ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF I-WIRELESS, LLC FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF INDIANA FOR THE LIMITED PURPOSE OF OFFERING LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS	)	**CAUSE NO. 41052 ETC 56** **APPROVED:** AUG 03 2011

BY THE COMMISSION:
Larry S. Landis, Commissioner
David E. Veleta, Administrative Law Judge

On August 25, 2010, i-wireless, LLC ("Petitioner," or "i-wireless") filed its Petition for Designation as an Eligible Telecommunications Carrier ("ETC") for the Limited Purpose of Offering Lifeline Service ("Petition") with the Indiana Utility Regulatory Commission ("Commission"). In its Petition, i-wireless sought designation as an ETC pursuant to §214(e)(2) of the Federal Communications Act of 1934, as amended ("Act") solely to provide prepaid wireless services supported by the Federal Universal Service Fund's ("USF") Lifeline program. Petitioner did not seek authority to provide services supported by the USF's high-cost program.

On September 20, 2010, Petitioner filed its direct testimony and exhibits. On November 22, 2010, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its direct testimony of Senior Analyst Ronald L. Keen. On December 15, 2010, Petitioner filed its rebuttal testimony.

On January 11, 2011, pursuant to notice duly published according to law, an evidentiary hearing was convened at 9:30 a.m. at the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, i-wireless and the OUCC appeared and participated. No members of the general public were present or sought to testify at the hearing. The testimony and exhibits of the parties were admitted into evidence and the witnesses were made available for cross-examination.

The Commission, having examined all of the evidence of record and being duly advised in the premises, now finds as follows:

1. **Notice and Jurisdiction.** Proper, legal and timely notice of the hearing in this Cause was given and published by the Commission as provided for by law. The proofs of publication of the notice of the hearing have been incorporated into the record of this proceeding. Pursuant to the Act, 47 U.S.C. § 151 *et seq.* and applicable Federal Communications Commission ("FCC") Rules, 47 C.F.R. §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under Section 254 of the Act and in accordance with Commission orders of generic application in Cause Nos. 40785, 41052 and 42067. The Commission therefore has jurisdiction over the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a communications service provider which offers commercial mobile radio service ("CMRS") as indicated by its CTA No. CC0702-2, approved on February 27, 2007. Petitioner is also a telecommunications carrier as defined by 47 U.S.C. § 153(44).

3. **Requirements for ETC Designation.** By our Order issued on November 5, 1997 in Cause No. 40785, the Commission adopted the FCC's original eligibility requirements for designation of ETCs within the State of Indiana. Accordingly, each Indiana ETC receiving federal universal service support is required by 47 C.F.R. § 54.101(b) to offer the nine (9) universal services or functionalities set out in 47 C.F.R. § 54.101(a)(1)-(a)(9). In addition to offering these nine universal services, to be eligible for designation as an ETC applicants are required by 47 C.F.R. §§ 54.405 and 54.411 to offer qualifying low-income customers "Lifeline" and "Link-Up" programs. The Petition seeks only a limited designation and thus is presented for the limited purpose of participating in the USF's "Lifeline" program as a prepaid wireless carrier. If the Petition is approved, 47 C.F.R. § 54.201(d)(2) will require Petitioner as an ETC receiving federal universal support for Lifeline to publicize the availability and cost of the nine supported services and the Lifeline program using media of general distribution throughout the service areas for which the designation is requested. Pursuant to the Commission's November 5, 1997 Order in Cause No. 40785, carriers seeking ETC designation in Indiana are also required to file proposed Lifeline tariffs and boundary maps depicting the area(s) for which ETC designation is sought.

On March 17, 2005, the FCC released new ETC eligibility guidelines mandating that future ETC designations would require a public interest analysis for applicants regardless of whether the proposed designation area is served by a rural or non-rural carrier. Federal-State Joint Board on Universal Service, 20 F.C.C.R. 6371 ¶42-43 (March 17, 2005) ("2005 FCC ETC Order"). The 2005 FCC ETC Order also required applicants for ETC designation to: (1) provide a five-year plan demonstrating how high-cost universal support will be used to improve its coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support; (2) demonstrate their ability to remain functional in emergency situations; (3) demonstrate that they will satisfy consumer protection and service quality standards; (4) offer local usage plans comparable to those offered by the incumbent local exchange carrier ("ILEC") in areas for which they seek designation; and (5) acknowledge that they may be required to provide equal access if all other ETCs in the designated service area relinquish their designations. The Commission adopted the FCC's new eligibility guidelines by its Order in *Sprint PCS*, Cause No. 41052 ETC 47, 2005 Ind. PUC LEXIS 219 (IURC June 8, 2005).

4. **Evidence Presented.**

(a) **Petitioner's Evidence.** Petitioner presented the testimony of Patrick McDonough, Vice President of i-wireless, at the Evidentiary Hearing. Petitioner is a North Carolina limited liability company, 50% owned by Genie Global, Inc. and 50% owned by The Kroger Co. ("Kroger"). Petitioner is a reseller of CMRS across the United States and provides prepaid wireless telecommunications services to consumers by using the Sprint Nextel network. Since i-wireless resells service from Sprint Nextel, whose network is operational and largely built

out, i-wireless will be capable of offering Lifeline service shortly after receiving Commission approval.

In his pre-filed direct testimony, Mr. McDonough stated that designation of i-wireless as an ETC would further the goals of the Act to secure lower prices and higher quality services and encourage the rapid deployment of new telecommunications technologies to all citizens regardless of geographic location or income. Mr. McDonough testified that i-wireless' Lifeline rate plans offer feature-rich mobile connectivity for qualifying subscribers at no cost to the subscriber, without the burden of credit checks, contracts, activation fees or roaming charges. Mr. McDonough explained that, through its affiliation and partnership with 141 Kroger stores in Indiana, i-wireless offers a unique benefit that allows customers to earn free minutes simply by shopping at select Kroger-owned stores using their Kroger Shopper's Card. He noted that i-wireless and Kroger are committed to lower-income individuals, and customers can participate in the Free Minutes Program even when using food stamps for payment. In his pre-filed rebuttal testimony, Mr. McDonough outlined three different Lifeline plans available to eligible customers, one of which includes 250 anytime minutes, a free handset, free balance checks, Voicemail, Caller-ID, call waiting, and calls to 911 emergency services. Two other Lifeline plans offer various levels of free minutes with the opportunity to earn additional minutes when a customer uses a Kroger Shopper's Card.

Mr. McDonough testified that on June 25, 2010, the FCC granted i-wireless' Petition for Forbearance ("Forbearance Order") from the requirement of 47 C.F.R. § 54.201(i) that an ETC offer services, at least in part, over its own facilities. *Petition of i-wireless, LLC for Forbearance from 47 U.S.C. § 214(e)(1)(A),* Order, FCC 10-117 (rel. June 25, 2010). Mr. McDonough stated that the Forbearance Order is limited to i-wireless' participation in the Lifeline program. The FCC specifically conditioned its grant of forbearance on i-wireless complying with certain conditions. On July 26, 2010, i-wireless submitted its compliance plan to the FCC. The compliance plan outlines the measures that i-wireless will take to implement the conditions imposed by the FCC in its order of forbearance. However, the FCC has yet to approve i-wireless's compliance plan.

Mr. McDonough testified that i-wireless satisfies the requirements for designation as an ETC set forth in Section 214(e) of the Act and Section 54.201(d) of the FCC's rules. Mr. McDonough offered testimony that i-wireless provides all of the services and functionalities required by 47 C.F.R. §§ 54.101(a) and 54.202(a). With regard to toll limitation, Mr. McDonough noted the FCC's observation that the nature of prepaid service offerings works as an effective toll control. He also noted that since i-wireless seeks an ETC designation for Lifeline service only, the FCC requirement for a five-year plan of network improvements on a wire-center basis is not applicable since no high cost USF support is involved.

Mr. McDonough testified that the public interest will be served by granting the requested ETC designation by significantly benefitting low-income consumers eligible for Lifeline services in Indiana through Kroger's neighborhood grocery stores. He stated that i-wireless will provide increased customer choice, high-quality service offerings, mobility, and the safety and security of effective 911 and Enhanced 911 ("E911") services. Mr. McDonough also noted that designation of i-wireless as an ETC will promote competition and innovation, and spur other carriers to target low-income consumers with service offerings tailored to their needs and to improve their existing networks to remain competitive, resulting in improved service and greater choice to consumers.

Mr. McDonough testified that i-wireless' designation request will not unduly burden the USF or otherwise reduce funding available to other ETCs. He noted that in the Forbearance Order, the FCC stated that "the additional choice and service options of another wireless reseller offering a service for low-income consumers represents a significant benefit for consumers and is in the public interest." *Petition of i-wireless, LLC for Forbearance from 47 U.S.C. § 214(e)(1)(A),* Order at ¶19.

In his pre-filed rebuttal testimony and in response to questions from the Presiding Officers at the Evidentiary Hearing, Mr. McDonough testified that with minor clarifications, i-wireless is willing to comply with the conditions imposed by the Commission's Order in *Virgin Mobile*, Cause No. 41052 ETC 55, 210 Ind. PUC LEXIS 387 (IURC November 10, 2010) ("Virgin Mobile ETC Order"). He requested that the Commission approve i-wireless' Lifeline offerings, which are substantially similar, but not identical, to the Virgin Mobile Lifeline offerings. Mr. McDonough also asked the Commission to clarify that i-wireless may use a professional universal service program contractor, Solix, to verify customer eligibility, and noted his belief that Solix performs the same function for Virgin Mobile's Lifeline program.

(b) **OUCC's Evidence.** The OUCC presented direct testimony from its Senior Analyst, Ronald L. Keen. Mr. Keen testified that he reviewed the Petition, Petitioner's responses to data requests issued by the OUCC and Commission Orders from other ETC proceedings. Mr. Keen presented a detailed analysis of the federal and state requirements regarding the designation of ETCs and explained how i-wireless met those requirements.

Mr. Keen testified that approval of i-wireless as an ETC designee could assist in increasing the penetration rate of individuals who are connected to the public switched telecommunications network. He noted that the introduction of additional wireless prepaid competitive ETC providers into the market affords low-income individuals and families a wider choice of providers and available services while creating a robust competitive marketplace as "Lifeline-only" ETCs compete for the largest share of the finite number of eligible Indiana households.

With regard to the FCC Forbearance Order's waiver of the facilities-ownership requirement for i-wireless, Mr. Keen stated that the Commission already applied a similar FCC forbearance order in the Virgin Mobile ETC Order, and because prepaid wireless providers typically operate like Virgin Mobile, the OUCC accepts the Commission opinion regarding facilities ownership.

In his public interest analysis, Mr. Keen noted that i-wireless will create competitive choice through the unique opportunity for customers to earn extra free minutes of airtime through the purchase of food and other merchandise at Kroger stores. In response to questions from the Presiding Officers on this issue at the Evidentiary Hearing, Mr. Keen noted that Kroger makes a dedicated effort to reach out to the entire community, which he saw as a plus for reaching the Lifeline community through the opportunity to transition grocery shopping into telecommunications connectivity. Ultimately, Mr. Keen testified that the OUCC recommends that the Commission grant i-wireless' ETC designation and require i-wireless to submit the same type of information required in the Virgin Mobile ETC Oder.

5. **Commission Findings.** Based on the evidence in the record, we have determined that Petitioner meets the eligibility criteria for ETC designation as contained in Section 214(e)(1)

provided that the FCC approves Petitioner's compliance plan. The Commission's findings are set out more fully below.

(a) Common Carrier Status. The first requirement for ETC designation is status as a common carrier under federal law. A common carrier is generally defined by 47 U.S.C. § 153(10) as a person engaged as a common carrier on a for-hire basis in interstate telecommunications utilizing either wire or radio technology (except for radio broadcasters). As a provider of wireless telecommunications services, we find that i-wireless is a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1).

(b) Services Required to be Offered by an ETC. The evidence confirms that upon designation as an ETC in Indiana, i-wireless will provide all of the functionalities required of an ETC in 47 C.F.R. § 54.101(a) as follows:

(i) Voice-grade access to the public switched telephone network. The FCC has concluded that voice grade service means the ability to make and receive phone calls within a specified bandwidth and frequency range. 47 U.S.C. § 54.101(a)(1). We find that Petitioner meets this requirement. No evidence was presented that Petitioner's customers would not be able to make and receive calls on the public switched telephone network in accordance with the federal rules. Accordingly, we find that Petitioner satisfies this requirement.

(ii) Local usage. ETCs must include local usage beyond providing simple access to the public switched telephone network as part of a universal service offering. An applicant for ETC designation must demonstrate that it offers a local usage plan that is "comparable" to the plan offered by the ILEC in the relevant service territory. 47 C.F.R. § 54.202(a)(4). In analyzing whether an ETC applicant's plan is comparable to the underlying ILECs, the FCC reviews all aspects of the plan on a case-by-case basis, including the nature of the supported service, the size of the local calling area, the inclusion of additional services (*e.g.*, caller I.D.) and the amount of local usage. *See* 2005 FCC ETC Order, ¶33. As the record demonstrates, i-wireless will offer users the ability to send and receive local phone calls wherever the company offers service. Mr. McDonough noted that i-wireless intends to offer Lifeline customers "access to a variety of other features at no cost, including voice mail, caller I.D., call waiting services and E911 capabilities."

(iii) Dual-Tone, Multi-Frequency ("DTMF") signaling, or its functional equivalent. DTMF is a method of signaling that facilitates the transportation of call set-up and call detail information. We noted in our Virgin Mobile ETC Order that the FCC permits CMRS carriers to provide signaling which is a functional equivalent to DTMF to satisfy this requirement. Petitioner's evidence shows that the telephone handset to be provided free-of-charge to eligible Lifeline customers is DTMF-capable as required by 47 C.F.R. § 54.101(a)(3). Accordingly, the record reflects that Petitioner satisfies this requirement.

(iv) Single-party service or its functional equivalent. Petitioner provides the functional equivalent of single-party service to its wireless customers for the duration of each telephone call, and does not provide multi-party (or "party-line") services. Accordingly, the record reflects that Petitioner satisfies this requirement.

(v) Access to emergency services. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. By virtue of its use of the Nationwide Sprint PCS Network, Petitioner provides nationwide access to 911 emergency services for all of its customers. As a condition of the Petitioner's FCC Forbearance Order, i-wireless will provide its Lifeline customers with basic 911 and E911 access regardless of activation status and availability of prepaid minutes; will provide its new Lifeline customers with E911 compliant handsets; and will replace at no additional charge to the customer noncompliant handsets of existing customers who obtain Lifeline-supported service. In a late filed exhibit, filed March 10, 2011, i-wireless provided documentation from Sprint indicating that i-wireless customers will have the same access to 911 and E911 service as Sprint's own customers. Further, after providing 90 days advance notice to the Public Safety Answering Points ("PSAPs") in its proposed designated service area, i-wireless self-certified that it provides customers with 911 and E911 service. Thus, we find Petitioner has satisfied this requirement.

(vi) Access to operator services. Access to operator services is defined as any automatic or live assistance provided to a consumer to arrange for the billing or completion, or both, of a telephone call. 47 C.F.R. § 54.101(a)(6). Petitioner meets this requirement by providing all of its customers with access to operator services. Thus, we find Petitioner has satisfied this requirement.

(vii) Access to directory assistance. Petitioner meets the requirement of access to directory assistance by providing customers with the ability to dial "411" to reach directory assistance.

(viii) Access to interexchange service. Petitioner meets the requirement of access to interexchange service by providing all of its customers with the ability to make interexchange, or long distance, telephone calls. Domestic long distance capabilities are included in Petitioner's service with no additional charges because minutes for local or long distance services are not billed separately at different rates.

(ix) Toll limitation for qualifying low-income consumers. Toll limitation allows customers to either block the completion of outgoing long distance calls or specify a certain amount of toll usage to prevent them from incurring significant long distance charges and risking disconnection. Petitioner provides its wireless service on a prepaid, or pay-as-you-go, basis. Moreover, Petitioner's service is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Customers also must specifically authorize access for international services, for which additional charges may apply. The FCC has determined in ETC designations for Virgin Mobile that the nature of prepaid service mitigates concerns that low-income customers will incur significant charges for long distance calls, risking disconnection of their service. *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A); Petitions for Limited Eligible Telecommunications Carrier Designation in New York, Pennsylvania, Virginia, North Carolina, and Tennessee,* CC Docket No. 96-45, Order, 24 FCC Rcd 3381 at ¶34 (2009) ("Virgin Mobile Forbearance Order"). Since i-wireless offers only prepaid cellular service, the limitation requirement is satisfied by virtue of the fact that service will automatically end when the prepaid bank of minutes runs out, regardless of whether prepaid

minutes were used on local or long-distance calls. Accordingly, we find Petitioner's service satisfies this requirement.

(c) Lifeline Service Offering Requirements. In its Petition, direct testimony, and rebuttal testimony, i-wireless provided a description of its proposed prepaid Lifeline offerings. i-wireless has proposed to give customers three options for its Lifeline offerings. Under option 1, the customer will receive 150 free minutes per month with additional usage priced at 10 cents per minute. Under option 2, the customer will receive 250 free minutes per month with additional minutes priced at 10 cents per minute. Under option 3, the customer may choose any i-wireless monthly retail plan at a $15 discount. The evidence shows that Petitioner agrees to comply with all applicable Lifeline requirements after its request for ETC designation is granted.

(d) Functionality in Emergency Situations. FCC regulations require that applicants for ETC designation demonstrate their ability to remain functional in emergency situations. 47 C.F.R. § 54.209(a)(2). Mr. McDonough explained that as a reseller of Sprint Nextel service, i-wireless has the same reliability as its underlying carrier. We recognized in the Virgin Mobile ETC Order that Sprint Nextel has established a variety of internal programs, policies and teams dedicated to analyzing, assessing and responding to emergency situations. We noted that Sprint Nextel has reasonable amounts of back-up power to ensure functionality without an external power source, and has implemented reasonable practices to reroute traffic around damaged facilities and manage traffic spikes resulting from emergency situations. Based on the foregoing, we find that Petitioner satisfactorily meets this requirement.

(e) Advertising Requirements. i-wireless demonstrated that it will broadly advertise the availability and rates for its Lifeline services using media of general distribution that may include advertisements in newspapers, radio, and the internet in conformance with state and federal regulations. Petitioner noted that it will provide its network of retail partners with signage to be displayed where i-wireless products are sold, and with printed materials describing i-wireless' Lifeline program. Mr. McDonough also indicated that i-wireless intends to distribute brochures at various state and local social service agencies, and intends to partner with nonprofit assistance organizations such as Habitat for Humanity in order to help promote the availability of Lifeline plans. Mr. Keen testified at the Evidentiary Hearing that upon visiting one Indiana Kroger store, he found the i-wireless point of purchase kiosk at a prominent location in the center of the store. Based on the foregoing, we find that the evidence of record indicates that the Petitioner will comply with all applicable advertising requirements.

(f) Petitioner's Designated ETC Service Areas. The FCC's rules define a "service area" as a "geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." 47 C.F.R. § 54.207(a). i-wireless provides its services exclusively over the Nationwide Sprint PCS Network and does not provide service in territories not covered by the network. Petitioner provided a list of the wire centers in which it is requesting ETC designation. i-wireless requests to be designated as an ETC in the coverage area for the Nationwide Sprint PCS Network in Indiana.

(g) Public Interest Considerations. As noted above, the designation of i-wireless as an ETC requires a public interest analysis. 2005 FCC ETC Order, ¶¶42 and 43. In the

absence of statutory strictures for evaluating the public interest, the FCC has recommended that ETC designations be analyzed "in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunication services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas." 2005 FCC ETC Order, ¶40.

(i) Use of Lifeline funding. Through the testimony offered at the Evidentiary Hearing by Mr. McDonough, i-wireless has indicated that it will not use funds from the federal Lifeline program to provide free handsets or unsupported services to Lifeline customers. We find that this is consistent with current FCC regulations on the use of such funds. *See In re Federal-State Joint Board on Universal Service, Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas,* 18 FCC Rcd 10958 at ¶18 (2003).

(ii) Impact on the Universal Service Fund. We have previously recognized that the FCC has undertaken various steps to address the explosive growth in high-cost universal support disbursements. *Perry-Spencer Communications, Inc.,* Cause No. 41052 ETC 53, 2008 Ind. PUC LEXIS 510, at *33 (IURC July 24, 2008). Notably, however, i-wireless is not seeking access to funding from the federal USF to provide service to high-cost areas. Lifeline support is provided on a customer-specific basis, and only after a carrier has acquired and begun to serve an eligible customer does the carrier receive Lifeline support for that customer. By tying support to actual service of a customer, the Lifeline program ensures that universal service fund support only funds the carrier that serves the customer. However, we also recognize that costs for the low income portion of the universal service fund are increasing rapidly. While it is in the public interest that Lifeline eligible customers get connected to affordable telecommunications service, preventing misuse of the Lifeline program is necessary to control unnecessary growth of the fund and increased USF surcharges for all Indiana telecommunications customers. We are concerned that prepaid wireless providers may be especially vulnerable to misapplication of the program due to the appeal of free phones and free minutes. Therefore, we find as we did in the Virgin Mobile ETC Order that it is in the public interest to impose extra safeguards on i-wireless. To ensure that i-wireless' Lifeline offering does not unnecessarily increase USF expenditures, we condition our grant on i-wireless' adoption of a policy terminating service to inactive customers. Specifically, if a customer does not make a voice call or send a text message at least once during any 90-day period, i-wireless will notify the customer that the customer is no longer eligible for Lifeline service. The customer must make a voice call or send a text message at least once during the 30-day period following such notification in order to have eligibility restored. At the end of the applicable 30-day period following notification of ineligibility, if the customer has not utilized the service, the customer will no longer receive a monthly allocation of free minutes and i-wireless will no longer report the customer on FCC Form 497. Provided these requirements are satisfied, we find that i-wireless' designation should not have an excessive impact on the universal service fund.

Mr. McDonough noted in his pre-filed testimony that i-wireless takes steps to mitigate fraud and misapplication of the Lifeline program through use of a database and company practices to identify and reject applications for Lifeline supported service for more than one handset associated with an address. Mr. McDonough also testified that i-wireless has the ability to reference

transactions if any questions arise. Tr. at 18. We find that i-wireless' testimony provides assurances that the company will take seriously the conditions to prevent misuse of the Lifeline program and that it has the technical ability to do so.

(iii) Consumer Protection. The FCC found that an ETC applicant must make a specific commitment to objective measures to protect consumers. *See* 2005 FCC ETC Order. i-wireless states at page 14 of its Petition that it will comply with the Cellular Telecommunications Industry Association ("CTIA") Consumer Code for Wireless Service as a condition of its ETC designation. Mr. Keen testified that the OUCC anticipates that i-wireless will voluntarily satisfy the requirements contained in the CTIA Consumer Code for Wireless Service.

(iv) Creamskimming. The FCC identified creamskimming as an appropriate factor to consider in "areas where an ETC applicant seeks designation below the study area level of a rural company." *See* 47 CFR § 54.202(c). That analysis is unnecessary in this case, as i-wireless seeks ETC designation to serve entire rural ILEC study areas in this proceeding. *See* 2005 FCC ETC Order. In addition, the FCC has concluded that applicants seeking ETC designation solely for Lifeline purposes need not perform a creamskimming analysis. *See Virgin Mobile USA, L.P. Petition for Forbearance from 47 US.C § 214(e)(1)(A) Petitions for Designation as an Eligible Telecommunications Carrier in the State of New York, North Carolina, Tennessee and Virginia,* Order, 24 FCC Rcd 3381, fn. 101 (2009).

(v) Increased customer choice. Currently in Indiana all incumbent local exchange carriers are required to provide the Lifeline discount to eligible customers. Non-ILEC Lifeline providers include three competitive local exchange carriers, and two prepaid wireless carriers. The record reflects that the Petitioner's unique association with Kroger grocery stores could make Lifeline services accessible to qualified customers not being reached by the other Lifeline providers. We agree with Mr. Keen that this offering brings increased consumer choice to the Lifeline eligible customers in Indiana. We find the fact that i-wireless does not impose credit checks or long-term service contracts as prerequisites to obtaining service could help Lifeline customers unserved by traditional local exchange carriers ("LECs") due to poor credit and payment histories. Based on the record, we find that Petitioner's designation as an ETC will increase the level of customer choice and may promote competition by expanding the availability of wireless services to qualifying Indiana customers, leading to lower prices.

(vi) Affordable rates. We must also consider whether designation as an ETC will "ensur[e] the availability of quality telecommunications services at just, reasonable, and affordable rates[.]" 2005 FCC ETC Order, ¶40. Petitioner presented evidence that its Lifeline offerings include three options. Under option 1, the customer will receive 150 free minutes per month with additional usage priced at 10 cents per minute. Under option 2, the customer will receive 250 free minutes per month with additional minutes priced at 10 cents per minute. Under option 3, the customer may choose any i-wireless monthly retail plan at a $15 discount. Mr. McDonough noted that all the Lifeline offerings include a handset, activation fees, and all applicable taxes and fees. Thus, Lifeline customers will receive free service (so long as they do not exceed their monthly minute allotment) with no additional charges for taxes or activation.

We find that these unique and varied plans will allow Lifeline customers to determine the best value based on their calling patterns and will provide affordable alternatives for many of Indiana's Lifeline eligible customers. Therefore, i-wireless should file tariffs consistent with the testimony filed herein prior to offering Lifeline service in Indiana.

(vii) Advantages & Disadvantages of the Offering. The record reflects that Petitioner's service offering is comparable to the Virgin Mobile and ILEC Lifeline and local service plans. Additionally, i-wireless may reach a Lifeline eligible customer base not being reached by other Indiana Lifeline providers through its partnership with Kroger stores. However, the service offering is being made by i-wireless, not Kroger. Accordingly, we find that i-wireless has satisfied this criterion of our public interest inquiry.

(viii) Facilities Ownership. In the Virgin Mobile Forbearance Order, the FCC found that "after careful consideration of the regulatory goals of universal service as applied to low-income consumers, we determine that a facilities requirement for ETC designations is not necessary to ensure that a pure wireless reseller's charges, practices, classifications or regulations are just and reasonable when that carrier seeks the status solely for the purpose of providing Lifeline-supported services." *Virgin Mobile Forbearance Order* at ¶15. In the i-wireless Forbearance Order, the FCC found support for similar facilities-ownership forbearance and imposed conditions to safeguard the Universal Service Fund against fraud, abuse, and waste. *i-wireless Forbearance Order* at ¶20. i-wireless testimony indicates a commitment to compliance with the conditions of its FCC Forbearance Order and has provided evidence that it can reliably deliver Lifeline services to eligible customers and use federal support only for the provision of Lifeline services. With this finding in mind, we are persuaded that in the context of a prepaid wireless provider whose service is resold from Sprint Nextel it is unnecessary to require facilities ownership.

In prior ETC orders, we have noted the importance of facilities-ownership in the context of our public interest inquiry. Facilities ownership indicates the company has made a commitment to a long term presence in Indiana. Further, in the case of ETC designations for the purposes of receiving high cost support, facilities buildout provides evidence that the support will be used only for the provision, maintenance, and upgrading of facilities and service for which the support is intended. While i-wireless does not own telecommunications facilities that demonstrate a capital investment in Indiana infrastructure, Mr. Keen's testimony noted that i-wireless' affiliate, Kroger, employs approximately 14,000 Indiana employees at its 140 local stores. Through its relationship with Kroger, i-wireless has an established a presence in Indiana. i-wireless has held a CTA as a wireless carrier in Indiana since 2007 and has history of providing prepaid wireless services in Indiana. We find the relationship between i-wireless and Kroger, which has a demonstrated and longstanding commitment to employing Hoosiers, supports a finding that an i-wireless ETC designation is in the public interest.

(ix) Deployment of, or improvement to, Indiana Network Facilities. The record reflects that i-wireless depends on Sprint Nextel to provide the facilities for its service. As we noted in the Virgin Mobile ETC Order, Sprint Nextel is constantly upgrading and expanding its Indiana network and infrastructure, directly benefiting Indiana consumers. Accordingly, we find that i-wireless' designation as an ETC will bring benefits to Indiana's telecommunications infrastructure.

(x) Commitment to Provide Service Upon Reasonable Request. Pursuant to 47 C.F.R. § 54.202(a)(I)(i), an ETC applicant must commit to provide service upon reasonable request throughout its designated service area. We find, as we did in the Virgin Mobile ETC Order, that it is reasonable for i-wireless through Sprint Nextel to accommodate requests for service as required by the 2005 FCC ETC Order. If the potential customer is within Sprint Nextel's designated service area and its existing network coverage, i-wireless will provide service on a timely basis. If the potential customer is within Sprint Nextel's designated service area, but outside its existing network coverage, i-wireless through Sprint Nextel will provide service within a reasonable period of time if service can be provided at reasonable cost by:

(a) Modifying or replacing the requesting customer's equipment;
(b) Deploying a roof-mounted antenna or other equipment;
(c) Adjusting the nearest cell tower;
(d) Adjusting network or customer facilities;
(e) Reselling services from another carrier's facilities to provide service; or
(f) Employing, leasing or constructing an additional cell site, cell extender, repeater or other similar equipment.

Sprint PCS, 2005 Ind. PUC LEXIS 219, at *22. Accordingly, we find Petitioner has demonstrated its willingness and ability to provide service throughout its requested service area.

(xi) Additional Public Interest Analysis. ETC designation confers both benefits and burdens upon the petitioning telecommunications service provider. Because the designation gives the provider the right to apply for federal universal service funds, it is of the utmost importance that the provider be in compliance regarding its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoidance of such obligations. We find that it would not be competitively neutral to designate an ETC permitting it to collect a public subsidy, yet not contribute its fair share to public interest funds from which its network and its customers benefit. i-wireless complies with Indiana laws and policies regarding public interest funds for which the Commission has administrative oversight, including the public utility fee pursuant to Indiana Code ch. 8-1-6, the InTrac fee pursuant to Indiana Code ch. 8-1-2.8, and the Indiana Universal Service Fund pursuant to the Commission's Order in *Commission Investigation of Universal Service Reform*, Cause No. 42144, 2004 Ind. PUC LEXIS 61 (IURC March 17, 2004). Mr. McDonough indicated that due to the prepaid nature of its business, i-wireless either collects applicable fees and surcharges at the point of sale where permitted by state law, or remits applicable fees and surcharges on behalf of its customers. Based on the foregoing public interest analysis, we conclude that designating i-wireless as an ETC will promote the public interest and further the goals of the Act.

6. Regulatory Oversight. This Commission has previously recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order to secure and maintain their ETC status in Indiana. *See e.g., Re Nextel,* Cause No. 41052 ETC 43, 2004 Ind. PUC Lexis 87, at *84 (IURC March 17, 2004). Such regulatory requirements stem from the FCC's mandate that state commissions certify that federal USF support is being used "only for the provision, maintenance and upgrading of facilities and services for which the support is intended," consistent with 47 U.S.C. § 254(e). Absent such a certification, carriers will not receive such

support. 47 C.F.R. §54.313. In order for this Commission to satisfy its ETC certification requirements to the FCC, this Commission requires ETC applicants to file a tariff with the Commission and track its USF expenditures. *See Re Commission Investigation of Universal Service Reform,* Cause No. 40785, 1997 Ind. PUC Lexis 354 (IURC November 5, 1997). The record reflects Petitioner intends to comply with the Commission's Lifeline tariff filing requirement. Petitioner must also comply with USF tracking requirements this Commission previously established to ensure that funds received from Universal Service Administrative Company ("USAC") for Indiana are devoted to furthering universal service goals within Petitioner's designated service area. Accordingly, we find that Petitioner's terms and conditions of service should be incorporated into Petitioner's Lifeline tariff for Indiana and filed with the Commission's Communications Division for review prior to Petitioner making its universal service offering available to eligible consumers in Indiana.

i-wireless asked the Commission to clarify that i-wireless may use a professional universal service program contractor, Solix, to verify customer eligibility, and Mr. McDonough noted his belief that Solix performs the same function for Virgin Mobile's Lifeline program. The i-wireless Forbearance Order requires that i-wireless deal directly with the customer to certify and verify the customer's Lifeline eligibility. *Forbearance Order* at ¶16. In imposing this requirement, the FCC noted that the obligation is consistent with those imposed on TracFone and Virgin Mobile. In the TracFone Forbearance Order, the FCC required TracFone to deal directly with the customer to certify and verify the customer's Lifeline eligibility in response to a concern that TracFone was distributing service through retail outlets over which it would not have the requisite control over the retailer's employees to ensure compliance with Lifeline rules and certifications. The FCC would not allow TracFone to submit qualifying information to the retail vendor, and noted that TracFone must have direct contact with the customer, whether by telephone, fax, Internet, in-person consultation or otherwise, when establishing initial and continued eligibility. *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),* FCC 05-165, CC Docket No. 96-45, rel. 9/8/05 at ¶19. i-wireless is bound by the Forbearance Order. We note that so long as i-wireless has a direct interaction with the customer via the means noted by the FCC, it is appropriate for i-wireless to forward customer materials to a professional USF company for review and approval.

7. **Prospective ETC Reporting Requirements.** Finally, we find that Petitioner should be required to meet the prospective reporting requirements established by the 2005 FCC ETC Order to the extent applicable given Petitioner's limited designation as an ETC for Lifeline services only. To this end, Petitioner shall submit the following information on an annual basis:

(a) Detailed information on any outage lasting at least 30 minutes, for any service area in which an ETC is designated for any facilities that it owns, operates, leases, or otherwise utilizes that potentially affects at least ten percent of the end users served in a designated service area, or that potentially affects a 911 special facility (as defined in subsection (e) of Section 4.5 of the Outage Reporting Order. *See* In the Matter of New Part 4 in Commission's Rules Concerning Disruptions to Communications Services, ETC Docket 04-35, Released August 14, 2004). An outage is defined as a significant degradation in the ability of an end user to establish

and maintain a channel of communications as a result of failure or degradation in the performance of a communications provider's network. Specifically, the ETC's annual report must include: (1) the date and time of onset of the outage; (2) a brief description of the outage and its resolution; (3) the particular services affected; (4) the geographic areas affected by the outage; (5) steps taken to prevent a similar situation in the future; and (6) the number of customers affected. As noted above, Petitioner has beneficial use of Sprint's wireless facilities. Sprint is designated as an ETC in Indiana and is also subject to this reporting requirement. In order to avoid duplicative reporting, we find that Petitioner may join in the report filed by Sprint Nextel for this or other reporting requirements provided that any such report clearly indicate the participating entities.

(b) The number of requests for service from potential customers within its service areas that were unfulfilled for the past year. The ETC must also detail how it attempted to provide service to those potential customers;

(c) The number of complaints per 1,000 handsets or lines;

(d) Certification that the ETC is complying with applicable service quality standards and consumer protection rules, e.g., the CTIA Consumer Code for Wireless Service;

(e) Certification that the ETC is able to function in emergency situations;

(f) Certification that the ETC is offering a local usage plan comparable to that offered by the incumbent LEC in the relevant service areas; and

(g) Certification that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

2005 FCC ETC Order at ¶69 (footnotes omitted); 47 C.F.R. § 54.209.

i-wireless's compliance filings should be filed under this Cause, due on August 15th of each year beginning in 2011, unless otherwise directed by the Commission.

8. <u>Conditions on i-wireless's Designation as an Eligible Telecommunications Carrier.</u> In accordance with the Commission's findings above, i-wireless shall be subject to the following conditions:

(a) i-wireless shall deactivate a Lifeline account if the customer has no usage for ninety (90) consecutive days. No fewer than eight (8) business days before deactivation, i-wireless shall send the customer a written notice by mail about the potential deactivation and ways to avoid unwanted deactivation. The customer shall have a thirty (30) day grace period from the deactivation date to reactivate the Lifeline account and restore the minutes accrued during the ninety (90) day non-usage period and the thirty (30) day grace period.

(b) i-wireless shall file a tariff of their proposed offerings as discussed herein prior to initiating Lifeline service in Indiana consistent with Findings in Section 5(g)(vi), and notify the Commission in the form of a new tariff if any terms, conditions or allocation of free minutes changes.

(c) i-wireless shall provide the Commission with a copy of its annual Lifeline Verification survey results for Indiana that it files with the USAC by August 31 of each year.

(d) i-wireless shall notify each Lifeline customer on an annual basis and request that they confirm their continued eligibility by requiring that the customer self- certify that they continue to be eligible for the discount based upon their income or participation in a qualifying low income program. Such verification will be required in order for the consumer to continue to purchase prepaid airtime at the discounted rate.

(e) On a quarterly basis i-wireless shall provide the number of Indiana Lifeline customers that it enrolls each month. i-wireless shall also report the number of deactivated Indiana Lifeline customers each month and the reasons for deactivation (e.g., no usage for 90 consecutive days, annual verification unsuccessful or voluntary exit). Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter. i-wireless will continue to make such quarterly filings until otherwise instructed by the Commission.

(f) To safeguard against misuse of the Lifeline service plan, i-wireless shall deal directly with the customer and require each customer to self certify under penalty of perjury that they are the only member of a household receiving the Lifeline discount and that they do not receive the Lifeline discount for any other phone. Lifeline customers shall provide copies of documentation demonstrating that they are eligible for Lifeline based upon participation in one of the qualifying low income programs or based upon income.

(g) In the event the ILAP becomes law, i-wireless shall seek Commission approval of its new Lifeline offering subject to the additional Indiana discount prior to participation in the program.

(h) i-wireless shall contribute to the InTrac Fund on a monthly basis an amount equal to the Commission approved InTrac monthly surcharge (currently $0.03) multiplied by the number of active i-wireless accounts during each month consistent with Cause No. 39880 and Indiana Code ch. 8-1-2.8.

(i) i-wireless shall continue to pay applicable fees, such as the public utility fee pursuant to Indiana Code ch. 8-1-6, the IUSF fee pursuant to the Commission's Final Order in Cause No. 42144, the wireless emergency enhanced 911 fee pursuant to Indiana Code § 36-8-16.5-30.5 and any other applicable fees.

(j) i-wireless shall submit a compliance plan indicating how it will implement the above conditions prior to offering service in Indiana. The Commission shall have thirty (30) days to approve or seek additional modifications of the compliance plan.

We therefore find, based on the evidence presented, that i-wireless has met all of the ETC eligibility requirements and that the public interest supports granting ETC status for the purpose of participation in the Lifeline program to i-wireless at this time. We further find that making this prepaid service available to eligible customers will increase customer choice and will not adversely affect the USF. i-wireless has demonstrated that it has the ability through the Sprint Nextel network to satisfy the obligation to serve the designated service areas within a reasonable time frame. Finally, we note that the Commission has the statutory authority to investigate, as it deems necessary, i-wireless' compliance with this Order and its eligibility for ETC designation. Accordingly, we find that i-wireless' Petition should be granted. We further find that i-wireless should be subject to the prospective reporting requirements and conditions set forth herein.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. i-wireless LLC's application for designation as an Eligible Telecommunications Carrier for the limited purpose of participation in the Universal Service Fund's Lifeline program, for the service areas identified in Petitioner's evidence, shall be and hereby is granted provided that the FCC approves i-wireless LLC's compliance plan.

2. i-wireless LLC's request for authority to apply for or receive universal service funds pursuant to 47 U.S.C. § 254 shall be and hereby is granted, subject to Petitioner's continued compliance with the terms, conditions and reporting requirements of this Order and other applicable laws.

3. This Order shall be effective on and after the date of its approval.

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED: AUG 03 2011

I hereby certify that the above is a true and correct copy of the Order as approved.

Brenda A. Howe

Brenda A. Howe
Secretary to the Commission