

ORDER NO. 22-096

ENTERED Mar 24 2022

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1631

In the Matter of

ASSURANCE WIRELESS USA, L.P.,

Request for Waiver of OAR 860-033-0010(2),  
Oregon Telephone Assistance Program  
Discount.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on March 22, 2022, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.



BY THE COMMISSION:

A handwritten signature in blue ink, appearing to read "Nolan Moser".

**Nolan Moser**  
Chief Administrative Law Judge

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 Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: March 22, 2022**

REGULAR  CONSENT  EFFECTIVE DATE Not Applicable

**DATE:** March 14, 2022

**TO:** Public Utility Commission

**FROM:** Jon Cray

**THROUGH:** Michael Dougherty **SIGNED**

**SUBJECT:** RESIDENTIAL SERVICE PROTECTION FUND:  
(Docket No. UM 1631)  
Assurance Wireless USA, L.P. Request for Waiver of  
OAR 860-033-0010(2).

**STAFF RECOMMENDATION:**

Staff recommends the Public Utility Commission of Oregon (Commission) grant Assurance Wireless USA, L.P.'s (Assurance Wireless or Company) request for waiver of the first sentence in Oregon Administrative Rule (OAR) 860-033-0010(2).

**DISCUSSION:**

Issue

Whether the Commission should approve Assurance Wireless's request for waiver of the first sentence in OAR 860-033-0010(2) governing the applicability of the Oregon Telephone Assistance Program (OTAP) and Lifeline discount.

Applicable Law

Pursuant to the first sentence in OAR 860-033-0010(2), "An Eligible Telecommunications Provider must offer to all low-income customers who meet eligibility requirements OTAP discounts with all service offerings that include broadband internet access service or basic telephone service."

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The Commission may waive any of the Chapter 860, Division 33 administrative rules upon a showing of good cause. See OAR 860-033-0001(2). A waiver may be granted upon the filing of a written request or on the Commission's own motion.

### Analysis

#### *Background*

On March 11, 2021, Assurance Wireless filed a petition for waiver of the first sentence in OAR 860-033-0010(2) and provided a timeline of rulemaking proceedings that culminated in the adoption of OAR 860-033-0035(1)(c) governing OTAP benefits, which currently states,

For a customer that receives the OTAP supported service at no charge, the State of Oregon support of \$10.00. If an Eligible Telecommunications Provider that offers OTAP supported service at no charge to the low-income customer demonstrates to the Commission that it provides unlimited voice minutes for basic service and unlimited data for any broadband internet access service provided to the customer, the Commission may authorize a State of Oregon support amount up to \$10.00.

At the time of the Company's waiver request, the OTAP support amount was set to \$7.00. Assurance Wireless asserts it cannot offer qualifying low-income customers unlimited data at a reimbursement rate of \$7.00 or \$12.00<sup>1</sup> and that Oregon is the only jurisdiction that has a minimum service standard of unlimited voice minutes and unlimited data. For comparison purposes, Assurance Wireless indicates that the minimum service standard is 4.5 and 6 gigabytes (GB) to qualify for the federal Lifeline and State of California support in the monthly amount of \$9.25 and \$14.85, respectively. In addition, the State of California allows companies to claim reimbursement in the amount of \$39.00 for service initiation fees. Therefore, the Company seeks relief from the obligation to offer OTAP discounts on its service offering that includes 1400 voice minutes and 4.5 GB of data at no charge to the qualifying low-income customer.

#### *Justification for Waiver*

Assurance Wireless proffers no evidence such as cost data to support the Company's claims that it cannot comply with the first sentence in OAR 860-033-0010(2) and therefore, offer unlimited voice and unlimited data in accordance with OAR 860-033-0035(1)(c) at an OTAP reimbursement rate between \$7.00 and \$12.00. Instead, the Company relies on the premise that the Federal Communications

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<sup>1</sup> The State of Oregon support was temporarily set to \$12.00 in Docket No. AR 642 due to the enactment of the Consolidated Appropriations Act, 2021 on December 27, 2020, that extended the date by which states like Oregon must make expenditures with the CARES Act Coronavirus Relief Fund.

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Commission and California Public Utilities Commission only require ETCs like Assurance Wireless to offer a limited amount of data to qualify for respective federal and state support.

Absent concrete evidence, Staff is unable to assess, for instance, the cost of service provided and how these costs might affect an Eligible Telecommunications Provider's (ETP's) ability to meet the Commission's minimum standard. In Order No. 20-492, entered on December 29, 2020, in Docket No. AR 635, the Commission was not persuaded by the argument that some other jurisdictions provide higher subsidies and limit data amounts. However, the Commission recognized that some ETPs had been granted a waiver of OAR 860-033-0010(2). Also, whether the California Public Utilities Commission permits ETCs to claim reimbursement for service connection fees is not germane; the Commission does not offer OTAP support for service connection fees and Assurance Wireless does not impose service connection fees on Lifeline-eligible customers in Oregon.

However, separate from the grounds stated by the Company, Staff believes good cause exists to support a waiver of OAR 860-033-0010(2). The Commission issued a waiver of a similar rule for Virgin Mobile USA, L.P.<sup>2</sup> and Boomerang Wireless, LLC.<sup>3</sup> By granting the waiver, the Commission fostered competition; eligible low-income customers were afforded more options of providers that offered federal Lifeline-supported wireless service at no charge. A similar benefit will be available for customers if this waiver is granted without adverse effects on Lifeline customers. Staff issued a data request to Assurance Wireless requesting the average amount of data available at no charge that the Oregon customer used for each month from January 2020 to June 2020. The Company's response indicates that despite the federal Lifeline-supported allocation of 4.5 GB of data, customers, on average, used less than 2 GB. If the waiver is granted, customers will retain the Company as a provider offering Lifeline-supported wireless service at no charge at a service level that will accommodate current usage levels.

### Conclusion

Staff believes good cause exists for the Commission to grant a waiver based on the reasons set forth above.

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<sup>2</sup> Docket No. UM 1522, Order No. 12-015 (January 23, 2012).

<sup>3</sup> Docket No. UM 1668, Order No. 15-280 (September 15, 2015).

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**PROPOSED COMMISSION MOTION:**

Grant a waiver of the first sentence in OAR 860-033-0010(2) for Assurance Wireless.