



Sharon Mullin
Director
External Affairs

2003 Point Bluff
Austin, TX 78746

T: 512-330-1698
F: 832 213-0203
stmullin@att.com

August 19, 2014

VIA E-Filing and Overnight Mail

Patrick Power, ALJ
Oregon Public Utility Commission
3930 Fairview Industrial Dr SE
Salem, OR 97302-1166

Re: Docket UM 1684

Dear Judge Power:

Enclosed for filing in the above entitled matter, please find an original and three (3) copies of the Comments for AT&T Mobility, LLC and Cricket Communications, Inc.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Sharon Mullin
Sharon Mullin

Attachment

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF OREGON**

UM 1684

In the Matter of)	
)	COMMENTS OF AT&T
PUBLIC UTILITY COMMISSION OF)	
OREGON)	
)	
Investigation into the Oregon Telephone)	
Assistance Program and Lifeline Marketing)	
Practices.)	
_____)	

Oregon Marketing LL Practices

I. INTRODUCTION

AT&T Mobility appreciates the opportunity to provide comments on Staff's Status Report and Recommendations ("Staff Report") in the above referenced docket. AT&T¹ has participated in each of the workshops held by Staff in this docket.

AT&T Mobility has been participating in the Oregon Telephone Assistance Program ("OTAP"), which is the state counterpart to the federal Lifeline program, since 2007 and recently acquired Cricket, who has been providing OTAP/Lifeline service in the state since early 2010. AT&T commends Staff for its efforts to eliminate fraud, waste and abuse from OTAP/Lifeline programs. The Commission, however, does not need to adopt the majority of the prescriptive concepts set forth by Staff to accomplish its goal. Instead, Oregon, like the Federal Communications Commission ("FCC"), should simply restate the principles of agency law – i.e., OTAP/Lifeline providers can be liable for the actions of their agents acting within their scope of employment that violate the

¹ AT&T Mobility and Cricket will be collectively referred to as AT&T.

Residential Service Protection Fund (“RSPF”) rules. The remaining concepts proposed by staff only make it more difficult for companies that operate in good faith to participate in OTAP/Lifeline.

Oregon must balance the effect of prescriptive rules with the concern that eligible households receive the OTAP/Lifeline benefit. The Lifeline benefit has “been instrumental in increasing the availability of quality voice service to low income subscribers.”² Indeed, the Staff Report notes that “Staff does not wish to deter legitimate program growth, but [wants to] prevent waste, fraud and abuse.”³ However, the concepts proposed by Staff will very likely deter legitimate program growth and are unnecessary if the Commission simply restates agency law principles. Rather than encouraging participation in OTAP/Lifeline, state-specific rules that conform to the concepts proposed by Staff will discourage provider participation in the Lifeline program, which ultimately limits the choices available to eligible consumers.

II. DISCUSSION

A. Eliminating Waste, Fraud and Abuse and Encouraging Participation in OTAP/Lifeline

AT&T supports the Staff’s goal to eliminate waste, fraud and abuse. However, the recommendations in the Staff Report would deter legitimate program growth and would not substantially enhance the Commission’s tools for eliminating waste, fraud and abuse. The proposed concepts focus on a single business model and must be balanced against making it more difficult for a provider operating in good faith to provide OTAP/Lifeline service in Oregon.

² In the Matter of Lifeline and Link-Up Reform and Modernization, et al, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012)(“*Lifeline Reform Order*”), ¶15.

³ Staff Report, p. 3.

Instead of adopting prescriptive rules in this one area, the Commission should focus on other tools to prevent waste, fraud and abuse. For example, the Commission should carefully review whether a new applicant for OTAP/Lifeline service has demonstrated the technical and financial capacity to provide the support service. Specifically, the FCC has stated that a “common carrier seeking to be designated as a Lifeline-only ETC [should] demonstrate its technical and financial capacity to provide the supported service.”⁴ The considerations for such a showing would include,

...whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.⁵

This is something the Commission should consider when it is developing rules in UM 1684 regarding initial ETC designations. In addition, as discussed in more detail below, the Commission should simply restate the principles of agency law -- that OTAP/Lifeline providers can be liable for the actions of their agents acting within their scope of employment that violate the Residential Service Protection Fund (“RSPF”) rules. Further, the Commission already has the ability to revoke the ETC/ETP designation for a carrier.

B. “Evidence” Put Forth By Staff Is Not Persuasive

Staff has introduced a number of news articles and speeches as “evidence” to support the recommendations in the Staff Report. The Commission should look closely at this

⁴ Lifeline Reform Order, ¶388.

⁵ Id.

evidence and its applicability to Oregon. As an initial matter, a number of the articles⁶ were for incidents prior to the FCC's 2011 *Duplicative Program Payments Order* which made it clear that an eligible consumer may only receive one Lifeline-supported service, established procedures to detect and de-enroll subscribers with duplicate Lifeline-supported services, and directed USAC to implement a process to detect and eliminate duplicative Lifeline support⁷ and the FCC's 2012 *Lifeline Reform Order* to reduce waste, fraud and abuse. All ETCs are required to comply with both federal and state Lifeline/OTAP rules. Indeed, the Staff Report noted that a carrier cannot participate in the federal Lifeline program without also participating in the Oregon Telephone Assistance Program ("OTAP").⁸

Further, the "evidence" cited by Staff is to incidents in states where the carrier determines the eligibility of the customer for OTAP/Lifeline support.⁹ This is not the

⁶ E.g., See kmov.com, St Louis "More Problems with free cell phone program" posted December 13, 2011, www.kmov.com/news/broke/More-problems-with-free-cell-phone-program-134444653.html; February 29, 2012 post from CBS Atlanta News, "Your money wasted: Fraud in free cell phone program citing Life Wireless, www.cbs46.com/story/17048072/your-money-wasted-fraud-in-free-cell-phone-program; August 11, 2011 "Rogue Agent of Assurance Wireless faked free cell phone applications" occurring in Tennessee and Mississippi; www.freegovernmentcellphones.net/rogue-agent-of-assurance-wireless-faked-free-cell-phone-applications;

⁷ *Lifeline Reform Order*, para. 10.

⁸ Staff Report, fnnt 1 ("ETP status enables participation in OTAP. Eligible Telecommunications Carrier ("ETC") status enables participation in the federal Lifeline program. A company cannot be an ETC without obtaining ETP designation in Oregon.")

⁹ E.g., See September 16, 2013 Scripps News Release regarding TerraCom-Yourtel in Oklahoma; August 1, 2013 "Me and My Obamaphones" by Jillian Kay Melchior www.nationalreview.com/node/354867 citing SafeLink and Assurance practices in New York; 11/01/2012 "Free Cell phone Fraud Uncovered," Fox 23 News regarding Oklahoma abuses of True Wireless and Assist Wireless; February 29, 2012 post from CBS Atlanta News, "Your money wasted: Fraud in free cell phone program citing Life Wireless, www.cbs46.com/story/17048072/your-money-wasted-fraud-in-free-cell-phone-program; August 14, 2013 "TerraCom Wireless/Free Government Phone Fraud Case, (Terracom Wireless, Yourtel America); July 12, 2013 "lifeline phone company TerraCom slashes sales force" Oklahoma/Indian, Illinois, www.knoxnews.com/news/2013/jul/12/lifeline-phone-company-terra-com-slashes-sales-force/; See also September 16, 2013 "Fraud at ObamaPhone, Inc", September 15, 2013 post by Isaac Wolf "Lifeline phone applications:TerraCom, YourTel contract agents claim signatures forged and "A Look at 2 Lifeline phone carriers: TerraCom and Yourtel America"--reporting on the same companies; June 4, 2014 "Federal Government charges Oklahoma telephone company, its owner and vendor with fraud" by Paul Monies regarding Icon Telecom Inc actions in Oklahoma; See also: June 4, 2014 "Feds: Men face allegations in \$25 million fraud case, Mark Schlachtenhaufen, [The Edmond Sun](http://TheEdmondSun.com); and "OK Corporation Commission

case in Oregon where the Commission determines the eligibility of customers for OTAP/Lifeline, not the carrier. That critical distinction eliminates the possibility and incentive for the fraud portrayed in many of the articles. Giving the responsibility to the carrier to determine customer eligibility for Lifeline can lead to precisely the types of problems discussed in the articles cited in the Staff Report.

AT&T has long advocated that eligibility and enrollment for government benefit programs like Lifeline should be administered by government agencies.¹⁰ It is inappropriate for private sector, for-profit companies who stand to benefit from consumer eligibility determinations, to be responsible for making those eligibility determinations. AT&T is not aware of any other federal government benefit program that places the providers in such a role. Unlike many states, the Oregon Commission has asserted responsibility for determining whether or not the household is eligible for Lifeline service and then transmits the information to the company with which the customer already has service.¹¹ This safeguard in and of itself is the largest deterrent to waste, fraud and abuse of OTAP/Lifeline.

The one example given by Staff of “waste, fraud or abuse” in Oregon, was from the agent of a company that had not yet even been qualified to be an ETC/ETP. First, it is not clear what jurisdiction the Commission would have over a wireless carrier that had

Alleges Over 40,000 Violation By Icon Telecom, www.newson6.com/story/23141502/icon-telecom-faces-over-40,000-counts-in-corporation-commission-complaint;

¹⁰ See e.g., Comments of AT&T Inc., *Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, CC Docket 95-45, WC Docket 03-109 (filed July 15, 2010) (“Under our proposal, all states... would assume responsibility for determining if a consumer is eligible to receive a Lifeline/Link-Up discount.”) See also, Reply Comments of AT&T Inc., (filed July 30, 2010) at 10; Comments of AT&T, *Lifeline and Link-Up Reform and Modernization, et. al.*, WC 11-42 (filed April 21, 2011) at 12 (“One of the most significant but also most common sense changes we propose is that the Commission take Lifeline Providers out of the role of determining whether consumers are eligible for the Lifeline Program...”)

¹¹ AT&T understands that there might be a slightly different process for two OTAP/Lifeline providers in Oregon. Although AT&T does not know the specifics of this exception or why it was granted, it is AT&T’s understanding that it is still the responsibility of the Commission Staff to make the final eligibility determination.

not yet been designated as an ETC/ETP. If the Commission did have jurisdiction, it would seem that a general regulation that adopted Oregon agency law, i.e., that a company is responsible for the action of its agents, would be sufficient to address this situation.

C. Commission Should Mirror FCC’s Approach and Adopt a Statement that Lifeline Providers are Liable for the Acts of Their Agents

The one concept that may be beneficial to adopt from the Staff Report is in the section titled “Federal Communications Commission Standard.” As the Staff Report explains this concept would be “consistent with the FCC standard” “to ensure that ETCs are responsible for compliance with the rules and orders applicable to ETCs participating in the OTAP and Lifeline programs in Oregon by agents, contractors, or representatives acting on behalf of the ETC in Oregon.

As the FCC has found, “[l]icensees and other [FCC] regulates are responsible for the acts and omissions of their employees and independent contractors” and, thus, “the ETC remains liable for ensuring the agent or other representative’s compliance with the Lifeline program rules.”¹² In concept, AT&T does not oppose a rule that codifies Oregon agency law.

III. CONCLUSION

The Oregon Commission should reject the recommendations in the Staff Report with the one possible exception of codifying the principles of Oregon agency law. The news articles and speeches cited by Staff must be reviewed carefully for the applicability to Oregon. The Oregon Commission already has the tools in place to combat waste, fraud and abuse in the OTAP/Lifeline program.

¹² *Lifeline Reform Order*, ¶110.

Dated: August 19, 2014

AT&T Mobility, LLC and Cricket
Communications, Inc.

Sharon Mullin

Sharon Mullin

2003 Point Bluff

Austin, TX 78746

smullin@att.com

(512) 330-1698 (telephone)

(832) 213-0203 (facsimile)

CERTIFICATE OF SERVICE

UM 1684

I hereby certify that on the 19th day of August, 2014, I served the foregoing Petition to Intervene by AT&T in the above entitled docket on the following persons via U.S. Mail, by mailing a correct copy to them in a sealed envelope, with postage prepaid, addressed to them at the address shown below, or via email only if the service list indicates such persons waive paper service.

<p>Jon Cray (W) OPUC P.O. Box 1088 Salem, OR 97308-1088 jon.cray@state.or.us</p>	<p>Cindy Manheim (W) General Attorney AT&T Services, Inc. 16331 NE 72nd Way, Rm 1164B Redmond, WA 98052 cm9268@att.com</p>	<p>Sharon Mullin (W) Director, External Affairs AT&T Services, Inc. 816 Congress Ave. Austin, TX 78701 sm3162@att.com</p>
<p>Kay Marinos (W) Public Utilities Commission of Oregon PO Box 1088 Salem, OR 97308-1088 kay.marinos@state.or.us</p>	<p>Johanna Riemenschneider (W) PUC Staff – Dept of Justice 1162 Court St NE Salem, OR 97301-4796 johanna.riemenschneider@doj.state.or.us</p>	<p>Robert Jenks (W) Citizens' Utility Board of Oregon 610 SW Broadway, Ste 400 Portland, OR 97205 bob@oregoncub.org</p>
<p>G. Catriona McCracken (W) Citizen's Utility Board of Oregon 610 SW Broadway, Ste 400 Portland, OR 97205 catriona@oregoncub.org</p>	<p>OPUC Dockets (W) Citizens' Utility Board of Oregon 610 SW Broadway, Ste 400 Portland, OR 97205 dockets@oregoncub.org</p>	<p>Todd B Lantor (W) Lukas, Nace, Gutierrez & Sachs 8300 Greensboro Dr, #1200 McLean, VA 22102 tlantor@fcclaw.com</p>
<p>Brooks Harlow (W) Lukas, Nace, Gutierrez & Sachs 8300 Greensboro Dr, #1200 McLean, VA 22102 bharlow@fcclaw.com</p>	<p>Mark Paul (W) Lukas, Nace, Gutierrez & Sachs 8300 Greensboro Dr, #1200 McLean, VA 22102 mpaul@fcclaw.com</p>	<p>David Collier (W) AT&T Services, Inc. 645 E. Plumb Ln Rm C-142 PO Box 11010 Reno, NV 89520 david.collier@att.com</p>

(W) = Waive Paper Service

DATED this 19th day of August, 2014

AT&T)
By: 
Kelli Mathis
2535 E. 40th Ave, Rm D3208
Denver, CO 80205
(303) 294-6222 (telephone)
(303) 294-6021 (facsimile)
km8261@att.com