

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
NewPhone Wireless LLC)
File No.: EB-IHD-20-00031449
CD Acct. No.: 202232080001
FRN: 0021322953

ORDER

Adopted: December 16, 2021

Released: December 17, 2021

By the Chief, Enforcement Bureau:

1. The Federal Communications Commission’s (Commission or FCC) rules governing the Lifeline program establish specific requirements that eligible telecommunications carriers must fulfill in order to claim and receive federal Lifeline support for serving low income consumers. Compliance with these rules is critical to ensuring that the program’s resources are distributed appropriately to serve only individuals who qualify for the discounted service. Consistent with this objective, the Enforcement Bureau of the FCC has entered into a Consent Decree to resolve its investigation into whether NewPhone Wireless LLC (NewPhone) violated the Commission’s Lifeline rules by requesting and/or receiving support from the Lifeline program of the Universal Service Fund for ineligible subscribers. To settle this matter, NewPhone will implement a compliance plan and will make a \$100,000 settlement payment to the United States Treasury.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and terminating the referenced investigation regarding NewPhone’s compliance with sections 54.404(b), 54.405(e), 54.407, 54.409, 54.410, and 54.417 of the Commission’s rules.

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of NewPhone’s basic qualifications to hold or obtain any Commission license or authorization.

4. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended and the authority delegated by sections 0.111 and 0.311 of the Commission’s rules, the attached Consent Decree IS ADOPTED and its terms incorporated by reference.

1 See 47 CFR §§ 54.400-54.422 (2020).

2 See 47 CFR §§ 54.404(b); 54.405(e); 54.407; 54.409; 54.410; 54.417.

3 See 47 CFR § 1.93(b).

4 47 U.S.C. § 154(i).

5 47 CFR §§ 0.111, 0.311.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** in accordance with the terms of the attached Consent Decree.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by e-mail to Danielle Frappier, Esq., and Christopher Savage, Esq., Davis Wright Tremaine LLP, Counsel to NewPhone Wireless LLC, via e-mail at DanielleFrappier@dwt.com and ChrisSavage@dwt.com.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary C. Harold
Chief
Enforcement Bureau

Before the
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Washington, D.C. 20554

In the Matter of
NewPhone Wireless LLC
File No.: EB-IHD-20-00031449
CD Acct. No.: 202232080001
FRN: 0021322953

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and NewPhone Wireless LLC (NewPhone or Company), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Bureau’s Investigation, as defined below, into whether NewPhone violated sections 54.404(b), 54.405(e), 54.407, 54.409, 54.410, and 54.417 of the Commission’s Lifeline Rules.1

2. The Bureau’s Investigation focused on whether NewPhone, as an eligible telecommunications carrier (ETC), claimed support from the Lifeline program of the Universal Service Fund (USF or Fund) for duplicate or otherwise ineligible subscribers by creating new enrollments using beneficiary data from existing customer accounts. To resolve this matter, NewPhone agrees to implement a compliance plan and make a \$100,000 settlement payment.

I. DEFINITIONS

- 3. For the purposes of this Consent Decree, the following definitions shall apply:
(a) “Act” means the Communications Act of 1934, as amended.2
(b) “Adopting Order” means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
(c) “Bureau” means the Enforcement Bureau of the Federal Communications Commission.
(d) “CD Acct No.” means account number 202232080001, associated with payment obligations described in paragraph 20 of this Consent Decree.
(e) “Commission” and “FCC” mean the Federal Communications Commission and all of its bureaus and offices.
(f) “Communications Laws” means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which NewPhone is subject by virtue of its business activities, including but not limited to the Lifeline Rules.

1 See 47 CFR §§ 54.404(b); 54.405(e); 54.407; 54.409; 54.410; 54.417.

2 47 U.S.C. § 151 et seq.

- (g) “Company” means NewPhone Wireless LLC, its agents (including Marketing Agents), affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (h) “Compliance Plan” means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 16.
- (i) “Covered Employees” means all employees and agents of NewPhone who perform, supervise, oversee, or manage the performance of, the duties that relate to NewPhone’s responsibilities under the Communications Laws, including the Lifeline Rules and the activities of the Company’s Marketing Agents.
- (j) “Effective Date” means the date by which both the Bureau and NewPhone have signed the Consent Decree and the Bureau has released an Adopting Order.
- (k) “ETC” means an eligible telecommunications carrier designated under, or operating pursuant to, section 214(e) of the Communications Act, as amended, 47 U.S.C. § 214(e), as eligible to offer and receive support for one or more services through federal universal low-income support mechanisms.
- (l) “Investigation” means the investigation commenced by the Bureau in File No. EB-IHD-20-00031449 regarding whether NewPhone violated the Lifeline Rules.
- (m) “Lifeline Rules” means Title 47, Code of Federal Regulations, sections 54.407(a), (c), 54.410(a), 54.410(b), and 54.410(c) of the Commission’s rules, and other provisions of the Act, the Rules, and Commission orders which provides that Lifeline ETCs may only claim Lifeline support for eligible, qualifying customers.
- (n) “LOI” means the Letter of Inquiry issued by the Bureau to NewPhone on September 23, 2021 in EB-IHD-20-00031449 in connection with the Company’s compliance with the Lifeline Rules.
- (o) “Marketing Agents” means all contractors and/or subcontractors acting on behalf of the Company with direct responsibility for the sales, marketing, enrollment of new customers, and other duties directly related to the Company’s responsibilities under the Lifeline Rules.
- (p) “Operating Procedures” means the standard internal operating procedures and compliance policies established by NewPhone to implement the Compliance Plan.
- (q) “Parties” means NewPhone and the Bureau, each of which is a “Party.”
- (r) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (s) “NewPhone or Company” means NewPhone Wireless LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.
- (t) “USAC” means the Universal Service Administrative Company, which serves as the administrator for the federal Universal Service Fund.³

II. BACKGROUND

4. *Legal Framework.* The Lifeline program was established in 1985 to ensure that low-income consumers had access to affordable, landline telephone service.⁴ In 2008, the Commission

³ See 47 CFR § 54.701.

⁴ See *MTS and WATS Market Structure and Amendment of Parts 67 & 69 of the Commission’s Rules and Establishment of a Joint Board*, Report and Order, 50 Fed. Reg. 939 (Jan. 8, 1985).

expanded the program to allow participation by non-facilities-based providers.⁵ Today, the Lifeline program has significantly grown to include discounts on voice or broadband Internet access services, as well as bundled service, to qualifying low-income consumers, ensuring that all Americans can take advantage of the benefits that voice and broadband Internet access service bring, including being able to connect to jobs, family, education, health care providers, and emergency services.⁶

5. Pursuant to the Act, in order to participate in the Lifeline program and receive federal universal service support for providing Lifeline service, a service provider must be designated as an ETC by either a state commission or the FCC if the ETC is not subject to the state commission's jurisdiction.⁷ Once designated, an ETC may receive federal Lifeline support in the applicable amount of support per month, per subscriber.⁸ ETCs are required to pass these discounts along to eligible low-income consumers.⁹ Pursuant to section 54.407 of the Commission's rules, in order to receive reimbursement for offering Lifeline, among other things, an ETC must certify "as part of each request for reimbursement that . . . [it] is in compliance with all of the [Commission's] rules"¹⁰ for the program.

6. The Commission's Lifeline rules establish specific requirements that ETCs must fulfill in order to claim and receive federal Lifeline support.¹¹ Section 54.407(a) of the Commission's rules states that Lifeline support shall be paid to an ETC "based on the number of actual qualifying low-income customers listed in the National Lifeline Accountability Database that the eligible telecommunications carrier serves directly as of the first of the month."¹² The key tenets of the rules prescribing which customers can be claimed by ETCs for discounted Lifeline service are: (1) disbursements of Lifeline support can only be based on the number of "actual qualifying low-income consumers" served by an ETC as that term is defined in Commission rules,¹³ (2) such qualifying low-income consumers must be served directly by the ETC as of the first day of the month, and (3) such consumers must have been determined to be eligible.¹⁴

⁵ See, e.g., *Petition of TracFone Wireless, Inc. for Forbearance*, Order, 20 FCC Rcd 15095 (2005); *TracFone Wireless, Inc., Petition for Designation as an Eligible Telecommunications Carrier in New York et al.*, Order, 23 FCC Rcd 6206 (2008).

⁶ See 47 CFR § 54.401(a) ("Lifeline means a non-transferable retail service offering . . . [t]hat provides qualifying low-income consumers with [reduced price] voice telephony service or broadband Internet access service. . . ."); 47 CFR § 54.401(b) (permitting Lifeline discounts to be applied to bundled services).

⁷ 47 U.S.C. § 254(e) ("[O]nly an eligible telecommunications carrier designated under section 214(e) . . . shall be eligible to receive specific Federal universal service support.").

⁸ 47 CFR § 54.403(a). An ETC providing voice service with broadband meeting the applicable minimum standards may claim \$9.25 per month, and it may receive up to an additional \$25 per month if the qualifying low-income consumer resides on Tribal lands. See 47 CFR §§ 54.403(a), 54.408.

⁹ See 47 CFR § 54.403(a); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order, 27 FCC Rcd at 6681, para. 53 (2012) (*2012 Lifeline Reform Order*).

¹⁰ 47 CFR § 54.407(d).

¹¹ See 47 CFR §§ 54.400 – 54.422.

¹² 47 CFR § 54.407(a).

¹³ *Id.*; see also 47 CFR §§ 54.409 (establishing the criteria to constitute a "qualifying low-income consumer"); 54.410(b)–(c) (establishing procedural requirements for determining whether a consumer is a qualifying low-income consumer).

¹⁴ 47 CFR §§ 54.400(a), 54.407(a), 54.409.

7. The Commission's rules strictly prohibit an ETC from seeking reimbursement for a subscriber unless the ETC has confirmed that subscriber's eligibility to receive Lifeline service.¹⁵ ETCs are required to "implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services."¹⁶ In particular, ETCs must confirm that a consumer is an actual "qualifying low-income consumer" meeting the eligibility criteria set forth in the Commission's rules.¹⁷ Section 54.409 requires Lifeline subscribers to meet certain income-based criteria.¹⁸ In addition, the consumer "must not already be receiving a Lifeline service" and cannot receive more than one Lifeline-supported service at a time, either individually or within a group of individuals who live together at the same address as one economic unit (defined in the Commission's rules as a "household").¹⁹ In other words, the Commission's rules prohibit a consumer from receiving duplicate support.²⁰ Moreover, pursuant to section 54.410(d) of the Commission's rules, ETCs must ensure that a prospective subscriber has certified his/her eligibility to receive Lifeline service.²¹

8. USAC is the administrator of the federal universal service programs, including Lifeline.²² As the administrator, USAC collects and distributes universal service funds. In the 2012 *Lifeline Reform Order*, the Commission established the National Lifeline Accountability Database (NLAD), a system used by USAC to receive and process subscriber data and prevent ETCs from enrolling a new subscriber without first confirming that the subscriber or someone in the subscriber's household does not already receive Lifeline service.²³ In late 2019, the Commission began launching the National Lifeline Eligibility Verifier in a phased introduction in states and territories.²⁴ Beginning on January 22, 2020, the

¹⁵ See 47 CFR §§ 54.410(b)(1)(i), (c)(1)(i).

¹⁶ *Id.* at § 54.410(a).

¹⁷ *Id.* at § 54.409(c).

¹⁸ *Id.* at §§ 54.400(a), 54.409.

¹⁹ *Id.* at § 54.409(c).

²⁰ *Id.* at §§ 54.400(h); 54.409(c). Since 2011, the Commission has addressed potential waste, fraud, and abuse in Lifeline by preventing duplicate payments for multiple Lifeline-supported services to the same individual. See, e.g., *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Report and Order, 26 FCC Rcd 9022-23, 9026, paras. 1, 7 (2011) (*Lifeline Duplicates Order*) (clarifying that each eligible Lifeline consumer is entitled to only one Lifeline benefit); *2012 Lifeline Reform Order*, 27 FCC Rcd at 6662-67, paras. 11-18, and 6689, para. 74, n.192 (emphasizing the restriction on duplicates and moving the rule from section 54.401(a) to revised section 54.409(c)); *Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Order, 28 FCC Rcd 9057 (WCB 2013) (*2013 Lifeline Reform Order*) (codifying the requirement that ETCs verify a Lifeline subscriber's eligibility before activating service); see also *Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization*, WC Docket Nos. 17-287, 11-42, 09-197, Fifth Report and Order, 34 FCC Rcd 10886, 10922-24, paras 87-91 (2019) (*2019 Lifeline Reform Order*) (adopting enrollment process improvements to assist USAC's efforts to detect improper duplicate addresses among Lifeline subscribers in the NLAD).

²¹ 47 CFR § 54.410(d).

²² See 47 CFR §§ 54.701(a), 54.702(b).

²³ See *2012 Lifeline Reform Order*, 27 FCC Rcd at 6734, para. 179; 47 CFR §§ 54.404(b) (prescribing steps for ETCs to check NLAD to determine whether providing a prospective subscriber for the Lifeline program would result in duplicative support); see also *Wireline Competition Bureau Clarifies Minimum Requirements for States Seeking to Opt-Out of National Lifeline Accountability Database*, Pub. Notice, 27 FCC Rcd 12321 (WCB 2012).

²⁴ See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4021, para. 165 (2016).

Commission required Lifeline ETCs in Louisiana to begin using the National Verifier's eligibility determination process for all consumers applying for Lifeline service.²⁵

9. *Factual Background.* NewPhone is a Louisiana limited liability company headquartered in Houston, Texas.²⁶ The Company has resold mobile wireless Lifeline service since 2012 exclusively in Louisiana.²⁷ USAC referred this matter to the Bureau on August 25, 2020, concerning NewPhone's apparent claims for ineligible Lifeline subscribers between August 2018 and June 2020, with a majority of the claims occurring in 2020. The claims appeared to involve duplicate or otherwise ineligible accounts that used beneficiary data from other existing Lifeline customers.

10. On September 23, 2020 the Bureau issued NewPhone an LOI to obtain information about the claims.²⁸ NewPhone filed its response to the LOI on November 23, 2021.²⁹ Within weeks after USAC notified NewPhone of the apparently improper use of beneficiary data, the Company terminated its relationship with the Marketing Agents involved in the enrollments.³⁰ USAC worked with NewPhone from early August through October 2020 to address the issues raised by the claims.³¹ On October 30, 2020, NewPhone submitted revised claims which USAC agreed addressed the full amount at issue in its investigation. Because USAC determined NewPhone had promptly submitted revised claims in the full amount USAC sought, there was no need to issue a recovery letter. NewPhone and the Bureau enter into this Consent Decree and agree to the following terms and conditions.

III. TERMS OF AGREEMENT

11. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

12. **Jurisdiction.** NewPhone agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

13. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

14. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, NewPhone agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute any new proceeding on its own motion against NewPhone concerning the matters that were the subject of the Investigation, or to set for hearing the

²⁵ See *Wireline Competition Bureau Announces the Launch of the National Lifeline Eligibility Verifier for All New Enrollments in Nine States*, Pub. Notice, 34 FCC Rcd 12300 (WCB 2019).

²⁶ See Letter from Danielle Frappier and Christopher Savage, Counsel for NewPhone Wireless LLC, to Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, at 2 (Nov. 23, 2020) (LOI Response) (on file in EB-IHD-20-00031449).

²⁷ *Id.* at 3.

²⁸ Letter from Jeffrey J. Gee, Chief, Investigations & Hearings Division, FCC Enforcement Bureau, to Henry Hung Do, President/CEO, and Thuy Nguyen, Controller, NewPhone Wireless LLC (Sept. 23, 2020) (LOI) (on file in EB-IHD-20-00031449).

²⁹ LOI Response, *supra* note 26.

³⁰ *Id.* at 11.

³¹ *Id.* at 7.

question of NewPhone's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations based on the matters that were the subject of the Investigation.³²

15. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, NewPhone shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that NewPhone complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Lifeline Rules prior to assuming his/her duties.

16. **Compliance Plan.** For purposes of settling the matters set forth herein, NewPhone agrees that it shall, within ninety (90) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Communications Laws and with the terms and conditions of this Consent Decree. With respect to the Lifeline Rules, NewPhone will implement, at a minimum, the following procedures:

- (a) **Operating Procedures.** Within ninety (90) calendar days after the Effective Date, NewPhone shall establish Operating Procedures that all Covered Employees must follow to help ensure NewPhone's compliance with the Lifeline Rules. NewPhone's Operating Procedures shall include internal procedures and policies specifically designed to ensure that the Company complies with the Lifeline Rules. NewPhone shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Lifeline Rules.
- (b) **Compliance Manual.** Within ninety (90) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Lifeline Rules and set forth the Operating Procedures that Covered Employees shall follow to help ensure NewPhone's compliance with the Lifeline Rules. NewPhone shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. NewPhone shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** NewPhone shall establish and implement a Compliance Training Program on compliance with the Lifeline Rules and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of NewPhone's obligation to report any noncompliance with the Lifeline Rules under paragraph 17 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within one hundred twenty (120) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. NewPhone shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

³² See 47 CFR § 1.93(b).

17. **Reporting Noncompliance.** NewPhone shall report any noncompliance with the Lifeline Rules and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that NewPhone has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that NewPhone has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted by U.S. mail and electronically to Jeffrey Gee, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, Jeffrey.Gee@fcc.gov, with copies submitted electronically to Mindy.Littell@fcc.gov and EnforcementBureauIHD@fcc.gov.

18. **Compliance Reports.** NewPhone shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of NewPhone's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Lifeline Rules. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of NewPhone, stating that the Compliance Officer has personal knowledge that NewPhone: (i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 17 of this Consent Decree.
- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.³³
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of NewPhone, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that NewPhone has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that NewPhone has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted by U.S. mail and electronically to Jeffrey Gee, Chief, Investigations & Hearings Division, Enforcement Bureau, Federal Communications Commission, 45 L Street, N.E., Washington, D.C. 20554, Jeffrey.Gee@fcc.gov, with copies submitted electronically to Mindy.Littell@fcc.gov and EnforcementBureauIHD@fcc.gov.

19. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 15 through 18 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

20. **Settlement Payment.** NewPhone will pay a Settlement Payment to the United States Treasury in the amount of one hundred thousand dollars (\$100,000) within thirty (30) calendar days of the Effective Date. NewPhone acknowledges and agrees that upon execution of this Consent Decree, the

³³ 47 CFR § 1.16.

Settlement Payment shall become a “Claim” or “Debt” as defined in 31 U.S.C. § 3701(b)(1).³⁴ Upon an Event of Default, all procedures for collection as permitted by law may, at the Commission’s discretion, be initiated. NewPhone shall send electronic notification of payment to Jeffrey.Gee@fcc.gov, Mindy.Littell@fcc.gov, and EnforcementBureauHHD@fcc.gov on the date said payment is made. Payment of the Settlement Payment must be made by credit card, ACH (Automated Clearing House) debit from a bank account, or by wire transfer using the Commission’s Registration System (the Commission’s FRN Management and Financial system).³⁵ The Commission no longer accepts Civil Penalty payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:³⁶

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated.³⁷ Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters “FORF” in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).³⁸ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). After selecting the bill for payment, choose the “Pay by Credit Card” option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission’s Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Manage Existing FRNs | FRN Financial | Bills & Fees” on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the “Open Bills” tab and find the bill number associated with the CD Acct. No. The bill number is the CD Acct. No. with the first two digits excluded (e.g., CD 1912345678 would be associated with FCC Bill Number 12345678). Finally, choose the “Pay from Bank Account” option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and

³⁴ Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

³⁵ Payments made using CORES do not require the submission of an FCC Form 159.

³⁶ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

³⁷ FCC Form 159 is accessible at <https://www.fcc.gov/licensing-databases/fees/fcc-remittance-advice-form-159>.

³⁸ Instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

verify with that financial institution that the designated account has authorization to accept ACH transactions.

21. **Event of Default.** NewPhone agrees that an Event of Default shall occur upon the failure by NewPhone to pay the full amount of the Settlement Payment on or before the due date specified in this Consent Decree.

22. **Interest, Charges for Collection, and Acceleration of Maturity Date.** After an Event of Default has occurred under this Consent Decree, the then unpaid amount of the Settlement Payment shall accrue interest, computed using the U.S. Prime Rate in effect on the date of the Event of Default plus 4.75%, from the date of the Event of Default until payment in full. Upon an Event of Default, the then unpaid amount of the Settlement Payment, together with interest, any penalties permitted and/or required by the law, including but not limited to 31 U.S.C. § 3717 and administrative charges, plus the costs of collection, litigation, and attorneys' fees, shall become immediately due and payable, without notice, presentment, demand, protest, or notice of protest of any kind, all of which are waived by NewPhone.

23. **Waivers.** As of the Effective Date, NewPhone waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. NewPhone shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither NewPhone nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and NewPhone shall waive any statutory right to a trial *de novo*. NewPhone hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act³⁹ relating to the matters addressed in this Consent Decree.

24. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

25. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

26. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or order adopted by the Commission (except an order specifically intended to revise the terms of this Consent Decree to which NewPhone does not expressly consent) that provision will be superseded by such Rule or order.

27. **Successors and Assigns.** NewPhone agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

28. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation. The Parties further agree that this Consent Decree does not constitute either an adjudication on the merits or a factual or legal finding regarding any compliance or noncompliance with the requirements of the Communications Laws. This Consent Decree shall not be used as evidence or precedent in any action or proceeding, except an action to enforce this Consent Decree.

³⁹ See 5 U.S.C. § 504; 47 CFR §§ 1.1501–1.1530.

29. **Modifications**. This Consent Decree cannot be modified without the advance written consent of both Parties.

30. **Paragraph Headings**. The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

31. **Authorized Representative**. Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

32. **Counterparts**. This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Rosemary C. Harold
Chief
Enforcement Bureau

Date

Henry Hung Do
President and Chief Executive Officer
NewPhone Wireless LLC

Date