

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF TORCH WIRELESS'S) CASE NO. TOR-T-21-01
APPLICATION FOR DESIGNATION AS AN)
ELIGIBLE TELECOMMUNICATIONS) ORDER NO. 35126
CARRIER IN IDAHO)
)

On March 15, 2021, Torch Wireless (“Company”) applied for designation as an Eligible Telecommunications Carrier (“ETC”) to provide Lifeline service throughout Idaho. The Company also seeks authorization to participate in and receive reimbursement from the Idaho Telecommunications Service Assistance Program.

On April 14, 2021, the Commission issued a Notice of Application and Modified Procedure, setting a May 3, 2021, comment deadline and a May 10, 2021, reply deadline. Order No. 35001. Commission Staff filed comments; no other comments were received.

On June 22, 2021, the Commission deliberated on the fully submitted case. During the deliberation, the Commission noted that the Company had not provided written notice of the Application to affected Tribal authorities. The Commission order establishing ETC application requirements, Order No. 29841, states that an “ETC applicant seeking ETC designation for any part of tribal lands shall provide a copy of its application to the affected tribal government or tribal regulatory authority, as applicable, at the time it files its application with the Commission.” The Commission declined to issue a final order until the record reflected that the affected Tribal authorities had received notice of the Company’s Application and been given an opportunity to comment on it. On June 25, 2021, the Commission issued Order No. 35090 directing the Company to provide the affected Tribal authorities notice and setting a new comment deadline for July 15, 2021, for interested persons to submit comments on the Company’s Application. No additional comments were filed.

Having reviewed the record, the Commission grants the Company’s Application as set forth in our findings below.

BACKGROUND

Under the federal Telecommunications Act of 1996 (“Federal Act”), a carrier designated as an ETC is eligible to receive federal support from the federal Universal Service Fund

(“USF”).¹ 47 U.S.C. § 214(e). This Commission has the authority, under the Federal Act, to grant ETC designations within Idaho. 47 U.S.C. § 214(e)(2). Authority for the Commission to designate ETC status is also provided in Idaho law—the Idaho Telecommunications Act of 1988 (“Idaho Act”)—and expounded upon in prior Commission orders. *See Idaho Code* §§ 62-610D(1), 62-615(1); Order No. 29841. Under this authority, this Commission has granted ETC designations to numerous carriers in Idaho, including wireless carriers. *See e.g.*, Order Nos. 32586, 32645, and 34163.

To qualify as an ETC, an applicant must satisfy several requirements established in federal and state law. 47 U.S.C. § 214(e); Order No. 29841. The Federal Act requires the applicant to be a “common carrier,” offering services supported under Section 254(c) of the Federal Act “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted Federal Communications Commission (“FCC”) forbearance. 47 U.S.C. §§ 153(11), 214(e)(1)(A), 160(a)(3) (FCC has regulatory flexibility to forbear application where consistent with public interest). The Federal Act also requires the applicant “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B).

Under the Federal Act, state commissions are granted the authority to determine whether ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2). In evaluating this public interest element, this Commission has generally considered two factors. *See* Order Nos. 33002 at 2-3; and 33226 at 3. First, the Commission evaluates whether the carrier contributes to state assistance programs such as ITSAP and the Idaho Telecommunications Relay Services (“TRS”) program. *Id.*; *Idaho Code* § 61-1301. Second, the Commission considers if the designation is sought for only part of a rural telephone company’s study area, thus leaving some (perhaps less profitable) customers without service. *See* Order Nos.

¹ The Federal Communications Commission established the federal USF with the intent to make adequate, efficient communications available nationwide, at reasonable charges. *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training (“Lifeline and Link Up Reform Order”)* 27 F.C.C.R. 6656, at 6660-62 (Feb. 6, 2012); 47 U.S.C. § 254(b). Lifeline is a program supported by the USF that provides monthly discounts to eligible low-income subscribers to maintain access to communications networks. *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656 at 6662-63. Idaho has an analogous state USF program, established in *Idaho Code* §§ 62-610 and 62-610A-610F, and a Lifeline program known as the Idaho Telecommunications Service Assistance Program (“ITSAP”).

33002 at 2-3; and 33226 at 3. Such practice, known as “cream skimming,” has been determined by this Commission to be contrary to the public interest. *Id.*

Federal regulations include these additional requirements, which the Commission has adopted by reference, in evaluating applications for ETC designation: (1) compliance with service requirements applicable to support received; (2) submission of a plan for proposed improvements or upgrades to the network (where applicable); (3) demonstrated ability to remain functional in emergencies without an external power source; (4) demonstrated willingness to satisfy consumer protection and service quality standards; (5) financial and technical capability to provide Lifeline service; and (6) notice to affected Tribes where designation is sought for any part of Tribal lands. *See* 47 C.F.R. § 54.202; No. 29841 at 5 and 16.

For applicants seeking Lifeline-only ETCs, the FCC has waived the requirement to submit a network improvement and upgrade plan, noting that such ETCs do not receive funds to improve or extend their networks. *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656, ¶ 386. This Commission—which requires a two-year network improvement plan and progress report (Order No. 29841 at 18) where applicable—has also waived the requirement where a Lifeline-only ETC is requested. Order No. 33002 at 3.

THE APPLICATION

The Company is a Wyoming corporation authorized to do business in Idaho as a foreign corporation. The Company seeks ETC in the entire state of Idaho (including Tribal Lands) for local exchange services in the designated service area, for the purpose of receiving federal universal service support. The Company is seeking only low-income support to provide Lifeline services to qualifying consumers in the state of Idaho. The Company is not seeking nor requesting high-cost support. Torch requests that its designation as an ETC include the authority to participate and receive reimbursement from ITSAP. The Company asserted it meets all federal and state requirements for designation as an ETC and argued that designating the Company as an ETC is in the public interest.

STAFF COMMENTS

Staff recommended approval of the Company’s Application. Staff’s analysis included a review of the Company’s compliance with the federal Telecommunications Act of 1996 and FCC regulations and orders. Staff also verified whether the Company meets the ETC eligibility and reporting requirements established by the Commission in Order No. 29841. Staff concluded “the

Application demonstrates the Company’s commitment to fulfill the obligations of an ETC in Idaho.” *Staff Comments* at 4.

When analyzing whether a common carrier’s ETC application is in the public interest, Staff usually focuses on two considerations: whether the company will contribute to Idaho telecommunications funds, and whether the company’s application raises “cream-skimming” concerns.² *See* Case No. VCS-T-18-01. Regarding the first consideration, Staff noted the Company confirmed it will comply with the reporting and contribution requirements outlined in Order No. 29841. Regarding the second consideration, Staff noted the Company requests ETC designation statewide; therefore, no cream skimming analysis is required.” *Staff Comments* at 3.

COMMISSION FINDINGS AND DECISION

The Commission has authority to grant ETC designation to a telecommunications carrier under federal and state law. 47 U.S.C. § 214(e); and *Idaho Code* §§ 62-610D, 62-615(1). The Commission has reviewed and considered the record, including the Company’s Application and Staff Comments. We now make the following findings.

A. Common Carrier, Own-Facilities, and Advertising

We first address requirements listed in § 214(e)(1) of the Federal Act. That provision requires an applicant to be a “common carrier” by offering the supported services “using a combination of its own facilities and resale”. *See Application* at 7. Therefore, we find the Company will utilize its own facilities as a facilities-based provider. On the record before us, we find the Company is also a “common carrier.” *See* 47 U.S.C. § 153(11).

An applicant seeking ETC designation must also “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B). Based on the record and the Company’s assurances, we find this requirement to also be satisfied. *See Application* at 8.

B. Public Interest and Related ETC Designation Requirements

Under the Federal Act, state commissions shall determine whether granting the requested ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2).

² “Cream skimming” occurs when a telecommunications carrier seeks ETC designation for only part of a rural telephone company’s study area, leaving less profitable customers without service.

First, the Company committed to providing Idaho consumers, especially low-income consumers, with low prices and high-quality services. *Id.* at 10. The Company also committed to offering Lifeline services in its service area. *Id.* at 11; *see also* 47 C.F.R. § 54.101(d). We find that the Company’s offering of these services promotes the public interest because these services will provide competition and choice for consumers. *Id.* This deployment also furthers this Commission and the FCC’s goals of expanding the reach of digital connectivity to promote economic growth in rural areas. In pursuit of deployment, the Company has committed to satisfying all applicable state and federal requirements related to consumer protection and service quality standards. *Id.* at 10. We further find it is in the public interest for the Company to offer Lifeline services in its service area.

We also consider whether the Company would contribute to the appropriate Idaho funds. *See* Order Nos. 33002 at 2-3, 33226 at 3. Staff confirmed that the Company will participate in the appropriate Idaho programs and comply with the Commission’s annual reporting requirements. *Staff Comments* at 3. We find that the Company’s commitment to participating in the appropriate Idaho programs advances the public interest.

Next, we consider whether the Company is engaged in “cream skimming,” which we have found to be contrary to the public interest. Order Nos. 33002 at 2-3, 33226 at 3. Because the Company requested ETC designation for the entire state, no cream-skimming analysis is required.

We therefore find that granting the Company ETC designation in Idaho satisfies the public interest requirements.

C. Remaining Requirements

Finally, we address the six remaining requirements from federal regulations and Order No. 29841. *See* 47 C.F.R. § 54.202.

(1) Service Requirements for Support Received. We find the Company has sufficiently committed to meeting these requirements. *Application* at 6-11.

(2) Plan for Proposed Improvements or Upgrades to the Network. The FCC waived the requirement for a winning bidder to file a five-year plan as part of the ETC designation process, citing its heightened oversight of auction winners. *WCB Reminds Connect Am. Fund Phase II Auction Applicants of the Process for Obtaining A Fed. Designation As an Eligible Telecommunications Carrier*, 33 FCC Rcd. 6696 (2018). Considering the FCC’s heightened

oversight, we waive in this proceeding our requirement that the Company's ETC Application include a two-year network improvement plan. *See* Order No. 29841 at 8.

(3) Ability to Remain Functional in Emergencies. We find the Company has demonstrated sufficient compliance with this requirement. *Application* at 9.

(4) Willingness to Satisfy Consumer Protection and Service Quality Standards. We are satisfied with the Company's assurances as to this requirement. *Id.* at 8.

(5) Financial and Technical Capability. Based on the Company's assurances and description of its financial and technical qualifications, and how it interacts and partners with its parent company, we also find this requirement to be satisfied. *Id.* at 9.

(6) Notice to Affected Tribes. To obtain ETC designation by this Commission we find the Company has sufficiently notified and engaged Tribal authorities according to 47 C.F.R. § 54.202, and Order No. 29841.

Following the issuance of Order No. 35090, the Company provided Staff with copies of the correspondence, which were all dated July 9, 2021, sent to Tribal authorities in Idaho of the Company's Application.³ We have reviewed this correspondence and conclude that the Company has satisfied the federal and state requirements for an ETC designation. We therefore designate the Company an ETC for the entire state of Idaho. Likewise, we designate the Company a Lifeline-only ETC for the service area in which the Company will not receive high-cost support.⁴ As this case was processed it came to our attention that the original Appendix setting forth the requirements to qualify to be granted ETC status in Idaho were outdated. As a result, minor changes were made.

When this Commission originally established ETC application requirements we imposed the responsibility to provide notice to the affected Tribes not only on the company seeking ETC status but also on ourselves. *See* Order No. 29841. We find this requirement redundant and unnecessary. It is reasonable for the company requesting ETC status to notify the Tribes of such a request. The Commission's responsibility is to verify that notice is provided, as is the case here.

³ The Company provided notice of its Application to the Coeur D'Alene, Kootenai, Nez Perce and Shoshone Bannock Tribes in Idaho.

⁴ Attached to this Order is the Appendix setting forth updated requirements for ETC Designation, Reporting and Certification.

ORDER

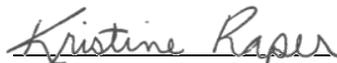
IT IS HEREBY ORDERED that the Company's Application for a) designation as an ETC in the state of Idaho, b) designation as a Lifeline-only ETC for the service area in which the Company will not receive high-cost support, and c) authorization to participate and receive reimbursement from ITSAP as appropriate is granted.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 25th day of August 2021.



PAUL KJEELANDER, PRESIDENT

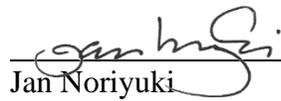


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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APPENDIX

Requirements for Eligible Telecommunications Carrier (ETC) Designation, Reporting, and Certification.

A. STATUTORY DESIGNATION REQUIREMENTS

All ETC applicants must follow the federal statutory requirements for ETC designation. *See* 47 U.S.C. § 214(e)(1).

1. Common Carrier

The ETC applicant must be a "common carrier" as defined by 47 U.S.C. § 153(10).

2. Provide the Universal Services

The ETC applicant must demonstrate that it is capable of providing and will continuously provide throughout its proposed service area the universal services set forth in 47 C.F.R. § 54.101(a), either by using its own facilities or a combination of its own facilities and resale of another carrier's services. *See* 47 U.S.C. § 214(e)(1)(A). These services include:

- (a) Voice grade access to the public switched network;
- (b) Local calling;
- (c) Touch tone signaling or its functional equivalent;
- (d) Single-party service or its functional equivalent;
- (e) Access to 911 emergency services where available;
- (f) Access to operator services;
- (g) Access to long-distance service;
- (h) Access to directory assistance; and
- (i) Toll limitation service.

See 47 C.F.R. § 54.101(a).

3. Advertising

The ETC applicant must demonstrate that it will advertise the availability of its universal service offering and the charges therefore using media of general distribution. *See* 47 U.S.C. § 214(e)(1)(B).

4. Public Interest

The ETC applicant must demonstrate that ETC designation is consistent with the public interest, convenience, and necessity; and, in the case of an area served by a rural telephone company, demonstrate that the public interest will be met by an additional designation.

5. Tribal Notification

An ETC applicant seeking ETC designation for any part of tribal lands shall provide a copy of its application to the affected tribal government or tribal regulatory authority, as applicable, at the time it files its application with the Commission. Evidence of such notification shall be provided to the Commission.

B. ADDITIONAL ELIGIBILITY REQUIREMENTS

All ETC applicants in Idaho must also satisfy the following additional requirements for ETC designation in Idaho. All ETCs previously designated by this Commission pursuant to 47 U.S.C. § 214(e)(2) must provide this information by September 1, 2006.

1. The Commitment and Ability to Provide Supported Services

The ETC applicant must certify that it will: (a) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (b) provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by (i) modifying or replacing the requesting customer's equipment; (ii) deploying roof-mounted antenna or other equipment; (iii) adjusting the nearest cell tower; (iv) adjusting network or customer facilities; (v) reselling services from another carrier's facilities to provide service; or (vi) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment.

The ETC applicant must also submit a two-year network improvement plan that describes with specificity proposed improvement or upgrades to the applicant's network on a wire center-by-wire center basis throughout its proposed designated service area. Each applicant must also demonstrate how signal quality, coverage or capacity will improve due to the receipt of high-cost support; the projected start date and completion date for each improvement and the

estimated amount of investment for each project that is funded by high-cost support; the specific geographic areas where the improvements will be made; and the estimated population that will be served as a result of the improvements. If an applicant believes that service improvements in a particular wire center are not needed, it must explain its basis for this determination and demonstrate how funding will otherwise be used to further the provision of supported services in that area.

2. The Ability to Remain Functional in Emergencies

The ETC applicant must demonstrate that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

3. A Commitment to Consumer Protection and Service

The ETC applicant must certify that it will comply with all applicable service quality standards and consumer protection rules. In addition, all wireless carriers seeking ETC designation must agree to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("CTIA Code").

4. Description of the Local Usage Plans

The ETC applicant must provide a description of its local usage plans and a description of the local usage plan(s) of the incumbent local exchange carrier (ILEC).

C. REPORTING REQUIREMENTS

Beginning on September 1, 2006, and every year thereafter, all carriers requesting high-cost support must submit an annual report to the Commission.

1. Two-Year Network Improvement Plan and Progress Report

The annual report must include a progress report demonstrating what progress has been made in the last year toward goals outlined in the most recent two-year network improvement plan. The progress report must include maps detailing the ETC's progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve signal quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled. This information should be submitted at the wire center level. The annual report must also include a new two-year network

improvement plan indicating plans for future investment. The two-year network improvement plan must provide the same information required for ETC designation. *See, infra*, Appendix B.1.

2. Outages

The annual report must include detailed information on any outage, as that term is defined in 47 C.F.R. § 4.5, of at least thirty (30) minutes in duration for each service area in which an ETC is designated for any facilities it owns, operates, leases or otherwise utilizes that potentially affect (a) at least ten percent of the end users served in a designated service area; or (b) a 911 special facility, as defined in 47 C.F.R. § 4.5(e). Specifically, the annual report must include information detailing: (a) the date and time of onset of the outage; (b) a brief description of the outage and its resolution; (c) the particular services affected; (d) the geographic areas affected by the outage; (e) the steps taken to prevent a similar situation in the future; and (f) the number of customers affected.

3. Unfulfilled Service Requests

The annual report must include the number of requests for service from potential customers within the ETC's service areas that were unfulfilled in the previous year. The carrier shall also detail how it attempted to provide service to those potential customers.

4. Customer Complaints

The annual report must include the number of complaints per 1,000 handsets or lines.

5. Service Quality and Consumer Protection Certification

The annual report must include certification that the ETC is complying with applicable service quality standards and consumer protection rules.

6. Descriptions of the Applicant's local usage plan and that of the ILEC.

The annual report must include a description of the ETC's local usage plan(s) and a description of the ILEC's local usage plan(s).

D. CERTIFICATION REQUIREMENTS

In order to be eligible for federal USF funding in any given year, the carrier must comply with the annual reporting requirements above. In addition, the carrier must certify to the Commission that all federal high-cost support provided to the carrier for service areas in Idaho will be used only for the provision, maintenance, and upgrading of facilities and services for which the support was intended.