

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

**UM-1684**

In the Matter of

PUBLIC UTILITY COMMISSION OF  
OREGON,

Investigation into the Oregon Telephone  
Assistance Program and Lifeline  
Marketing Practices.

COMMENTS OF BUDGET PREPAY,  
INC., RE STAFF REPORT AND  
RECOMMENDATIONS

**I. Introduction.**

Budget PrePay, Inc. (“Budget PrePay”) appreciates this opportunity to comment on the Staff’s Status Report and Recommendations filed on August 5, 2014 (“Staff Report”) regarding OTAP and Lifeline marketing. As the name of the federal low-income program implies, such programs are, indeed, a “Lifeline” for millions of low-income Americans; enabling them, among other things, to seek employment, communicate with healthcare providers, and seek help from first responders in emergency situations. Accordingly, Budget PrePay applauds staff for recognizing that the Commission should not “deter legitimate program growth....”

As the Staff Report acknowledges, requirements designed to prevent abuse of low-income programs should not override the policy goals that led to establishment of the programs to begin with. If the barriers to enrollment are too high (as appears to be the case in Oregon), then too many eligible consumers will be left out. Any well-run government benefits program must find the right balance between curbing abuse and curbing legitimate use.

As the sensational news stories attached to the Staff Report illustrate, even a relatively small number of abuse cases can lead to public and political backlash that jeopardize support for Lifeline programs. No legitimate service provider wants the public scrutiny or enforcement action that may result from enrollment of ineligible subscribers, even in the case of innocent errors or fraud on the provider by an applicant for Lifeline service. And no evidence available contradicts the fact that the vast majority of Lifeline enrollees today are eligible for program benefits, particularly in Oregon.

## II. Status of Lifeline in Oregon.

Oregon already has one of the most robust programs in the nation for curbing abuse of Lifeline subsidies, through its state-administered OTAP/Lifeline program. While the OTAP enrollment process and centralized databases could certainly be improved, they already ensure that no Lifeline applicant is approved unless they are eligible. The OTAP process also ensures that an applicant is not already receiving subsidized service on another phone—whether from the same or a different service provider. Staff did not provide evidence of even a single ineligible Lifeline applicant slipping through the process and receiving unauthorized support in Oregon.

Empirical data suggests that Oregon may have struck a balance between curbing abuse and achieving the program goals of serving low-income residents that is already too restrictive. A compilation of Lifeline participation rates by state filed with the FCC recently shows Oregon’s Lifeline participation rate is just 14% – in other words, only 14% of those eligible for Lifeline in Oregon are actually receiving the Lifeline benefit.<sup>1</sup> This means that an astonishing **86%** of eligible low income households in Oregon are *not* receiving the support to which they are entitled. Oregon’s Lifeline participation rate is *third from the*

---

<sup>1</sup> Lifeline Reform 2.0 Coalition Notice of Oral Ex Parte Presentation; Briefing Materials Exhibit at 25; WC Docket Nos. 11-42, 09-197 (available here: <http://apps.fcc.gov/ecfs/document/view?id=7521334356>)(filed July 20, 2014)(hereafter “*FCC Briefing Materials*”).

*bottom* among the 50 states. *Id.* Oregon’s Lifeline-eligible tribal population also appears to be woefully underserved.

Looking at absolute numbers, Oregon has only three wireless ETCs receiving more than a *de minimis* amount of Lifeline support; TracFone, U.S. Cellular,<sup>2</sup> and Virgin Mobile, as this chart of projected quarterly USAC data shows:

OR	539001	Rural Cellular Corporation	\$0	\$0	\$0	\$0
OR	539002	Yakima MSA Limited Partnership	\$34,808	\$10	\$0	\$34,818
OR	539003	VCI Company	\$0	\$0	\$0	\$0
OR	539004	Cingular Wireless	\$0	\$0	\$0	\$0
OR	539005	Comspan Communications Inc	\$922	\$0	\$0	\$922
OR	539006	Cingular Wireless	\$0	\$0	\$0	\$0
OR	539007	Eagle Telephone System Inc	\$576	\$0	\$0	\$576
OR	539009	Cricket Communications	\$0	\$0	\$0	\$0
OR	539010	ATandT Mobility LLC	\$0	\$0	\$0	\$0
OR	539011	Virgin Mobile USA LP	\$689,578	\$190	\$0	\$689,769
OR	539012	Warm Springs Telecommunications Company	\$17,788	\$5	\$0	\$17,792
OR	539013	TracFone Wireless Inc.	\$397,445	\$109	\$0	\$397,554
OR	539014	T-Mobile USA Inc.	\$0	\$0	\$0	\$0

Report LI01: Low Income Support Projected by State by Study Area, 2014 Fourth Quarter Appendices, Universal Service Administrative Company (hereafter “USAC LI01”).<sup>3</sup> For the quarter, USAC is projecting that low-income Oregon residents will receive approximately \$1.12 million in support for mobile telephone services.

In comparison to Oregon, neighboring Washington will receive \$4,909,006 of support for wireless services. *Id.* Thus, while having 46% more people living in poverty,<sup>4</sup> Washington will receive 437% more federal low-income support. Moreover, low-income citizens in Washington have more wireless service providers to choose from than consumers in Oregon. Similarly, Kentucky, the next larger state than Oregon, with 36% more people in poverty, will receive \$6,327,171 of wireless low income support; almost 600% more

<sup>2</sup> U.S. Cellular is shown as “Yakima MSA Limited Partnership.”

<sup>3</sup> Available here: <http://www.usac.org/about/tools/fcc/filings/2014/q4.aspx>. Due to monthly fluctuations in actual payments, based on true ups and other anomalies, projected data from USAC is used throughout these comments to ensure a fair and representative comparison with other states.

<sup>4</sup> “Selected Economic Characteristics” 2008-2012 American Community Survey 5-year Estimates for Oregon and Washington. Accessed 21 Aug 2014 at <http://factfinder2.census.gov>.

Lifeline support than is distributed in Oregon. Even Connecticut, with a slightly smaller population than Oregon and one of the wealthiest states with a very low poverty rate—about 60% of the number of people in poverty compared to Oregon—will receive \$3,443,254 more than *triple* Oregon’s Lifeline support.

The stark data certainly do not support further barriers to deployment of Lifeline services. Rather, the Commission ought to instead examine why Lifeline penetration rates in Oregon are so low in comparison to other states and what the Commission can do to ensure that more Lifeline-eligible Oregon residents receive the Lifeline discount to which they are entitled. The Commission needs to figure out why only 14% of Lifeline-eligible customers are participating in the Lifeline program. In addition, having worked closely with staff and been a pending Lifeline-only ETC applicant in Oregon over a period of nearly three years, Budget can attest that the Lifeline-only ETC designation application process for non-facilities-based providers in Oregon is seriously broken.

Budget's experience as a Lifeline-only ETC applicant in other states has been drastically different (and far more productive) than its experience in Oregon. Of the approximately 40 states where Budget has sought and been granted Lifeline-only ETC designation status, not one has come anywhere close to the almost three-year odyssey that Budget experienced as a Lifeline-only ETC applicant in Oregon. While facilities-based providers in Oregon have been granted Lifeline-only ETC status in less than one year,<sup>5</sup> Lifeline-only ETC applications filed by multiple non-facilities-based carriers – *i.e.*, MVNOs – still remain pending three to four years after they were filed.<sup>6</sup>

Budget has been approved as an ETC in nearly 40 states, including California, Massachusetts and Washington, all of which are well-known to thoroughly review and scrutinize

---

<sup>5</sup> *E.g.*, Dkt. UM 1549.

<sup>6</sup> *E.g.*, Dkt. UM 1509 (filed November 19, 2010), Dkt. UM 1533 (filed March 21, 2011).

Lifeline-only ETC applications and have been diligent in their oversight of the Lifeline program in order to deter fraud and abuse. The unnecessarily slow and onerous ETC designation process, which frequently requires Lifeline-only ETC applicants to agree to conditions nowhere found in the Commission's rules, as well as the ongoing operational burdens and restrictions being applied to Lifeline-only ETCs in Oregon is hurting the state and, in particular, those Oregonians most in need of the benefits Lifeline can provide.

Absent compelling evidence of significant abuses specific to Oregon—which is lacking in the Staff Report—the Commission should conclude that the current program rules and procedures are aimed at eliminating waste, fraud, and abuse are sufficient. What is in peril is Oregon's most economically-challenged residents, who typically are not receiving the Lifeline benefit for which they qualify and are being given far less carrier choice than most Lifeline-qualifying individuals elsewhere in the country. These are the areas where the Commission really ought to be focusing its attention.

### **III. The Evidence For Agent Regulations.**

Staff's evidence in support of imposing a number of separate regulations on agents of ETCs is anecdotal, at best. Nearly all of it is from news stories and from other states. Much of it is dated, describing incidents and practices occurring before the FCC undertook a major reform intended to curb the abuses described in the news articles. *See 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). The other states in the stories are largely, if not entirely, states in which carriers determine Lifeline eligibility rather than a state agency, as in Oregon. That is certainly the case in Oklahoma, where many of the stories originated. But, Oklahoma is a one-of-a-kind state when it comes to Lifeline and its experience is not representative of states like Oregon with a state-administered program and a disturbingly low number of eligible tribal residents. Given the key differences in how

the program is administered in Oregon as well as demographics, anecdotal stories about alleged abuses by agents in Oklahoma are not good evidence in support of regulations here.

The Staff Report provided only a handful of examples of concern with the program specific to Oregon. And there was no indication that any of the examples resulted in enrollment of a single ineligible subscriber. The only Oregon-specific example in the Staff Report with any numbers provided was a unique example involving 40 customers. *E.g.*, Staff Report at 4. The only other Oregon-based evidence refers to “multiple occasions” with no further quantification suggested. *Id.* Oregon has approximately 70,000 current Lifeline subscribers (wireline and wireless). Assuming the “multiple” calls reflect a dozen or so, then the evidence in the Staff Report suggests that less than 1/100<sup>th</sup> of one percent of Lifeline customers in Oregon<sup>7</sup> have been impacted by the issues of concern to the staff. And the evidence offered does not show a single instance of a fraudulent enrollment in Oregon.

#### **IV. Conclusion.**

While Budget PrePay and Staff appear to be in agreement conceptually that the desire to prevent abuse must not override the overall success of the Lifeline program in providing support to eligible needy consumers, they differ in where to draw the line. Data suggests that that the Commission’s focus ought to be on finding ways to improve Lifeline penetration rates in Oregon, not further restrict consumer access to Lifeline, as Staff’s proposals would certainly do, and there is no evidence provide to support special restrictions on agents of ETCs in Oregon.

---

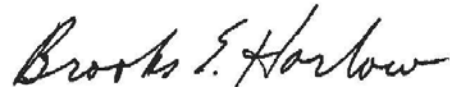
<sup>7</sup> See “USAC LI01” (dividing dollars disbursed by \$9.25 and by 3 months).

Respectfully submitted this 26<sup>th</sup> day of August, 2014.

**Budget PrePay, Inc.**

By Counsel:

LUKAS, NACE, GUTIERREZ & SACHS, LLP  
8300 Greensboro Drive, Suite 1200  
McLean, Virginia 22102  
(703) 584-8678  
[bharlow@fcclaw.com](mailto:bharlow@fcclaw.com)  
[tlantor@fcclaw.com](mailto:tlantor@fcclaw.com)



---

By: Brooks E. Harlow (OSB # 030420)  
Todd B. Lantor, *pro hac vice*  
Marc Paul, *pro hac vice*

August 26, 2014

## CERTIFICATE OF SERVICE

I hereby certify that on the 26<sup>th</sup> day of August 2014, a true and correct copy of the foregoing

**MOTION FOR EXTENSION OF TIME** of Budget PrePay, Inc., was served, via electronic mail, to the

following:

G. Catriona McCracken  
Citizen's Utility Board of Oregon  
610 SW Broadway, Ste 400  
Portland OR 97205  
catriona@oregoncub.org

Jon Cray  
Citizen's Utility Board of Oregon  
610 SW Broadway, Ste 400  
Portland OR 97205  
jon.cray@state.or.us

Kay Marinos  
Citizen's Utility Board of Oregon  
610 SW Broadway, Ste 400  
Portland OR 97205  
kay.marinos@state.or.us

Johanna Riemenschneider  
PUC Staff - Department Of Justice  
Business Activities Section  
1162 Court St NE  
Salem OR 97301-4796  
johanna.riemenschneider@doj.state.or.us

Robert Jenks  
Citizens' Utility Board of Oregon  
610 SW Broadway, Suite 400  
Portland OR 97205  
bob@oregoncub.org

David Collier  
AT&T Services, Inc.  
645 E Plumb LNM RN C-142  
PO Box 11010  
Reno NV 89502  
David.collier@att.com

Cynthia Manheim  
AT&T  
PO Box 97061  
Redmond WA 98052  
Cm9268@att.com

Sharon L. Mullin  
AT&T Services, Inc.  
2003 Point Bluff  
Austin TX 78746-6236  
slmullin@att.com

Alan Galloway  
Davis Wright Tremaine  
Suite 2400  
1300 SW Fifth Avenue  
Portland, Oregon 97201-5610  
alangalloway@dwt.com

Mark Trinchero  
Davis Wright Tremaine  
Suite 2400  
1300 SW Fifth Avenue  
Portland, Oregon 97201-5610  
Marktrinchero@dwt.com

Teri Ohta  
12920 SE 38th Street  
Bellevue WA 98006  
Teri.ohta@t-mobile.com

Sommer Templet  
Citizen's Utility Board of Oregon  
610 SW Broadway, Ste 400  
Portland OR 97205  
sommer@oregoncub.org

David Poston  
david.poston@state.or.us



Elishava Simon  
Lukas, Nace, Gutierrez & Sachs, LLP  
8300 Greensboro Dr. Suite 1200  
McLean, VA 22102  
esimon@fcclaw.com