

Agenda Date: October 14, 2010
Item Number: A1

Docket: UT-101060
Company Name: T-Mobile West Corporation

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

Recommendation

- (1) Designate T-Mobile West Corporation as an Eligible Telecommunications Carrier for the purpose of receiving the federal universal service fund in the exchanges specified in Attachment 1 to this memo, subject to the following conditions:
 - a. T-Mobile shall comply with all applicable federal and Washington state statutes and regulations, including E911 tax contributions.
 - b. T-Mobile shall provide the number of Lifeline customers and its receipt of federal low income support in its annual re-certification report. T-Mobile shall also provide a copy of its annual verification survey report on Lifeline customers' continued eligibility to the Commission. Based on the size of the low income support the company receives in the future and the result of its eligibility verification survey, the commission reserves the right to impose more rigorous customer eligibility verification conditions on the company's ETC designation.
- (2) Grant T-Mobile West Corporation a temporary exemption until December 31, 2014, from WAC 480-123-030(1)(g) and WAC 480-123-070(6) which require at least four hours of back-up power at each cell site subject to the following conditions:
 - a. The company must provide four hours of back-up power at all new cell sites constructed during this period, subject to its right to seek exemption from the requirement if warranted;
 - b. The company must include a compliance status report on back-up power upgrades in its annual ETC certification filing with the commission;
 - c. The company must file a final compliance report upon completion of the back-up power upgrades or at the expiration of the temporary exemption, whichever occurs first.

I. Background

On June 10, 2010, T-Mobile West Corporation (T-Mobile or the 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) of the

Communications Act of 1934, as amended (the Act), and Washington Administrative Code (WAC) 480-123-020 through 040. T-Mobile seeks ETC designation in Washington for the purpose of receiving both High Cost support and Low Income support from the federal universal service fund (USF). Attachment 1 lists the exchanges for which T-Mobile seeks ETC designation. The proposed area for ETC designation includes service areas of the non-rural incumbent local exchange carriers (ILECs) and the rural ILECs.

On September 16, 2010, T-Mobile filed a letter, urging the commission to consider and approve its ETC application as soon as possible. In that letter, it also provided additional information about its proposed Lifeline plan.

On October 6, 2010, T-Mobile filed a second letter to clarify a few issues. The company revised its proposed ETC service area and its investment plan, both with minor non-stative changes. The letter also described its Lifeline plan for residents of tribal lands and expressed the company's wish to be able to seek exemption from back-up power requirement for new cell sites under special circumstances.

T-Mobile is a wholly owned subsidiary of T-Mobile USA, Inc. It is a facility-based provider of Commercial Mobile Radio Service. It has obtained ETC designation in Florida, Kentucky, North Carolina and Puerto Rico.

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.¹ By rule, WAC 480-123-040, the UTC has the authority to approve petitions from carriers requesting ETC designation.

II. Discussion

A. ETC Designation

Staff reviewed T-Mobile's petition and finds it qualifies for ETC designation except for compliance with the cell site back-up power requirement, which will be discussed later in this memo.

47 U.S.C. § 214(e)(2) specifies the criteria based on which a state commission determines whether an applicant qualifies for ETC designation. The provisions are summarized as follows:

- (1) The applicant must be a common carrier and meet the requirements in 47 U.S.C. §214(e)(1). The carrier must: (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 associated charges using media of general distribution.

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

- (2) The designation of a competitive ETC (CETC) must be consistent with the public interest, convenience, and necessity.

T-Mobile meets the definition of a common carrier. It uses its own facilities to provide the supported services throughout the proposed service area for ETC designation in Washington. It also has roaming arrangements with other wireless carriers to provide extended coverage. It commits to take all reasonable measures as prescribed in 47 C.F.R. § 54.202(a)(1) to fulfill customer requests for service throughout the proposed service area.

T-Mobile is capable of offering the services supported by federal universal service fund specified in 47 C.F.R. § 54.101(a). The services include (1) voice grade access to the public switched telephone network, (2) local usage, (3) dual tone multi-frequency signaling or its functional equivalent, (4) single party service or its functional equivalent, (5) access to emergency services, (6) access to operator services, (7) access to interexchange service, (8) access to directory assistance, and (9) toll limitation for qualifying low-income consumers. T-Mobile also commits to advertise the availability of services supported by federal universal service mechanisms and the charges using media of general distribution.

The company provided additional detailed information required by WAC 480-123-030 “Contents of petition for eligible telecommunications carriers.” The petition contains a substantive investment plan for the federal support to be received in the first two years and a description of customer benefits. The petition complies with RCW 9A.72.085, as required.

Based on staff’s analysis, T-Mobile meets the public interest test for ETC designation.² Washington consumers will benefit from the company’s additional investment as a result of receiving federal high cost support. It will enhance T-Mobile’s ability to bring competitive and innovative services to consumers throughout its service area, especially rural areas. Designating T-Mobile as an ETC is also consistent with the principle of competitive neutrality.

Presently, T-Mobile is neither collecting nor remitting Enhanced 911 (E-911) exercise tax on the prepaid customer accounts to the Washington State Department of Revenue (DoR). There is a debate whether the state law on E911 tax contribution, RCW 82.14B.030(4) applies to prepaid wireless accounts. The court case between TracFone and DoR on this matter is pending before the Washington State Supreme Court.³ Staff considers contribution to the state E-911 tax revenue an important component of public interest. In the future, if the court rules that the existing Washington law on E-911 contribution applies to prepaid wireless accounts, or if the relevant law is revised to explicitly include contribution from prepaid wireless accounts, T-Mobile should pay 911 excise tax on the wireless customer accounts to DoR. If T-Mobile fails to do so, then the commission should reserve the authority to re-examine the company’s qualification as an ETC. Therefore, staff recommends the commission imposes a condition on T-Mobile’s ETC designation that T-Mobile shall comply with all applicable federal and Washington state statutes and regulations, including E911 tax contributions.

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

³ *TracFone Wireless, Inc. v. State of Washington Department of Revenue*. Washington State Supreme Court, Docket 82741-9.

The approval of T-Mobile's ETC designation will not impose additional burden on the federal USF. The FCC capped the total annual high cost support for CETCs in each state at the support level of March 2008.⁴ New ETC designations will cause the redistribution of high cost fund disbursement among CETCs in a state, depending on their reported customer counts. When the total high cost support for all CETCs exceeds the cap, a state cap factor will apply. As a result, all CETCs will get less support proportionately.

By federal rules, all ETCs must make available Lifeline service to qualified low-income consumers and publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.⁵ T-Mobile states in its petition that it will comply with the federal requirements on Lifeline and Link Up services. With access to federal low-income support, T-Mobile will offer a Lifeline plan priced at \$6.50 per month (net of discount) with a monthly allotment of 145 Whenever minutes of use (MOU), plus 500 Night MOU and 500 Weekend MOU.⁶ Additional minutes will be charged at \$0.05 per minute. With federal Link Up support, the company will also reduce the \$35 activation fee by \$17.50 for Lifeline customers. Staff believes T-Mobile's Lifeline plan will be a beneficial addition to the existing Lifeline plans available in Washington. It will provide a competitive choice in the market segment serving low-income consumers.

As Lifeline disbursements rapidly increase nationwide, staff has an increasing concern about the potential for fraud, waste and abuse in the federal Lifeline program. But there is a need to reach more eligible low income households and encourage Lifeline enrollment with minimal logistical hurdles. Staff recognizes that the commission needs to find the balance between accountability and administrative simplicity.

Staff does not recommend that T-Mobile comply with any additional conditions on the verification of customer eligibility for Lifeline service beyond existing federal requirements.⁷ In a recent docket concerning TracFone's ETC designation, the commission required additional conditions to ensure proper verification of customer eligibility.⁸ Staff's recommendation to not impose additional requirements on T-Mobile is based on three considerations. First, unlike TracFone's Lifeline services, T-Mobile's Lifeline plan is post-paid and requires a customer to pay a monthly service fee for service to be continued. If the customer doesn't pay the monthly fee, the service is disconnected and T-Mobile will not receive a lifeline subsidy for the

⁴ *In the Matter of High-Cost Universal Service Support et al.*, Order, WC Docket No.05-337 and CC Docket No.96-45. FCC 08-122 (Released May 1, 2008).

⁵ 47 C.F.R. § 54.405.

⁶ Eligible Lifeline customers of tribal lands will pay \$1 per month for the same package. The company will seek \$5.49 Tire Four support for those customers from the federal Lifeline program.

⁷ The federal rule requires a customer to sign a self-certification form to enroll in a Lifeline program. The customer should either indicate the qualifying public assistance program the customer participates in or provide income documentation to prove income-based eligibility. The federal rule also requires ETCs to conduct an annual survey to verify the continued eligibility of a statistically valid random sample of their Lifeline customers and provide the survey results to the Universal Service Administrative Company and the FCC. 47 C.F.R. § 54.409-410.

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*, UT-093012, Order No. 03 (June 24, 2010).

disconnected customer. Second, the potential fraud associated with T-Mobile's offering is likely to be small. T-Mobile's Lifeline customers will pay an activation fee of \$17.50 as well as a monthly fee of \$6.50. Given that customers need to provide an initial as well as a monthly payment, the likelihood of fraudulent enrollment will be less than that associated with free pre-paid plans. Finally, T-Mobile just started to operate its Lifeline program in several states. It is hard to estimate how many Lifeline customers it will have. A small Lifeline customer base does not justify the cost associated with more sophisticated customer verification procedure.

While staff does not believe that additional verification requirements be imposed, staff recommends that the commission require T-Mobile to provide the number of Lifeline customers and its receipt of federal low income support in its annual re-certification report. T-Mobile should also provide a copy of its annual verification survey report on Lifeline customers' continued eligibility to the Commission. Based on the size of the low income support the company receives in the future and the result of its eligibility verification survey, the commission should reserve the right to impose more rigorous customer eligibility verification conditions on the company's ETC designation.

B. Exemption from the Cell Site Back-Up Power Requirements

WAC 480-123-030(g) requires a wireless ETC applicant to demonstrate that it has 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 of back-up battery power and back-up generators at each switch. WAC 480-123-070(6) requires each wireless ETC to certify that it meets the above-mentioned back-up power requirement on an annual basis as part of its annual filing requirements.

T-Mobile states that it meets the back-up power requirement at each microwave hub and each switch. Also, the vast majority of its cell sites have at least four hours of back-up battery power at each cell site. However, 22 cell sites currently do not satisfy the four-hour back-up battery power requirement. The company requests the commission grant it a partial exemption from WAC 480-123-030(1)(g) and WAC 480-123-070(6) for four years conditioned upon T-Mobile bringing all 22 cell sites into compliance at the end of the four year period.

T-Mobile describes that many of the cell sites without sufficient back-up battery power are "micro" cells used to enhance coverage within a building. The coverage provided by such sites is largely duplicative of existing outdoor coverage. These sites are located in constrained spaces that limit the company's ability to install standard back-up power. Other cell sites without back-up battery power are pole attachments and building rooftop sites. T-Mobile commits that it will take measures to bring these cell sites in compliance with the commission's four-hour back-up power requirement, however, it estimates the process will take a considerable amount of time.

The commission previously has granted other wireless ETCs temporary exemption from the cell site back-up power rule. The commission granted AT&T Mobility an exemption for over five years total⁹ and Sprint Nextel Corporation for over four years.¹⁰ The same rationale for

⁹ *In the Matter of the Request of Bellingham Cellular Partnership et al. for a Permanent Exemption from the Requirements of WAC 480-123-070(6)*, UT-063060, Order Nos. 01, 02 and 03.

¹⁰ *In the Matter of the Petition of Sprint Nextel Corporation to Amend its Designation as an Eligible Telecommunications Carrier and Request for and Exemption from WAC 480-123-070(6) and WAC 480-123-*

exemption applies here.

Staff recommends the commission grant a temporary exemption to T-Mobile in a manner similar to the requests by other wireless ETCs. T-Mobile should have four years to complete the back-up power upgrade for all cell sites; the company should be allowed to use reliable power sources other than battery, such as fixed generators or fuel cells to meet the four-hour back-up power standard. Staff recommends the following conditions for the temporary exemption:

- The company must provide four hours of back-up power at all new cell sites constructed in the service area where it is designated as an ETC during this period, subject to its right to seek exemption from the requirement if warranted.
- The company must include a compliance status report on back-up power upgrades in its annual ETC certification filing with the Commission.
- The company must file a final compliance report upon completion of the back-up power upgrades or at the expiration of the temporary exemption, whichever occurs first.

III. Conclusion

Based on the above analysis, Staff believes that T-Mobile's petition meets the federal and Washington state statutory requirements on ETC designation. Staff recommends the commission issue an order (1) designating T-Mobile West Corporation as an Eligible Telecommunications Carrier in the exchanges listed in Attachment 1, subject to the conditions outlined above; and (2) granting a temporary exemption until December 31, 2014 from Washington Administrative Code 480-123-030(1)(g) and WAC 480-123-070(6) concerning cell site back-up power requirements, subject to the conditions outlined above.