



## **PARTIES**

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Chief Staff Counsel as authorized by Commission Rule 20 CSR 4240-2.070(1).

3. Respondent American Broadband and Telecommunications Company d/b/a American Assistance, is a Delaware company incorporated in 2007 and with a legal corporate existence as of 2012.<sup>2</sup> Its registered agent is listed as the Missouri Secretary of State's office, although at registration it was listed as CT Corporation System, 120 South Central Avenue, Clayton, MO 63105. Its registered office is 1 Seagate, Ste. 600, Toledo, OH 43699. Respondent was granted status as an ETC by the Commission on July 25, 2014, in Case No. RA-2014-0225.

## **JURISDICTION**

4. 47 U.S.C. 214(e)(2) authorizes a state commission to designate a common carrier as an ETC if the common carrier meets the requirements of 47 U.S.C. 214(e)(1).<sup>3</sup> 47 U.S.C. 254(f) states a state may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.

5. On information and belief, the Respondent is an ETC pursuant to Missouri Code of State Regulations provision 20 CSR 4240-31.016 and is subject to 20 CSR 4240-

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<sup>2</sup> American Assistance was administratively dissolved or revoked as of June 10, 2014, the same date as the filing of Staff's Recommendation in RA-2014-0225, due to the Company's failure to file a correct and current annual report pursuant to the requirements of Section 351.484 and/or 351.598, RSMo, with the Missouri Secretary of State.

<sup>3</sup> States also have the authority to revoke ETC designation. FCC Report and Order and Further Notice of Proposed Rulemaking; In the Matter of Lifeline and Link Up Reform and Modernization et al; WC Docket No. 11-42; FCC 12-11; released February 6, 2012; ¶299.

31.015. Federal code provision 47 C.F.R. §54.201 defines an ETC and provides that a state commission shall designate ETCs for specific service areas.<sup>4</sup>

6. Section 386.390.1, RSMo, authorizes the Commission to hear and determine complaints:

Complaint may be made by the commission of its own motion, or by the public counsel or any corporation or person, chamber of commerce, board of trade, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order or decision of the commission . . . .

7. The Commission has by rule, authorized the Staff Counsel's Office to bring complaints on behalf of the Staff: "A complaint may also be filed by . . . the commission staff through the staff counsel . . . ."

### **AUTHORITY**

8. Code of Federal Regulations (CFR) §54.417(a) requires an ETC to maintain records that document its compliance with all FCC and state requirements for Lifeline.

9. CFR §54.409 outlines the consumer qualifications to be eligible to receive federal Lifeline funding, which includes a requirement that a consumer's household income be at or below 135% of the Federal Poverty Guidelines for a household of that size; or the consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from certain federal assistance programs: Medicaid<sup>5</sup>,

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<sup>4</sup> The federal provision continues to say that an ETC is not required to use facilities located within the relevant service area so long as their facilities provide services within the service area. The Respondent does provide such services in the service area for which the Missouri Public Service Commission has designated it an ETC.

<sup>5</sup> The Medicaid program in Missouri is called Missouri Health Net.

Supplemental Nutrition Assistance Program, Supplemental Security Income, Federal Public Housing Assistance or Veterans and Survivors Pension Benefit.

10. C.F.R. §54.410 outlines the requirements of ETCs to have policies and procedures in place to determine the eligibility of those subscribing for Lifeline. It also includes a specific provision under subsection (d)(3) to use a form that asks a subscriber to certify they understand specific information including that all information on the form is true and correct to the best of their knowledge and that providing false information on the form can result in de-enrollment.

11. 20 CSR 4240-31.014 outlines the consumer qualifications to be eligible to receive state Lifeline and Disabled program support through the Missouri Universal Service Fund.

12. Commission rule 20 CSR 4240-31.015 governs the requirements for ETCs, including a requirement to notify the Commission's Telecommunications Department of any finding by a state or federal authority that the company has violated universal service fund program requirements.

13. Commission rule 20 CSR 4240-31.015 was modified December 30, 2018. The version of the Commission rule in effect at the time the FCC issued its NAL against American Assistance included a provision to notify the Commission's Telecommunication Department of any proceeding initiated by a state or federal regulatory authority alleging an ETC or any person/entity involved in owning/managing the ETC was violating state/federal universal service fund requirements.<sup>6</sup>

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<sup>6</sup> Rescinded rule 4 CSR 240-31.130(2)(J).

## **BACKGROUND**

14. Staff began its investigation on November 28, 2018, when the Commission opened Docket No. LO-2019-0154 to permit it to investigate American Assistance's practices with its Missouri subscribers related to the Lifeline program in response to the NAL issued by the FCC. The FCC's NAL proposed a \$63,463,500 forfeiture penalty against American Assistance for willfully and repeatedly violating the FCC's rules governing the federal Lifeline Program.

15. Attachment A presents a timeline of events of the company's total federal Lifeline support received since 2014. The attachment shows how Lifeline support significantly grew and peaked in August 2016, then began to decline in August 2016, which is also when the FCC initiated its investigation. The FCC's investigation scrutinized current American Assistance subscribers during the August through December 2016 time period. The timeline shows the Company made claims of correcting problems. The FCC issued its Notice of Apparent Liability in October 2018 citing numerous compliance issues with thousands of the Company's customers resulting in the FCC's intent to fine the Company over \$63 million.<sup>7</sup>

16. Attachment A shows the timing of Staff's investigation. In general, Staff's investigation specifically focused on the Company's Missouri Lifeline subscribers as of late 2018 which consisted of 376 Missouri Lifeline subscribers. Staff issued two reports in Docket No. LO-2019-0154. Staff's initial report was filed May 31, 2019 and Staff's second report was filed September 9, 2019.

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<sup>7</sup> The types of infractions and the basis for the penalty is summarized in Attachment A's, footnote 1.

17. Staff's investigation of American Assistance's Missouri activities led to the following concerns regarding the Company's compliance with Lifeline and ETC requirements:

- The Company failed to provide notice of compliance issues, which violates current Commission rule 20 CSR 4240-31.015(C), and rescinded rule 4 CSR 240-31.130(2)(J).<sup>8</sup>
- The Company failed to readily produce enrollment documentation, which violates C.F.R. §54.417(a), as well as rescinded rule 4 CSR 240-31.130(2)(L).<sup>9</sup>
- The Company enrolled many subscribers with non-compliant proof of eligibility, also in violation of C.F.R. §54.417(a), as well as rescinded rules 4 CSR 240-31.120(3)(a) and 4 CSR 240-31.120(5)(c)(4).<sup>10</sup>
- The Company failed to ensure subscribers sign the enrollment form, in violation of C.F.R. §54.417(a).<sup>11</sup>
- The Company failed to reflect when a Company official saw an applicant's proof of eligibility, in violation of rescinded rules 4 CSR 240-31.120(5)(c)(4)<sup>12</sup>
- The Company failed to use a compliant enrollment form, which violates §54.410(d) as well as rescinded rule 4 CSR 240-31.120(5)<sup>13</sup>

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<sup>8</sup> Rescinded rule 4 CSR 240-31.130(2)(J) was in effect April 30, 2014 through December 29, 2018. See Staff's May 31, 2019 report, page 5.

<sup>9</sup> Rescinded rule 4 CSR 240-31.130(2)(L) was in effect April 30, 2014 through December 29, 2018. See Staff's September 9, 2019 report, page 2.

<sup>10</sup> Rescinded rules 4 CSR 240-31.120(3)(A) and 4 CSR 240-31.120(5)(C)4 were in effect April 30, 2014 through December 29, 2018. Acceptable proof of eligibility guidelines are posted on USAC's website. See Staff's September 9, 2019 report pages 2-4.

<sup>11</sup> See Staff's September 9, 2019 report, page 4.

<sup>12</sup> Rescinded rule 4 CSR 240-31.120(5)(C)4 was in effect April 30, 2014 through December 29, 2018. See Staff's September 9, 2019 report, page 4.

<sup>13</sup> Rescinded rule 4 CSR 240-31.120(5) was in effect April 30, 2014 through December 29, 2018. See Staff's September 9, 2019 report, page 5.

- The Company provided false information on enrollment forms, which violates §54.410(d)(3)(vi) and (vii), as well as rescinded rule 4 CSR 240-31.130(2)(O).<sup>14</sup>
- The Company failed to do business using the name under which the Commission granted ETC designation, in violation of Commission rule 20 CSR 4240-31.015(1)(A) and rescinded rule 4 CSR 240-31.130(2)(G).<sup>15</sup>

18. Staff's findings identified in its September 2019 report filed in Docket No. LO-2019-0154, suggest American Assistance never initiated appropriate proactive action on its own to ensure proper enrollment documentation was being maintained for all existing subscribers. Based on Staff's identification of American Assistance's failure to recognize enrollment documentation issues for many Missouri Lifeline subscribers, Staff has concluded that the Company has not taken sufficient corrective actions as represented to the FCC.

19. The Company's response to Staff's September 2019 report was to contact those subscribers flagged by Staff as having insufficient proof of eligibility. The Company ultimately claimed 12 out of 59 subscribers had recently provided acceptable proof of eligibility. The Company's effort is suspect because the Universal Service Administrative Company (USAC), which is charged with verifying subscribers' eligibility for Lifeline funding, shortly thereafter de-enrolled 4 of the 12 subscribers for failing to produce acceptable proof of eligibility in the national verifier's reverification process.

20. American Assistance initially informed Staff that it planned to retain all previously-received support amounts if a non-compliant subscriber had de-enrolled

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<sup>14</sup> Rescinded rule 4 CSR 240-31.130(2)(O) was in effect April 30, 2014 through December 29, 2018. See Staff's September 9, 2019 report, page 5.

<sup>15</sup> Rescinded rule 4 CSR 240-31.130(2)(G) was in effect April 30, 2014 through December 29, 2018. See Staff's September 9, 2019 report, pages 5-6.

during the ordinary course of operations or if the non-compliant subscriber ultimately produced acceptable proof. In response to Staff's questions about retaining such support, the Company later informed Staff it had decided to refund that support back to the federal USF. The Company reported to Staff on January 29, 2020, that it had refunded all of the funds in dispute. However overall, and to the best of Staff's knowledge, American Assistance has continued to retain most of the Lifeline support received for its Missouri Lifeline subscribers. Staff estimates, based on the information available, that 14.38% of the total funding received for Lifeline in Missouri over American Assistance's participation in the Lifeline program was refunded.

21. The FCC reported that it was considering revoking Respondent's federal ETC status.

22. Upon a review of the applicable federal and state provisions governing the Lifeline program and funding, as well as the requirements to qualify for ETC status, Staff recommends that American Assistance has committed violations of these provisions and, therefore, should have its ETC status revoked in Missouri.

23. Staff in its review of the public interest standard, which is embedded in the authority delegated to designate additional ETCs in a service area, also inherently includes and extends to the authority to revoke an ETC's status when the designation is no longer in the public interest. The Commission's rules, cited above, specifically provide for a complaint seeking revocation of such a designation.<sup>16</sup>

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<sup>16</sup> 47 USC §214 (e), Provision of universal service...(2) **Designation of eligible telecommunications carriers** A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and **consistent with the public interest, convenience, and necessity**, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as

## REQUEST FOR RELIEF

24. Staff now asks this Commission to issue an order revoking American Broadband and Telecommunications Company d/b/a American Assistance's eligible telecommunications carrier status pursuant to 20 CSR 4240-31.015 and the inherent public interest standard embedded in the provision and 47 USC §214 (e).

**WHEREFORE**, Staff prays that the Commission will order American Broadband and Telecommunications Company d/b/a American Assistance to show cause why its ETC designation should not be immediately revoked; to continue to serve its Missouri customers until they can be migrated to another ETC, as necessary; and, if it finds proper, issue an order revoking American Broadband and Telecommunications Company d/b/a American Assistance's eligible telecommunications carrier status pursuant to 20 CSR 4240-31.015 and for its violation of C.F.R. §54.417(a) and 20 CSR 4240-31.015; and grant such other and further relief as the Commission considers just in the circumstances.

Respectively submitted,

**/s/ Whitney Payne**

Whitney Payne

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each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest. [emphasis added] .

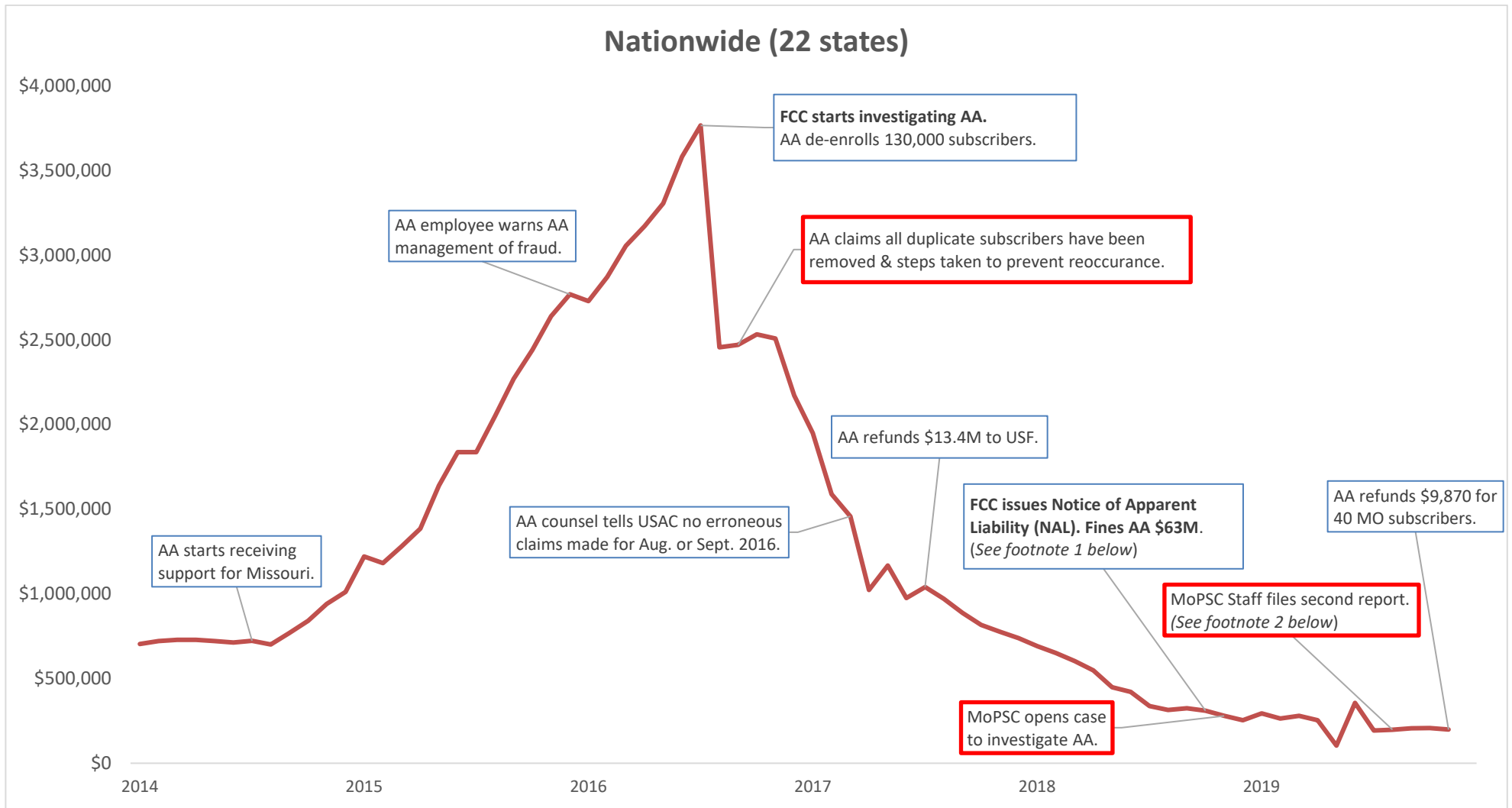
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing was served by electronic mail, or First Class United States Postal Mail, postage prepaid, on this 9<sup>th</sup> day of March, 2020, to all counsel of record.

**/s/Whitney Payne**

# American Assistance (AA) Monthly Lifeline Support

Total amount of Lifeline support received by AA to date: **\$97 million** (\$1 million is for AA Missouri subscribers)



**Time periods AA subscriber lists were focus of investigation:** Aug. - Dec. 2016 (FCC)<sup>1</sup>

Late 2018 (MoPSC Staff)<sup>2</sup>

<sup>1</sup> **FCC's NAL:** Among AA's list of subscribers for August thru December 2016 time period FCC Staff found 18,894 subscribers who were deceased, had manipulated addresses, or were duplicate subscribers. In addition FCC Staff found 32,032 subscribers whom AA failed to de-enroll for non-usage or had transferred their benefits to another carrier. Among these 50,926 subscribers with issues the FCC determined 8,617 accounts appeared more than once resulting in 42,309 improper accounts. The FCC's \$63,463,500 fine is based on (42,309 \* \$1,000) + an upward adjustment of 50% of this amount for egregious misconduct. To date AA has not paid any of the fine.

<sup>2</sup> **MoPSC Staff second report:** Among Missouri subscribers listed by AA in late 2018 MoPSC Staff found enrollment documentation issues for 50% of the subscribers.