E. AirVoice agrees to adopt any changes to the certification and verification process required by the FCC or by the Commission.

- F. Upon implementing any changes to its Lifeline offerings, AirVoice 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 AirVoice'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 § 54-7-1 (2018) 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 Code § 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.

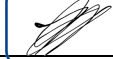
WHEREFORE, the Parties respectfully submit this Stipulation and Settlement Agreement for approval by the Commission and request that the Commission grant such approval.

Dated this 7th day of July, 2022.

FOR AIRVOICE WIRELESS, LLC
D/B/A AIRTALK WIRELESS


FOR UTAH DIVISION OF PUBLIC
UTILITIES

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ATTACHMENT 1

Utah-specific Fact Sheet

IMPORTANT INFORMATION ABOUT YOUR AIRTALK LIFELINE SERVICE

AirTalk Lifeline Service is brought to you by AirVoice Wireless, LLC dba AirTalk Wireless, and includes the provision of a free SIM card or E911-compliant, data-capable wireless device. This government-sponsored Lifeline telephone 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. A household, for purposes of the Lifeline program, is defined as any individual or group of individuals who live together at the same address and share income and expenses. Violation of the one-per-household requirement would constitute a violation of the FCC's rules and would result in the consumer's de-enrollment from the program, and potentially, prosecution by the United States government. If you no longer receive the low-income assistance or your income exceeds the qualifying amount, you must notify AirTalk Wireless. As a recipient of Lifeline service, you may not transfer your service to any other individual, including another eligible low-income consumer or 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 thirty (30) consecutive days).
- You will receive 1,000 voice minutes, unlimited text messages, and 4.5 gigabytes ("GB") of data usage each month (or unlimited talk, text and data for Tribal customers) for \$0 net cost after application of Lifeline and UUSF support. AirTalk Wireless will inform you of any plan changes.
- Unused minutes and data will not carry over to the following month.
- Minutes will be charged for both outgoing and incoming calls.
 - Emergency calls to 911 will not count against your available minutes.
 - Calls to AirTalk Wireless customer service will not count against your minutes.
- To contact AirTalk Wireless customer service, please dial 611 from your AirTalk Wireless handset device, or call toll-free at 855-924-7825. You can also contact AirTalk Wireless customer service representatives via the "Contact Us" page on AirTalk Wireless's website: www.airtalkwireless.com.
- Emergency calls to 911 CAN be made even if you have NO remaining minutes available.
- Before the end of 12 months the National Verifier will verify your continued eligibility for Lifeline support. If your continued eligibility for Lifeline support cannot be determined by accessing the appropriate eligibility or income databases, the National Verifier may request a signed certification from you verifying that you are still eligible for Lifeline support to continue to receive your discounted service.

YOU ARE ENCOURAGED TO READ YOUR WELCOME KIT CAREFULLY FOR COMPLETE DETAILS REGARDING YOUR AIRTALK WIRELESS LIFELINE SERVICE.