

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of	DOCKET UT-240072
IM TELECOM, LLC d/b/a INFINITI MOBILE,	ORDER 01
Seeking Designation as an Eligible Telecommunications Carrier on a Wireless (Lifeline Only) Basis	GRANTING PETITION FOR DESIGNATION AS ELIGIBLE TELECOMMUNICATIONS CARRIER WITH CONDITIONS AND EXEMPTION FROM RULE

BACKGROUND

- 1 On December 22, 2023, IM Telecom, LLC d/b/a Infiniti Mobile (IM or Company) filed a petition (Petition) with the Washington Utilities and Transportation Commission (Commission) requesting designation as an Eligible Telecommunications Carrier (ETC) in the state of Washington under the Communications Act of 1934, as amended (the Act),¹ applicable FCC rules, and WAC 480-123-030. IM seeks ETC designation in Washington for the purpose of receiving federal Low Income (Lifeline) support that subsidizes monthly charges for telecommunications service for qualified low-income households. Lifeline support is part of the federal Universal Service Fund (USF).² The Company is a reseller of facility based wireless service providers. Infiniti also requests an exemption from Washington Administrative Code 480-123-030(1)(d), (f), and (g), which require ETC applicants to file a substantive investment plan, wireless network maps, and certification on backup power capabilities.
- 2 On April 3, 2024, and April 19, 2024, IM supplemented its Petition to include letters of guarantee for both (i) KonaTel, Inc. up to the first year of Infiniti's operations in Washington; and (ii) Excess Telecom, Inc. (ETI) when the acquisition of majority ownership occurs (or after Infiniti's first year of operations in Washington, whichever occurs first).

¹ 47 U.S.C. § 214 (e)(2).

² The USF subsidizes monthly and, in certain circumstances, initial connection charges for qualified low-income households.

- 3 IM proposes to serve statewide, including federally-recognized tribal lands.³ As a result, IM's proposed service area will overlap with rural carriers.⁴ IM states that the designation of an additional ETC in rural areas across the state is justified, based on a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) and is therefore consistent per se with the public interest.⁵ Accordingly, The Company states that it will offer services that are supported by federal universal service support mechanisms, by providing voice telephony service and broadband through its network. The Company also commits to advertising its available Lifeline services consistent with the FCC's *LifeLine Reform Order*.⁶
- 4 Commission staff (Staff) agrees with IM that the Company meets all applicable regulatory requirements to be designated as an ETC. However, Staff presented, and the Company agreed to comply with, a list of conditions the Commission previously imposed on other similarly situated Lifeline ETCs seeking to operate in Washington. These include compliance filings, customer communications, and annual reports to be filed with the Commission. A complete list of these conditions is set forth in Appendix A to this order.
- 5 Additionally, IM's Petition seeks an exemption from WAC 480-123-030(1)(d) which requires high-cost program participants to file a substantive plan of the investments to be made with initial federal support for the first two years of their programs. IM indicates that it does not seek ETC designation for the purpose of participating in the USF high-cost program, making the substantive investment plan inapplicable to its petition.
- 6 IM's Petition also seeks exemption from WAC 480-123-030(1)(f), which ETC petitioners to provide a map of proposed service area and cell sites. IM is a reseller, and does not have access to the underlying cell maps of the carriers it purchases from.

³ Petition at 9.

⁴ Petition at 9.

⁵ Petition at 9-10 (citing *In the Matter of Telecommunications Carriers Eligible for Support, Lifeline and Link Up Reform*, WC Docket No. 09-197, WC Docket No. 11-42, Memorandum Opinion and Order, FCC 13-44 (rel. April 15, 2013)).

⁶ Petition at 10 (citing *Lifeline and Link Up Reform Memorandum Opinion and Order* (FCC 13-44 released April 15, 2013)).

7 IM's Petition also seeks exemption from WAC 480-123-030(1)(g) which requires a wireless ETC to have back up power contingencies at each cell cite, microwaves hub, and switch. IM is a reseller, and therefore does not have control over its underlying carriers' emergency power back up facilities.

8 Staff also agrees with and recommends granting IM's request for exemptions from the filing requirements of WAC 480-123-030(1)(d), (f), and (g) due to the limited nature of the designation as a Lifeline Only (LLO) ETC; and the limitations inherent to resellers of facility based wireless service providers. Staff recommends granting the exemptions.

9 Staff notes that the FCC's National Lifeline Accountability Database and the National Lifeline Eligibility Database (aka the National Verifier or NV) are now fully functional. As such, Staff recommends that the Commission set conditions consistent with its most recent Orders designating Sage and Air Voice as ETCs.⁷

DISCUSSION

10 Common carriers receiving designation as ETCs under 47 U.S.C. § 214 are eligible to receive funds from the federal USF for Lifeline services. State utility commissions are responsible for designating common carriers as ETCs for the purpose of receiving such funds, and may impose conditions on a common carrier so designated.⁸ The Commission will approve petitions from carriers requesting ETC designation if the petition meets the requirements of WAC 480-123-030, the designation will advance some or all of the purposes of universal service found in 47 U.S.C. § 254, and the designation is in the public interest.⁹

11 State commissions shall 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 ETC designation meets these two requirements of 47 U.S.C. § 214(e)(1):

⁷ See, e.g., *In the Matter of Sage Telecom Communications, LLC d/b/a Truconnect*, Docket UT-190744, Order 01 (May 7, 2020).

⁸ *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.

⁹ WAC 480-123-040.

- (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 therefor using media of general distribution.¹⁰

12 Here, IM seeks ETC designation for the limited purpose of participating in the Lifeline program. We agree with Staff that IM 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.

13 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. 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. IM has met the forbearance condition.

14 The Company's initial Compliance Plan was approved by the FCC on August 8, 2012. Then, on March 8, 2018, IM filed an *Amended Compliance Plan* to reflect the KonaTel, Inc. transaction as well as other updates due to the passage of time. The FCC approved the Amended Compliance Plan on October 23, 2018. Due to another more recent transaction with ETI, the Company has filed a *Second Amended Compliance Plan* currently pending before the FCC. This more recent transaction is described in the Company's April 3, 2024, response to Staff's information requests (*see Exhibit C for the SEC Form 8-K and Purchase Agreement dated January 22, 2024*). The Company will continue to offer the federally supported Lifeline services and commits that it will advertise the availability of those Lifeline services.¹¹

¹⁰ 47 U.S.C. § 214(e)(1).

¹¹ Petition at 10.

- 15 Based on the Company's operational history and updated Company financial statements and letters of guarantee, Staff concludes that the Company is technically and financially capable of providing the supported Lifeline service in compliance with the low-income program rules. We accept Staff's review and recommendation that IM has the technical and financial capabilities to provide the supported Lifeline service.
- 16 The FCC's National Lifeline Accountability Database and the National Lifeline Eligibility Database (aka the National Verifier or NV) are fully functional. We accept Staff's recommendation that the Commission set conditions consistent with recent Orders designating Sage and Air Voice as ETCs.¹²
- 17 We also adopt Staff's recommendation that IM must strictly comply with any commitments made in the most current Compliance Plan reviewed and approved by the FCC. We note that deviation from its Compliance Plan would forfeit the forbearance from the own-facilities requirements granted by the FCC, consequently not meeting the qualification for ETC designation from this Commission. The Commission may revoke, suspend, or modify a designation subject to the provisions in WAC 480-123-050.
- 18 We agree with Staff that designating Infiniti as a Lifeline-only ETC will deliver benefits and additional choices to low-income households in Washington and is therefore in the public interest.
- 19 These services are supported by federal universal service support mechanisms.¹³ Further, IM commits to advertise its Lifeline services.¹⁴ Designating the Company an ETC is consistent with the public interest, convenience, and necessity.
- 20 Staff is correct that certain additional conditions should be imposed on IM as we have done when designating other similarly situated ETCs in Washington. Appendix A to this order provides the Company specific guidance on our expectations for regulatory

¹² *In the Matter of the Petition of Sage Telecom Communications, LLC, d/b/a TruConnect*, Order 01 (May 7, 2022), Docket UT-190744 at 8; *Granting Eligible Telecommunications Carrier Designation With Conditions and Exemption From Rule* Order 01 at 8 (May 7, 2020); *In the Matter of the Petition of Air Voice Wireless, LLC, d/b/a AirTalk Wireless*, Order 01 (September 29, 2022), Docket UT-220276 at 7.

¹³ 47 C.F.R. § 54.101(a).

¹⁴ Petition at 16.

compliance, customer service, consumer protection, and various reporting requirements that will ensure Staff can monitor IM's operations for strict adherence to all ETC requirements.

21 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.” Infiniti 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.” Infiniti 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.” Infiniti requests an exemption because it does not have control over its underlying carriers’ emergency power back up facilities.

22 We agree with Staff’s recommendation to grant the Company’s request for exemptions from the three requirements under WAC 480-123-030 listed above. Granting the request is consistent with the public interest, the purposes underlying regulation, and applicable statutes.¹⁵

¹⁵ The Commission granted these exemptions in other orders designating Lifeline-only ETCs. *See supra* fn. 12.

FINDINGS AND CONCLUSIONS

- 23 (1) The Commission has jurisdiction over the subject matter of this order and is authorized to designate Eligible Telecommunications Carriers in Washington under 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b)-(c), and WAC 480-123.
- 24 (2) IM is a telecommunications company seeking to do business in the state of Washington. IM meets the requirements for designation as a Lifeline-only ETC because the Company provides services supported by federal universal support mechanisms and because IM has committed to advertise the availability of its services and the charges therefor using media of general distribution. IM's designation as a Lifeline-only ETC will advance the purpose of universal service because IM will offer voice telephony services and broadband services, which facilitate universal service. IM has also demonstrated that its designation as an ETC is in the public interest.
- 25 (3) The Commission may grant an exemption from any of its rules if consistent with the public interest, the purposes underlying regulation, and applicable statutes. IM has demonstrated that the requirements of WAC 480-123-030(1)(d), (f), and (g) should not apply to the Company and that granting the requested exemption is in the public interest and consistent with applicable laws, rules, and orders.
- 26 (4) This matter came before the Commission at its regularly scheduled meeting on May 9, 2024.

ORDER

THE COMMISSION ORDERS:

- 27 (1) IM Telecom, LLC d/b/a Infiniti Mobile's request for designation as an ETC is hereby GRANTED, subject to the conditions set out in Appendix A.
- 28 (2) IM Telecom, LLC d/b/a Infiniti Mobile's request for exemptions from WAC 480-123-030(1)(d), (f), and (g) are hereby GRANTED.
- 29 (3) The Commission retains jurisdiction over this matter for purposes of effectuating this order.

DATED at Lacey, Washington, and effective May 9, 2024.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner