

STATE OF ILLINOIS
ILLINIOS COMMERCE COMMISSION

American Broadband and Telecommunications Company)))	Docket No. 14-0432
Petition for a Partial Waiver of the Agreed Joint Stipulation as a Condition of ETC Designation.)))	

STAFF OF THE ILLINOIS COMMERCE COMMISSION'S VERIFIED RESPONSE
TO AMERICAN BROADBAND AND TELECOMMUNICATIONS COMPANY'S
PETITION FOR PARTIAL WAIVER OF THE AGREED JOINT STIPULATION AS
A CONDITION OF ETC DESIGNATION

NOW COMES the Staff of the Illinois Commerce Commission, through its undersigned attorneys, and in response and in opposition to American Broadband and Telecommunications Company's (American Broadband's) Petition (Petition) for Partial Waiver of the Agreed Joint Stipulation as a Condition of ETC Designation, states as follows:

On or about October 22, 2013, American Broadband and Staff entered into an Agreed Joint Stipulation, pursuant to which American Broadband agreed to subject itself to certain conditions and commitments were it to be designated an Eligible Telecommunications Carrier (ETC) for the limited purpose of serving Lifeline customers, subject to which conditions and commitments Staff agreed not to oppose American Broadband's Petition to be so designated. See, *generally, Joint Stipulation, American Broadband and Telecommunications Company: Petition for Limited Designation as a Wireless Eligible Telecommunications Carrier*, ICC Docket No 12-0680 (October 22, 2013). As American Broadband correctly observes in its Petition in this proceeding, one of

the conditions and commitments to which American Broadband is subject is that, in the event its non-lifeline wireless customer base fell below 20% of its total wireless customer base (i.e., if fewer than one out of every five of its wireless customers was not a Lifeline customer) it would cease enrolling Lifeline customers. Petition, ¶3. On February 5, 2014, the Commission approved American Broadband's Petition for ETC Designation subject to the terms of the Joint Stipulation. *Order* at 14, American Broadband and Telecommunications Company: Petition for Limited Designation as a Wireless Eligible Telecommunications Carrier, ICC Docket No 12-0680 (February 5, 2014) (Designation Order).

On June 18, 2014, American Broadband filed its Petition seeking relief from the condition and commitment requiring it to maintain a non-Lifeline wireless customer base equal to or greater than 20% of its total wireless customer base. *See, generally*, Petition. American Broadband claims that if it is required to comply with the conditions and commitments it made in the Joint Stipulation, it will violate federal provisions which require ETCs to offer service to all eligible customers. Petition, ¶¶1, 4-6. Conversely, American Broadband asserts that if it complies with the federal requirements, it will violate the conditions. Id., ¶7. American Broadband's ostensible basis for seeking such relief is that "it could not have known" that the condition to which it agreed would have this effect. Id., ¶11. American Broadband further avers that it will be required to lay off five employees engaged in processing Lifeline Applications if it is required to comply

with the condition. *Id.*, ¶12. American Broadband seeks a permanent waiver of the condition. *Id.*, ¶¶1, 8, 11.

As an initial matter, American Broadband's Petition is procedurally defective and therefore precluded. The Commission Order from which it seeks relief is dated February 5, 2014. *See, generally, Designation Order*. Thereafter, American Broadband sought relief from the Order on June 18, 2014, approximately 4 ½ months after it was entered. This is fatal to its Petition.

Section 10-113 of the Illinois Public Utilities Act provides that: "any party [may file] a petition setting up a new and different state of facts after 2 years, and invoking the action of the Commission [seeking rescission of a Commission Order.]" 220 ILCS 5/10-113(a). Thus, American Broadband clearly seeks rescission of the Commission's Order, at least as to one of its conditions; styling this as a "Request for Permanent Waiver" is misleading. Assuming for the sake of argument that American Broadband has indeed "set[] up a new and different set of facts", which as seen below it has not, its filing is still highly premature.¹

As noted above, in its ETC Designation Proceeding in Docket No. 12-0680, American Broadband committed to, and the Commission conditioned American Broadband's ETC designation upon, American Broadband providing non-Lifeline services to more than a de minimis fraction of its wireless customers – in this case, at least 20% of its total wireless customer base. More specifically, American Broadband committed to cease enrolling new Lifeline customers if the

¹ This is not to suggest that the Commission is prevented from reopening its Orders on its own Motion. 220 ILCS 5/10-113(a); 83 Ill. Adm. Code 200.900. However, the Commission alone may do this. In any case, American Broadband does not invoke either the statute or regulation to seek reopening on the Commission's Motion.

fraction of its wireless non-Lifeline customers to total wireless customers (including Lifeline customers) in Illinois falls below 20% for any three consecutive months. American Broadband indicates in its Waiver Petition that its began providing wireless Lifeline service in Illinois on April 1, 2014 and implies that it anticipates the fraction of its wireless non-Lifeline customers to total wireless customers (including Lifeline customers) in Illinois will fall below 20% for April, May, and June.

American Broadband asserts, without factual support, that it will fail to satisfy its commitment. American Broadband states: “[a]s a result of Paragraph 5 of the Stipulation, American Broadband will begin denying Lifeline eligible applicants its Lifeline services ... beginning July 1, 2014.” Petition, ¶12. Conspicuously absent from American Broadband’s Petition is any information indicating the number of customers to which it has provided either Lifeline or non-Lifeline wireless service in Illinois or the fractions of wireless non-Lifeline customers to total wireless customers between the date of its approval and the present. This omission is significant in many respects not least of which is that it highlights additional ETC-related compliance failures on the part of American Broadband.

In its Amended Petition, American Broadband committed to filing, in its ETC Designation Docket, a Wireless Customer Report providing, among other information, the number of its Illinois wireless Lifeline and non-Lifeline customers. American Broadband committed to filing this report within 30 days after the end of each calendar quarter. American Broadband was designated an ETC on

February 5, 2014. In its Designation Order, the Commission imposed this condition, among others, on American Broadband stating: "...the granting of such designation is subject to compliance with those conditions. Designation Order at 14. Its first quarterly report was therefore due by April 30, 2014. American Broadband did not did not file its report.

Similarly, Section 757.400(d) of the Commission's rules requires that:

Each eligible telecommunications carrier shall complete Exhibit A and file an original of this report with the Chief Clerk of the Illinois Commerce Commission within 30 days after the end of each calendar quarter. Carriers that have eligible telecommunications carrier designations for both wireline and wireless operations shall report separately for wireline and wireless operations. Any LEC seeking administrative cost reimbursement shall complete Exhibit B and file an original of this report with the Chief Clerk of the Illinois Commerce Commission within 30 days after the end of each calendar year.

83 Ill. Adm. Code 757.400(d)

American Broadband was required pursuant to Section 757.400(d) to file an Exhibit A containing information on its Lifeline customer enrollments for the first quarter of 2014 on or before April 30, 2014. American Broadband has to date refused or failed to do so.²

Had American Broadband filed the quarterly report referenced above, the Commission would possess information revealing, among other things, whether

² American Broadband appears to have a certain amount of difficulty with regulators. In her Order, In the Matter of American Broadband and Telecommunications Co.: Complaint Regarding Unauthorized Change of Subscriber's Telecommunications Carrier, IC No. 13-S3636409, DA 14-905 (Adopted June 26, 2014; Released June 27, 2014), the Deputy Chief of Consumer Policy Division, Consumer & Governmental Affairs Bureau found that "[American Broadband] has failed to respond to [a] complaint [regarding slamming]." Order, ¶4. American Broadband was directed to pay damages to Frontier, the customer's carrier of choice. Id., ¶5.

or not American Broadband was providing either Lifeline or non-Lifeline wireless service to customers in Illinois between February 5, 2014 and March 31, 2014. This is a matter of some importance, because although American Broadband asserts in its Waiver Petition that it began providing Lifeline service on April 1, 2014, the Universal Service Administrative Company reports that it paid \$4,505 in Lifeline subsidies to American Broadband for the month of March 2014. This suggests that American Broadband's representations regarding the date upon which it began providing broadband are, to put it charitably, less than accurate; if a company has no Lifeline customers, it should, very simply, collect no Lifeline support.

Additionally, American Broadband provides no information to indicate whether or not should it have reasonably foreseen its impending compliance failure at an earlier date. The condition that American Broadband now alleges that it cannot meet applies only if American Broadband fails to meet the non-Lifeline wireless threshold for three consecutive months. Now, two and one half months into a three month period and less than two weeks before the date upon which it has committed to ceasing enrolling new Lifeline customers, American Broadband brings to the Commission an expedited petition for relief asserting that if the Commission does not act prior to July 1, that it will cease enrolling customers and will fire five of its employees. Petition, ¶12. The time American Broadband has provided the Commission to address this issue, coupled with American Broadband's threat to immediately fire its employees if the Commission

does not act in its favor, exemplifies the very type of conduct in an ETC that the Commission should be concerned about.

Based upon the Agreed Joint Stipulation entered into between the Staff and American Broadband Telecommunications Company, filed on October 22, 2013, and subject to the terms thereof, the Staff supported granting of the Amended Petition filed by Applicant on October 22, 2013 without further proceedings. Among the provisions included in the stipulation were those designed to assure the Commission that American Broadband does not rely exclusively on USF disbursements to operate and to ensure that American Broadband receives revenue from other sources. That is to say, American Broadband has to sell its services to enough non-Lifeline customers so that they make up a mere one-fifth of its total wireless customer base – 20%. Such assurances are necessitated by, and implement, recently adopted FCC requirements.

The FCC recently revised its rules governing the designation of carriers as ETCs for Lifeline-only purposes. Federal Rule 54.201(h) provides that: “[a] state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving [Lifeline-only] support ... unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.” 47 C.F.R. §54.201(h). In adopting these rules the FCC stated:

Among the relevant considerations for such a [technical and financial capability] showing would be whether the applicant

previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings³ in any state.

Report and Order and Further Notice of Proposed Rulemaking, ¶388, In the Matter of Lifeline and Link Up Reform and Modernization / Lifeline and Link Up / Federal-State Joint Board on Universal Service / Advancing Broadband Availability Through Digital Literacy Training, FCC No. 12-11, WC Docket Nos. 03-109, 11-42, 12-23, CC Docket No. 96-45 (Adopted January 31, 2012; Released February 6, 2012) (Lifeline Reform Order)

American Broadband's commitment to cease enrolling new Lifeline customers if the fraction of its wireless non-Lifeline customers to total wireless customers (including Lifeline customers) in Illinois falls below 20% for any three consecutive months is intended to provide assurance to the Commission that American Broadband does not rely exclusively upon its USF disbursements to operate. Unfortunately, almost immediately after beginning ETC operations in Illinois, American Broadband, by its own admission, appears to be entirely reliant upon federal subsidies to continue those operations. American Broadband's complete reliance on Lifeline revenues is demonstrated by the fact that, having operated for fewer than three months, it asserts that it will be compelled begin firing employees if it cannot continue to enroll new Lifeline customers and is compelled to rely to any degree whatever upon revenues from non-Lifeline customers won from other wireless carriers. Petition, ¶12. In any case, it has apparently made no attempt to sell wireless services to non-Lifeline customers.

³ As noted above, American Broadband has recently been the subject of enforcement proceedings by the FCC's Consumer & Governmental Affairs Bureau.

As noted above, what is completely lacking from American Broadband's Petition is even the barest assertion that the Company made the slightest attempt to viably offer wireless services to non-Lifeline customers or that American Broadband established its business to rely upon anything other than Lifeline revenues. As of July 10, 2014 Staff was unable to find any advertising for its wireless non-Lifeline services on its website (American Broadband's Amended Petition indicated that its non-Lifeline plans could be found at <http://www.ambt.net/home-solutions/telephone.aspx>) (accessed July 10, 2014). Indeed, if one is to rely upon the "FAQ" section of American Broadband's website, American Broadband has made no such efforts; the following colloquy is revealing, not to say dispositive:

Q. Can you bundle telephone, internet and DISH Network? What about cell phone?

Yes. We are proud to provide our customers with the ability to bundle together their telephone, internet and DISH Network television services. We are not a cell phone company and do not offer cell phone service.

<http://www.ambt.net/support/faq.aspx> (accessed July 10, 2014) (emphasis added). A true and correct copy of this webpage is attached as Exhibit 1 hereto and incorporated by this reference herein.

In other words, slightly over three months⁴ after it began offering wireless Lifeline service, American Broadband did not offer, and appears never to have

⁴ Or four months, if one chooses to believe the evidence that American Broadband collected Lifeline subsidies for March 2014 rather than the company's representation that it began providing wireless Lifeline service on April 1, 2014.

offered, wireless non-Lifeline service. This suggests that the “Morton’s Fork”⁵ in which the company ostensibly finds itself is a conundrum entirely of its own making.

In other words, American Broadband provides nothing but a bare assertion regarding the alleged need to lay off five of its employees; moreover, it is reasonable to assume that these employees might be utilized in building the de minimis wireless non-Lifeline business that American Broadband committed to build. In particular, American Broadband does not even suggest that it built a business model around providing wireless service in Illinois and not a business model designed around solely providing wireless Lifeline service. American Broadband’s Petition is utterly devoid of any facts that would indicate that it made any attempt, let alone a reasonable attempt, to comply with the Commission’s Order.

American Broadband attempts to justify its waiver request by claiming that it will violate federal rules if it does not offer service in its ETC designation area. Notably, there has been no change in relevant state or federal rules in the five-months since American Broadband stipulated to a condition that would require it to cease enrolling new customers if it failed to win a de minimis number of non-Lifeline wireless customers. American Broadband asserts that the fact that it

⁵ The use of the term “Morton’s Fork” is perhaps ill-considered, deriving as it does from a logical fallacy intentionally invented by the then-Lord Chancellor of England, John Morton. Charged with extracting the maximum in taxes from King Henry VII’s subjects, he determined that: “[i]f [a] subject is seen to live frugally, ... because he is clearly a money saver of great ability, he can afford to give generously to the King. If, however, the subject lives a life of great extravagance, ... he, too, can afford to give largely, the proof of his opulence being evident in his expenditure.”

might not be able to comply with the Commission's condition preventing overreliance on Lifeline revenues somehow took it by surprise. Petition, ¶11.

Regrettably, it appears from American Broadband's position that it never considered that it might have to comply with its commitment and that it never intended to comply if it was required to do so. It is difficult to characterize this as anything but a subterfuge worked upon the Commission.

American Broadband's argument that it will violate federal rules if it fails to offer Lifeline service throughout its ETC area highlights another defect in American Broadband's ETC compliance. American Broadband was designated an ETC on February 5, 2014. American Broadband, however, asserts that it did not begin to provide Lifeline until April 1, 2014. American Broadband fails to explain why, if it believes failing to provide service throughout its ETC service area is a violation of federal rules, failing to provide Lifeline service in its ETC service area between its designation on February 5, 2014 and April 1, 2014 did not violate federal rules.

Staff agrees that American Broadband, as an ETC, is required by federal law to offer its Lifeline service throughout its designated ETC service area. It may only do so, however, if it is designated as an ETC by this Commission and meets the requirements and conditions of designation imposed by the Commission. The Commission is authorized, through ETC designation proceedings, to establish conditions under which ETCs may or may not enroll customers, as the FCC's own actions in this regard demonstrate. For example, the FCC has imposed ETC designation conditions that prevent carriers from

enrolling customers if they do not have employees that have completed certain Lifeline enrollment training programs. *Order*, ¶¶2,3,28, In the Matter of Federal-State Joint Board on Universal Service: i-wireless, LLC Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia, FCC DA 12-934, WC Docket No. 09-197 (Adopted and Released June 13, 2012); see also *i-wireless, LLC: Amended Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia* at 28-29, In the Matter of Federal-State Joint Board on Universal Service: i-wireless, LLC Petition for Limited Designation as an Eligible Telecommunications Carrier in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, North Carolina, New York, Tennessee, the Commonwealth of Virginia, and the District of Columbia, FCC DA 12-934, WC Docket No. 09-197 (filed April 2, 2012). As this FCC decision shows, it is well within a State Commission's authority to prevent ETCs from enrolling new customers if they are not meeting conditions established to safeguard the public.

The non-Lifeline wireless threshold with which American Broadband is required to comply is an important requirement designed to ensure American Broadband is financially capable of providing service and, thus, less likely to commit waste, fraud, or abuse with respect to the Lifeline program. In requiring

the showing of its financial and technical capability to provide services for which an applicant seeks designation as a Lifeline-only ETC, the FCC cited the growth in the number of ETCs as well as the Indiana Commission's assertion that "companies that have made a business case to serve a certain market in a state prior to receiving Lifeline subsidies may be less inclined to risk being cited for non-compliance with the program." Lifeline Reform Order, ¶387 and fn. 1010; see also Comments of Indiana Utility Regulatory Commission regarding the Lifeline and Link Up NPRM at 15-16, WC Docket No. 11-42, CC Docket No. 96-45, WC Docket No. 03-109 (April 21, 2011). The FCC made favorable reference to T-Mobile's assertion that "Lifeline ETC applicants should be required to make showings of financial and technical capability to provide the supported services (including consideration of whether the carrier offers services in addition to Lifeline service) in order to be designated as Lifeline ETCs" to ensure that Lifeline services are provided by carriers with sufficient incentives to comply with all applicable rules. Lifeline Reform Order, ¶388 and fn. 1013. Therefore, by imposing a financial and technical capability requirement on carriers seeking designation as Lifeline-only ETCs, the FCC clearly intended to strengthen protections against waste, fraud and abuse by filtering out carriers that have not made a business case and are therefore more likely to commit waste, fraud and abuse of the federal low-income program. The Commission should not waive American Broadband's binding commitments, since these commitments are designed to ensure that the company continues to be financially and technically

viable without incentives to commit waste, fraud, and abuse of the Lifeline program.

In making its determinations, the Commission should consider that there are multiple alternative wireless ETC providers offering Lifeline service in American Broadband's designated ETC area including those such as TracFone, PlatinumTel and YourTel that are designated as ETCs throughout Illinois. Any advantages American Broadband alleges its program to have should not excuse American Broadband's failure to comply with the conditions the Commission imposed upon it less than five months ago, particularly conditions designed to ensure that American Broadband continues to be financially and technically viable without incentives to commit waste, fraud, and abuse of the Lifeline program. Additionally, the commitments to which American Broadband as conditions of its ETC designation do not require American Broadband to terminate its Lifeline service to its existing customers. Therefore, the services of these customers should not be interrupted while American Broadband takes steps that will remedy its technical and financial situation and allow it to resume enrolling new Lifeline customers.

Furthermore, American Broadband requests a permanent waiver of the conditions, after being subject to them in any meaningful way for less than four months, during which time it apparently made no attempt to sell wireless service to non-Lifeline customers. If the Commission is inclined to grant it any sort of a waiver, it should be temporary and of short duration, such as will enable it to belatedly commence its attempts to build a non-Lifeline customer base.

WHEREFORE, the Staff requests that the Commission deny the Petition in its entirety. In the alternative, Staff requests that any waiver granted should be temporary and of short duration, such as will enable American Broadband to belatedly commence its attempts to build a non-Lifeline customer base.

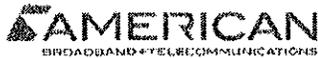
Respectfully submitted,

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Dated: July 23, 2014


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FAQ



FAQ

For the quickest answer to your questions, please see our list of frequently asked questions below. Simply click on the questions of interest to you for answers and/or suggestions.

What is the Customer Service phone number?

What are your Customer Service hours?

What number should I call if I have a disruption in phone service for a repair, not during normal hours?

Are you sure all my services will stay the same way it is with Frontier/Verizon as I was told by the Sales Department?

Why did I get a disconnection letter stating my service was to be terminated and that you have attempted to call, but no attempts have been made?

Why am I getting billed from my old provider?

Why was I not given a confirmation letter and information for what I agreed to during the conversion?

Why does the automated system not take my payment?

What are your terms for late fees and long distance service suspension?

Why am I not able to change the number of rings for VoiceMail, and why do I not have any indication that there is a message?

How to check a NID?

Where can I pay my bill?

Do you offer Internet service?

Why is the first bill \$10 more than I was told it would be?

What is the weekend repair telephone number?

Can you bundle telephone, internet and DISH Network? What about Cell Phone?

Yes. We are proud to provide our customers with the ability to bundle together their telephone, internet and DISH Network television services. We are not a cell phone company and do not offer cell phone service.

Do I get charged for a repair call?

What are your plans and prices?

When do you charge a late fee, and how much is it?

Do you have a walk in payment center?

EXHIBIT 1

- Is there a charge to take payments over the phone?
- Will someone call to let me know the service has been activated?
- How do I know if I qualify for Lifeline?
- If I am suspended, how much is the restoral fee? How long until service is restored?
- Can I receive DSL service through American Broadband & Telecommunications?
- What happens if I cancel my DSL service?
- Do you have a resource that customers can refer to for additional information?
- What are the Terms and Conditions of my Wireless Lifeline services?
- What are the Terms and Conditions of AB&T's FCC Compliance plan for Wireless Lifeline Service?

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