

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
To: The Commission		

**APPLICATION FOR REVIEW**

Spot On Networks, LLC (“Spot On”) by and through its attorney and pursuant to the Commission’s Rules, hereby requests review by the Commission of four actions taken by an order<sup>1</sup> of the Acting Chief, Wireline Competition Bureau (the “Order on Reconsideration”): (1) setting aside an order adopted by the Chief, Wireline Competition Bureau on December 1, 2016<sup>2</sup> confirming Spot On’s designation as a Lifeline Broadband Provider (“LBP”) (the “December 1<sup>st</sup> Order”); (2) revoking Spot On’s designation as a LBP; (3) returning Spot On’s petition for LBP designation to a pending status; and (4) removing Spot On’s petition from streamlined treatment. All four of these actions should be reversed as they are (a) in conflict with the Communications Act of 1934, as amended, (“the Act”), the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, and the Commission’s own rules; (b) arbitrary, capricious, and an abuse of discretion; and (c) otherwise contrary to law.

In support whereof the following is averred:

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<sup>1</sup> *Order On Reconsideration*, WC Docket Nos. 09-197 and 11-42, DA 17-128 (released February 3, 2017).

## I. DESIGNATION OF SPOT ON'S LBP STATUS

In the FCC's 2016 Lifeline Modernization Order,<sup>3</sup> the Commission established a framework for federally designating LBPs eligible to receive reimbursement through the Lifeline program. A provider seeking such designation must meet the requirements established in section 214(e) of the Act and the accompanying sections of the Commission's rules.

The 2016 Lifeline Modernization Order established by rule<sup>4</sup> a streamlined ETC designation process for carriers seeking designation as LBPs, solely for the purpose of receiving Lifeline support for broadband service. That rule unequivocally states that if the requirements specified in that rule are met, the LBP designation *automatically* would be granted, unless the Commission notifies the applicant that the grant will not be automatically effective. In the 2016 Lifeline Modernization Order, the Commission explained:

A broadband provider's petition for ETC designation as a Lifeline Broadband Provider for the limited purpose of receiving Lifeline support for BIAS will be subject to expedited review and will be deemed granted within 60 days of the submission of a completed filing provided that the provider meets certain criteria demonstrating that it is financially stable and experienced in providing broadband services, unless the Commission notifies the applicant that the grant will not be automatically effective. (emphasis added) (at 278)

Spot On filed its petition for LBP designation on October 27, 2016 and met all of the requirements for streamlined ETC designation. This was confirmed by the December 1<sup>st</sup> Order. At no time did the Commission notify Spot On that the grant of LBP designation will not be automatically effective. The December 1<sup>st</sup> Order said:

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<sup>2</sup> DA 16-1325 (released December 1, 2016)

<sup>3</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, (2016) (*2016 Lifeline Modernization Order*).

<sup>4</sup> 47 C.F.R. §54.202(d)(1)

[We] find that ... Spot On, [has] satisfied the Commission's requirements to be designated as LBPs, eligible only to receive Lifeline BIAS support pursuant to the terms of this Order, and there is no contradictory evidence available to us raising concern as to whether [Spot On] will fail to meet its obligations under the Act, Commission rules, this Order, and the representations and commitments made in [its] Petition. (at 8)

## **II. DESIGNATION OF SPOT ON'S LBP STATUS BECAME FINAL**

The designation of Spot On as a LBP provider has become final and now can not be upended without the commencement of a separate proceeding.

Pursuant to Section 1.102 of the Commission's Rules<sup>5</sup>, actions taken pursuant to delegated authority are effective upon release of the document containing the full text of such action. In the instant matter, the full text of the action designating Spot On as a LBP was released on December 1, 2016. Thus, December 1, 2016 is the effective date of the Spot On LBP designation.

Under some circumstances, the FCC can undo the action. But, those circumstances are not present in the instant matter as they relate to Spot On.

Section 1.113 of the Commission's Rules<sup>6</sup> provides that "Within 30 days after public notice has been given of any action taken pursuant to delegated authority, the person...taking the action may modify or set it aside on its own motion." This particular rule, which otherwise would have empowered the Chief, Wireline Competition Bureau to set aside the December 1<sup>st</sup> Order, however, does not apply to Spot On in the instant matter. This is because, according to Section 1.113, the last day for the Chief, Wireline Competition Bureau to set aside the December

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<sup>5</sup> 47 C.F.R. § 1.102

<sup>6</sup> 47 C.F.R. § 1.113

1<sup>st</sup> Order was January 3, 2017.<sup>7</sup> In the instant matter, however, the Order on Reconsideration issued by the Chief, Wireline Competition Bureau setting aside the December 1<sup>st</sup> Order was not adopted until February 3, 2017. Thus, the time for the Chief to have reconsidered December 1<sup>st</sup> Order, as applied to Spot On, had expired and the Order on Reconsideration is a legal nullity. Accordingly, the actions taken by the Chief on February 3<sup>rd</sup> should be reversed as they are: (a) in conflict with the Act, the Administrative Procedure Act, and the Commission's own rules; (b) arbitrary, capricious, and an abuse of discretion; and (c) otherwise contrary to law.

It may be observed that the National Tribal Telecommunications Association ("NTTA") filed a petition for reconsideration on January 3, 2017. But, that petition for reconsideration was directed only to requesting reconsideration of the December 1<sup>st</sup> Order of those LBP applicants seeking to serve Tribal lands, pointing out that some of the LBP applicants receiving LBP designation in the December 1<sup>st</sup> Order failed to comply with Section 54.202(c). Section 54.202(c) says,

A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority....

Focusing on this rule, NTTA's petition says,

Applicants that failed to comply with this rule deny Tribal governments their rightful opportunity to review applications and evaluate whether those applicants will help advance the communications priorities and goals of the Tribal government.  
(emphasis added)

Clearly, however, the relief requested in the NTTA petition has nothing whatsoever to do with Spot On because Spot On is not proposing to serve any Tribal lands. This plainly can be seen by

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<sup>7</sup> Section 1.4(j) of the Commission's Rules (47 C.F.R. § 1.4(j)) says "If a rule or order of the Commission specifies that the Commission must act by a certain date and that date falls on a holiday, the Commission action must be taken

a reading of Spot On's petition for LBP designation on file with the Commission and confirmed by the Chief, Wireline Competition Bureau in his December 1<sup>st</sup> Order, wherein the Chief says,

Spot On filed its petition seeking designation as an LBP, eligible to receive universal service Lifeline BIAS support for its service area in New York – specifically, to provide Lifeline-supported BIAS in the New York Housing Authority Queensbridge multi-tenant residential housing site located within the Borough of Queens in New York City (zip 11101). (at 4)

Because the Commission is fully aware that Spot On is proposing only to serve land of the New York City Housing Authority, and no tribal lands are involved in the proposed Spot On service area, the NTTA petition has nothing to do with Spot On.

Accordingly, the Order on Reconsideration adopted by the Chief, Wireline Competition Bureau on February 3, 2017 granting the NTTA petition as it relates to Spot On should be reversed as it is (a) in conflict with the Act, the Administrative Procedure Act, and the Commission's own rules; (b) arbitrary, capricious, and an abuse of discretion; and (c) otherwise contrary to law.

### **III. NO REVOCATION OR CHANGE TO LBP DESIGNATION**

The designation of Spot On as a LBP provider has become final and now can not be upended without the commencement of a separate proceeding to revoke or sanction Spot On. Because no such separate proceeding has been commenced the actions taken by the Order on Reconsideration should be reversed as they are (a) in conflict with the Act, the APA and the Commission's own rules; (b) arbitrary, capricious, and an abuse of discretion; and (c) otherwise contrary to law.

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by the next business day.” Accordingly, the last day for the Chief, Wireline competition Bureau to set aside the December 1<sup>st</sup> Order was January 3, 2017.

As indicated above, Spot On filed its petition for LBP designation on October 27, 2016 and met all of the requirements for streamlined ETC designation. This was confirmed by December 1<sup>st</sup> Order adopted by the Chief, Wireline Competition Bureau.

The December 1<sup>st</sup> Order went on to acknowledge that separate procedures were available to the Commission which the Commission could use in the event the Commission desired to revoke Spot On's LBP designation. The Order said:

Pursuant to the LBP requirements and the Commission's authority to revoke designations in the case of non-compliance with the Act, Commission rules, or the order granting designation,<sup>8</sup> Petitioners must comply with sections 214(e) and 254 of the Act, accompanying Commission's rules, and the representations and commitments made in their petitions, as set forth in this Order. (at 8)

And, later in that same Order, once again, the Order acknowledged that separate procedures were available to the Commission which the Commission could use in the event the Commission desired to revoke Spot On's LBP designation. There, the Order said:

Finally, we note that the Commission may institute an inquiry on its own motion to examine the Petitioners' records and documentation to ensure that the universal service support they receive is being used for the purpose for which it was intended.<sup>9</sup> The Petitioners are required to provide such records and documentation to the Commission or USAC upon request. We further emphasize that, if the Petitioners fail to fulfill the requirements of the Act, the Commission's rules, or the terms of this Order after they begin receiving universal service support, the Commission may exercise its authority to revoke the Petitioners' LBP designation.<sup>10</sup> (at 26)

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<sup>8</sup> 47 U.S.C. § 214.

<sup>9</sup> 47 U.S.C. §§ 220, 403; 47 CFR § 54.707.

<sup>10</sup> See *Federal-State Joint Board on Universal Service, Petitions for Reconsideration of Virginia Cellular, LLC and Highland Cellular, Inc. Designations as Eligible Telecommunications Carriers in the Commonwealth of Virginia*, Order on Reconsideration, 19 FCC Rcd 15383, 15385, para. 6 (2012) (citing *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000); 47 U.S.C. § 254(e)).

But, in the instant matter, no such separate proceeding has been commenced. Accordingly, the actions taken by the Order on Reconsideration should be reversed.

**IV. CONCERN ABOUT WASTE, FRAUD, AND ABUSE DOES NOT APPLY TO SPOT ON**

In her Order On Reconsideration, the Chief, Wireline Competition Bureau expresses concern about preventing waste, fraud, and abuse in the Lifeline program. However, such concern, as it may be applied to Spot On, is misplaced and does not apply.

In her Order on Reconsideration, the Chief says:

Recent investigations in the Lifeline program raise concerns that substantial waste, fraud, and abuse appears to continue to exist in the program. For example, in December 2016 the Enforcement Bureau entered into a consent decree with Total Call Mobile, in which Total Call Mobile admitted to violating Lifeline program rules to claim reimbursement for duplicative and ineligible consumers and paid a settlement of \$30 million. The Universal Service Administrative Company has also indicated that at least 16 other major Lifeline wireless resellers have used tactics similar to Total Call Mobile's. (at 7)

Yet, it is wholly arbitrary, capricious, and an abuse of discretion for the Chief to tag Spot On with her concerns about Total Call Mobile and other Lifeline wireless resellers! Those concerns have nothing whatsoever to do with service Spot On is providing. (The Commission's concern with Total Call Mobile pertained to misuse of eligibility documents such as temporary Supplemental Nutrition Assistance Program (SNAP) cards, including "phantom" consumers who were created by using the identity information of an individual without the individual's consent.<sup>11</sup>)

The Commission's own rules make very clear who can qualify for Lifeline support.

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<sup>11</sup> See *Total Call Mobile, Inc.*, Order, 31 FCC Rcd 13204 (EB 2016).

Section 54.409(a)(2)<sup>12</sup> specifies:

To constitute a qualifying low-income consumer:

(2) The consumer, one or more of the consumer's dependents, or the consumer's household must receive benefits from one of the following federal assistance programs:

...Federal Public Housing Assistance...

And, Section 54.409(c) specifies:

In addition to meeting the qualifications provided in paragraph (a)...in order to constitute a qualifying low-income consumer, a consumer must not already be receiving a Lifeline service, and there must not be anyone else in the subscriber's household subscribed to a Lifeline service.

These quoted rules apply like an indelible litmus test to the instant matter. And, Spot On passes both tests with flying colors! As to the service Spot On is providing, the only persons capable of receiving Lifeline subsidies are residents subject to Federal Public Housing Assistance.

Moreover, as noted above, Spot On will be offering a fixed wireless BIAS *only* to residents having apartments in the New York City Housing Authority site. All of these residents categorically meet the eligibility criteria of Section 54.409(a)(2) as they all are subject to receiving benefits of Federal Public Housing Assistance. Only a person verified by the New York City Housing Authority as living in one of its apartments will receive a Lifeline subsidy. Further, the eligibility criteria of Section 54.409(c) are met, as well, for 2 reasons: (1) the Spot On system is engineered so that each apartment can obtain only one gateway to the Spot On wireless BIAS (each gateway can service up to 8 devices); and (2) the Spot On system allows each apartment to receive only 1 Lifeline subsidy (generally the head of the household).

Accordingly, the Chief's concern about waste, fraud, and abuse, as it may be applied to Spot On, is misplaced and does not apply.

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<sup>12</sup> 47 C.F.R. § 54.409(a)(2)



## V. THE PUBLIC INTEREST FAVORS REVERSAL OF THE ORDER

The public interest, convenience, and necessity favors reversal of the Order on Reconsideration.

As Chairman Pai has forcefully expressed, one of the Commission's top priorities is closing the digital divide, as the Chairman explains, "the gap between 'those who can use cutting-edge communications services and those who do not.'"<sup>13</sup> And, he has recognized, "It's vital that low income Americans have access to communications services, including broadband Internet, which Lifeline helps to achieve."<sup>14</sup>

Another endorsement of efforts to close the digital divide was expressed by the Chairman in his speech to the FCC staff on January 24, 2017. In those remarks, the Chairman said:

There are a lot of challenging issues on our plate.

One of the most significant things that I've seen during my time here is that there is a digital divide in this country – between those who can use from cutting-edge communications services and those who do not. I believe one of our priorities going forward should be to close that divide – to do what's necessary to help the private sector build networks, send signals, and distribute information to American consumers, regardless of race, gender, religion, sexual orientation, or anything else. We must work to bring the benefits of the digital age to all Americans.

By reversing the Chief's Order on Reconsideration and restoring Spot On's LBP designation, the Commission would be advancing the public interest, convenience, and necessity.

As observed by the Chief, in his December 1<sup>st</sup> order designating Spot On as a LBP provider, Spot On is a privately owned company. Thus, restoration of its LBP designation by the Commission would, in the words of the Chairman quoted above, would be doing "what's

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<sup>13</sup> Chairman Pai's Blog, February 7, 2017.

<sup>14</sup> *Ibid.*

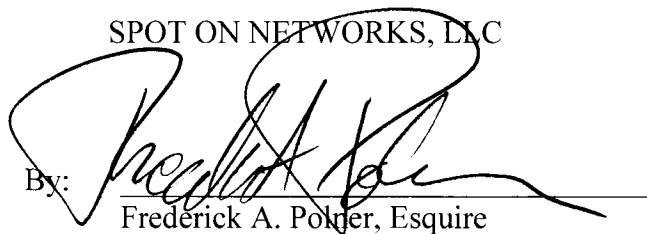
necessary to help the private sector build networks, send signals, and distribute information to American consumers...”

**VI. CONCLUSION**

For the foregoing reasons, Spot On requests review by the Commission of the actions taken by the Order on Reconsideration as they apply to Spot On, viz: (1) setting aside the December 1<sup>st</sup> Order; (2) revoking Spot On’s designation as a LBP; (3) returning Spot On’s petition for LBP designation to a pending status; and (4) removing Spot On’s petition from streamlined treatment. All of these actions should be reversed as they pertain to Spot On as they are: (a) in conflict with the Act, the Administrative Procedure Act and the Commission’s own rules; (b) arbitrary, capricious, and an abuse of discretion; and (c) otherwise contrary to law. The public interest, convenience, and necessity will best be served by immediate and full restoration of Spot On’s designation as a LBP provider as acknowledged in the December 1<sup>st</sup> Order.

Respectfully submitted,

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February 24, 2017