

Agenda Date: February 14, 2014
Item Number: A1

Docket: UT-110423
Company Name: YourTel America, Inc.

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

Recommendation

Renew the designation of YourTel America, 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 modified conditions in Attachment 2.

I. Background

On June 6, 2012, YourTel America, Inc. (YourTel or company) filed a petition with the Washington Utilities and Transportation Commission (UTC or commission) to renew designation as an Eligible Telecommunications Carrier (ETC) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the Act), and WAC 480-123-030 through -040. YourTel was designated as an ETC for the purpose of receiving Low Income Support from the federal Universal Service Fund on June 15, 2011. The commission granted the exemption from provisions of WAC 480-123-030(1)(d),(f) and (g), which requires the company to file a substantive investment plan, a digital map of wireless facilities and coverage, and a certification on back-up power requirements, respectively. The commission imposed 21 conditions on YourTel's ETC designation to make sure that the designation will be consistent with the public interest. Condition One provided that the designation is for an interim period of one year and the company needs to seek renewal of its ETC status before the end of one year.

YourTel started its Lifeline operation in Washington in July, 2011. It offers multiple rate plans to Lifeline as well as non-Lifeline customers. The company serves approximately 8,000 Lifeline customers in Washington.

The company asserts that it has complied with Washington ETC rules, WAC 480-123-030, except for provisions for which an exemption was granted, as well as all the conditions imposed by the commission.

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 Fund.¹ By rule, WAC 480-123-040, the commission has the 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.²

¹ 47 U.S.C. § 214(e)(2). See also 47 C.F.R. § 54.201(c).

² *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*

II. Discussion

Staff finds that YourTel continues to qualify for ETC designation pursuant to 47 U.S.C. § 214(e)(2). It offer the services that are supported by federal universal service support mechanisms. It advertises the availability of such services and the charges using media of general distribution.

The landscape of the federal Lifeline and Link Up program has changed since the FCC launched a significant reform in early 2012. The FCC's 2012 Lifeline and Link Up Reform Order³ contains a number of measures to strengthen safeguards against fraud, abuse and misuse of Lifeline and Link Up support. YourTel has complied with all the new federal requirements in light of the 2012 reform. Some key changes are highlighted as follows:

- *Elimination of Link Up Support*
The FCC eliminated Link Up support except for ETCs that receive High Cost Support in tribal areas, beginning June, 2012. YourTel no longer receives Link Up support, but continues to offer free activation for Lifeline customers.
- *Compliance Plan with the FCC*
The FCC changed the list of services supported by the federal USF. As a result, many resale-based prepaid wireless ETCs can no longer claim that they are facilities-based carriers based on their provision of directory assistance and operator services. In the Lifeline and Link Up Reform Order, the 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. All the ETCs designated prior to December 29, 2011 that do not meet the new facility-based classification were required to submit their compliance plans by July 1, 2012. YourTel filed its compliance plan with the FCC on March 5, 2012. It is now pending FCC's approval.
- *Customer Eligibility Verification*
Prior to the reform, Lifeline applicants were only required to sign an application form self-certifying their eligibility. Now the FCC requires the ETCs to verify all customers' eligibility either by query of a state database or by reviewing customers' proof documentations. YourTel is using a combination of the two methods to verify all new Lifeline customers in Washington.⁵

Federal Universal Service Fund, Order 03 (June 24, 2010), UT-093012, ¶ 78.

³ *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*").

⁴ *Id.* ¶¶ 361 - 381.

⁵ YourTel uses the Department of Social and Health Services' online query database to verify customers who are qualify based on their participation of a public assistance program administered by the DSHS. It reviews proof

- *Annual Recertification*
Prior to the reform, ETCs were required to survey a statistically valid sample of their customers to validate their eligibility. The FCC now requires ETCs to obtain annual recertification from all their Lifeline customers. YourTel complied with the new federal rule and provided a copy of its annual recertification result for 2012 to the commission.

- *Uniform Federal Default Eligibility Criteria*
When YourTel was designated as an ETC in Washington, the commission required YourTel to use the WTAP criteria⁶ for the convenience of using Department of Social and Health Services' (DSHS) online eligibility query database and participating in DSHS's annual audit on customer eligibility. YourTel was also allowed to use income-based criteria. The FCC now mandates that all states must utilize, at the minimum, the income and program criteria utilized by federal default states, as specified in 47 C.F.R. 54.409(a) and (b).⁷ Given the federal requirement on uniform eligibility criteria, staff recommends the commission require YourTel to use federal default criteria going forward. Staff also recommends the commission allow YourTel to grandfather all existing customers who qualified based on the WTAP-eligible programs not on the federal eligibility list.

Staff believes that YourTel has complied with all the conditions the commission imposed on the company when it granted ETC designation. Staff proposes some modifications to clarify the requirements. Staff changed some original conditions because they are no longer necessary under the new FCC rules. Staff recommends the commission add three conditions: (1) Make YourTel's

documents to verify customers who qualify based on a public assistance program not in the DSHS database or based on income criterion.

⁶ Participation in the following public assistance programs qualifies for WTAP:

- (i) Temporary assistance for needy families (TANF);
- (ii) State family assistance (SFA);
- (iii) Pregnant women assistance (PWA);
- (iv) Aged, blind, or disabled (ABD) cash assistance;
- (v) Refugee assistance;
- (vi) Food assistance;
- (vii) State supplemental security income (SSI);
- (viii) Medical assistance, including Medicare cost sharing programs;
- (ix) Community options program entry system (COPEs);
- (x) Chore services; or
- (xi) Have completed using community service voice mail services, and been identified to the DSHS as eligible for WTAP by the community agency.

⁷ *Lifeline and Link Up Reform Order*, ¶¶ 65 - 66. To qualify for federal Lifeline, a customer's income must be at or below 135% of the Federal Poverty guidelines, or the customer must participate in one of the following public assistance programs:

- (i) Medicaid;
- (ii) Supplemental Nutrition Assistance Program (formerly Food Stamps);
- (iii) Supplemental Security Income;
- (iv) Federal Public Housing Assistance (Section 8);
- (v) Low-Income Home Energy Assistance Program;
- (vi) National School Lunch Program's free lunch program; or
- (vii) Temporary Assistance for Needy Families.

ETC designation contingent upon the FCC's approval of the company's compliance plan; (2) Clarify that YourTel shall utilize federal default eligibility criteria going forward. All existing customers who enrolled in the company's Lifeline plan based on criteria other than programs on the federal default list should be grandfathered; (3) Require that YourTel notify the commission of the results of any audit or investigation conducted at the federal level as well as any significant ongoing investigations. Please see Attachment 2 for the list of modified conditions and see Attachment 3 for a red-lined version of the original conditions that shows all changes and modifications recommended by Staff.

Since the 2012 Lifeline and Link Up reform, the FCC has strengthened a number of rules to preserve the integrity of the program e.g., require ETCs to use state database or review proof documents before they enroll Lifeline customers; re-certify every Lifeline customers' eligibility on an annual basis; enforce deactivation upon 60 days' non-usage. The FCC has also directed the Universal Service Administrative Company to conduct in-depth audits on ETCs. In addition, the National Lifeline Accountability Database will begin accepting subscriber data in December, 2013 for Washington ETCs.⁸ These developments are expected to effectively address the problems of fraudulent Lifeline claims. Staff believes monitoring and rule enforcement in the Lifeline market obviates the need for the commission's one-year interim condition.

III. Conclusion

YourTel has complied with all federal and state statutes and rules on ETC designation as well as the conditions that the commission imposed in 2011. Staff believes renewal of its ETC designation is consistent with public interest. The company will continue to use federal Lifeline support to offer affordable wireless services to low-income households.

Staff recommends the commission issue an order to continue to grant the company the exemption from WAC 380-123-030(1)(d),(f) and (g) and renew the designation of YourTel America, 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 modified conditions in Attachment 2.

⁸ *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).