

Agenda Date: June 13, 2013
Item Number: A1

Docket: UT-110321
Company Name: Telrite Corporation d/b/a Life Wireless

Staff: Jing Liu, Regulatory Analyst
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Recommendation

Grant the exemption 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 back up power capabilities, respectively. Additionally, designate Telrite Corporation 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.

I. Background

On February 17, 2011, Telrite Corporation d/b/a Lifeline Wireless (Telrite or the 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. Telrite seeks ETC designation in Washington for the purpose of receiving federal Low Income support (Lifeline and Link Up) that subsidizes monthly charges and the initial connection charges for basic telephone service for qualified low-income households. Low Income support is part of the federal Universal Service Fund (USF). However, the company does not seek funds from the High Cost support program of the federal USF or funds from the state Lifeline program, Washington Telephone Assistance Program (WTAP).

In late 2011 and early 2012, the Federal Communications Commission (FCC) released two major orders that revamped rules for both High Cost Support and Low Income Support programs. On April 11, 2012, the company filed an amendment to the petition to reflect their compliance with the new rules.

In its original petition, the company alleged that it was a facilities-based carrier offering services supported by the USF through a combination of its own facilities and resale of another carrier's services. The FCC USF/ICC Transformation Order¹ re-defined services supported by the USF,

¹ *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (*USF/ICC Transformation Order*).

making it clear that mobile virtual network operators who rely on other wireless carriers' network to provide Lifeline services are non-facility-based.

The FCC's Lifeline and Link Up Reform Order² granted forbearance from applying the facilities requirement of Section 214(e)(1)(A) to any telecommunications carrier that seeks ETC designation for Lifeline support only, subject to two conditions. One, the carrier must comply with certain 911 requirements; two, the carrier must file, and the FCC must approve, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement the obligations specified in the Lifeline and Link Up Reform Order as well as further safeguards against waste, fraud and abuse. In its April 11, 2012 amendment, the company stated that it will offer the USF-supported services, as revised by the FCC. It also informed the Commission that it has filed a Compliance Plan with the FCC. On April 27, 2012, the company provided a copy of its proposed Compliance Plan filed with the FCC. On January 7, 2013, the Company filed a copy of its Compliance Plan approved by the FCC.

In its original petition, the company requested ETC designation for the purpose of receiving Lifeline and Link Up support. The FCC Lifeline and Link Up Reform Order eliminated Link Up support on all non-tribal lands. In its April 11, 2012 amendment, the company declared it will no longer seek Link Up support.

On January 30, 2013, the company filed an amendment to the Petition, which essentially replaced the entire original petition. The amendment reiterated the company's qualification under the reformed Lifeline rules and updated the Lifeline plans.

On May 31, 2013, the company filed a supplement to its amended petition. It sought exemption from WAC 480-123-030(1)(d), (f) and (g), which requires the filing of an substantive investment plan, wireless network maps and certification on back up power capabilities, respectively. It added a description of its enhanced tribal Lifeline plan. Additionally, it also provided an updated list of non-rural exchanges where it seeks ETC designation, as listed in Attachment 1 to this memo.

On June 5, 2013, the company filed a revision to the May 31, 2013 supplement, correcting the list of states where the company has obtained ETC designation.

Telrite is a Georgia corporation with its principal offices located in Covington, GA. It has provided wireline local and long distance service for over 10 years. It offers commercial mobile radio service by utilizing AT&T Wireless' network facilities. It has been providing Lifeline service since October, 2010. It has obtained ETC designation in 22 states and Puerto Rico. It now serves approximately 670,000 wireless customers nationwide.

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

² *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*").

receiving federal Universal Service Funds.³ 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.⁴

II. Discussion

Commission staff (staff) finds that Telrite qualifies for ETC designation with the proposed conditions in Attachment 2. Pursuant to 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.

Telrite 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 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.⁵ 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. Telrite has met the forbearance condition. Its Compliance Plan was approved by the FCC on December 26, 2012.⁶ The company also commits that it will advertise the availability of Lifeline services.

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." Telrite requests an exemption from the

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

⁴ *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.

⁵ *Lifeline and Link Up Reform Order*, ¶¶ 361 - 381.

⁶ *Wireline Competition Bureau Approved the Compliance Plans of Airvoice 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).

requirement because the company seeks only Lifeline support, not federal High Cost support. It does not have the 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.” 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, back up generators at each microwave hub, and at least five hours back up battery power and back up generators at each switch.”

Telrite requests an exemption from the subsections (1)(f) and (1)(g) because it does not have access to its underlying carriers’ coverage map, nor does it have control over its underlying carriers’ emergency power back up facilities. Staff supports the company’s request for exemption from the three requirements under WAC 480-123-030. The exemption is consistent with the public interest, the purposes underlying regulation, and applicable statutes. Granting the exemption will also be consistent with the commission’s designations of other Lifeline-only ETCs such as TracFone Wireless, Inc. (TracFone).

Telrite brands its Lifeline products as “Life Wireless.” It will provide two prepaid Lifeline plan options free of charge for qualified Lifeline customers with a free wireless handset. One includes 125 prepaid minutes and unused minutes are rolled over to the next month. The other includes 250 minutes without rollover. Under both plans, three text messages count as one voice minute. Additional bundles of minutes, or “top-up” minutes, will be available for purchase starting from \$5 denomination. Top-up minutes are sold through any Money Gram location and on the company’s website www.lifewireless.com.

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 recent Lifeline and Link Up Reform Order.⁷ Based on the company’s operational history and its financial statements from 2008 to 2012, 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.

In the proceedings involving ETC petitions for TracFone, Virgin Mobile USA, L.P., YourTel American, Inc., Cricket Communications, Inc., Budget Prepay, Inc. and i-wireless, LLC, staff recommended additional conditions to ensure that the companies would provide Lifeline services in a manner consistent with the public interest. Staff recommends that the commission apply a similar set of conditions to Telrite’s ETC designation. Staff recommends the commission require Telrite to use the federal default eligibility criteria in 47 C.F.R. § 54.409(2).⁸ As with all other similarly situated Lifeline-ETCs in Washington, Staff encourages Telrite to work with the Department of Social and Health Services (DSHS) to gain access to their beneficiary verification query database to verify the eligibility of those customers whose qualification is based on their participation in Medicaid, Supplemental Nutrition Assistance Program, Supplemental Security

⁷ *Lifeline and Link Up Reform Order*, ¶¶ 388.

⁸ The rationale is detailed in staff memo on Cricket Communications, Inc.’s ETC designation petition in Docket UT-111534.

Income and Temporary Assistance for Needy Families. 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 documentations, as specified in 47 C.F.R. § 54.410. Telrite 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 in place until the FCC's National Accountability Database and the National Lifeline Eligibility Database are fully functional.

Staff would like to emphasize that Telrite 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.

In particular, staff is concerned about the company's enrollment method of lifeline customers and the in-person distribution of free cell phone handsets via "events." Although effective in outreach, this distribution method could create incentives for sales agents to enroll Lifeline customers without thorough eligibility checks. Telrite also plans to establish relationships with retailers through agency agreements and have agency retailers enroll Lifeline customers. Telrite will require all agents, its employees and agency retailers' employees involved in retail or event enrollment to complete Telrite training.⁹ However, staff is concerned that it may be hard to enforce training on agency retailers' employees.

The company committed in its Compliance Plan that a Telrite employee will be responsible for overseeing and finalizing every Lifeline enrollment prior to including that customer on an FCC Form 497 for reimbursement. Staff recognizes that the additional step will alleviate the disadvantage of its distribution methods; therefore, staff recommends that the commission permit the company to use the proposed Lifeline distribution methods until the ETC renewal next year.

The commission should reserve its authority to investigate the company's customer eligibility verification process, as laid out in its Compliance Plan, and revoke or suspend the company's ETC designation if the company fails to carry out its commitment in practice. Staff is also aware that TracFone has recently filed a petition with the FCC to prohibit in-person distribution of handsets for Lifeline service.¹⁰ If the FCC decides to make a rule change on this issue in the future, the commission should modify the company's ETC designation accordingly.

III. Conclusion

Based on the above analysis, staff believes that Telrite meets all the federal and state rules for ETC designation in proposed service areas. Designating Telrite as an additional Lifeline-only

⁹ Telrite Compliance Plan, pp.5 - 8.

¹⁰ *In the Matter of Petition for Rulemaking to Prohibit In-Person Distribution of Handsets to Prospective Lifeline Customers; Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service*, WC Docket No.11-42, WC Docket N. 03-109, CC Docket No. 94-45, Petition for Rulemaking, May 13, 2013.

ETC will deliver competitive benefits to low-income households in Washington. Staff recommends the commission issue an order granting the exemption from WAC 480-123-030 (1)(d), (f) and (g) and designate Telrite Corporation 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.

Attachments - 2