

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF DISH WIRELESS) CASE NO. DWL-T-23-01
L.L.C.’S APPLICATION FOR)
DESIGNATION AS AN ELIGIBLE) ORDER NO. 35931
TELECOMMUNICATIONS CARRIER IN)
THE STATE OF IDAHO FOR THE LIMITED)
PURPOSE OF OFFERING LIFELINE)
SERVICE TO QUALIFYING CUSTOMERS)
)

On March 2, 2023, Dish Wireless L.L.C. d/b/a Gen Mobile (“Company”) applied to the Idaho Public Utilities Commission (“Commission”) for designation as an Eligible Telecommunications Carrier (“ETC”) in the State of Idaho (“Application”). The Company also asked for authorization to participate in and be reimbursed from the Idaho Telephone Service Assistance Program (“ITSAP”).¹

On July 26, 2023, the Commission issued a Notice of Application and set deadlines for public and Commission Staff (“Staff”) comments and the Company’s reply. Order No. 35863. Staff submitted 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”).² 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—and expounded

¹ Several supplemental materials related to the Application have been filed in this case; these materials have been reviewed by Staff.

² 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 ITSAP. *Idaho Code* § 56-901.

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. *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, the Commission has generally considered two factors. *See* Order No. 33002 at 2-3; Order No. 33226 at 3. First, the Commission evaluates whether the carrier contributes to state assistance programs such as the ITSAP and the Idaho Telecommunications Relay Services program consistent with *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. Such practice, known as “cream skimming,” has been determined by the 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, 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*”). The 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 requested designation as an ETC for limited purposes of providing Lifeline service under the name “Gen Mobile” to qualifying Idaho consumers—including those on federally recognized Tribal lands. The Company also requested approval to participate in the ITSAP and receive benefits accordingly.

The Company asserted that it meets all federal and state requirements for designation as an ETC and indicated it will comply with all regulations the Commission imposes. The Company also argued that designating the Company as an ETC was in the public interest.

STAFF COMMENTS

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

Staff believed the Company’s proposal satisfied public interest considerations. Staff further believed the Company complied with the tribal notification requirements delineated in Commission Order No. 35126. Staff noted the Company is not required to have a network improvement plan because it only seeks lifeline designation. Staff believed the Company will 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 the requirements for ETC designation as delineated in the Appendix to Commission Order No. 29841.

Staff believed the Company’s designation as a limited ETC is in the public interest and its Application should 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); *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 2012 FCC-approved Compliance Plan. The Company stated its intention to follow 911 requirements governing Lifeline subscribers in accordance with its FCC-approved Compliance Plan. 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.

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. *See* 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 No. 33002 at 2-3; Order No 33226 at 3. Staff confirmed that the Company would participate in the appropriate Idaho programs and comply with the Commission’s annual reporting requirements. 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 No. 33002 at 2-3; Order No. 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.

(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.

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

(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.

(6) Notice to Affected Tribes. We find the Company has sufficiently notified and engaged Tribal authorities. *See* April 3, 2023, and July 28, 2023, Supplements to the Company’s Application; 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. Additionally, the Company may participate in the ITSAP.

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 22nd day of September 2023.



ERIC ANDERSON, PRESIDENT

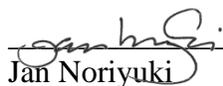


JOHN R. HAMMOND, JR., COMMISSIONER



EDWARD LODGE, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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