EXHIBIT TO REQUEST FOR COMMENT & NOTICE OF PUBLIC HEARING

The Federal Communications Commission ("FCC") has established through the *Lifeline Reform Order*[1] a number of new certification, verification, auditing, and reporting obligations with which ETCs must comply in order receive reimbursement for their Lifeline subscribers. *See Order Opening Investigation* at 3.[2] The *Lifeline Reform Order* also expanded subscriber eligibility criteria, clarified the services to be covered by the Lifeline discount, and established consumer safeguards, such as new advertising disclosure requirements. *See Lifeline Reform Order* at ¶¶ 65, 271-282, 315. The Department now seeks comment on the implementation of these reforms in Massachusetts and the creation of a single, uniform set of procedures and requirements applicable to all Massachusetts ETCs seeking Lifeline support. Specifically, the Department seeks comment on requiring all current and future ETCs operating in Massachusetts to comply with the obligations outlined below.

1. Existing Department Requirements

The Department seeks comment on requiring all ETCs to comply with the procedures and requirements established by the Department[3] as applicable, including:

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1 The term "*Lifeline Reform Order*" refers to *In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Rep. & Order & Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012).

2 *Investigation by the Dep't on its Own Motion into the Implementation in Mass. of the Fed. Commc'ns Comm'n's Order Reforming the Lifeline Program*, D.T.C. 13-4, *Order Opening Investigation* (Apr. 1, 2013).

3 *See In the Matter of the Application of Virgin Mobile USA, L.P.'s Petition for Limited Designation as an Eligible Telecommunications Carrier*, D.T.C. 10-11, Order Approving Petition (Sept. 9, 2011) ("Virgin Mobile Order"); *T-Mobile Northeast LLC Petition for Limited Designation as an Eligible*

a. reporting to the Department on a quarterly basis the number of Lifeline subscriber accounts terminated for non-usage each month (Virgin Mobile Order at 15; T-Mobile Order at 20; Stand Up Wireless Order at 15; Budget PrePay Order at 15);

b. reporting to the Department on an quarterly basis the number of consumer complaints from Massachusetts subscribers regarding its Lifeline service (Virgin Mobile Order at 16; T-Mobile Order at 20; Stand Up Wireless Order at 15 (quarterly reports); Budget PrePay Order at 15 (quarterly reports));

c. reporting to the Department on a quarterly basis the amount of Universal Service Fund support received for Massachusetts Lifeline subscribers each month (Virgin Mobile Order at 16; T-Mobile Order at 20; Stand Up Wireless Order at 15; Budget PrePay Order at 15);

d. filing with the Department, within 60 days of being designated an ETC, the rates, terms, and conditions of the ETC's Lifeline service (Virgin Mobile Order at 16; T-Mobile Order at 20; Stand Up Wireless Order at 15; Budget PrePay Order at 15);

e. notifying the Department of any changes to the rates, terms, or conditions of the ETC's Lifeline service 30 days prior to the implementation of the changes; except that changes clearly benefitting Lifeline subscribers (e.g., the *only* change is additional minutes or reduced cost) need not be reported to the Department in advance, but must be reported to the Department at the time the changes are implemented (Virgin Mobile Order at 16; T-Mobile Order at 20; Stand Up Wireless Order at 16; Budget PrePay Order at 15);

f. providing to the Department copies of all marketing materials circulated in the Commonwealth for the ETC's Lifeline service within 30 days of the materials' release (Virgin Mobile Order at 10; T-Mobile Order at 16; Stand Up Wireless Order at 11; Budget PrePay Order at 10);

g. participating in dispute resolution[4] by the Department's Consumer Division to resolve Lifeline subscriber disputes (including eligibility disputes, program offering issues, and limited equipment related issues, but not matters related to rates or entry) (Virgin Mobile Order at 16; T-Mobile Order at 20; Stand Up Wireless Order at 15; Budget PrePay Order at 15);

Telecommunications Carrier for Purposes of Low Income Support Only, D.T.C. 12-4, Order Approving Petition (Aug. 30, 2012) ("T-Mobile Order"); *Petition of Global Connection Inc. of America d/b/a STAND UP WIRELESS for Designation as an Eligible Telecommunications Carrier*, D.T.C. 11-11, Order Approving Petition (Mar. 5, 2013) ("Stand Up Wireless Order"); *Petition of Budget PrePay, Inc. for Limited Designation as a Lifeline-Only Eligible Telecommunications Carrier*, D.T.C. 11-12, Order Approving Petition (Mar. 5, 2013) ("Budget PrePay Order").

[4] *See Rules and Practices Relating to Telephone Service to Residential Customers*, D.P.U. 18448 (1977), ("B&T Rules"), Part 6. Complaints and Disputed Claims.

h. including the Department's contact information for consumer complaints on the ETC's Lifeline advertising, Lifeline subscriber applications, website, Lifeline terms and conditions, initial Lifeline subscriber receipts, and Lifeline subscriber bills, if applicable;[5] and including information about the Department's dispute resolution process on its website, Lifeline application form, and Lifeline terms and conditions;[6] and

i. providing public safety answering points ("PSAP") self-certification annually to the Department (Virgin Mobile Order at 16; T-Mobile Order at 20; Stand Up Wireless Order at 16; Budget PrePay Order at 16).

2. Annual ETC Certification and Other Annual Reporting Obligations

The Department seeks comment on requiring all ETCs to certify with the Department on an annual basis that the ETC continues to meet designation requirements and that the ETC is operating in compliance with all applicable Lifeline program procedures and requirements, and to establish annually that the ETC's designation continues to be in the public interest. Specifically, the Department seeks comment on requiring all ETCs to provide to the Department an annual ETC certification that includes:

a. a sworn statement explaining whether:

(i) the ETC continues to meet the ETC designation requirements pursuant to 47 U.S.C. §§ 214(e), 254(e); 47 C.F.R. §§ 54.201-54.202, 54.400-54.422 *et seq.*;

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5 *See* Virgin Mobile Order at 16 (Virgin Mobile agreed to include Department contact information in Lifeline marketing materials); T-Mobile Order at 20 (T-Mobile agreed to include Department contact information in Lifeline marketing materials); Stand Up Wireless Order at 16 (Stand Up Wireless agreed to include Department contact information in Lifeline marketing materials, application, subscriber receipts, and terms and conditions); Budget PrePay Order at 15 (Budget PrePay agreed to include Department contact information in Lifeline marketing materials).

6 *See T-Mobile Northeast LLC Petition for Limited Designation as an Eligible Telecommunications Carrier for Purposes of Low Income Support Only*, D.T.C. 12-4, Evidentiary Hearing Transcript at 95-96 (May 16, 2012) ("T-Mobile Tr.") (T-Mobile testified that its Lifeline application would contain a notice with an explanation of consumer rights); T-Mobile's response to D.T.C. 12-4 Department Record Request 9 ("T-Mobile will include notice of the Lifeline dispute resolution procedures as required in its Lifeline advertising, in the Lifeline customer application form, and in any Lifeline specific Terms and Conditions."); *see also* Stand Up Wireless Order at 15 (Stand Up Wireless agreed to include notice of Department dispute resolution procedures at point of sale and via Stand Up Wireless' customer service call centers).

(ii) the ETC is in compliance with the procedures and requirements established by *Lifeline Reform Order*; 47 C.F.R. §§ 54.400-54.422 *et seq*.; and any applicable Department procedures and requirements;

(iii) the ETC is in compliance with all of the Commonwealth's 911 and E911 obligations;

(iv) the ETC has the capability to provide subscriber access to 911 Public Safety Answering Points;

(v) the ETC's corporate ownership, principle address, business operations, or eligibility qualifications as set forth in (or existing at the time of) the ETC's original petition for designation have changed;

(vi) the ETC has any outstanding tax liabilities or other late payments or liabilities due and owing to the Commonwealth of Massachusetts;

(vii) the FCC, any state utilities commission, or government agency has rendered or entered a finding, criminal conviction (including plea agreements), or civil judgment or settlement (including consent decrees and money judgments) against the ETC, its executives, or senior managers, since its designation by the Department or its most recent annual filing; and

(viii) its ETC designation has been suspended or revoked in any jurisdiction.

b. certified copies of any certifications or reports filed with the FCC or Universal Service Administrative Company ("USAC") including, but not necessarily limited to:

(i) the report filed annually with USAC regarding the number of Massachusetts subscribers de-enrolled for non-usage pursuant to 47 C.F.R. § 54.405(e)(3); and

(ii) the certification filed annually with USAC (FCC Form 555 or its equivalent) regarding compliance with all federal Lifeline certification procedures pursuant to 47 C.F.R. § 54.416.[7]

c. an annual report that includes information specified in 47 C.F.R. §§ 54.422(a)-(b) regarding updated business information (names of holding companies and affiliates and brand designation); outage reports (outages of at least 30 minutes in duration potentially affecting at least 10% of end users in a designated service area or a 911 special facility); number of complaints per 1,000 connections; certification of ability

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[7] *See* Stand Up Wireless Order at 16 (Stand Up Wireless agreed to provide annual certification of an officer of the Company that the Company (a) has policies and procedures in place to review consumers' documentation of income- and program-based eligibility; (b) is in compliance with all federal Lifeline certification procedures; and (c) has obtained a valid certification form for each subscriber for whom the carrier seeks Lifeline reimbursement); Budget PrePay Order at 16 (same).

to function in emergency situations; and detailed information regarding offered Lifeline service plans and associated terms and conditions.

d. a copy of the ETC's Lifeline subscriber application(s) in use at the time of the filing of its annual ETC certification.

The Department also seeks comment on requiring all ETCs to provide to the Department the results of any audits performed pursuant to 47 C.F.R. § 54.420(b) within 30 days of the issuance of the final audit report.

3. Lifeline Eligibility Criteria

The Department also seeks comment regarding the expansion of Lifeline subscriber eligibility requirements. In the *Lifeline Reform Order*, the FCC required all states to use, at a minimum, the income and program criteria currently used by federal default states. *Lifeline Reform Order* at ¶ 65. In doing so, the FCC established baseline eligibility requirements on top of which states may adopt additional program or income criteria to address the unique circumstances facing consumers in their respective states. *Id*. The Department seeks comment regarding whether it should: (1) expand eligibility requirements to include additional qualifying programs such as the Women, Infants, and Children (WIC) program and appropriate income based Veterans Services programs; and/or (2) extend the qualifying income amount from an annual household income level of 135% or below of the Federal Poverty Guidelines ("FPG") to 150% or below of the FPG.[8] The Department also seeks comment regarding best practices for ETCs to promptly notify Lifeline subscribers and prospective subscribers of changes in eligibility criteria or FPG calculations. For example, the Department seeks comment regarding a requirement that ETCs should within 60 days of changes in eligibility criteria or FPG

[8] *Id*. at ¶¶ 22, 62 n.160 (According to the FCC, Ohio, the District of Columbia, and several other states set income eligibility at 150% of the FPG.)

calculations notify existing subscribers of the changes and update marketing materials, application forms, etc., to reflect these changes.

4. Outreach, consumer safeguards, and service quality

The Department also seeks comment on improving outreach methods and the most effective ways to communicate with consumers about the Lifeline program. In its *Lifeline Reform Order*, the FCC took steps to ensure that potential consumers receive accurate and quality information from ETCs. *Lifeline Reform Order* at ¶¶ 271-282. In addition to the previously existing requirements that ETCs must advertise the availability of Lifeline service "using media of general distribution" (47 U.S.C. § 214(e)(1)(B)) and "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service" (47 C.F.R. § 54.405(b)), the FCC adopted rules requiring ETCs to make specific disclosures in all marketing materials including, but not limited to, the company's name, the details of its Lifeline offering(s), that the offering is a Lifeline supported service, that it is a government program, that consumers who willfully make false statements to obtain the benefit can be punished by a fine or imprisonment, and that the program is limited to one benefit per household. *Lifeline Reform Order* at ¶ 275; 47 C.F.R. §§ 54.405(c)-(d). The FCC further specified that the term "marketing materials" includes email, web, and social networking media in addition to print, audio, and video advertising. *Lifeline Reform Order* at ¶ 275. The FCC also encouraged states to be proactive in providing information to low-income consumers about the Lifeline program. *Id*. at ¶ 279.

The Department seeks comment on establishing updated outreach requirements given changes in how carriers now communicate with their customers (e.g., e-mail and texting) and changes in types of media used for reaching potential customers (e.g., company websites and

social networking media). In particular, the Department seeks comment on the continued viability of the Department's existing outreach requirements for wireline ETCs,[9] the methods of outreach which are most effective, recommended changes to outreach requirements that would improve consumer knowledge, and whether changes to outreach requirements should be applied equally to both wireline and wireless ETCs. Currently, wireline providers of Lifeline must publish Lifeline information in directory white pages.[10] The Department seeks comment on whether ETCs should prominently display Lifeline plan information on the main page of the ETC's website with a direct link to all associated terms and conditions as well as make Lifeline plan information available to the public through other means such as printed brochures. The Department also seeks comment concerning whether ETCs should disclose in their Lifeline marketing materials (including print advertising, website pages, mailings, outreach brochures, and initial subscription receipts) all material terms and conditions associated with the advertised plan.[11]

The Department also seeks comment on requiring all ETCs to satisfy certain consumer safeguards and service quality requirements in order to advance universal service while

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[9] Existing Department requirements include:

(1) Conduct annual employee training about the Lifeline program;
(2) Require customer service representatives to inform customers about Lifeline;
(3) Include Lifeline information in directory white pages;
(4) Include Lifeline information with bills;
(5) Limit sales efforts of optional services to Lifeline subscribers;
(6) Provide Lifeline sign-up sales incentives to employees.

See Investigation by the Dep't of Pub. Utils. on its own motion as to the propriety of the rates and charges set forth in tariff schedules D.P.U. Mass. Nos. 10 and 15, filed with the Dep't on June 14, 1993, to become effective July 14, 1993, by New England Tel. and Tel. Co., D.P.U. 93-125, *Order* at 53 (Jan. 13, 1994) ("D.P.U. 93-125 Order") (requiring publication of Lifeline information in directory white pages).

[10] *See* D.P.U. 93-125 Order at 53 (requiring publication of Lifeline information in directory white pages).

[11] *See*, *e.g.*, T-Mobile Tr. at 78-79 (T-Mobile agreed to disclose contract commitments, early termination fees, and activation fees in it Lifeline advertising).

safeguarding the Lifeline program from waste, fraud, and abuse. Under the universal service program, states are free to implement rules, consistent with those of the FCC, to "preserve and advance universal service," as well as to provide "additional definitions and standards to preserve and advance universal service within that State." 47 U.S.C. § 254(f). In order to preserve and advance universal service, the Department seeks comment on requiring Massachusetts ETCs to:

a. Offer a basic voice option to eligible Lifeline subscribers with no associated contract term or early termination fee.[12]

b. Offer a minimum 90 day warranty or return policy for refurbished phones provided to Lifeline subscribers.[13]

c. Ensure adequate customer service resources to provide: [14]

   (i) Trained customer service assistance;

   (ii) Prompt processing of Lifeline subscriber applications;

   (iii) Prompt and satisfactory customer assistance and resolution of complaints;

   (iv) Person-to-person customer service assistance if requested by the subscriber;

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12 *See, e.g.*, T-Mobile Order at 23 ("T-Mobile is committed to making an affordable basic voice plan available to eligible Lifeline customers… without the imposition of a long-term contract or early termination fee."); Stand Up Wireless Order at 7-8 ("Stand Up Wireless asserts that it is committed to offering to eligible Lifeline subscribers a free, basic voice plan that includes all of the supported services … Stand Up Wireless offers two basic Lifeline plans … free to Lifeline subscribers, with no contracts or fees of any kind."); Budget PrePay Order at 7-8 (Budget asserts that it is committed to offering to eligible Lifeline subscribers a basic voice plan that does not require a service contract, activation fees, late fees or early termination fees).

13 *See generally* Stand Up Wireless's response to D.T.C. 11-11 Department Information Request 2-6 (explaining Stand Up Wireless's 90 day warranty period); *Petition of Budget PrePay, Inc. for Limited Designation as a Lifeline-Only Eligible Telecommunications Carrier*, D.T.C. 11-12, Evidentiary Hearing Transcript at 73-74 (Sept. 25, 2012) (explaining Budget PrePay's 30 day warranty period).

14 *See* 47 C.F.R. § 54.202(a)(3) (which requires ETC applicants to demonstrate they will satisfy applicable consumer protection and service quality standards); B&T Rule 6.1 (which requires a provider to investigate and make a substantial effort to resolve customer billing complaints); T-Mobile Order at 18 (T-Mobile abides by CTIA – The Wireless Association's Consumer Code for Wireless Service which generally requires a commitment to provide ready access to customer assistance and prompt response to consumer inquiries and complaints received from government agencies); Stand Up Wireless Order at 14 (same); Budget PrePay Order at 13 (same).

(v) Prompt response to Department inquiries (for example, confirm receipt of complaint within 1-2 business days and report status or resolve complaint within 5-7 business days);[15] and

(vi) Customer service point of contact accessible to the Department.

d. Offer the same services and benefits to Massachusetts Lifeline subscribers that the ETC offers in other jurisdictions.[16]

e. Provide the following information to the Department within one business day of the onset of any service outage lasting at least 30 minutes affecting at least 10% or 200 of the ETC's Massachusetts Lifeline subscribers, whichever is less, or otherwise affecting special facilities in the Commonwealth including 911 PSAPs:[17]

(i) The date and time when the outage began;

(ii) The location and cause of the outage;

(iii) The approximate number of subscribers affected; and

(iv) Plans to restore service and projected service restoration date.

Also, during the outage, provide periodic progress reports to the Department on service restoration. Finally, report to the Department the date service is restored.

The Department also seeks comment regarding how an ETC should assist Lifeline subscribers in the event the ETC ceases to provide Lifeline service in Massachusetts. In particular, the Department seeks comment from ETCs regarding their ability to comply with Mass Migration Requirements set forth in D.T.E. 02-28 (adopted by D.T.E. Order on August 7, 2002)[18] should they discontinue Lifeline service in Massachusetts. The Department also seeks

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15 *See* Notification to ETC Providers from Joslyn Day, Director, Department Consumer Division (email dated Mar. 11, 2013).

16 *See* Stand Up Order at 19 ("Stand Up Wireless is also committed to offering the same services and benefits to Massachusetts Lifeline subscribers as the Company offers in other jurisdictions."); Budget PrePay Order at 19 ("Budget is also committed to offering the same services and benefits to Massachusetts Lifeline subscribers as the Company offers in other jurisdictions.").

17 *See generally* 47 C.F.R. §§ 4.1-4.13 (Part 4)(which sets forth reporting requirements for communications disruptions); 47 C.F.R. § 54.422(b)(1)(which requires annual reporting of service outage information).

18 The Mass Migration Requirements are to be used when a competitive local exchange carrier is exiting the local exchange services market, or a portion of its market, and has a customer base to migrate to other

comment regarding alternative requirements for ETCs that discontinue Lifeline service that include, at a minimum, the following: (1) ETC notification to Lifeline subscribers and the Department 60 days in advance of the provider's intention to cease providing Lifeline service in Massachusetts, and (2) ETC cooperation with Lifeline subscribers and the Department in order to facilitate smooth migration of subscribers to alternative ETC providers.[19]

5. Other Related Matters

The Department also invites comment on any additional matters reasonably related to the implementation of the *Lifeline Reform Order* in Massachusetts and any procedures or requirements needed to implement the *Lifeline Reform Order*, advance universal service, and/or safeguard the federal universal service fund. For example, the Department seeks comment regarding whether ETCs should take more action to retain eligible Lifeline subscribers during the annual re-certification process. Under the *Lifeline Reform Order* reforms, ETCs must re-certify each Lifeline subscriber annually (47 C.F.R. § 54.410(f))[20] and if an ETC is unable to re-certify a subscriber, the ETC must provide to the subscriber written notice separate from the subscriber's bill that failure to respond to the re-certification request within 30 days of the date of the request

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carriers. The objective of the requirements is to provide adequate advance notice to the Department and customers of the carrier's plans to exit the market and to afford customers the opportunity to migrate to another local exchange carrier without interruption of service. The requirements are available at: http://www.mass.gov/ocabr/searchresults.html?output=xml_no_dtd&client=massgov&proxystylesheet=massgov&getfields=*&ie=UTF-8&sort=date%3AD%3AL%3Ad1&oe=UTF-8&startsite=CONSUMERx&q=DTE+02-28&site=CONSUMERx.

19 *See* Stand Up Wireless Order at 12 ("Stand Up Wireless agrees to provide advance notice to the Department if it ceases to provide Lifeline in Massachusetts for whatever reason, and agrees to comply with the Mass Migration Requirements."); Budget PrePay Order at 12 ("[I]n the event that Budget ceases to provide Lifeline in Massachusetts, the Company agrees to provide 30 days advance notice to its customers and to the Department, and certifies that it will comply the Mass Migration Requirements."); T-Mobile Tr. at 117 (In the event T-Mobile ceases to provide Lifeline service in Massachusetts, T-Mobile testified that it would be obligated "to ensure that these Lifeline subscribers are transitioned either off of Lifeline service or onto another Lifeline service provider.").

20 The FCC determined that "for purposes of annual certifications, ETCs may rely upon text messages from Lifeline consumers when such communications is received in response to the annual certification request from the consumer's Lifeline-supported phone number." *Lifeline Reform Order* at ¶ 168.

will trigger de-enrollment (47 C.F.R. § 54.405(e)(4)). The Department seeks comment regarding whether these steps are sufficient to encourage response from subscribers and prevent de-enrollment of otherwise eligible Lifeline subscribers.[21]

[21] *See Lifeline Reform Order* at ¶ 140 (authorizing states to "supplement the federal re-certification methodology with their own procedures specifically tailored to state-specific program requirements").