

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AIRVOICE)
WIRELESS, LLC’S d/b/a AIRTALK) **CASE NO. AVW-T-22-01**
APPLICATION FOR LIMITED)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN) **ORDER NO. 35515**
THE STATE OF IDAHO)
_____)

On March 23, 2022, AirVoice Wireless, LLC d/b/a AirTalk (“Company” or “AirVoice”) applied for limited designation as an Eligible Telecommunications Carrier (“ETC”) in Idaho. The Company supplemented its Application on April 22, 2022, and June 2, 2022, with additional information elucidating its technical and financial capabilities. On June 24, 2022, the Company provided receipts of the mailing of its Application to affected tribal governments and regulatory authorities.

On July 15, 2022, the Commission issued a Notice of Application and Notice of Modified Procedure, setting a 21-day public comment deadline and 28-day Company reply deadline.

On August 5, 2022, Commission Staff (“Staff”) filed comments. No other comments were received. With this Order, we approve the Company’s Application and grant it limited designation as an ETC.

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-

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”). *Idaho Code* § 56-901.

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. *See* 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 shall 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 the Idaho Telephone Service Assistance Program (“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. 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 the following 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; Order 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 (“*Lifeline and Link Up Reform Order*”). 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. 35126 at 3.

APPLICATION

The Company seeks designation solely to provide Lifeline service statewide. Application at 4. The Company stated that it is not eligible to seek access to funds from the federal USF “for the purpose of participating in the Link-Up program or providing service to high-cost areas.” *Id.* The Company requested permission to participate in and be reimbursed from ITSAP. *Id.* at 4-5.

The Company asserted that it met all federal and state requirements for designation as an ETC. The Company contended that designating it as an ETC was in the public interest because it would allow the Company to provide Lifeline service to an impressive range of low-income, and underserved Idaho residents. *Id.* at 5.

STAFF COMMENTS

Staff reviewed and analyzed the Company’s Application for compliance with the Federal Act, FCC regulations, state law, and Commission Order No. 29841.

Staff believed the Company satisfied public interest considerations. Staff further believed the Company complied with the tribal notification requirements. Staff noted the Company was not required to have a network improvement plan. Staff believed the Company’s underlying carriers provided sufficient ability for the Company to remain functional in emergencies per Commission Order No. 29841 and FCC requirement 47 C.F.R. § 54.202(a)(2). Last, Staff believed the Company’s Application met all the additional requirements for ETC designation as delineated in the Appendix to Order No. 29841. Staff recommended that the Company’s Application be approved.

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 and 62-615(1). The Commission has considered the record, including the Company’s Application and Staff Comments. We now make these 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” offering services “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(11), 214(e)(1)(A) and 160(a)(3). The FCC has granted forbearance from the “own-facilities” requirement to Lifeline-only ETCs provided they comply with certain 911 requirements and file a compliance plan. *Lifeline and Link Up Reform Order*. The Company represented that, as a Lifeline-only ETC, it complied with the Federal Act with the filing of its December 2021 FCC-approved Compliance Plan. Application at 11. The Company stated its intention to follow 911 requirements governing Lifeline subscribers in accordance with its FCC-approved Compliance Plan. *Id.* We find the Company properly complied with the FCC forbearance regarding the “own facilities” requirement. 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 15-16.

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).

First, the Company committed to offering Lifeline services to a wide array of low-income and unserved and underserved Idaho residents. Application at 5; *see also* 47 C.F.R. § 54.101(d). We find that the Company’s offering of these services in the service areas promotes the public interest because these services will assist unserved or underserved people and provide investment in facilities and equipment in these areas.

We also consider whether the Company would contribute to the appropriate Idaho funds. Order Nos. 33002 at 2-3, 33226 at 3. Staff confirmed that the Company would participate in the appropriate Idaho programs and comply with the Commission’s annual reporting requirements. *See* Staff Comments at 5, 6. 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 limited ETC designation for the entire state, no cream-skimming analysis is required.

We therefore find that granting the Company limited designation as an ETC in its requested service area—the State of 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 16.

(2) Plan for Proposed Improvements or Upgrades to the Network. The FCC and this Commission have waived the requirement for Lifeline-only ETCs who seek only low-income USF support to submit a network improvement plan. *See* Order No. 32501 at 3-4; 47 C.F.R. § 54.202(a)(1)(ii). We find that the Company is not required to submit a network improvement plan.

(3) Ability to Remain Functional in Emergencies. We find the Company has demonstrated sufficient compliance with this requirement. Application at 17.

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

(5) Financial and Technical Capability. Based on the Company’s assurances and description of its financial and technical qualifications, as well as how it interacts and partners with its parent company, we also find this requirement to be satisfied. *Id.* at 17-18.

(6) Notice to Affected Tribes We find the Company has sufficiently notified and engaged Tribal authorities. *See* June 24, 2022, ID Tribe Certificate of Service Letters, AirVoice Tribal Mailing Receipts; 47 C.F.R. § 54.202(c); Order No. 29841 at 16 (superseded in part by Order No. 35126 at 6).

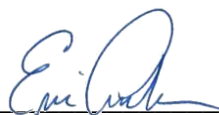
Based on the above findings, we conclude that the Company has satisfied the federal and state requirements for limited designation as an ETC carrier. We therefore designate the Company an ETC in the State of Idaho for the purpose of providing Lifeline service to qualifying Idaho consumers and to participate in and receive reimbursement from the ITSAP.

ORDER

IT IS HEREBY ORDERED that the Company's Application for limited designation as an ETC in the State of Idaho is approved.

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. *Idaho Code* § 61-626.

DONE by order of the Idaho Public Utilities Commission at Boise, Idaho this 30th day of August 2022.



ERIC ANDERSON, PRESIDENT

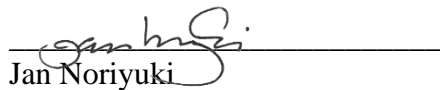


JOHN CHATBURN, COMMISSIONER



JOHN R. HAMMOND, JR., COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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