

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,	)	Application No. NUSF-89/
on its own motion, seeking to	)	C-4621
conduct an inquiry into the	)	
operations of Telrite	)	
Communications d/b/a Life	)	
Wireless, an Eligible	)	
Telecommunications Provider for	)	ORDER REVOKING ELIGIBLE
the limited purpose of	)	TELECOMMUNICATIONS CARRIER
participating in the Lifeline	)	DESIGNATION
program within the state of	)	
Nebraska, for violations of	)	
Commission Rules and Regulations	)	
regarding Lifeline in Nebraska.	)	Entered: September 17, 2013

BY THE COMMISSION:

APPEARANCES:

For the Respondent:

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and

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For the Commission:

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**Background**

On July 30, 2013, the Nebraska Public Service Commission ("Commission"), entered an Order to Show Cause, ordering Telrite Corporation d/b/a Life Wireless, ("Telrite" or "Company") an

Eligible Telecommunications Carrier ("ETC") in Nebraska participating in the Nebraska Telephone Assistance Program ("NTAP"), the name given to the low-income assistance program in Nebraska, to make a showing as to why the Commission should not revoke its ETC designation in Nebraska for violation of Commission rules, regulations, and orders, and setting a hearing.

A copy of the Show Cause Order was mailed to the Company via certified mail. On August 19, 2013, Telrite filed an Answer to the Commission's Order to Show Cause.

Hearing on this matter was held August 27, 2013, in the Commission Hearing Room ("Show Cause Hearing").

#### E V I D E N C E

On May 7, 2013, Telrite had a hearing before the Commission on its ETC application, seeking ETC designation for the limited purposes of participation in the low income programs of the Federal Universal Service Fund, Lifeline, and NTAP ("ETC Hearing"). At the ETC Hearing, Brian Lisle, President of Life Wireless, committed Life Wireless to comply with all Nebraska-specific requirements for limited ETCs, including using the approved NTAP enrollment form and having the Commission determine a participants eligibility. At the ETC Hearing, Mr. Lisle further committed Life Wireless to work with the NTAP Department concerning the NTAP database and start-up procedures for operating in Nebraska. He stated, "Of course I know we talked about the NTAP database and we'll have to look at that piece of it."<sup>1</sup>

Mr. Lisle testified he understood the Commission made all final determinations regarding eligibility of NTAP applicants. During cross examination at the ETC Hearing, the following exchange took place with Mr. Lisle,

Q. And you understand that [its] the commission, that a company [cannot] give eligibility determination for itself, that only the commission [with] the assistance of the HHS, et cetera, determines eligibility?

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<sup>1</sup> Application No. C-4571/NUSF-88, Hearing Transcript, 16:23 - 17:1.  
(Hereinafter "TR page number:line number").

A. Right, you have the ultimate say if we're good or not.<sup>2</sup>

Mr. Lisle further committed Telrite to ensure that eligibility determination information was clear to potential Telrite customers, specifically that the Company will not determine eligibility. Mr. Lisle stated the following during cross examination regarding eligibility determination by NTAP,

Q. That it be made very clear to [the applicants], however, that you are not the one making the final determination, there would be no promises made?

A. Sure.<sup>3</sup>

Mr. Lisle also testified regarding personnel training. He stated that Telrite operates in other states and that they were experienced with dealing with different requirements in different states.<sup>4</sup> He specifically committed to state specific training for Telrite personnel, stating, "So yes, there will be training specific to that individual state rules."<sup>5</sup>

Based on Mr. Lisle's sworn testimony, the Commission entered an order on May 29, 2013, designating Telrite as an ETC for the limited purpose of receiving federal and state universal service support for participating in the Lifeline program, and NTAP on a wireless basis.<sup>6</sup>

On July 12, 2013, the Commission began receiving customer complaints and inquiries connected to a Telrite event in Nebraska. Specifically, the complaints and inquiries focused on an event held by the Company in a temporary tent structure in Omaha, Nebraska, on July 12, 2013.<sup>7</sup> A disturbance arose at the event while large numbers of people waited in line in over ninety (90) degree heat with no shelter or water. Police were

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<sup>2</sup> Application No. C-4571/NUSF-88, TR 22:1-7.

<sup>3</sup> Application No. C-4571/NUSF-88, TR 22:13-16.

<sup>4</sup> Application No. C-4571/NUSF-88, TR 22:21-23:9.

<sup>5</sup> Application No. C-4571/NUSF-88, TR 23:3-4.

<sup>6</sup> See Application No. C-4571/NUSF-88, *In the Matter of the Application of Telrite Corporation d/b/a Life Wireless seeking designation as an Eligible Telecommunications Carrier in the State of Nebraska for the limited purpose of participating in the Lifeline program*. Granted. (May 29, 2013).

<sup>7</sup> Docket No. C-4621/NUSF-89, Affidavit of Jackie Synhorst, Hearing Exhibit No. 4, and Affidavit of Kandi Bremer, Hearing Exhibit No. 5.

called to deal with the disturbance and the event was covered by a local news station.<sup>8</sup>

Prior to the event, the Commission had received no contact from Telrite concerning commencement of operations in Nebraska, nor any inquiries from the Company regarding the operation of the NTAP database. Also, investigation by Commission Staff of Telrite's website revealed the Company was using an application form that was not the Commission approved NTAP application form.

Commission staff contacted Mr. Lisle on July 15, 2013 regarding the Omaha tent event and the incorrect information included on the Company's website. At that time, Telrite voluntarily ceased operations in Nebraska pending the outcome of the Commission investigation into its Nebraska operations.<sup>9</sup>

In a letter sent by Telrite President Brian Lisle to Commission Chair Anne Boyle on July 19, 2013, Mr. Lisle admitted Telrite made, "errors in opening up its Lifeline program in Nebraska."<sup>10</sup> Mr. Lisle further explained that the errors made by the Company in Nebraska included, "failure to completely implement state-specific customization of Telrite's FCC-default standard forms and operating procedures."<sup>11</sup> Mr. Lisle's letter also attached copies of the flyer distributed at the Omaha tent event.<sup>12</sup>

In response to the events surrounding the Omaha Telrite event, the Commission opened the above-captioned proceeding and entered an Order to Show Cause against Telrite for its violations of Commission rules, regulations and orders.

Mr. Lisle testified at the Show Cause Hearing on behalf of the Company. In both the Answer filed by Telrite<sup>13</sup>, and Mr. Lisle's testimony at the Show Cause Hearing, Telrite admits it violated Commission rules, regulations and orders. Mr. Lisle stated at the hearing, "Life Wireless deeply regrets and

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<sup>8</sup> Docket No. C-4621/NUSF-89, News Article, *Channel Six News*, "Free Phones Draw Crowd, Including Police" (WOWT July 12, 2013)(TV broad.)(available at <http://www.wowt.com/news/headlines/Free-Phones-Draws--A-Crowd-215277581.html>), Hearing Exhibit No. 3.

<sup>9</sup> Docket No. C-4621/NUSF-89, July 19, 2013 Letter from Brian Lisle to Commission Chair Anne Boyle, Hearing Exhibit No. 7, p. 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at p. 5.

<sup>13</sup> Docket No. C-4621/NUSF-89, Telrite Answer, Hearing Exhibit No. 2, p. 1.

apologizes for the errors made during the July launch of our Lifeline program in Nebraska."<sup>14</sup>

Mr. Lisle further testified that Telrite began as a long distance company in 2000. With the widespread adoption of wireless service, the Company decided to get into the wireless ETC business. According to Mr. Lisle, Telrite received its first ETC designation on a wireless basis to participate in Lifeline in Arkansas in 2010. Mr. Lisle went on to state that Telrite is currently designated as a Lifeline ETC in twenty-five (25) states, and currently serves approximately 750,000 Lifeline customers, making Telrite one of the largest ETCs in the Lifeline program.<sup>15</sup>

#### O P I N I O N   A N D   F I N D I N G S

Pursuant to the Nebraska Telecommunications Universal Service Fund Act<sup>16</sup> ("NUSF Act"), the Commission has the authority to "subject eligible telecommunications companies to service quality, customer service, and billing regulations."<sup>17</sup> Further the NUSF Act provides the Commission "shall have authority and power to issue orders carrying out its responsibilities and to review the compliance of any eligible telecommunications company receiving support for continued compliance with any such orders or regulations adopted pursuant to the act."<sup>18</sup>

The Commission has promulgated rules and regulations containing application and participation requirements for any carrier designated as an ETC and participating in NTAP.<sup>19</sup> Further, the Commission has issued orders specifically addressing requirements for those carriers participating in NTAP.<sup>20</sup>

There is no dispute Telrite violated Commission rules, regulations and orders when it initiated service at its first event after receiving ETC designation on May 29, 2013. Telrite admits it made errors and failed to comply with Nebraska

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<sup>14</sup>Docket No. C-4621/NUSF-89, TR 13:17-19.

<sup>15</sup>Docket No. C-4621/NUSF-89, TR 14:7 - 15:12.

<sup>16</sup> See Neb. Rev. Stat. § 86-316 et seq. (Reissue of 2008).

<sup>17</sup> See Neb. Rev. Stat. § 86-324(2)(a) (Reissue of 2008).

<sup>18</sup> See Neb. Rev. Stat. § 86-324(2)(b) (Reissue of 2008).

<sup>19</sup> See 291 NAC 5 § 009 and 291 NAC 10 § 006.

<sup>20</sup> See Application No. NUSF-2, *In the Matter of the Commission, on its own motion, seeking to establish guidelines for administration of the Nebraska Lifeline Program.*

specific requirements at its Omaha event in early July.<sup>21</sup> Telrite further admits the personnel that conducted the Omaha event on behalf of Telrite were not appropriately trained in NTAP requirements and were ill prepared to initiate Lifeline service in Nebraska.<sup>22</sup>

The Commission clearly has discretion to determine the appropriate penalty for Telrite's non-compliance and failures in Nebraska. The Company urges us to give it a second chance and allow it to continue to participate in NTAP, citing the public interest and the low penetration rate of those individuals currently on the NTAP program and those that are eligible.<sup>23</sup> Ultimately, what penalty we impose rests upon our confidence in Telrite's assurances and commitments to comply with our NTAP requirements on a prospective basis. Regarding that confidence, we have three main areas of concern with Telrite that form the basis of our decision here today.

#### Similar Assurances of Compliance

Just weeks after Mr. Lisle testified before the Commission at Telrite's ETC Hearing, that he understood the Nebraska specific NTAP requirements and committed his Company to comply with all those requirements, Telrite violated many of those commitments and failed to comply with its promises.

We are troubled by the similarity of the testimony Mr. Lisle offered in May at the ETC Hearing and in August at the Show Cause Hearing. In both, Mr. Lisle gave assurances regarding the Company's commitment to compliance and its willingness to work with the Commission. Mr. Lisle specifically assured this Commission when questioned at the ETC Hearing about the Nebraska specific requirements, stating he has, "a full compliance department that takes care of all of [that]."<sup>24</sup>

However, at the Show Cause Hearing, Mr. Lisle attempted to explain why his compliance department had failed to ensure compliance with the Nebraska specific requirements stating the following,

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<sup>21</sup>Docket No. C-4621/NUSF-89, Telrite Answer, Hearing Exhibit No. 2; July 19, 2013 Letter from Brian Lisle to Commission Chair Anne Boyle, Hearing Exhibit No. 7; and TR 6:10-12.

<sup>22</sup>Docket No. C-4621/NUSF-89, TR 59:17 - 60:11.

<sup>23</sup>Docket No. C-4621/NUSF-89, TR 6:24 - 7:13.

<sup>24</sup>Application No. C-4571/NUSF-88, TR 23:16-17.

After the [ETC] hearing, kind of a typical scenario of what I would do is I will send e-mails to different departments within the company. (...) I shot the information over to the compliance department specifically about NTAP process because that is a twist on the normal roll[-out] (...) So, we wanted to get the information exchange going between NTAP, the personnel in Telrite or Life Wireless personnel. Unfortunately, that did not happen. Myself, I am moving on to other events, and it just resulted in error. There was lack of follow-ups on communications there.<sup>25</sup>

It seems from the events that Mr. Lisle's confidence in his compliance department may have been misplaced. While we understand errors and miscommunications can occur, we are concerned as we were assured that Telrite had operations and individuals in place to both ensure compliance with state specific requirements and to train its employees and contractors regarding Nebraska requirements. Yet, both the compliance department and the management team failed to follow through. Additionally, we are disturbed that Mr. Lisle relied on one e-mail message to his compliance department, but no follow-up was ever attempted.

When the initiation of Telrite service occurred in Omaha approximately six weeks later, none of the promised training or compliance work had been done. Regarding training, Mr. Lisle testified at the Show Cause Hearing, "So, you have service state specific training that takes place on the reps. Reps cannot get into a state unless they are credentialed into the state. It just further simplifies or identifies that we were just going [down] the line and we just missed everything."<sup>26</sup>

We have heard the promises of compliance before. The result was the Omaha tent event. Now the Company assures us they will comply with our requirements in the future. We are not convinced.

### Telrite's Experience

Next, Telrite is an experienced ETC operator, and in its own words, "one of the largest Lifeline ETCs in the country."<sup>27</sup>

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<sup>25</sup> Docket No. C-4621/NUSF-89, TR 16:9 - 17:6.

<sup>26</sup> Docket No. C-4621/NUSF-89, TR 60:2-7.

<sup>27</sup> Docket No. C-4621/NUSF-89, Telrite Answer, Hearing Exhibit No. 2, p. 6.

Telrite stated that it operated in numerous states that have state specific requirements for Lifeline. Mr. Lisle stated at the ETC Hearing, "[W]e've rolled out to many states, I mean, we're not new into this program. (...) [N]ot all but many states have some specific variance that they like us to use and that they like to enforce."<sup>28</sup>

We would be more understanding regarding errors and failures by a company that was just getting into the ETC arena. However, Telrite by its own testimony is an experienced and knowledgeable participant in the Lifeline program.

Further, at the Show Cause Hearing, Mr. Lisle testified to the twenty-five (25) states in which they operate, and the 750,000 Lifeline customers they serve nationwide.<sup>29</sup> The Company highlighted and relied on its experience in the Lifeline program at both the ETC Hearing and the Show Cause Hearing to assure the Commission of the Company's ability and willingness to comply with all operating requirements as a Nebraska ETC.

In addition to its experience, Telrite is involved on the national level with issues confronting Lifeline as a member of the Lifeline Reform 2.0 Coalition, a national group making proposals regarding combating fraud and abuse of the Lifeline program to the FCC.<sup>30</sup> In light of the heightened scrutiny on the Lifeline program nationally in the past year, Telrite's failures to honor its commitments to the Commission are even more disturbing to us.

Additionally, we are not swayed by Mr. Lisle's testimony that the Company was expanding into different states at a rapid pace, going from ETC designation in ten (10) states to twenty-five (25) in a short timeframe.<sup>31</sup> The pace at which Telrite applied for ETC designation in different jurisdictions was completely within the discretion of the Company. If the Company was unable to keep pace with the rigors of compliance in so many different states so rapidly, it was within the Company's control to slow the pace of its expansion. It appears that by moving too quickly, Telrite allowed important details to be overlooked.

### Lack of Oversight

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<sup>28</sup> Application No. C-4571/NUSF-88, TR 22:23 - 23:3.

<sup>29</sup> Docket No. C-4621/NUSF-89, TR 14:7 - 15:12 and Application No. C-4571/NUSF-88, TR 22:23 - 23:3.

<sup>30</sup> Id. at 7.

<sup>31</sup> Docket No. C-4621/NUSF-89, TR 17:15-22.



Finally, there seems to be a significant lack of oversight by the management at Telrite. Mr. Lisle came before us specifically to discuss the July Omaha event but was unable to address specific questions about the event. Mr. Lisle couldn't address issues such as, the parties in charge of the event, the manner and type of advertising done in Omaha prior to the event, and how the site of the tent was determined. We understand, based on Mr. Lisle's testimony, that Telrite is a large organization and Mr. Lisle has numerous individuals working for him. However, he was asked to come to Nebraska to give answers specifically regarding one event in Omaha and he was unable to answer many of our questions, even with nearly three weeks to ask his staff for an explanation and make a determination as to the identity of the responsible local contacts.

After careful consideration, we are unconvinced we can rely on Telrite's assurances and commitments to operate as a fully compliant Lifeline ETC in Nebraska in the future. Therefore, due to the violations of Commission rules, regulations, and orders regarding NTAP by Telrite, we find that Telrite Corporation d/b/a Life Wireless' Eligible Telecommunications Carrier designation in Nebraska should be revoked. Further, Telrite shall cease and desist providing service as a Lifeline provider in the State of Nebraska within forty-five (45) days from the date of this order. Furthermore, Telrite shall give notice of the discontinuance of Lifeline service by Telrite to their Nebraska customers a minimum of thirty (30) days before termination of the service. The customer notice shall include contact information for the Commission, including the Commission's website and toll-free number.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Telrite Corporation d/b/a Life Wireless' Eligible Telecommunications Carrier designation in Nebraska for the limited purpose of participating in the Lifeline and Nebraska Telephone Assistance Program should be revoked.

IT IS FURTHER ORDERED that Telrite Communications d/b/a Life Wireless shall cease and desist providing service as a Lifeline provider in the State of Nebraska within forty-five (45) days from the date of this order.

IT IS FURTHER ORDERED that Telrite Communications d/b/a Life Wireless shall give notice of the discontinuance of

Lifeline service by Telrite Communications d/b/a Life Wireless to their Nebraska customers a minimum of thirty (30) days before termination of the Lifeline service, such notice shall include contact information for the Commission, including the Commission's website and toll-free number.

MADE AND ENTERED at Lincoln, Nebraska, this 17<sup>th</sup> day of September, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

Application No. C-4621/NUSF-89

PAGE 10

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NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Executive Director

//s//Anne C. Boyle  
//s//Frank E. Landis