

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1684

In the Matter of)	
)	
PUBLIC UTILITY COMMISSION OF OREGON)	COMMENTS OF UNITED STATES
)	CELLULAR CORPORATION ON
Investigation into the Oregon Telephone Assistance Program and Lifeline Marketing Practices)	STAFF'S STATUS REPORT AND RECOMMENDATIONS
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I. INTRODUCTION

United States Cellular Corporation (“U.S. Cellular”) appreciates the opportunity to comment on the Status Report and Recommendations (“Staff Report”) submitted by Staff in this docket.¹ U.S. Cellular supports the important goals of the federal Lifeline program and the Oregon Telephone Assistance Program (“OTAP”) in providing discounted phone service – including wireless service – to low-income Oregonians. U.S. Cellular is proud to have participated in OTAP and Lifeline in Oregon since 2004.

U.S. Cellular supports the goal of ensuring that waste, fraud and abuse does not become a problem in Oregon with respect to either Lifeline or OTAP. U.S. Cellular recognizes that Staff’s recommendations are aimed at this laudable goal, and appreciates the time and effort that Staff has expended in formulating its recommendations to the Oregon Public Utility Commission (“Commission”).

Nonetheless, U.S. Cellular opposes opening a new rulemaking at this time. The factual record developed in this investigation does not justify a new rulemaking. Staff’s investigation to

¹ *In the Matter of PUBLIC UTILITY COMMISSION OF OREGON Investigation into the Oregon Telephone Assistance Program and Lifeline Marketing Practices*, Oregon Public Utility Commission Docket No. UM 1684, Staff’s Status Report and Recommendations (Aug. 5, 2014) (“Staff Report”).

date has not demonstrated that significant waste, fraud and abuse exists in Oregon, or even that there is any potential for significant abuse. If anything, the paucity of evidence uncovered by Staff's seven-month investigation demonstrates that abusive practices have not taken root here in Oregon. While Staff is understandably outraged – as is U.S. Cellular – about out-of-state abuses, the fact is that Staff's stewardship of OTAP, coupled with the structure of the program, prevents such abuse from being repeated here. The few anecdotes Staff relates from this state do not reveal abusive practices or patterns that necessitate new rules. Moreover, the FCC's recent reforms to the Lifeline program are effectively curbing the abuses identified by Staff, in part by managing duplicates – something Staff already does with OTAP. Finally, amending OAR 860-033 twice within one year is both burdensome and unnecessary, and could deter and hinder carriers from providing OTAP and Lifeline service to deserving Oregonians.

II. DISCUSSION

A. **Staff's investigation has not revealed the existence of or potential for significant waste, fraud and abuse in Oregon.**

It has been eight months since the Commission rejected Staff's proposed ban on "agents" and instead directed Staff "to develop a record from which we can discern the nature of the abusive practices that should be addressed and to propose new rules accordingly."² Since this docket was opened in January, the record developed by Staff is exceedingly thin with respect to the existence of abusive practices in Oregon.

The contrast between the well-publicized incidents Staff points to from other states and the dearth of evidence of abuse in Oregon suggests that the unique structure of OTAP and Staff's role in administering it simply does not create a climate for abuse. Many of the out-of-state

² *In the Matter of Rule Changes Regarding Eligibility for OTAP and Other RSPF Rule Changes*, Oregon Public Utility Commission Docket No. AR 574, Order (entered Dec. 19, 2013) ("Order No. 13-375"), at 11.

incidents could not occur here, where the Commission Staff receives Lifeline applications, determines eligibility, identifies duplicates, and handles recertification through its own database.

For example, the case of Icon Telecom, Inc., cited by Staff, is not informative as to the state of Lifeline and OTAP in Oregon. Icon's entire business model – according to federal prosecutors – was based on blatant fraud, and “phantom customers.” Thus, Icon would not have been deterred by any rule, such as those suggested by Staff. Nor could Icon have remained undetected given Staff’s hands-on approach to OTAP. Other articles in the Staff Report discuss the potential and incentive for duplicating and fraudulently enrolling customers, yet these problems are addressed by the Commission’s existing rules and procedures, making these articles irrelevant as well.

As to the portion of Staff’s evidence which relates to Oregon, no conclusions can be drawn from the few anecdotal reports Staff has relied on during this investigation. In particular, Staff cites one individual employed as an agent of an ETC who contacted Staff in 2013 seeking commission payments for 40 Lifeline applications that he had collected for an ETC not yet serving Oregon. Staff Report, at 3. Separately, Staff reports that an agent, also in 2013, collected 40 Lifeline applications without authorization, including social security numbers, from Oregon consumers. Staff Report, at 4. Because Staff provides no citation or additional detail, one is left to wonder whether both of these are references to a single incident prompted by a single person’s failure to grasp essential aspects of the program. Regardless, the abject failure of one person (or even two) to apprehend fundamental facts about the program (*e.g.* that the “Commission” does not *pay* commissions) does not establish a factual record of *abusive practices*.

Staff also voices concern about an incident where at least one application was submitted incomplete, such that the ETC had no record of the applicant. Adding to this, Staff voices concern that one agent of the same ETC once handed a customer a personal business card that did not identify the carrier, apparently creating confusion. These unremarkable incidents illustrate inevitable human error. They are not evidence of abuse, much less abusive practices. Bad judgment, ineptitude, and even failure to follow training are of an entirely different nature than the abuses Staff cites from outside Oregon. Staff's other Oregon incidents likewise fall within the realm of incompetence, and do not suggest that either the existing OTAP rules or the carriers that follow them either encourage or incentivize abuse. Because Staff's examples do not provide evidence of abusive practices in Oregon, no rulemaking is justified.

B. The out-of-state abuses cited by Staff are being addressed by FCC reforms.

The FCC has taken steps, notably in the *2012 Lifeline Reform Order*,³ to curb abuses that surfaced in other states. By establishing the National Lifeline Accountability Database ("NLAD") and by investigating the national eligibility database, the FCC has indicated that the remedy is to make the national program more like OTAP. Just as Staff's practices successfully guard against abuse, the FCC's steps should stop serious abuse outside Oregon. Instead of expecting abuse to spread to Oregon, Oregon Staff should expect improvement in other states.

III. CONCLUSION

The Commission should not open a new rulemaking as recommended in the Staff Report. The fact that Staff's investigation has not revealed abusive practices in Oregon is a testament to the sound structure of the OTAP program, and the difference between Lifeline in Oregon and the

³ See *Lifeline and Link Up Reform et al.*, WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656 (2012) ("*Lifeline Reform Order*"), at ¶ 335 (noting "substantial and unprecedented steps to eliminate waste, fraud, and abuse from Lifeline, including establishing a database to eliminate duplicative support, requiring electronic or documentary evidence of program-based eligibility, and eliminating support for services such as toll limitation and Link Up that are no longer the best uses of funds given current product offerings available in the marketplace.").

original structure of Lifeline in other states. The appropriate response to Staff's findings is to close this docket due to the lack of evidence of abusive practices in Oregon. In the absence of evidence of abuse, opening a new rulemaking is not justified. Regardless of the merits of Staff's proposals – on which U.S. Cellular takes no position at this time – imposing new rules on ETCs carries an inherent burden. A rulemaking should be opened only in response to a demonstrated need. The absence of abuse uncovered by Staff's investigation demonstrates a lack of need to amend the OTAP rules, particularly when it has been less than a year since OAR 860-033 was amended in AR 574.

Respectfully submitted this 26th day of August, 2014.

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CERTIFICATE OF SERVICE**

I hereby certify that on August 26, 2014, the original and one copy of the foregoing **COMMENTS OF UNITED STATES CELLULAR CORPORATION ON STAFF'S STATUS REPORT AND RECOMMENDATIONS** was sent by UPS Overnight Mail to the Oregon Public Utilities Commission, 3930 Fairview Industrial Park SE, Salem OR 97302-1166 and email to puc.filingcenter@state.or.us with corresponding email service on the following persons:

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