

program subscribers as Missouri subscribers. Staff reviewed American's response to the FCC's NAL and describes its findings in the Memo. Staff identifies in its Memo several instances of American's failure to follow both federal and state reporting requirements consistent with participation in the Lifeline program as well as requirements specifically related to its subscribers.

3. Staff makes no formal recommendations to the Commission at this time and notes that any actions taken against American related its investigation will need to be taken in a new docket for a contested case as this matter is only an investigatory docket. Staff asks the Commission to permit it to continue its investigation and file a subsequent progress report at a future date.

WHEREFORE, Staff prays that the Commission will accept this *Progress Report*, permit Staff to continue its investigation and file a subsequent progress report(s); and grant such other and further relief as is just in the circumstances.

Respectfully submitted,

/s/ Whitney Payne

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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 31st day of May, 2019, to all counsel of record.

/s/ Whitney Payne

STAFF MEMORANDUM

TO: Missouri Public Service Commission, Official Case File
Case No. LO-2019-0154

FROM: John Van Eschen
Telecommunications Department

DATE: May 31, 2019

SUBJECT: Progress Report

The Missouri Public Service Commission (Commission) opened this case on November 28, 2018, to facilitate Staff's investigation into the Lifeline program practices of American Broadband and Telecommunications Company d/b/a American Assistance (American Assistance or Company). The purpose of this memo is to comply with the Commission's directive to file a progress report regarding its investigation. As will be discussed in this memo the Company can be considered non-compliant in several areas; however, Staff's investigation is on-going and will be updated in future progress reports.

Purpose of Staff's Investigation

American Assistance is a wireless carrier with eligible telecommunications carrier (ETC) status. The Missouri Commission granted ETC status to the Company in July 2014 specifically enabling the Company to participate in the Lifeline program in Missouri.¹ On October 25, 2018, the Federal Communications Commission (FCC) proposed a \$63,463,500 forfeiture penalty against American Assistance for "...willfully and repeatedly engaging in conduct that violated the Commission's rules governing the federal Lifeline program."² Staff's Motion to open this investigatory docket asked the Commission to open a docket to permit Staff to discern if the Company has violated any Missouri statutes, Missouri Commission rules, federal statutes or federal rules applicable to Lifeline service in Missouri. According to the Order Opening Investigation this case is only a fact-finding investigation and is not a contested case.

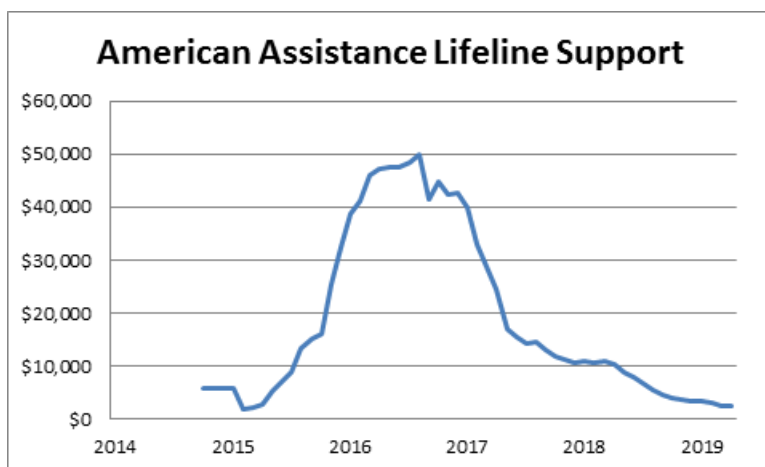
¹ Order Granting Amended Application; Case No. RA-2014-0225 Application of American Broadband and Telecommunications Company for Designation as an Eligible Telecommunications Carrier for the Purpose of Offering Lifeline Service on a Wireless Basis; effective July 25, 2014.

² Notice of Apparent Liability for Forfeiture and Order; File No. EB-IHD-17-00023554; NAL/Acct. No.: 201932080001; In the Matter of American Broadband & Telecommunications Company Jeffrey S. Ansted; FCC 18-144; released October 24, 2018; ¶1.

Overview of American Assistance

American Assistance is a Delaware corporation headquartered in Toledo, Ohio. Jeffrey Ansted is the Company's President and sole shareholder. The Company is considered a wireless reseller providing wireless service by purchasing services from other facility-based wireless carriers. The Company offers "free" Lifeline service where a Lifeline subscriber is given a free wireless phone with no monthly fee.³ The Company is currently receiving federal Lifeline disbursements for Lifeline service provided in 22 states.⁴ The Company began receiving Lifeline support in May 2009 and disbursements totaled \$85.7 million through February 2019.⁵

American Assistance began receiving federal Lifeline disbursements for Missouri Lifeline subscribers in October 2014. The Company's federal Lifeline support for Missouri rapidly grew and peaked in August 2016 and has since declined as shown in the graph below:



The Company received \$50,006 in federal Lifeline support for Missouri in August 2016 which translates into approximately 5,406 Missouri Lifeline subscribers for the Company. During August 2016 the Company received more money for its Lifeline operations in 8 other states than it received in Missouri for its Missouri Lifeline operations.⁶ In Missouri 61 companies received Lifeline support in August 2016 whereby American Assistance's Missouri Lifeline support ranked 8th

³ American Assistance response to Staff Data Request No. 23. The Company offers 1,000 voice minutes and 1GB of data each month along with an Android phone and unlimited text messages for no monthly fee.

⁴ USAC January 2019 funding disbursements to American Broadband and Telecommunications Company. The 22 states are: AR, AZ, CA, CO, GA, HI, IL, IN, KY, MD, MI, MN, MO, NV, OH, PA, PR, RI, SC, UT, WI, and WV.

⁵ This number is derived from FCC NAL ¶13 for the May 2009 through March 2018 time period and USAC quarterly reports for the April 2018 through February 2019 time period.

⁶ According to USAC's Tool Disbursement at <https://www.usac.org/li/tools/disbursements/results.aspx> the 8 states where the Company received more Lifeline support than Missouri are MI, IL, OH, IN, PR, KY, PA, and SC. For comparative purposes the Company received over \$1.6 million in Lifeline disbursements for MI for the month of August 2016.

highest among the 61 Missouri companies..⁷ Most recently the company received in April 2019 support amounting to \$2,498 which corresponds to 270 Missouri subscribers.

FCC Action

The FCC is proposing to apply the largest penalty ever proposed for federal USF rule violations. The FCC claims the Company has repeatedly and systematically violated Lifeline program rules. The FCC's action against American Assistance is formally labeled a Notice of Apparent Liability for Forfeiture (FCC NAL). The FCC's press release describes this type of action as containing "... only allegations that advise a party on how it has apparently violated the law and may set forth a proposed monetary penalty. The Commission may not impose a greater monetary penalty in this action than the amount proposed in the NAL. Neither the allegations nor the proposed sanctions in the NAL are final Commission actions. The party will be given an opportunity to respond and the Commission will consider the party's submission of evidence and legal arguments before acting further to resolve the matter..."⁸ The FCC's NAL states if the FCC subsequently discovers the company is violating other Lifeline rules then the FCC's NAL does not foreclose the FCC from taking additional enforcement actions and imposing additional forfeitures.⁹

The FCC observed compliance issues involving 50,926 of American Assistance's accounts whereby the FCC cites 18,894 accounts with enrollment violations and 32,032 accounts with de-enrollment violations. The types of enrollment and de-enrollment violations are briefly described below:

Enrollment violations:

- Creating duplicate Lifeline accounts by manipulating names, date of births and social security numbers.
- Enrolling deceased individuals.
- Improper claims from reusing Supplemental Nutrition Assistance Program (food stamps) cards.

De-enrollment violations:

- Failed to de-enroll subscribers who did not use their Lifeline service for 60 consecutive days.
- Failed to de-enroll subscribers who transferred their Lifeline benefit to another carrier.
- Failed to de-enroll subscribers when American Assistance records indicate should subscribers should have been de-enrolled.

⁷ TracFone, QLink Wireless, Budget Prepay, Telrite, Virgin Mobile, Assist Wireless, and AT&T received higher Lifeline disbursements amounts for Missouri than American Assistance during August 2016.

⁸ FCC Press Release "FCC Proposes \$63 Million Fine for Lifeline Violations" issued October 23, 2018.

⁹ FCC NAL ¶3 and ¶178.

The FCC's NAL does not breakdown the 42,309 ineligible subscribers by state but Staff has discovered that some of the violations involved Missouri subscribers. For example Table 8 in the NAL shows Missouri had 8 out of 1,222 ineligible non-usage subscribers claimed on the Company's Form 497 subscriber list for August 2016.¹⁰ Another example involves Table 9 showing how the Company continued to seek Lifeline benefits after subscribers were transferred to another carrier.¹¹ Table 9 reflects this type of de-enrollment violation over the August 2016 to December 2016 time period involving a total of 3,708 subscribers of which Missouri had 7 claims. The time period associated with Table 9 is noteworthy because these violations occurred after the Company claimed to have corrected all issues related to benefit transfers.¹²

The FCC's NAL is proposing a total penalty of \$63,465,500. This amount is calculated based on the FCC finding that the Company was receiving Lifeline support for 42,309 ineligible subscribers.¹³ The FCC is applying a \$1,000 fine for each ineligible subscriber. This resulting \$42,309,000 amount is further increased by 50% or \$21,154,500 for egregious misconduct. In addition to the penalty, the FCC is also considering revoking the company's ETC status.¹⁴

It should be noted the FCC is proposing to hold liable both the company as well as Jeffrey Ansted jointly for the \$63,465,500 penalty. According to the FCC, Mr. Ansted maintained exclusive control over American Assistance and its business matters.¹⁵ Mr. Ansted's use of Lifeline funds to support a lavish lifestyle conflicts with FCC rules requiring an ETC to pass through the full amount of support to the qualifying low-income consumers and only use the support for its intended use. Mr. Ansted instead used Lifeline funds to buy a \$1.3 condominium in Florida, a \$250,000 convertible Ferrari 458 Spider, country club and yacht club memberships, and an \$8 million jet.¹⁶ Based on these considerations the FCC has found it's proper to hold American Assistance and its owner jointly liable for the forfeiture penalty.

American Assistance's response to the FCC's NAL

American Assistance formally responded to the FCC's NAL on February 8, 2019. In general, the Company's response primarily makes legal arguments against the overall size of the penalty amount and Jeffrey Ansted's liability. A procedural schedule and/or timeline for resolving the FCC's NAL has not been established. The Company has subsequently met with FCC and Department of Justice personnel to exchange information and discuss resolution.¹⁷

¹⁰ FCC NAL page 36.

¹¹ FCC NAL page 40-41.

¹² FCC NAL; ¶124.

¹³ FCC NAL footnote 424. This footnote explains the 50,926 was reduced by 8,617 to eliminate Lifeline accounts appearing more than once to arrive at the 42,309 number used for penalty purposes.

¹⁴ FCC NAL ¶179.

¹⁵ FCC NAL ¶170.

¹⁶ FCC NAL ¶134-140.

¹⁷ American Assistance response to Staff Data Request No. 17.

Status of Staff Investigation

American Assistance Failed to Provide Notice of Compliance Issues

Staff proposes that American Assistance violated Missouri Commission rules by failing to provide any notification of the FCC's proceedings or audits. Missouri Commission rule 4 CSR 240-31.010(C) requires an ETC to provide notification "...of any finding by a state or federal authority that the Company has violated universal service fund program requirements." This rule went into effect on December 30, 2018 but versions of this rule in effect prior to this date were broader in scope in that Missouri Commission notification was required of any proceeding initiated by a state or federal regulatory authority alleging the ETC or any person or entity involved in owning or managing the ETC was violating any state or federal universal service program requirements as well as any allegations of fraud, tax evasion or the commitment of a felony.¹⁸ In addition, prior rules also required copies of audit reports conducted by the federal USF administrator or by an independent auditor as contemplated by 47 CFR 54.420.¹⁹ These prior versions of the rule were in effect at the time the FCC issued the NAL to American Assistance. In Staff's opinion, the Company should have provided notification regarding the FCC's NAL. Staff cannot yet make a recommendation as to whether the Company should be considered noncompliant in notifying the Missouri Commission about other matters as required by Missouri Commission rules in effect at the time because it has not yet completed its investigation.

American Assistance Failed to Comply with Reporting Requirements

Missouri and federal rules require Lifeline providers to annually file completed copies of two reports. One report is referred to as the annual filing requirement involving the filing of Form 481 and a company officer's certificate.²⁰ The other report is Form 555 which provides the results of a company's efforts to annually certify the continued eligibility of existing subscribers.²¹ American Assistance has repeatedly failed to file these reports or alternatively it filed the reports late. Specifically the Company's reporting compliance failures include:

- Failure to file the annual filing requirement in 2018.
- Failure to file the annual filing requirement in a timely manner in 2016.
- Failure to file Form 555 reports in a timely manner in 2015 and 2016.

¹⁸ Rescinded rule 4 CSR 240-31.130(2)(J).

¹⁹ Rescinded rule 4 CSR 240-31.130(2)(K).

²⁰ The annual filing requirement is currently identified in Missouri rule 4 CSR 240-31.015(3) and FCC rule §54.422.

²¹ A Lifeline provider must annually recertify the continued eligibility of Lifeline subscribers per §54.410(f). FCC rule §54.416(b) requires a Lifeline provider to annually provide results of their re-certification efforts with state commissions where the state designated the company as an ETC.

Ongoing analysis of Company documentation

Staff reviewed a list of the Company's current Missouri Lifeline subscribers.²² Staff selected eight subscribers for which it asked the Company to provide all supporting documentation associated with each subscriber.²³ In addition Staff looked at data maintained in the National Lifeline Accountability Database for these eight subscribers. Staff's preliminary analysis of documentation associated with solely these eight subscribers makes the following observations:

- The Company admits one of the selected subscribers failed to provide valid proof of eligibility.²⁴
- The Company failed to produce documentation that two beneficiaries served by the company at the same address were two independent households.²⁵
- In instances where a subscriber is transferring from another Lifeline provider to American Assistance the Company failed to provide any documentation affirming the benefit transfer.²⁶
- The Company failed to provide annual recertification documentation for three subscribers.²⁷
- The Company is noncompliant in using the name under which the Commission granted ETC designation.²⁸ For example the Company solely uses the name "American Broadband" on the enrollment forms reviewed by Staff.

These observations are limited to Staff's review of supporting documentation for only eight subscribers. If Staff solicited supporting documentation for all of the Company's subscribers then Staff anticipates this list of failures may grow and/or involve more consumers.

Listed below are some additional observations about the Company's documentation. These observations do not necessarily indicate a violation but rather may warrant further investigation:

- The heading listed on the Company's enrollment form is "Lifeline Self-Certification Form"

²² American Assistance provided this information in its response to Staff Data Request No. 3.

²³ American Assistance provided this information in its response to Staff Data Request No. 3.1.

²⁴ This customer was enrolled November 20, 2017 and subsequently recertified by the oCmpany as maintaining eligibility in 2018. American Assistance recently acknowledged the customer failed to provide valid proof of eligibility and has notified the customer to demonstrate eligibility within 30 days before it will terminate the customer's Lifeline service.

²⁵ The two beneficiaries shared the same last name. In addition NLAD information indicates one beneficiary was flagged as completing an independent economic housing filing.

²⁶ NLAD information codes two subscribers as "transfer" indicating the subscriber was transferred to the current ETC from another ETC. If true, then American Assistance is required to obtain specific consent to transfer Lifeline benefits from the other provider as described at <https://www.usac.org/li/tools/nlad/benefit-transfers.aspx> .

²⁷ NLAD identifies February 2019 anniversary dates for these three subscribers. Recertification is to be annually completed by a subscriber's anniversary date.

²⁸ This requirement is currently codified in Missouri rule 4 CSR 240-31.015(1)(A) which went into effect December 30, 2018; however, this same requirement was codified prior to this date in 4 CSR 240-31.130(2)(G).

- Signatures by the applicant and agent on enrollment forms are generally illegible. Listed below are two examples consisting of screenshots of two different enrollments:



- Documentation regarding recertifying an existing subscriber’s eligibility consists of long and difficult to understand audio recordings. In particular the recordings are difficult to ascertain the consumer’s responses.

Overall Staff continues to review the Company’s documentation.

Company continues to enroll subscribers

Staff’s investigation reveals the Company intends to participate in the Lifeline program in Missouri for the foreseeable future.²⁹ The Company presently continues to enroll new subscribers in Missouri. It’s unclear when the Company stopped using sales agents to enroll consumers in Missouri. Presumably the Company dropped using sales agents to help curb FCC concerns about the company’s agents.³⁰ The Company currently enrolls Missouri customers into the Lifeline program solely through web-based enrollments.³¹ New enrollment activity is somewhat erratic during the November 2017 through November 2018 time period but overall the Company is signing up fewer consumers.³² It should be noted as of March 2019 the individual Missouri Lifeline providers can no longer verify the eligibility of their new enrollees. Instead all enrollments are now routed through the National Verifier established by the FCC.³³

Continue to monitor federal proceeding

²⁹ American Assistance response to Staff Data Request No. 6.
³⁰ FCC NAL ¶37. The FCC states, “...Despite the Company’s claims that BeQuick was responsible for many of its enrollment issues, American Broadband apparently hired and retained agents who engaged in conduct designed to bypass Lifeline rules and procedures...”
³¹ American Assistance provided this information in its response to Staff Data Request No. 4.
³² American Assistance provided this information in its response to Staff Data Request No. 5.
³³ For more information about the National Verifier see <https://www.usac.org/li/tools/national-verifier/default.aspx> .

The Company has supplied copies of key pieces of evidence cited by the FCC's NAL as well as American Assistance's response to the NAL. In addition the Company has produced documents required to be retained and readily available from any ETC.³⁴ Staff is in the process of reviewing this information. It remains unclear when and if the federal proceeding will be resolved. No timeline has been established and no subsequent filings have been made since the date of the Company's response to the NAL. Wisconsin is the only other state besides Missouri to open up an investigation of American Assistance within the past year.³⁵

Future Commission Action

State commissions do have the authority to revoke a carrier's ETC designation. For example the FCC in discussing consequences of non-compliance specifically states, "...Finally, ETCs are subject to revocation of their ETC designation, by either the relevant state commission or this Commission, for failure to comply with program requirements."³⁶ Any punitive action to be considered by the Commission will need to be presented in a separate proceeding and not within the context of this investigatory docket. Staff's recommendation at this time is that the evidence collected so far in this investigatory docket may be sufficient to file a complaint; however, Staff prefers to more fully evaluate data request responses recently filed by the Company and to file a subsequent progress report for the Commission's review.

³⁴ The list of documents is derived from USAC's Documentation Retention Checklist for Lifeline providers as posted on USAC's website at <https://www.usac.org/res/documents/li/pdf/audit/Audit.pdf>.

³⁵ Wisconsin PSC Docket No. 133-TI-102 *Investigation into whether American Broadband and Telecommunications Company is Meeting the Requirements to Operate as an Eligible Telecommunications Carrier and into whether the Company has the Financial, Managerial and Technical Capability to Be Certified as a Competitive Local Exchange Carrier in Wisconsin.*

³⁶ 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.