

Agenda Date: September 29, 2022  
Item Number: A3

**Docket:** UT-220276  
Company Name: Air Voice Wireless, LLC d/b/a Airtalk Wireless

Staff: Sean Bennett, Regulatory Analyst  
Tim Zawislak, Regulatory Analyst  
Jing Roth, Assistant Director - Telecommunications

### **Recommendation**

Issue an order in Docket UT-220276:

- Designating Air Voice Wireless, LLC d/b/a Airtalk Wireless, 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 require the filing of a substantive investment plan, wireless network maps, and certification on backup power capabilities, respectively.

### **Background**

On April 19, 2022, Air Voice Wireless, LLC d/b/a Airtalk Wireless (Air Voice or Company) filed a petition with the Washington Utilities and Transportation Commission (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 (Petition). Air Voice 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). The Company is a reseller of facility based wireless service providers. Air Voice also requests an exemption from Washington Administrative Code 480123-030(1)(d), (f), and (g), which require ETC applicants to file a substantive investment plan, wireless network maps, and certification on backup power capabilities.

On August 12, 2022, Air Voice supplemented its filing to include an updated officer certification and listed the actual Washington exchanges and zip codes for which the Company requests ETC designation. On September 6, 2022, Air Voice filed an additional supplement

clarifying that it is seeking designation on an exchange basis. After discussion with Staff, the Company filed a final, updated study area list on September 20, 2022.

The Lifeline rate plans comply with the Federal Communications Commission's (FCC's) minimum service standards.<sup>1</sup> Both plans include:

- Free data-capable device or SIM card
- Free calls to Company Customer Service
- Free calls to 911 emergency services
- Free access to Voicemail, Caller-ID, and Call Waiting features
- Voice minutes may be used for Domestic Long Distance at no extra cost
- Data on LTE or 5G Network

*Customers can purchase additional voice minutes, data plans, and international talk refill options that are sold through the Company's website at <https://airtalkwireless.com>.*

The details of Air Voice's proposed rate plans are as follows:

<b>Plan Type</b>	<b>Monthly Minutes</b>	<b>Monthly Text Messages</b>	<b>Monthly Data<sup>2</sup></b>	<b>Net Cost to Qualifying Customers</b>
Basic Lifeline	1,000	Unlimited	4.5 GB	\$0.00
Tribal Lifeline	Unlimited	Unlimited	4.5 GB	\$0.00

Air Voice provides Lifeline service in 10 states through commercial mobile radio service by utilizing the networks of AT&T Mobility and T-Mobile. It has recently been granted ETC

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<sup>1</sup> See *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, and 1090, Order, FCC 19-116 (rel. Nov. 19, 2019) ("MSS Order"). NOTE: the imputed credit for Basic is \$9.25 and Tribal is \$34.25. These support amounts are distributed to the Company for each qualifying customer.

<sup>2</sup> *Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, and 1090, Order, FCC DA-22-706 (rel. July 1, 2022). The FCC extends the waiver and pauses the mobile broadband data capacity increase through December 1, 2023.

designation in Puerto Rico and 16 states and has applications pending before an additional 14 states, excluding Washington.<sup>3</sup>

## **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.<sup>4</sup> 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.<sup>5</sup>

Commission staff (Staff) finds that Air Voice 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.

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<sup>3</sup> ETC Designated in: California, Kentucky, Michigan, Mississippi, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, and Wisconsin.

Air Voice has recently been designated as an ETC in: Colorado, Georgia, Idaho, Louisiana, Missouri, Maryland, Montana, Nevada, New Jersey, North Dakota, Puerto Rico, Rhode Island, Tennessee, Utah, Vermont, West Virginia, and Wyoming.

Pending ETC designation in: Alaska, Arizona, Arkansas, Illinois, Indiana, Iowa, Kansas, Massachusetts, Minnesota, Montana, Nebraska, New Mexico, Oregon, South Dakota, and Virginia.

<sup>4</sup> 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c).

<sup>5</sup> 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.

Air Voice 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.<sup>6</sup> 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. Air Voice has met the forbearance condition. Air Voice's initial Compliance Plan was approved by the FCC on December 26, 2012.<sup>7</sup> On May 17, 2021, Air Voice filed a Revised Compliance Plan due to the change in ownership and to update its policies to account for the changes to the FCC's Lifeline rules, orders and guidance. The FCC approved the Revised Compliance on December 23, 2021.<sup>8</sup> The Company commits that it will advertise the availability of Lifeline services.

The Company meets the requirements of the Washington rule on ETC designation, WAC 480123-030, 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." Air Voice 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

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<sup>6</sup> 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.

<sup>7</sup> Wireline Competition Bureau Approved the Compliance Plans of Air Voice Wireless, Amerimex Communications, Blue Jay Wireless, Millennium 2000, Nexus Communications, Platinumtel Communications, Sage Telecom, Telrite and Telscape Communications; FCC Public Notice, WC Docket Nos. 09-197 and 11-42, DA 12-2063 (rel. December 26, 2012).

<sup>8</sup> Wireline Competition Bureau Approves the Revised Compliance Plan of Air Voice Wireless, LLC; FCC Public Notice, WC Docket Nos. 09-197 and 11-42, DA 21-1641 (rel. December 23, 2021).

cell sites and shading to indicate where the carrier provides and plans to provide commercial mobile radio service signals.” Air Voice 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.” Air Voice 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 Boomerang, TracFone Wireless, Inc., and Sage Telecom.

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.<sup>9</sup> 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.<sup>10</sup>

Staff will continue to coordinate with the Consumer Protection division to track and resolve any potential customer’s complaints for services.

The FCC’s National Lifeline Accountability Database and the National Lifeline Eligibility Database (aka the National Verifier or NV) are fully functional. As such, Staff recommends that the Commission set conditions consistent with its most recent Order designating Sage as an ETC.<sup>11</sup>

The specific conditions for Air Voice are listed in Attachment 2. Staff has included a new condition, that Air Voice must not deduct airtime minutes for calls to the 988 suicide and crisis

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<sup>9</sup> *Lifeline and LinkUp Reform Order*, ¶¶ 388.

<sup>10</sup> In informal response to Staff data requests, Air Voice has made commitment that it will partner with nonprofit assistance organizations to inform potential customers about lifeline to further promote digital equity.

<sup>11</sup> Previously, the Commission required Lifeline-Only ETCs to work with the Department of Social and Health Services to gain access to their benefit verification system query database to verify eligibility of those customers based on their participation in various federal programs (i.e., Medicaid, SNAP, SSI, TAN).

prevention lifeline, this change will be included within its Lifeline service agreements. One notable change relative to the conditions previously imposed on other ETCs is the elimination of the one-year interim designation. The more recent 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.

Staff emphasizes that Air Voice 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 the own-facilities requirements granted by the FCC, consequently not meeting the qualification for ETC designation from this Commission.

### **Conclusion**

Staff believes that designating Air Voice 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 Air Voice Wireless, LLC d/b/a Airtalk Wireless 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, while also granting exemptions from 480-123-030 (1)(d), (f) and (g).

Attachments (2)