

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

In the Matter of a General Investigation of TAG)
Mobile, LLC to Show Cause Why This) Docket No.: 16-TAGC-323-SHO
Commission Should Not Initiate Sanctions and)
Fines and Cancel, Suspend and Revoke Any)
Authority the Carrier Currently Holds.)

**MOTION TO DISMISS SHOW CAUSE OR
FOR EVIDENTIARY HEARING**

TAG Mobile, LLC ("TAG") hereby requests the Commission issue an Order finding TAG is not in violation of state or federal statutes, rules or orders, or in the alternative, schedule this matter for an evidentiary hearing and issue a Protective Order and a Discovery Order. In support of this request, TAG states as follows:

1. TAG was approved as an Eligible Telecommunications Carrier ("ETC") by Commission Order issued in Docket No. 12-TAGC-843-ETC on November 15, 2012 ("12-843 Docket").

2. On January 14, 2016, the Kansas Corporation Commission ("Commission") issued an Order to Show Cause ("Show Cause Order") based solely upon a December 23, 2015 Report and Recommendation submitted by the Staff of the Commission ("Staff") wherein Staff alleged TAG had violated Federal Communications Commission's ("FCC") rules, federal and state statutes, and Commission Orders in Kansas. Staff asserted that the manner in which TAG has been providing Lifeline Service as a designated ETC in Kansas is inconsistent with such rules, statutes and Orders because it is not providing low-income consumers with voice telephone service using its "own facilities" on every call it carries. In addition, Staff alleged that TAG was not passing along the entirety of the Lifeline discount to its new and existing customers.

3. As part of the Show Cause Order, the Commission instructed the KUSF Administrator, GVNW, to immediately cease providing Lifeline support to TAG until the issues in the docket were resolved. On February 2, 2016, TAG filed a Petition for Reconsideration asking that this aspect of the Show Cause Order be modified so that such payments would be held by GVNW until the outcome of this proceeding is known, at which time the accrued amounts could be paid to TAG as appropriate. The Commission granted TAG's Petition by Order dated March 3, 2016. Thus, at this time and during the pendency of this case, TAG is not receiving these revenues for the Lifeline services it continues to provide to low-income customers in Kansas.

4. On February 17, 2016, TAG filed its response to the Commission's Show Cause Order ("TAG's Response"). TAG explained that it was still using its "own facilities" to provide service in Kansas consistent with FCC requirements and applicable law. Additionally, TAG fully addressed Staff's incorrect allegation that TAG was not passing along the entirety of the Lifeline discount to its customers.

5. On February 25, 2016, Staff filed a Response to TAG's Response to the Show Cause Order ("Staff's Response") arguing that (1) prior to the FCC removing the "own facilities" requirement on ETC carriers, the FCC's rules required such carriers to use their "own facilities" on every call they carried, (2) the Commission's Order in the 12-843 Docket required TAG to comply with FCC's rules, including the requirement that it utilize its facilities for all calls to or from its Kansas customers, (3) the agreement between Selectel and TAG is not a "commercial agreement" because TAG did not lease or acquire unbundled network elements from Selectel, (4) the agreement with Selectel somehow placed TAG in violation of the FCC and Kansas rules because TAG has no legal basis to contract with Selectel to provide services on TAG's behalf,

(5) Selectel was unlawfully providing Lifeline services at TAG's behalf, (6) TAG was not providing any of the Lifeline services, (6) TAG cannot pass along any of the Lifeline subsidy to a non-ETC designated carrier, and (7) TAG's violations were "intentional and unreasonable", and "there was no voluntary disclosure of the violations on TAG's part" and, as such, the Commission should impose penalties on TAG, make TAG repay KUSF funds, and consider revocation of TAG's ETC designation.

6. Staff's analysis is fraught with inconsistencies and errors, and the allegations are not supported by precedent or authorities. There are factual errors, such as alleging that TAG has not been providing any Lifeline services, and legal errors, such as asserting the FCC rules did not permit the Selectel/TAG arrangement at issue in this case. In addition, there are unsupported assumptions, such as Staff's assertion that TAG cannot pay any of the Lifeline subsidy to its vendors unless they are designated ETCs.

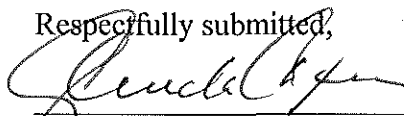
7. In TAG's Response, TAG explained that Kansas law adopts the federal standards for designating a provider as an ETC for Kansas Universal Service Fund ("KUSF") purposes, and that the federal rules allow the arrangement TAG entered into with Selectel. (See select portions of *Report and Order and Further Notice of Proposed Rulemaking*, FCC 12-11, attached hereto as **Exhibit A**.) Additionally, TAG pointed out that the Commission has not established additional state-specific criteria for ETC designation, citing to the Commission's website wherein the Commission states that "[T]he Commission, at this time, has not established additional state-specific criteria for ETC designation." This section of the website has since been removed, so TAG is providing a copy of the information as **Exhibit B** to this filing. (See page 3 of 5.) As of at least as late as February 15, 2016, this information was published by the Commission as an explanation of the Commission's ETC rules.

8. TAG believes the information presented to the Commission thus far in the pleadings of this docket shows that TAG is not in violation of state or federal statutes, rules or orders as alleged by Staff in its Report and Recommendation. TAG requests the Commission issue an Order making such findings and dismissing the Show Cause.

9. In the alternative, if the Commission believes that additional investigation is needed before final action can be taken, TAG requests the Commission schedule this matter for an evidentiary hearing and issue a Protective Order and a Discovery Order. TAG submits that an evidentiary hearing is the most efficient way to put these matters before the Commission and allow the parties to support their claims.

WHEREFORE, TAG Mobile, LLC respectfully requests that the Commission issue an Order finding TAG is not in violation of state or federal statutes, rules or orders as alleged by Staff in its Report and Recommendation. In the alternative, TAG requests the Commission schedule this matter for an evidentiary hearing and issue a Protective Order and a Discovery Order, and for such other relief as the Commission deems appropriate.

Respectfully submitted,



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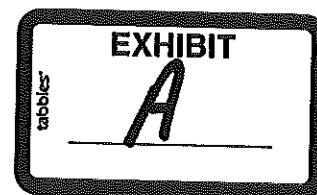
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ATTORNEYS FOR TAG MOBILE, LLC

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



In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Lifeline and Link Up)	WC Docket No. 03-109
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Advancing Broadband Availability Through Digital Literacy Training)	WC Docket No. 12-23
)	

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

Adopted: January 31, 2012

Released: February 6, 2012

Comment Date: (30 days after date of publication in the Federal Register)

Reply Comment Date: (60 days after date of publication in the Federal Register)

By the Commission: Chairman Genachowski issuing a statement; Commissioner Clyburn approving in part, concurring in part and issuing a statement; Commissioner McDowell approving in part, concurring in part, dissenting in part and issuing a statement.

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I. INTRODUCTION

1. In this Order, we comprehensively reform and begin to modernize the Universal Service Fund's Lifeline program (Lifeline or the program). Building on recommendations from the Federal-State Joint Board on Universal Service (Joint Board), proposals in the National Broadband Plan, input from the Government Accountability Office (GAO), and comments received in response to the Commission's

initiate Lifeline service, and the impact of competitive Lifeline offerings on the program. With the information we will gather in the next year as a result of the reforms and in response to the Further Notice, and from the Bureau's reports described in the previous paragraph, we fully expect to have the information needed to determine an appropriate budget for the program and its appropriate duration. We will be in a position to take into account the program's goals—ensuring availability of communications service to low-income Americans, and minimizing the contribution burden on consumers and businesses—and the Commission's review of the effects of the reforms adopted in this Order; the effects of any further reforms and modernization of the program, including adoption of proposals in the *FNPRM*; and changes in the economy. In doing so, the Commission may consider linking the size of the monthly support amount to a communications price index as one way to constrain the size of Lifeline, as discussed in the *FNPRM*.

360. During this interim period between the adoption of today's Order and the Commission's decision regarding an appropriate budget, we strongly discourage ETCs from enrolling ineligible subscribers or taking other actions (or failing to take actions) that enable or exacerbate waste, fraud, and abuse in the program. We note that today's Order largely eliminates Link Up based in part on our conclusion that Link Up has become too susceptible to abuse and provides perverse incentives to ETCs. We will be particularly vigilant over the coming year to ensure such problems do not persist or arise elsewhere in the program.

XI. ELIGIBLE TELECOMMUNICATIONS CARRIER REQUIREMENTS

A. Facilities-Based Requirements for Lifeline-Only ETCs

1. Background.

361. To be eligible for federal universal service support, the Act provides that an ETC must offer the services supported by federal universal service support mechanisms throughout a service area "either using its own facilities or a combination of its own facilities and resale of another carrier's services."⁹⁶² In the *Universal Service First Report and Order*, the Commission interpreted this to mean that a carrier "must use its own facilities to provide at least one of the supported services," but did not specify or define the amount of its own facilities a carrier must use.⁹⁶³ The Commission clarified, however, that "a carrier that serves customers by reselling wholesale service may not receive universal service support for those customers that it serves through resale alone."⁹⁶⁴ It interpreted the term "facilities" to mean "any physical component of the telecommunications network that are used in the transmission or routing of the services that are designated for support."⁹⁶⁵ As such, pursuant to the Act as interpreted by the Commission, a carrier's facilities that are not being used to route or transmit USF supported services do not qualify as "facilities" to meet the ETC requirements in section 214(e)(1)(A).⁹⁶⁶

362. In 2005, the Commission agreed to conditionally forbear from the own-facilities requirement for the limited purpose of allowing TracFone to participate in the federal Lifeline program and receive Lifeline-only support.⁹⁶⁷ By receiving forbearance, TracFone was able to apply for and

⁹⁶² 47 U.S.C. § 214(e)(1)(A).

⁹⁶³ See *USF First Report and Order* at 8871, para. 169.

⁹⁶⁴ *USF First Report and Order* at 8873, para. 174.

⁹⁶⁵ 47 C.F.R. § 54.201(e).

⁹⁶⁶ 47 U.S.C. § 214(e)(1)(A).

⁹⁶⁷ See *TracFone Forbearance Order*.

become an ETC for Lifeline-only support. The Commission subsequently granted conditional forbearance from the facilities requirement for Lifeline support to several other carriers, but refused to extend this forbearance for Link-Up support, finding that such carriers had not demonstrated that doing so was in the public interest.⁹⁶⁸ In the most recent forbearance orders, the Commission conditioned forbearance on carriers meeting several 911 and E911 obligations as a precaution to ensure that a lack of facilities would not impair emergency services.⁹⁶⁹ Other conditions have focused on preventing waste, fraud, and abuse of universal service funding.⁹⁷⁰

363. In the *Lifeline and Link Up NPRM*, the Commission sought comment on whether it should forbear from applying the Act's facilities-based requirement to all carriers that seek limited ETC designation to participate in the Lifeline program.⁹⁷¹ In determining whether to grant a blanket forbearance, the Commission also asked whether it should adopt rules codifying any conditions it would impose on grant of forbearance, rather than imposing them on a case-by-case basis.⁹⁷² Section 10 of the Act requires that the Commission forbear from applying any regulation of any provision of the Act to telecommunications services or telecommunications carriers, or classes thereof, in any or some of its or their geographic markets, if the Commission determines that the three conditions set forth in section 10(a) are satisfied.⁹⁷³

364. In avoiding the forbearance process, some carriers seeking designation as ETCs by state commissions for the limited purpose of participating in the federal low-income program have relied on their provision of operator services and/or directory assistance to meet the ETC "facilities"

⁹⁶⁸ See *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*, WC Dkt. No. 09-197, CC Dkt. No. 96-45, Order, 25 FCC Rcd 10510 (2010) ("*Global Forbearance Order*"); *Conexions ETC Order*; *PlatinumTel Forbearance Order*. The Commission has pending before it several petitions seeking forbearance from the facilities requirement. See, e.g., American Broadband and Telecommunications Petition for Forbearance, WC Dkt. No. 09-197 (filed Feb. 25, 2011); Petition for Forbearance of Millennium 2000, Inc., WC Dkt. No. 09-197 (filed Apr. 12, 2011); Petition for Forbearance of North American Local, LLC, WC Dkt. No. 09-197 (filed Apr. 27, 2011); Total Call Mobile, Inc. Petition for Forbearance, WC Dkt. No. 09-197 (filed May 25, 2011); Petition of Airvoice Wireless, LLC, WC Dkt. No. 09-197 (filed Sept. 13, 2011).

⁹⁶⁹ See *TracFone Forbearance Order*, 20 FCC Rcd at 15101-02, paras. 15-16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390-91, paras. 21-23; *PlatinumTel Forbearance Order*, 26 FCC Rcd at 13793-94, paras. 12-14.

⁹⁷⁰ See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15102-03, paras. 17-18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3393, para. 29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *PlatinumTel Forbearance Order*, 26 FCC Rcd at 13794-96, paras. 17-18. In granting forbearance from the facilities requirement for Lifeline-only ETCs, the Commission has not approved Link Up support for any ETC. *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Conexions Forbearance Order*; *PlatinumTel et. al. Forbearance Order*.

⁹⁷¹ *Lifeline and Link Up NPRM*, at 2863, para. 306.

⁹⁷² *Id.*

⁹⁷³ Specifically section 10(a) provides that the Commission shall forbear from applying such provision or regulation if the Commission determines that:

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers;
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

requirement.⁹⁷⁴ These carriers have received ETC status as facilities-based carriers because they are using their own “facilities” to provide at least one of the supported services.⁹⁷⁵

365. As noted above, in the *USF/ICC Transformation Order FNPRM*, the Commission eliminated its former list of nine supported services and amended section 54.101 of the Commission’s rules to specify that “voice telephony service” is supported by federal universal service support mechanisms.⁹⁷⁶ In amending section 54.101, the Commission eliminated the following functionalities as supported services: dual tone multi-frequency signaling or its functional equivalent; single-party service or its functional equivalent; access to operator services; access to interexchange service; and access to directory assistance.⁹⁷⁷

366. On December 23, 2011, the Commission affirmed that only carriers that provide voice telephony as defined under section 54.101(a) as amended using their own facilities will be deemed to meet the requirements of section 214(e)(1).⁹⁷⁸ Thus, a Lifeline-only ETC does not meet the “own-facilities” requirement of section 214(e)(1) if its only facilities are those used to provide functions that are no longer supported “voice telephony service” under amended rule 54.101, such as access to operator service or directory assistance. The Commission stated that to be in compliance with the rules, Lifeline-only carriers that seek ETC designation after the December 29, 2011 effective date of the *USF/ICC Transformation Order and FNPRM*, as well as such carriers that had previously obtained ETC designation prior to December 29, 2011 on the basis of facilities associated solely with, for example, access to operator service or directory assistance, must either use their own facilities, in whole or in part, to provide the supported “voice telephony service,” or obtain forbearance from the “own-facilities” requirement from the Commission.⁹⁷⁹ To avoid disruption to consumers of previously designated ETCs, however, the Commission set July 1, 2012 as the effective date of amended rule 54.101 for Lifeline-only ETCs in the service areas for which they were designated prior to December 29, 2011, to provide sufficient time to take further action related to the “own-facilities” requirement for Lifeline providers in this proceeding.⁹⁸⁰

367. Moreover, in light of the modifications to TLS adopted in this Order, TLS is no longer required to be provided except in certain specified circumstances, and no longer will be deemed a

⁹⁷⁴ See, e.g., Comments of Ohio Public Utilities Commission Staff, WC Dkt. No. 09-197, WC Dkt. No. 03-109, at 9-10 (explaining how entrance of wireless carriers into the Lifeline market raises questions as to what constitutes “wireless facilities” in the ETC designation process); Reply Comments of Michigan Public Service Commission, CC Dkt. 96-45, WC Dkt. No. 09-197 at 2-3 (raising concerns on whether American Broadband and Telecommunications Company claims that it is a facilities-based ETC meets the requirements under the Act); Comments of South Carolina Office of Regulatory Staff, WC Dkt. No. 09-197, at 2-4 (arguing that Budget PrePay, Inc. should be denied Link Up support because it is not providing facilities-based wireless service).

⁹⁷⁵ See *id.*; see also Letter of Kerri J. DeYoung, Counsel, MA DTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, Dkt. No. 11-42 *et al.*, (filed Nov. 10, 2011) (MA DTC Nov. 10 *ex parte* Letter (reporting that in MA and elsewhere, many wireless carriers are filing ETC petitions claiming satisfaction of the facilities requirement solely by facilities used for operator services and directory assistance)).

⁹⁷⁶ *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 3, 78; see also revised section 54.101(a).

⁹⁷⁷ See *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at paras. 3, 78, nn.114-115 (noting that the Commission no longer mandates that ETCs provide those services that were eliminated from the definition of USF-supported services under section 54.101, but encourages carriers to continue to offer them to customers).

⁹⁷⁸ See *USF/ICC Transformation Order on Reconsideration*, FCC-11-89 at para. 4.

⁹⁷⁹ See *id.*

⁹⁸⁰ See *id.*

supported service. We provide support for TLS only on a transitional basis for those carriers that are required to offer TLS – namely, ETCs that charge a fee for toll calls, whether domestic or international, that is in addition to the per month or per billing cycle price of the consumer's Lifeline service. Furthermore, we clarify that call management functionality that tracks usage for a Lifeline offering that provides a specified number of minutes for a set price does not constitute TLS. As a consequence of such actions, a carrier that formerly relied on toll-limitation facilities as its "own" facilities can no longer rely on those facilities to satisfy the facilities-based requirement in section 214, and such carriers must also obtain forbearance from this Commission.⁹⁸¹

2. Discussion.

368. We forbear, on our own motion, from applying the Act's facilities requirement of section 214(e)(1)(A) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program, subject to certain conditions noted below.⁹⁸² For the reasons explained below, we find that all three prongs of section 10(a) are satisfied and that, as a result, the Commission will forbear from the "own-facilities" requirement contained in section 214(e)(1)(A) for carriers that are, or seek to become, Lifeline-only ETCs, subject to the following conditions: (1) the carrier must comply with certain 911 requirements, as explained below; and (2) the carrier must file, and the Bureau must approve, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.⁹⁸³ The review and approval of all compliance plans is a critical element of our action today. These conditions will give the states and the Commission the ability to evaluate the Lifeline providers' offerings to low-income consumers and adherence with program rules before such companies may receive any Lifeline funds. At the same time, this grant of forbearance will re-allocate administrative resources that would otherwise be devoted to evaluating forbearance petitions subject to a statutory timeframe, resources that can otherwise be utilized to improve and oversee the Lifeline program.

369. Since 2005, the Commission has granted forbearance eleven times to carriers seeking to

⁹⁸¹ See *supra* section VII.B, para. 230 (explaining how facilities that enable a subscriber to access a call center to purchase additional minutes or to pay for an international call do not constitute toll limitation facilities).

⁹⁸² See Section 214(e)(1)(A); see also Letter from John J. Heitmann, Link Up for America Coalition, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, at 1-2 (filed Dec. 15, 2011) (Link Up Coalition Dec. 15, 2011 *ex parte* Letter) (describing customer impact to existing Lifeline-only ETCs if Commission does not issue blanket forbearance). Upon the effective date of this Order, we grant forbearance from the facilities requirement of section 214(e)(1)(A) of the Act and section 54.201(d)(1), (i) of the Commission's rules, subject to the conditions contained in this Order, to all carriers seeking to provide Lifeline-only service on a non-facilities basis, including those carriers with petitions for forbearance from the facilities requirement of the Act pending with the Commission, including American Broadband & Telecommunications, Millennium 2000, Inc., North American Local, LLC, Total Call Mobile, Inc., and Airvoice Wireless, LLC. See Petition for Forbearance of American Broadband & Telecommunications, WC Dkt. No. 09-197 (filed Feb. 25, 2012); Petition for Forbearance by Millennium 2000, Inc., CC Dkt. No. 96-45, WC Dkt. 09-197 (filed Apr. 12, 2011); Petition for Forbearance by North American Local, LLC, WC Dkt. 09-197 (filed Apr. 28, 2011); Petition for Forbearance by Total Call Mobile, Inc., WC Dkt. 09-197 (filed May 25, 2011); and Petition for Forbearance of Airvoice Wireless, LLC, WC Dkt. 09-197 (filed Sep. 13, 2011); 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1), (i).

⁹⁸³ All ETCs availing themselves of forbearance from the facilities requirement as granted in this Order, including carriers with forbearance petitions and compliance plans pending with the Commission must comply with this requirement. Carriers with compliance plans currently pending Commission approval must revise, and if necessary amend, its compliance plan to include a detailed description of its compliance with this Order.

participate in the Lifeline program without using their own facilities to provide service.⁹⁸⁴ In each case, the Commission has concluded that the use of a carrier's own facilities when participating in the Lifeline program is not necessary to ensure just and reasonable rates or to protect consumers and is in the public interest as long as such carriers meet certain conditions, approved by the Bureau in each carrier's compliance plan.⁹⁸⁵

370. *Just and Reasonable.* Under section 10(a)(1) of the Act, we must consider whether enforcement of the facilities requirement of section 214(e) for carriers that are, or seek to become, Lifeline-only ETCs is necessary to ensure that the charges, practices, classifications, or regulations are just and reasonable and not unjustly or unreasonably discriminatory.⁹⁸⁶

371. We conclude that the section 214(e) facilities requirement is not necessary to ensure that Lifeline-only ETCs have charges, practices, classifications, and regulations for Lifeline service that are just and reasonable and not unjustly or unreasonably discriminatory. Resellers necessarily will face existing competition in the marketplace from the Lifeline offerings of the incumbent wireline carriers in the same designated areas, as well as other carriers, such as facilities-based wireless providers. Competition should help to keep their rates and other terms and conditions of service just and reasonable and not unjustly or unreasonably discriminatory.⁹⁸⁷ The additional competition that they provide would do more to ensure just and reasonable rates and terms than a requirement to use their own facilities. For these reasons, we find that the first prong of section 10(a) is met.

372. *Consumer Protection.* Section 10(a)(2) requires the Commission to consider whether enforcement of the "own-facilities" requirement of section 214(e) for the Lifeline-only ETCs is necessary for protection of consumers. We find that imposing the "own-facilities" requirement on Lifeline-only ETCs is not necessary for the protection of consumers so long as the carriers comply with the obligations described below.

373. We reaffirm the Commission's previous finding that ensuring consumers' access to 911 and E911 services is an essential element of consumer protection.⁹⁸⁸ Given the importance of public safety, we condition this grant of forbearance on each carrier's compliance with certain obligations as an ETC. Specifically, our forbearance from the facilities requirement of section 214(e) is conditioned on each carrier: (a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order.⁹⁸⁹

⁹⁸⁴ See, e.g., *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Conexions Petition for Forbearance*, *PlatinumTel Forbearance Order*.

⁹⁸⁵ See, e.g., *Conexions Forbearance Order*, 25 FCC Rcd at 13868, paras. 8-20.

⁹⁸⁶ 47 U.S.C. §160(a)(1); 47 U.S.C. §214(e).

⁹⁸⁷ See *TracFone Oct. 13 ex parte Letter* at 4 (noting that both TracFone and Sprint, as ETCs, operate in the same markets as other wireless ETCs).

⁹⁸⁸ See, e.g., *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390-91, paras. 22-23; *TracFone Forbearance Order*, 20 FCC Rcd at 15102-03, paras. 16-17.

⁹⁸⁹ Under section 20.18(m) of our rules, wireless resellers have an independent obligation, beginning December 31, 2006, to provide access to basic and E911 service, to the extent that the underlying facilities-based licensee has deployed the facilities necessary to deliver E911 information to the appropriate Public Safety Answering Point (PSAP). See 47 C.F.R. § 20.18(m). Section 20.18(m) further provides that resellers have an independent obligation (continued....)

374. The Commission has an obligation to promote “safety of life and property” and to “encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-to-end infrastructure” for public safety.⁹⁹⁰ The provision of 911 and E911 services is critical to our nation’s ability to respond to a host of crises, and the Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline consumers.⁹⁹¹ We find that these conditions are necessary to ensure that Lifeline subscribers of these Lifeline-only ETCs will continue to have meaningful access to emergency services.⁹⁹²

375. Based on the record and the fact that wireless resellers are obligated to comply with section 20.18(m) of the Commission’s rules, we are not requiring that each Lifeline-only ETC obtain a certification from each PSAP where it currently provides Lifeline service.⁹⁹³ States, however, have a right to impose a state-specific obligation on each existing Lifeline-only ETC to obtain either a certification from each PSAP where the company plans to offer service, or a self-certification, confirming that the carrier provides its subscribers with 911 and E911 access.⁹⁹⁴

376. We find that, subject to the conditions contained herein, the facilities requirement is not necessary for consumer protection with respect to Lifeline-only ETCs. We therefore conclude that the second prong of section 10(a) is satisfied.

377. *Public Interest.* Section 10(a)(3) requires that we consider whether enforcement of the facilities-based requirement of section 214(e) for Lifeline-only ETCs is in the public interest. Requiring Lifeline-only ETCs to use their own facilities to offer Lifeline service does not further the statutory goal of the low-income program.⁹⁹⁵

378. Our public-interest inquiry must include consideration of whether forbearance would promote competitive market conditions, including the extent to which such forbearance would enhance

(Continued from previous page)

to ensure that all handsets or other devices offered to their customers for voice communications are location-capable. *Id.* Under our rules, this obligation applies only to new handsets sold after December 31, 2006. *Id.*

⁹⁹⁰ *Applications of Nextel Communications, Inc. and Sprint Corporation For Consent to Transfer Control of Licenses and Authorization*, WT Dkt. No. 05-63, Memorandum Opinion and Order, 20 FCC Rcd 13967, 14020, para. 144 (2005).

⁹⁹¹ *Id.*

⁹⁹² See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15101-02, paras. 15-16; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390-91, para. 21-23; *i-wireless Forbearance Order*, 25 FCC Rcd at 8788, para. 12; *Global Forbearance Order*, 25 FCC Rcd at 10515, para. 12.

⁹⁹³ See 47 C.F.R. § 20.18(m); see also Letter from Jonathan Lee, Consumer Cellular, to Marlene H. Dortch, Federal Communications Commission, WC Dkt. No. 11-42 *et al.*, Attach. (filed, Dec. 21, 2011) (explaining how the underlying facilities-based provider has complete control over deployment of 911/E911 and how AT&T, its underlying network provider, provides Consumer Cellular with a certification stating that AT&T routes all 911 calls on its network to PSAPs in accordance with applicable FCC rules).

⁹⁹⁴ Section 214(e)(2) of the Act authorizes state commissions to designate ETCs for federal universal service purposes. 47 U.S.C. § 214(e)(2).

⁹⁹⁵ See, e.g., *i-wireless Forbearance Order*, 25 FCC Rcd at 8789, para. 15. We also note that the Commission’s traditional concern with a carrier doubling its recovery by reselling facilities that are already supported by the high-cost fund does not apply in the low-income context. *Id.*

competition among providers of telecommunications services.⁹⁹⁶ We conclude that forbearance from the facilities requirement will enhance competition among retail providers that service low-income subscribers. Lifeline-only ETCs offer eligible consumers an additional choice of providers for telecommunications services. The prepaid feature that many Lifeline-only ETCs offer is an attractive alternative for subscribers who need the mobility, security, and convenience of a wireless phone, but who are concerned about usage charges or long-term contracts.⁹⁹⁷

379. The Commission has made clear its ongoing commitment to fight waste, fraud and abuse in the Lifeline program. The Commission has historically conditioned forbearance from the facilities requirement on the filing and approval by the Bureau of a compliance plan describing the ETC's adherence to certain protections designed to protect consumers and the Fund, and we see no reason to disrupt that precedent.⁹⁹⁸ Accordingly, in addition to the requirements currently imposed on all ETCs that participate in the Lifeline program, including those we adopt in this Order, we condition this grant of forbearance from the "own-facilities" requirement by requiring each carrier to submit to the Bureau for approval a compliance plan that (a) outlines the measures the carrier will take to implement the obligations contained in this Order, including but not limited to the procedures the ETC follows in enrolling a subscriber in Lifeline and submitting for reimbursement for that subscriber from the Fund, materials related to initial and ongoing certifications and sample marketing materials, as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary; and (b) provides a detailed description of how the carrier offers service, the geographic areas in which it offers service, and a description of the carrier's various Lifeline service plan offerings, including subscriber rates, number of minutes included and types of plans available.

380. We note that after each carrier submits its compliance plan, the Bureau will review it for conformance with this Order. To avoid disruption to the millions of low-income subscribers served by existing Lifeline-only ETCs that met the facilities requirement based solely on operator services/directory assistance facilities and were designated prior to December 29, 2011,⁹⁹⁹ those ETCs may continue to receive reimbursement pending approval of their compliance plans in the states in which they currently serve Lifeline subscribers, provided they submit their compliance plans to the Bureau by July 1, 2012.¹⁰⁰⁰ Such existing Lifeline-only ETCs may not receive reimbursement, however, for additional states where

⁹⁹⁶ See 47 U.S.C. § 160(b) (requiring the Commission to consider whether forbearance will promote competitive market conditions).

⁹⁹⁷ See Link Up Coalition Dec. 15 *ex parte* Letter at 5.

⁹⁹⁸ See, e.g., *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Conexions Petition for Forbearance*, *PlatinumTel Forbearance Order*.

⁹⁹⁹ See Link Up Coalition Dec. 15 *ex parte* Letter (claiming that the rule change would threaten service disruption for an estimated 2 million-plus Lifeline service customers served by members of the Link Up Coalition).

¹⁰⁰⁰ If an existing Lifeline-only ETC fails to submit its compliance plan by July 1, 2012, however, that ETC will not be able to continue to receive Lifeline support after July 1, 2012. If the Bureau finds that an existing Lifeline-only ETC's compliance plan does not conform to the requirements of the Order, it shall provide that ETC with notice that it must file a revised compliance plan within 45 days that conforms to the requirements of the Order. If the ETC fails to file a revised compliance plan pursuant to the Bureau's direction, the Bureau may direct USAC to suspend Lifeline disbursements to that ETC until such time as its compliance plan is revised to the satisfaction of the Bureau. In the event there is a change in ownership control of an existing Lifeline-only ETC that received forbearance of the facilities-based requirement, designated prior to December 29, 2011, and that Lifeline-only ETC is acquired by a telecommunications carrier that does not meet the definition of a facilities-based carrier under section 214(e)(1)(A), the controlling carrier may not rely on the existing Lifeline-only ETC's compliance plan and must submit a compliance plan for Bureau approval as detailed in paragraph 379 before receiving reimbursement from the program.

they have not yet been designated as of December 29, 2011, until their compliance plans are approved. No designations shall be granted for any pending or new Lifeline-only ETC applications filed with the states or the Commission after December 29, 2011, for carriers that do not meet the "own-facilities" requirement contained in section 214(e)(1)(A), and such carriers shall not receive reimbursement from the program, until the Bureau approves their compliance plans. We find that these requirements are necessary to ensure ongoing compliance with our rules.

381. With the reforms adopted today, along with the conditions outlined herein to address potential waste, fraud and abuse, including the Bureau's review and approval of all compliance plans, we find that the public interest is served by forbearing from the facilities requirement in section 214(e) for all carriers that are, or seek to become, Lifeline-only ETCs, and that the third prong of section 10(a) is therefore satisfied.

B. Impact of New Rules on Prior Forbearance Conditions

382. The Commission has exercised its statutory authority to forbear from enforcing the facilities requirement of the Act on several non-facilities based wireless resellers so that those wireless resellers may be eligible to be designated as an ETC for participation in the Lifeline program.¹⁰⁰¹ In each forbearance order, the Commission provisioned forbearance on several key conditions aimed at consumer safety protection and at protecting the Lifeline fund from waste, fraud and abuse.¹⁰⁰² Each of the orders also requires that the carrier subject to forbearance submit a compliance plan describing how that carrier would comply with the conditions of forbearance.¹⁰⁰³

383. In this Order, the Commission adopts several new rules, many of which relate to the requirements set forth in prior forbearance orders and compliance plans.¹⁰⁰⁴ To the extent that any of the conditions in the carrier-specific forbearance orders and compliance plans are inconsistent with the rules adopted herein, the newly adopted rules established in this proceeding shall prevail. However, the conditions and rules adopted in this Order set forth the minimum obligations with which a carrier must comply for forbearance from the facilities requirement, and any carrier whose grant of forbearance was conditioned on more stringent compliance plans must comply with those additional obligations as well as the conditions adopted herein. In addition, any ETC that has received forbearance from the facilities requirement prior to this Order must continue to comply with the 911/E911 public safety obligations.¹⁰⁰⁵

¹⁰⁰¹ See *TracFone Forbearance Order*; *Virgin Mobile Forbearance Order*; *i-wireless Forbearance Order*; *Global Forbearance Order*; *Conexions Forbearance Order*; *PlatinumTel Forbearance Order*. No wireless reseller has received forbearance for the purpose of receiving Link Up support.

¹⁰⁰² See, e.g., *TracFone Forbearance Order*, 20 FCC Rcd at 15101-03, paras. 15-18; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3390-93, paras. 21-29; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *Global Forbearance Order*, 25 FCC Rcd 10517-18, paras. 16-18; *Conexions Forbearance Order*, 25 FCC Rcd at 13871, paras. 17-18; *PlatinumTel et. al Forbearance Order*, 26 FCC Rcd 13795-96, paras. 17-18.

¹⁰⁰³ See *TracFone Forbearance Order*, 20 FCC Rcd at 15105, para. 25; *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3397, para. 44; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 16; *i-wireless Forbearance Order*, 25 FCC Rcd at 8790, para. 17; *Global Forbearance Order*, 25 FCC Rcd 10517, paras. 16; *Conexions Forbearance Order*, 25 FCC Rcd at 13871, para. 17; *PlatinumTel et. al Forbearance Order*, 26 FCC Rcd 13796, para. 17.

¹⁰⁰⁴ See, e.g. *supra* para. 74 (adopting a one-per-household requirement similar to the head of household certification condition in the *TracFone Forbearance Order* and the *PlatinumTel. Forbearance Order*); *TracFone Forbearance Order*, 20 FCC Rcd at 15098, para. 6; *PlatinumTel. Forbearance Order*, 26 FCC Rcd 13795, para. 17.

¹⁰⁰⁵ See *supra* paras. 373-75. Given that section 20.18(m) already requires wireless resellers to provide access to basic and enhanced 911 service to the extent that the underlying licensee of the facilities the reseller uses to provide access to the public switched network complies with 20.18(d)-(g), we are no longer requiring that Lifeline-only ETCs subject to existing forbearance orders to obtain a certification from each PSAP where it currently provides (continued....)

C. Additional Rule Amendments

384. In the *Lifeline & Link Up NPRM*, we sought comment on whether the current process for designating eligible telecommunications carriers should be revised for Lifeline providers and, if so, how.¹⁰⁰⁶ In this Order, we have made a number of important changes to our rules in order to eliminate waste and inefficiency, and to increase accountability in the program. Here, we make some conforming changes to our rules and several other changes that reflect the growing role of Lifeline-only ETCs in today's marketplace. We seek further comment in the attached *FNPRM* on additional proposal to streamline the process of becoming a Lifeline-only service provider.

385. First, we modify the definition of "eligible telecommunications carrier" in section 54.5 of our rules to include not just ETCs designated by the states pursuant to section 54.201, but to include all ETCs designated pursuant to our rules. This modification is necessary because section 214 of the Act, and our rules provide for designation of ETCs by the states and by the Commission.¹⁰⁰⁷ Furthermore this modification conforms the rule to the Commission's consistent use of the term since it was given specific authority to designate ETCs by Congress in 1997.¹⁰⁰⁸ We therefore find good cause to amend this rule without notice and comment.¹⁰⁰⁹

386. Second, we amend section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC. In the *USF/ICC Transformation Order and FNPRM*, the Commission included a new requirement in section 54.202, requiring a common carrier seeking to be designated as an eligible telecommunications carrier by the Commission to submit a five-year plan describing proposed network improvements and upgrades. Given that Lifeline-only ETCs are not receiving funds to improve or extend their networks, we see little purpose in requiring such plans as part of the ETC designation process.

387. Third, we amend sections 54.201 and 54.202 of our rules, which govern ETC designations by states and this Commission, respectively, to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.¹⁰¹⁰ In 2005, the Commission

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Lifeline service. See 47 C.F.R. § 20.18(m). As noted in paragraph 375 above, states, however, have a right to impose a state-specific obligation on these existing Lifeline-only ETCs. See *supra* para. 375.

¹⁰⁰⁶ *Lifeline and Link Up NPRM* at 2865, para. 312.

¹⁰⁰⁷ See 47 U.S.C. 214(e)(2), (3) and (6); and 47 C.F.R. §§ 54.201-203. In 1997, Congress amended section 214 of the Act to give the Commission specific authority to designate ETCs, and the Commission issued a public notice setting forth the procedures it would use to designate ETCs, but did not amend its rules at that time. See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997).

¹⁰⁰⁸ See, e.g., *ETC Designation Order*, 20 FCC Rcd, at 6378-79, para. 17 ("State commissions and the Commission are charged with reviewing ETC designation applications for compliance with section 214(e)(1) of the Act"); *Virgin Mobile Forbearance Order*, 24 FCC Rcd at 3383-84, para. 5 (discussing the authority of the state commissions and the Commission to designate ETCs); *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at para. 390 ("By statute the states, along with the Commission, are empowered to designate common carriers as ETCs.").

¹⁰⁰⁹ See 5 U.S.C. § 553(b)(3)(B).

¹⁰¹⁰ See Indiana Commission Comments at 15 ("[C]ompanies that have made a business case to serve a certain market in a state prior to receiving Lifeline subsidies may be less inclined to risk being cited for non-compliance with the program.").

declined to adopt such an explicit requirement for federally-designated ETCs, concluding that the Commission's existing rules, including the showings a common carrier had to make to be designated as an ETC pursuant to section 54.202, would provide sufficient assurance of the carrier's financial and technical ability to provide the supported service.¹⁰¹¹

388. Given recent growth in the number of companies obtaining ETC designation,¹⁰¹² we now conclude that it is appropriate to update our rules for federally-designated ETCs and extend the requirement to all ETCs to ensure that Lifeline-only ETCs have the financial and technical ability to offer Lifeline-supported services. Therefore, in order to ensure Lifeline-only ETCs, whether designated by the Commission or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in section 54.202 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported service.¹⁰¹³ Among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.

389. Fourth, we delete section 54.209 of our rules regarding certification and reporting obligations for federally-designated ETCs, while moving those reporting requirements relevant to ETCs providing Lifeline services to subpart E, which governs universal service support provided to low-income consumers.¹⁰¹⁴ In the *USF/ICC Transformation Order and FNPRM*, the Commission indicated that recipients of high-cost support would henceforth report pursuant to new section 54.313, and section 54.209 would continue to apply only to Lifeline-only ETCs.¹⁰¹⁵ In order to centralize and streamline certification and reporting requirements pertaining to federally-designated Lifeline-only ETCs in subpart E of the rules, we move the relevant portions of section 54.209, as they related to such ETCs, to new section 54.422. In particular, in order to receive support under subpart E, an ETC must provide the following information, previously required by section 54.209: information regarding service outages, the number of complaints received per 1,000 connections, certification of compliance with applicable service quality standards and consumer protection rules, and certification that the carrier is able to function in emergency situations. In doing so, we streamline annual reporting by eliminating reporting requirements that no longer make sense in today's marketplace for federally-designated Lifeline providers.

390. We also establish targeted reporting requirements in this new rule section that will apply to all ETCs receiving Lifeline. First, as discussed above,¹⁰¹⁶ an ETC receiving low-income support must

¹⁰¹¹ See *ETC Designation Order*, 20 FCC Rcd at 6387-88, paras. 37-39.

¹⁰¹² USAC assigns a study area code (SAC) for each state in which a company receives designation as an ETC, and USAC reported disbursement information for 135 more SACs in the fourth quarter of 2011 than it did in the fourth quarter of 2010. See Universal Service Administrative Company, 2Q 2011 Filing, Appendices at LI04 <http://usac.org/about/governance/fcc-filings/2011/quarter-2.aspx> (reporting fourth quarter 2010 disbursements for 2085 SACs); Universal Service Administrative Company, 2Q 2012 Filing, Appendices at LI04 (usac.org/about/governance/fcc-filings/2012/quarter-2.aspx (reporting 4th quarter 2011 disbursements for 2220 SACs)).

¹⁰¹³ See Letter from Luisa Lancetti, T-Mobile, to Marlene H. Dortch, WC Dkt. No. 11-42 *et al.*, Attach. at 10 (filed Jan. 24, 2012) (arguing that the Commission should require ETCs to demonstrate that they are technically and financially capable).

¹⁰¹⁴ See USTelecom Comments at 23 (participation in Lifeline should not be tied to high-cost requirements).

¹⁰¹⁵ *USF/ICC Transformation Order and FNPRM*, FCC 11-161 at 580, n.955.

¹⁰¹⁶ See *supra* para. 296.

annually report the names and identifiers used by the ETC, its holding company, operating companies and affiliates, which will assist us in the Lifeline audit program. Second, we require every ETC receiving low-income support to provide to the Commission and USAC general information regarding the terms and conditions of the Lifeline plans for voice telephony service offered specifically for low income consumers through the program they offered during the previous year, including the number of minutes provided, and whether there are additional charges to the consumer for service, including minutes of use and/or toll calls, which will enable us to monitor service levels provided to low-income consumers.¹⁰¹⁷

391. Because section 54.209 is now obsolete in light of the rule changes adopted in this Order and in the *USF/ICC Transformation Order and FNPRM*, we find good cause to delete it without notice and comment.¹⁰¹⁸

XII. APCC PETITION FOR RULEMAKING AND INTERIM RELIEF

392. *Background.* On December 6, 2010, the American Public Communications Council (APCC) petitioned the Commission (Petition) to initiate a rulemaking to make payphone service eligible for Lifeline support at \$10 per month per line for all publicly available phones.¹⁰¹⁹ APCC also petitioned for interim relief (Petition for Interim Relief), seeking to allow ETCs to receive Lifeline support for service provided over payphone lines.¹⁰²⁰ APCC asserts that Lifeline funds for payphone service will prevent the disappearance of payphones.¹⁰²¹ It urges the Commission to “act on an interim basis to provide immediate relief before the decline in payphones becomes irreversible as payphone deployment ceases to be a viable business.”¹⁰²² The Wireline Competition Bureau sought comment on the petitions.¹⁰²³

393. According to APCC, in 1998, there were over 2 million payphones in service, but there are now fewer than 475,000 payphones, a collapse APCC attributes to the growth in wireless telephone service as well as in Lifeline-supported wireless service.¹⁰²⁴ APCC seeks universal service support for the 475,000 payphones in service.¹⁰²⁵

¹⁰¹⁷ In the event ETCs choose to offer, as an additional option to low income consumers, the Lifeline discount to other retail service offerings, including bundles, that are available to the general public as described in section IX.A above, ETCs are not required to submit the terms and conditions of such retail service offerings to the Commission or USAC.

¹⁰¹⁸ See 5 U.S.C. § 553(b)(3)(B).

¹⁰¹⁹ *Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service*, WC Dkt No. 03-109 *et al.* (filed Dec. 6, 2010) (*Petition*). APCC is a national trade association that represents independent payphone providers.

¹⁰²⁰ *Emergency Petition for Interim Relief to Prevent the Disappearance of Payphones*, CC Dkt. No. 96-45; WC Dkt. No. 03-109 (filed December 6, 2010) (*Petition for Interim Relief*).

¹⁰²¹ *Petition* at 32; *Petition for Interim Relief* at 9.

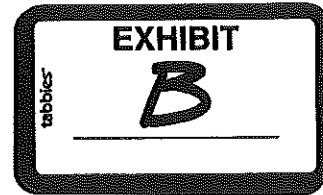
¹⁰²² *Petition for Interim Relief* at 1.

¹⁰²³ *Wireline Competition Bureau Seeks Comment on American Public Communications Council Petitions Regarding Universal Service and Payphone Issues*, Public Notice, WC Dkt. No. 03-109 *et al.*, 25 FCC Rcd 17345 (2010). Five commenters, Rosebud Telephone, the Florida Public Telecommunications Association, Minority Media & Telecom Council, and, in a joint submission, Consumer Action and the National Consumers League support APCC's petitions. Verizon and Verizon Wireless, Sprint Nextel Corporation, TracFone, United States Telecom Association, and NASUCA oppose the petitions.

¹⁰²⁴ *Petition* at 3.

¹⁰²⁵ *Id.* at 19-20.

ETC Fact Sheet



Q. WHAT IS AN ETC?

- A. ETC is an acronym for eligible telecommunications carrier. An eligible telecommunications carrier is a common carrier that has been designated by the Commission to receive universal service support.

Q. HOW DO I BECOME AN ETC?

- A. In order to be designated an ETC in Kansas, you need to file an application with the Commission and meet all Federal and state ETC criteria.

Q. WHAT ARE THE FEDERAL ETC REQUIREMENTS?

- A. Eligibility for Federal universal support is covered by Section 214(e) of the Federal Act. Section 214(e) of the Federal Act states that,

(1) ELIGIBLE TELECOMMUNICATIONS CARRIERS.—A common carrier designated as an eligible telecommunications carrier under paragraph (2) or (3) shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges therefor using media of general distribution.

(2) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS:—A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

(3) DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS FOR UNSERVED AREAS.—If no common carrier will provide the services that are supported by Federal universal service support mechanisms under section 254 (c) to an unserved community or any portion thereof that requests such service, the [Federal Communications] Commission, with respect to interstate services, or a State commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for the unserved community or portion thereof. Any carrier or carriers ordered to provide such service under this paragraph shall meet the

requirements of paragraph (1) and shall be designated as an eligible telecommunications carrier for that community or portion thereof.

(4) RELINQUISHMENT OF UNIVERSAL SERVICE.—A State commission shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier. An eligible telecommunications carrier that seeks to relinquish its eligible telecommunications carrier designation for an area served by more than one eligible telecommunications carrier shall give advance notice to the State commission of such relinquishment. Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the State commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The State commission shall establish a time, not to exceed one year after the State commission approves such relinquishment under this paragraph, within which such purchase or construction shall be completed.

(5) SERVICE AREA DEFINED.—The term “service area” means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, “service area” means such company’s “study area” unless and until the [Federal Communications] Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

Q. WHAT SERVICES ARE SUPPORTED BY FEDERAL UNIVERSAL SERVICE SUPPORT?

- A. The services or functionalities that are to be supported by Federal universal service support mechanisms, as identified in 47 C.F.R. § 54.101(a), are (1) voice-grade access to the public switched telephone network; (2) local usage; (3) dual tone multi-frequency signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to long distance services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers.

Q. MUST A CARRIER PROVIDE ALL OF THE SERVICES THAT ARE SUPPORTED BY THE FEDERAL UNIVERSAL SERVICE FUND IN ORDER TO RECEIVE FEDERAL UNIVERSAL SERVICE SUPPORT?

- A. Yes. Per 47 C.F.R. § 54.101(b), an eligible telecommunications carrier must offer each of the services set forth in 47 C.F.R. § 54.101(a) in order to receive federal universal service support. However, per 47 C.F.R. § 54.101(c) a state commission may grant a petition of a telecommunications carrier, that is otherwise eligible to receive universal service support, additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation.

Q. SECTION 214(E)(1) OF THE FEDERAL ACT ALLOWS ETCS TO RECEIVE UNIVERSAL SERVICE SUPPORT IF IT OFFERS THE SERVICES SUPPORTED BY THE FEDERAL UNIVERSAL SERVICE FUND AND ADVERTISES FOR THOSE

SERVICES THROUGHOUT THE "SERVICE AREA" FOR WHICH THE DESIGNATION IS RECEIVED. WHAT IS A "SERVICE AREA?"

- A. Section 214(e)(5) of the Federal Act allows State commissions discretion over establishing "service areas." "Service areas" or "operating areas" are defined by the state act in K.S.A. 66-1,187(k)(2). K.S.A. 66-1,187(k)(2) provides that,

(1) In the case of a rural telephone company, operating area or service area means such company's study area or areas as approved by the federal communications commission;

(2) in the case of a local exchange carrier, other than a rural telephone company, operating area or service area means such carrier's local exchange service area or areas as approved by the commission.

Thus, a carrier must offer its services throughout a rural company's entire study area in order to be eligible for universal service support, unless the Commission grants a carrier's request for redefinition below the study area level and the FCC concurs.

In its September 30, 1999 order in Docket No. 99-GIMT-326-GIT, the Commission designated Kansas wire centers as the service area for universal service support for non-rural telephone company's services areas. Thus, in order to receive universal service support in non-rural telephone companies' service areas an ETC must offer service throughout the wire center for which it seeks support.

Q. DOES KANSAS HAVE A STATE UNIVERSAL SERVICE FUND?

- A. Yes. K.S.A. 66-2008 required the Commission to establish the Kansas Universal Service Fund (KUSF) on or before January 1, 1997.

Q. WHAT IS THE STATE CRITERIA FOR RECEIVING STATE UNIVERSAL SERVICE SUPPORT?

- A. Kansas law adopts the federal standards, contained in 214(e)(1), for designating a provider as an ETC for KUSF purposes. K.S.A. 66-2008(c) states:

Pursuant to the federal act, distributions from the KUSF shall be made in a competitively neutral manner to qualified telecommunications public utilities, telecommunications carriers and wireless telecommunications providers, that are deemed eligible both under subsection (e)(1) of section 214 of the federal act and by the commission.

The Commission, at this time, has not established additional state-specific criteria for ETC designation.

Q. CAN A CARRIER QUALIFY TO BE AN ETC IN ALL AREAS OF THE STATE OF KANSAS?

- A. Yes; however, it *must* be declared by the Commission that it is in the public interest for a carrier to be an ETC in rural areas of the state and the Commission *may* determine whether it is in the public interest for a carrier to be an ETC in non-rural areas of the state.

Q. WHAT AREAS OF KANSAS ARE CONSIDERED RURAL?

- A. For state purposes, all exchanges except those served by Southwestern Bell Telephone Company or Sprint/United Telephone Company are considered rural. For federal purposes, all exchanges except those served by Southwestern Bell Telephone Company are considered rural.

Q. HAS THE COMMISSION ADDRESSED WHETHER IT IS IN THE PUBLIC INTEREST TO DESIGNATE ADDITIONAL ETCs IN RURAL AREAS?

- A. Yes. The Commission established a rebuttable presumption that it is in the public interest to designate additional ETCs in the areas served by rural telephone companies in Order No. 10 in Docket No. 99-GCCZ-156-ETC. The Order states in pertinent part,

The Commission finds, as a general principle, that allowing additional ETCs to be designated in rural telephone company service areas is in the public interest. This general public interest finding is a presumption which may be rebutted by individual rural telephone companies. The Commission has the discretion to find that in a particular discrete rural area, competition is not in the public interest. The obligation to establish that additional ETCs are not in the public interest is on the rural telephone company serving that area. Such a determination must be based on the facts shown to exist in a specific study area.

However, since the Commission's rebuttable presumption finding, the FCC found in the Virginia Cellular proceeding that considering only the value of competition is not sufficient in making a public interest finding. The FCC adopted several criteria to be used in public interest findings for rural company service areas in its Virginia Cellular Order. The FCC states that in determining whether it is in the public interest to designate an additional ETC in areas served by rural companies it will consider the following:

- the benefits of increased competition;
- the impact of multiple designations on the universal service fund (USF);
- the unique advantages and disadvantages of the applicant's service offering;
- any commitments made regarding quality of service; and
- the applicant's ability to provide the supported services throughout the designated service area within a reasonable amount of time.

Although the FCC's Virginia Cellular Order is not binding on this Commission, the Commission found in Docket No. 04-ALKT-283-ETC that examining additional factors enumerated in the FCC's order is reasonable.

Q. HAS THE COMMISSION IMPOSED ADDITIONAL REQUIREMENTS ON ETCs?

- A. The Commission determined in its May 5, 2000 order in Docket No. 00-GIMT-584-GIT that both state and federal law allow it to impose conditions for distributions from the KUSF in order to ensure competitive neutrality, and also to impose conditions for ETC designation, but declined to do so at that time. In its September 24, 2004 Order in Docket No. 04-ALKT-283-ETC, the Commission declared it will open a generic proceeding to discuss the following issues related to ETC designations: minimum local usage; content, frequency and types of media for advertising; per-minute blocking for wireless carriers; billing standards; carrier-of-last resort responsibilities; build-out plans; and application of termination fees.

In addition, the Commission required the following of RCC Minnesota, Inc. and ALLTEL Kansas Limited Partnership in their respective ETC designation orders: a) file a map indicating

the extent of its existing infrastructure for which service coverage is available from such facilities and update the map on a yearly basis; b) work with Staff in developing language used in all advertising for areas in which the carrier is designated as an ETC; comply with CTIA's Code for Wireless Service and report the number of complaints per 1000 handsets for the proceeding year on January 31 of each year; provide a projection of the amount of support it expects to receive from the FUSF in 2005; provide a capital expenditure budget for Kansas for 2005; and to follow the process each carrier outlined for evaluating requests for service. The Commission required H&B Cable Service, Inc. to also work with Staff in developing language to be used in all advertising for areas in which the carrier is designated an ETC.

Q. ARE ETCS REQUIRED TO MEET MINIMUM QUALITY OF SERVICE STANDARDS?

- A. Currently, unless an ETC is a facilities based local exchange carrier, ETCs are not required to meet minimum quality of service standards. In its May 5, 2000 Order in Docket No. 00-GIMT-584-GIT, the Commission chose not to impose minimum quality of service standards on ETCs; except to the extent an ETC is a facilities based local exchange carrier, the ETC is required to meet the Commission's Quality of Service standards, as required by the Commission in Docket No. 191,206-U. However, on September 13, 2004, the Commission opened Docket No. 05-GIMT-187-GIT to examine the retail quality of service standards adopted in Docket No. 191,206-U. One of the issues to be examined is whether to impose minimum quality of service standards on all ETCs.

Additionally, in Docket Nos. 04-RCCT-338-ETC and 04-ALKT-283-ETC, the Commission required RCC Minnesota, Inc. and ALLTEL Kansas Limited Partnership, respectively, to comply with CTIA's Code for Wireless Service and report the number of complaints per 1000 handsets for the proceeding year on January 31 of each year.

Q. ARE ALL LINES SUPPORTED BY THE KUSF?

- A. All lines provided by ETCs to residential and single line business customers in high cost areas are supported by the KUSF. A business customer with three (3) or fewer lines or units/phones is considered to be a single line business customer.

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the above was electronically served, hand-delivered or mailed, postage prepaid, this 10th day of March, 2016 to:

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