

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

Petition of i-wireless, LLC Pursuant to
Public Service Law 92-h to Participate in the
New York State Targeted Accessibility Fund
And for Establishment of Distribution

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Case 18-C-0497

Comments of the Public Utility Law Project of New York

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On July 27, 2018 i-wireless submitted a Petition to the Public Service Commission (“PSC” or “Commission”) seeking authorization to provide wireless Lifeline telecommunications services pursuant to New York’s Lifeline Program,¹ and to receive distributions of \$11.05 per subscriber-household per month from New York’s Targeted Accessibility Fund (“TAF”).² If the Commission were to grant the i-wireless Petition, the company would be able to expand its service offering in New York State wireless while also becoming one of the first wireless providers to pay into and receive distributions from the TAF. The company would also add to a potential precedent for expanding Lifeline services at a time when federal support for the provision of these services by such providers is in jeopardy,³

¹ See, Case 18-C-0497, Petition of I-Wireless, LLC Pursuant to Public Service Law 92-h to Participate in the New York State Targeted Accessibility Fund and for Establishment of Distribution, filed on July, 27, 2018 (“i-Wireless Petition”); at <http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=18-01780&submit=Search>

² See, Opinion 98-10, OPINION AND ORDER ESTABLISHING ACCESS CHARGES FOR NEW YORK TELEPHONE COMPANY AND INSTITUTING A TARGETED ACCESSIBILITY FUND, issued and effective June 2, 1998 (“Opinion 98-10”).

³ See, FCC proceeding 17-55, dockets WC-17-2827, 11-42, 09-147, collectively the FOURTH REPORT AND ORDER, ORDER ON RECONSIDERATION, MEMORANDUM OPINION AND ORDER, NOTICE OF PROPOSED RULEMAKING, AND NOTICE OF INQUIRY, adopted November 16, 2017 (“Lifeline NPRM & Order”), at pg. 25. And see, Case 18-C-0125, Petition of Tracfone Wireless, Inc. For Approval to Participate in State Lifeline Program and Receive Distributions from the Targeted Accessibility Fund.

potentially creating a fiscal obligation for the TAF that is as of now unknown, and not yet contained within the record of this proceeding. Therefore, while Public Utility Law Project (“PULP”) does not oppose the Commission potentially granting the i-wireless Petition with regard to allowing the company’s entry into the TAF, PULP respectfully requests that the Commission forebear from ordering the \$11.05 monthly payment sought by i-wireless until an additional proceeding has been held to determine what amount of monthly subsidy is reasonable, what the effect might be upon the TAF of one or more non-facilities-based carriers seeking subsidies for Lifeline service, and what other changes might be reasonable or necessary for the TAF given the continuing changes – and proposed federal changes – in the Lifeline market.

As its Petition notes, i-wireless provides Lifeline service to approximately 40,000 households in New York.⁴ The company has provided Lifeline service in New York since June 2012, and currently offers a product that includes 750 voice minutes, unlimited text messaging, between 50-500 megabytes (“MB”) of data usage, and a free smartphone,⁵ all of which is supported by \$9.25 per month in funding per customer from the federal Universal Service Fund (“USF”). For the additional \$11.05 per month in New York State funding the company is seeking, it proposes offering unlimited calling and 2 gigabytes (GB) of data, which is more than triple its current data offering,⁶ but does not exceed the federal minimum requirement.⁷ New customers will also receive a WiFi-enabled Android smartphone, which the company asserts at a minimum will have the ability to be used as a hotspot capable of supporting other devices. i-wireless further asserts in its Petition that the “unsubsidized retail rate” for the proposed service(s) would be \$20.30.⁸

The ability of i-wireless, among other wireless cellular telephone services providers to become a member of the TAF is predicated upon the passage of a bill in 2017 that created a new section 92-h of the public service law and allowed wireless carriers to receive Lifeline support

⁴ Service is provided through i-wireless' "Access Wireless Lifeline" brand. See, I-wireless Petition, at p. 3.

⁵ See, i-wireless Petition, p. 4, also see Table 1: Comparison of Current v. Proposed Monthly Access Offering, I-Wireless Petition p. 6.

⁶ See, i-wireless Petition, p. 6.

⁷ See, the Universal Service Administration Corporation requirements at <https://www.usac.org/li/program-requirements/Lifeline-Supported-Voice-Service.aspx> and <https://www.usac.org/li/program-requirements/lifeline-broadband.aspx>.

⁸ See i-wireless Petition, p. 6.

via the TAF,⁹ provided however that such carriers must be designated eligible telecommunications carriers (“ETCs”) in the State of New York. i-wireless received such a designation in 2008,¹⁰ and is therefore presumptively eligible to receive Lifeline support under section 92-h.

In addition to the question of eligibility, there is the important question of whether or not i-wireless and the potential entry of other wireless carriers into the TAF furthers the public interest. As Department of Public Service staff (“DPS” or “DPS Staff”) noted in its assessment of telecommunications in Case 14-C-0370, wireline Lifeline service peaked in or around 1996 at just short of 800,000 lines but had dropped to only approximately 138,000 lines by 2014.¹¹ At the same time, wireless Lifeline had grown to approximately 1 million subscribers.¹² It is indisputable therefore that by 2014, wireless Lifeline services were a key service for low-income households in New York. Focusing upon the sort of services provided by i-wireless – costs limited to the \$9.25 monthly provided by the federal USF (i.e., free to the subscriber) – for those New Yorkers unable to pass a credit check, or pay the cost of purchasing a smartphone, or pay for “post-paid” or pre-paid wireless service, i-wireless’ service(s) and those of other “free” providers arguably fill a vital niche. This is particularly true for those New Yorkers that have no access to affordable broadband in their homes or are otherwise necessitated to rely upon using wireless/smartphone access to the Internet as their only access to broadband, or broadband from a publicly accessible network (e.g., Wi-Fi in libraries, etc.). i-wireless’ Petition therefore, has a point that allowing the company’s entry into the TAF could be in the public interest.

Relying upon the seminal work of the Pew Research Center and many of the intervenors in the FCC’s Lifeline NPRM and Order, i-wireless points out that most low-income households are “more dependent upon wireless technology” as their sole provider of telephony and

⁹ Although inclusion of wireless carriers was contemplated by the original TAF working group in 1998, the Commission found that Ch. 684 of 1997 suspended its jurisdiction over wireless companies, exempting them from TAF charges and precluding such carriers from recovery from the TAF. See, Opinion 98-10, at pp. 30-37.

¹⁰ See, 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, WC Docket No. 09-197, (“FCC ETC Application”) Order, DA 12-934 (rel. June 13, 2012).

¹¹ See, Staff Assessment of Telecommunications Services, in Case 14-C-0370, In the Matter of a Study on the State of Telecommunications in New York State, at pp. 29-30.

¹² Id. See, also, Comments of the Public Utility Law Project in Case 14-C-0370, at pp. 14-16. Since 2015 the number of wireless Lifeline subscribers has dropped.

broadband.¹³ This is particularly true for families that move often (i.e., are “housing unstable”), or have impaired credit, or whose finances are impaired. i-wireless’ proposal to increase the amount of data service to the amount required by the FCC in 2019, and to maintain the provision of “hotspot” capability despite the FCC’s proposal to abandon such a feature in the Lifeline NPRM and Order, are both laudable. However, i-wireless notes in its Petition that “2 gigabytes of data per month is more than triple the data usage.”¹⁴ For low-income households that presumably would use i-wireless offering as their only access to the Internet, and would be sharing such access for employment searches, homework, digital government and other average uses, it would appear that providing a minimum of 4GB might be a better direction for i-wireless and, for that matter, it would be a key factor of the public interest analysis for the record to reflect the proposed per gigabyte cost for overages i-wireless is proposing.

Moreover, i-wireless’ Petition says nothing about the proposed privacy/confidentiality policies for the services provided over its Lifeline product, and nothing about how it might help consumers block robocalls and engage in at least minimal cybersecurity protections. All of these issues are worth considering in the context of i-wireless’ Petition and if the Commission grants the Petition, should become part of the consideration of a broader proceeding.

In conclusion, PULP does not oppose i-wireless’ Petition requesting the ability to participate in the TAF. However, PULP believes that the second request made by i-wireless in its Petition – the receipt of \$11.05 monthly per household for its proposed services – is not supported by the record in this proceeding to this point, which only contains a conclusory statement with regards to a supposed retail cost for the proposed services. Consequently, PULP respectfully submits that the Commission take the action contemplated in its Order Directing Tariff Filings Regarding Lifeline Eligibility, which is to “commence a new phase in [Case 17-C-0171] to examine the nature and level of future state support for Lifeline service.”¹⁵ As part of such a proceeding, PULP respectfully suggests that the Commission charge the parties with determining what amount of monthly subsidy is reasonable, what the effect might be upon the TAF of one or more non-facilities-based carriers seeking subsidies for Lifeline service, whether

¹³ Id. at pp. 7-8.

¹⁴ See, i-wireless Petition, p. 6.

¹⁵ See, Case 17-C-0171, Order Directing Tariff Filings Regarding Lifeline Eligibility, issued and effective April 19, 2018.

and how much data and tethering offerings should exceed the federal minimums, and what other changes might be reasonable or necessary for the TAF given the continuing changes – and proposed federal changes – in the Lifeline market.

Respectfully submitted,

/s/

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