

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

In the Matter of Assurance Wireless’s Petition
for Waiver of OAR 860-033-0010(2)

Docket No. UM 1631

PETITION FOR WAIVER OF OAR 860-033-0010(2)

Pursuant to Administrative Rule (“OAR”) 860-033-0001(2), Assurance Wireless USA, L.P. (“Assurance” or the “Company”)¹ respectfully asks the Public Utility Commission of Oregon (“Commission”) for a waiver² of the first sentence in OAR 860-033-0010(2). Specifically, the Company hereby requests that the Commission waive the requirement in OAR 860-033-0010(2) which states an Eligible Telecommunications Provider (“ETP”) is required to offer the Oregon Telephone Assistance Program (“OTAP”) discount, currently \$12.00, to all eligible low-income customers.

BACKGROUND

On January 23, 2012, the Commission designated the Company as both an Eligible Telecommunication Carrier (“ETC”) and an ETP in Docket No. UM 1522, granting its application for a limited ETC designation in order to offer prepaid wireless services using support only from the federal Universal Service Fund (“USF”) Lifeline program, and not the

¹ On March 27, 2020, Sprint notified the Oregon Commission in Docket No. UM 1522 of a name change for Virgin Mobile USA, L.P. to Assurance Wireless USA, L.P. For the sake of simplicity and continuity, we refer throughout this petition to filings made previous to that date using the current name of the Company rather than any name in effect at that time.

² T-Mobile reserves all rights regarding whether a waiver is required.

federal high-cost or Link Up portions of the fund. Assurance began participating in OTAP in 2017.

On June 30, 2020, the Commission adopted several temporary rule amendments for OTAP in response to the 2019 Senate Bill 69 and an Oregon Joint Emergency Board allotment of \$3.5 million in CARES Act funding to aid individuals in response to the coronavirus pandemic. This resulted in a temporary OTAP rate of \$12.00 that was available to ETPs providing unlimited voice minutes for basic service and unlimited mobile data at no charge to the customer. The temporary rules allowed these no charge ETPs to provide the \$12.00 OTAP discount if they offered unlimited voice minutes and data, but also allowed no charge ETPs providing less than unlimited voice and data to continue providing Lifeline services with a \$3.50 OTAP discount.

The Commission issued a Notice of Proposed Rulemaking on October 28, 2020, which sought to codify several of the temporary rule amendments on a permanent basis. OAR 860-033-0035 was subsequently amended on December 29, 2020, to require that, for customers receiving OTAP supported service at no charge, an ETP must provide unlimited voice minutes for basic service and unlimited data for any broadband internet access service to low-income customers in order to be eligible for monthly support, set at \$7.00, from the State of Oregon. Unlike the temporary rules, the newly amended rule does not include a \$3.50 OTAP discount to support Lifeline service plans that provide less than unlimited data at no charge. On January 19, 2021, the Commission also adopted another temporary rule to continue providing \$12.00 in OTAP support through June 2021 to qualified ETPs due to an extension of CARES Act funding, but continued to forego provision of an OTAP discount that supports no charge Lifeline plans providing less than unlimited data.

DISCUSSION AND WAIVER REQUEST

OAR 860-033-0001(2) provides that the Commission may waive any division 33 rules for good cause shown. Assurance submits that good cause exists to grant Assurance's request for waiver. Assurance has determined it cannot offer Oregon Lifeline customers unlimited data for a state subsidy of either \$12.00 or \$7.00. At present, Assurance does not provide unlimited data under any of its plans throughout the United States. For qualifying Oregon customers, Assurance's current bundled Lifeline offering (based on the previous \$3.50 OTAP subsidy) provides 1400 voice minutes and 4.5 gigabytes ("GB") of data at no charge on a monthly basis. Customers that want additional minutes and data have options of adding to their base plan for a monthly charge.

Furthermore, Oregon is the only jurisdiction that requires carriers who provide a Lifeline plan at no charge to the customer to offer a bundled plan of unlimited voice minutes and unlimited data. For example, the Federal Communications Commission ("FCC") requires ETCs to provide 4.5 GB data per month in order to qualify for the \$9.25 federal monthly subsidy per subscriber. Similarly, the California Public Utilities Commission's ("CPUC") specific support amounts and minimum service standards require California LifeLine ETCs to offer 4 GB of data per subscriber per month in connection with Unlimited Voice and Text for a monthly state subsidy of \$12.85, or 6 GB of data per subscriber per month and Unlimited Voice and Text to receive a monthly state subsidy of \$14.85. The CPUC also permits California LifeLine providers to collect a service connection fee of \$39.00.

Assurance continues to evaluate the market in which it provides Lifeline service, but is unable at this time to offer unlimited data at no cost to consumers with a \$12.00 OTAP monthly subsidy. Therefore, Assurance requests a waiver of the first sentence in OAR 860-033-0010(2)

so that it may opt out of the OTAP subsidy. Under this waiver, the Company will be able to continue providing federal Lifeline benefits to its Oregon Lifeline customers and will continue to refrain from drawing OTAP funds. Assurance remains eligible to collect \$9.25 per subscriber per month in federal Lifeline support. The public interest supports granting this petition to ensure that low-income Oregonians continue to receive critical Lifeline support, and to alleviate the impact on OTAP funding needed by other service providers.

CONCLUSION

For the reasons set forth above, the Company respectfully requests that the Commission issue an order approving the Company's request for waiver of OAR 860-033-0010(2) to permit Assurance to provide Oregon customers with its Lifeline service offering supported by federal Lifeline funds.

Respectfully submitted this 11th day of March, 2021.

ASSURANCE WIRELESS USA, L.P.

By: 
Mark P. Trinchero
Heather Moelter
DAVIS WRIGHT TREMAINE LLP
2400 SW Fifth Ave
Portland OR 97201
503 241 2300
marktrinchero@dwt.com
heathermoelter@dwt.com