

TITLE 170 INDIANA UTILITY REGULATORY COMMISSION

RM 15-03

Development of Rules Regarding Sales Practices and Regulatory Compliance Standards for Lifeline Services

Comments of i-wireless, LLC d/b/a Access Wireless on Second Draft Strawman

I. Introduction

i-wireless, LLC d/b/a Access Wireless respectfully submits the following comments in response to the Lifeline-only Fraud and Abuse Rule, Second Strawman Draft issued in this proceeding on December 11, 2015.

i-wireless, LLC is a wireless Eligible Telecommunications Carrier (ETC) operating in Indiana today, providing wireless Lifeline service to qualifying Indiana subscribers. The issues under consideration are matters with which the Company has extensive experience and expertise.

i-wireless is appreciative of the modifications that the Commission has made from its first rules iteration to this more recent draft. Some of the most problematic proposed rules are no longer included in this draft and we would like to thank the Commission and its staff for listening to concerns that we, and others raised. Nonetheless, the current draft rules still contain items of concern for reasons set forth herein.

II. Comments on Draft Rules

Items in the draft rules that i-wireless, LLC finds problematic are noted in bold below.

170 IAC 7-8-3 Lifeline Agents
Authority: IC 8-1-1-3; IC 8-1-2.6-13
Affected: IC 8-1-2.6-13(c)(5)

Sec. 3. *A wireless lifeline-only ETC shall require and maintain evidence for a period of **two years** that each of its employees or independent agents meets the following criteria prior to the employee or independent agent interacting, on the wireless lifeline-only ETC's behalf, with participants or prospective participants at a temporary location:*

i-wireless Comment: We seek guidance from the PUC on an acceptable storage and redundancy protocol in order to best protect such sensitive and personally identifiable information.

(a) The individual is at least eighteen (18) years of age.

(b) The individual has a high school diploma or the equivalent of a high school diploma.

i-wireless Comment: This requirement may have a disparate impact on a particular class of people and consequently may preclude individuals that are working towards securing their high school diploma or GED equivalent from gainful employment opportunities. All i-wireless representatives must undergo a comprehensive training program, by which a high school diploma is not necessarily considered to be job related or consistent with business necessity.

(c) The individual has completed training on federal and state lifeline rules, enrollment procedures, and proper handling of sensitive personal information.

(d) The wireless lifeline-only ETC has proof of the following, through a criminal background check, for each jurisdiction in the United States in which the individual has lived or worked:

(1) The individual has not been convicted of a felony within the immediately preceding seven (7) years.

i-wireless Comment: i-wireless performs criminal background checks on all candidates applying to represent its company in Indiana and elsewhere. i-wireless disagrees with the restrictions on engaging individuals with certain types of criminal histories. The Company already successfully utilizes criminal background checks to assess a candidate's desirability to represent them in all states in which it conducts business. We assert that the portion of this rule listing criminal histories that cannot be accepted by ETC's as Lifeline representatives in Indiana should be deleted as it will needlessly restrict the pool of potential representatives to the detriment of both the Lifeline program, and those with certain criminal histories that need gainful employment opportunities.

(2) Within the immediately preceding seven (7) years, the individual has not been released from incarceration after serving time for a felony conviction.

i-wireless Comment: i-wireless performs criminal background checks on all candidates applying to represent its company in Indiana and elsewhere. i-wireless disagrees with the restrictions on engaging individuals with certain types of criminal histories. The Company already successfully utilizes criminal background checks to assess a candidate's desirability to represent them in all states in which it conducts business. We assert that the portion of this rule listing criminal histories that cannot be accepted by ETC's as Lifeline representatives in Indiana should be deleted as it will needlessly restrict the pool of potential representatives to the detriment of both the Lifeline program, and those with certain criminal histories that need gainful employment opportunities.

(3) The individual has not been convicted of the following within the immediately preceding five (5) years:

(A) A misdemeanor involving fraud, deceit, or dishonesty;

i-wireless Comment: i-wireless performs criminal background checks on all candidates applying to represent its company in Indiana and elsewhere. i-wireless disagrees with the restrictions on engaging individuals with certain types of criminal histories. The Company already successfully utilizes criminal background checks to assess a candidate's desirability to represent them in all states in which it conducts business. We assert that the portion of this rule listing criminal histories that cannot be accepted by ETC's as Lifeline representatives in Indiana should be deleted as it will needlessly restrict the pool of potential representatives to the detriment of both the Lifeline program, and those with certain criminal histories that need gainful employment opportunities.

(B) Battery as a misdemeanor; or

(C) Two (2) or more misdemeanors involving the illegal use of alcohol or the illegal sale, use, or possession of a controlled substance

i-wireless Comment: i-wireless performs criminal background checks on all candidates applying to represent its company in Indiana and elsewhere. i-wireless disagrees with the restrictions on engaging individuals with certain types of criminal histories. The Company already successfully utilizes criminal background checks to assess a candidate's desirability to represent them in all states in which it conducts business. We assert that the portion of this rule listing criminal histories that cannot be accepted by ETC's as Lifeline representatives in Indiana should be deleted as it will needlessly restrict the pool of potential representatives to the detriment of both the Lifeline program, and those with certain criminal histories that need gainful employment opportunities.

170 IAC 7-8-4 Temporary Structures and/or Locations

Authority: IC 8-1-1-3; IC 8-1-2.6-13

Affected: IC 8-1-2.6-13

Sec. 4. Enrollment of prospective participants in the federal lifeline program by a wireless lifeline-only ETC from a temporary structure or location is prohibited unless the following conditions are met:

(a) The name of the wireless lifeline-only ETC is visible from the exterior of the temporary structure and is written in print that is at least 12 inches in height.

i-wireless Comment: This is not a requirement of the FCC's rules for advertising.

(b) All employees or agents of the wireless lifeline-only ETC must display the name of the wireless lifeline-only ETC in a prominent position on the outermost layer of clothing in a conspicuous manner.

i-wireless Comment: This is not a requirement of the FCC's rules for advertising.

All representatives of i-wireless are provided with a branded lanyard and apparel, but this rule is unreasonable, as it does not account for circumstances beyond the ETC's control, such as, if a representative is cold and puts a jacket on over a branded t-shirt, or is hot and removes a branded sweatshirt. It is implausible that an ETC could be in violation of such requirement.

(c) The terms, conditions and rates for the federal lifeline program product(s) must be prominently posted at the location where the marketing is taking place.

(d) The wireless lifeline-only ETC must have proof of permission, available on-site, from either the owner of the property where the marketing is taking place or from the individual or entity responsible for the property.

i-wireless Comment: All property owners have a wide set of rights available to them afforded by local, state and federal law and we work with owners to ensure their consent, but prior written approval is not a requirement for two parties to demonstrate an agreement.

Additionally, it is important to note that while verbal permission may be granted to an ETC to set-up an enrollment location by a store manager or clerk, the owner of a property is not always present on-site to provide written permission.

(e) The wireless lifeline-only ETC must have all required city and county licenses necessary for selling a service at that location.

i-wireless Comment: If city and county licensing are required in order to set-up an enrollment location, the Company will make every effort to comply with the requirement.

(f) All marketing conducted or services provided by the wireless lifeline-only ETC must be provided in a manner that does not create a traffic hazard.

(g) The wireless lifeline-only ETC must provide the commission a list of locations, sent to designated commission staff by email, identifying where marketing from temporary structures and or locations has taken place in the previous month. The email shall include the date, time and location, and be submitted by the 10th day of the following month.

i-wireless Comment: To ensure that i-wireless can track the location of its enrollment initiatives, all representatives conducting an enrollment event are required to electronically sign-in and provide their location prior to submitting orders and enrolling customers in i-wireless' Lifeline service. However, monthly submission of enrollment event activities creates an unnecessary administrative burden on the ETC. The Company requests that this documentation be provided as part of the ETC's quarterly or annual reporting obligations with the state.

(h) When the wireless lifeline-only ETC provides any wireless handset in conjunction with the federal lifeline program, it must also provide a document containing, at the least, the date, time, and location the customer received the phone, the name of the wireless lifeline-only ETC, an operational customer service telephone number, and the agent's identifier. The wireless lifeline-only ETC must retain a copy of the document for a period of two years.

(i) Lifeline eligibility determinations must be conducted before the customer is enrolled in the federal lifeline program and provided with a lifeline phone.

170 IAC 7-8-5 Process for checking accurate subscriber address
Authority: IC 8-1-1-3; IC 8-1-2.6-13
Affected: IC 8-1-2.6-13(c)(5)

Sec. 5. In addition to adherence to federal lifeline program rules, when using an online public records database to verify the address of the prospective participant and the online public records database returns an error code, or signal that the address is vacant, non-existent or otherwise non-conforming, the wireless lifeline-only ETC must obtain a document verifying the address. Appropriate documentation may include a utility bill, a driver's license, or other government identification. The wireless lifeline-only ETC must retain the documentation for a period of two years.

i-wireless Comment: The intended purpose of this rule is unclear. Some of the most needy applicants for Lifeline service are homeless and have no address. An ETC could not comply with this rule and serve a homeless individual. We seek guidance from the PUC on how to satisfy the requirement for homeless individuals.

170 IAC 7-8-6 Enforcement
Authority: IC 8-1-1-3; IC 8-1-2.6-13
Affected: IC 8-1-2.6-13(c)(5)

Sec. 6. The Commission may initiate an investigation of possible violations of this chapter. Upon finding a violation under this chapter, the Commission may revoke the violator's ETC designation