

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Petition of DISH Wireless L.L.C.) d/b/a Gen Mobile for
Designation as an Eligible)
Telecommunications Carrier in the State of) Docket No. 23-2641-01
Utah for the Limited Purpose of Providing)
Lifeline Service to Qualifying Customers)
)
)

STIPULATION AND SETTLEMENT AGREEMENT

DISH Wireless L.L.C. dba Gen Mobile (“DISH 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 DISH Wireless 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 Utah Code Ann. § 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 *2012 Lifeline Reform Order* released February 6, 2012.¹

¹ See *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 Nos. 11-42 and 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) (“*2012 Lifeline 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:

- (i) be a common carrier;
- (ii) 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
- (iii) demonstrate intent and ability to advertise its universal service offerings and the charges thereof, using media of general distribution.²

4. Voice Telephony Service is set forth in 47 C.F.R. § 54.101(a), which are the supported services of the FCC, consisting of:

- (i) voice grade access to the public switched telephone network or its functional equivalent;
- (ii) minutes of use for local service provided at no additional charge to end users;
- (iii) access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the

² See 47 U.S.C. § 214(e); *Universal Service Order*, 12 FCC Rcd at 8791.

local government in an eligible carrier's service area has implemented 911 or enhanced

911 systems; and

(iv) toll limitation services to qualifying low-income consumers.

5. Pursuant to 47 U.S.C. § 214(e)(2), the State Commission is required to find that the designation of an additional ETC is in the public interest for areas served by a rural telephone company.

6. On March 6, 2023, DISH Wireless filed a petition seeking designation as an ETC in the State of Utah ("Petition"), Docket No. 23-2641-01. On March 29, 2023, DISH Wireless filed Direct Testimony of Robert Yap in support of its Petition. On August 1, 2023, DISH Wireless filed a supplement to its Direct Testimony. These filings and additional investigation by the parties indicate that the Company currently resells wireless telecommunications services and offers service on its own 5G network in the State of Utah through its dba Gen Mobile brand. DISH Wireless seeks designation throughout the State of Utah to allow the Company to provide Lifeline service using a combination of its own facilities and resale of its underlying carriers' services in service areas as identified by zip codes in Exhibit 3 of the Petition ("Service Area").

7. DISH Wireless's Petition seeks designation as a wireless ETC in the State of Utah for the purpose of receiving:

(i) federal universal Lifeline support for qualifying Utah customers;

(ii) federal enhanced tribal universal service Lifeline support for qualifying Utah customers; and

(iii) Lifeline support from the Utah Universal Service Fund ("UUSF") for qualifying customers.

8. DISH Wireless commits to remitting all state and local regulatory fees required by applicable laws of the State of Utah, including but not limited to UUSF and 911 fees.

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

10. The Parties have now reached an 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. DISH Wireless is a commercial mobile radio service (“CMRS”) provider, and a common carrier as defined by 47 U.S.C. § 332(c)(1)(A).

2. DISH Wireless provides prepaid wireless telecommunications services to consumers by using a combination of the Company’s own 5G network facilities and resale of other carriers’ services.

3. DISH Wireless seeks ETC designation for the purpose of receiving:

(i) federal universal Lifeline support for qualifying Utah customers;

(ii) federal enhanced tribal universal service Lifeline support for qualifying Utah customers; and

(iii) Lifeline support from the UUSF for qualifying customers.

4. DISH Wireless 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.³

5. DISH Wireless meets the requirements for federal ETC designation.

6. Because DISH Wireless is deploying facilities-based wireless voice and broadband services in Utah and other states, and will provide services using a combination of its own facilities and resale of other carriers' services, there is no need for the Company to obtain an approved FCC Compliance Plan in accordance with the *2012 Lifeline Reform Order*.⁴

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

8. DISH Wireless will provide Lifeline service offerings through its Gen Mobile brand offerings to qualifying low-income Utah customers that meet or exceed 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. DISH Wireless shall make available the following Lifeline plan options: 1,000 voice minutes, unlimited text messages, and 5 gigabytes (GB) of data per month for non-tribal customers, or unlimited voice and text messages and 16 GB of data for Tribal customers (eligible customers residing on federally recognized Tribal lands), 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. DISH Wireless agrees that it will seek the full amount of federal USF reimbursement from the Universal Service Administrative Company ("USAC"), currently \$9.25

³ With respect to toll limitation, in its *2012 Lifeline Reform Order*, the FCC stated that toll limitation would no longer be deemed a supported service in the case of ETCs. See *2012 Lifeline Reform Order* at ¶¶ 49 and 367. ⁴ See *2012 Lifeline Reform Order*, ¶ 368.

per month for eligible subscribers and an additional \$25.00 per month for Tribal customer), and UUSF support.

10. DISH Wireless's Lifeline product offering will supply an additional choice of a local provider 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 DISH Wireless as an ETC in the Service Area serves the public interest, convenience, and necessity, as required under 47 U.S.C. § 214(e)(2).

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

- (i) DISH Wireless will use its Utah-Specific fact sheet for Lifeline service (the "Fact Sheet") that provides customers concise and complete information about the services they will receive. This Fact Sheet is attached hereto as Attachment 1. DISH Wireless will provide the Fact Sheet to prospective new customers, each new customer at the time of enrollment, and to existing customers upon request. DISH Wireless will also make the Fact Sheet available for download by posting it on the Company's website. DISH Wireless agrees to promptly update the Fact Sheet anytime the Company changes its Utah Lifeline program offerings.
- (ii) DISH Wireless will receive \$3.50 per qualifying line per month pursuant to Utah Admin. Code R746-8-403 and Utah Code Ann. § 54-8b-15.

- (iii) DISH Wireless will comply with all applicable state service quality and consumer protection requirements and the CTIA Consumer Code.
- (iv) DISH Wireless 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.
- (v) DISH Wireless agrees to adopt any changes to the certification and verification process required by the FCC or by the Commission.
- (vi) Upon implementing any changes to its Lifeline offerings, DISH Wireless 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 DISH Wireless's Petition and pre-filed Testimony and Exhibits. This Stipulation regarding 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 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.

(Remainder of the page intentionally left blank.)

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

Dated this ___ day of October 2023. 6th

DISH WIRELESS, L.L.C. DBA GEN MOBILE



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ATTACHMENT 1

Gen Mobile's Utah-Specific Fact Sheet

ATTACHMENT 1-1
**IMPORTANT INFORMATION ABOUT YOUR DISH WIRELESS LLC dba GEN MOBILE
LIFELINE SERVICE**

This is the general description of and the rates applicable to the Lifeline service provided by DISH Wireless L.L.C. dba Gen Mobile (“Gen Mobile”) within the State of Utah. Gen Mobile’s provision of service within the State of Utah will be subject to the terms and conditions in this Utah-Specific fact sheet for Lifeline by and between the customer and Gen Mobile.

The Lifeline Program (“Lifeline”) is a government assistance program that provides discounted telephone services to eligible households funded by the Federal Universal Service Fund. A household means adults and children who are living together at the same address as one economic unit. Only one discount per eligible household is permitted and is nontransferable to another person. The discount is limited to a single, primary residential address. A subscriber cannot have this discount from multiple carriers at the same time. Lifeline service is restricted to qualified low-income consumers. The applicant must show proof of participation in the approved public assistance program(s) or income. Gen Mobile will confirm eligibility by accessing available databases, or applicants will be required to submit documentation of eligibility. To continue to receive the Lifeline discount, the subscriber must use their Lifeline service once every thirty (30) days and re-certify annually with the National Verifier that the subscriber is qualified to continue participation in Lifeline. If the subscriber no longer qualifies for Lifeline or is receiving more than one (1) discount, the subscriber must contact Gen Mobile Customer Care or Utah Public Service Commission within thirty (30) days of such event. In the event of noncompliance with the foregoing, the subscriber will lose the Lifeline discount and may be subject to regular retail rates or penalties.

- A qualified Lifeline customer in the State of Utah will receive 1,000 voice minutes, unlimited text messages, and 5 GB of data usage each month (or unlimited voice, text and 16 GB of data for Tribal customers) for \$0 net cost after application of Lifeline and UUSF support. Gen Mobile will inform you of any plan changes.
- Qualified Lifeline customers will be able to apply their Lifeline benefit or subsidy to any Gen Mobile plans offered to non-Lifeline customers. These customers will need to contact Customer Care to do so.
- Minutes will be charged for both outgoing and incoming calls. Calls to 911 and to Gen Mobile Customer Care will not count against a customer’s available voice minutes.
- Unused voice minutes at the end of a customer’s monthly cycle will not roll over to the next month. A Lifeline customer will be able to make calls to 911 even if they have exhausted their available voice minutes.
- A Lifeline enrollment will be for 12 months (unless the customer’s eligibility status changes, select a different carrier, or there is no activity on their phone for thirty (30) consecutive days).
- A Lifeline customer can reach Gen Mobile Customer Care by calling 611 from their Gen Mobile network device or (833) 528-1380. The customer can also contact Gen Mobile Customer Care by visiting genmobile.com/pages/contact-us.

**PLEASE VISIT GEN MOBILE'S WEBSITE AT GENMOBILE.COM FOR THE UTAHSPECIFIC
FACT SHEET FOR LIFELINE AND FULL TERMS AND CONDITIONS.**

ATTACHMENT 1-2