

Agenda Date: March 27, 2014
Item Number: A6

Docket: UT-121524
Company Name: Total Call Mobile, Inc.

Staff: Roger Hahn, Regulatory Analyst
Jing Liu, Regulatory Analyst
William Weinman, Assistant Director - Telecommunications

Recommendation

The commission enter an order:

- Designating Total Call Mobile, Inc., as an Eligible Telecommunications Carrier for the purpose of receiving Lifeline support from the federal Universal Service Fund in service areas specified in Attachment 1 and subject to the conditions in Attachment 2, and
- Granting exemptions from Washington Administrative Code 480-123-030(1)(d),(f) and (g), which requires the filing of a substantive investment plan, wireless network maps, and certification on backup power capabilities, respectively.

I. Background

On September 18, 2012, Total Call Mobile, Inc., (Total Call or company) filed a petition with the Washington Utilities and Transportation Commission (UTC or commission) requesting designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-030. Total Call seeks ETC designation in Washington for the purpose of receiving federal Low Income support (Lifeline) that subsidizes monthly charges for basic telephone service for qualified low-income households. Low Income support is part of the federal Universal Service Fund (USF). The company is a reseller of facility based wireless service providers. Total Call also requests an exemption from Washington Administrative Code 480-123-030(1)(d),(f) and (g), which requires ETC applicants to file a substantive investment plan, wireless network maps and certification on backup power capabilities.

Total Call filed an amended petition on February 21, 2014, with the following changes:

- Updated the states granted ETC designation from 8 to 19 and Puerto Rico.¹
- Modified service area to include exchange detail.
- Update lifeline service offerings.
- Provide additional detail for customer acquisition methods.
- Request waiver of WAC 480-123-030 (1)(d), Five-Year Network Improvement Plan.

¹ Total Call is currently designated as an ETC in Arizona, Colorado, Hawaii, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Puerto Rico, Texas, Utah, West Virginia, Wisconsin and Wyoming, currently has applications for ETC designation pending with Arkansas, California, Idaho, Minnesota, New Jersey, Pennsylvania, Rhode Island, South Dakota, and Vermont, and is awaiting designation as an ETC by the FCC in the states of Alabama, Connecticut, Delaware, District of Columbia, Florida, New Hampshire, New York, North Carolina, Tennessee, and Virginia; no such petitions have been denied.

Total Call is a Delaware Corporation with its principal office in Gardena, California. Total Call has been providing wireless telecommunications services in the United States since January 2006. It is a Mobile Virtual Network Operator, using the Sprint network and provides services to Lifeline and non-Lifeline customers in 49 states. It serves approximately 150,000 wireless lifeline customers nationwide. Total Call has the financial support of its parent company, KDDI of America, a subsidiary of KDDI of Japan, the second largest communication carrier in Japan.

II. Discussion

The commission has jurisdiction over ETC petitions. Section 214 (e) of the Act authorizes state regulatory commissions to designate a qualified common carrier as an ETC for the purpose of receiving federal Universal Service Funds.² Under WAC 480-123-040, the commission has authority to approve petitions from carriers requesting ETC designation. The commission's authority to grant or deny petitions for ETC designation includes the authority to impose conditions.³

Commission staff (staff) finds that Total Call qualifies for ETC designation with the proposed conditions in Attachment 2. Under 47 U.S.C. § 214(e)(2), state commissions may designate more than one carrier as an ETC in an area if such designation is "consistent with the public interest, convenience, and necessity" and the carrier seeking designation as an ETC meets the two requirements of 47 U.S.C. § 214(e)(1):

- (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 therefore using media of general distribution.

Total Call is a common carrier. It is capable of providing services supported by federal universal service mechanisms, as defined in 47 C.F.R. § 54.101(a) by reselling its underlying network carrier's services. Based on the FCC's *Lifeline and Link Up Reform Order*, the Federal Communications Commission (FCC) forbears from applying the Act's facilities-based requirement to all carriers that seek limited ETC designation to participate in the Lifeline program on the condition that the FCC's Wireline Competition Bureau approves such ETC applicant's Compliance Plan.⁴ The Compliance Plan must demonstrate the ETC applicant's commitment to fight waste, fraud and abuse in the Lifeline program and describe its adherence to the revised federal Lifeline rules. Total Call has met the forbearance condition. Its Compliance

² 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c).

³ *In the Matter of the Petition of TracFone Wireless, Inc. for Exemption from WAC 480-123-030(1)(d),(f) and (g); and Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Lifeline Support from the Federal Universal Service Fund*, Order 03 (June 24, 2010), UT-093012, ¶ 78.

⁴ *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*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb 6, 2012) ("*Lifeline and Link Up Reform Order*"), ¶¶ 361 - 381.

Plan was approved by the FCC on May 25, 2012.⁵ The company also commits that it will advertise the availability of Lifeline services.

Staff reviewed the company's technical and financial capabilities to provide the supported Lifeline service and carefully considered relevant factors suggested in the FCC's Lifeline and Link Up Reform Order.⁶ Based on the company's operational history and company financial statements staff concludes that the company is technically and financially capable of providing the supported Lifeline service in compliance with all the low-income program rules.

The company meets the requirements of the Washington rule on ETC designation, WAC 480-123-030, except subsections (1)(d), (f) and (g):

- WAC 480-123-030(1)(d) requires an ETC petitioner to provide a "substantive plan of the investments to be made with initial federal support during the first two years in which support is received and a substantive description of how those expenditures will benefit customers." Total Call requests an exemption from the requirement because the company seeks only Lifeline support, not federal High Cost support. It does not have an obligation to use federal USF for infrastructure investment.
- WAC 480-123-030(1)(f) requires a wireless ETC petitioner to provide "a map in .shp format of proposed service areas (exchanges) with existing and planned locations of cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals." Total Call requests an exemption because it does not have access to its underlying carriers' maps.
- WAC 480-123-030(1)(g) requires a wireless ETC to have "at least four hours of back up battery power at each cell site, backup generators at each microwave hub, and at least five hours back up battery power and backup generators at each switch." Total Call requests an exemption because it does not have control over its underlying carriers' emergency power back up facilities.

Staff supports the company's request for exemptions from the three requirements under WAC 480-123-030. Granting the request is consistent with the public interest, the purposes underlying regulation, and applicable statutes. The commission granted these exemptions in its orders designating Lifeline-only ETCs such as TracFone Wireless, Inc.

Total Call offers the following four non-Tribal Lifeline plans and two Tribal Lifeline plans. Additional packages of minutes will be available for purchase in various retail outlets, via Internet or through customer support over the phone.

⁵ Wireline Competition Bureau Approved the Compliance Plans of American Broadband & Telecommunications, Budget Prepay, Consumer Cellular, Global Connection, Terracom and Total Call, FCC Public Notice, WC Docket Nos. 09-197 and 11-42, DA 12-828 (rel. May 25, 2012).

⁶ *Lifeline and LinkUp Reform Order*, ¶¶ 388.

<u>NON-TRIBAL OFFERINGS</u>		
<u>Plan</u>	<u>Retail price (per month, per customer)</u>	<u>Discounted price (per month, per customer)</u>
250-Minute Plan (i.e., Plan 1)	\$10.00	\$0.00
1000 Talk & 1000 Text (i.e., Plan 2)	\$29.99	\$19.99
Unlimited Talk & Text (i.e., Plan 3)	\$39.99	\$29.99
Unlimited Talk, Text & Data (i.e., Plan 4)	\$49.99	\$39.99
<u>TRIBAL OFFERINGS</u>		
Unlimited Talk & Text (i.e., Tribal Plan 1)	\$39.99	\$0.00
Unlimited Talk, Text & Data (i.e., Tribal Plan 2)	\$49.99	\$10.00

All plans include a wireless handset with no provision to rollover unused minutes or data to the next month. Non-tribal plans 2, 3 and 4 are discounted at \$10.00 (i.e., which is greater than the \$9.25⁷ currently reimbursed by the FCC). Tribal plan 2 is discounted at \$39.99 (i.e., which is greater than the \$34.25⁸ currently reimbursed by the FCC).

Currently the majority of Total Call's Lifeline customers are acquired by contracted agents and retail stores who advertise Total Call's Lifeline products at in-person direct events. Lifeline sales representatives sign-up a potential subscriber through an online application that is transmitted to the company. A Total Call employee will approve the application prior to a handset being distributed to a new subscriber. Total Call clearly communicates to agents that commissions and handsets distributed to ineligible subscribers will be charged back to agents.

Staff recommends the commission require Total Call to use the federal default eligibility criteria in 47 C.F.R. § 54.409(2).⁹ As with all other similarly situated Lifeline ETCs in Washington, Staff recommends Total Call to work with the Department of Social and Health Services (DSHS) to gain online access to DSHS's Benefit Verification System query database to verify the eligibility of those customers whose qualification is based on their participation in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security Income and Temporary Assistance for Needy Families.¹⁰ For customers who qualify based on their participation in the three federal assistance programs that are not in the DSHS database, and customers who qualify based on income-based criteria, the company must review relevant proof documentation, as specified in 47 C.F.R. § 54.410. Total Call is also required to provide its relevant customer records to the commission and the DSHS at least on an annual basis for the purpose of identifying ineligible customers and customers who receive duplicate Lifeline benefits from the company and a wireline Lifeline provider. This condition will be required until both the FCC's National Accountability and the National Lifeline Eligibility Databases are fully functional.

⁷ See *Lifeline and Link Up Reform Order* at page 5.

⁸ See *Lifeline and Link Up Reform Order* at page 5.

⁹ The rationale is detailed in staff memo on Cricket Communications, Inc.'s ETC designation petition in Docket UT-111534.

¹⁰ Before the company obtains access to DSHS's online query database or in the event that the company fails to obtain such access, the company should follow the federal default process to verify Lifeline applicants' eligibility, as specified in 47 C.F.R. § 54.410.

Staff recommends that the commission apply a set of conditions to Total Call's ETC designation.¹¹ The specific conditions for Total Call are listed in Attachment 2. Two notable changes relative to the conditions previously imposed on other ETCs have been made. First, the one-year interim designation has been eliminated. Since the 2012 Lifeline and Link Up reform, the FCC has directed the Universal Service Administrative Company to conduct in-depth audits on ETCs. In addition, the National Lifeline Accountability Database began accepting subscriber data in December, 2013 for Washington ETCs.¹² This database was activated for Washington Lifeline verification in February, 2014. These developments are expected to effectively address the problems of duplicative Lifeline claims. Staff believes monitoring and rule enforcement in the Lifeline market obviates the need for the commission's one-year interim condition. Second, staff has added a condition requiring Total Call to file with the commission the results of any audits or investigations on its Lifeline operations in any state conducted by the FCC or USAC within 14 calendar days from receipt of results.

Staff emphasizes that Total Call must strictly comply with its commitments in the Compliance Plan reviewed and approved by the FCC. Deviation from its Compliance Plan would forfeit the forbearance from their own-facilities requirements granted by the FCC, consequently not meet the qualification for ETC designation from this commission.

III. Conclusion

Staff believes that designating Total Call as a Lifeline-only ETC will deliver benefits and additional choices to low-income households in Washington. Staff recommends the commission enter an order designating Total Call Mobile Inc., as an Eligible Telecommunications Carrier for the purpose of receiving Lifeline support from the federal Universal Service Fund in the service areas specified in Attachment 1 and subject to the conditions specified in Attachment 2 and grant exemptions from WAC 480-123-030 (1)(d), (f) and (g).

Attachments - 2

¹¹ The commission has previously imposed conditions on similarly situated Lifeline only ETCs.

¹² Wireline Competition Bureau Announces that the National Lifeline Accountability Database Will Begin Accepting Subscriber Data in December, FCC Public Notice, WC Docket No. 11-42, DA 13-2052, Footnote 1 (rel. October 23, 2013).