

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

Petition of TerraCom, Inc. d/b/a Maxsip Tel for Designation as an Eligible Telecommunications Carrier in the State of Utah and to Participate in the Utah Universal Service Fund	Docket No. 23-2642-01 STIPULATION AND SETTLEMENT AGREEMENT
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STIPULATION AND SETTLEMENT AGREEMENT

TerraCom, Inc. d/b/a Maxsip Tel (“TerraCom” 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 TerraCom in the instant docket. The Parties submit this Stipulation for approval by the Public Service Commission of Utah (the “Commission”) pursuant to 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

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

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*”).

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. A service area is defined as “a geographic area established by a State commission . . . for the purpose of determining universal service obligations and support mechanisms.” 47 U.S.C. § 214(e)(5).

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 therefor using media of general distribution. 47 U.S.C. § 214(e)(1); *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 July 27, 2023, TerraCom filed its Petition for Designation as an ETC in the State of Utah and to Participate in the Utah Universal Service Fund (“Petition”) in Docket No. 23-2642-01. TerraCom 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 the maps in Exhibit 3 of the Petition.

7. TerraCom’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. TerraCom 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.

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 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. TerraCom is a commercial mobile radio service (“CMRS”) provider, and a common carrier pursuant to 47 U.S.C. § 332(c)(1)(A).

2. TerraCom 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. TerraCom 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. TerraCom 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. TerraCom 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, subject to certain conditions.³ The FCC requires a Lifeline-only ETC that doesn’t meet the “own facilities” requirement to submit and receive FCC

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.

³ *Lifeline and Link Up Reform Order* at ¶ 368.

approval of a compliance plan.⁴ In addition, FCC “approval is required in advance of any transfer of ownership or control of an ETC with an approved Lifeline compliance plan.”⁵ As a condition of this forbearance, TerraCom filed a Compliance Plan with the FCC, which the FCC approved on May 25, 2012.⁶ TerraCom filed its Fourth Revised Compliance Plan on October 3, 2016, which the FCC approved on November 8, 2016,⁷ identifying a transfer of control and making revisions to comply with rule changes since the 2012 Lifeline Reform Order. TerraCom filed its Fifth Revised Compliance Plan, which remains pending, as required by the FCC due to the proposed change in ownership of TerraCom described in its Petition and direct testimony. TerraCom’s Petition provides that the change in ownership will not close until all regulatory approvals have been obtained, including approval of the Fifth Revised Compliance Plan.

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

8. TerraCom’s Lifeline product offerings 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.

⁴ *Id.*

⁵ *Wireline Competition Bureau Reminds Carriers of Eligible Telecommunications Carrier Designation and Compliance Plan Approval Requirements for Receipt of Federal Lifeline Universal Service Support*, Public Notice, DA 14-1052 (rel. July 24, 2014).

⁶ *Wireline Competition Bureau Approves the Compliance Plans of American Broadband & Telecommunications, Budget Prepay, Consumer Cellular, Global Connection, TerraCom and Total Call*, Public Notice, 27 FCC Red 5776 (WCB rel. May 25, 2012); *In Re Telecommunications Carriers Eligible for Universal Service Support, et al.*, Third Revised Compliance Plan of TerraCom, Inc. (filed June 19, 2012) (providing minor updates requested by Bureau staff).

⁷ *Wireline Competition Bureau Approves the Amended Compliance Plan of TerraCom*, Public Notice, DA 16-1264 (rel. Nov. 8, 2016); *In Re Telecommunications Carriers Eligible for Universal Service Support, et al.*, Fourth Revised Compliance Plan of TerraCom, Inc. (filed Oct. 3, 2016), a copy of which can be found at <https://www.fcc.gov/ecfs/document/1003273824499/1>.

9. TerraCom shall initially make available the following Lifeline plan options: 1,583 voice minutes, unlimited text messages, and 4.5 gigabytes (GB) of data per month for non-tribal customers, or 1,583 voice minutes, unlimited text messages, and 10 GB of 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. TerraCom 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. TerraCom’s Lifeline product offerings will offer an additional choice of local providers offering a high-quality service for low-income consumers, which represents a benefit for those consumers, 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 TerraCom as an ETC in the zip codes set forth in Exhibit 3 of the Petition serves the public interest, convenience, and necessity, as required under 47 U.S.C. § 214(e)(2).

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

- A. TerraCom will use a Utah-specific fact sheet for Lifeline service (“Fact Sheet”) that provides customers concise and complete information about the services they will receive. This Fact Sheet is attached hereto as Attachment 1. TerraCom will provide the Fact Sheet to prospective new customers, each new customer at the time of

enrollment, and to existing customers upon request. TerraCom will also make the Fact Sheet available for download by posting it on the Company's website. TerraCom agrees to promptly update the Fact Sheet anytime the Company changes its Utah Lifeline program offerings.

- B. TerraCom will receive \$3.50 per qualifying line per month pursuant to Utah Admin. Code R746-8-403 and Utah Code §54-8b-15.
- C. TerraCom will comply with all applicable state service quality and consumer protection requirements and the CTIA Consumer Code.
- D. TerraCom 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. TerraCom 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, TerraCom 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 TerraCom's Petition and exhibits thereto.

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 27th day of October, 2023.

FOR TERRACOM, INC. D/B/A
MAXSIP TEL



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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 30th day of October, 2023.


FOR TERRACOM, INC. D/B/A
MAXSIP TEL

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ATTACHMENT 1

Utah-specific Fact Sheet

IMPORTANT INFORMATION ABOUT YOUR TERRACOM WIRELESS LIFELINE OFFERING

TerraCom Wireless Lifeline Offering is brought to you by TerraCom, Inc. d/b/a Maxsip Tel, 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 TerraCom. 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 1,583 voice minutes, unlimited text messages, and 4.5 gigabytes ("GB") of data per month (or 1,583 voice minutes, unlimited text messages, and 10 GB of data for Tribal Lifeline customers) for \$0.00 net cost after application of Lifeline and Utah USF support. TerraCom 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 TerraCom customer service will not count against your minutes.
- To contact TerraCom customer service, please dial 611 from your TerraCom handset device, or call toll-free at 888-716-8880. You can also contact TerraCom customer service representatives via TerraCom's website: www.terracomwireless.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 TERRACOM WIRELESS LIFELINE OFFERING.