

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**IN THE MATTER OF THE)
APPLICATION OF RAINIER)
CONNECT NORTH, LLC FOR)
DESIGNATION AS AN)
ELIGIBLE COMMUNICATIONS)
CARRIER (LOW INCOME ONLY))**

Docket No. _____

**PETITION OF RAINIER CONNECT NORTH, LLC FOR DESIGNATION
AS AN ELIGIBLE COMMUNICATIONS CARRIER**

COMES NOW Rainier Connect North, LLC ("RCN" or the "Company") and, pursuant to the Federal Communications Act of 1934, as amended (the "1996 Act"), 47 U.S.C. § 214(e) and Federal Communications Commission ("FCC") rules related to Universal Service, 47 C.F.R. §§ 54.101 through 54.207 (the "FCC Rules"), and Washington Administrative Code ("WAC") 480-123-030, hereby requests that the Washington Utilities and Transportation Commission (the "Commission") designate RCN as an Eligible Telecommunications Carrier ("ETC") in the State of Washington for the purpose of receiving federal universal service support for Lifeline services. RCN does not at this time seek ETC designation for the purpose of receiving federal universal service support for providing service to high-cost areas.

RCN respectfully requests that the Commission grant this Application and that it do so expeditiously so the RCN may begin providing Lifeline service to qualified low-income households at the earliest practicable time.

INFORMATION REGARDING THE APPLICATION

1. RCN is a Washington limited liability company with its principal offices located at 2516 Holgate Street, Tacoma, WA 98402.

2. RCN is an affiliate of Mashell Telecom, Inc. ("Mashell") which has held ETC designation in Washington for many years.

3. Correspondence or communications pertaining to this Application should be directed to RCN's attorney of record:

Richard A. Finnigan
2112 Black Lake Blvd. SW
Olympia, WA 98512
Telephone: 360-956-7001
Email: rickfinn@localaccess.com

4. Questions concerning the ongoing operations of RCN following certification should be directed to:

Amanda Singleton
Rainier Connect North, LLC
2516 Holgate Street
Tacoma, WA 98402
Telephone: 360-623-4578
Email: Amanda.Singleton@rainierconnect.net

BACKGROUND

5. The FCC has adopted a number of cost recovery policies and mechanisms designed to promote and maintain universal service. One aspect of universal service is the availability of subsidies from the federal Universal Service Fund ("USF"), created by the Act. The USF was created, in part, to provide support to qualifying low-income communications end-users. Mechanisms were also established to moderate the amount of costs to be recovered through basic, recurring charges to low-income users, thereby assisting efforts to maintain reasonable basic rate levels. Only carriers designated as an ETC may receive subsidies from the USF. Moreover, only a "common carrier" designated as an ETC under 47 U.S.C § 214(e) is eligible to receive subsidies from the federal USF. Common carriers that provide services

consistent with the requirements of Section 214(e) may be deemed ETCs. Section 214(e)(2) of the Act provides that:

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier and an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

Section 214(e)(1) of the Act provides:

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with Section 254 of this title and shall, throughout the service area for which the designation is received –

(A) offer the services that are supported by Federal universal service support mechanisms under Section 254(c) of this title, 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.

6. The FCC has promulgated rules governing ETC designations, set forth in the FCC Rules, to establish various requirements for carriers to obtain ETC status. Applications seeking ETC status in Washington must address and satisfy each of the ETC designation criteria under the FCC Rules.

7. Pursuant to 47 U.S.C. § 214(e)(2), the Commission has the statutory authority to designate a common carrier as an ETC that offers the services supported by the federal Universal

Service Fund support mechanisms and advertises "the availability of such services and the charges therefore using media of general distribution."¹

8. RCN is a common carrier and will offer the voice and broadband services and functionalities detailed in Section 54.101(a) of the FCC Rules throughout its Service Area, defined below. Additionally, RCN will advertise the availability of such services and the charges for these services using media of general distribution and commits to continue to advertise the availability of its Lifeline program.

9. RCN has been awarded the operation and management of the Click! Network through an Indefeasible Right of Use (IRU), copy available at <https://www.mytpu.org/wp-content/uploads/Approval-Version-CBTAIRU.pdf>.

The footprint of the Click! Network is attached as Exhibit 1 and is RCN's "Service Area."

10. As shown herein, RCN meets the additional requirements set forth in the FCC Rules for obtaining ETC designation for purposes of receiving Lifeline funding support:²

(a) Certification of RCN's compliance with the service requirements applicable to the support that it receives;

(b) Demonstration of RCN's ability to remain functional in emergency situations, including a demonstration of possession of reasonable amount of back-up power to ensure functionality without an external power source, and ability to reroute traffic around damaged facilities, and capability of managing traffic spikes resulting from emergency situations;

¹ 47 C.F.R. § 54.201(d)(2).

² 47 C.F.R. § 54.202.

(c) Demonstration that RCN satisfies the applicable consumer protection and service quality standards;

(d) Demonstration of RCN's financial and technical capability of providing the Lifeline service in compliance with subpart E of the FCC's rules and regulations;³

(e) Submission of information describing the terms and conditions of any service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan; and

(f) Demonstration that ETC designation is in the public interest.

11. Finally, designation of RCN as an ETC is in the public interest of the State of Washington and its low-income telecommunications end-users. Upon designation as an ETC, RCN will make Lifeline service available to qualifying customers in the Service Area pursuant to the guidelines and requirements of the universal service program and 47 C.F.R. § 54.202.

**RCN MEETS THE REQUIREMENTS FOR DESIGNATION
AS AN ETC IN WASHINGTON**

12. As demonstrated below, RCN meets the requirements for ETC designation by the Commission pursuant to Section 214(e)(2) of the Act.⁴ In addition, RCN complies with the standards established by the FCC for determining whether applicants for ETC status serve the public interest.⁵ The FCC has determined that applications for ETC status in "non-rural" areas are

³ 47 C.F.R. §§ 54.400 to 423.

⁴ 47 U.S.C. § 214(e)(2)

⁵ See Federal-State Joint Board on Universal Service, *Report and Order*, CC Docket No. 96-45, 20 FCC Rcd 6371, ¶ 40-43 (Rel. March 17, 2005).

per se in the public interest.⁶ The Service Area is in a "non-rural" service area.

13. The Commission has jurisdiction to designate RCN as an ETC. Pursuant to the provisions of Section 214(e)(2) of the Act, state commissions, such as this Commission, have primary responsibility for the designation of eligible telecommunications carriers under Section 214(e)(2). As shown in this Application, RCN meets the requirements for designation as and ETC in Washington. The Commission may and should grant RCN's application for ETC status.

14. RCN has the financial and technical capability to provide Lifeline service. As part of its Lifeline Reform Order, the FCC amended its rules to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.⁷ RCN satisfies these criteria.

15. RCN's affiliate company, Mashell, generates substantial revenues from non-Lifeline and wholesale services derived from some 18,000 retail and non-Lifeline customers. RCN itself has approximately 9,000 network subscribers. RCN and its affiliate Mashell are each 100 percent owned by Mashell, Inc. and RCN has access to capital from its parent company. Consequently, RCN has not relied, and will not rely on, Lifeline reimbursement for its operating revenues.

⁶ Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, *Memorandum and Order*, CC Docket No. 96-45, 16 FCC Rcd 39, 45; -U 14 (Rel. Dec. 26, 2000) (hereinafter "*Cellco Partnership*") ("For those areas served by non-rural telephone companies, such as the state of Delaware, we believe that designation of an additional ETC based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) is *consistent per se with the public interest*. The carrier need make *no further showing* to satisfy this requirement.") (emphasis added.)

⁷ 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 Reform Order").

16. The same individuals who operate Mashell will operate RCN. Thus, RCN has the same level of technical expertise and experience in running a Lifeline program as does Mashell. As noted earlier, Mashell has operated a Lifeline program for many years.

17. RCN will offer all required services and functionalities. Section 214(e)(1)(A) of the Act⁸ requires an ETC to offer the services that are supported by federal universal service support mechanisms under Section 254(c). Effective December 29, 2011, pursuant to the USF/ICC Transformation Order⁹ as further clarified by the USF/ICC Order on Reconsideration¹⁰, the FCC eliminated its former list of nine supported services and amended Section 54.101(a) of its rules to specify that "voice telephony service" is supported by the federal universal service mechanisms. The amended Section 54.101(a) and its list of supported services reads as follows:

§54.101 Supported services for rural, insular and high cost areas.

(a) *Services designated for support.* Voice telephony services and broadband service shall be supported by federal universal service support mechanisms.

(1) Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

⁸ 47 U.S.C. § 214(e)(1).

⁹ 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").

¹⁰ 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, Order on Reconsideration, FCC 11-189 (rel. Dec. 23, 2011) ("USF/ICC Order on Reconsideration").

(2) Eligible broadband Internet access services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service.

(b) An eligible telecommunications carrier eligible to receive high-cost support must offer voice telephony service as set forth in paragraph (a)(1) of this section in order to receive federal universal service support.

(c) An eligible telecommunications carrier (ETC) subject to a high-cost public interest obligation to offer broadband Internet access services and not receiving Phase I frozen high-cost support must offer broadband services as set forth in paragraph (a)(2) of this section within the areas where it receives high-cost support consistent with the obligations set forth in this part and subparts D, K, L and M of this part.

(d) Any ETC must comply with subpart E of this part.

18. Upon designation as an ETC in Washington, and consistent with state and federal policies favoring universal service, RCN will offer voice telephony services as described in the amended Section 54.101 of the FCC Rules.¹¹ The service will not be limited in terms of the number of local minutes. To the extent that the Commission continues to require ETCs to provide those services supported by federal universal service support mechanisms previously enumerated in 47 C.F.R. § 54.101(a), RCN commits to continue to satisfy state voice service requirements.¹² RCN will also provide broadband services.

19. The Company also will provide access to emergency services provided by local government or public safety officials, including 911 and enhanced 911 ("E911") where available and will comply with any Commission requirements regarding E911-compatible handsets. RCN also commits to remit 911 revenues to local authorities. The Company commits to pay in a timely manner all applicable federal, state and local regulatory fees, including but not limited to universal service and E911 fees.

¹¹ 47 C.F.R. § 54.101(a).

¹² USF/ICC Transformation Order at ¶ 82.

20. RCN will provide service through its own facilities, whether owned or pursuant to the IRU. Under Section 214(e)(1)(A) of the Act, an ETC must offer the services supported by federal universal service support mechanisms throughout its designated service area "either using its own facilities or a combination of its own facilities and resale of another carrier's services."¹³

21. RCN will advertise the availability of the supported services. The FCC adopted specific requirements for Lifeline advertising in its Lifeline Reform Order with which the Company will comply.¹⁴ Within the deadline provided in the Lifeline Reform Order, the Company will include the following information regarding its Lifeline service on all marketing material describing the service: (1) it is a Lifeline service, (2) Lifeline is a government assistance program, (3) the service is non-transferable, (4) only eligible consumers may enroll in the program, (5) the program is limited to one discount per household; (6) documentation necessary for enrollment; (7) RCN's name (the ETC); (8) notice that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program; and (9) details of the Lifeline service offerings.¹⁵ These statements will be included in all print, audio, video and web materials (including social networking media) used to describe or enroll customers in the Company's Lifeline service offering, as well as the Company's application forms and certification forms. This specifically includes the Company's website.

22. RCN is fully prepared to and will comply with federal requirements that it advertise the availability of its services throughout its Service Area using media of general

¹³ 47 U.S.C. § 214(e)(1)(a).

¹⁴ Lifeline Reform Order at ¶¶ 275-82.

¹⁵ Lifeline Reform Order at ¶ 275.

distribution.¹⁶ RCN further commits that it will also publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.¹⁷

ADDITIONAL ELIGIBILITY CRITERIA

23. 47 C.F.R. § 54.202 imposes a number of requirements in order to be designated an ETC under Section 214(e)(6). RCN will comply with the requirements of 47 C.F.R. § 54.202.

24. RCN will comply with service requirements. Per the requirements of 47 C.F.R. § 202(a)(1)(i), RCN certifies that it will comply with the service requirements applicable to the low-income support it receives as a result of designation as an ETC for purposes of receiving Lifeline. RCN not only commits to provide service throughout its Service Area, but also commits to provide universal service in a timely manner to all customers in the Service Area who make a reasonable request for service pursuant to the FCC Rules.¹⁸ If designated as an ETC, RCN will provide service throughout its Service Area through its own facilities or the IRU facilities.

25. RCN will comply with the consumer protection standards set by the FCC, including:

(a) Customer Proprietary Network Information – RCN will satisfy all consumer privacy protection standards as provided in 47 C.F.R. § 64, Subpart U as applicable and will protect Customer Proprietary Network Information ("CPNI") as required by state and federal law and will certify compliance with the same on an annual basis.

¹⁶ 47 C.F.R. § 54.201(d)(2).

¹⁷ 47 C.F.R. § 54.405(b).

¹⁸ 47 C.F.R. § 54.202(a)(1) also requires the submission of a five-year plan demonstrating how high-cost universal service support will be used to improve the ETC's coverage, service quality and capacity. This requirement, however, is inapplicable to this application, since RCN is not seeking high-cost assistance.

(b) General Compliance – RCN commits to reporting information on consumer complaints per 1,000 lines on an annual basis consistent with the FCC's USF Order.¹⁹ RCN in general commits to satisfying all applicable state and federal requirements related to consumer protection and service quality standards.

26. Further, under the FCC Rules, and in compliance with WAC 480-123-030(1)(g), an ETC applicant must demonstrate its ability to remain functional in emergency situations.²⁰ RCN certifies that it maintains adequate backup power to meet state and federal standards.

27. WAC 480-123-030(1)(d) requires petitions for ETC designation to include a substantive plan of the investments to be made with initial federal support during the first two years in which support is received. This requirement applies to carriers that seek high-cost support to fund investments to their networks. RCN is requesting ETC designation in Washington solely for the purpose of participating in the Lifeline program as a Lifeline provider. It is not seeking designation for the purpose of participating in the USF's high-cost program. Based on the foregoing, RCN has no basis for filing an investment plan and should be exempt from WAC 480-123-030(1)(d). However, RCN has made substantial investment commitments which are set out in the IRU. As an alternative, RCN requests that the Commission find that the IRU constitutes the investment plan.

28. In areas served by non-rural ILECs, the Act does not require a separate public interest finding. The FCC has previously held that designating a competitor as an ETC in area served by non-rural ILECs is per se in the public interest.²¹ RCN's Service Area is in an area served by a non-rural ILEC.

¹⁹ Federal-State Joint Board on Universal Service, First Report and Order, 12 FCC Rcd 8776 at ¶ 4 (1997) ("USF Order").

²⁰ 47 C.F.R. § 54.202(a)(2).

²¹ See Cellco Partnership, 16 FCC Rcd, at 45.

29. The FCC has also identified factors that are to be considered in determining whether designation of additional ETCs will serve the public interest and whether the benefits of an additional ETC would outweigh potential harms. These factors include: 1) the benefits of increased competitive choice; and 2) the unique advantages of the applicant company's service offerings.²² RCN affirms that its ETC designation meets these criteria as described below.

30. The FCC has long acknowledged the benefits to consumer of being able to choose from a variety of telecommunications providers and the resulting variety of telecommunications services they provide.²³ This is of particular interest in cases where a carrier like RCN seeks to provide service as an alternative to the ILEC.

31. Added together, RCN expects these additional competitive advantages to create an atmosphere that will cause many qualified consumers, at their option, to select RCN's low-income Lifeline service in lieu of the more traditional wireline or wireless services.

32. Designation of RCN as an ETC also creates competitive pressure for other wireline and wireless providers within the proposed service area. In order to remain competitive in low-income markets, therefore, all carriers will have greater incentives to improve networks, increase service offerings and lower prices. The results in improved customer services and, consistent with federal law, benefits consumers by allowing RCN to offer the services designated for support at rates that are "just, reasonable, and affordable."²⁴

33. RCN will offer a unique, easy to use, competitive and highly affordable Lifeline broadband service of 30 megabits upload and 10 megabits download for \$10.00 per month. RCN has a digital voice package available. The basic package is \$9.99 per month and includes unlimited local minutes. The advanced package is \$34.99 per month. In addition to unlimited

²² 47 U.S.C. § 54.202(c).

²³ See e.g. Specialized Common Carrier Services, 29 FCC2d 870 (1971).

²⁴ 47 U.S.C § 254(b)(1).

local minutes, the advanced package includes unlimited local long distance, voice mail and a calling feature chosen by the customer.

34. RCN will announce and advertise telecommunications services as an ETC in its Service Area and will publicize the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for those services. Accordingly, more low-income Washington residents will be made aware of the opportunities afforded to them under the Lifeline program and will be able to take advantage of those opportunities by subscribing to RCN's service.

35. RCN will provide universal service as an ETC in all of its Service Area.

36. RCN reiterates that it is applying for ETC designation solely for the purpose of providing Lifeline discounts to qualified low-income consumers and to seek reimbursement for the same and will not seek or accept high-cost support. Since Lifeline support is designed to reduce the monthly cost of telecommunication or broadband services for the eligible consumer, it is distributed on a per-customer basis, and is directly reflected in the price that the eligible customer pays. As a result, it is assured that all support received by the carrier is used to provide Lifeline services to consumers, thus promoting Lifeline and the availability of telephone service to low-income users, which is clearly in the public interest. In addition, designation of RCN as an ETC will not pose any adverse effect in the growth in the high-cost portions of the USF, nor will it create or contribute to an erosion of high-cost funding from any rural or non-rural telephone company.

37. It is also vital to recognize that in the case of Lifeline support, an ETC receives USF support *only* for the customers it obtains. In the scenario where a competitive ETC obtains

a Lifeline customer from another ETC, only the "capturing" ETC provides Lifeline discounts and as a result, only the "capturing" ETC receives support reimbursement.

38. in addition, all providers are required to contribute a portion of the interstate revenues received from their customers to the Universal Service Fund. In accordance with current federal regulations, RCN will make contributions based on that portion of its revenue that is determined to be interstate. As such, approving RCN as an ETC will actually create contributions to the USF that were previously non-existent.

39. Designation of RCN as an ETC benefits the public interest of low-income consumers throughout RCN's Service Area. Approval of RCN's ETC Application will serve the public interest by increasing participation of qualified consumers in the Lifeline program in the State of Washington. It will also increase the number of carriers eligible for federal USF support, thereby proportionately increasing the amount of federal USF dollars available to Washington consumers. Granting ETC status to RCN will contribute to more Washington residents receiving Lifeline, thereby increasing the amount of federal USF dollars flowing into and thereby benefiting Washington residents. In short, Washington residents will get more of their money back.

RCN WILL COMPLY WITH ALL ANNUAL REPORTING REQUIREMENTS

40. Consistent with the requirements of 47 C.F.R. § 54.422, RCN will comply with the FCC's annual reporting requirements:

(a) As required by 47 C.F.R. §54.422(b)(1), RCN will report, on an annual basis, "any outage in the prior calendar year, as that term is defined in 47 C.F.R. 4.5, of at least 30 minutes in duration" that potentially affects 1) at least ten percent of the end users served in a designated service area; or 2) a 911 special facility. The report will include 1) the date and time

of the onset of the outage; 2) a brief description of the outage and its resolution; 3) the particular services affected; 4) the geographic areas affected; 5) the steps taken to prevent a similar situation in the future; and 6) the number of customers affected.

(b) Consistent with the requirements of 47 C.F.R. § 54.422(b)(2), RCN will annually report the number of complaints received by RCN from the FCC, this Commission, or the Better Business Bureau, per 1,000 connections.

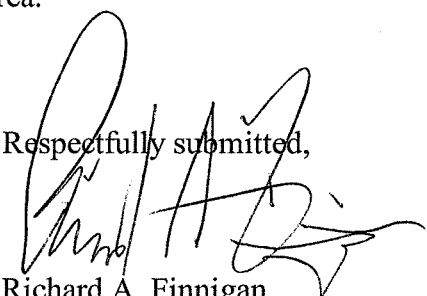
(c) As required by 47 C.F.R. § 54.422(b)(3), RCN will certify its continuing compliance with all applicable service quality standards and consumer protection rules.

(d) Consistent with the requirement of 47 C.F.R. § 54.422(b)(4), RCN will certify, on an annual basis, its continued ability to remain functional in emergency situations.

CONCLUSION

Having demonstrated that RCN satisfies the conditions necessary for designation as an ETC in Washington, and having shown that the public and universal service interests of the telecommunications consumers of Washington will be properly served, RCN respectfully requests that the Commission designate Rainier Connect North, LLC as an ETC for the provision of low income support throughout RCN's Service Area.

Respectfully submitted,



Richard A. Finnigan
Attorney for Rainier Connect North, LLC