

Agenda Date: June 16, 2011
Item Number: A1

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

Staff: Jing Liu, Regulatory Analyst
Tim Zawislak, Regulatory Analyst
William Weinman, Assistant Director – Telecommunications

Recommendation

Grant the exemption from Washington Administrative Code 480-123-030(1)(d), (f) and (g), which require the filing of an investment plan, wireless coverage map, and compliance to back-up power standards, respectively; and designate YourTel America, Inc. as an Eligible Telecommunications Carrier for the purpose of receiving Low Income 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 March 2, 2010, YourTel America, Inc. (YourTel 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. YourTel seeks ETC designation in Washington for the purpose of receiving the federal Lifeline and Link Up support. Lifeline and Link Up support are programs which subsidize monthly charges for basic telephone service and the non-recurring connection charges, respectively for qualified low-income households. Both Lifeline and Link Up are programs that are funded through the federal Universal Service Fund (USF). YourTel seeks ETC designation for exchanges listed in Attachment 1. YourTel does not seek to participate in the state Lifeline program, Washington Telephone Assistance Program (WTAP).

YourTel filed four amendments to its original petition on April 19, 2011, April 27, 2011, May 16, 2011 and May 20, 2011, respectively. The first and third amendments describe the additional Lifeline plan for qualified residents in tribal areas. The second amendment affirms that YourTel will provide nationwide access to 911 service for all of its customers. In the fourth amendment, YourTel provided additional commitment to E911 provision and customer verification procedures.

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);*

II. Discussion

YourTel and its Lifeline Offering

YourTel's principal office is located in Kansas City, Missouri. It has been an ETC providing Lifeline service since 2003. It has been designated as an ETC for its wireline operation in Kansas, Missouri, Oklahoma and Illinois. It is an ETC for its wireless operation in Kansas, Missouri and Illinois.

YourTel offers the following Lifeline plans:

Free Minutes	Text Messages	Can Unused Minutes Roll Over to the Next Month?
68 minutes	1 text message = 0.3 minute	Yes Unused rolled-over minutes expire in 60 days.
125 minutes	1 text message = 1 minute	Yes Unused rolled-over minutes expire in 60 days.
250 minutes	1 text message = 1 minute	No
2000 minutes (tribal Plan)	1 text message = 1 minute	No

YourTel charges \$60 activation fee for commencing service. With the federal Link Up support, the activation fee will be reduced to \$30 for Lifeline customers.

Customers can purchase additional minutes by phone, at YourTel website or at YourTel authorized agent locations. Additional minutes come in increments of \$5, \$10, \$15, \$20, \$30 and \$50. Depending on the value of the purchase, additional voice minutes are priced as low as 3.5 cents per minute. All minutes expire after 30 days from the purchase date.

In its amendment to petition filed on April 19, 2011, YourTel added description for its tribal Lifeline plan. The tribal plan offers 2000 voice minutes for \$1.00 for eligible residents of tribal areas in Washington. Unused minutes cannot roll over from month to month under the tribal plan.

Attachment 3 presents a detailed comparison of the existing wireless prepaid Lifeline plans available in Washington. As shown in the comparison, YourTel's Lifeline plans are comparable to those offered by TracFone Wireless, LLC (TracFone) and Virgin Mobile USA, L.P. (Virgin Mobile).

Federal ETC Requirements

Staff finds YourTel qualifies for ETC designation if the designation is accompanied with proposed conditions in Attachment 2. Pursuant to 47 U.S.C. § 214(e)(2), state commissions may designate additional carriers as ETCs if such designation is "consistent with the public interest,

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. [UTC TracFone Proceeding].

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.

YourTel demonstrates in its petition and amendments that it is capable of providing telecommunications services supported by the federal USF, as specified in 47 C.F.R. § 54.101(a), and it will adequately advertise the services to reach those who likely qualify for Lifeline telephone assistance.

YourTel will provide the USF-supported services with a combination of its own facilities and resale from Sprint Nextel Corporation. YourTel owns and operates a central office switch and proprietary call management intelligence located in Kansas City, Missouri. The switch will be used to process calls for directory assistance, operator services and international long distance toll service. Because directory assistance and operator services are two components of the basic telephone service supported by the federal USF, staff believes that the company meets the minimal facility requirements prescribed by the Federal Communications Commission (FCC). The FCC defines “facilities” as “physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under section 254(c)(1).”³ The FCC further explains facility requirement for ETC applicants as follows:

“The statute does not require a carrier to use its own facilities to provide each of the designated services but, instead, permits a carrier to use its own facilities to provide at least one of the supported services. . . .if a carrier uses its own facilities to provide at least one of the designated services, and the carrier otherwise meets the definition of "facilities" adopted above, then the facilities requirement of section 214(e) is satisfied. For example, we conclude that a carrier could satisfy the facilities requirement by using its own facilities to provide access to operator services, while providing the remaining services designated for support through resale.”⁴

As in the proceedings of TracFone and Virgin Mobile ETC petitions, staff recommended additional conditions to ensure the company will provide Lifeline services in a manner consistent with the public interest. Staff proposes the commission apply the same conditions to YourTel’s ETC designation.

The FCC has granted a number of resale-based wireless providers forbearance from the requirement under section 214(e)(1)(A) of the Act that an ETC applicant must provide services,

³ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45. FCC 97-157 (rel. May 98, 1997), ¶ 151.

⁴ *Id.*, ¶ 169.

at least in part, over its own facilities.⁵ The forbearance is contingent upon several conditions. As staff discussed in recommendation on Virgin Mobile's ETC designation, the FCC's forbearance conditions have strong relevance to public interest, regardless whether the ETC petitioner has its own facilities or not. They include requirements related to E911 provision and customer eligibility verification. Even though YourTel petitions for ETC designation as a facility-based carrier, it commits to the same conditions the FCC imposes on non-facility-based ETCs for forbearance from the facility requirement:

- YourTel's Lifeline customers will be able to have access to 911 and E911 service regardless of activation status and availability of prepaid minutes.⁶
- All the handsets YourTel provides to Lifeline customers will be E911-compliant. The company will replace, at no additional charge to the Lifeline customer, any noncompliant handsets.⁷
- YourTel obtained a certification letter from the E911 Program Office of the Washington Military Department Emergency Management Division. The letter confirms that YourTel has wireless location capability in providing its customers with access to E911.⁸
- YourTel will implement customer verification procedures by which it will require its customers to self-certify prior to enrollment that they are the head of household and receive Lifeline-supported service only from YourTel. Annually thereafter, YourTel will notify each Lifeline customer prior to the service anniversary date, requiring them to confirm the continued eligibility by self-certification. Any customers who do not confirm their eligibility within 30 days of receipt of the verification notice will be removed from the Lifeline program. The company must deal directly with the customer to certify and verify the customer's Lifeline eligibility. The company must have direct contact with the customer, whether by telephone, fax, Internet, in-person consultation or otherwise, when establishing initial and continued eligibility.⁹
- YourTel will track addresses of its Lifeline customers to prevent customers from receiving multiple YourTel Lifeline subsidies at the same address.¹⁰

Washington State ETC Requirements and Exemptions

YourTel meets all but three Washington state rules on ETC designation under WAC 480-123-030. WAC 480-123-030(1)(d) requires all ETC applicants 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. WAC

⁵ For example, *In the Matter of Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Order, CC Docket No. 96-45. FCC 05-165 (rel. September 8, 2005) and *In the Matter of Federal-State Joint Board on Universal Service, et al.*, Order, CC Docket No. 96-45. FCC 09-17 (rel. March 5, 2009); also see *In the Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A), et al.*, Order, CC Docket No. 96-45. FCC 09-18 (rel. March 5, 2009).

⁶ *YourTel ETC Petition*, p.11 and Fourth Amendment to Petition.

⁷ *YourTel ETC Petition*, Exhibit D.

⁸ *YourTel Second Amendment to Petition*,.

⁹ *YourTel ETC Petition*, p.26 and *YourTel Fourth Amendment to Petition*.

¹⁰ *YourTel Fourth Amendment to Petition*.

480-123-030(1)(f) requires wireless ETC petitioners to provide a digital map showing locations of cell sites and signal coverage. WAC 480-123-030(1)(g) specifies back-up power requirements for wireless petitioners. The company seeks exemption from the three rules because they are intended to apply to high cost fund recipients who have the obligation to build out and maintain network infrastructure. The company only seeks Low Income Support. Staff recommends the commission grant YourTel's request to be exempted from WAC 480-123-030(1)(d), (f) and (g). The exemption is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

Washington State Conditions on YourTel's ETC Designation

YourTel's ETC petition is very similar to TracFone and Virgin Mobile's petitions filed during the past two years with the UTC.. Staff recommends the commission impose the same set of conditions on YourTel's ETC designation as the commission did on TracFone and Virgin Mobile because the rationale underlying each condition is applicable in this proceeding.¹¹ These conditions were proposed to protect consumers' interests and safeguard the integrity of the federal USF.

Customer eligibility verification remains staff's biggest concern. In the FCC's recent Notice for Proposed Rulemaking,¹² the FCC proposes a number of measures to make the customer eligibility verification process more rigorous. Before any changes are implemented at the federal level, however, staff thinks the Washington state conditions on prepaid Lifeline ETC designation are necessary to detect and alleviate the problem of fraud, waste and abuse of the Lifeline fund. The company will abide by the following procedure of customer eligibility verification, as prescribed by the federal rule and Washington state conditions on its ETC designation:

1. The company shall use the list of WTAP-eligible public assistance programs in WAC 388-273-0020 (1) (not the list in 47 C.F.R. § 54.409(b)) as well as the federal income-based eligibility criteria. The use of the list of state public assistance programs is to ensure that the Washington Department of Social and Health Services (DSHS) can verify the company's customer records.
2. The company must use customers' self-certification forms to process program-based Lifeline applications, as prescribed by 47 C.F.R. § 54.409(d); the company should follow 47 C.F.R. §54.410(a) and (b) to process income-based Lifeline applications.
3. The company will follow 47 C.F.R. §54.410(c)(2) to select a statistically valid random sample of the company's Lifeline consumers to verify their continued eligibility and collect proof documents. The company should report the survey result to the Universal Service Administration Company (USAC). The company should file a copy of the survey result to the commission by August 31 of each year.
4. Annually, YourTel shall notify each Lifeline customer prior to the service anniversary

¹¹ For detailed discussion of the conditions, see *UTC TracFone Proceeding*, Staff Memo for the November 25, 2009 Open Meeting, Order 03 (June 24, 2010) and Order 05 (October 13, 2010), UT-093012; also see *In the Matter of the Petition of for an Exemption from WAC 480-123-030(1)(d) and Designation as an Eligible Telecommunications Carrier*, Order 01 (November 10, 2010), UT-100203.

¹² *In the Matter of Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, Notice of Proposed Rulemaking, CC Docket No. 96-45. FCC 11-32 (rel. March 4, 2011).

date, requiring them to confirm the continued eligibility by self-certification. Any customers who do not confirm their eligibility within 30 days of receipt of the verification notice should be removed from the Lifeline program.

5. To process Lifeline applications based on participation in qualifying public assistance programs, the company shall cooperate with the commission and the DSHS to work out a procedure to verify the applicant's eligibility. The company should obtain access to the DSHS' online database to verify whether an applicant is receiving one of the qualifying public assistance benefits.
6. To process Lifeline applications based on income criteria, the company will follow the income certification and verification requirements in 47 C.F.R. § 54.410 and other applicable instructions from the FCC and the USAC. The company should require such customers to present documentations of their household income prior to enrollment.
7. By March 31 of each year, the company shall file with the commission its complete Lifeline customer records of the prior calendar year. The customer records are subject to review of the commission and DSHS. The records must have all the necessary information and be in an electronic format required by DSHS. After being notified of the results of the review, the company must take appropriate measures to either correct the customer records or stop providing services to ineligible customers and report the resolutions to the agencies within 60 days of the notice.

III. Conclusion

YourTel's Lifeline plan is a valuable addition to the wireless Lifeline plans currently available in Washington. Affordable wireless services will benefit qualifying low-income households. Designating YourTel as an ETC will facilitate competition in the market segment that serves the low-income population. YourTel's petition, along with its commitments to recommended conditions, meets federal and Washington state statutory requirements on ETC designation.

Based on the above analysis, staff recommends the commission issue an order granting the exemption from Washington Administrative Code 480-123-030 (1)(d), (f) and (g) and designating YourTel America, Inc. as an Eligible Telecommunications Carrier for the purpose of receiving Low Income Support (Lifeline and Link Up support) of the federal Universal Service Fund in service areas specified in Attachment 1 and subject to the conditions specified in Attachment 2.

The commission should reserve the right to modify the ETC designation and the conditions, depending upon other factors. Such factors may include but are not limited to changes in FCC rules on Low Income Support, including rules on facility requirement and procedure of customer eligibility verification, the company's operation performance in Washington, and the results of the federal and state verification results of its Lifeline customers' eligibility.