

COMMONWEALTH OF PUERTO RICO  
PUERTO RICO TELECOMMUNICATIONS REGULATORY BOARD

IN RE \*  
UNIVERSAL SERVICE FUND \* CASE NO. JRT-2001-SU-0003  
LIFELINE / LINK UP \*  
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**RESOLUTION AND ORDER**

This Resolution and Order reconsiders the fines imposed on certain eligible telecommunications carriers (ETCs) in our Administrative Order and Resolution and Order of January 24, 2012, for failure to comply with reporting requirements established in Regulation No. 8093, Provisional Amendments to the Universal Service Regulation (Regulation 8093).<sup>1</sup>

**Background**

As we had previously stated, on January 24th this year we imposed fines on ETCs for failure to comply with reporting requirements related to the Lifeline program.

The Board imposed a fine of fifteen thousand dollars (\$15,000) to those ETCs that had not filed their December 2011 report by the date of the Order. However, the Board granted them a grace period until Wednesday, January 25, 2012, to submit said report. If the report was not received by then, the ETC would lose its right to claim reimbursement for December 2011, and reimbursements of other ETCs would be processed without their feedback. The only ETC to which this fine was applied was T-Mobile. The Board imposed a fine of ten thousand dollars (\$10,000) to those other ETCs that had submitted incomplete or inaccurate information, and an additional sanction of one thousand dollars per day, until the complete and/or corrected information was submitted by Friday, January 27, 2012.

On that occasion, we had advised that, in the future, in addition to similar or higher fines for failure to comply with the duty to file [reports] in a timely and accurate manner, the Board would not hesitate to revoke their designation as eligible to receive monies from the Universal Service Fund, or to revoke their certification to render telecommunications services in Puerto Rico, if they obstinately opted to continue violating reporting requirements.

As a result of the Administrative Order and Resolution and Order, ETCs filed motions for reconsideration, namely: Motion to Clarify, in Compliance with Order and to Request Extension of Time, by WorldNet Telecommunications, Inc., filed on January 26, 2012;

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<sup>1</sup> See, Section 14.10 of Regulation 8093.

Request for Reconsideration, by T-Mobile, dated February 7, 2012<sup>2</sup>; Request for Reconsideration of the Administrative Order and Resolution and Order of January 24, 2012, by Puerto Rico Telephone Company, Inc. and Puerto Rico Telephone Company, Inc., d/b/a Claro (PRT); Request for Reconsideration, by PR Wireless, d/b/a Open Mobile (Open Mobile); Motion for Clarification and/or Reconsideration of Administrative Order and Resolution and Order of January 24, 2012, by AT&T Mobility (AT&T); Motion Requesting Reconsideration, by TracFone Wireless (Tracfone); and Motion for Reconsideration, by SprintCom, Inc.(Sprint), all these filed on February 13, 2012.

In addition, ETCs requested a meeting with the Board, which took place on February 17, 2012, at our facilities. The Chairman of this Board, Sandra E. Torres López, Esq., and Associate Member, Mrs. Gloria Escudero Morales, attended. After discussing for several hours, the parties reached certain agreements,<sup>3</sup> among these, that ETCs would file their reports on time, in a complete and accurate manner, in order to begin populating the state database.<sup>4</sup> The Board would oversee compliance of the above until April 2012. In view of the above, the Board held in abeyance the fines imposed on January 24, 2012 until said date, when it would contemplate reconsidering them. Terms to appeal were also stayed until said date.

By this Resolution and Order we are evaluating the requests for reconsideration, which basically allege that the Administrative Order and Resolution and Order of January 24, 2012 is vague because it imposed fine categories without identifying to whom they were addressed; imposed unreasonable fines that are not in proportion with the alleged violation; imposed fines in violation of the due process of law ETCs are entitled to; granted a term to correct the reports that was too short. Likewise, ETCs argue that the order issued by the Federal Communications Commission, dated February 6, 2012, has an impact on Regulation 8093, and that an open proceeding to comment on the above-referred Regulation already exists.

PRTC also raises some arguments related to control codes, a matter that is moot, as provided in our Resolution and Order of April 19, 2012, and those fields related to the physical addresses of the Lifeline subsidy beneficiaries, alleging that it needs at least six (6) months to gather this information, indicating that its arguments on this matter would be exposed at length in its comments on Regulation 8093.

We have examined ETCs arguments and considered the filing pattern of each ETC and the quality and accuracy of the data being submitted, and are now ready to resolve.

## **Discussion**

As we have previously stated in several Resolution[s] and Orders, ETCs have been historically reluctant to comply with reporting requirements and to respond to the Board's

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<sup>2</sup> This motion for reconsideration was evaluated by Resolution and Order of March 7, 2012.

<sup>3</sup> See, our Resolution and Order of March 7, 2012.

<sup>4</sup> This database began operating in January 2012.

questioning about the different violation findings, as well. However, we recognize that this attitude has changed since the meeting held on February 17<sup>th</sup>, and the multiple meetings each ETC individually held with BlueWave Consulting, Inc., since then. The promptness, quality and accuracy of the data submitted have substantially improved.

In view of the above, this Board has decided to reconsider, and hereby sets aside the fines imposed on AT&T Mobility (Centennial), PRT and its wireless operation Claro, T-Mobile, Tracfone and WorldNet. Nevertheless, those fines imposed on Open Mobile and Sprint shall remain in effect, for the quality and accuracy of the data submitted leaves much to be desired, and Sprint did not even comply with essential format requirements applicable to the reports.

Section 13 of the Universal Service Regulation, Regulation No. 7795 (Regulation 7795), and our Orders of January 27<sup>th</sup>, July 13, 2011, January 24<sup>th</sup> and April 2, 2012, undoubtedly advised them that failure to comply with those obligations to file, and/or to file in an accurate and complete manner, **would result in administrative sanctions**, pursuant to Section 13(c) of Regulation 7795, which include, without limitation: (i) revoking the certification to render telecommunications services in Puerto Rico; (ii) revoking the designation of eligibility; and (iii) imposing daily fines and penalties up to twenty five thousand dollars per violation, as provided by Article II-7 of Act No. 213 of September 12, 1986, as amended, 27 L.P.R.A. § 267f(b)(1).<sup>5</sup>

We reiterate that ETCs must do their filings in a timely and accurate manner, and that we would not hesitate to revoke the eligibility designation of a carrier to receive monies from the Universal Service Fund, or to revoke its certification to render telecommunications services in Puerto Rico, if it obstinately decides to continue violating reporting requirements.

## **Order**

Pursuant to the extensive primary case law applicable to all telecommunications services, all persons rendering these services within the Commonwealth of Puerto Rico, and any person with a direct or indirect interest in said services or carriers, this Board RESOLVES AND ORDERS:

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<sup>5</sup> Section 13 **Sanctions**, subparagraph (b), provides:

Among the actions that could result in sanctions, without limitation, are the following: (i) failure to pay the Universal Service Fund contribution; (ii) falsification of documents, or providing false information in the application for designation of eligibility, or when submitting information relative to the amount to be contributed to the Universal Service Fund; (iii) failure to provide information required by the Board or the Administrator relative to this Regulation; (iv) **late or incomplete filing of reports or other information expressly required** and (v) committing fraud against the Universal Service Fund; and (vi) excess contributions recovery or late charges recovery in excess of what was paid. See, also, Act No. 242 of October 9, 2002, and Act No. 202 of December 14, 2007.

**The fines imposed on AT&T Mobility (Centennial), PRT and its wireless operation Claro, T-Mobile, Tracfone, and WorldNet, are hereby RECONSIDERED AND SET ASIDE.**

**The fines imposed on Open Mobile and Sprint SHALL REMAIN IN EFFECT. These carriers shall have ten (10) days from notice of this Resolution and Order to make their payments.**

**All eligible telecommunications carriers are HEREBY ORDERED to duly comply with Regulation 8093. Failure to comply with any of its provisions shall result in administrative sanctions, as provided by Section 13 of Regulation 7795. In addition, eligible telecommunications carriers may be found in contempt of court, in accordance with the provisions of 27 L.P.R.A. § 267f(b)(6).**

It is hereby provided that any party affected by this decision may file a request for reconsideration at the Clerk's Office of this Telecommunications Regulatory Board, within the first twenty (20) days after notice of this Order is filed in the record. Petitioner shall send copy of said document, by mail, to the parties that have intervened in the proceedings.

The Puerto Rico Telecommunications Regulatory Board shall evaluate the motion for reconsideration within fifteen (15) days of its filing. If outright rejected, or if the Board fails to take any action within those fifteen (15) days, the term of thirty (30) days to request judicial review shall begin to run again from the date such denial is notified or from expiration of those fifteen (15) days, as the case may be. If any decision is made after its evaluation, the term to request review shall begin from the date a copy of the notification of the Board's resolution, definitely ruling on the motion, is filed in the record. The above-mentioned resolution shall be issued and recorded within ninety (90) days after filing of the motion for reconsideration. If the Board fails to take any action in regards to the motion for reconsideration within ninety (90) days after filing of a motion that has been considered for resolution, the Board shall lose jurisdiction over it, and the term to request review shall begin to run from the expiration of said term of ninety (90) days, unless the agency, for just cause and within those ninety (90) days, extends the term to resolve for a period not to exceed thirty (30) additional days.

If the party affected chooses not to request reconsideration, or if the party is adversely affected by it, the party may file a request for review before the United States District Court for the District of Puerto Rico, within [thirty] (30) days from the date the copy of the notification of the Board's final order or resolution is filed in the record. The party shall notify the Board, and all the parties, that it has filed a request for review, within the term provided to request such review. Notice may be given by mail.

This Resolution and Order SHALL BE NOTIFIED to all eligible telecommunications carriers: Puerto Rico Telephone Company, Inc., Walter Arroyo Carrasquillo, Esq., PO

Box 360998, San Juan, PR 00936-0998; T-Mobile Puerto Rico LLC, Liza M. Ríos Morales, Esq., 654 Muñoz Rivera Ave., Suite 2000, San Juan, PR 00918; SprintCom, Inc., d/b/a Sprint PCS, Miguel J. Rodríguez Marxuach, Esq., PO Box 16636, San Juan, PR 00908-6636; AT&T Mobility Puerto Rico, Inc., Rebecca Guerríos, Esq., PO Box 71514, San Juan, PR 00936-8614; PR Wireless, Inc., d/b/a Open Mobile, Karla Piñero, PMB 856, PO Box 7891, Guaynabo, PR 00970-7891; WorldNet Telecommunications, Inc., Vanessa Santo Domingo Cruz, Esq., PO Box 3365, Guaynabo, PR 00970-3365, and to Mr. David Bogaty, International Marketing Center, 90 Road 165, Suite 201, Guaynabo, PR 00968-8059; TracFone Wireless, Inc., Edwin Quiñones, Esq., PO Box 19417, San Juan, PR 00910; Telrite, d/b/a Life Wireless, Roberto L. Prats Palerm, Esq., American Airlines Building, 1509 López Landrón, 10<sup>th</sup> Floor, San Juan, PR 00911; Absolute Mobile, Inc., Mr. Christopher Peltier, PO Box 830010, Ocala, FL 34483-0010; TerraCom, Inc., Jessica Hernández Sierra, Esq., Goldman Antonetti & Córdova, PSC, PO Box 70364, San Juan, PR 00936-8364.

As resolved by the Board, on May 11, 2012.

[Signed]  
Sandra E. Torres López  
Chairman

[Excused]  
Nixyvette Santini Hernández

[Signed]  
Gloria Escudero Morales  
Associate Member

### **CERTIFICATION**

I CERTIFY that this is a true and exact copy of the Resolution and Order approved by the Board on May 11, 2012. I also CERTIFY that on this 11<sup>th</sup> day of May 2012, I have sent copy of this Resolution and Order to the parties listed in the notification portion of this document, and that I have filed a copy of this document in the record.

IN WITNESS WHEREOF, I sign these presents, in San Juan, Puerto Rico, this 11<sup>th</sup> day of May 2012.

[Signed]  
CIORAH J. MONTES GILORMINI  
Secretary of the Board

[Seal of the Puerto Rico Telecommunications Regulatory Board]