

ORDER NO. 22-097

ENTERED Mar 24 2022

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1631

In the Matter of

i-WIRELESS,

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** X **EFFECTIVE DATE** Not Applicable

DATE: March 15, 2022

TO: Public Utility Commission

FROM: Jon Cray

THROUGH: Michael Dougherty **SIGNED**

SUBJECT: RESIDENTIAL SERVICE PROTECTION FUND:
(Docket No. UM 1631)
i-wireless, LLC Request for Waiver of OAR 860-033-0010(2).

STAFF RECOMMENDATION:

Staff recommends the Public Utility Commission of Oregon (Commission) grant i-wireless's (i-wireless or Company) requests for waiver of the first sentence in Oregon Administrative Rule (OAR) 860-033-0010(2) for the months of January, May, and June 2021.

Staff recommends the Commission grant a waiver on its own motion to i-wireless of the first sentence in OAR 860-033-0010(2).

DISCUSSION:

Issue

Whether the Commission should waive on its own motion the first sentence in OAR 860-033-0010(2) governing the applicability of the Oregon Telephone Assistance Program (OTAP) and Lifeline discount for the months of January, May, and June 2021.

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 January 27, 2021 and May 5, 2021, i-wireless dba Access Wireless filed a petition for waiver of the first sentence in OAR 860-033-0010(2) for the months of January 2021, May 2021, and June 2021. The Company 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 January 2021 waiver request, the OTAP support amount was set to \$7.00. i-wireless asserts it is not financially feasible to offer qualifying low-income customers unlimited data at a reimbursement rate of \$7.00 and that Oregon is the only jurisdiction that has a minimum service standard of unlimited voice minutes and unlimited data. For comparison purposes, i-wireless, under its Kroger Wireless prepaid brand, provides retail prices for plans that include unlimited voice minutes and ranges from \$25.00 to \$45.00 for 2 gigabytes (GB) to 25 GB. The Company 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. The State of California allows companies to claim reimbursement in the amount of \$39.00 for service initiation fees. In addition, the state of Kentucky only imposes a minimum standard of unlimited voice minutes for \$8.00 in support.

The OTAP reimbursement rate was \$12.00 at the time i-wireless requested a waiver in May 2021 for the months of May 2021 and June 2021. On April 29, 2021, the Federal Communications Commission (FCC) released a public notice announcing the launch of the Emergency Broadband Benefit Program (EBB Program) on May 12, 2021, for eligible low-income households. See DA 21-493. i-wireless elected to participate in the EBB Program to receive up to \$50.00 per month in reimbursement. However, the Company sought a waiver for the months of May 2021 and June 2021, citing its inability

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to offer the Lifeline-supported service that is not supported by EBB funds at no charge to the customer and meet the minimum service standard.

In informal discussions with the Company, Staff understands that the Company seeks an ongoing waiver of the current rule for its Lifeline-supported service at no charge to the customer, not just for the three months identified in the two waiver petitions filed. The Company, for the same reasons listed above, states that it is unable to offer the service and meet the minimum service standards with the OTAP support amount of \$10.00. Due to employee turnover, i-wireless has not had an opportunity to supplement its petitions to the Commission to request a general waiver of the first sentence in OAR 860-033-0010(2). Staff therefore addresses this issue by asking the Commission to consider a waiver on its own motion.

Justification for Waiver

Although i-wireless lists retail prices for various plans that include unlimited voice minutes and data allotments, the Company complied with OAR 860-033-0035(1)(c) between July 2020 through December 2021 and February 2021 through April 2021 when the OTAP reimbursement rate was set to \$12.00.¹ For nine (9) months, i-wireless offered unlimited voice minutes and unlimited data to eligible low-income households in Oregon for a combined federal and State of Oregon monthly support of \$21.25. i-wireless contends that it only complied in anticipation of impending available support from the FCC's EBB program. Ongoing compliance with Commission regulations should not be contingent upon availability of public funding from a separate and distinct federal program.

The Company relies on the premise that the FCC and California Public Utilities Commission only require Eligible Telecommunications Carriers (ETCs) like i-wireless to offer a limited amount of data to qualify for respective federal and state support. i-wireless also proclaims that the state of Kentucky does not mandate a minimum service standard for data. Instead, the state of Kentucky provides \$8.00 in support if an ETC like i-wireless offers unlimited voice minutes. Nevertheless, the Company demonstrated compliance with the minimum service standard in OAR 860-033-0035(1)(c) when the OTAP reimbursement rate was \$12.00. However, the Company proffers no evidence such as cost data to support the Company's claims that it's not financially feasible to comply or continue to comply with the first sentence in OAR 860-033-0010(2) and therefore, offer unlimited voice and unlimited data at an OTAP reimbursement rate of either \$7.00 or \$12.00, especially after having demonstrated compliance for nine (9) months.

¹ 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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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). 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 i-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 the first sentence in OAR 860-033-0010(2). The Commission issued a waiver of a similar rule for Virgin Mobile USA, L.P.² and Boomerang Wireless, LLC.³ 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 i-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 700 megabytes. 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.

Administrative Efficiency

Due to employee turnover, i-wireless indicates it has not had an opportunity to petition the Commission for general waiver of the first sentence in OAR 860-033-0010(2). For purposes of administrative efficiency, Staff recommends that the Commission grant a waiver on its own motion.

The Company has reviewed this memo and has no concerns.

Conclusion

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

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

³ Docket No. UM 1668, Order No. 15-280 (September 15, 2015).

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PROPOSED COMMISSION MOTION:

Grant i-wireless's requests for waiver of the first sentence in OAR 860-033-0010(2) for the months of January, May, and June 2021.

Waive, on the Commission's own motion, the first sentence in OAR 860-033-0010(2) for i-wireless.