

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20544

)
)
In the Matter of Lifeline and Link Up Reform and) WC Docket Nos. 11-42, 09-197, 10-90,
Modernization; Telecommunications Carriers) FCC 15-71
Eligible for Universal Service Support; Connect)
America Fund)
)
)

DECLARATION OF DALE R. SCHMICK
IN SUPPORT OF
JOINT PETITION FOR PARTIAL STAY

I, Dale R. Schmick, declare as follows:

1. I am more than 18 years of age and employed by TerraCom, Inc. (“TerraCom”) as its Chief Operating Officer. As the Chief Operating Officer of TerraCom, I am responsible for the daily management of all aspects of the company and for developing and implementing strategic business decisions. I have held various leadership positions with TerraCom since 2010. I submit this declaration in support of petitioners’ Motion for a Partial Stay of the Order of the Federal Communications Commission (“FCC”) challenged in this litigation. *See In the Matter of Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support; Connect America Fund*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order,

WC Docket Nos. 11-42, 09-197, 10-90, FCC 15-71 (FCC Rel. June 22, 2015) (the “Order”). Unless expressly stated, I have personal knowledge of the information set forth in this declaration, and if called as a witness in this action, I could and would testify competently to these facts under oath.

2. As explained below, the Order threatens the continuing viability of TerraCom, and poses irreparable harm to its employees and customers. If it goes into effect as planned on February 9, 2016, the portion of the Order challenged in this case will drastically limit the amount of funding available to TerraCom to offer services to low-income consumers under the FCC’s “Lifeline” program (a federal program that enables qualifying low-income Americans to have access to affordable communications services). Unless the relevant portion of the Order is stayed pending judicial review, these resulting revenue losses will force the company to shed jobs, close retail locations, and curtail investment, threatening TerraCom’s ability to continue to offer service in Oklahoma. These losses will also ultimately threaten TerraCom’s ability to remain in business, as well as causing other harms which cannot be reversed should TerraCom ultimately prevail in this litigation.

A. Background on TerraCom

3. TerraCom is an Oklahoma corporation with its principal place of business in Oklahoma. TerraCom has provided telecommunications services for

over a decade, and in 2004, TerraCom became one of the earliest competitive Lifeline “Eligible Telecommunications Carriers” (*i.e.*, carriers eligible to provide services to low-income consumers under the FCC’s Lifeline program). In that time, TerraCom has assisted hundreds of thousands of subscribers in receiving telephone service they otherwise could not afford. Today, TerraCom’s primary business is to provide essential telecommunications services to low-income Americans under the FCC’s Lifeline universal service program. TerraCom is one of the Petitioners in this case challenging the FCC’s Order.

B. The FCC’s Decision to Exclude Longstanding Tribal Lands in Oklahoma From Tribal Lifeline Benefits

4. Designed to boost telephone access among low-income members of Native American and other federally recognized Tribes, the FCC’s Lifeline program includes an additional benefit of \$25 per month for low-income residents of “tribal lands” (the “Tribal Lifeline Benefits”).

5. Under the map currently used by the FCC, the industry (including Eligible Telecommunications Carriers such as TerraCom), and the Oklahoma Corporation Commission, nearly all of Oklahoma is designated as “Tribal” land. This current map designating Tribal lands in Oklahoma has been in broad use since the FCC first established the Tribal Lifeline Benefits program in 2000. As explained in an email I received in 2004 from the Universal Service Administrative Company, an entity that administers certain aspects of the FCC’s Lifeline program,

the FCC made clear that Tribal Lifeline Benefits are available in nearly the entire state of Oklahoma with the sole exception of certain counties in the panhandle and the southwest corner of the state. (A copy of this email is attached as Exhibit A.) Indeed, the primary reason TerraCom exists as an Oklahoma Corporation is because of the opportunities presented by the Tribal Lifeline Benefits program and the availability of Tribal Lifeline Benefits to low-income subscribers throughout Oklahoma.

6. The Order introduces a new map that will significantly reduce the area designated as “Tribal” land in Oklahoma. The new rule implementing this change—which, unless stayed, will take effect on February 9, 2016—will also dramatically cut the Tribal Lifeline Benefits available to TerraCom and its customers. If the provisions of the Order adopting and implementing the change in the map used to designate Tribal land in Oklahoma are not stayed, TerraCom will suffer irreparable harm to its business.

C. The Order Will Cause Massive and Unrecoverable Funding Cuts, Causing Our Tribal Customers to Lose Essential Services

7. TerraCom serves more than [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] customers in Oklahoma, [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] of whom are currently eligible for Tribal Lifeline Benefits. If the Order goes into effect, approximately [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] of

TerraCom's customers who currently receive Tribal Lifeline Benefits would no longer be eligible for those additional benefits. That number represents approximately [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] of TerraCom's customers in Oklahoma. TerraCom will therefore lose at least \$25 per month per customer if those customers are no longer eligible for Tribal Lifeline Benefits under the FCC's new map.

8. We know that at least [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] of these customers are in the Oklahoma City area, which will clearly be excluded from the Order's newly adopted map. *See* Order, ¶ 264. However, the FCC has said that other areas will also be excluded—which would have an even broader impact.

9. Even under the best case scenario, in which TerraCom retains all of its current customers and *only* loses the \$25 per customer per month tribal subsidy, losses will be *at least* [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL]

10. The reality is that TerraCom will lose much more than that. It can be expected that [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] of our affected customers are likely to cancel their service with us altogether. Thus, a more realistic projection of lost revenue is

approximately [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] per month.

11. In addition, the immediate and substantial loss of revenue will force TerraCom to stop marketing and offering Lifeline service in the newly “non-Tribal” areas. This will further decrease TerraCom’s revenues, and, critically, limit access to these essential services by our low-income customers in the affected areas.

D. We Will Be Forced to Impose Severe Cost Reductions, Let Go of Employees, Close Store Locations, and Halt Plans for Business Expansion and Service Enhancements

12. Under even the best case scenario, allowing the FCC’s redrawing of the Oklahoma map to take effect while this litigation runs its usual course would force TerraCom to make severe cost reductions and close store locations. As noted above, it also threatens to ultimately force the company out of business.

13. TerraCom has made several substantial business decisions and investments in reliance on the current – and widely understood – designations of Tribal lands in Oklahoma. For instance, we have opened twenty stores in the State. If the Oklahoma-related provisions of the Order take effect in February 2016, we would be forced to close [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] of those stores, and shed [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] retail employees.

14. TerraCom has prided itself on being not only one of the longest-established Lifeline providers, but also an innovator that has, for example, provided free data services (allowing users to access the Internet) to its subscribers who have smartphones. Our significant investments in Oklahoma have made these innovations possible. But our ability to provide innovative services will be undercut as the drastic funding cuts resulting from implementation of the new Oklahoma map force us to let go of employees who have valuable experience and know-how in providing these services.

15. Due to the certain revenue losses, TerraCom will also not be able to fund any further enhancements to the products and services it offers, which will deprive our customers of the online services that are now an essential aspect of our digital society. We will also be forced to cancel pending business plans that include, for example, offering [START OF CONFIDENTIAL] [REDACTED]
[REDACTED]
[REDACTED] [END OF CONFIDENTIAL].

16. For many years, we have also partnered with community retailers. Of our fifty-five retail partners serving primarily rural customers, at least eighteen of them are in affected areas that are now ineligible for Tribal Lifeline Benefits. Thus, those community partners will also suffer from lost revenue.

E. The Damage to Our Reputation Will Be Irremediable

17. On top of all this, the Order will have a devastating impact on our reputation and result in a substantial loss of customer good will. It is natural to expect that customers whose services are cut under the new regulatory regime will be extremely upset and will likely blame TerraCom for these cuts. (Many of our customers have already expressed frustration about certain aspects of the Lifeline program, and have directed these complaints to TerraCom.) Affected customers who do not cancel their service would see either a dramatic increase in their out-of-pocket costs or a dramatic decrease in their monthly minutes available (though the latter may not even be a realistic option in light of rules of the Oklahoma Corporation Commission requiring that we provide a minimum number of minutes of local voice service).

F. We Will Incur Substantial Compliance Costs

18. Finally, because the Order significantly changes the subsidies for which our customers are eligible, it will impose significant costs of compliance and regulatory uncertainty.

19. To comply with the Order, we will need to modify our current electronic systems used to identify whether customers are eligible for Tribal Lifeline Benefits. This cost is estimated to start out at \$250,000, but could easily grow to the extent that the FCC continues to modify the map. As a result of the

new map, the customer application process will also become more complicated. Customers will need to return to our retail locations to pick up their phones on a second visit, increasing our processing costs by at least \$22,500 per month due to the increased labor.

20. In addition, TerraCom will be required to send out notices to each of our approximately [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL] customers advising them of the reduction in their benefits. The estimated cost of such notices is [START OF CONFIDENTIAL] [REDACTED] [END OF CONFIDENTIAL].

21. Finally, the Order creates confusion and uncertainty. While the Oklahoma map that the FCC now deems controlling unquestionably removes large swaths of Oklahoma Tribal lands in which Tribal Lifeline Benefits have long been available (*see* Order, ¶ 264), the exact boundaries of the newly defined territories are unclear. That is not surprising, as the map the FCC opted to use reflects territorial borders from the Nineteenth Century. As one would expect, this antiquated map does not provide clear and distinct borders that can be applied to modern-day Oklahoma residential addresses, including precisely indicating whether current addresses close to those borders will now be excluded from the Tribal Lifeline Benefits program.

22. This lack of clarity creates undue regulatory risk. Specifically, the Order places carriers in the untenable position of either denying customers Tribal Lifeline Benefits at the risk of later being accused of an improper denial because the customer in fact resides in an area where those benefits remain available or granting benefits and facing potential regulatory enforcement action for improperly seeking government subsidies where the customer is ineligible for those subsidies under the FCC's new approach. This is a far cry from the clearly understood way in which the Lifeline program has run for more than a decade.

23. I have read a materially complete version of Petitioners' Motion for Partial Stay and state that the factual assertions set forth therein regarding TerraCom are true and correct to the best of my knowledge and belief.

I declare, under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed: October 15, 2015



Dale R. Schmick

REDACTED - FOR PUBLIC INSPECTION

EXHIBIT A

Dale Schmick (dschmick@yourtel.com)

From: TelcoLifeline <TelcoLifeline@universalservice.org>
Sent: Friday, November 05, 2004 11:08 AM
To: Dale R. Schmick;

Subject: FCC has clarified which areas in Oklahoma are eligible for Enhanced Lifeline and Link Up

Importance: High

The FCC has provided clarification as to which areas within Oklahoma are eligible for Enhanced Lifeline support:

The areas of Oklahoma where consumers are entitled to Enhanced Lifeline and Link-Up are the entire state of Oklahoma, except for the panhandle and the southwest area identified as "the Leased District." That is, the following counties should be excluded from participation in Enhanced Lifeline and Link-Up:

(1) in the panhandle, Cimarron, Texas, and Beaver counties; (2) in the Southwest corner of Oklahoma, Greer, Harmon, and Jackson counties, as well as the area of Beckham County south of the North Fork of the Red River. And to confirm, the only current reservation in Oklahoma is the Osage Nation.

If you have any questions, please contact Pam Gallant or Ta'Nea Davis at 202-776-0200.

Best regards,

Ta'Nea Davis
Assistant Manager of Low Income
USAC
2000 L Street, NW Suite 600
Washington, DC 776-0200