

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF THE STATE OF MISSOURI**

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In the Matter of the Application of	)	
T-Mobile Central LLC for Designation as an	)	Case No. RA-2012-0195
Eligible Telecommunications Carrier	)	
For Purposes of Low Income Support Only	)	
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**RESPONSE TO STAFF RECOMMENDATION TO DENY  
APPLICATION OF T-MOBILE CENTRAL LLC  
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER**

COMES NOW T-Mobile Central LLC (“T-Mobile” or “Company”) and for its response to the Missouri Public Service Commission Staff (“Staff”) Recommendation to deny T-Mobile’s Application for designation as an Eligible Telecommunications Carrier (“ETC”) for the limited purpose of offering and receiving federal Universal Service Fund (“USF”) support for providing low income related services to qualified consumers within its service area in Missouri, states as follows:

**I. Background.**

1. On December 22, 2011, T-Mobile filed its Application for Designation as an Eligible Telecommunications Carrier (“Application”) with the Commission. Attached to that Application is the declaration of H. Skip Cornett, in which Mr. Cornett verifies the truth and accuracy of the Application.

2. Among the verified statements made by T-Mobile in its December 22, 2011 Application is the following statement in paragraph 4, with which Staff now takes issue:

T-Mobile does not have any pending actions or final unsatisfied judgments or decisions against it from any state or federal agency or court relating to customer service or rates, which action, judgment or decision has occurred within (3) years of the date of this Application except for the following: [*Marple and Worrell v. T-Mobile*].

3. T-Mobile filed its first supplement to its Application on December 29, 2012, which supplemented its Application with information that it is authorized to do business in Missouri pursuant to the Commission's December 23, 2012 Order directing such filing.

4. On January 26, 2012, Staff served DR0001 on T-Mobile, which consisted of twenty-six (26) Data Requests. T-Mobile requested, and was granted, a short extension of time in which to respond to DR0001, and timely responded on February 22, 2012. As its response to DR0001 request number 4, which was a tremendously broad request for any disciplinary action taken by the Federal Communications Commission ("FCC") or state regulatory agency regarding violations of any law, regulation, or tariff, T-Mobile described four matters within the past four years that constitute the universe of disciplinary matters involving the Company over that period.

5. Since those filings, the FCC issued a number of orders and modified its rules governing the Lifeline and Link Up programs in such a way as to affect the Company's proposed low-income service offerings in the State of Missouri. Consequently, on March 30, 2012, T-Mobile filed an Amendment to its December 22, 2011 Application in order to explain and remain consistent with those modifications made by the FCC.

6. Among the statements made in its March 30, 2012 Amendment is the following statement in paragraph 11, with which Staff now takes issue:

T-Mobile receives revenue from several non-USF sources, is currently a Lifeline service provider in numerous states, and has not been subject to ETC enforcement or revocation proceedings in any state.

7. T-Mobile filed its second supplement to its Application on April 30, 2012, in which it updated its response to DR0001 request number 4 and agreed to use the generic

Missouri Lifeline Application form until such time as the Company's Lifeline Application form is approved by the Missouri USF Board.

8. On May 1, 2012, Staff filed its Staff Recommendation and Request to File Out of Time, in which Staff took issue with the two statements made by T-Mobile in its Application and Amendment that are quoted above. In its prayer for relief, Staff recommended that the Commission not grant ETC status to T-Mobile until "such time as the Company's statement in paragraph 4 of its Application can be demonstrated as being true."

## **II. T-Mobile's Statements Are True.**

9. T-Mobile maintains its statements as originally set forth in its Application (filed December 22, 2011) and Amendment (filed March 30, 2012) are true as originally submitted.

10. Staff's Memorandum supporting its Recommendation lists the disciplinary matters that T-Mobile disclosed in response to DR0001 request number 4 and in its update to that response.<sup>1</sup> Of the seven items Staff lists in its Memorandum, only four fall within the three year window of T-Mobile's statement in paragraph 4 of its Application, demonstrating its compliance with 4 CSR 240-2.060(1)(K): (1) two Kansas Corporation Commission ("KCC") fines resulting from a single Kansas USF audit; (2) a third fine assessed by the KCC related to the same audit compliance process; (3) a fine assessed by the Puerto Rico Telecommunications Regulatory Board against all ETCs; and (4) a Federal Communications Commission ("FCC") Notice of Apparent Liability ("NAL") for Forfeiture related to failure to comply with the wireless handset compatibility with hearing aid compliance ("HAC") regulations.

11. The only item that even arguably relates to "customer service or rates," the subject matter of T-Mobile's statement in paragraph 4 of its Application and of 4 CSR 240-

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<sup>1</sup> T-Mobile submitted its response to DR0001 on February 22, 2012. T-Mobile supplemented its response on April 30, 2012, to provide a current status on each matter. T-Mobile also added the new matter (item 4 listed *infra*) of the FCC NAL regarding compliance with HAC regulations, which was issued April 13, 2012.

2.060(1)(K), is the last item.<sup>2</sup> However, as noted in Staff’s Memorandum, the FCC NAL was issued April 13, 2012, nearly four months after T-Mobile submitted its Application with the statement that Staff claims is untrue. Although the statement was true at the time of filing, T-Mobile is willing to amend its original statement to account for this new matter, to the extent the Commission believes such an amendment is necessary.

12. The remaining items within the three year window of actions that involve “customer service or rates” are actions taken in response to compliance reporting matters, none of which involves “customer service and rates.”

13. Staff fails to explain how these irrelevant actions, or the action that arose several months after the filing, renders T-Mobile’s statement in paragraph 4 of its December 22 Application untrue as of the time of filing. Plainly, it is not.

14. Staff further fails to explain how T-Mobile’s statement in paragraph 11 of its March 30, 2012 Amendment is inconsistent with the disclosures made in its response to Staff’s DR0001 request number 4. None of the actions disclosed by T-Mobile in response to Staff’s broad request for any disciplinary action taken by the FCC or state regulatory agency regarding violations of any law, regulation, or tariff, listed in Staff’s Memorandum supporting its Recommendation, constitutes an “ETC enforcement or revocation proceeding.” As described above and in greater detail below, those actions concern reporting requirements or occurred after the time of T-Mobile’s statement.

### **III. Granting T-Mobile ETC Status Is In The Public Interest.**

15. Staff also recommends denial of the Application, in part, because it believes the disciplinary history reflected in T-Mobile’s discovery responses indicates that the public interest

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<sup>2</sup> The better position is that even this item does not relate to “customer service or rates.” Regulators and the telecommunications industry in general have for more than 30 years separated the customer equipment used in conjunction with telecommunications services from those services themselves, and regulation of telecommunications “service” by a regulator typically does not include regulation of the customer equipment itself.

may not be served by granting T-Mobile ETC status in Missouri. Staff avers that the “actual substance of the enforcement actions” discussed in its Memorandum have caused Staff to “question” whether granting ETC status in Missouri is in the public interest. Staff’s Recommendation and supporting Memorandum do not elaborate as to what it is about the “substance” of these disciplinary matters that compelled Staff to recommend against granting ETC status to T-Mobile in Missouri. If Staff’s concern is that this list of disciplinary matters indicates that T-Mobile is a bad actor in terms of general regulatory compliance, T-Mobile strongly disagrees.

16. Focusing on a small number of disciplinary matters that have occurred over a multiple year period for a large nationwide provider with more than 30 million customers fails to consider these disciplinary matters in the proper context. More importantly, narrowly focusing on limited number of disciplinary matters, most of which have very limited (or no) relevance to the responsibilities of an ETC, ignores that T-Mobile has been consistently recognized as a highly ethical telecommunications provider operating in the United States over that same period.

17. Indeed, T-Mobile USA, Inc. and all of its affiliates are dedicated to excellence and integrity throughout its operations, and that commitment to excellence and integrity has been recognized by Ethisphere Institute, a leading international think-tank dedicated to the advancement of business ethics and corporate responsibility. Ethisphere has named T-Mobile as one of the World’s Most Ethical Companies each of the last four years. This award recognizes T-Mobile, and other prestigious companies that have been named to the list, for continuing efforts to implement ethical business practices in a way that surpasses industry peers.

18. It is noteworthy that T-Mobile USA, Inc. is the *only* American telecommunications service provider to have earned this prestigious honor – setting T-Mobile apart from all other telecommunications carriers in the United States. In an ever-challenging

business environment, T-Mobile has proven it is committed to doing business with uncompromised ethics, for the benefit of customers and communities where it does business as well as all stakeholders. Additional information about this distinguished award may be found at [www.Ethisphere.com/wme](http://www.Ethisphere.com/wme).

19. However, as is the case with all large businesses operating nationwide in a regulated industry, issues arise that may result in investigations and ultimately disciplinary measures. Nevertheless, even where T-Mobile has accepted the judgment of regulators in the limited number of matters that warranted disciplinary action, T-Mobile is confident that a further understanding of the context in which those matters arose should dispel any notion that granting ETC status to T-Mobile in Missouri would not be in the public interest.

20. Two items noted in the Staff analysis involved penalties assessed by the Kansas Corporation Commission (“KCC”) in relation to the Kansas Universal Service Fund (“KUSF”).<sup>3</sup> The KCC routinely and regularly conducts audits of the contributions that telecommunications companies make to the KUSF. On August 10, 2009, the KCC initiated an audit of T-Mobile Central LLC’s contributions to the KUSF for 2008-2009. After receipt of the KCC Staff audit report, the KCC issued an Order Adopting Audit Report Recommendations on December 30, 2010, directing T-Mobile Central LLC to comply with the audit recommendations and assessing penalties of \$12,000 for alleged noncompliance with KCC orders regarding the reporting of revenues. T-Mobile contested these findings and filed a Motion for Reconsideration, which was denied. The KCC Staff and T-Mobile Central LLC held numerous discussions and subsequently entered into a Stipulated Settlement Agreement, in which the parties agreed on a method that T-Mobile Central LLC could use to report billed and uncollectible revenue in a timely manner in accordance with KCC rules. The Settlement Agreement also provided that T-Mobile Central

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<sup>3</sup> T-Mobile is not a designated Eligible Telecommunications Carrier (“ETC”) in Kansas, and therefore, does not receive funds from the KUSF.

LLC would pay an additional \$3,000 penalty for its failure to timely provide an affidavit regarding the contents of certain files provided to the auditor.

21. On September 21, 2011, the KCC adopted the Stipulated Settlement Agreement. On December 20, 2011, the KCC issued an Order assessing a \$500.00 penalty against T-Mobile Central LLC for providing a KUSF audit report 18 days late. T-Mobile Central LLC provided a report to the auditors prior to the deadline but it was discovered that it did not contain certain information requested by the auditors. T-Mobile provided a corrected report late due to a delay in obtaining the necessary data from its billing systems. T-Mobile Central LLC paid the penalty, and the docket was subsequently closed.

22. A second item referenced in the Staff Memorandum concerned penalties assessed by the Puerto Rico Telecommunications Regulatory Board (“TRB”), which fine is being held in abeyance as noted by T-Mobile in its second Supplement to its Application. Fines were imposed by TRB in a generic order issued on all ETCs operating in Puerto Rico January 24, 2012, including T-Mobile Puerto Rico LLC (“T-Mobile PR”), for alleged failure to comply with certain new reporting requirements pursuant to recently approved emergency regulations. The emergency regulations have been challenged in state appellate court by all ETCs. Additionally, several ETCs, including T-Mobile PR, filed a Motion for Reconsideration of the TRB’s Order given, among other things, that the TRB admitted during the appellate proceeding that its emergency regulations, with which T-Mobile PR was assessed fines for violating, had been stayed.

23. The TRB order imposing the fines made general findings pertaining to all ETCs and found general violations in regard to the Lifeline monthly and annual filings. However, the TRB did not make specific findings as to T-Mobile PR’s alleged violation of specific provisions of Lifeline Regulations. Thus, it is unclear which regulations T-Mobile PR was found to have

violated by the TRB. It is important to note that the TRB later cited one carrier (specific carriers were not mentioned but it was in response to one carrier's comments filed with the FCC) for encouraging fraudulent activity by its subscribers.<sup>4</sup> However, the TRB did not accuse T-Mobile PR of encouraging or facilitating fraudulent consumer practices.

24. The genesis of the TRB's new monthly reporting obligation is also instructive. Monthly reporting was implemented to stem consumer fraud with respect to USF services. T-Mobile and most other ETCs operating in Puerto Rico have submitted quarterly customer reports to the TRB since its regulation was first put in place in 2004. However, until May 1, 2012, the TRB had not used that information to compile a centralized database of customer information. The new monthly reports are now being used by the TRB to populate a centralized database that will be used to prevent customers from fraudulently signing up with more than one ETC provider. Before this system was in place, ETCs had no means by which to independently verify whether a customer was attempting to defraud the USF program by initiating USF supported service with multiple carriers.

25. The TRB had previously stated that if ETCs filed their monthly reports on a timely basis to permit the timely release of the new database on May 1, 2012, then the TRB would eliminate the fines. T-Mobile PR has fulfilled its new monthly filing obligation, and the database has become operational. To date, the TRB has not addressed the fine imposed on T-Mobile PR, but has reinstated fines against four other ETCs for not complying with the new monthly filing obligations. As previously noted, all other ETCs operating in Puerto Rico, including at least one (1) other provider that has been designated as an ETC by this Commission, was subject to the same fine under the generic order by the TRB.

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<sup>4</sup> See Comments of the Telecommunications Regulatory Board of Puerto Rico In Response To The Emergency Petition For Declaratory Ruling And Interim Relief Filed By Tracfone Wireless, Inc., WC Docket Nos. 11-42 and 03-109 and CC Docket No. 96-45 (Mar. 9, 2012).



26. The Staff Memorandum also references a USAC finding from April 2008, briefly summarizing that T-Mobile improperly complied with USF-related regulations during Hurricane Katrina. T-Mobile filed an appeal of the audit findings with the FCC in February 2009, and that the appeal is still pending. Staff's summary fails to note that other parties were subject to the same fines by USAC, including at least one other provider that has been designated as an ETC by this Commission.

27. The referenced USAC finding and fine was the result of an audit of T-Mobile's participation in a special ETC project related to Hurricane Katrina directed and managed by the FCC. Hurricane Katrina struck the Gulf Coast of the United States on August 29, 2005, causing tremendous damage in Alabama, Louisiana, and Mississippi. In the aftermath, the FCC took quick action to immediately assist hurricane victims and their families displaced by the storm by targeting universal service Low-Income support for reconstruction and rebuilding efforts, including the creation of the Katrina Program, a special temporary FCC USF program through which eligible consumers could acquire free wireless service and handsets from existing ETCs and certain providers who were provided limited ETC designation to support such efforts. T-Mobile USA, Inc. applied for and was granted such limited ETC designation on a temporary basis to provide wireless services to qualifying customers who had been displaced as a result of the storm and temporarily or permanently relocated to other cities and states in the region under the Katrina Program.

28. T-Mobile USA, Inc.'s participation in the Katrina Program was a tremendous success, as demonstrated by its provision within a six month period of wireless services at no charge to more than 51,600 Katrina victims. The FCC's *Katrina Order* directed ETCs who received this temporary designation and corresponding support to maintain "all necessary documentation" for *all* Katrina subscribers to verify that the support was used for its intended

purpose to assist Katrina victims. Neither the *Katrina Order* nor USAC explained or defined “all necessary documentation.”

29. Two years after the Katrina Program ended, USAC commenced an audit of T-Mobile USA, Inc.’s compliance with the Commission’s rules and regulations. Ultimately the auditors requested that T-Mobile USA, Inc. provide supporting documents for a sample of 240 selected Katrina subscribers. Using this limited information, the auditors concluded that T-Mobile USA, Inc. did not retain “all necessary documentation” for *all* Katrina subscribers by which auditors could verify that Katrina Program recipients were eligible for the services T-Mobile USA, Inc. had provided and claimed reimbursement for. While T-Mobile had maintained what it believed in good faith to be all necessary records related to its Katrina program activities, USAC auditors believed additional documentation should have been maintained.

30. The audit report recommended forfeiture consistent with the findings of the sample projected over the entire subscribership for which T-Mobile USA, Inc. had claimed support. The audit report was then reviewed and ultimately accepted by USAC. USAC demanded that T-Mobile USA, Inc. reimburse Low-Income funds it received totaling approximately \$1,969,705. The auditors also separately concluded that T-Mobile USA, Inc. had claimed support for providing services to certain customers that USAC alleged were “business-like names” and as part of the final audit findings, asked T-Mobile USA, Inc. to reimburse USAC \$1,430 for Lifeline funds they claimed T-Mobile USA, Inc. had received for such customers.

31. On February 16, 2010, T-Mobile USA, Inc. filed a Request for Review of the Decision of the Universal Service Administrator (i.e. appeal), and vigorously contested USAC’s conclusions. T-Mobile USA, Inc. requested that the FCC reverse the USAC audit report and

rescind USAC's demand that T-Mobile USA, Inc. reimburse USAC for certain Low-Income funds associated with T-Mobile USA, Inc.'s successful participation in the Katrina program. T-Mobile USA, Inc.'s Request for Review is pending with the FCC.

32. As previously noted, T-Mobile is not the only provider that was subjected to a forfeiture related to the Katrina Project because it could not produce the previously undefined "all necessary information." AT&T, an ETC in Missouri, and other ETCs have filed their own respective appeals regarding similar audit findings that USAC issued against their Katrina Project documentation.

33. Additionally, any alleged deficiency in T-Mobile's documentation processes that may have occurred during the Katrina Program has since been remedied. T-Mobile subsequently acquired an entity that was already designated as an ETC and been granted ETC designations in nine (9) states. Accordingly, T-Mobile has grown its internal operations that support ETC compliance obligations and is prepared to assume the obligations of being designated as an ETC in Missouri and the other states in which it has pending requests for ETC designation.

34. Staff also lists two items in its Memorandum that are FCC orders approving consent decrees. The first consent decree from April 2008 related to an alleged failure to provide timely notification of a network outage that occurred in March 2007. The second FCC order approving a consent decree issued in 2009 arose from an investigation into whether T-Mobile constructed wireless facilities in 2005 without notifying State Historic Preservation Offices in two states. Both items are entirely unrelated to the obligations of a lifeline ETC provider.

35. As a general matter, it is important to note that consent decrees do not constitute a finding of wrongdoing by the FCC. In entering into consent decrees, the investigated party does not admit to wrongdoing, nor does the FCC order approving the consent decree include findings of wrongdoing. Thus, highlighting consent decrees as evidence that T-Mobile is a bad actor is

contrary to the very nature of a consent decree. Indeed, a quick search of the FCC Enforcement Bureau website reveals the existence of consent decrees adopted by order of the FCC against all other major wireless and wireline providers, some of whom are designated as ETCs in Missouri.<sup>5</sup>

36. Giving proper consideration to the factual context also shows these items are inconsequential with respect to the integrity of T-Mobile as a regulated service provider. For example, the consent decree related to the construction of wireless facilities without properly notifying state historical preservation officers in two states involved one site in each state, which sites were installed in 2005. In a typical year, T-Mobile installs around 4,000 sites. Thus, the investigation concerned two potential siting related violations out of a universe of 4,000 sites, amounting to approximately .05% of the total.

37. That consent decree included conditions that T-Mobile develop a siting compliance program and provide compliance training for key employees, contractors, and vendors involved in the antenna siting process, all of which were timely completed. Since the consent decree was entered, the FCC has not pursued enforcement actions against T-Mobile for siting related matters.

38. Finally, the most recent matter noted in the Staff Memorandum is the FCC's NAL issued on April 13, 2012, related to T-Mobile's alleged failure comply with Hearing Aid Compatibility ("HAC") obligations. Although T-Mobile has not made a final determination as to whether it will challenge the NAL, it has met with various commission offices to discuss mitigating factors as to the alleged noncompliance. For example, T-Mobile met the HAC rules for its GSM handsets on both the M3 and T3 requirements. Further, the HAC rules are designed to help the hearing impaired, and, thus, are relevant for voice service. The vast majority of T-Mobile's voice traffic (high of 90% in Nov. 2009; low of 74% in Dec. 2010) was on its GSM

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<sup>5</sup> See Attachment A, attached hereto and incorporated herein by reference.

network (on which T-Mobile was fully compliant) and not on UMTS (WCDMA). The majority (75-87%) of the traffic on UMTS (WCDMA) during the relevant period was non-voice (data) traffic, and thus, not voice related traffic that HAC regulations are intended to address.

39. It is important to note that T-Mobile has a track record of being a good actor in the disabilities access arena with demonstrated leadership in the carrier community for reaching out in particular to the deaf and hearing loss community, as shown by the following examples:

- Sidekick, introduced by T-Mobile, was the first messaging device to be widely adopted by the deaf community, breaking down barriers as consumers with and without hearing loss shared a common enthusiasm for this popular handset. This GSM-only Sidekick was HAC compliant M3.
- T-Mobile's first 3G version of the Sidekick was HAC compliant, expanding this popular device to UMTS.
- Going back to 2000, T-Mobile has been a charter member of the TTY Forum.
- T-Mobile has been a charter member of the HAC Forum, leading the carrier-vendor-consumer partnership that developed the Joint Consensus Plan, which is the foundation of the HAC rules.
- T-Mobile has been a charter member of the Emergency Accessibility Advisory Committee ("EAAC") and a leader in industry-consumer discussions around text-to-911 and next gen access.

#### **IV. Conclusion.**

40. In summary, T-Mobile stands ready to promptly address any additional concerns raised by Staff or the Commission itself with respect to T-Mobile's request to be designated as a competitive Eligible Telecommunications Carrier in Missouri. T-Mobile submits that its record of regulatory compliance is on par with, if not superior to, other nationwide providers, some of whom have ETC status in Missouri. T-Mobile has also demonstrated a commitment to being a facilities based provider in Missouri as well as being a large employer in the state. The ETC designation will allow T-Mobile to expand its presence in Missouri while providing low income customers a competitive choice for services that meet their needs. T-Mobile submits that granting ETC status to T-Mobile by the Commission is very much in the public interest.

WHEREFORE, T-Mobile Central LLC requests that the Commission grant its Application for designation as an Eligible Telecommunications Carrier and designate T-Mobile as an ETC for low income customers.

Respectfully submitted,

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**ATTORNEYS FOR T-MOBILE  
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**Certificate of Service**

I hereby certify that on this 10th day of May, 2012 copies of the foregoing have been mailed, transmitted by facsimile, or emailed to all counsel of record.

/s/ Lisa A. Gilbreath

Attorney for T-Mobile Central LLC