

**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

ORDER

DISPOSITION: PROCEEDINGS CLOSED

In this order, we decline to pursue a rulemaking to address the use of third-party agents to solicit potential customers for the Oregon Telephone Assistance Program (OTAP) and Lifeline-supported services.

**I. INTRODUCTION**

In docket AR 574, our Staff proposed a rule that would have prohibited the use of agents by Eligible Telecommunications Providers (ETPs) to solicit potential customers for the OTAP and Lifeline services. Deciding not to adopt a blanket prohibition, we opened this docket to further investigate the matter and determine whether a rulemaking proceeding is required to address marketing abuses.

Staff convened three workshops and gathered information relating to waste, fraud, and abuse in the Lifeline program regarding marketing practices and the use of agents. Staff then filed its report on August 5, 2014. Comments on Staff's report were filed by Budget Prepay, Inc. (Budget), United States Cellular Corporation (U.S. Cellular), AT&T Mobility, LLC and Cricket Communications, Inc. (AT&T), and the Citizens' Utility Board of Oregon (CUB).

**II. STAFF'S REPORT AND RECOMMENDATIONS**

Citing widespread reports of fraud, waste, and abuse, Staff recommends we pursue a rulemaking proceeding to protect customers and to preserve the fiscal integrity of OTAP and federal Lifeline programs. Specifically, Staff proposes rulemaking to address five areas of concern: (1) Financial Incentives; (2) Application Process; (3) Marketing Events; (4) Representative Training; and (5) Vicarious Liability.

**A. Financial Incentives**

Staff cites media reports that expose waste, fraud, and abuse linked to the practice where carriers pay commissions to third parties to solicit potential customers. Staff believes that these practices have the potential for agents to manipulate the program for their financial gain. Staff acknowledges, however, that without such incentives, carriers may not find enough program participants to be financially feasible, meaning that eligible customers would be less likely to learn about and enroll in the program in Oregon. Staff does not wish to deter legitimate program growth.

Staff notes that Oregon is not the only state concerned with these practices, citing recent actions by the Massachusetts Department of Telecommunications and Cable. Staff also refers to statements by a Federal Communication Communications (FCC) Commissioner and U.S. Senators expressing concerns that commission-based models contribute to the problems with the program, and cites particular actions by a carrier in Oklahoma that resulted in criminal charges.

With regard to Oregon, Staff reports that it was contacted by a person employed as an agent of a carrier that had not yet started service in Oregon. This person inquired of Staff how to submit 40 Lifeline applications that he had collected from Oregon customers to be able to receive his commission. Staff notes that carriers recruit representatives on-line with promises of substantial commissions.

To reduce the financial incentives and the potential for waste, fraud, and abuse, Staff proposes the following rule (in conceptual form):

*The ETP may not provide or allow a representative (including any agent, contractor, or subcontractor) to receive any commission, bonus, or other incentive payment based on the submission of an OTAP or Lifeline application. Such incentives may be based upon the successful enrollment of an Oregon customer in the OTAP or Lifeline program.*

**B. Application Process**

Staff expresses concerns about a carrier or agent completing an OTAP or Lifeline application on behalf of a customer. Staff fears that the use of agents increases the risk that an applicant's personal identifying information (PII) might be publically disclosed. Staff explains that it uses an applicant's social security number to determine eligibility via an Oregon Department of Human Services' database. According to Staff, some carriers have entrusted or may entrust their agents with the responsibility of transmitting the applications to the Commission, allowing those agents access to the customers' PII.

Staff cites two Oregon cases that raise concerns about the security of applicants' PII. In 2013, an agent without authorization collected Lifeline applications from 40 customers. The agent was in possession of these applications at his residence, placing the information at greater risk for theft. In another case, Staff was contacted by a

customer who found that the carrier's computer still had the customer's PII from an earlier application. The customer realized that the information could have been accessed by anyone handling the computer.

Staff is also concerned that agents may not provide sufficient information to applicants. Staff reports a case where agents submitted incomplete applications to the carrier who had no record of the applications. One of the agents provided the customer a business card that did not contain information regarding the carrier. Such practices raise concerns for Staff about the information provided to customers and can make it difficult for Staff to investigate and assist consumers.

To address concerns regarding customer protection and the application process, Staff proposes the following rule (conceptually):

*Neither the ETP nor its representatives, including agents, contractors, and subcontractors, may complete or sign an OTAP or Lifeline application on behalf of a customer. If an ETP transmits the customer's application or any representative transmits the customer's application or any representative transmits the application on its behalf, the ETP or its representative must provide the customer the following:*

- *Electronic or printed copy of the completed OTAP or Lifeline application;*
- *Confirmation verifying that the OTAP or Lifeline application was transmitted with the date of the transmission;*
- *Name of the ETP's representative who transmitted the OTAP or Lifeline application and the location where the customer received assistance;*
- *Name of the company that hired the representative acting on behalf of the ETP;*
- *Name of the ETP and OTAP or Lifeline service brand, if applicable;*
- *The ETP's contact information, including, but not limited to mailing address, customer service phone number, e-mail address, and web address.*

*The ETP's agents, contractors, and employees acting within the scope of employment may not use a personally-owned mobile computing device, including, but not limited to tablets, phones, laptops, and PDAs, in the completion or transmission of the customer's OTAP or Lifeline application. The ETP must provide any mobile computing device used in completion or transmission of an OTAP or Lifeline application for the ETP.*

*The ETP must ensure that an OTAP or Lifeline applicant's personal information as defined in ORS 645A.600 is not stored or accessible to unauthorized users on a mobile computing device, including, but not limited to tablets, phones, laptops, and PDAs that are used by the ETP or its representatives in the transmission of the customer's OTAP or Lifeline application.*

**C. Marketing Events**

According to Staff, some carriers host promotional events at temporary sites to solicit customers. Staff believes that it needs to be notified of these events to effectively respond to requests for customer assistance. Staff's concerns with temporary site events include how the information is presented, how the applications are taken, who is taking the applications, and whether customer protections are observed. Staff is concerned that such events could result in fraud or customer abuse, citing an occurrence in Nebraska.

To address its concerns regarding marketing abuse, Staff proposes the following rule (conceptually):

*The ETP must provide to the Commission notice of promotional events at temporary locations conducted by the ETP on its behalf by any agent, contractor, or subcontractor to promote enrollment in the OTAP or Lifeline program at least ten business days prior to the event. The initial notice must include the names of the participating agents, contractors, subcontractors, representatives, and employees and the location and dates of the promotional event. The initial notice may be corrected up to the date of the event if there are any changes in location or participants.*

**D. Representative Training**

Staff believes that proper training is essential to prevent fraud and protect personal information. Staff cites instances of abuses from around the country that were due to inadequate training of sales representatives. Staff supports requirements for initial training in OTAP and Lifeline program rules and identity theft protection, and annual training thereafter. Staff notes that annual training also would facilitate the education of representatives regarding any new OTAP or Lifeline program rules that may have been promulgated in the interim.

To address its concerns regarding training, Staff proposes the following rule (conceptually):

*The ETP may not allow an agent, contractor, subcontractor, or employee acting within the scope of employment to make contact with potential OTAP or Lifeline customers regarding the OTAP and Lifeline program prior to receiving training in OTAP and Lifeline rules applicable to their duties. The ETP must provide annual training on the OTAP and Lifeline Program thereafter to any representative who will have contact with potential OTAP or Lifeline customers. An officer of the ETP will certify annually, under penalty of perjury, compliance with this rule on a Commission-approved form.*

### **E. Vicarious Liability**

Staff cites an FCC order where the FCC declared that licensees and other regulatees are responsible for the acts and omissions of their employees and independent contractors, emphasizing that the carriers are liable for ensuring that their agents or representatives comply with the Lifeline program rules.

Subsequently, the FCC Enforcement Bureau released an advisory notice reminding carriers that they are liable for any conduct by their agents, contractors, or representatives who violate the FCC's Lifeline program rules. Any act, omission, or failure of an agent shall in every case be also deemed to be the act, omission, or failure of the carrier.

Staff proposes this Commission take similar action through the adoption of the following rule (conceptually):

*The ETP is liable for any act, omission, or failure to comply with OTAP and Lifeline rules committed by an agent, contractor, subcontractor, representative of or employee of the ETP acting within the scope of the person's employment.*

## **III. PARTICIPANTS' COMMENTS**

### **A. CUB**

CUB supports each of Staff's proposed rules. In addition, CUB proposes that the Commission require ETCs to conduct routine audits of applications to ensure that each agent is complying with program rules. Such audits also could be used to help identify recurring issues.

### **B. Carriers**

Budget, U.S. Cellular, and AT&T oppose Staff's recommended rulemaking. The carriers generally agree that the factual record developed by Staff does not justify a new rulemaking. AT&T compares the out-of-state abuses cited by Staff with the paucity of evidence of abusive practices in Oregon and suggests that the unique structure of OTAP and Staff's role in administering it simply does not create a climate for abuse here. AT&T notes that many of the abuses cited by Staff occurred in states where the carrier determines customer eligibility. In contrast, in Oregon, the Commission has asserted responsibility for deciding whether a household is eligible for Lifeline service. This safeguard, AT&T maintains, is the largest deterrent to waste, fraud, and abuse.

AT&T also notes that some of the articles cited by Staff relate to incidents prior to the FCC's Duplicative Program Payments Order that made it clear that an eligible customer may receive only one Lifeline-supported service. Those incidents also occurred before the FCC's Lifeline Reform Order that reduced waste, fraud, and abuse.

With respect to that portion of Staff's evidence that relates specifically to Oregon, the carriers caution against drawing any particular conclusions. From the limited information provided by Staff, it appears that one (or possibly two) incidents occurred that reflect an "abject failure" of an agent to understand the program. The carriers contend that the other incidents cited by Staff are best attributed to incompetence and are not evidence of abuse, let alone abusive practices.

Regarding the program results in Oregon, Budget posits that only a few Oregon customers have been impacted by issues of concern to Staff. Budget emphasizes that the evidence offered does not show a single instance of a fraudulent enrollment in Oregon.

Rather than adopt more rules to further limit action by carriers, Budget suggests that the Commission should focus on ways to increase participation in the programs. Budget cites data showing that other states receive significantly more federal low income support than Oregon.

Budget suggests that Lifeline penetration rates might be low due to what it considered to be a broken process to designate Lifeline-only ETCs. According to Budget, while facilities-based providers in Oregon have been granted Lifeline-only ETC status in less than one year, Lifeline-only ETC applications of multiple non-facilities-based carriers still remain pending three to four years after they were filed.

#### IV. DISCUSSION

The overall impression from Staff's report is that Oregon has been well-served by Staff's administration of the OTAP and Lifeline programs, compared to the results in many other states. Staff's good work has spared Oregon the abusive practices carried out in other states that led to the FCC's enforcement actions. In many respects, Oregon stands as a role model for other states wishing to clean up abusive practices in their jurisdictions.

We agree with the carriers that the few Oregon specific instances of marketing abuses cited by Staff do not require the adoption of additional rules. While the proposed rules have substantial merit in the abstract, we cannot find that circumstances warrant their adoption at this time.

We acknowledge the apparent low Oregon participation rate, which may be related to the extended process to designate Lifeline-only ETCs in Oregon. We encourage Staff to continue their good work while looking for ways to accelerate the approval process and increase customer participation without compromising program standards.

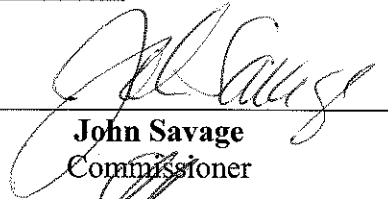
## V. ORDER

IT IS ORDERED that this investigation is closed.


Made, entered, and effective DEC 18 2014.



**Susan K. Ackerman**  
Chair



**John Savage**  
Commissioner

  
**Stephen M. Bloom**  
Commissioner

A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Court of Appeals in compliance with ORS 183.480 through 183.484.