

**Lance J.M. Steinhart, P.C.**  
Attorneys At Law  
1725 Windward Concourse  
Suite 150  
Alpharetta, Georgia 30005

Also Admitted in New York  
Email: lsteinhart@telecomcounsel.com

Telephone: (770) 232-9200  
Facsimile: (770) 232-9208

April 24, 2023

**VIA ELECTRONIC DELIVERY**

Ms. Shonda Green, Secretary  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 600  
Boston, Massachusetts 02118

Re: AirVoice Wireless, LLC d/b/a AirTalk Wireless  
D.T.C. 22-2; Responses to Information Requests

Dear Ms. Green,

On behalf of AirVoice Wireless, LLC d/b/a AirTalk Wireless ("AirVoice"), attached please find the responses to the Department of Telecommunications and Cable's First Set of Confidential Information Requests and Second Set of Information Requests.

If you have any questions or if I may provide you with additional information, please do not hesitate to contact me. Thank you for your assistance.

Respectfully submitted,

*/s/ Lance J.M. Steinhart*

Lance J.M. Steinhart, Esq.  
Managing Attorney  
Lance J.M. Steinhart, P.C.

*Attorneys for AirVoice Wireless, LLC  
d/b/a AirTalk Wireless*

Attachment(s)

**BEFORE THE**  
**MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

In the Matter of AirVoice Wireless, LLC's	)	
Petition for Limited Designation as an Eligible	)	
Telecommunications Carrier in Massachusetts	)	D.T.C. 22-2
for the Limited Purpose of Offering Wireless	)	
Lifeline Service to Qualified Households	)	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the following documents upon all persons in the service list compiled by the Secretary of the Department in this proceeding and all parties of record in accordance with the requirements of 207 CMR 1.05(1) (Department's Procedural Rules).

Dated at Alpharetta, Georgia this 24th day of April, 2023.

*s/ Heather Kirby*

\_\_\_\_\_  
Heather Kirby  
Regulatory Specialist  
Lance J.M. Steinhart, P.C.

**D.T.C. 22-2 Service List**

**Petition of AirVoice Wireless, LLC d/b/a AirTalk Wireless for Designation as an  
Eligible Telecommunications Carrier**

Shonda D. Green, Secretary  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 600  
Boston, MA 02118-6500  
Telephone: (617) 305-3580  
Email: [dte.filing@mass.gov](mailto:dte.filing@mass.gov)

Sarah Monahan  
Presiding Officer  
Legal Division  
1000 Washington Street, Suite 600  
Boston, MA 02118-6500  
Telephone: (617) 305-3580  
Email: [sarah.k.monahan@mass.gov](mailto:sarah.k.monahan@mass.gov)

Sean Carroll, General Counsel  
Legal Division  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 600  
Boston, MA 02118-6500  
Telephone: (617) 305-3580  
Email: [sean.m.carroll@mass.gov](mailto:sean.m.carroll@mass.gov)

Joseph Tiernan  
Administrator of Special Projects and Data Analytics, Competition Division  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 600  
Boston, MA 02118-6500  
Telephone: (617) 305-3580  
Email: [joseph.tiernan@mass.gov](mailto:joseph.tiernan@mass.gov)

Jacob Levine  
Market Policy Economist, Competition Division  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 600  
Boston, MA 02118-6500  
Telephone: (617) 305-3580  
Email: [jacob.levine@mass.gov](mailto:jacob.levine@mass.gov)

Marina Levy, Data Analyst  
Competition Division  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 600  
Boston, MA 02118-6500  
Telephone: (617) 305-3580  
Email: [marina.levy@mass.gov](mailto:marina.levy@mass.gov)

Joslyn Day, Director  
Consumer Division  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 600  
Boston, MA 02118-6500  
Telephone: (617) 305-3580  
Email: [joslyn.day@mass.gov](mailto:joslyn.day@mass.gov)

Corey Pilz, Deputy Director  
Consumer Division  
Department of Telecommunications and Cable  
1000 Washington Street, Suite 600  
Boston, MA 02118-6500  
Telephone: (617) 305-3580  
Email: [corey.r.pilz@mass.gov](mailto:corey.r.pilz@mass.gov)

Lance J.M. Steinhart  
Managing Attorney  
Lance J.M. Steinhart, P.C.  
1725 Windward Concourse, Suite 150  
Alpharetta, GA 30005  
Telephone: (770) 232-9200  
Email: [lsteinhart@telecomcounsel.com](mailto:lsteinhart@telecomcounsel.com)

Marisa Desautel, Esq.  
Desautel Law  
38 Bellevue Avenue, Suite H  
Newport, RI 02840  
Telephone: (401) 477-0023  
Email: [Marisa@desautelesq.com](mailto:Marisa@desautelesq.com)

David Stewart, Compliance & Legal Affairs Associate  
AirVoice Wireless, LLC  
9920 Brooklet Drive  
Houston, Texas 77099  
Telephone: (888) 944-2355  
Email: [david@hthcomm.com](mailto:david@hthcomm.com)

Jonathan Dinerstein  
Assistant Attorney General  
Energy & Telecommunications Division, Energy & Environment Bureau  
Massachusetts Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
Telephone: (617) 963-2000  
Email: [Jonathan.Dinerstein@mass.gov](mailto:Jonathan.Dinerstein@mass.gov)

Adriana Bakhos  
Litigation Support Specialist  
Energy & Telecommunications Division, Energy & Environment Bureau  
Massachusetts Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
Telephone: (617) 963-2000  
Email: [adriana.c.bakhos@mass.gov](mailto:adriana.c.bakhos@mass.gov)

**RESPONSES TO FIRST SET OF CONFIDENTIAL INFORMATION REQUESTS  
BY THE DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

D.T.C. Confidential 1-1      Refer to Exhibit 1-3.

- A.      Provide the initial purpose of AirVoice ordering the Independent Accountant's report from Bahoura Ballinger Plc.

**Response: In the ordinary course of business, most small companies provide their CPAs copies of their internal accounting program in order to produce financial statements. The financial statements are not audited, but rather a compilation.**

- B.      Provide the rationale of management declining to provide the information as described by Bahoura Ballinger Plc.

**Response: A compilation is a basic summary of a company's financial statements written by a CPA using data provided by the company. Unlike an audit, this method provides no assurance. There are no tests performed, and the auditor does not examine any internal controls. Most smaller privately-held companies do not have audited financial statements prepared because of the cost.**

- C.      As Bahoura Ballinger's did not provide assurance on the provided financial statements, describe the value and accuracy of the figures provided in Exhibit 1-3, and any limitations of the documents within the Exhibit.

**Response: Previous ownership represented and warranted to the current ownership that "The Financial Statements (i) were prepared in accordance with the books of account and other financial records of the Company, and (ii) present fairly in all material respects the financial condition and results of operations of the Company as of the dates thereof or for the periods covered thereby. The books of account and other financial records of the Company: (i) reflect all items of income and expense and all assets and liabilities required to be reflected therein in accordance with the Company's historical accounting practices consistently applied, (ii) are complete and correct in all respects, and do not contain or reflect any material inaccuracies or discrepancies, and (iii) have been maintained in accordance with good business and accounting practices."**

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**D.T.C. 22-2**

**April 24, 2023**

- D. Provide a description of the company known as “HBD 2425 Franklin LLC.”

**Response: HBD 2425 Franklin LLC was a Michigan limited liability company which owned the office building located at 2425 Franklin Road, Bloomfield Hills, Michigan, which AirVoice leased under prior ownership. The owners of HBD were the same owners of AirVoice.**

- E. Describe AirVoice’s relation with HBD 2425 Franklin LLC.

**Response: There is no relationship with HBD 2425 Franklin LLC. AirVoice is now located in Houston, Texas; the lease was terminated and the property was sold by the prior owners of AirVoice.**

**Response prepared by: David Stewart, Lifeline Operations Manager  
Lance J.M. Steinhart, Attorney for AirVoice**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-1      Describe how and when a Massachusetts Lifeline customer will be notified of any changes or updates to the applicable Terms and Conditions.

**Response:**      **Notifications are sent via email and SMS message to the subscriber's device. Timing depends upon the type of change, as some changes require more notice.**

**Response prepared by: David Stewart, Lifeline Operations Manager**



**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-2      Refer to Exhibit 1-5, Section 7 of Lifeline Terms of Service. The condition states “AirTalk Wireless will notify subscribers of change to the Terms and Conditions of Service that are determined to be materially adverse to a subscriber’s service 30 days in advance of the change. If subscriber does not terminate service within 30 days of receiving this notice of a change in the Terms and Conditions of Service, subscriber agrees to accept any such changes.” Clarify how the Company determines whether a change is materially adverse to a subscriber’s service. Provide examples of a materially adverse change.

**Response:**      **Generally, changes made to the Terms and Conditions affect new subscribers (i.e. availability of devices for enrollment). Materially adverse changes would consist of any changes that represent a reduction in service or increased limitation to the subscriber, such as more restrictive Acceptable Use Policy, Lost Equipment Policy, Returns Policy, Warranty Policy, unauthorized use, limitations of service, Lifeline rule changes, etc. Any changes to the AirTalk Terms and Conditions are reviewed by the Compliance and Legal departments to determine if customer notice is needed.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

- D.T.C. 2-3      Refer to Exhibit 1-5 (Lifeline Terms of Service). Under the section titled, “AirTalk Wireless Service Rates (Airtime), Features, Coverage, and Activation Fees,” the Company states that airtime “is valued at \$0.20 per minute of use” and that “unanswered outbound calls will be billed if the ring time exceeds 30 seconds. Ring time is defined as the amount of time between the point when a call is initiated (pressing the TALK button) and when it is answered (or terminated before being answered).”
- A. Describe how AirVoice developed the \$0.20 per minute use rate and what rate elements went into this calculation.
  - B. Confirm that consumers will not be billed any fees once their 1,000 allotted minutes are used up in a month.
  - C. Explain how unanswered outbound calls will be counted against the 1,000 allotted minutes.

**Response:**

- A. This is no longer included in our terms and conditions.**
- B. Once a customer has consumed 1,000 minutes, all outbound calls are routed to the Airtalk Customer Service Center and they will otherwise be unable to make calls until the next monthly cycle starts unless they purchase additional airtime (the service is prepaid and consumers are not billed any fees).**
- C. Unanswered calls exceeding 30 seconds are counted as one minute of use. Calls where a customer leaves a voicemail message are counted as actual call time.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-4      Refer to Exhibit 1-5 (Lifeline Terms of Service). In the paragraph beginning with “LIFELINE FREE PLAN”, it states that text messaging “will be assessed at a rate of 1 minute per text message for sending and 1 minute per text message for receiving text messages.”

- A. Confirm whether this term limits the number of text messages a subscriber can send and receive per month under AirVoice’s Lifeline plan.
- B. Confirm whether the sending of one text message reduces the number of available voice minutes that remain available to the subscriber for use in that month by one minute.

**Response:**      **AirVoice’s Lifeline plan contains unlimited text messages, and therefore text messages do not affect voice minutes and vice versa.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-5      Refer to the Company's response to DTC 1-5. The Terms and Conditions (T&C) submitted under Exhibit 1-5 contain different terms from the T&C presently available on AirVoice's website.

- A. Clarify whether AirVoice proposes to use the T&C submitted as Exhibit 1-5 or the T&C currently available on AirVoice's website for AirVoice's prospective Massachusetts Lifeline subscribers.
- B. If the T&C available on AirVoice's website are the proposed T&C for Massachusetts Lifeline subscribers, provide the Department with an updated Exhibit 1-5 and clarify when AirVoice changed the terms in the latest version.

**Response:**      **AirVoice maintains its most current T&C, which was last changed on December 16, 2022, on its website (<https://airtalkwireless.com/term-condition>). AirVoice intends to use the website T&C in Massachusetts, a copy of which is attached hereto as Updated Exhibit 1-5.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-6      Refer to Exhibit 1-5 (Lifeline Terms of Service). The terms and conditions state that “Subscribers who successfully submit a AirTalk Wireless application for the Lifeline program will receive a wireless phone provided by AirTalk Wireless including an allotment of airtime minutes, data and text each month for a period of twelve (12) consecutive months from the date service is started.”

Explain under which circumstances newly enrolled Massachusetts Lifeline customers must purchase a device versus when AirVoice will provide a device free of charge.

**Response:**      **Device offers for the Lifeline program will change over time. Currently we plan to offer a free standard device for Lifeline-only subscribers in Massachusetts, though the Company’s application contemplates the Company’s option to offer a free device or SIM card. For subscribers that enroll in both Lifeline and ACP we will offer free upgraded devices such as the iPhone 7, Samsung Galaxy 9 and other iconic brand names.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-7      Refer to Exhibit 1-6, Steps 3, 12, and 15. “Step 3” notes “No Free Smartphone” for the Lifeline Plan, as well as 4.5GB of data, 1,000 voice minutes, and Unlimited SMS. On the other hand, “Step 12” shows a phone selection screen (suggesting that phones are included in the plan) and notes “Free Unlimited High-Speed Data”, 350 voice minutes, and Unlimited SMS. “Step 15” shows an Order Summary for a Lifeline Plan including a Wiko Life 3 phone, as well as 4.5GB of data, 1,000 voice minutes, and Unlimited SMS. Explain the discrepancy in service offerings between steps 3, 12, and 15.

**Response:**      **The screenshots provided for Exhibit 1-6 were for example only. As noted in response to DTC 2-6, device offerings will change over time; however, the Massachusetts Lifeline-only plan will consist of 1,000 minutes, unlimited SMS and 4.5 Gigabytes of data. We will provide an updated set of enrollment screenshots if needed.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-8 Refer to Exhibit 1-6. “Step 13” describes a 120-day commitment, during which customers may be responsible for the cost of the smartphone they receive. “Step 13” also states that a customer authorizes the Company to “transfer [their] benefit back” if they switch to another provider within 120 days.

- A. Describe in further detail how AirVoice treats customer accounts if the customer chooses to switch to a different Lifeline provider within 120 days of starting service with AirVoice. Describe any obligations Massachusetts Lifeline subscribers will face if terminating or switching service before 120 days of service.
- B. Describe any circumstances under which current or former AirVoice Lifeline subscribers have been billed for equipment or services provided by AirVoice or an affiliate.
- C. Confirm whether AirVoice customers who are enrolled in both the Lifeline and ACP programs receive equipment and specify what equipment they receive for each benefit.

**Response: The 120 day commitment notification only applies to ACP or Lifeline/ACP combination enrollments. Subscribers enrolling in Lifeline-only will not have to fulfill a 120 day commitment as they will not be offered free upgraded devices.**

- A. Lifeline/ACP combination enrollments will have to commit to 120 days of active enrollment, but are still free to transfer or cancel service at any time. If they fail to meet the 120-day commitment, AirTalk reserves the right to invoice the customer for the cost of the free upgraded device provided, and/or ask the customer if they would rather consent to transfer their service back to AirVoice to avoid being charged the cost of the smartphone. That said, AirVoice has not yet issued any invoices under this policy.**
- B. To date, no subscribers have been invoiced for failure to complete the 120 day commitment.**
- C. AirVoice customers who are enrolled in both the Lifeline and ACP programs are offered a variety of iconic brand devices like the above-mentioned iPhones, Samsung Galaxy, Google Pixel etc.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-9      Describe AirVoice's policy regarding customers returning equipment.

**Response:**      **In case of a warranty replacement, AirVoice approves an RMA and sends customers a prepaid shipping label to facilitate the return of the defective device.**

**Response prepared by: David Stewart, Lifeline Operations Manager**



**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-10    Refer to Exhibit 1-1. Provide the sources of the coverage maps for the state of Massachusetts and provide a link if they are accessible online.

**Response:**    **The links provided below were used to create the coverage maps for Massachusetts (note, the colors used for AT&T have changed slightly):**

T-Mobile

<https://www.t-mobile.com/coverage/coverage-map>

AT&T

<https://www.att.com/maps/wireless-coverage.html>

Overlay

[https://commons.wikimedia.org/wiki/File:MA\\_Area\\_Codes\\_Map.svg](https://commons.wikimedia.org/wiki/File:MA_Area_Codes_Map.svg)

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-11    Describe how AirVoice determines which Lifeline subscribers will be assigned to which underlying carrier's network. Also confirm if customers can use their equipment for any underlying carrier network or specify if they are limited to one carrier.

**Response:**    **A customer's carrier is determined based on coverage available at their service address. Absent a coverage issue, AirVoice customers may not request to switch between our two underlying carriers. Customers using their own device must have an unlocked GSM device that is compatible with the underlying carrier.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-12 State if AirVoice has ever:

- A. Formally relinquished, or unilaterally abandoned, or withdrawn an ETC designation in any state or other jurisdiction;
- B. Experienced dismissal (with or without prejudice) of an application or petition for ETC designation.
- C. Had an ETC designation permanently revoked, rescinded, suspended, or otherwise “terminated” in any state or jurisdiction.

Explain the reason(s) for and circumstances behind each such event or occurrence falling under the foregoing categories.

**Response:** To the best of the Company’s knowledge:

- A. AirVoice has not relinquished, abandoned, or withdrawn an existing ETC designation in any state or jurisdiction.**
- B. AirVoice, under prior ownership and management, applied for Lifeline ETC designation in Indiana in 2013 and was denied based upon the state public utility commission’s finding of insufficient showing of financial and technical ability to provide Lifeline services in Indiana. Air Voice went on to receive ETC designation in the other ten (10) states in which it applied, and under current ownership has received ETC designation in an additional 29 jurisdictions (including Indiana).**
- C. AirVoice has not had an ETC designation permanently revoked, rescinded, suspended, or otherwise “terminated” in any state or jurisdiction.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-13 Identify all ongoing litigation and any litigation within the past ten years involving AirVoice or any of its affiliates. If applicable, provide a copy of all judicial findings or settlement agreements made in relation to such litigation(s).

**Response:** The Company does not have knowledge of any litigation for AirVoice prior to current ownership. The only litigation for AirVoice or its affiliates under current ownership, to the best of the Company's knowledge, is provided below:

HTH Communications, LLC was a defendant in the federal case of *True Wireless v. HTH Communications, LLC* (U.S. District Court for the Southern District of Texas, 4:20-cv-02666, filed on July 31, 2020). HTH first filed a suit against True Wireless in Harris County District Court on July 30, 2020, but rather than fight a removal battle, HTH decided to proceed with HTH's claims in federal court and dismiss the state court case. In its complaint, True Wireless asserted claims for breach of contract, declaratory judgment, and request for an accounting. HTH filed counterclaims in the federal case against True Wireless for breach of contract, quantum meruit, fraud and fraudulent inducement, declaratory relief, negligent misrepresentation, unjust enrichment, and promissory estoppel. The court ruled in favor of HTH and the matter was settled confidentially, with settlement payments made by True Wireless to HTH.

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-14 Explain whether the FCC, any state commission, or any government agency has rendered or entered a finding, conviction (including plea agreements), or civil judgment against AirVoice, its executives or senior managers, or any of its affiliates or their executives or senior managers, during the last ten years. Provide a copy of any such findings, consent decrees, convictions, plea agreements, or civil judgments.

**Response:** To the best of the Company's knowledge, the only instances of findings, convictions or civil judgments against AirVoice and its affiliates including executives or senior managers, under current ownership or otherwise known to AirVoice, are provided below with respective findings attached:

AirVoice, under prior ownership and management, was found by the FCC to have violated the digital wireless handset hearing aid compatibility status report filing requirement and was thus issued an NAL by the FCC (*See* DA 14-175 issued February 12, 2014, File No. EB-SED-13-00012959) for failure to timely file its hearing aid compatibility status report for the 2012 reporting period, resulting in monetary forfeiture in the amount of six thousand dollars (\$6,000), which AirVoice paid.

AirVoice, under prior ownership and management, was the subject of a California LifeLine Program Examination by the Commission's Utility Audit, Finance and Compliance Branch (UAFCB) for time period July 1, 2016 to June 30, 2017. Pursuant to the final report issued December 23, 2019, the UAFCB noted one finding of non-compliance resulting in AirVoice's repayment of overclaimed reimbursement and associated interest penalty. AirVoice made the necessary payment and demonstrated that it had strengthened its internal controls and oversight accordingly.

Cintex Wireless, LLC ("Cintex"), under prior ownership and management, settled a Notice of Apparent Liability ("NAL") with the FCC (*See* File No. EB-IHD-13-00010671) pursuant to an Order and Consent Decree adopted on December 22, 2017. Mr. Do purchased 100% of the equity of Cintex pursuant to a Membership Interest Purchase Agreement dated February 6, 2019.

By Order adopted December 16, 2021 (*See* File No. EB-IHD-20-00031449), NewPhone Wireless, LLC ("NewPhone") entered into a Consent Decree with the Enforcement Bureau of the FCC for the purpose of terminating the Bureau's investigation on whether NewPhone, as an ETC, claimed support from the Lifeline program of the Universal Service Fund (USF or Fund) for duplicate or otherwise ineligible subscribers. On September 23, 2020 the

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
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D.T.C. 22-2  
April 24, 2023**

**Bureau issued NewPhone an LOI to obtain information about the claims in question. NewPhone timely filed its response. Within weeks after USAC notified NewPhone of the apparently improper use of beneficiary data, the Company terminated its relationship with the Marketing Agents involved in the enrollments. USAC worked with NewPhone from early August through October 2020 to address the issues raised by the claims. On October 30, 2020, NewPhone submitted revised claims which USAC agreed addressed the full amount at issue in its investigation. Because USAC determined NewPhone had promptly submitted revised claims in the full amount USAC sought, there was no need to issue a recovery letter. To resolve the matter, NewPhone agreed to implement a compliance plan and make a \$100,000 settlement payment.**

**Finally, to the extent it may be considered a finding: Pursuant to a letter dated October 7, 2021, Louisiana Public Service Commission (LPSC) records indicated that NewPhone had not filed an annual report for the calendar year 2020. As acknowledged in the LPSC letter, NewPhone had requested and been granted an extension to file the annual report. Because NewPhone did not file the report by the extended deadline, a \$500.00 fine was imposed. NewPhone filed the necessary report with payment for the fine on October 8, 2021 and has since confirmed that the Company is in compliance with LPSC.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-15     Certify that AirVoice will remit the 911 surcharge to the Massachusetts State 911 Department for each of its Massachusetts Lifeline customers.

**Response:**     **AirVoice certifies that it will remit any applicable 911 surcharge to the Massachusetts State 911 Department for each of its Massachusetts Lifeline customers.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-16    State the average time between Lifeline subscriber application and service activation for AirVoice's current Lifeline customers.

**Response:**    **The average time between Lifeline subscriber application and service activation for AirVoice is 10 days (this includes the shipping time).**

**Response prepared by: David Stewart, Lifeline Operations Manager**



**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-17    Provide the price of additional minutes and data for AirVoice's proposed Massachusetts Lifeline subscribers.

**Response:**    AirVoice's current TopUps options for additional minutes and data can be found at <https://airtalkwireless.com/topup>.

**Response prepared by: David Stewart, Lifeline Operations Manager**

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DEPARTMENT OF TELECOMMUNICATIONS AND  
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D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-18    Identify any instances in which AirVoice or its affiliates have been ordered to, or have voluntarily undertaken, to complete independently audited financial statements, including but not limited to cashflows, assets and liabilities, incomes and expenses.

**Response:**    **Under current ownership (the Company does not have knowledge relating to prior ownership), as a privately-owned company that is self-funded with no debt, neither AirVoice nor its affiliates have been ordered to or have voluntarily undertaken to complete independently audited financial statements.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-19 Refer to Cintex Wireless's November 14, 2022, Petition for Waiver before the FCC, WC Docket No. 11-42.

- A. Identify any shared ownership, management, and operations between Cintex Wireless and AirVoice.
- B. Provide the number, if any, of Massachusetts ACP subscribers affected by the Cintex Wireless disenrollment.
- C. Confirm the number, if any, of AirVoice customers affected by the Cintex Wireless disenrollment.
- D. Describe any actions AirVoice has taken to prevent unintentional disenrollment.
- E. Provide a description of the current status of the Cintex Wireless waiver before the FCC.

**Response:**

- A. AirVoice and Cintex Wireless are both wholly-owned, either directly or indirectly, by Mr. Henry Do. All of Mr. Do's companies share management and operations.**
- B. No Massachusetts Cintex subscribers were affected by the inadvertent de-enrollment.**
- C. None.**
- D. The inadvertent de-enrollments occurred during Cintex Wireless' transition from a 3rd party provider for OSS/BSS services to our own internal OSS/BSS system. That transition is complete and therefore there would not be another episode of inadvertent de-enrollments.**
- E. Cintex's Petition for Waiver remains pending. However, it is important to note that the Petition for Waiver is simply an issue of Cintex attempting to be compensated for service it provided, notwithstanding a purely administrative error, and has no impact on consumers.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-20 Refer to Exhibit 1-13 and provide:

- A. The geographies and service types (Lifeline only, Lifeline and ACP, ACP only, others) included in the complaints table.
- B. A definition for each type of complaint category recorded.
- C. AirVoice's procedure for registering complaints as tabulated in Exhibit 1-13.
- D. AirVoice's procedures for resolving complaints, including escalation to government agencies.

**Response:** AirVoice's Customer Relations Management System (CRMS) does not provide functionality to segregate aggregated complaint data by geographical region. All data on complaints in Exhibit 1-13 was for either Lifeline or Lifeline/ACP combination customers. AirVoice will supplement this response as soon as possible to address B through D.

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

D.T.C. 2-21    When compared with the Lifeline service providers currently doing business in Massachusetts, what is unique about AirVoice's proposed Lifeline service which would provide an added benefit to low-income consumers in Massachusetts.

**Response:**    **AirVoice will provide competitive service offerings and, through affiliation with HTH Communications, LLC, has ready access to high-quality, desirable devices, but one of the biggest benefits AirVoice will provide is its commitment to increase Lifeline subscribership.**

**Based upon USAC's online Lifeline funding disbursement tool, there appear to be only four (4) active prepaid wireless ETCs providing Lifeline service in Massachusetts, and only 7 carriers total. According to USAC (*see <https://www.usac.org/lifeline/resources/program-data/>*), Massachusetts has a current Lifeline participation rate of only 13%, with more than 800,000 Lifeline-eligible households left unserved. So, regardless of how AirVoice compares to existing Lifeline service providers, clearly there is a need for more providers that are actively enrolling low-income consumers in the Lifeline program. AirVoice is committed to reaching a substantial number of these subscribers, just as AirVoice has a track record of greatly and consistently increasing subscribership in other states in which it is designated as an ETC.**

**Response prepared by: David Stewart, Lifeline Operations Manager**

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

**Exhibit 2-5**

**(Updated Exhibit 1-5)**

**Terms and Conditions**

# Terms and Conditions

## AirTalk Wireless Terms and Conditions of Service

Welcome to AirTalk Wireless. Thank you for choosing us as your service provider. We are pleased to have you as a customer and we look forward to providing you with the best wireless service. Please read these terms carefully as these Terms and Conditions of Service become effective by activating or using an AirTalk Wireless phone and is a legally binding agreement between you and AirTalk Wireless. These Terms and Conditions of Service contain important information about your consumer rights. AirTalk Wireless reserves the right to change or modify the Terms and Conditions of Service at any time and at its sole discretion. Changes made to the Terms and Conditions of Service will become effective at the time the change is posted on the AirTalk Wireless website at [www.airtalkwireless.com](http://www.airtalkwireless.com). Please check this website often for updates to the Terms and Conditions of Service. By enrolling in the AirTalk Wireless Lifeline and/or ACP Programs and by using the AirTalk Wireless Service, you, the participant, acknowledge and agree to the following terms and conditions. If you disagree with any item contained herein, please immediately discontinue use of the Services and contact AirTalk Wireless Customer Support at +1 (855) 924-7825 to terminate.

### 1. Lifeline Program

Lifeline Support is a monthly support that reduces the cost of monthly wireless telephone service or residential home telephone service. An eligible AirTalk Wireless customer may receive a Lifeline discount on wireless service, but the Lifeline discount is available for only one telephone connection per household. Lifeline support may vary between states but will at least equal the dollar amount AirTalk Wireless receives in Federal Universal Service Support.

Subscribers may qualify for the AirTalk Wireless Lifeline program if they participate in one of the government programs listed below or qualified based on household income eligibility standards as defined below. When completing the AirTalk Wireless application, subscriber acknowledges and

consents to the use of Subscriber's Name, Telephone Number, Address, Date of Birth, Last Four Digits of the Subscriber's Social Security Number, amount of support being sought, means of qualification for support and dates of service initiation and termination to be given to the Universal Service Administrative Company (USAC) (the administrator of the program) and/or its agents for the purpose of verifying that subscriber does not receive more than one Lifeline benefit. Refusal to grant this permission will mean consumer is not eligible for Lifeline service. Subscriber grants authorization to AirTalk Wireless to access any records required to verify subscribers's statements herein and to confirm continued eligibility for Lifeline assistance. This consent survives any termination of this agreement. If the subscriber or any member of the subscriber's family participates in a Lifeline program from another provider, the subscriber is responsible for notifying the other provider that they have been approved for the AirTalk Wireless Lifeline program and request their service with the other provider be disconnected. Notice to terminate service from any other provider's Lifeline program must be given if activating new service in the AirTalk Wireless Lifeline program.

AirTalk Wireless subscribers may qualify for a Lifeline service offering if the subscriber meets certain State and Federal eligibility requirements. These requirements are determined by the state where the subscriber resides. These State and Federal eligibility requirements are also based on either program-based eligibility or income-based eligibility.

### **Program Based Eligibility**

Program based eligibility varies by state. AirTalk Wireless subscribers are eligible to receive Lifeline discounts, under the program-based eligibility, if they participate in one or more of the following programs and the state participates in that program:

- Food Stamps / Supplemental Nutrition Assistant Program (SNAP)
- Medicaid
- Supplemental Security Income (SSI)
- Federal Public Housing Assistance (Section 8)



- Veterans and Survivors Pension Benefit
- Bureau of Indian Affairs General Assistance (BIA)
- Tribal Temporary Assistance for Needy Families (Tribal TANF)
- Head Start (only those households meeting its income qualifying standard)
- Food Distribution Program in Indian Reservation (FDPIR)

### **Income Based Eligibility**

Income based eligibility varies by state. Some states do not offer income-based eligibility for Lifeline. AirTalk Wireless subscribers are eligible to receive Lifeline, under the income-based eligibility, if subscriber's household income meets or is less than 135% of the Federal Poverty Guidelines for a household of the subscriber's size. Proof of income documentation may be provided to National Verifier to demonstrate income-based eligibility.

- Last 3 months consecutive paystubs
- Last year income tax return form (Federal, State, or Tribal tax return)
- Last year W2 form
- Letter from the SSA stating the benefits customer receives per month. Letter cannot be older than 12 months
- IRS Form
- Veterans Administration Statement of Benefits
- Retirement/Pension Statement of Benefits
- Unemployment/Workers' Compensation Statement of Benefits
- Divorce Decree
- Child Support Award Letter
- Letter from Employer verifying income
- Any other official documents with income information

## **Lifeline Rules**

- Lifeline is a federal benefit and willfully making false statements to obtain the benefit can result in fines, imprisonment, disenrollment or being blocked from the program;
- Only one Lifeline service is available per household;
- A household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses;
- A household is not permitted to receive Lifeline benefits from multiple providers;
- Violation of the one-per-household limitation constitutes a violation of the Commission's rules and will result in the applicant's de-enrollment from the program;
- Lifeline is a non-transferable benefit, and the applicant may not transfer his or her benefit to any other person.

## **2. AirTalk Wireless Lifeline Programs Restrictions**

Subscribers applying for service in AirTalk Wireless Lifeline program agree to, and declare under penalty and perjury, that all of the following conditions below (including but not limited to) apply:

- AirTalk Wireless Lifeline program is limited to one connection per household.
- Subscribers must meet the income-based or program-based eligibility criteria for receiving Lifeline service and have provided documentation of eligibility if required.
- Subscribers applying for service certifies that the subscriber do not participate in any other Lifeline program.
- If subscriber participates in another Lifeline program at the time applying for AirTalk Wireless Lifeline service, the subscriber agrees to cancel Lifeline service with any other provider.
- Subscriber agrees to immediately, and no later than within 30 days, notify AirTalk Wireless of any address change.

- Subscriber affirms they meet the head of household requirement and they are not claimed as a dependent on another person's tax returns (unless over the age of 60).
- Subscriber affirms they will immediately, and no later than within 30 days, notify AirTalk Wireless if they no longer participate in at least one of the state or federal programs required to receive Lifeline discounts or no longer satisfy the criteria for receiving the Lifeline discount.
- Subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law.
- Subscriber acknowledges that it may be required to re-certify continued eligibility for Lifeline at any time, and failure to re-certify as to subscriber's continued eligibility within 30 days will result in de-enrollment and the termination of the subscriber's Lifeline benefits.
- Subscriber applying for AirTalk Wireless Lifeline service affirms, under penalty and perjury, that all foregoing representations made when applying for service are true and correct to the best of the subscriber's knowledge.

### **3. Other AirTalk Wireless Requirements**

Subscriber applying for service may be required to provide a Social Security Number to certify or verify eligibility for Lifeline service. (Social Security information is strictly confidential and will not be disclosed to others without a subscriber's written consent). Subscriber affirms they are at least 18 years old.

Subscriber authorizes representatives of any state or federal assistance program to discuss or provide documentation needed to verify participation requested by AirTalk Wireless. Subscriber also authorizes any state or federal assistance program representative to verify subscriber's eligibility for Lifeline program.

Subscribers applying for Lifeline and/or ACP program authorizes AirTalk Wireless or its duly appointed representatives to have access to records relating to the applicant to verify eligibility for the AirTalk Wireless Lifeline and/or ACP service.

## **4. Annual Recertification, Verification, or Termination of Lifeline Programs**

Subscribers participating in the AirTalk Wireless Lifeline and/or ACP program will be automatically recertified on an annual basis, their qualification to continue to participate in Lifeline and/or ACP programs based on the appropriate state or federal recertification and after reverification requirements. Every subscriber in the National Verifier recertification will go through an initial automated data check that will check for the subscriber's eligibility. Subscribers whose eligibility cannot be verified via the initial automated check will be required to self-certify their eligibility. USAC (Universal Service Administrative Company) will conduct outreach to these subscribers and require that they self-certify. Subscribers that fail the initial data source checks will be prompted to self-certify during a 60-day window. Failure to self-certify during this time will result in automatic de-enrollment. USAC can determine, at its sole discretion, if a subscriber meets the annual recertification requirements and if the subscriber fails to re-qualify for Lifeline and/or ACP service. If USAC is unable to recertify the required Lifeline and/or ACP qualifications, the subscriber will be deemed ineligible to further participate in the AirTalk Wireless Lifeline program.

AirTalk Wireless reserves the right to cancel or suspend, without notice, a subscriber's account for any fraudulent related reasons or upon the request of any state or federal authority's request. AirTalk Wireless subscribers have the ability to terminate from the Lifeline program for any reason. Subscribers who choose to terminate from the Lifeline program may send notice of termination to the address or fax listed below or email listed below with their request. Customers also can call the Customer Service number below to de-enroll from Lifeline and/or ACP service. Identification will be required by providing the customers Full Name, AirTalk Wireless Number, DOB and last 4 numbers of their Social Security Number. Upon termination from the program, subscribers will no longer receive discounted minutes each month and will be required to re-qualify for Lifeline if they choose to enroll in another AirTalk Wireless Lifeline and/or ACP program.

Please send all termination requests (include name, wireless number, and identity related information) to:

**AirTalk Wireless, LLC**

Attn: Disconnect Department

9920 Brooklet Drive

Houston, TX 77099

**Customer Service: +1 (855) 924-7825**

If you do not accept any of these Terms and Conditions of Service, do not activate or use service provided by AirTalk Wireless and contact AirTalk Wireless Customer Service at +1 (855) 924-7825. By accepting these Terms and Conditions of Service, you represent that you are at least 18 years of age, you meet the eligibility requirements for AirTalk Wireless service, and you agree that you may not assign your rights or delegate any of your duties under these terms without the prior written consent of AirTalk Wireless. Any attempted assignment or delegation without proper consent from AirTalk Wireless shall be void.

## **5. Affordable Connectivity Program Terms & Conditions**

The Affordable Connectivity Program (ACP) is a government benefit program operated by the Federal Communications Commission (FCC) that provides discounts on monthly broadband Internet access service and certain connected devices. The ACP was launched on December 31, 2021, and replaces the Emergency Broadband Benefit (EBB) program. ACP provides discounts of up to \$30 per eligible household on monthly broadband Internet access service (or up to \$75 per eligible household on Tribal lands) and up to \$100 on certain connected devices (with a required co-pay of between \$10.01 and \$50.00). ACP is a supplemental plan that is separate from the US Government's Lifeline program. AirTalk standard terms and conditions apply.

ACP services and devices are subject to consumer eligibility, provider participation, product availability, and eligibility approval by the FCC/Universal Service Administrative Company (USAC).

Pursuant to these terms, you authorize AirTalk and its contracted partners, where applicable (for the purpose of applying for, determining eligibility, enrolling in and seeking reimbursement of ACP service and device benefits) to collect, use, share and retain your personal information, including, but not limited to, full name, full residential address, date of birth, last four digits of social security number, telephone number, and eligibility criteria and status, and any information necessary to establish identity and verify your address, to USAC to ensure proper administration of the ACP service and/or connected device benefits. Failure to provide consent to the sharing of this information will result in your being denied ACP service and/or connected device benefits.

### **ACP Eligibility**

A household is eligible for ACP if the household income is at or below 200% of the [Federal Poverty Guidelines](#), or if a member of the household meets at least one of the criteria below:

- Participates in one of these assistance programs:
  - Free and Reduced-Price School Lunch Program or School Breakfast Program, including at U.S. Department of Agriculture (USDA) Community Eligibility Provision schools.
  - SNAP
  - Medicaid
  - Federal Housing Assistance, including:
    - Housing Choice Voucher (HCV) Program (Section 8 Vouchers)
    - Project-Based Rental Assistance (PBRA)/Section 202/Section 811
    - Public Housing
    - Affordable Housing Programs for American Indians, Alaska Natives or Native Hawaiians
  - Supplemental Security Income (SSI)
  - WIC
  - Veterans Pension or Survivor Benefits
  - or [Lifeline](#);

- Participates in one of these assistance programs and lives on [Qualifying Tribal lands](#):
  - Bureau of Indian Affairs General Assistance
  - Tribal TANF
  - Food Distribution Program on Indian Reservations
  - Tribal Head Start (income based)

Program eligibility will be determined by USAC's National Verifier and National Lifeline Accountability Database.

An eligible household is limited to one monthly service discount and one device discount. The ACP monthly service and one-time device discounts are non-transferrable. You may continue to receive your current Lifeline plan without enrolling in the ACP. Eligible subscribers may obtain ACP supported broadband service from any participating provider of their choosing and a subscriber can transfer their ACP benefit to another provider at any time. You may cancel at any time by calling us at +1 (855) 924-7825. You may file a complaint against your service provider via the Commission's Consumer Complaint Center.

### **Requirement to Use Service**

To continue receiving your ACP service discount with AirTalk, you must do one of the following during any 30-day period: complete an outbound voice call or answer an incoming call from someone other than your service provider, use data, send a text message, purchase minutes or data from your service provider, or respond to direct contact from AirTalk confirming that you want to continue to receive service.

### **Service Plans**

You may apply the ACP benefit to any AirTalk broadband service offering at the same terms available to households that are not eligible for ACP supported service. AirTalk Wireless may apply your Lifeline, EBB, ACP, and any company discounts to make AirTalk's UNLIMITED Data, Talk and Text Plan FREE.

### **Connected Device Offer**

Qualifying ACP subscribers will have the option to co-pay for a one-time

connected device discount from AirTalk Wireless with a minimum co-pay of \$10.01. Eligible subscribers will be notified of their device shipment after payment has been received. Connected device offerings vary by state and are subject to product availability. This is a limited-time promotional offering and our standard [terms and conditions](#) will apply. You do not need to accept a connected device to participate in ACP.

### **Emergency Broadband Benefit Subscribers**

This Agreement applies to subscribers who are enrolled in AirTalk's EBB services. The FCC is phasing out the EBB and replacing it with the ACP beginning on December 31, 2021. Eligible subscribers who are enrolled in AirTalk's EBB services as of 6:00 PM Eastern Time on December 30, 2021, will continue to receive services with their EBB program discount of up to \$50 (or for households on Tribal lands, up to \$75) per month during a 60-day transition period, which begins on December 31, 2021, and ends March 1, 2022. Beginning December 31, 2021, EBB customers may switch their service plan at any time. EBB subscribers who qualified for the EBB through eligibility criteria that are not applicable to the ACP will be required by USAC to demonstrate their eligibility in the National Verifier to receive an ACP benefit using the ACP criteria before the end of the transition period. EBB subscribers will receive additional information if they are required to take additional steps to transition to the ACP benefit on March 1, 2022. The discount amount available to subscribers who are enrolled in the ACP after the transition period will be up to \$30 per month.

### **ACP Discontinuance**

If the FCC announces the end the ACP or we discontinue our ACP service offers, we will notify you and you will revert to receiving only the standard FREE Lifeline plan where available and if you are eligible. Where Lifeline plans are not available or if you are not eligible, you may keep your service by selecting from one our existing prepaid plans and paying the applicable undiscounted rate plus applicable fees and taxes. Our standard [terms and conditions](#) will apply.



## **6. Supported Services**

Lifeline and/or ACP supported services are available to AirTalk Wireless subscribers who participate in Lifeline and/or ACP. Questions regarding supported services can be made by contacting an AirTalk Wireless representative at: +1 (855) 924-7825.

Lifeline and/or ACP supported service includes voice, data and text service. Lifeline and/or ACP supported service provides access to the emergency services provided by local government or other public safety organizations such as 911 or enhanced 911, to the extent the local government in AirTalk Wireless' service has implemented 911 or E911 service.

## **7. AirTalk Wireless Services**

AirTalk Wireless service is provided at the company's discretion. AirTalk Wireless may change pricing or the company's Terms and Conditions of Service, from time to time, without notice. Unless expressly prohibited by law, AirTalk Wireless reserves the right to modify or cancel a subscriber's service, an account, or take corrective action at any time and for any reason, including, but not limited to, violation of any provision of these Terms and Conditions of Service. Check the AirTalk

Wireless website, [www.airtalkwireless.com](http://www.airtalkwireless.com), for the most recent pricing and changes to the Terms and Conditions of Service. A subscriber's right to use AirTalk Wireless service is subject to AirTalk Wireless business practices, policies, procedures, rates and Terms and Conditions of Service. AirTalk Wireless may change the Terms and Conditions of Service at any time. AirTalk Wireless will notify subscribers of change to the Terms and Conditions of Service that are determined to be materially adverse to a subscriber's service 30 days in advance of the change. If subscriber does not terminate service within 30 days of receiving this notice of a change in the Terms and Conditions of Service, subscriber agrees to accept any such changes.

AirTalk Wireless provides mobile telecommunications services using the geographic areas covered by two of the largest 5G networks in America. AirTalk Wireless may provide Lifeline and/or ACP supported services

in these areas based on state authorized licensing areas. AirTalk Wireless does not guarantee coverage availability in all areas. Local phone numbers may not be available in all areas. Subscribers do not have the ability to use AirTalk Wireless service with any other wireless phone, device, or on another network. Subscribers may not use an AirTalk Wireless handset with any other service or network. Airtime may be used for domestic calling from the United States and for other services as provided in these Terms and Conditions of Service. AirTalk Wireless service is for personal use only and may not be used in a manner that interferes with another AirTalk Wireless customer's use of service. AirTalk Wireless has determined that ability to provide good service to subscribers may be impaired when customers place abnormally high number of calls, sends, or receive unusually high number of messages, or repeatedly place calls of unusually long duration, relative to typical usage by other AirTalk Wireless customers on similar service plans. Such non-typical usage suggests that a wireless phone is being used for other than personal use and is in violation of these Terms and Conditions of Service. AirTalk Wireless services are provided solely for live dialogue between two individuals. AirTalk Wireless services may not be used for any type of monitoring services, any data transmissions, or other non-personal related connections that do not consist of uninterrupted live dialogue between two individuals. An AirTalk Wireless subscriber account may be terminated, without notice, if a subscriber's usage is determined to be used in violation of the Terms and Conditions of Service for non-personal use, pager service, voicemail retrieval service, or other uses deemed inappropriate.

AirTalk Wireless services use radio transmissions and are therefore affected by limitations. Coverage is not available everywhere. Quality of service may be affected by conditions beyond AirTalk Wireless control, including atmospheric, geographical, or topographical conditions. Service may also be affected by damage to wireless handsets. AirTalk Wireless does not guarantee, or warrant, that service will be available at any specific time or geographical location, or that service will be provided without possible interruption. You should therefore never solely rely on your wireless phone for emergency calls, such as to 911. AirTalk Wireless customers have access to dial 911 in an emergency. However, occasionally a subscriber may attempt to call 911 in an area where there is no wireless coverage. If there is no wireless

coverage, a subscriber's call to 911 may not go through and the subscriber should dial 911 from the nearest landline phone.

By applying or activating or using service with AirTalk Wireless, a subscriber agrees not to use AirTalk Wireless services in any way that is illegal, abusive, or fraudulent. This will be determined by AirTalk Wireless in its sole discretion. You may also not alter any of the software or hardware on your AirTalk Wireless handset for any purpose. AirTalk Wireless phones may not be sold to third parties.

In order to verify if you reside within a service area, please visit [www.airtalkwireless.com](http://www.airtalkwireless.com). You may enter your ZIP code or locate coverage maps on the website to verify coverage. The map is only an approximation of actual coverage and may differ substantially from the areas of coverage shown on the website. Coverage can be affected by many factors such as weather, terrain, buildings, equipment, signal strength or many other factors that may affect network coverage. AirTalk Wireless does not guarantee coverage or network availability.

## **8. AirTalk Wireless ETC Services**

AirTalk Wireless Lifeline plans are only available for activation by customers who reside in the areas in which AirTalk Wireless has been designated as an Eligible Telecommunications Carrier (ETC). To receive subsidized wireless service, a subscriber's principal residence address must be within an AirTalk Wireless ETC service area. Visit [www.airtalkwireless.com](http://www.airtalkwireless.com) to check whether you reside in an AirTalk Wireless ETC service area. To be eligible for AirTalk Wireless service, a subscriber must meet the applicable eligibility standards described throughout these Terms and Conditions of Service, which may be amended by AirTalk Wireless. Where applicable, AirTalk Wireless Lifeline plans are provided to you by AirTalk Wireless and are governed by tariffs. Tariffs are on file with the appropriate public utility commissions in each state when required and supersede any term related to the Lifeline Assistance program. AirTalk Wireless may provide access to tariffs through its website. Please be aware that tariffs posted online may not be official documents and you assume full responsibility for any tariff information you access on

the AirTalk Wireless website. AirTalk Wireless bears no liability for the accuracy of any documents available on this website.

## **9. AirTalk Wireless Service Rates (Airtime), Features, Coverage, and Activation Fees**

Airtime charges apply to standard voice usage calls for both local and domestic long-distance calls. AirTalk Wireless voice usage is deducted in full-minute increments and all partial minutes are rounded up to the next minute. Airtime usage is rounded up to the nearest whole minute. Airtime applies to all message retrieval and voice calls. Unanswered outbound calls will be billed if the ring time exceeds 30 seconds. Ring time is defined as the amount of time between the point when a call is initiated (pressing the TALK button) and when it is answered (or terminated before being answered). Credits will not be given for dropped calls. Any unused airtime that expires is forfeited upon expiration or termination of eligibility in the AirTalk Wireless Lifeline and/or ACP program. An AirTalk Wireless customer must have airtime minutes available to make or receive a call. AirTalk Wireless handsets will only make or receive calls when you have airtime minutes available on your wireless account. If you run out of your allotment of airtime, you may purchase and add additional airtime to your account.

**INTERNATIONAL DIALING:** International calling is not allowed on any AirTalk Wireless Plan unless you have purchased an international calling plan. Currently AirTalk Wireless offers international calling to Canada, Mexico and Argentina, Brazil, Colombia, Costa Rica, Guadeloupe, Paraguay, Peru and Venezuela.

**LIFELINE FREE PLAN:** Each month you will receive Free Minutes, 4.5 GB of Data and Free Unlimited Text Messages. Unused minutes will not roll over from month to month.

**AirTalk Wireless Additional Minutes & Data Plans:** AirTalk Wireless may offer Additional Data Plans for purchase. Please visit [www.airtalkwireless.com](http://www.airtalkwireless.com) for the current rates of adding additional data rate plans. If you use all your

monthly data before a new monthly cycle starts and you add an Additional Data Offering Plan to your account, you will be charged based off the Data Offering Plan you choose for data. Subscribers may add an Additional Data Offering Plan to their AirTalk Wireless account online or over the phone to your account by paying by credit/debit card. AirTalk Wireless Additional Data Offering Plans come in various increments. Sales taxes may apply and maybe added to the minute plan purchased. All data plans offered by AirTalk Wireless include a limit (CAP) on the amount of data a subscriber can use. Purchased Data Plans cannot be transferred or applied to any other wireless service or account.

AirTalk Wireless Calling Features include Caller ID, Call Waiting, Three-Way Calling, Call Forwarding, and Voicemail. Caller ID may display both your billing name and your wireless number when placing outbound calls. AirTalk Wireless does not have the ability to block your name and number when making outbound calls.

Subscribers who successfully submit an AirTalk Wireless application for the Lifeline and/or ACP program will receive a free SIM card and if subscribers also elect and are eligible to receive Lifeline and/or ACP benefits, a free wireless phone will be provided by AirTalk Wireless. AirTalk Wireless reserves the right to determine, at its sole discretion, whether or not an applicant meets the eligibility requirements to participate or continue to participate in the AirTalk Wireless Lifeline and/or ACP.

**About Data Services & Content:** Our data Services and your Device may allow you to access the Internet, text, pictures, video, games, graphics, music, email, applications, sound and other materials ("Data Content") or send Data Content elsewhere. Some Data Content is available from our vendors, or us while other Data Content can be accessed from others (for example, third party websites, games, ringers, applications, etc.). We make absolutely no guarantees about the Data Content that you access on your Device. Data Content may be: (1) unsuitable for children/minors; (2) unreliable or inaccurate; or (3) offensive, indecent, or objectionable. You are solely responsible for evaluating the Data Content accessed by you or anyone through your Services. We strongly recommend that you monitor your data

usage by children/minors. Data Content from third parties may also harm your Device or its software. We are not responsible for any Data Content. We are not responsible for any damage caused by any Data Content that you access through your Services, that you load on your Device, or that you request that our representatives' access or load on your Device. To protect our networks and Services or for other reasons, we may place restrictions on accessing certain Data Content (such as certain websites, applications, etc.); impose separate charges; limit throughput or the amount of data that you can transfer; or otherwise limit or terminate Services. If we provide you storage for Data Content that you have purchased, then we may delete the Data Content without notice or place restrictions/limits on the use of storage areas. Data Content stored on a Device, transmitted over our networks, or stored by AirTalk Wireless may be deleted modified, or damaged. You may not be able to make or receive voice calls while using data Services. Data Content provided by our vendors or third parties is subject to cancellation or termination at any time without notice to you and you may not receive a refund for any unused portion of the Data Content.

**Specific Terms & Restrictions On Using Data Services:** In addition to the rules for using all of our other Services, unless we identify the Service or Device that you have selected as specifically intended for that purpose (for example, wireless routers, Data Link, etc.), you may not use our data Services: (1) with server devices or host computer applications, or other systems that drive continuous, heavy traffic or data sessions; (2) as a substitute or backup for private lines or frame relay connections; or (3) for any other unintended use as we determine in our sole discretion. We reserve the right to limit, suspend, or constrain any heavy, continuous data usage that adversely impacts our networks' performance or hinders access to our networks. If your Services include Web or data access, you also can't use your Device as a modem for computers or other equipment, unless we identify the Service or Device you have selected as specifically intended for that purpose (for example, with "phone as modem" plans, broadband internet access service, mobile broadband card plans, wireless router plans, etc.).

**Porting/Transferring a Phone Number:** We do not guarantee that number transfers to or from us will be successful. If you authorize another carrier to

transfer a number away from us, then that is considered a request by you to us to terminate all the Services associated with that number.

## **10. AirTalk Wireless Taxes and Surcharges**

AirTalk Wireless charges state and local sales taxes. Pricing listed on the AirTalk Wireless website or listed in advertising methods for wireless service may not include certain taxes or surcharges. Subscribers are responsible for all charges applicable to the use of AirTalk Wireless service regardless of if the subscriber was the actual user of the service. The amount of these taxes and surcharges are subject to change and may vary by geographic area. AirTalk Wireless may charge and collect sales taxes and regulatory fees on all Additional Minutes or Data Offering Plans in each state. Third party authorized retailers who sell AirTalk Wireless Additional Minutes or Data Offering Plans may become responsible for the collecting and paying of sales taxes and required regulatory fees for transactions that occur through such third party authorized retailers. Changes to a tax or surcharge will become effective as provided by the appropriate taxing authority and changes to applicable contribution amounts for Federal Universal Service Fund ("FUSF") will apply. Taxes and fees are subject to change without notice.

## **11. AirTalk Wireless Text Messaging Rates**

An AirTalk Wireless subscriber can send and receive text messages of up to 160 characters. This text message includes the address and subject line. The type of messages a device can receive will depend on the wireless handset capabilities. Standard plan message rates apply when sending or receiving text messages, regardless of if the message is viewed. Any unused messages that expire from one monthly billing cycle will not carry over to the next monthly billing cycle unless the monthly plan specifically allows carry over messages. Text messages sent to you by AirTalk Wireless are free of charge.

**Domestic Text Messaging Rates:** Any unused messages will expire at the end of your monthly subscription period and will not be applied to subsequently purchased minutes unless your plan includes roll over minutes. Subscriber messaging plans do not include international text or voicemail messages.

**International Text Messaging Rates:** AirTalk Wireless does not allow international text messages. Attempting to send international messages could result in deactivation of service and de-enrollment from AirTalk Wireless Lifeline Assistance Program.

**Premium SMS:** Premium SMS is a text message to a designated “short code.” Buying or attempting to buy SMS services from anyone other than AirTalk Wireless is strictly prohibited. Premium SMS campaigns may include activities such as sending a vote, playing a game, expressing opinions, subscribing to some type of service, or some type of interaction with a television program. AirTalk Wireless does not participate in Premium SMS services or campaigns. You are solely responsible for any charges incurred for Premium SMS services or campaigns. Any text messages sent to a “short code” using AirTalk Wireless service will not likely be successfully sent or received. Any charges you may incur as a result of any attempts to participate in Premium SMS campaigns or services are not refundable, regardless of whether you incur charges as deductions from your AirTalk Wireless minutes.

## **12. Preventing or Sending Spam:**

AirTalk Wireless subscribers receiving unwanted text messages ('spam') should contact the source and request to unsubscribe or remove the subscriber's wireless phone number from the service. If an AirTalk Wireless subscriber intentionally sends spam from an AirTalk Wireless handset, the subscriber may be terminated without notice. Contact AirTalk Wireless Customer Service at toll free +1 (855) 924-7825 if additional help or information is required.

AirTalk Wireless may send messages to your AirTalk Wireless handset or alternative phone number via SMS.

## **13. AirTalk Wireless Directory Assistance, Additional Charges and Services**



Directory assistance calls are not charged at a rate per call. Directory assistance calls are deducted from subscriber's available minutes at a 1:1 ratio. AirTalk Wireless reserves the right to assess a rate per call in the future. Notice of such will be added to these Terms of Service and will be posted to our website.

Calls to 900 / 976 or other pay-per-call service numbers are not available to AirTalk Wireless subscribers. AirTalk Wireless will block any calls to 1-900, 1-976, some international calling, or other pay-per-call services. However, if any charges are received by AirTalk Wireless from the underlining carrier for these types of calls, these charges will be passed through to the end user for payment. Nonpayment of these charges when billed to the subscriber will constitute automatic disconnection of service.

Calls placed to 800/866/877 or other toll-free numbers will incur standard minute usage of a 1:1 ratio. AirTalk Wireless allows subscribers to make or receive domestic long-distance calls inside the domestic USA if coverage is available. AirTalk Wireless does not allow free calls to other subscribers using AirTalk Wireless service. AirTalk Wireless subscriber handsets do not provide rate information for services used to make or receive voice calls or messages.

Voice minutes are not deducted for calls to 911, \*611, 988, or AirTalk Wireless Customer Support, and all phones will be able to call 911, even if they have no minutes remaining. AirTalk Wireless may require the customer to call the toll-free customer care number from another phone if necessary to resolve technical issues related to the handset or its programming.

Please contact AirTalk Wireless Customer Service at +1 (855) 924-7825, or visit our website at [www.airtalkwireless.com](http://www.airtalkwireless.com), for additional pricing information or answers to any questions about AirTalk Wireless.

## **14. AirTalk Wireless Refunds, Returns, or Lost Equipment Policy:**

**Refunds:**

AirTalk Wireless is not responsible for, nor will we refund any lost, stolen, misused, or damaged AirTalk Wireless Additional Minutes or Data Offering Plans. AirTalk Wireless does not accept returns or provide refunds of any AirTalk Wireless Additional Minutes or Data Offering Plans unless it is determined AirTalk Wireless did not perform the duty of service. All purchases of AirTalk Wireless Additional Minutes or Data Offering Plans are final and non-refundable regardless of who uses or possesses the subscriber's wireless phone after airtime is purchased, and regardless of whether the wireless phone is used with the subscriber's consent or knowledge. Monthly charges are non-refundable.

**Returns:**

Wireless handsets purchased directly from or received from AirTalk Wireless may be returned for a full refund within 15 days of receipt. A subscriber must return the complete handset as received at the time of activation. For instructions, please contact AirTalk Wireless' Customer Service at +1 (855) 924-7825. AirTalk Wireless provides new and used handsets to subscribers. All handset models provided to Lifeline subscribers are selected at the sole discretion of AirTalk Wireless. Handset models may vary. AirTalk Wireless reserves the right to replace handsets with various models at its sole discretion. All wireless handsets purchased directly from AirTalk Wireless include a 15-day warranty from AirTalk Wireless. If you experience a handset malfunction call AirTalk Wireless' Customer Service at +1 (855) 924-7825.

**Lost or Stolen Equipment:**

If an AirTalk Wireless Subscriber loses or has their handset stolen, the subscriber is responsible for all charges incurred until AirTalk Wireless is notified of the lost or stolen wireless phone. To report a lost or stolen wireless phone, please contact AirTalk Wireless's Customer Service at +1 (855) 924-7825. Upon receiving notice of the lost or stolen phone, AirTalk Wireless will suspend the account immediately. If a subscriber does not either activate a new AirTalk Wireless phone or notify us that they have found their wireless phone within 15 days of the suspension of the account, the account will be deactivated and the subscriber will lose the AirTalk Wireless phone number.

**Disclosure:**

For all free phones subsidized by AirTalk Wireless (the Company), we make every effort to fulfill your order and ship the device make and model you selected during the application process. Occasionally, a device may become unavailable after you have submitted your order. In that case, the Company reserves the right to select an alternate phone (a different make and model than the one you selected) of equal or greater value as determined by the Company.

## **15. AirTalk Wireless Phone Number**

AirTalk Wireless subscribers must accept the number that is assigned to them at the time of activation. The wireless phone number AirTalk Wireless provides for subscribers to use is and will remain the property of AirTalk Wireless. AirTalk Wireless may release a subscriber's wireless phone number to another subscriber, without giving notice, if the subscriber cancels service with AirTalk Wireless, or if the account expires and is deactivated. Subscribers may transfer a wireless number prior to the wireless number being reissued to another subscriber. AirTalk Wireless reserves the right to change a wireless number at any time. AirTalk Wireless will attempt to notify the subscriber prior to any change.

In some situations, a subscriber may transfer an existing carrier telephone number to their AirTalk Wireless service for use as an AirTalk Wireless phone number. To switch an existing phone number to AirTalk Wireless, please contact AirTalk Wireless' Customer Service at +1 (855) 924-7825. Before calling, please have a bill available from the existing carrier. When a subscriber transfers from another wireless carrier to AirTalk Wireless, they may have to pay a termination fee to the former carrier to early terminate the contract. AirTalk Wireless will not reimburse a subscriber for any termination fees imposed by other carriers.

## **16. Bring Your Own Phone Program**

AirTalk Wireless affords subscribers the option to use their own mobile phone or device, as long as it is compatible with AirTalk Wireless' services and

network, under its Bring Your Own Phone Program.

If you are activating your own phone under the Bring Your Own Phone Program, you are responsible for ensuring that the phone is unlocked, is compatible with the AirTalk Wireless Lifeline Service, does not interfere with the AirTalk Wireless Service, and complies with all applicable laws, rules and regulations. You are also responsible for ensuring that your phone meets all federal laws and standards. You are further responsible for the purchase and maintenance of any additional hardware and/or software required to use the Service. Not all aspects of the AirTalk Wireless Service may function on any provided mobile devices not provided by AirTalk Wireless including those activated under the Bring Your Own Phone program. Additionally, some functions and features available on other carrier networks or referenced in the manufacturer's manual provided with your phone may not be available when using the AirTalk Wireless Service.

## **17. Termination Service**

As an AirTalk Wireless customer, you are eligible to receive AirTalk Wireless Lifeline Service for up to one (1) year upon your enrollment and using the device in the AirTalk Wireless Lifeline Program, and you are eligible to receive up to another year following each successful Annual Recertification for your continued program eligibility in the AirTalk Lifeline Program based on your continued eligibility to participate in the program and your continued usage of the AirTalk Wireless Lifeline Service. If you have no usage in a period of 30 days "Non-Usage" of Lifeline and/or ACP service, you will receive notice with a fifteen (15) day grace period to correct the non-usage. If you do not respond to the notice, you will be de-enrolled, and deactivation of Lifeline and/or ACP Service will occur, regardless of the service end date. If it is found that you no longer meet the requirements or eligibility guidelines to receive AirTalk Wireless Lifeline and/or ACP Service you will be de-enrolled, and deactivation of AirTalk Wireless Lifeline and/or ACP Service will occur. Upon de-enrollment from the AirTalk Wireless Lifeline and/or ACP Program, you will cease receiving the discounted or free monthly allotment of airtime or Data.

If you exceed 45 days without any usage, you will be de-enrolled from the AirTalk Wireless Lifeline and/or ACP Program. Any of these activities, if undertaken by the subscriber, will establish "usage" of the AirTalk Wireless Lifeline and/or ACP service: (i) Completion of an outbound call; (ii) Purchase of Data from AirTalk Wireless to add to the subscriber's service plan; (iii) Answering an incoming call from a party other than the AirTalk Wireless or AirTalk Wireless's agents or representatives; (iv) Responding to direct contact from AirTalk Wireless and confirming that you want to continue receiving the AirTalk Wireless Lifeline service; or (v) Sending a text message; or (vi) Using data.

AirTalk Wireless's provision of service begins on the 1st calendar day of each month. If, at any time during a calendar month, an AirTalk Wireless customer terminates his/her service, the customer service will be cancelled in accordance with AirTalk Wireless's respective policies and procedures.

## **18. Limitation of Liability**

AirTalk Wireless will not be liable to you (subscriber) for any direct or indirect, special, incidental, consequential, exemplary or punitive damages of any kind, including lost or potential profits (regardless of whether it has been notified such loss may occur) by reason of any act or omission in its provision of equipment and/or Services. AirTalk Wireless will not be liable for any act or omission of any other company furnishing a part of our services, or our equipment or for any damages that result from any service or equipment provided by or manufactured by affiliated or non-affiliated third parties. AirTalk Wireless is not responsible, at any time, and shall not be liable to you or anyone else for any personal information such as user names, passwords, contacts, pictures, SMS, or any additional content you may have stored on your phone or which may remain on your phone during and/or after you no longer have service with AirTalk Wireless. Unless prohibited by law, you (subscriber) agree to limit claims for damages or other monetary relief against each other to direct and actual damages. AirTalk Wireless assumes no risk or responsibility for a subscriber's use of any content provided by AirTalk Wireless services. There is no fiduciary duty that exists between you (subscriber) and AirTalk Wireless or its affiliates. You

(subscriber), also agree that AirTalk Wireless will not be liable for any missed voice mails, any messages from your voicemail system, any data content, or any storage or deletion of contacts from a handset address book provided by AirTalk Wireless.

## **19. Use of AirTalk Wireless Customer Information**

By agreeing to Terms and Conditions of Service herein, you also agree to the terms of AirTalk Wireless Privacy Policy available online at [www.airtalkwireless.com](http://www.airtalkwireless.com). The Privacy Policy may change from time to time and includes important information on what data we collect about you, how we use this data and with whom we share that data. Customer Proprietary Network Information (CPNI) is information that AirTalk Wireless obtains when providing your telecommunications services to you. CPNI includes the types of telecommunications services you currently purchase, how you use them, and the billing information related to those services, including items such as the types of local, long distance and wireless telecommunications services that you have purchased and your calling details. Your telephone, name and address are not considered CPNI.

## **20. Right to Terminate Your AirTalk Wireless Lifeline and/or ACP Service**

You agree not to give away, resell, or offer to resell the AirTalk Wireless Mobile Device or service provided by the AirTalk Wireless Lifeline and/or ACP Program. You also agree your AirTalk Wireless Mobile Device will not be used for any purpose that is not allowed by this agreement or that is illegal. AirTalk Wireless can, without notice, limit, suspend, or end your service and de-enroll you from the AirTalk Wireless Lifeline and/or ACP Program for violating this provision or for any other good cause, including, but not limited to, if you: (a) violate any of the Terms and Conditions of Service; (b) lie to any representative of AirTalk Wireless or attempt to defraud any representative of AirTalk Wireless; (c) allow anyone to tamper with your AirTalk Wireless Mobile Device; (d) threaten or commit violence against any representative of AirTalk Wireless, any of our employees or Customer Support Representatives; (e) use vulgar and/or inappropriate language when

interacting with AirTalk Wireless representatives; (f) steal from AirTalk Wireless; (g) harass AirTalk Wireless representatives; (h) interfere with AirTalk Wireless operations; (i) engage in abusive messaging, emailing, or calling; (j) modify your device from its manufacturer's specification; or (k) use the service in a way that adversely affects our network or the service available to AirTalk Wireless's other customers. We reserve the right to, without notice, limit, suspend, or end your service for any other operational or governmental reason. In addition to permanently terminating your service, criminal offenses (i.e., selling or giving away your service; threatening violence, etc.) will be reported to the appropriate legal authorities for prosecution.

## **21. Unauthorized Usage and/or Tampering**

The AirTalk Wireless Mobile Device is provided exclusively for use by you, the end consumer, with the AirTalk Wireless Service available solely in the United States. Any other use of your AirTalk Wireless Mobile Device, including, but not limited to, resale, unlocking, and/or re-flashing of the phone, is unauthorized and constitutes a violation of your agreement with AirTalk Wireless. You agree not to unlock, re-flash, tamper with, or alter your AirTalk Wireless Mobile Device or its software; engage in any other unauthorized or illegal use of your AirTalk Wireless Mobile Device or the service or assist others in such acts; or to sell and/or export AirTalk Wireless Mobile Devices outside of the United States. These acts violate AirTalk Wireless's rights and state and federal laws. Improper, illegal, or unauthorized use of your AirTalk Wireless Mobile Device is a violation of this agreement and may result in immediate discontinuance of services and legal action against you. AirTalk Wireless will prosecute violators fully of the law.

Some AirTalk Wireless Mobile Devices have SIM cards. If your AirTalk Wireless Mobile Device has a SIM card, then you agree to safeguard your SIM card and not to allow any unauthorized person to use your SIM card. You agree not to allow any other person to, directly or indirectly alter, bypass, copy, deactivate, remove, reverse-engineer or otherwise circumvent or reproduce the encoded information stored on, or the encryption mechanisms of, your SIM card. You may not remove your SIM Card from your phone nor place the SIM Card in any other phone. Doing so could result in the immediate

termination of your service and de-enrollment from the AirTalk Wireless Lifeline and/or ACP Program. The Carriers, AirTalk Wireless, or its service providers, may, from time to time, remotely update or change the encoded information on your SIM card. Your AirTalk Wireless Mobile Device is restricted from operating when you are located anywhere outside of the United States, including offshore or in international waters. In the event of suspension for this or any other unauthorized usage, you will not be entitled to receive any refunds for unused airtime.

## **22. Limitations of Service and Use of Equipment**

Service is subject to transmission limitations caused by certain equipment and compatibility issues, atmospheric, topographical, and other conditions. Further, Services may be temporarily refused, limited, interrupted, or curtailed due to system capacity limitations, technology migration, or limitations imposed by AirTalk Wireless or the Carriers, or because of equipment modifications, upgrades, repairs, relocations, or other similar activities necessary or proper for the operation or improvement of AirTalk Wireless or the Carriers's radio telephone system. At any time, AirTalk Wireless reserves the right to substitute and/or replace any AirTalk Wireless equipment (including Mobile Devices) with other AirTalk Wireless equipment (including Mobile Devices) of comparable quality. Some functions and features referenced in the manufacturer's manual for a particular AirTalk Wireless Mobile Device may not be available on your phone. AirTalk Wireless does not warrant or guarantee availability of network or of any services at any specific time or geographic location or that the services will be provided without interruption. AirTalk Wireless does not guarantee access to 911 services where there is not or limited wireless coverage, a subscriber's 911 call may not go through; subscribers should dial 911 from the nearest landline phone. Neither AirTalk Wireless, nor any carrier, shall have any liability for service failures, outages, or limitations of service. Because of the risk of being struck by lightning, you should not use your AirTalk Wireless Mobile Device outside during a lightning storm. You should also unplug the AirTalk Wireless Mobile Device power cord and charger to avoid electrical shock and/or fire during a lightning storm. In the event AirTalk Wireless determines that it is necessary to interrupt the Services for any reason or there is the



potential for a Services interruption due to system maintenance, AirTalk Wireless will use reasonable efforts to notify you prior to the performance of such maintenance and will attempt to schedule such maintenance during non-peak hours.

## **23. Law Enforcement**

AirTalk Wireless intends to fully comply with the Communications Assistance for Law Enforcement Act and other similar laws or regulations. By use of the Services, you agree that, if and as required by law enforcement entities, AirTalk Wireless may monitor or facilitate monitoring, and otherwise disclose the nature and content of communications transmitted through the Services or the Mobile Device without any further notice or liability.

## **24. Indemnification**

To the full extent by law, you agree to hold harmless and indemnify AirTalk Wireless LLC. and its affiliates and their respective officers, agents, directors, partners and employees, from any and all liabilities, settlements, penalties, claims, causes of action and demands brought by third parties (including any costs, expenses or attorneys' fees on account thereof), directly or indirectly, resulting from your use of AirTalk Wireless products and services, or another person whom you authorize or not to use your products or services, whether based in contract or tort (including strict liability) and regardless of the form of action. This obligation shall survive any expiration or termination of your service with AirTalk Wireless LLC.

A subscriber may reside in a state that does not allow disclaimers of implied warranties or limits remedies for breach. Therefore, the above exclusions or limitations may not apply to all subscribers. A subscriber may have other legal rights that vary by state.

## **25. Warranties**

AirTalk Wireless customers shall have up to fifteenth (15) days from the delivery date of their Mobile Device to return any defective Mobile Device and/or accessories to AirTalk Wireless. AirTalk Wireless will exchange a

defective Mobile Device for a replacement phone, at AirTalk Wireless's discretion. For a defective phone replacement, call AirTalk Wireless Customer Support at +1 (855) 924-7825 or email [info@airtalkwireless.com](mailto:info@airtalkwireless.com).

## **26. Notices**

You may send notices to AirTalk Wireless by mail, 9920 Brooklet Drive, Houston, TX 77099, or by fax, 1-832-617-7842. Notices will be considered effective after received by AirTalk Wireless. If a subscriber is unable to resolve concerns with AirTalk Wireless, they may file a complaint with the Federal Communications Commission or their state commission board. Any notice sent to a subscriber will be sent to your last known residence we have on file, or via text message to your AirTalk Wireless phone, or via text message to your alternative phone, or via email to your email.

**The AirTalk Wireless Terms and Conditions of Service, contained herein, supersede all oral or written communications and understandings between you and AirTalk Wireless with respect to products and services provided to you and the terms under which they are offered to you by AirTalk Wireless. The surviving sections of this Terms and Conditions of Service shall continue to be valid and enforceable in the event that any part of these Terms and Conditions of Service is declared invalid, not applicable, or becomes unenforceable. There are no provisions of these Terms and Conditions of Service that provide any person or any entity that is not a party to these Terms and Conditions of Service with any remedy, liability, claim, reimbursement, or any cause of action, or that creates any other third-party beneficiary rights. Any legal dispute, unless otherwise specified herein, shall be subject to the exclusive jurisdiction of the federal or state courts located within the state of Texas. AirTalk Wireless reserves the right to suspend or terminate any subscriber's access to AirTalk Wireless services or to the AirTalk Wireless website or affiliated websites, at any time, should we determine in our sole discretion that a subscriber has violated any of these Terms and Conditions of Service or any other policy of AirTalk Wireless, its affiliates, or for any other reason at the sole discretion of AirTalk Wireless.**

## **27. Account Activity Requirement**

To continue receiving your Lifeline and/or ACP service with AirTalk Wireless, you must make or answer a voice call or send a text message, use data, purchase minutes, or respond to direct contact from AirTalk Wireless at least once during any 30-day period.

**RESPONSES TO SECOND SET OF INFORMATION REQUESTS BY THE  
DEPARTMENT OF TELECOMMUNICATIONS AND  
CABLE TO AIRVOICE WIRELESS, LLC  
D.T.C. 22-2  
April 24, 2023**

**Exhibit 2-14**

**Copies of findings, consent decrees, convictions, plea agreements, or civil judgments**

AirVoice Hearing Aid Compatibility NAL

AirVoice CA UAFCB Final audit report

Cintex Wireless Consent Decree

NewPhone Wireless Consent Decree

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	File No.: EB-SED-13-00012959 <sup>1</sup>
	)	
Airvoice Wireless, LLC	)	NAL/Acct. No.: 201432100009
	)	
	)	FRN: 0019466515
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted: February 12, 2014**

**Released: February 12, 2014**

By the Chief, Spectrum Enforcement Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture, we propose a forfeiture in the amount of six thousand dollars (\$6,000) against Airvoice Wireless, LLC (Airvoice).<sup>2</sup> We find that Airvoice apparently willfully and repeatedly violated the digital wireless handset hearing aid compatibility status report filing requirements set forth in Section 20.19(i)(1) of the Commission's rules (Rules).<sup>3</sup>

**II. BACKGROUND**

2. In the 2003 *Hearing Aid Compatibility Order*, the Commission adopted several measures to enhance the ability of consumers with hearing loss to access digital wireless telecommunications.<sup>4</sup> The Commission established technical standards that digital wireless handsets must meet to be considered

<sup>1</sup> The investigation initiated under File No. EB-SED-13-00012382 was subsequently assigned File No. EB-SED-13-00012959. Any future correspondence with the Commission concerning this matter should reflect the new case number.

<sup>2</sup> Airvoice is a Tier III mobile virtual network operator (MVNO) that resells AT&T's wireless telecommunications services. See *Airvoice Wireless, LLC*, Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, Florida and the District of Columbia at ii, WC Docket No. 09-197 (filed Aug. 6, 2012), available at <http://apps.fcc.gov/ecfs/document/view?id=7021997029> (last visited Jan. 10, 2014) (Airvoice Petition). Tier III carriers are non-nationwide wireless radio service providers with 500,000 or fewer subscribers as of the end of 2001. See *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide CMRS Carriers*, Order to Stay, 17 FCC Rcd 14841, 14847-48, paras. 22-24 (2002). In the Airvoice Petition, Airvoice petitioned the Commission to be designated as an eligible telecommunications carrier (ETC) for purposes of offering Lifeline services supported by the Universal Service Fund (USF) Low-Income program. See Airvoice Petition.

<sup>3</sup> 47 C.F.R. § 20.19(i)(1).

<sup>4</sup> See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753 (2003), Erratum, 18 FCC Rcd 18047 (2003), Order on Reconsideration and Further Notice of Proposed Rulemaking, 20 FCC Rcd 11221 (2005) (*Hearing Aid Compatibility Order*). The Commission adopted these requirements for digital wireless telephones under the authority of the Hearing Aid Compatibility Act of 1988, Pub. L. No. 100-394, 102 Stat. 976 (codified at 47 U.S.C. §§ 609 note, 610, 610 note).

compatible with hearing aids operating in acoustic coupling and inductive coupling (telecoil) modes.<sup>5</sup> Specifically, the Commission adopted a standard for radio frequency interference (the M3 rating) to enable acoustic coupling between digital wireless phones and hearing aids operating in acoustic coupling mode, and a separate standard (the T3 rating) to enable inductive coupling with hearing aids operating in telecoil mode.<sup>6</sup> In the 2008 *Hearing Aid Compatibility First Report and Order*, the Commission established various deadlines by which manufacturers and service providers were required to offer specified numbers of digital wireless handset models rated hearing aid-compatible.<sup>7</sup>

3. The Commission also adopted reporting requirements to ensure that it could monitor the availability of hearing aid-compatible handsets and to provide valuable information to the public concerning the technical testing and commercial availability of these handsets.<sup>8</sup> The Commission initially required manufacturers and digital wireless service providers to report every six months on efforts toward compliance with the hearing aid compatibility requirements for the first three years of implementation, and then annually thereafter through the fifth year of implementation.<sup>9</sup> In its 2008 *Hearing Aid*

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<sup>5</sup> See *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16777, 16779, paras. 56, 63; see also 47 C.F.R. § 20.19(b)(1)–(2). The *Hearing Aid Compatibility Order* described the acoustic coupling and inductive coupling (telecoil) modes as follows:

In acoustic coupling mode, the microphone picks up surrounding sounds, desired and undesired, and converts them into electrical signals. The electrical signals are amplified as needed and then converted back into sound by the hearing aid speaker. In telecoil mode, with the microphone turned off, the telecoil picks up the audio signal-based magnetic field generated by the voice coil of a dynamic speaker in hearing aid-compatible telephones, audio loop systems, or powered neck loops. The hearing aid converts the magnetic field into electrical signals, amplifies them as needed, and converts them back into sound via the speaker. Using a telecoil avoids the feedback that often results from putting a hearing aid up against a telephone earpiece, can help prevent exposure to over amplification, and eliminates background noise, providing improved access to the telephone.

18 FCC Rcd at 16763, para. 22.

<sup>6</sup> See 47 C.F.R. § 20.19(b). As subsequently amended, Section 20.19(b)(1) of the Rules provided that, for the period beginning January 1, 2010, a wireless handset is deemed hearing aid-compatible for radio frequency interference if, at a minimum, it meets the M3 rating associated with the technical standard set forth in the standard document, “American National Standard Methods of Measurement of Compatibility between Wireless Communication Devices and Hearing Aids,” ANSI C63.19-2007 (June 8, 2007) (ANSI C63.19-2007), except that grants of certification issued before January 1, 2010, under earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. 47 C.F.R. § 20.19(b)(1). Section 20.19(b)(2) provided that, for the period beginning January 1, 2010, a wireless handset is deemed hearing aid-compatible for inductive coupling if, at minimum, it meets the T3 rating associated with the technical standard set forth in ANSI C63.19-2007, except that grants of certification issued before January 1, 2010, under earlier versions of ANSI C63.19 remain valid for hearing aid compatibility purposes. 47 C.F.R. § 20.19(b)(2). Effective August 16, 2012, a further amendment to Section 20.19(b) permits manufacturers to test handsets for hearing aid compatibility using the 2011 version of the ANSI standard, ANSI C63.19-2011, as an alternative to ANSI C63.19-2007. See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, Third Report and Order, 27 FCC Rcd 3732 (WTB/OET 2012).

<sup>7</sup> See *Amendment of the Commission’s Rules Governing Hearing Aid-Compatible Mobile Handsets*, First Report and Order, 23 FCC Rcd 3406, 3418–20, paras. 35–36 (2008), Order on Reconsideration and Erratum, 23 FCC Rcd 7249 (2008) (*Hearing Aid Compatibility First Report and Order*).

<sup>8</sup> *Id.* at 3443, para. 91; see also 47 C.F.R. § 20.19(i).

<sup>9</sup> *Hearing Aid Compatibility Order*, 18 FCC Rcd at 16787, para. 89; see also *Wireless Telecommunications Bureau Announces Hearing Aid Compatibility Reporting Dates for Wireless Carriers and Handset Manufacturers*, Public Notice, 19 FCC Rcd 4097 (Wireless Tel. Bur. 2004).

*Compatibility First Report and Order*, the Commission indefinitely extended these reporting requirements with certain modifications.<sup>10</sup>

4. Airvoice failed to timely file its hearing aid compatibility status report for the period January 1, 2012, through December 31, 2012. The required report was due on January 15, 2013.<sup>11</sup> In order to permit the late filing of the required report, the Commission's Wireless Telecommunications Bureau (Wireless Bureau) opened a filing window on February 26–27, 2013.<sup>12</sup> Airvoice filed its status report for 2012 on February 26, 2013.<sup>13</sup> The Wireless Bureau subsequently referred Airvoice's apparent violation of the hearing aid compatibility status report filing requirement to the Enforcement Bureau (Bureau).

5. On December 12, 2013, the Bureau's Spectrum Enforcement Division issued a letter of inquiry (LOI) to Airvoice, directing the company to submit a sworn written response to a series of questions relating to Airvoice's failure to timely file its hearing aid compatibility status report by the January 15, 2013 deadline.<sup>14</sup> Airvoice responded to the LOI on December 30, 2013.<sup>15</sup>

### III. DISCUSSION

#### A. Failure to Timely File Hearing Aid Compatibility Status Report

6. Section 20.19(i)(1) of the Rules requires service providers to file hearing aid compatibility status reports.<sup>16</sup> These reports are necessary to enable the Commission to perform its enforcement function and to evaluate whether Airvoice is in compliance with Commission mandates that were adopted to facilitate the accessibility of hearing aid-compatible wireless handsets. These reports also provide valuable information to the public concerning the technical testing and commercial availability of hearing aid-compatible handsets.<sup>17</sup> As the record in this case reflects, Airvoice failed to

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<sup>10</sup> See *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3444–46, paras. 97–99, 101. The extensions of these reporting requirements became effective on December 13, 2011. See 76 Fed. Reg. 77,415 (Dec. 13, 2011).

<sup>11</sup> Service providers are required to file their hearing aid compatibility status reports on January 15th of each year. 47 C.F.R. § 20.19(i)(1); see also *Hearing Aid Compatibility Status Reporting*, <http://wireless.fcc.gov/hac>.

<sup>12</sup> The opening of a new filing window does not constitute an extension of time to file an otherwise late-filed hearing aid compatibility status report.

<sup>13</sup> See *Airvoice Wireless, LLC*, Hearing Aid Compatibility Report (Feb. 26, 2013), [http://wireless.fcc.gov/hac\\_documents/130411/7444403\\_323.PDF](http://wireless.fcc.gov/hac_documents/130411/7444403_323.PDF) (last visited on Jan. 10, 2014).

<sup>14</sup> See Letter from John D. Poutasse, Chief, Spectrum Enforcement Division, FCC Enforcement Bureau, to Jim Bahri, CEO, Airvoice Wireless, LLC (Dec. 12, 2013) (on file in EB-SED-13-00012959).

<sup>15</sup> See Letter from Glenn S. Richards, Esq., Pillsbury Winthrop Shaw Pittman LLP, Counsel to Airvoice Wireless, LLC, to Jason A. Koslofsky, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Dec. 30, 2013) (on file in EB-SED-13-00012959) (LOI Response). Airvoice also requested that certain information in its LOI Response be withheld from public inspection pursuant to Section 0.459 of the Rules, 47 C.F.R. § 0.459(a). See Letter from Glenn S. Richards, Esq., Pillsbury Winthrop Shaw Pittman LLP, Counsel to Airvoice Wireless, LLC, to Jason A. Koslofsky, Attorney Advisor, Spectrum Enforcement Division, FCC Enforcement Bureau (Jan. 19, 2014) (on file in EB-SED-13-00012959). Because we defer action on the confidentiality request pursuant to Section 0.459(d)(3) of the Rules, 47 C.F.R. § 0.459(d)(3), Airvoice's confidentiality request remains pending. We do not disclose in this NAL any information that is the subject of the confidentiality request.

<sup>16</sup> 47 C.F.R. § 20.19(i)(1).

<sup>17</sup> *Hearing Aid Compatibility First Report and Order*, 23 FCC Rcd at 3446, para. 98 (stating that a handset model's hearing aid compatibility rating, among other relevant information, "should be readily available to service providers either from the manufacturer's previous reports to the Commission, from the manufacturer's own website, or from (continued....)

timely file the hearing aid compatibility status report due on January 15, 2013, in apparent willful<sup>18</sup> and repeated<sup>19</sup> violation of Section 20.19(i)(1) of the Rules.<sup>20</sup>

## B. Proposed Forfeiture

7. Under Section 503(b)(1)(B) of the Communications Act of 1934, as amended (Act), any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>21</sup> To impose such a forfeiture penalty, the Commission must first issue a notice of apparent liability for forfeiture and the person against whom such notice has been issued must have an opportunity to show, in writing, why no such forfeiture penalty should be imposed.<sup>22</sup> The Commission will then issue a forfeiture if it finds by a preponderance of the evidence that the person has violated the Act or the Rules.<sup>23</sup> We conclude that Airvoice is apparently liable for a forfeiture for its failure to timely file the required hearing aid compatibility status report in apparent willful and repeated violation of Section 20.19(i)(1) of the Rules.<sup>24</sup>

(Continued from previous page) \_\_\_\_\_  
the manufacturer directly”). We note, however, that the Commission’s Equipment Authorization System is the most reliable source for information on a handset’s hearing aid compatibility rating. The Equipment Authorization System is an electronic database of all equipment certified under Commission authority. The database identifies the hearing aid compatibility rating of each handset by FCC ID, as reported by the handset manufacturer in test reports submitted to the Commission at the time of an equipment authorization or of any modification to such authorization. See <http://transition.fcc.gov/oet/ea/fccid/>.

<sup>18</sup> Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312 clarifies that this definition of willful applies to Sections 312 and 503 of the Act, H.R. Rep. No. 97-765 (1982) (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context. See *So. Cal. Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387–88, para. 5 (1991), *recons. denied*, 7 FCC Rcd 3454 (1992) (*Southern California*). In the context of a forfeiture action, “willful” does not require a finding that the rule violation was intentional. See, e.g., *Tidewater Communications, LLC*, Order on Review, 25 FCC Rcd 1675, 1676, para. 5 (2010) (“To be willful, the violator must consciously commit or omit certain actions and need not be aware that such actions violate the Rules.”); *Southern California*, 6 FCC Rcd at 4388, para. 5 (holding that, consistent with the Congressional record accompanying the 1982 amendments to the Act, a “willful” violation need not be intentional); *Princess K Fishing Corp.*, Forfeiture Order, 24 FCC Rcd 2606, 2608-09, para. 8 (Enf. Bur. 2009) (stating that a licensee need not have the *mens rea* to commit a violation in order for a violation to be “willful”), *recons. dismissed*, Memorandum Opinion and Order, 27 FCC Rcd 4707 (Enf. Bur. 2012).

<sup>19</sup> Section 312(f)(2) of the Act, which also applies to forfeitures assessed pursuant to Section 503(b) of the Act, defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2); see also *Southern California*, 6 FCC Rcd at 4388, para. 5. Failure to file these reports can have an adverse impact on the Commission’s ability to ensure the commercial availability of hearing aid-compatible digital wireless handsets, to the detriment of consumers. As we have previously stated, the failure to file a hearing aid compatibility status report constitutes a continuing violation that persists until the violation is cured. See *American Samoa Telecommunications Authority*, Notice of Apparent Liability for Forfeiture, 23 FCC Rcd 16432, 16437, para. 11 (Enf. Bur. 2008), *forfeiture ordered*, Forfeiture Order, 27 FCC Rcd 13174 (Enf. Bur. 2012) (forfeiture paid) (*ASTCA*).

<sup>20</sup> 47 C.F.R. § 20.19(i)(1).

<sup>21</sup> 47 U.S.C. § 503(b)(1)(B); see also 47 C.F.R. § 1.80(a).

<sup>22</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80(f).

<sup>23</sup> See, e.g., *SBC Communications, Inc.*, Forfeiture Order, 17 FCC Rcd 7589, 7591, para. 4 (2002).

<sup>24</sup> 47 C.F.R. § 20.19(i)(1).



8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b) of the Rules set a base forfeiture amount of \$3,000 for the failure to file required forms or information.<sup>25</sup> While the base forfeiture requirements are guidelines lending some predictability to the forfeiture process, the Commission retains the discretion to depart from these guidelines and issue forfeitures on a case-by-case basis under its general forfeiture authority in Section 503 of the Act.<sup>26</sup>

9. We have exercised our discretion to set a higher base forfeiture amount for violations of the wireless hearing aid compatibility reporting requirements. In *ASTCA*, we found that the status reports are essential to implement and enforce the hearing aid compatibility rules.<sup>27</sup> The Commission relies on these reports to provide consumers with information regarding the technical specifications and commercial availability of hearing aid-compatible digital wireless handsets and to ensure that the digital wireless industry meets the needs of the increasing number of consumers with hearing loss.<sup>28</sup> In an analogous context, we noted that when setting an \$8,000 base forfeiture for violations of the hearing aid-compatible handset labeling requirements, the Commission emphasized that consumers with hearing loss could only take advantage of critically important public safety benefits of digital wireless services if they had access to accurate information regarding hearing aid compatibility features of handsets.<sup>29</sup> We also noted that the Commission has adjusted the base forfeiture upward when noncompliance with filing requirements interferes with the accurate administration and enforcement of Commission rules.<sup>30</sup> Because the failure to file hearing aid compatibility status reports implicates similar public safety and enforcement concerns, we exercised our discretionary authority and established a base forfeiture amount of \$6,000 for failure to file a hearing aid compatibility report.<sup>31</sup> Consistent with *ASTCA*, we believe the \$6,000 base forfeiture for violation of the hearing aid compatibility reporting requirement should apply here.

10. In assessing forfeitures, Section 503(b)(2)(E) of the Act requires that we take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>32</sup> It is undisputed that Airvoice failed to timely file its hearing aid compatibility status report for the 2012 reporting period. We have fully considered the arguments raised by Airvoice in its LOI Response and conclude that none of them mitigate the violation or warrant a downward adjustment of the proposed forfeiture. In view of all the factual circumstances presented, and having considered the statutory factors, we propose a forfeiture in the amount of \$6,000 against Airvoice for failing to timely file its hearing aid compatibility status report for the period ending December 31, 2012, by the January 15, 2013 deadline, in apparent willful and repeated violation of Section 20.19(i)(1) of the Rules.<sup>33</sup>

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<sup>25</sup> See *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113, Appendix A, Section I, *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999) (*Forfeiture Policy Statement*); 47 C.F.R. § 1.80.

<sup>26</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, 17101, paras. 22, 29; *see also* 47 C.F.R. § 1.80.

<sup>27</sup> See *ASTCA*, 23 FCC Rcd at 16436–37, para. 10.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>33</sup> 47 C.F.R. § 20.19(i)(1).

#### IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, and 1.80 of the Commission's rules,<sup>34</sup> Airvoice Wireless, LLC is **NOTIFIED** of its **APPARENT LIABILITY FOR A FORFEITURE** in the amount of six thousand dollars (\$6,000) for willful and repeated violation of Section 20.19(i)(1) of the Commission's rules.<sup>35</sup>

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's rules, within thirty (30) calendar days after the release date of this Notice of Apparent Liability for Forfeiture, Airvoice Wireless, LLC **SHALL PAY** the full amount of the proposed forfeiture, or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraph 15 below.

13. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Airvoice Wireless, LLC shall send electronic notification of payment to Pamela Hairston at [Pamera.Hairston@fcc.gov](mailto:Pamera.Hairston@fcc.gov), Jason Koslofsky at [Jason.Koslofsky@fcc.gov](mailto:Jason.Koslofsky@fcc.gov), and Samantha Peoples at [Sam.Peoples@fcc.gov](mailto:Sam.Peoples@fcc.gov) on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>36</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions Airvoice Wireless, LLC should follow based on the form of payment it selects:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

14. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, DC 20554.<sup>37</sup> If Airvoice Wireless, LLC has questions regarding payment procedures, it should contact the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

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<sup>34</sup> 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80.

<sup>35</sup> 47 C.F.R. § 20.19(i)(1).

<sup>36</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>37</sup> See 47 C.F.R. § 1.1914.

15. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Commission's rules.<sup>38</sup> The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554, ATTN: Enforcement Bureau—Spectrum Enforcement Division, and must include the NAL/Account Number referenced in the caption. The statement must also be e-mailed to Pamela Hairston at [Pamera.Hairston@fcc.gov](mailto:Pamera.Hairston@fcc.gov), Jason Koslofsky at [Jason.Koslofsky@fcc.gov](mailto:Jason.Koslofsky@fcc.gov), and Samantha Peoples at [Sam.Peoples@fcc.gov](mailto:Sam.Peoples@fcc.gov). The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

16. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by first class mail and certified mail, return receipt requested, to Jim Bahri, CEO, Airvoice Wireless, LLC, 2425 Franklin Road, Bloomfield Hills, MI 48302, and to Glenn S. Richards, Esq., Pillsbury Winthrop Shaw Pittman LLP, Counsel to Airvoice Wireless, LLC, 2300 N Street N.W., Washington, DC 20037-1122.

FEDERAL COMMUNICATIONS COMMISSION

John D. Poutasse  
Chief, Spectrum Enforcement Division  
Enforcement Bureau

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<sup>38</sup> 47 C.F.R. §§ 1.80(f)(3), 1.16.





# California LifeLine Program Examination

Air Voice Wireless, LLC (U-4451-C)

For July 1, 2016 to June 30, 2017

Utility Audit, Finance and Compliance Branch

December 23, 2019



# Table of Contents

<b>EXECUTIVE SUMMARY .....</b>	<b>1</b>
<b>BACKGROUND.....</b>	<b>2</b>
<b>EXAMINATION ENGAGEMENT PROCESS.....</b>	<b>4</b>
<b>FINDING AND RECOMMENDATIONS .....</b>	<b>9</b>
<b>CONCLUSION .....</b>	<b>12</b>
<b>APPENDIX A – RULES AND REGULATIONS.....</b>	<b>14</b>
<b>APPENDIX B – AIR VOICE WIRELESS'S RESPONSES .....</b>	<b>15</b>

### Acknowledgement

The following California Public Utilities Commission staff contributed to the completion of this report:

Angie Williams, Tracy Fok, and Jeff Walter



## Executive Summary

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The Utility Audit, Finance and Compliance Branch (UAFCB) of the California Public Utilities Commission (CPUC) conducted an examination on Air Voice Wireless, LLC's (Air Voice Wireless or the carrier) compliance with applicable rules and regulations<sup>1</sup> with respect to the California LifeLine (LifeLine) Program for July 1, 2016 through June 30, 2017. As a result of our examination procedures, we noted one finding related to Air Voice Wireless' non-compliance with the applicable rules and regulations as described in the ***Finding and Recommendations*** section of this report.

The following is a summary of the finding:

- Air Voice Wireless was not in compliance with (1) Decision (D.)14-01-036, Conclusion of Law (COL) 41, as it failed to correctly account for the subscribers' program start dates that should have been based on the later of the LifeLine program approval date or the LifeLine service activation date and (2) 47 Code of Federal Regulations (CFR), section 54.407(c)(3) as it failed to de-enroll its subscribers with non-usage of LifeLine services. Consequently, Air Voice Wireless over-claimed and was over-paid by the LifeLine Fund in the amount of \$136,638 and incurred an associated interest penalty of \$5,278.

Air Voice Wireless is required to return a total of \$141,916<sup>2</sup> (\$136,638 overclaimed reimbursement amount and \$5,278 in the associated interest penalty) to the LifeLine Fund. In addition, the carrier should do the following:

1. Strengthen its oversight over its reporting to the LifeLine third party administrator (TPA or Conduent) regarding subscribers' service activation date for the TPA to properly determine subscribers' program start date using the later of the LifeLine program approval date or the service activation date.
2. Strengthen its internal controls over its de-enrollment process with respect to terminated LifeLine subscribers and LifeLine subscribers with inactivity of LifeLine service usage to ensure proper and timely de-enrollment of these types of subscribers.

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<sup>1</sup> Please refer to Appendix A – Rules and Regulations for the specific CPUC directives with respect to California LifeLine Program.

<sup>2</sup> Per Air Voice Wireless' response dated December 12, 2019 (see Appendix B), it agrees to pay back \$142,667, a difference of \$751. The minor difference is due to UAFCB's correction of its calculation error in the finding. Air Voice is required to pay \$141,916 back to the LifeLine Fund as indicated in the Executive Summary.

## Background

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### California LifeLine (LifeLine) Program

In 1984, the California Public Utilities Commission (CPUC) created the Universal Lifeline Telephone Service (ULTS) program<sup>3</sup> (now known as California LifeLine Program) pursuant to the Moore Universal Service Telephone Act<sup>4</sup> to provide discounted telecommunications services to eligible low-income California households. The goal of the California LifeLine Program (LifeLine) is to make high quality, residential telephone services affordable to all qualified California households through discounts on eligible telecommunications services. The program is funded by a surcharge on all-end-user customer billings for intrastate telecommunications services, except for those enrolled in the LifeLine program. The surcharge is billed and collected by telecommunication carriers which, in turn, remit the surcharge monies to the CPUC.

The CPUC is responsible for the oversight and supervision of the LifeLine program and maintaining an independent TPA to provide clearinghouse services for the LifeLine program.<sup>5</sup> During the examination period, Conduent was hired by the CPUC as the TPA. Conduent received and processed new program subscribers' applications and required supporting documentation to determine their eligibility. Conduent also performed recertification of existing LifeLine subscribers and determined their continued eligibility. Finally, Conduent collected, maintained, generated, and provided important information such as, among other things, the LifeLine subscriber weighted average counts, new connection counts, disconnection and de-enrollment counts for eligible telecommunication carriers (ETC) to prepare and submit their monthly LifeLine reimbursement claims to the CPUC for the costs or revenue loss of providing discounted wireless services to LifeLine subscribers.

In 2010, the CPUC initiated revisions to the LifeLine program due to significant technological and regulatory changes in the telecommunications industry. In D. 10-11-033, the CPUC addressed the most prominent problems confronting the LifeLine program and approved numerous changes including, but are not limited to, the following:

1. "de-linked" of California LifeLine from the AT&T basic rate structure.
2. Adopted a Specific Subsidy Amount (SSA) methodology for reimbursing LifeLine providers and set the SSA at \$11.50 effective July 1, 2011.
3. Capped the then current California LifeLine flat service rate of \$6.84 and measured service rate of \$3.66 until January 1, 2013.
4. Allowed non-traditional carriers, such as wireless carriers and Voice-Over-Internet-Provider (VoIP) companies, to participate in the LifeLine program.

In January 2014, the CPUC adopted further revisions to the LifeLine program to reaffirm its goal of providing "high-quality basic telephone service at affordable rates to the greatest number of California

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<sup>3</sup> D.84-11-028

<sup>4</sup> Public Utilities (PU) Code section 871 *et. seq.*

<sup>5</sup> Procedures for the administration of the California LifeLine Program are outlined in General Order (GO) 153.



residents...by making residential service affordable to low-income citizens...”<sup>6</sup> In D.14-01-036, the CPUC adopted rules that authorized the addition of wireless services to the LifeLine program as to enable eligible low-income Californians access wireless voice, text, and data services. The decision requires all program service providers to have a valid Certificate of Public Convenience and Necessity, Wireless Identification Registration, and/or Franchise operating authority from the CPUC. The decision also requires all wireless service plans offered by carriers to the LifeLine program subscribers to be approved by the CPUC. Moreover, this decision approves:

1. The SSA of \$5.75 per month and per subscriber to the LifeLine providers that offer qualifying wireless service plans with 501-999 voice minutes.
2. The SSA of \$12.65 per month and per subscriber to the LifeLine providers that offer qualifying wireless service plans with 1,000 or more voice minutes.
3. The reimbursement amount for service connection/activation and service conversion charges, which are capped at \$39.00 per participant per instance.

The SSA for wireless service plans with 1,000 or more voice minutes increased to \$13.20 per month in 2016 and \$13.75 per month in 2017 respectively. When combining the subsidies from the LifeLine Fund and the federal universal service fund for carriers that provide Lifeline discounted services to eligible subscribers, the affordability of voice, text, and data plans to eligible low-income Californians has improved significantly.

### Air Voice Wireless

Air Voice Wireless, a Michigan-based limited liability company, is an ETC that provides both federal and California Lifeline wireless services to qualifying customers. The carrier offers wireless Lifeline services under the brand name of “Feel Safe Wireless.” During the examination period, the carrier offered five types of plan to its LifeLine customers. However, its customers chose only its plan B - unlimited voice and text with 200 Megabytes (MB) data at \$22.45 per month (raised to \$23 in 2017). Since Air Voice Wireless receives Lifeline subsidies from both federal and California governments to fully cover the costs and revenue loss of the Lifeline discounted services, the carrier did not bill its customers for such services and offered them for free of charges.

Air Voice Wireless received a total of \$4,648,190 in California subsidy from the LifeLine Fund in the examination period, July 1, 2016 through June 30, 2017. The carrier had a total of 62,111 LifeLine subscribers as of June 30, 2017.

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<sup>6</sup> See PU Code section 871.7(a)

## Examination Engagement Process

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### CPUC Examination Statutory Mandate

Pursuant to the California Public Utilities Code (PU Code), section 274, the CPUC shall conduct a financial and compliance audit (or examination) of program-related costs and activities at least once every three years. Furthermore, pursuant to PU Code, sections 314.5 and 314.6, D.14-01-036, Ordering Paragraph (OP) 30, and the General Order (GO) 153, section 13, the CPUC shall inspect and examine the books and records of the wireless service providers to ensure regulatory compliance.

### Examination Objectives and Scope

The overall objective of this examination is to determine whether Air Voice Wireless complied with the applicable rules, regulations, and requirements with respect to the LifeLine Program's related costs, subsidies, and activities for the period of July 1, 2016 through June 30, 2017. Specifically, UAFCB examined the LifeLine reimbursement claims that Air Voice Wireless submitted to the CPUC for the examination period to verify whether the costs included in these claims were in compliance with all applicable CPUC rules and regulations, including but not limited to, GO 153, D.10-11-033, and D.14-01-036.

We focused our examination on the following specific objectives:

1. Determining whether the LifeLine reimbursement claims that Air Voice Wireless submitted to the CPUC were accurate.
2. Evaluating Air Voice Wireless' internal controls pertaining to the following aspects of its LifeLine program operation:
  - a. Subscriber enrollment and de-enrollment process.
  - b. Subscriber data collection, compilation, monitoring, and retention processes.
  - c. Subscriber data exchange process between Air Voice Wireless and the TPA (or Conduent).
  - d. Process of determining and accounting for subscriber service usage data that impacted LifeLine reimbursement received by Air Voice Wireless.
  - e. Process of preparing the LifeLine reimbursement claims.
3. Determining whether the carrier included in its LifeLine reimbursement claims only those subscribers who were approved by the TPA for meeting the eligibility criteria for obtaining and retaining the program benefits as specified in GO 153, section 5.
4. Determining whether the carrier incorrectly claimed against the LifeLine Fund for revenue loss and costs from providing the LifeLine program discounts to any subscribers who had more than one

program telephone service line, but were not eligible to receive more than one LifeLine service lines in accordance with GO 153, section 5.1.7.

5. Determining whether the carrier incorrectly claimed reimbursement from the LifeLine Fund for connection charges of the LifeLine subscribers who failed to qualify for the LifeLine discounts in accordance with D.14-01-036, COL 41.
6. Determining whether the carrier correctly claimed reimbursement for the discount of the pre-paid wireless telephone services based on the date of Lifeline program approval or the Lifeline service activation date, whichever is later, in accordance with D.14-01-036, COL 41.
7. Determining whether the carrier correctly claimed reimbursement in accordance with D.14-01-036, OPs 7 and 8 for providing the LifeLine discounts on recurring charges.
8. Determining whether the carrier correctly claimed reimbursement in accordance with D.14-01-036, OP 10 for providing the LifeLine discounts on connection and activation charges.
9. Determining whether the carrier correctly claimed reimbursement for administrative expenses in accordance with D.14-01-036, p. 38, footnote 22 and D.10-11-033, OP 18.
10. Determining whether the carrier only offered LifeLine plans approved by the CPUC in accordance with D.14-01-036, p. 45, 2<sup>nd</sup> Paragraph and OPs 18 and 24(b)(iii).
11. Determining whether the carrier promptly removed the LifeLine subscribers with inactivity (no service used) for a continuous 90-non-usage days (for period prior to December 2, 2016) or 45-non-usage days (for period on and after December 2, 2016) in accordance with 47 CFR Section 54.405(e)(3).
12. Assessing a correct amount of interest penalty on any applicable program overpayments that the carrier received from the LifeLine Fund in accordance with GO 153, sections 9.9.1 and 13.4.

Both the CPUC and the carrier depend on the TPA (or Conduent) to verify and determine the LifeLine eligibility and the continuity of such eligibility for subscribers to enroll and remain in the LifeLine program. Because these responsibilities rest on the TPA (or Conduent), verifying and determining the subscribers' LifeLine eligibility or the continuity of such eligibility were not part of the scope of this examination.

## Records Examined

We requested, obtained, and examined the following records of Air Voice Wireless for our examination of the LifeLine program related costs and activities and the LifeLine reimbursement claims that Air Voice Wireless submitted to the CPUC for the examination period.

1. The carrier's weighted average reports (WAR), new connection reports, and disconnection reports.
2. The carrier's monthly LifeLine reimbursement claims submitted to the CPUC.
3. The carrier's written policies and procedures related to the LifeLine program.
4. The carrier's contracts entered with third-party vendor related to the LifeLine program activities.
5. The carrier's third-party vendor's written policies and procedures related to the LifeLine program activities.
6. The carrier's responses to the UAFCB's internal control questionnaires (ICQ).
7. Samples of records (e.g. daily feeds and return feeds) exchanged between Air Voice Wireless and the TPA (or Conduent).
8. The carrier's usage activity data with respect to service activation dates, last usage or activity dates, disconnection dates, and program removal dates.
9. Supporting call detail records (CDRs) and/or usage and activity records for the sampled records/transactions.
10. Supporting documentation (e.g. approved CPUC advice letters) indicating the CPUC's approved LifeLine plans that Air Voice Wireless could offer to subscribers.
11. Supporting documentation substantiated administrative expenses included in the LifeLine reimbursement claims.
12. Three-month nonfinancial commercial paper rates from Federal Reserve website for interest to be assessed on claim overpayments from the LifeLine Fund.

## Procedures Performed

To achieve the aforementioned examination objectives, we performed the following procedures for our examination of Air Voice Wireless' compliance with respect to its LifeLine program-related costs and activities and its LifeLine reimbursement claims submitted to the CPUC for the period of January 1, 2017 through December 31, 2017:

### Planning/Risk Assessment

1. Gathered and reviewed the carrier's responses to the Internal Control Questionnaire, including reviewing the carrier's relevant policies and procedures with respect to its LifeLine program operation and information system, to determine if there were any internal control weaknesses and other high-risk areas that require audit attention.
2. Performed the following procedures with respect to the Air Voice Wireless' monthly LifeLine reimbursement claims to determine if any material anomaly existed:
  - a. Reconciled new connections and weighted average counts between the carrier's monthly LifeLine reimbursement claim forms and the new connection reports and the WAR generated by the TPA.
  - b. Verified the rates of SSA and new subscriber connection charges reported in the Air Voice Wireless' monthly LifeLine reimbursement claim forms to applicable CPUC's directives for accuracy.
  - c. Verified the LifeLine service plans offered by the carrier to applicable CPUC advice letters to determine whether the service plans were approved by the CPUC.

### Sampling and Testing

3. Stratified the whole LifeLine subscriber population with respect to the new connection and weighted average counts reported in the carrier's monthly LifeLine reimbursement claims submitted for the examination period into four groups with each group shared similar characteristics and risk factors. These four groups were: New and Active Subscribers, New and Terminated Subscribers, Existing and Active Subscribers, Existing and Terminated Subscribers. Using a non-statistical sampling (random) methodology, we selected 60 sampled transactions from each of the four stratified groups, a total of 240 sampled transactions. We designed our sample in such a way that we believe would enable us to detect systemic errors and provide a high level of assurance for our conclusions about the population.
4. Verified the sampled transactions to relevant supporting documentation obtained from Air Voice Wireless, such as CDR and usage and activity records to determine the correct program benefit start and end dates for compliance with the applicable regulatory requirements and accounting of proper LifeLine reimbursement.

- a. The correct program benefit start dates were determined based on the LifeLine benefit approval dates or the service activation dates (e.g. 1<sup>st</sup> usage dates), whichever were later.
  - b. The correct program end dates were determined based on program removal dates or LifeLine service disconnection dates, whichever were earlier.
  - c. The correct program end dates were also determined based on subscribers' inactivity of LifeLine service usage in accordance with 47 CFR, Section 54.407(c)(3).
5. Verified the carrier's usage activity data, which was obtained to perform 100 percent of data analytic for the whole LifeLine subscriber population, for completeness. The usage activity data contained service activation dates (e.g. 1<sup>st</sup> usage dates), last usage or activity dates, disconnection dates, and program removal dates.
  6. Performed 100 percent of data analytic for the whole LifeLine subscriber population in the examination period by comparing program benefit start and end dates determined by the TPA (or Conduent) to Air Voice Wireless' usage activity data in order to determine the correct program benefit start and end dates for compliance with the applicable regulatory requirements and accounting of proper LifeLine reimbursement.
  7. Verified Air Voice Wireless' administrative expenses included in its LifeLine reimbursement claim forms to relevant supporting documentation for reasonableness.
  8. Determine the amount of claim overpayment to Air Voice Wireless based on the finding derived from the above testing procedures.
  9. Assessed interest on the claim overpayment by applying the applicable interest rates of the three-month nonfinancial commercial paper (compounded daily) starting from the date of the overpayment to the audit completion date.<sup>7</sup>

The above procedures performed resulted in the finding and recommendations identified in the Finding and Recommendations section of this report. Finally, we conducted an exit conference on September 25, 2019 upon completion of our fieldwork to communicate the results.

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<sup>7</sup> For practical purpose, the period used in calculating the accrued interest amount started from the date of the overpayment to June 30, 2019.



## Finding and Recommendations

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### Finding 1: Air Voice Wireless over claimed \$136,638 in LifeLine program subsidy amount and incurred \$5,278 in interest penalty

#### Condition:

UAFCB performed data analytics on the entire LifeLine subscriber population (in excess of 100,000 transactions) in the examination period by comparing program benefit start and end dates determined by the TPA (Conduent) to Air Voice Wireless' usage activity data in order to determine the correct program benefit start and end dates for compliance with the applicable regulatory requirements and accounting of proper LifeLine reimbursement. This data comparison disclosed the following:

1. The carrier overstated its weighted average counts by 62.6 in its claims for reimbursement due to the incorrect LifeLine subscribers' program start dates that were not properly determined based on the later of LifeLine program approval dates or service activation dates. If the program start dates were determined based on the later of LifeLine program approval dates or service activation dates, the carrier would have had 1,878 fewer eligible days than it had claimed, an equivalent of 62.6 weighted average counts or a total of \$859 in overclaimed subsidy. In addition, the carrier overclaimed an additional \$156 ( $\$39 \times 4 = \$156$ ) in new connection fees for four of the aforementioned subscribers with incorrect program start dates. These subscribers had never activated their LifeLine services within the regulatory timeframe in accordance with 47 CFR, Section 54.407(c)(3), and so they should not be eligible for the connection charge discount of \$39 per subscriber.
2. The carrier incorrectly included subscribers with inactivity of LifeLine service usage that exceeded the respective claimable 90 continuous non-usage-days (for transactions occurring before December 2, 2016) and 45 continuous non-usage-days (for transactions occurring on or after December 2, 2016) for LifeLine reimbursement. Based on the additional documents provided by the carrier in response to the draft examination report, we determined that the carrier overstated the overall LifeLine eligible days by 305,159 days, an equivalent of 10,172 weighted average counts or a total of \$135,623 in overclaimed subsidy.
3. Based on the combined overclaimed subsidy, we calculated the interest penalty to be \$5,278.

#### Criteria:

1. 47 CFR, Section 54.407(c)(3) – de-enrollment for non-usage and timing of de-enrollment, states in part, '... if a Lifeline sub-scriber fails to use, as "usage" is defined in Section 54.407(c)(2),<sup>8</sup> for 30

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<sup>8</sup>47 CFR, §54.407(c)(2) Reimbursement for offering Lifeline:

After service activation, an eligible telecommunications carrier shall only continue to receive universal service support reimbursement for such Lifeline service provided to subscribers who have used the service within the last 30 days [or 60 days for period prior to 12/2/2016], or who have cured their non-usage as provided for in §54.405(e)(3). Any of these activities, if undertaken by the subscriber, will establish "usage" of the Lifeline service:

consecutive days [or for 60 consecutive days for period prior to December 2, 2016] a Lifeline service that does not require the eligible telecommunications carrier to assess and collect a monthly fee from its sub-scribers, an eligible telecommunications carrier must provide the subscriber 15 [or 30] days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 15-day [or 30-day] notice period will result in service termination for non-usage under this paragraph...

2. D.14-01-036, COL 41 – For pre-paid LifeLine participants, LifeLine discounts should begin with the date of approval notification or the date California LifeLine service is activated, whichever is later.
3. General Order (GO) 153, Section 9.11 - California LifeLine Service Providers have the burden of supporting and justifying any costs and lost revenues that they seek to recover from the California LifeLine Fund. Failure to provide information requested by the CPUC or CD is reasonable grounds to deny costs and lost revenues claimed by the California LifeLine Service Provider.
4. GO 153, Section 13.4 - California LifeLine Service Providers that promptly reimburse the California LifeLine Fund for an overpayment of California LifeLine claims found by a Commission audit shall pay interest on the amount of overpayment based on the Three-Month Commercial Paper Rate.

Cause:

The carrier has internal control deficiencies to track and report subscribers' service activation dates to the TPA (or Conduent) for the TPA to properly determine the program start date in accordance with D.14-01-036, COL 41. Moreover, the carrier has internal control deficiencies to track terminated subscribers and subscribers with inactivity of LifeLine service usage that exceeded the claimable days in accordance with 47 CFR, Section 54.407(c)(3). The carrier asserted that it has procedures in place with respect to reporting both the subscribers' service activation dates and inactive/terminated subscribers to the TPA for proper determination of LifeLine service eligible days and removal of terminated and inactive subscribers from the LifeLine program. However, our testing revealed that the procedures in place were not implemented effectively. Consequently, the program start date were incorrectly accounted for and the terminated and inactive subscribers were not completely captured and timely removed from the LifeLine program for proper claim reimbursement.

- 
- (i) Completion of an outbound call or usage of data;
  - (ii) Purchase of minutes or data from the eligible telecommunications carrier to add to the subscriber's service plan;
  - (iii) Answering an incoming call from a party other than the eligible telecommunications carrier or the eligible telecommunications carrier's agent or representative;
  - (iv) Responding to direct contact from the eligible communications carrier and confirming that he or she wants to continue receiving Lifeline service; or
  - (v) Sending a text message;



Effect:

The carrier has over claimed a total of \$136,638 in program subsidy and incurred \$5,278 in total interest penalty. The carrier received \$136,638 in LifeLine subsidy for subscribers not eligible for the California LifeLine services from the LifeLine fund, which could have been used to subsidize other subscribers eligible for the California LifeLine services. In addition, if Air Voice does not effectively improve its internal controls on tracking and reporting subscribers' service activation and termination dates and inactivity to the TPA, the carrier will likely to continue overclaiming the LifeLine program subsidy.

Recommendations:

1. The carrier should pay back \$141,916 to the LifeLine Fund.
2. The carrier should do the following:
  - a) Strengthen its oversight over its reporting to the LifeLine TPA (or Conduent) regarding subscribers' service activation date for the TPA to properly determine subscribers' program start date using the later of the LifeLine program approval date or the service activation date.
  - b) Strengthen its internal controls over its de-enrollment process with respect to terminated LifeLine subscribers and subscribers with inactivity of LifeLine service usage to ensure proper and timely de-enrollment of these types of subscribers.

Carrier's Response:

See Appendix B of this report for Air Voice Wireless' response.

## Conclusion

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In conducting our examination, UAFCB obtained a reasonable understanding of Air Voice Wireless' internal controls related to the California LifeLine program, where we considered relevant and significant within the context of our examination objectives. UAFCB does not provide any assurance on Air Voice Wireless' internal controls.

Air Voice Wireless' management is responsible for the development of its policies and procedures to ensure that its California LifeLine program related costs, subsidies, and activities adhere to the applicable CPUC directives. UAFCB examined the carrier's California LifeLine program related activities and reimbursement claims submitted to the CPUC to determine whether the program related costs, activities, and subsidies claimed and received by the carrier are in compliance with the applicable CPUC directives and supported by appropriate documentation.

UAFCB conducted this examination in accordance with PU Code, Sections 274, 314.5 and 314.6, D.14-01-036, OP 30, and the GO 153, Section 13. We planned and performed the examination to obtain sufficient and appropriate evidence to afford a reasonable basis for our conclusion based on our examination objectives. UAFCB believes that the evidence obtained provides a reasonable basis for our conclusion.

As a result of our procedures, UAFCB determined that except for Finding 1 noted in the Finding and Recommendations section, Air Voice Wireless was compliant with the CPUC directives with respect to the California LifeLine program related costs, subsidies, and activities in all material respects for the examination period of July 1, 2016 through June 30, 2017.

The report is intended solely for the information and use of the CPUC and Air Voice Wireless and is not intended to be and should not be used by anyone other than these specified parties. However, this report is a matter of public record and its distribution is not limited.



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Angie Williams, Director  
Utility Audit, Finance, and Compliance Branch and  
Enterprise Risk Compliance Office

Cc: See next page

Melissa Kallabat  
Director of Operation  
Air Voice Wireless dba Feel Safe Wireless

Cynthia Walker  
Director, Communications Division

Jonathan Lakritz  
Program Manager  
Communications Division

You-Young (Clover) Sellden  
Program and Project Supervisor  
Communications Division

Maria (Chari) Amparo Worster  
Program and Project Supervisor  
Communications Division

Tina Lee  
Public Utilities Regulatory Analyst  
Communications Division

Tracy Fok  
Program and Project Supervisor  
Utility Audit, Finance, and Compliance Branch

## Appendix A – Rules and Regulations

Rule/Regulations	Reference	Description
PU Code	Section 274	The CPUC may on its own order, whenever it determines it to be necessary, conduct compliance audits on the compliance with CPUC orders regarding each program subject to this chapter.
	Section 581	Guidance providing the CPUC the authority to require a utility to file complete and correct reports in prescribed form and detail.
	Section 582	Guidance providing the CPUC the authority to require a utility to timely provide applicable records.
	Section 584	Guidance providing the CPUC the authority to require a utility to furnish reports to the CPUC.
	Section 871	This article shall be known and may be cited as the Moore Universal Telephone Service Act.
GO 153	Section 5	Guidance regarding eligibility criteria for obtaining and retaining California LifeLine.
	Section 6	Guidance regarding the California LifeLine Administrator.
	Section 8	Guidance regarding California LifeLine rates and charges.
	Section 9	Guidance regarding reports and claims for reimbursement of California LifeLine-related costs.
	Section 13	Guidance regarding audits and records.
Decisions	D.84-11-028	Investigation on the CPUC's own motion into the method of implementation of the Moore Universal Telephone Service Act.
	D.10-11-033	Decision adopting forward looking modifications to California LifeLine in compliance with the Moore Universal Telephone Service Act.
	D.14-01-036	Decision adopting revisions to modernize and expand the California LifeLine program.
Advice Letters	AL No. 5	LifeLine Service Plans Offered by Air Voice Wireless and approved by CPUC.
47 CFR	§54.405(e)(3)	Guideline for de-enrolling Lifeline subscribers for non-usage.
	§54.407(c)	List of subscriber's activities constituting a LifeLine usage service.

## Appendix B – Air Voice Wireless's Responses

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*The Big Name In Prepaid Cellular Service Nationwide*

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**Corporate Office Michigan**  
2425 Franklin Road  
Bloomfield Hills, MI 48302

**AirVoice Wireless GSM**  
888-944-2355  
248-239-0182 FAX

December 12, 2019

Angie Williams, Director  
Utility Audits Branch  
Utility Audits & Risk Compliance Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

RE: Air Voice Wireless, LLC's Response to Draft Audit Report

Dear Ms. Williams,

Air Voice Wireless, LLC ("Air Voice" or "Company") hereby submits comments in response to the examination completed by the Utility Audit, Finance and Compliance Branch of the California Public Utilities ("CPUC") and the findings set forth in the draft audit report issued to Air Voice Wireless on November 25, 2019.

As noted in the attached comments, Air Voice provides a response to the one finding noted in the draft audit report.

Thank you for your consideration of Air Voice's comments. If I may provide you with additional information, please do not hesitate to contact our office.

Sincerely,

Jim Bahri



**Finding 1**

**Cause**

The carrier has internal control deficiencies to track and report subscribers' service activation dates to the TPA (or Conduent) for the TPA to properly determine the program start date in accordance with D.14-01-036, COL. 41. Moreover, the carrier has internal control deficiencies to track terminated subscribers and subscribers with inactivity of LifeLine service usage that exceeded the claimable days in accordance with 47 CFR, Section 54.407(c)(3). The carrier asserted that it has procedures in place with respect to reporting both the subscribers' service activation dates and inactive/terminated subscribers to the TPA for proper determination of LifeLine service eligible days and removal of terminated and inactive subscribers from the LifeLine program. However, our testing revealed that the procedures in place were not implemented effectively. Consequently, the program start date were incorrectly accounted for and the terminated and inactive subscribers were not completely captured and timely removed from the LifeLine program for proper claim reimbursement.

**Effect**

The carrier has over claimed a total of \$148,810 in program subsidy and incurred \$5,752 in total interest penalty. In addition, if Air Voice Wireless does not effectively improve its internal controls on tracking and reporting subscribers' service activation and termination dates and inactivity to the TPA, the carrier will likely continue overclaiming the LifeLine program subsidy.

In an email to Air Voice Wireless, dated December 11, 2019 the CPUC revised the total over claimed amount to \$137,389.00 and the interest penalty to \$5,278.00.

**Recommendation**

The carrier should pay back \$154,562 to the LifeLine Fund. In an email to Air Voice Wireless, dated December 11, 2019, the CPUC revised this amount to \$142,667.00.

The carrier should also do the following:

- a) Strengthen its oversight over its reporting to the LifeLine TPA (or Conduent) regarding subscribers' service activation date for the TPA to properly determine subscribers' program start date using the later of the LifeLine program approval date or the service activation date.
- b) Strengthen its internal controls over its de-enrollment process with respect to terminated LifeLine subscribers and subscribers with inactivity of LifeLine service usage to ensure proper and timely de-enrollment of these types of subscribers.

**Response of Air Voice Wireless**

Pursuant to the finding in this draft audit report Air Voice Wireless shall reimburse \$142,667.00, which includes \$137,389.00 in program subsidy overpayment and interest of \$5,278.00, to the LifeLine Fund.

Air Voice Wireless has improved its internal control procedures for accurately reporting the subscribers' program start dates and for de-enrolling subscribers with non-usage of LifeLine services.

Specifically, Air Voice Wireless reviews a percentage of new enrollments on a monthly basis to ensure the subscriber's program start date occurs after the LifeLine service activation date or LifeLine program approval date, whichever occurs later.

The issues surrounding de-enrollment occurred because even though the subscribers had been de-enrolled in Air Voice's system, some of the de-enrollment updates performed by Air Voice Wireless were either not successfully processed or not successfully communicated to Conduent. Air Voice Wireless has improved this communication process by changing from a third-party OSS billing system to an internal operating system built for Air Voice in late 2017. In addition to the newly built and enhanced internal operating system, Air Voice Wireless has implemented a twice per month comparison between its internal subscriber database and that of the TPA. This bi-monthly comparison ensures the data is consistent between the two parties and allows Air Voice to identify and de-enroll any account that has already been de-enrolled in Air Voice's internal database but is still active in the TPA's database, or vice versa.

#### CONCLUSION

Air Voice Wireless has made system improvements since the July 2016-July 2017 audit period. Air Voice Wireless has strengthened its oversight over its reporting to the TPA regarding subscribers' service activation date so that the TPA can properly determine subscriber's program start date.

Air Voice Wireless has strengthened its internal controls over its de-enrollment process with respect to terminated LifeLine subscribers with inactivity of LifeLine service usage to ensure proper and timely de-enrollment of subscribers.

  
Signature Tim BAHNI

MEMBER - CEO  
Title

12/12/19  
Dated

Before the  
Federal Communications Commission  
Washington, DC 20554

In the Matter of  
  
Cintex Wireless, LLC

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)  
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File No.: EB-IHD-13-00010671<sup>1</sup>  
Acct. No.: 201432080014  
FRN: 0020964524

**ORDER**

**Adopted: December 22, 2017**

**Released: December 29, 2017**

By the Commission: Commissioner Clyburn approving in part, dissenting in part, and issuing a statement.

1. The Federal Communications Commission (Commission) has entered into a Consent Decree to resolve its investigation into whether Cintex Wireless, LLC (Cintex Wireless) violated the Commission's rules by requesting and/or receiving support from the Lifeline program of the Universal Service Fund (USF or Fund) for ineligible, duplicative subscribers, as identified by the Universal Service Administrative Company (USAC) through periodic in-depth validations (IDVs). To settle this matter, Cintex Wireless will implement a compliance plan to ensure that it adheres to the Commission's rules and will pay a Fifty-Five Thousand Dollar (\$55,000) settlement amount.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, including that USAC has recovered the overpayments for ineligible duplicate support received by Cintex Wireless for the time periods covered by the IDVs conducted by USAC, we find that the public interest would be served by adopting the Consent Decree and resolving the Notice of Apparent Liability for Forfeiture (NAL) regarding Cintex Wireless's compliance with the Lifeline program rules set forth in Sections 54.407, 54.409, and 54.410 of the Commission's rules.<sup>2</sup>

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Cintex Wireless's basic qualifications to hold or obtain any Commission license or authorization.<sup>3</sup>

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act,<sup>4</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** and the NAL **IS RESOLVED** in accordance with the terms of the attached Consent Decree.

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<sup>1</sup> This investigation, initiated under file no. EB-13-IH-0201, was subsequently assigned to file no. EB-IHD-13-00010671.

<sup>2</sup> 47 CFR §§ 54.407, 54.409, 54.410.

<sup>3</sup> See 47 CFR § 1.93(b).

<sup>4</sup> 47 U.S.C. §§ 154(i), 503(b).



6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Paul Greene, Chief Executive Officer, Cintex Wireless, LLC, 11565 Old Georgetown Road, Rockville, Maryland 20852, and to John J. Heitmann, Esq., Kelley Drye & Warren LLP, 3050 K Street, N.W., Suite 400, Washington, D.C. 20007.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of

Cintex Wireless, LLC

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)  
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)

File No.: EB-IHD-13-00010671<sup>5</sup>

Acct. No.: 201432080014

FRN: 0020964524

**CONSENT DECREE**

1. The Federal Communications Commission (Commission) and Cintex Wireless, LLC (Cintex Wireless), by their authorized representatives, hereby enter into this Consent Decree for the purpose of settling the Commission's investigation, as defined below, into whether Cintex Wireless violated Sections 54.407, 54.409, and 54.410 of the Commission's rules by requesting and/or receiving support from the Lifeline program of the Universal Service Fund (USF or Fund) for ineligible subscribers.

**I. DEFINITIONS**

2. For the purposes of this Consent Decree, the following definitions shall apply:

- (a) "Act" means the Communications Act of 1934, as amended.<sup>6</sup>
- (b) "Adopting Order" means an order of the Commission adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (c) "Agents" means all contractors and/or subcontractors acting on behalf of the Company with respect to the sales, marketing, enrollment of new customers, and other duties related to the Company's responsibilities under the Lifeline Rules.
- (d) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
- (e) "Cintex Wireless" or "Company" means Cintex Wireless, LLC, and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (f) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
- (g) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Cintex Wireless is subject by virtue of its business activities.
- (h) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 14.
- (i) "Covered Employees" means all employees of Cintex Wireless who perform, or supervise, oversee, or manage the performance of, duties that relate to Cintex Wireless's responsibilities under the Lifeline Rules.

<sup>5</sup> This investigation, initiated under file no. EB-13-IH-0201, was subsequently assigned to file no. EB-IHD-13-00010671.

<sup>6</sup> 47 U.S.C. § 151, *et seq.*

- (j) “Covered Third Party” means any non-employee Person, as defined herein, that performs services involving the enrollment and de-enrollment of Lifeline consumers, or any duties that relate to the Lifeline eligibility and de-enrollment rules, pursuant to a contractual relationship or agreement with Cintex Wireless, including any person performing work related to the Lifeline Rules on behalf of Cintex Wireless.
- (k) “Effective Date” means the date by which both the Bureau and Cintex Wireless have signed the Consent Decree.
- (l) “ETC” means an eligible telecommunications carrier designated under, or operating pursuant to, Section 214(e) of the Communications Act, as amended, 47 U.S.C. § 214(e), as eligible to offer and receive support for one or more services that are supported by the federal universal support mechanisms.
- (m) “Investigation” means the investigation commenced by the Bureau in File Nos. EB-13-IH-0201 and EB-IHD-13-00010671, and in *Cintex Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17124 (2013), regarding whether Cintex Wireless violated the Lifeline Rules.
- (n) “Lifeline Rules” means Title 47, Code of Federal Regulations, Sections 54.400--54.423, Section 254 of the Act, and Commission orders related to Lifeline service to low-income consumers.
- (o) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Cintex Wireless to implement the Compliance Plan.
- (p) “Parties” means Cintex Wireless and the Commission, each of which is a “Party.”
- (q) “Person” shall have the same meaning defined in Section 153(39) of the Communications Act, as amended, 47 U.S.C. § 153(39).
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (s) “USAC” means the Universal Service Administrative Company, which serves as the administrator for the federal Universal Service Fund.<sup>7</sup>

## II. BACKGROUND

3. Lifeline is a Universal Service Fund (USF) program that helps qualifying consumers connect to jobs, family members, and emergency services.<sup>8</sup> Lifeline service is provided by designated eligible telecommunications carriers (ETCs) pursuant to the Communications Act of 1934, as amended (Act).<sup>9</sup> An ETC may generally request Federal Lifeline support in the amount of \$9.25 per month for each qualifying low-income consumer it serves, provided the ETC passes through the support amount to the consumer.<sup>10</sup> To request reimbursement, ETCs must certify to the Universal Service Administrative

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<sup>7</sup> See 47 CFR § 54.701.

<sup>8</sup> *Lifeline & Link Up Reform & Modernization*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6662–67, paras. 11–18 (2012) (*Lifeline Reform Order*); see 47 CFR §§ 54.400–54.423.

<sup>9</sup> 47 U.S.C. § 254(e) (providing that “only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support”); 47 U.S.C. § 214(e) (prescribing the method by which carriers are designated as ETCs).

<sup>10</sup> See 47 CFR § 54.403(a)(1)–(2). ETCs may receive additional federal Lifeline support of up to \$25 per month for providing Lifeline service to an eligible resident of Tribal lands, as defined in 47 CFR § 54.409(e). See 47 CFR (continued....)

Company (USAC) that they have followed the Rules relating to Lifeline.<sup>11</sup> Section 54.407 of the Rules specifies that the support provided to an ETC is limited to “the number of actual qualifying low-income customers” it serves.<sup>12</sup> Additionally, pursuant to Sections 54.407 and 54.410 of the Rules, ETCs must obtain certification of every subscriber’s eligibility and certify their own compliance with the Rules.<sup>13</sup>

4. Furthermore, Section 54.410(a) of the Rules requires ETCs to implement policies and procedures for ensuring that their subscribers are eligible to receive Lifeline service.<sup>14</sup> Among other things, the Commission’s Rules define an eligible, or “qualifying low-income consumer,” as one who is not already receiving a Lifeline service and where no one else in the household is a Lifeline subscriber.<sup>15</sup> The Commission has made clear that “qualifying low-income consumers may receive no more than a single Lifeline benefit.”<sup>16</sup> In February 2012, the FCC defined “duplicative support” as “when a Lifeline subscriber is receiving two or more Lifeline services concurrently or two or more subscribers in a household are receiving Lifeline services or Tribal Link Up support concurrently.”<sup>17</sup> Therefore, ETCs generally must implement procedures designed to ensure that they are not seeking support from the Lifeline program for duplicate subscribers.<sup>18</sup>

5. In 2011, USAC began conducting in-depth data validations (IDVs) to identify subscribers who were improperly receiving duplicative Lifeline support.<sup>19</sup> If USAC determined that a subscriber was the recipient of multiple Lifeline benefits from that same ETC (e.g., intra-company duplicates), it notified the ETC of the instances of duplicate support, recouped duplicate payments, and directed the ETC to de-enroll the intra-company duplicate subscribers.<sup>20</sup>

(Continued from previous page)

§ 54.403(a)(3).

<sup>11</sup> See 47 CFR § 54.407(d). USAC administers the Lifeline program and is responsible for support calculation and disbursement payments to ETCs. See 47 CFR § 54.702(b).

<sup>12</sup> 47 CFR § 54.407(a)–(b).

<sup>13</sup> See 47 CFR §§ 54.407(d), 54.410(b)–(c), 54.416. To receive reimbursement, ETCs must file an FCC Form 497 with USAC, on which they must certify compliance with the Rules. See *Lifeline Reform Order*, 27 FCC Rcd at 6698, 6714, paras. 91, 125.

<sup>14</sup> 47 CFR § 54.410(a). See also *Lifeline Reform Order*, 27 FCC Rcd at 6879, App. A.

<sup>15</sup> 47 CFR §§ 54.400(a); 54.409(c).

<sup>16</sup> See *Lifeline & Link Up Reform & Modernization*, Report and Order, 26 FCC Rcd 9022, 9022–23, para. 2 (2011) (*Lifeline Duplicates Order*). See also *Lifeline & Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8306, para. 4 (2004); see also 47 CFR § 54.409(c) (qualifying Lifeline customers must not already be receiving a Lifeline service); 47 CFR § 54.401 (defining Lifeline); 47 CFR § 54.400(h) (defining “household” as “any individual or group of individuals who are living together at the same address as one economic unit”); *Lifeline Reform Order*, 27 FCC Rcd at 6760, para. 241 (noting that the costs of wireless handsets are not supported by Lifeline).

<sup>17</sup> See generally *Lifeline Reform Order*, 27 FCC Rcd 6656; 47 CFR § 54.400(g). The Lifeline Reform Order also required ETCs, upon notification from USAC, to de-enroll subscribers who were found to have received duplicative support. 47 CFR § 54.405(e)(2).

<sup>18</sup> 47 CFR § 54.410.

<sup>19</sup> See *Lifeline Duplicates Order*, 26 FCC Rcd at 9023, para. 2, nn.4–5; Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, FCC, to D. Scott Barash, Acting CEO, USAC, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, 26 FCC Rcd 8588 (WCB 2011).

<sup>20</sup> *Id.*

6. Cintex Wireless is a Delaware limited liability company<sup>21</sup> that provided prepaid wireless Lifeline service to customers as a designated ETC in Arkansas, Maryland, Rhode Island and West Virginia.<sup>22</sup> To receive reimbursement for Lifeline services provided, Cintex Wireless was required to file claims regularly with USAC.<sup>23</sup> USAC conducted IDVs of the reimbursement requests submitted by Cintex Wireless for subscribers in the following four states for the months specified: Arkansas (August 2012, February 2013, and April 2013), Maryland (June 2012 and March 2013), West Virginia (June 2012, December 2012, and April 2013), and Rhode Island (July 2012 and March 2013). Based on USAC's analysis, Cintex Wireless allegedly had 1,842 individual intra-company duplicate lines for which Cintex Wireless sought Lifeline support reimbursement.<sup>24</sup> According to USAC, these requests allegedly resulted in \$17,326 in overpayments to Cintex Wireless over the months covered by the IDVs.<sup>25</sup>

7. On December 13, 2013, the Commission issued a Notice of Apparent Liability for Forfeiture and Order proposing a forfeiture penalty of \$9,461,978 against Cintex Wireless for alleged willful and repeated violations of Sections 54.407, 54.409, and 54.410 of the Rules<sup>26</sup> by allegedly requesting and/or receiving Lifeline support for allegedly ineligible subscriber lines identified in the IDVs.<sup>27</sup> The Company submitted a response to the NAL on February 21, 2014 denying the allegations and seeking cancellation or reduction of the proposed forfeiture.<sup>28</sup> The Parties negotiated the following terms and conditions of settlement and hereby enter into this Consent Decree as provided below.

### III. TERMS OF AGREEMENT

8. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Commission in an Adopting Order.

9. **Jurisdiction.** Cintex Wireless agrees that the Commission has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

10. **Effective Date.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order adopted by the Commission.

11. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Commission agrees to terminate the Investigation. In consideration for the termination of the Investigation, Cintex Wireless agrees to the terms, conditions, and procedures contained herein. The Commission further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new

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<sup>21</sup> See Delaware Secretary of State, Division of Corporations, Cintex Wireless LLC, File No. 4381064 (formed June 29, 2007).

<sup>22</sup> See *Cintex Wireless, LLC*, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 17124, 17126-27, para. 8 (2013) (*Cintex NAL*). See also Cintex Wireless LLC's Revised Compliance Plan, WC Dockets Nos. 09-197 and 11-42, at 2 (Jan. 9, 2013). Other service areas served by Cintex Wireless are not at issue in this enforcement action.

<sup>23</sup> *Cintex NAL*, 28 FCC Rcd at 17126, para. 6. See also 47 CFR § 54.407; *Lifeline Reform Order*, 27 FCC Rcd at 6786-87, paras. 301-02.

<sup>24</sup> *Cintex NAL*, 28 FCC Rcd at 17126, para. 9.

<sup>25</sup> *Id.*

<sup>26</sup> 47 CFR §§ 54.407, 54.409, 54.410.

<sup>27</sup> See generally *Cintex NAL*.

<sup>28</sup> See Cintex Wireless, LLC's Response to Notice of Apparent Liability for Forfeiture (Feb. 21, 2014) (on file in EB-IHD-13-00010671).

proceeding, formal or informal, or take any action on its own motion against Cintex Wireless concerning the matters that were the subject of the Investigation. The Commission also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any proceeding, formal or informal, or to set for hearing the question of Cintex Wireless's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.<sup>29</sup>

12. **Stipulation.** Cintex Wireless stipulates for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions in paragraph 11 herein, that it sought reimbursement for certain subscribers who had improperly certified eligibility in violation of the Commission's rules prohibiting duplicative support. This Consent Decree shall not be used as evidence or precedent in any action or proceeding, except an action to enforce this Consent Decree, and does not constitute a finding of law or fact. The Parties agree this Consent Decree is for settlement purposes only and does not constitute an adjudication on the merits or a factual or legal determination regarding compliance or non-compliance.

13. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Cintex Wireless shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan, including the Compliance Training Program, and ensuring that Cintex Wireless complies with the terms and conditions of the Compliance Plan and this Consent Decree. The Compliance Officer shall regularly assess the compliance efforts and performance of Cintex Wireless and any Covered Third Party. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Lifeline Rules prior to assuming his/her duties. The Compliance Officer's salary or bonus shall not be related in any manner to sales. Any vendor that Cintex Wireless uses to perform tasks associated with compliance with the Lifeline Rules will be subject to the Compliance Officer's oversight.

14. **Compliance Plan.** For purposes of settling the matters set forth herein, Cintex Wireless agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Lifeline Rules and with the terms and conditions of this Consent Decree. With respect to the Lifeline Rules, Cintex Wireless will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within sixty (60) calendar days after the Effective Date, Cintex Wireless shall establish Operating Procedures that all Covered Employees and Covered Third Parties must follow to help ensure Cintex Wireless's compliance with the Lifeline Rules. Cintex Wireless's Operating Procedures shall include internal procedures and policies specifically designed to ensure that applicants for Lifeline service and Covered Employees and Covered Third Parties have not violated the Commission's Rules prohibiting duplicate support. Cintex Wireless shall also develop a Compliance Checklist that describes the steps a Covered Employee and Covered Third Party must follow to ensure compliance with the Lifeline Rules, including those prohibiting duplicate support. Cintex Wireless's Operating Procedures also shall include the following:
  - i. Agent Identifiers: All Covered Employees and Covered Third Parties involved with sales, marketing, and/or enrollment of new Lifeline customers shall be required to have individual numerical codes or other identifiers, which must be recorded when a Covered Employee

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<sup>29</sup> See 47 CFR § 1.93(b).

or Covered Third Party processes a Cintex Wireless Lifeline customer enrollment form.<sup>30</sup>

- ii. Responsibility for Agents: Cintex Wireless will accept legal responsibility with respect to compliance with the Lifeline Rules for the sales, marketing, and/or enrollment activities of all Cintex Wireless Lifeline personnel and its Agents.
  - iii. Agent Phishing: All Covered Employees and Covered Third Parties shall be expressly prohibited from signing themselves up for Lifeline, or entering their own information into NLAD.
  - iv. Whistleblowers: Cintex Wireless will create procedures for Covered Employees and Covered Third Parties to anonymously report wrongdoing by the company by providing the Commission Whistleblower Hotline's phone number to all employees.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees and Covered Third Parties. The Compliance Manual shall explain the Lifeline Rules and set forth the Operating Procedures that Covered Employees and Covered Third Parties shall follow to help ensure Cintex Wireless's compliance with the Lifeline Rules. Cintex Wireless shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Cintex Wireless shall distribute any revisions to the Compliance Manual promptly to all Covered Employees and Covered Third Parties.
- (c) **Compliance Training Program.** Cintex Wireless shall establish and implement a Compliance Training Program on compliance with the Lifeline Rules, including eligibility and self-certification requirements for Lifeline consumers, and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Cintex Wireless's obligation to report any noncompliance with the Lifeline Rules under paragraph 15 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees and Covered Third Parties shall be trained pursuant to the Compliance Training Program within ninety (90) calendar days after the Effective Date, except that any person who becomes a Covered Employee or Covered Third Party at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee or Covered Third Party and, in any event, before such person is permitted to engage in sales transactions. Cintex Wireless shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

15. **Reporting Noncompliance.** Cintex Wireless shall report any noncompliance with the Lifeline Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Cintex Wireless has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Cintex Wireless has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to the Chief, Investigations and Hearings Division, Enforcement

<sup>30</sup> When Cintex begins to use the National Lifeline Eligibility Verifier in a geographic area in which it provides Lifeline service, this obligation will be superseded.

Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey.Gee@fcc.gov, Kalun.Lee@fcc.gov and to Mindy.Littell@fcc.gov.

16. **Compliance Reports.** Cintex Wireless shall file compliance reports with the Commission one-hundred and twenty (120) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Cintex Wireless's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Lifeline Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as a representative of and on behalf of Cintex Wireless, stating that the Compliance Officer has personal knowledge that Cintex Wireless: (1) has established and implemented the Compliance Plan; (2) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (3) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 15 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.<sup>31</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as a representative of and on behalf of Cintex Wireless, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (1) each instance of noncompliance; (2) the steps that Cintex Wireless has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (3) the steps that Cintex Wireless has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey.Gee@fcc.gov, Kalun.Lee@fcc.gov, and Mindy.Littell@fcc.gov.

17. **Termination Date.** The requirements set forth in paragraphs 13 through 16 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

18. **Section 208 Complaints; Subsequent Investigations.** Nothing in this Consent Decree shall prevent the Commission or its delegated authority from adjudicating complaints filed pursuant to Section 208 of the Act<sup>32</sup> against Cintex Wireless or its affiliates for alleged violations of the Act, or for any other type of alleged misconduct, regardless of when such misconduct took place. The Commission's adjudication of any such complaint will be based solely on the record developed in that proceeding. Except as expressly provided in this Consent Decree, this Consent Decree shall not prevent the Commission from investigating new evidence of noncompliance by Cintex Wireless with the Communications Laws.

19. **Settlement Amount.** Cintex Wireless agrees to a settlement amount with a value of Fifty-Five Thousand Dollars (\$55,000), which it will pay to the United States Treasury within thirty (30)

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<sup>31</sup> 47 CFR § 1.16.

<sup>32</sup> 47 U.S.C. § 208.



calendar days of the Effective Date. Cintex Wireless shall send electronic notification of the payment to the Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Room 4-C224, Washington, DC 20554, with a copy submitted electronically to Jeffrey.Gee@fcc.gov, Kalun.Lee@fcc.gov, and Mindy.Littell@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the respective Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.<sup>33</sup> When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters “FORF” in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

20. **Waivers.** As of the Effective Date, Cintex Wireless waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Cintex Wireless shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Cintex Wireless nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Cintex Wireless shall waive any statutory right to a trial de novo. Cintex Wireless hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>34</sup> relating to the matters addressed in this Consent Decree.

21. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

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<sup>33</sup> An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

<sup>34</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

22. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

23. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Cintex Wireless does not expressly consent) that provision will be superseded by such Rule or Order.

24. **Successors and Assigns.** Cintex Wireless agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

25. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of the Communications Laws.

26. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

27. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

28. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

29. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

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Rosemary C. Harold, Chief  
Enforcement Bureau

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Date

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Paul Greene  
Chief Executive Officer  
Cintex Wireless, LLC

\_\_\_\_\_  
Date

**STATEMENT OF  
COMMISSIONER MIGNON L. CLYBURN  
APPROVING IN PART AND DISSENTING IN PART**

Re: *Cintex Wireless, LLC*, Order, File No.: EB-IHD-13-00010671

Waste, fraud, and abuse must not be tolerated in any of our Universal Service programs, which is why I will vote to approve these consent decrees. This company has repaid what it wrongfully claimed from USF and voluntarily agreed to remit to the Treasury several multiples of the harm done to the Fund. This investigation and its overall finding represent an efficient use of the Commission's resources, and we eliminate uncertainty for these companies while strongly reinforcing our expectations of Lifeline providers.

However, I am forced to also register a dissent in this case, because while I believe the Commission should have taken strong and decisive action, the Enforcement Bureau under this Chairman continues to show bias. It essentially gives hall passes to large, well-known corporations when wrongdoing is found, while it fines little-known small businesses and individuals substantial sums of money for harms which are often substantially narrower. When a company or an individual violates our rules, they should be punished, but that punishment should fit the offense. Any wrongdoing committed by a provider that has accepted an obligation to serve the public, should be fairly and consistently met with forfeitures and negotiated settlements that are more than a mere slap on the wrist. Large corporations simply view relatively meager fines as a mere nuisance expense. My wish for the season? That we stop this seemingly preferential trend that consistently benefits one class of provider, and that the Commission's rules are vigorously and fairly enforced for all.

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

NewPhone Wireless LLC

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File No.: EB-IHD-20-00031449  
CD Acct. No.: 202232080001  
FRN: 0021322953

**ORDER**

**Adopted: December 16, 2021**

**Released: December 17, 2021**

By the Chief, Enforcement Bureau:

1. The Federal Communications Commission's (Commission or FCC) rules governing the Lifeline program establish specific requirements that eligible telecommunications carriers must fulfill in order to claim and receive federal Lifeline support for serving low income consumers.<sup>1</sup> Compliance with these rules is critical to ensuring that the program's resources are distributed appropriately to serve only individuals who qualify for the discounted service. Consistent with this objective, the Enforcement Bureau of the FCC has entered into a Consent Decree to resolve its investigation into whether NewPhone Wireless LLC (NewPhone) violated the Commission's Lifeline rules by requesting and/or receiving support from the Lifeline program of the Universal Service Fund for ineligible subscribers. To settle this matter, NewPhone will implement a compliance plan and will make a \$100,000 settlement payment to the United States Treasury.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding NewPhone's compliance with sections 54.404(b), 54.405(e), 54.407, 54.409, 54.410, and 54.417 of the Commission's rules.<sup>2</sup>

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of NewPhone's basic qualifications to hold or obtain any Commission license or authorization.<sup>3</sup>

4. Accordingly, **IT IS ORDERED** that, pursuant to section 4(i) of the Communications Act of 1934, as amended<sup>4</sup> and the authority delegated by sections 0.111 and 0.311 of the Commission's rules,<sup>5</sup> the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

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<sup>1</sup> See 47 CFR §§ 54.400-54.422 (2020).

<sup>2</sup> See 47 CFR §§ 54.404(b); 54.405(e); 54.407; 54.409; 54.410; 54.417.

<sup>3</sup> See 47 CFR § 1.93(b).

<sup>4</sup> 47 U.S.C. § 154(i).

<sup>5</sup> 47 CFR §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by e-mail to Danielle Frappier, Esq., and Christopher Savage, Esq., Davis Wright Tremaine LLP, Counsel to NewPhone Wireless LLC, via e-mail at [DanielleFrappier@dwt.com](mailto:DanielleFrappier@dwt.com) and [ChrisSavage@dwt.com](mailto:ChrisSavage@dwt.com).

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold  
Chief  
Enforcement Bureau

<sup>2</sup> 47 U.S.C. § 151 *et seq.*

- (g) “Company” means NewPhone Wireless LLC, its agents (including Marketing Agents), affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 16.
- (i) “Covered Employees” means all employees and agents of NewPhone who perform, supervise, oversee, or manage the performance of, the duties that relate to NewPhone’s responsibilities under the Communications Laws, including the Lifeline Rules and the activities of the Company’s Marketing Agents.
- (j) “Effective Date” means the date by which both the Bureau and NewPhone have signed the Consent Decree and the Bureau has released an Adopting Order.
- (k) “ETC” means an eligible telecommunications carrier designated under, or operating pursuant to, section 214(e) of the Communications Act, as amended, 47 U.S.C. § 214(e), as eligible to offer and receive support for one or more services through federal universal low-income support mechanisms.
- (l) “Investigation” means the investigation commenced by the Bureau in File No. EB-IHD-20-00031449 regarding whether NewPhone violated the Lifeline Rules.
- (m) “Lifeline Rules” means Title 47, Code of Federal Regulations, sections 54.407(a), (c), 54.410(a), 54.410(b), and 54.410(c) of the Commission’s rules, and other provisions of the Act, the Rules, and Commission orders which provides that Lifeline ETCs may only claim Lifeline support for eligible, qualifying customers.
- (n) “LOI” means the Letter of Inquiry issued by the Bureau to NewPhone on September 23, 2021 in EB-IHD-20-00031449 in connection with the Company’s compliance with the Lifeline Rules.
- (o) “Marketing Agents” means all contractors and/or subcontractors acting on behalf of the Company with direct responsibility for the sales, marketing, enrollment of new customers, and other duties directly related to the Company’s responsibilities under the Lifeline Rules.
- (p) “Operating Procedures” means the standard internal operating procedures and compliance policies established by NewPhone to implement the Compliance Plan.
- (q) “Parties” means NewPhone and the Bureau, each of which is a “Party.”
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (s) “NewPhone or Company” means NewPhone Wireless LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (t) “USAC” means the Universal Service Administrative Company, which serves as the administrator for the federal Universal Service Fund.<sup>3</sup>

## II. BACKGROUND

4. *Legal Framework.* The Lifeline program was established in 1985 to ensure that low-income consumers had access to affordable, landline telephone service.<sup>4</sup> In 2008, the Commission

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<sup>3</sup> See 47 CFR § 54.701.

<sup>4</sup> See *MTS and WATS Market Structure and Amendment of Parts 67 & 69 of the Commission’s Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985).

expanded the program to allow participation by non-facilities-based providers.<sup>5</sup> Today, the Lifeline program has significantly grown to include discounts on voice or broadband Internet access services, as well as bundled service, to qualifying low-income consumers, ensuring that all Americans can take advantage of the benefits that voice and broadband Internet access service bring, including being able to connect to jobs, family, education, health care providers, and emergency services.<sup>6</sup>

5. Pursuant to the Act, in order to participate in the Lifeline program and receive federal universal service support for providing Lifeline service, a service provider must be designated as an ETC by either a state commission or the FCC if the ETC is not subject to the state commission's jurisdiction.<sup>7</sup> Once designated, an ETC may receive federal Lifeline support in the applicable amount of support per month, per subscriber.<sup>8</sup> ETCs are required to pass these discounts along to eligible low-income consumers.<sup>9</sup> Pursuant to section 54.407 of the Commission's rules, in order to receive reimbursement for offering Lifeline, among other things, an ETC must certify "as part of each request for reimbursement that . . . [it] is in compliance with all of the [Commission's] rules"<sup>10</sup> for the program.

6. The Commission's Lifeline rules establish specific requirements that ETCs must fulfill in order to claim and receive federal Lifeline support.<sup>11</sup> Section 54.407(a) of the Commission's rules states that Lifeline support shall be paid to an ETC "based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible telecommunications carrier serves directly as of the first of the month."<sup>12</sup> The key tenets of the rules prescribing which customers can be claimed by ETCs for discounted Lifeline service are: (1) disbursements of Lifeline support can only be based on the number of "actual qualifying low-income consumers" served by an ETC as that term is defined in Commission rules,<sup>13</sup> (2) such qualifying low-income consumers must be served directly by the ETC as of the first day of the month, and (3) such consumers must have been determined to be eligible.<sup>14</sup>

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<sup>5</sup> See, e.g., *Petition of TracFone Wireless, Inc. for Forbearance*, Order, 20 FCC Rcd 15095 (2005); *TracFone Wireless, Inc., Petition for Designation as an Eligible Telecommunications Carrier in New York et al.*, Order, 23 FCC Rcd 6206 (2008).

<sup>6</sup> See 47 CFR § 54.401(a) ("Lifeline means a non-transferable retail service offering . . . [t]hat provides qualifying low-income consumers with [reduced price] voice telephony service or broadband Internet access service...."); 47 CFR § 54.401(b) (permitting Lifeline discounts to be applied to bundled services).

<sup>7</sup> 47 U.S.C. § 254(e) ("[O]nly an eligible telecommunications carrier designated under section 214(e) . . . shall be eligible to receive specific Federal universal service support.").

<sup>8</sup> 47 CFR § 54.403(a). An ETC providing voice service with broadband meeting the applicable minimum standards may claim \$9.25 per month, and it may receive up to an additional \$25 per month if the qualifying low-income consumer resides on Tribal lands. See 47 CFR §§ 54.403(a), 54.408.

<sup>9</sup> See 47 CFR § 54.403(a); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order, 27 FCC Rcd at 6681, para. 53 (2012) (*2012 Lifeline Reform Order*).

<sup>10</sup> 47 CFR § 54.407(d).

<sup>11</sup> See 47 CFR §§ 54.400 – 54.422.

<sup>12</sup> 47 CFR § 54.407(a).

<sup>13</sup> *Id.*; see also 47 CFR §§ 54.409 (establishing the criteria to constitute a "qualifying low-income consumer"); 54.410(b)–(c) (establishing procedural requirements for determining whether a consumer is a qualifying low-income consumer).

<sup>14</sup> 47 CFR §§ 54.400(a), 54.407(a), 54.409.



7. The Commission's rules strictly prohibit an ETC from seeking reimbursement for a subscriber unless the ETC has confirmed that subscriber's eligibility to receive Lifeline service.<sup>15</sup> ETCs are required to "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services."<sup>16</sup> In particular, ETCs must confirm that a consumer is an actual "qualifying low-income consumer" meeting the eligibility criteria set forth in the Commission's rules.<sup>17</sup> Section 54.409 requires Lifeline subscribers to meet certain income-based criteria.<sup>18</sup> In addition, the consumer "must not already be receiving a Lifeline service" and cannot receive more than one Lifeline-supported service at a time, either individually or within a group of individuals who live together at the same address as one economic unit (defined in the Commission's rules as a "household").<sup>19</sup> In other words, the Commission's rules prohibit a consumer from receiving duplicate support.<sup>20</sup> Moreover, pursuant to section 54.410(d) of the Commission's rules, ETCs must ensure that a prospective subscriber has certified his/her eligibility to receive Lifeline service.<sup>21</sup>

8. USAC is the administrator of the federal universal service programs, including Lifeline.<sup>22</sup> As the administrator, USAC collects and distributes universal service funds. In the 2012 *Lifeline Reform Order*, the Commission established the National Lifeline Accountability Database (NLAD), a system used by USAC to receive and process subscriber data and prevent ETCs from enrolling a new subscriber without first confirming that the subscriber or someone in the subscriber's household does not already receive Lifeline service.<sup>23</sup> In late 2019, the Commission began launching the National Lifeline Eligibility Verifier in a phased introduction in states and territories.<sup>24</sup> Beginning on January 22, 2020, the

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<sup>15</sup> See 47 CFR §§ 54.410(b)(1)(i), (c)(1)(i).

<sup>16</sup> *Id.* at § 54.410(a).

<sup>17</sup> *Id.* at § 54.409(c).

<sup>18</sup> *Id.* at §§ 54.400(a), 54.409.

<sup>19</sup> *Id.* at § 54.409(c).

<sup>20</sup> *Id.* at §§ 54.400(h); 54.409(c). Since 2011, the Commission has addressed potential waste, fraud, and abuse in Lifeline by preventing duplicate payments for multiple Lifeline-supported services to the same individual. See, e.g., *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order, 26 FCC Rcd 9022-23, 9026, paras. 1, 7 (2011) (*Lifeline Duplicates Order*) (clarifying that each eligible Lifeline consumer is entitled to only one Lifeline benefit); *2012 Lifeline Reform Order*, 27 FCC Rcd at 6662-67, paras. 11-18, and 6689, para. 74, n.192 (emphasizing the restriction on duplicates and moving the rule from section 54.401(a) to revised section 54.409(c)); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 28 FCC Rcd 9057 (WCB 2013) (*2013 Lifeline Reform Order*) (codifying the requirement that ETCs verify a Lifeline subscriber's eligibility before activating service); see also *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 17-287, 11-42, 09-197, Fifth Report and Order, 34 FCC Rcd 10886, 10922-24, paras 87-91 (2019) (*2019 Lifeline Reform Order*) (adopting enrollment process improvements to assist USAC's efforts to detect improper duplicate addresses among Lifeline subscribers in the NLAD).

<sup>21</sup> 47 CFR § 54.410(d).

<sup>22</sup> See 47 CFR §§ 54.701(a), 54.702(b).

<sup>23</sup> See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6734, para. 179; 47 CFR §§ 54.404(b) (prescribing steps for ETCs to check NLAD to determine whether providing a prospective subscriber for the Lifeline program would result in duplicative support); see also *Wireline Competition Bureau Clarifies Minimum Requirements for States Seeking to Opt-Out of National Lifeline Accountability Database*, Pub. Notice, 27 FCC Rcd 12321 (WCB 2012).

<sup>24</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4021, para. 165 (2016).

Commission required Lifeline ETCs in Louisiana to begin using the National Verifier's eligibility determination process for all consumers applying for Lifeline service.<sup>25</sup>

9. ***Factual Background.*** NewPhone is a Louisiana limited liability company headquartered in Houston, Texas.<sup>26</sup> The Company has resold mobile wireless Lifeline service since 2012 exclusively in Louisiana.<sup>27</sup> USAC referred this matter to the Bureau on August 25, 2020, concerning NewPhone's apparent claims for ineligible Lifeline subscribers between August 2018 and June 2020, with a majority of the claims occurring in 2020. The claims appeared to involve duplicate or otherwise ineligible accounts that used beneficiary data from other existing Lifeline customers.

10. On September 23, 2020 the Bureau issued NewPhone an LOI to obtain information about the claims.<sup>28</sup> NewPhone filed its response to the LOI on November 23, 2021.<sup>29</sup> Within weeks after USAC notified NewPhone of the apparently improper use of beneficiary data, the Company terminated its relationship with the Marketing Agents involved in the enrollments.<sup>30</sup> USAC worked with NewPhone from early August through October 2020 to address the issues raised by the claims.<sup>31</sup> On October 30, 2020, NewPhone submitted revised claims which USAC agreed addressed the full amount at issue in its investigation. Because USAC determined NewPhone had promptly submitted revised claims in the full amount USAC sought, there was no need to issue a recovery letter. NewPhone and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

### III. TERMS OF AGREEMENT

11. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

12. **Jurisdiction.** NewPhone agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

13. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

14. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, NewPhone agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against NewPhone concerning the matters that were the subject of the Investigation, or to set for hearing the

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<sup>25</sup> See *Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier for All New Enrollments in Nine States*, Pub. Notice, 34 FCC Rcd 12300 (WCB 2019).

<sup>26</sup> See Letter from Danielle Frappier and Christopher Savage, Counsel for NewPhone Wireless LLC, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, at 2 (Nov. 23, 2020) (LOI Response) (on file in EB-IHD-20-00031449).

<sup>27</sup> *Id.* at 3.

<sup>28</sup> Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Henry Hung Do, President/CEO, and Thuy Nguyen, Controller, NewPhone Wireless LLC (Sept. 23, 2020) (LOI) (on file in EB-IHD-20-00031449).

<sup>29</sup> LOI Response, *supra* note 26.

<sup>30</sup> *Id.* at 11.

<sup>31</sup> *Id.* at 7.

question of NewPhone's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.<sup>32</sup>

15. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, NewPhone shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that NewPhone complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Lifeline Rules prior to assuming his/her duties.

16. **Compliance Plan.** For purposes of settling the matters set forth herein, NewPhone agrees that it shall, within ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Lifeline Rules, NewPhone will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within ninety (90) calendar days after the Effective Date, NewPhone shall establish Operating Procedures that all Covered Employees must follow to help ensure NewPhone's compliance with the Lifeline Rules. NewPhone's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Lifeline Rules. NewPhone shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Lifeline Rules.
- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Lifeline Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure NewPhone's compliance with the Lifeline Rules. NewPhone shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. NewPhone shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** NewPhone shall establish and implement a Compliance Training Program on compliance with the Lifeline Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of NewPhone's obligation to report any noncompliance with the Lifeline Rules under paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within one hundred twenty (120) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. NewPhone shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

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<sup>32</sup> See 47 CFR § 1.93(b).

17. **Reporting Noncompliance.** NewPhone shall report any noncompliance with the Lifeline Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that NewPhone has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that NewPhone has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted by U.S. mail and electronically to Jeffrey Gee, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), with copies submitted electronically to [Mindy.Littell@fcc.gov](mailto:Mindy.Littell@fcc.gov) and [EnforcementBureauIHD@fcc.gov](mailto:EnforcementBureauIHD@fcc.gov).

18. **Compliance Reports.** NewPhone shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of NewPhone's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Lifeline Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of NewPhone, stating that the Compliance Officer has personal knowledge that NewPhone: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 17 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.<sup>33</sup>
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of NewPhone, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that NewPhone has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that NewPhone has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted by U.S. mail and electronically to Jeffrey Gee, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), with copies submitted electronically to [Mindy.Littell@fcc.gov](mailto:Mindy.Littell@fcc.gov) and [EnforcementBureauIHD@fcc.gov](mailto:EnforcementBureauIHD@fcc.gov).

19. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 15 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

20. **Settlement Payment.** NewPhone will pay a Settlement Payment to the United States Treasury in the amount of one hundred thousand dollars (\$100,000) within thirty (30) calendar days of the Effective Date. NewPhone acknowledges and agrees that upon execution of this Consent Decree, the

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<sup>33</sup> 47 CFR § 1.16.

Settlement Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).<sup>34</sup> Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. NewPhone shall send electronic notification of payment to [Jeffrey.Gee@fcc.gov](mailto:Jeffrey.Gee@fcc.gov), [Mindy.Littell@fcc.gov](mailto:Mindy.Littell@fcc.gov), and [EnforcementBureauHD@fcc.gov](mailto:EnforcementBureauHD@fcc.gov) on the date said payment is made. Payment of the Settlement Payment must be made by credit card, ACH (Automated Clearing House) debit from a bank account, or by wire transfer using the Commission’s Registration System (the Commission’s FRN Management and Financial system).<sup>35</sup> The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:<sup>36</sup>

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto:RROGWireFaxes@fcc.gov) on the same business day the wire transfer is initiated.<sup>37</sup> Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).<sup>38</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and

<sup>34</sup> Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

<sup>35</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>36</sup> For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at [ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov).

<sup>37</sup> FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

<sup>38</sup> Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

verify with that financial institution that the designated account has authorization to accept ACH transactions.

21. **Event of Default.** NewPhone agrees that an Event of Default shall occur upon the failure by NewPhone to pay the full amount of the Settlement Payment on or before the due date specified in this Consent Decree.

22. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Settlement Payment shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Settlement Payment, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by NewPhone.

23. **Waivers.** As of the Effective Date, NewPhone waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. NewPhone shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither NewPhone nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and NewPhone shall waive any statutory right to a trial *de novo*. NewPhone hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act<sup>39</sup> relating to the matters addressed in this Consent Decree.

24. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

25. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

26. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which NewPhone does not expressly consent) that provision will be superseded by such Rule or order.

27. **Successors and Assigns.** NewPhone agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

28. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of the Communications Laws. This Consent Decree shall not be used as evidence or precedent in any action or proceeding, except an action to enforce this Consent Decree.

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<sup>39</sup> See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

29. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

30. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

31. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

32. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

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Rosemary C. Harold  
Chief  
Enforcement Bureau

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Date

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Henry Hung Do  
President and Chief Executive Officer  
NewPhone Wireless LLC

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Date