

RILEY NEWTON
DEPUTY ATTORNEY GENERAL
IDAHO PUBLIC UTILITIES COMMISSION
PO BOX 83720
BOISE, IDAHO 83720-0074
(208) 334-0318
IDAHO BAR NO. 11202

RECEIVED
2022 AUG -5 PM 3: 50
IDAHO PUBLIC
UTILITIES COMMISSION

Street Address for Express Mail:
11331 W CHINDEN BLVD, BLDG 8, SUITE 201-A
BOISE, ID 83714

Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF AIRVOICE WIRELESS,)
LLC’S D/B/A AIRTALK APPLICATION FOR)
LIMITED DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN THE)
STATE OF IDAHO)
) **CASE NO. AVW-T-22-01**
)
) **COMMENTS OF THE**
) **COMMISSION STAFF**
)

STAFF OF the Idaho Public Utilities Commission, by and through its Attorney of record, Riley Newton, Deputy Attorney General, submits the following comments.

BACKGROUND

On March 23, 2022, AirVoice Wireless, LLC d/b/a Air Talk (“Company” or “AirVoice”) applied for Limited Designation as an Eligible Telecommunications Carrier (“ETC”) in Idaho. The Company filed additional supplements to its Application on April 22, 2022, and on June 2, 2022, further elucidating its technical and financial capabilities. The Company seeks limited designation, solely to provide Lifeline service.

The Company states that it is not eligible to seek access to funds from the federal Universal Service Fund (“USF”) “for the purpose of participating in the Link-Up program or providing service to high-cost areas.” Application at 4. The Company “requests that its

designation as an ETC include the authority to participate in and receive reimbursement from the Idaho Telephone Service Assistance Program ([“]ITSAP[”]). *Id.* at 4-5.

The Company asserts it meets all federal and state requirements for designation as an ETC and argues that designating the Company as an ETC is in the public interest. The Company asks that the Commission grant it ETC status “expeditiously”. *Id.* at 5.

The Application

“AirVoice is a Michigan limited liability company, with its principal office located at 9920 Brooklet Drive, Houston, Texas 77099.” *Id.* at 6. It is a wholly owned subsidiary of VTel Holdings, LLC, a Texas limited liability company (“VTel”). *Id.* at 6. AirVoice provides “commercial mobile radio service (“CMRS”)” and “prepaid wireless telecommunications services to consumers by using the underlying wireless networks of AT&T Mobility LLC and T-Mobile USA, Inc. (its “Underlying Carriers”) on a wholesale basis.” *Id.* The Company “obtains the network infrastructure and wireless transmission facilities from its Underlying Carriers to allow it to operate as a Mobile Virtual Network Operator (“MVNO”).” *Id.* “AirVoice also provides non-Lifeline mobile phone services and is an approved provider of broadband services under the [Federal Communications Commission’s] [“]FCC’s[”] Affordable Connectivity Program (“ACP”).” *Id.*

AirVoice requests an “ETC designation that is statewide in scope to allow the Company to provide Lifeline service wherever its underlying, facilities-based providers have wireless coverage, including federally recognized tribal lands.” *Id.* at 13-14. The Company asserts that it meets the requirements of Section 214(e)(1) of the Federal Telecommunications Act to be designated an ETC. *Id.* at 10.

AirVoice represents that it is entitled to ETC designation under 47 U.S.C. § 214(e)(2), which authorizes state commissions to designate wireless ETCs. *Id.* at 9. The Company asserts that it: (1) is a common carrier; (2) commits to and can provide services supported by federal universal support mechanisms; (3) will advertise the availability of supported services in a manner reasonably designed to reach those likely to qualify; (4) is committed to consumer protection and service quality standards; (5) is capable of remaining functional in emergencies; (6) has the financial and technical capability to provide Lifeline service; and (7) will comply with requirements imposed by this Commission. *Id.* at 9-22. AirVoice represents that ETC

designation will further the public interest by providing Idaho consumers, especially low-income consumers, with low prices and high-quality services. *Id.* at 23. The Company notes, “whether because of financial constraints, poor credit history, or intermittent employment, many low-income consumers often lack the countless choices available to most consumers and thus have yet to reap the full benefits of the intensely competitive wireless market.” *Id.*

The Company states it seeks to be a Lifeline-only ETC, and “it will not (and is not eligible to) seek access to funds from the federal USF to participate in the Link-Up program or provide service to high-cost areas.” *Id.* at 4. The Company also seeks Commission authorization to participate in and receive reimbursement from ITSAP. *Id.*

AirVoice’s Lifeline Service Offerings

“AirVoice’s Lifeline customers will be low-income consumer households” *Id.* at 8. “AirVoice will provide affordable prepaid mobile phone service and high-quality customer service.” *Id.* “AirVoice’s service offering will include: (1) local and long-distance calling; (2) access to the following custom calling features at no charge: (a) Caller ID; (b) Call Waiting; (c) Call Forwarding; (d) 3-Way Calling; and (e) Voicemail; (3) text messaging; (4) broadband access; and (5) the option for a consumer to bring their device” *Id.* The Company states that it “may offer user-friendly handsets or hotspot devices.” *Id.* “AirVoice’s products and plans will be specially geared toward serving lower-income communities, especially in rural areas that are predominantly unserved by other ETCs designated in the state, and its service models and pricing plans will reflect this mission.” *Id.* at 8.

STAFF REVIEW

Staff reviewed AirVoice’s Application. Staff analyzed the Company’s fulfillment of the Federal Telecommunications Act of 1996, the FCC’s regulations, and Commission Order No. 29841. The specific state and federal requirements for ETC designation are discussed in more detail as follows:

Public Interest Considerations

Staff applies a two-prong test when analyzing whether a company's ETC Application is in the public interest. First, Staff determines whether the company contributes to Idaho funds. Second, Staff analyzes whether the company's Application raises "cream skimming" concerns.

In its Application, AirVoice confirmed that upon approval as an ETC in Idaho, it would participate in the appropriate Idaho programs, specifically the ITSAP program. *See* Application at 4-5. The Company requests ETC designation that is statewide in scope. *Id.* at 13-14. Therefore, no cream skimming analysis is required. Thus, Staff believes AirVoice satisfies the public interest considerations.

Tribal Notification

Pursuant to Commission Order No. 35126, 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. AirVoice provided copies of the USPS-certified mail that it sent to the authorities of the tribal land. Staff believes these comply with Commission Order No. 35126.

Network Improvement Plan

The Commission requires a two-year network improvement and progress report from all ETCs receiving high-cost support. Order No. 29841 at 18. However, the Commission determined in Cricket Communications, Inc.'s ETC Application in Case No. CRI-T-11-01 that a two-year network improvement plan did not apply to Lifeline-only ETCs. Order No. 32501.

In the USF/ICC Transformation Order, the FCC amended 47 C.F.R. § 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. Lifeline-only ETCs do not receive high-cost funds to improve or extend networks, therefore the FCC "saw little purpose in requiring such plans as part of the ETC designation process."¹

¹ *See* Lifeline and Link up Reform and Modernization et al, WC Dkt No. 11-41 et al. Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at para 386.

AirVoice's Application seeks only low-income USF support as a Lifeline-only ETC. Thus, Staff agrees that a network improvement plan is not a requirement for AirVoice's ETC Application.

Ability to Remain Functional in Emergencies

The Company states that it can remain functional in emergencies per Commission Order 29841 and FCC requirement 47 C.F.R, § 54.202(a)(2). *Id* at 17. AirVoice asserts that it "will utilize the extensive and well-established network facilities of Tier I wireless carriers to provide its Lifeline services." *Id*. Thus, because of this, the Company will be able to provide the same ability to remain functional in emergencies as the underlying carriers provide to its customers. *Id*. Namely, the Company asserts that the underlying carrier networks "have access to a reasonable amount of backup power to ensure functionality without an external power source, can reroute traffic around damaged facilities, and are capable of managing traffic spikes resulting from emergencies." *Id*. at 17. Staff agrees that AirVoice satisfies this requirement.

Other ETC Designation Requirements

Additional requirements for ETC designation are detailed in Appendix 1 of Order No. 29841 and are discussed in more detail below:


1. Common Carrier Status. AirVoice is a common carrier as defined in U.S.C. Title 47. *Id*. at 12.
2. Provide Universal Services. AirVoice will provide all required services and functionalities as outlined in Section 54.101(a) of the FCC's Rules (47 C.F.R. § 54.101(a)). *Id*. at 12-14.
3. Advertising. AirVoice will advertise the availability and rates for its services described in the Application through media of general distribution as required by 47 U.S.C. § 214(e)(1)(B). *Id*. at 15.
4. A Commitment to Consumer Protection and Service. AirVoice commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards, including compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service as required by 47 C.F.R. § 54.202(a)(3). *Id*. at 17.

5. Description of the Local Usage Plan. AirVoice will offer a Lifeline service plan. Exhibit 1. Furthermore, the Company will meet or exceed the minimum service standards outlined in 47 C.F.R. § 54.408, including as such standards are updated going forward. *Id.* at 16.

STAFF RECOMMENDATIONS

Based on its review of the Company's Application and all of the additional filings, Staff believes that the Company demonstrated its commitment to fulfilling the obligations of a Lifeline-only ETC in Idaho. The Company will provide all universal services supported by the federal USF throughout its service territory. It has addressed the public interest questions that accompany an ETC Application. AirVoice will provide multiple pricing plans, which will increase consumer choice for low-income telephone services in Idaho. Currently, the Commission has granted wireless ETCs access to participate in the State's ITSAP program, so Staff supports allowing AirVoice to participate in the ITSAP program. Thus, Staff believes AirVoice's Application for designation as an ETC is in the public interest and should be approved for the entire State of Idaho as the service area.

Respectfully submitted this 5th day of August 2022.

For: 
Riley Newton
Deputy Attorney General

Technical Staff: Johan Kalala-Kasanda

i:\umisc\comments\avwt22.1rnjk comments

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 5TH DAY OF AUGUST 2022, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. AVW-T-22-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

LANCE JM STEINHART
LANCE JM STEINHART PC
1725 WINDWARD CONCOURSE
STE 150
ALPHARETTA GA 30005
E-MAIL: lsteinhart@telecomcounsel.com



SECRETARY

CERTIFICATE OF SERVICE