

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
 TERRACOM, INC. FOR DESIGNATION AS)
 AN ELIGIBLE TELECOMMUNICATIONS) CAUSE NO. 41052 ETC 60
 CARRIER IN THE STATE OF INDIANA)
 FOR THE LIMITED PURPOSE OF) APPROVED: JAN 25 2012
 OFFERING LIFELINE AND LINKUP)
 SERVICE TO QUALIFIED HOUSEHOLDS)

ORDER OF THE COMMISSION

Presiding Officers:

Larry S. Landis, Commissioner

David E. Veleta, Administrative Law Judge

On April 12, 2011, TerraCom, Inc. (“Petitioner” or “TerraCom”) filed its Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) for the Limited Purpose of Offering Lifeline and Linkup Service (“Petition”) with the Indiana Utility Regulatory Commission (“Commission”). In its Petition, TerraCom 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 and Link Up program. Petitioner did not seek authority to provide services supported by the USF’s high-cost program or its proposed successor, the Connect America Fund.

On April 28, 2011, Petitioner filed its First Amendment to the Petition eliminating from its Petition a request for ETC designation in any area served by CenturyLink. On May 13, 2011, Petitioner pre-filed its direct testimony and exhibits. The Indiana Office of Utility Consumer Counselor (“OUCC”) pre-filed its testimony on June 28, 2011.

On July 26, 2011, pursuant to notice duly published according to law, an evidentiary hearing was convened at 10:00 a.m. at the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, TerraCom and the OUCC appeared and participated. No members of the general public were present or sought to testify.

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 the 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 acknowledged by the Commission in its March 30, 2011 CTA issued in Cause No. 43997. 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 (9) 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 and Link Up programs 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 and Link Up to publicize the availability and cost of the nine supported services and the Lifeline and Link Up programs 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 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 Commission adopted the FCC's new eligibility guidelines by its June 8, 2005 Order in Cause No. 41052 ETC 47. On November 10, 2010, this Commission issued the first "Lifeline-only" ETC designation to Virgin Mobile in Cause No. 41052 ETC 55 (the "Virgin Mobile ETC Order"). Subsequently, we granted Lifeline-only ETC designations to TracFone Wireless, Inc. in Cause No. 41052 ETC 54 and to i-Wireless, LLC in Cause No. 41052 ETC 56. In all three Orders, we imposed certain requirements and reporting obligations as a condition of the ETC designation.

4. Evidence Presented.

(a) Petitioner's Evidence. Petitioner presented the testimony of Dale Schmick, Vice President of TerraCom. Petitioner is an Oklahoma corporation with its principal offices located in Oklahoma City. Petitioner stated it is a facilities-based carrier and owns facilities in Oklahoma City, Oklahoma. Mr. Schmick provided late-filed exhibits detailing the company's ownership structure, identifying company officers and affiliates, and providing TerraCom's confidential financial information. Petitioner stated it would, if approved as an ETC, provide prepaid wireless services to consumers through a combination of its own facilities and resale of

services provided from underlying wireless providers. TerraCom is not currently serving any residential or business customer in Indiana, but plans to initiate service throughout its designated service area shortly after its ETC designation is granted.

Mr. Schmick testified that Petitioner's service is different from other pre-paid wireless providers because TerraCom prefers direct contact with consumers and will use outreach events, direct sales, neighborhood agents, and TerraCom branded or authorized retail outlets to reach customers. To make full use of TerraCom's unique distribution model, he noted that Petitioner will also offer targeted plans for customers. Mr. Schmick testified that Petitioner's seven years of experience serving low-income consumers has demonstrated that for companies to be successful, flexible and affordable options are required. Among these options are plans other than free plans. He testified that TerraCom also intends to serve non-Lifeline consumers.

Mr. Schmick testified that TerraCom is currently a wireline ETC in Oklahoma and Texas and a wireless ETC in Maryland, Arkansas, West Virginia, and Nevada. Mr. Schmick included with his testimony a list of wire centers where TerraCom plans to offer service once it is designated as an ETC in Indiana. He also provided a late-filed exhibit showing TerraCom's coverage area map. Mr. Schmick testified that TerraCom's systems are designed so that it will remit E-911 fees in Indiana once it begins offering service. Also, Mr. Schmick testified that TerraCom will contribute to the funding for universal service. Mr. Schmick stated that since TerraCom is a prepaid wireless service provider, it does not provide traditional monthly billing statements to its customers. Customers will purchase and subsequently replenish minutes in their accounts in advance either online, on their handsets or at retail locations. Minutes of use will be deducted from customer accounts in real time rather than being invoiced to customers after the fact. He testified that TerraCom either collects applicable fees and surcharges at the point of sale or remits applicable fees and surcharges on behalf of its customers. Mr. Schmick testified that TerraCom commits that it will pay all applicable fees, including the Indiana Telecommunications Relay Access Corporation ("InTRAC") fee pursuant to Indiana Code § 8-1-2.8; the public utility fee required under Indiana Code ch. 8-1-6, the IUSF fee established in Cause No. 42144; and the wireless enhanced 911 fee required under Indiana Code § 36-8-16.5-30.5. Mr. Schmick confirmed that customers will have access to InTRAC services for speech and hearing impaired individuals pursuant to Indiana Code § 8-1-2.8 *et seq.* Mr. Schmick also stated that TerraCom can quantify sales made in Indiana and determine which customer accounts remain open or have been closed.

Mr. Schmick testified that TerraCom satisfies all of the requirements for ETC designation contained in both federal and Indiana state regulations. He noted that Section 214(e)(1)(A) of the Act states that ETCs shall offer services, at least in part, over their own facilities and that the FCC's Rules (47 C.F.R. § 54.201(i)) prohibit state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier's services. Mr. Schmick stated that TerraCom meets this requirement because it provisions service through a combination of its own switch and through resale of other carriers' service. Specifically, Mr. Schmick testified that TerraCom owns and operates a Network Access Call Controller and a Class 4/5 switch located in Oklahoma City, OK both of which provide enhanced call routing and control for calls going to Interexchange Carriers, Directory Assistance and/or Operator Service providers. He stated that both facilities are Telcordia compliant, and provide

PSTN-grade service capable of routing local, long distance (both domestic and international) as well as Directory Assistance, Operator Services and Toll Free. In addition, he noted that TerraCom leases capacity on PRI/DS3 facilities as needed in Oklahoma City which serve to route these calls.

Mr. Schmick testified that upon designation as an ETC in Indiana, TerraCom will offer all of the following services and functionalities required by the FCC's rules:

a. *Voice-grade access to the public switched telephone network.* Mr. Schmick noted that the FCC has concluded that voice grade service means the ability to make and receive phone calls, within a specified bandwidth and frequency range. He stated that TerraCom meets this requirement by providing voice-grade access to the public switched telephone network. Through its interconnection agreements and TerraCom's own Class 4/5 switch, Mr. Schmick testified that all of Petitioner's customers are able to make and receive calls on the public switched telephone network within the specified bandwidth.

b. *Local usage.* ETCs must include local usage beyond providing simple access to the public switched network as a part of a universal service offering. Mr. Schmick stated that TerraCom complies with this requirement by including specific quantities of usage in its rate plans.

c. *Dual-tone, multi-frequency ("DTMF") signaling or its functional equivalent.* Mr. Schmick stated that DTMF, more commonly known as touch-tone, is a method of signaling that facilitates the transport of call set-up and detail information. He noted that all of the service offered by TerraCom includes DTMF signaling and all wireless handsets offered for sale by Petitioner are DTMF-capable.

d. *Single-party service or its functional equivalent.* Mr. Schmick stated that TerraCom provides single-party service by using a dedicated message path for the length of all customer calls.

e. *Access to emergency services.* Mr. Schmick testified that TerraCom will provide 911 and E911 access for all of its customers, and will comply with all FCC E911 requirements applicable to wireless resellers. He stated that through its underlying carrier(s), TerraCom has the ability to remain functional in emergency situations. He stated that Petitioner also commits that it will seek certification with all applicable PSAPs in Indiana and maintain copies of those certifications should the Commission request to review them.

f. *Access to operator services.* Mr. Schmick testified that TerraCom customers will have access to operator services, in accordance with the FCC's requirements.

g. *Access to directory assistance.* Mr. Schmick stated that access to directory assistance service is offered to all TerraCom customers.

h. *Access to interexchange service.* Mr. Schmick indicated that TerraCom customers have the ability to make interexchange telephone calls, and long distance calls are included in TerraCom's service with no additional charge.

i. *Toll limitation for qualifying low-income consumers.* According to Mr. Schmick, toll limitation allows customers to block the completion of outgoing long distance calls to prevent them from incurring significant long distance charges and risking disconnection. He noted that the nature of pre-paid service mitigates the need for toll control. Mr. Schmick stated that TerraCom's service is not distance-sensitive and there is no separate charge for local or domestic long distance calls. Since service is prepaid, customers are not disconnected for failure to pay toll charges.

Mr. Schmick testified that TerraCom will provide equal access to interexchange services of the customer's choice in the event that all other ETCs in its service area relinquish their designation pursuant to section 214(a)(4) of the Act. He stated that TerraCom is prepared to act as a Carrier of Last Resort in all areas in Indiana in which it has wireless coverage, to the extent that it is able to do so as a reseller. Mr. Schmick testified that upon the receipt of a Commission order, TerraCom expects to be offering service within 60 days.

With regard to reliability of service, Mr. Schmick testified that TerraCom is committed to offering the highest quality of prepaid wireless service possible. To demonstrate its commitment to high service quality, Mr. Schmick noted that TerraCom committed in its Verified Petition to comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service. Additionally, where TerraCom owns, operates, leases, or otherwise uses facilities where an outage potentially affects at least ten percent of the end users in the designated service area, or potentially affects a 911 special facility, Mr. Schmick stated that TerraCom is willing to annually report the following to the Commission:

- (i) The date and time of onset of the outage;
- (ii) A brief description of the outage and its resolution;
- (iii) The particular services affected;
- (iv) The geographic areas affected by the outage;
- (v) Steps taken to prevent a similar situation in the future; and
- (vi) The number of customers affected.

Mr. Schmick testified that TerraCom included with its Verified Petition a sample of its planned printed advertising for supported services. He stated that TerraCom has invested \$2,616,523.73 in advertising between the years of 2008-2010. He indicated that TerraCom uses print, TV and radio advertising depending on the demographic or the market and the availability of good advertising mediums. Mr. Schmick stated that this investment will continue in Indiana.

Mr. Schmick testified that TerraCom will require customers to self-certify at the time of service activation and annually thereafter that they: 1) are the head of household; 2) participate in one of the state-approved means tested programs; 3) will be receiving Lifeline-supported services only from TerraCom; 4) do not currently receive Lifeline support; and 5) will notify TerraCom in the event that they no longer participate in the qualifying program. Regardless of

the distribution method or the make-up of the mode of distribution ultimately employed in Indiana, Mr. Schmick noted that TerraCom's employees will be the gate keepers of the process and review every application before reimbursement is sought. Mr. Schmick testified that if contractors are used and there are ever any issues with any contractor, TerraCom will deal with such issues in a timely manner and terminate the relationship where warranted.

Mr. Schmick stated that annually after initial activation, customers must certify that they remain head of household and receive Lifeline-supported service only from TerraCom. Furthermore, certain customers will be chosen to participate in the additional random survey of continued eligibility. Those customers will be required to attest and certify under penalty of perjury that they continue to satisfy the requisite program or income based eligibility criteria. TerraCom will require and obtain all such certifications as a condition for continued Lifeline support, and will maintain certification records for auditing purposes.

When asked what measures Petitioner will take to prevent recovery of the federal lifeline discount for customers already receiving the discount for their landline telephone, Mr. Schmick testified that TerraCom's Lifeline application forms will require each applicant to provide their name, primary residential address and an alternate telephone number (if any). He stated that TerraCom will incorporate this information into its customer information database. The Company will check the name and address of each Lifeline applicant against its database to determine whether or not it is associated with a customer that already receives TerraCom Lifeline service, and will then review the application to ascertain whether the applicant is attempting to receive Lifeline-supported service for more than one handset or landline associated with the address. Mr. Schmick stated that TerraCom will deny the Lifeline application of any such individual and advise the applicant of the basis for the denial.

Mr. Schmick testified that TerraCom has internal policies in place to handle accounts with non-activity and thereby prevent recovery of Lifeline funds for prepaid customers who cease using TerraCom phones and airtime. He stated that TerraCom wireless subscribers who exceed ninety (90) days without any utilization (defined below), will be de-enrolled from the TerraCom wireless Lifeline Program. Mr. Schmick testified that "utilization" is defined as any transaction including, but not limited to, making or receiving a call, making or receiving a text message, checking voicemail message, checking airtime balance, downloading content, data usage or adding airtime. No fewer than eight business days before deactivation, TerraCom will send the customer a written notice by mail regarding the potential deactivation and offer methods to avoid unwanted deactivation. Upon de-enrollment for non-usage, the TerraCom wireless subscriber will have up to thirty (30) days to re-enroll by contacting TerraCom. If a customer does not re-enroll or call a TerraCom customer service representative within thirty (30) days of the de-enrollment, the phone service will be deactivated and any airtime will be lost. A subscriber must provide proof of eligibility and pay an activation fee to re-enroll in the TerraCom wireless Lifeline program. The customer will be given a minimum of thirty (30) days as a grace period from the deactivation date to reactivate the Lifeline account and restore minutes accrued during the 90-day non-usage period and 30-day grace period.

Mr. Schmick testified that under Petitioner's Wireless Lifeline plan, TerraCom customers will receive 250 free minutes. Under this initial service plan, any unused minutes will roll over

from month to month. In addition, Petitioner will use all low-income universal service support to allow TerraCom to provide the service with no monthly recurring charge, thus ensuring that the consumer receives 100% of all universal service support funding for which the Company will seek reimbursement. In the event that all airtime has been used, Lifeline Customers will have the ability to purchase additional time by calling TerraCom directly; purchasing time online at www.terraconline.com; purchasing time at any TerraCom Wireless service authorized retail locations; or purchasing time at any of over 32,000 locations that sell "top-up" airtime pins for TerraCom Wireless subscribers.

Mr. Schmick noted that the Wireless Lifeline Plan will also include a free handset. Mr. Schmick stated that TerraCom's standard customer terms and conditions in connection with its Lifeline service offering were attached to its Verified Petition. He noted that TerraCom's Lifeline Plan also includes caller ID; call waiting; call forwarding; 3-way calling; and voicemail.

Mr. Schmick testified that TerraCom will not deduct calls to 911 or to 611 from usage. Upon certification of the customer for Lifeline and/or Link Up, wireless handsets will be delivered at no charge to qualifying customers; service will be activated; and the requisite number of minutes will be added. Mr. Schmick stated that Petitioner commits that it will submit tariff filings for any and all proposed Lifeline and Link Up offerings, including changes in terms, conditions, or allocations of free minutes.

With regard to Link Up, Mr. Schmick testified that qualifying subscribers will receive a reduced activation charge deferred for a twelve-month period with no interest, thus allowing subscribers to obtain service without being required to pay substantial fees to activate service with TerraCom. Mr. Schmick stated that consistent with FCC requirements, TerraCom will use Link Up support to reduce by half the company's customary charge for commencing service, which will result in a reduction of the Company's standard \$60.00 customary activation charge by \$30.00.

Mr. Schmick stated that customers can ensure that they are receiving the correct number of minutes by tracking their minutes and usage at no charge on their handset, online, or by contacting customer service. He noted that customers can contact TerraCom via a toll free number or by dialing 611 from their TerraCom phone. They will also be able to contact a customer service representative through the Company's website or by mail.

Mr. Schmick stated that TerraCom's designation as an ETC is consistent with the public interest. He noted that the FCC has identified factors that are to be considered in determining whether designation of additional ETCs will serve the public interest such as 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 and disadvantages of the company's service offerings. Mr. Schmick testified that TerraCom's ETC designation meets these criteria. He stated that designation of Petitioner as an ETC on a wireless basis will incent other carriers serving the same area to improve their existing networks and service offerings in order to remain competitive, which will result in improved consumer services. He described the unique advantages of TerraCom's service offering by noting that the entrants to date focus on mass retail distribution, which will only reach a limited portion of the eligible consumers. By

contrast, Mr. Schmick stated that TerraCom will invest in the multi-faceted distribution needed to reach consumers who do not shop at Wal-mart, Target or Kroger. Mr. Schmick stated that this is particularly important in the most economically challenging neighborhoods where these stores simply do not exist. Mr. Schmick testified that Petitioner's model, based from experience, is to partner with neighborhood locations that already service low-income consumers. He noted that these partners often serve a particular demographic, such as an Asian grocery store, or a broader community, like a neighborhood insurance agent.

Mr. Schmick testified that he is aware that in the past, the Commission has considered the degree to which a carrier will invest in Indiana and contribute to the economic well-being of the State. He also noted that the OUCC has indicated the importance of a carrier's commitment to Indiana customers and Indiana communities and noted that Petitioner's model will create at least fifteen Indiana jobs.

Mr. Schmick testified that designation of TerraCom as an ETC will not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. He stated that TerraCom seeks ETC designation solely to utilize USF funding to provide Lifeline and Link Up service to qualified low-income consumers. It does not seek and will not accept high cost support. Mr. Schmick stated that according to the Universal Service Monitoring Report in 2008, Lifeline funding totaled approximately \$775 million in 2006 while high-cost program expenditures amounted to approximately \$4.1 billion—more than five times the amount of Lifeline funding. He testified that with Lifeline, ETCs only receive support for customers they obtain. The amount of support available to an eligible subscriber is exactly the same whether the support is given through a company such as TerraCom or the Incumbent LEC operating in the same service area. Mr. Schmick stated that designation of TerraCom as an ETC will very likely increase the Lifeline participation rate of qualified low-income individuals and further the goal of Congress to provide all individuals with affordable access to telecommunications service.

Mr. Schmick testified that TerraCom affirms its commitment to comply with all rules and regulations that the Commission may lawfully impose upon the Company's provision of service contemplated by its application for ETC designation. Specifically, he noted that TerraCom commits to provide the Commission with a copy of its annual Lifeline Verification survey results, which the Company files with USAC by August 31st of each year; TerraCom will file with the Commission on a quarterly basis a report detailing the number of Lifeline customers enrolled each month, the number of deactivated Lifeline customers each month, and the reasons for deactivation; and if required by the Commission, TerraCom will annually report the number of complaints per 1,000 handsets or lines as well as the number of requests for service from potential customers within TerraCom's designated area that were unfulfilled during the prior year, including detail of TerraCom's attempt to provide service to each potential customer.

In response to questions by the Presiding Officers at the evidentiary hearing, Mr. Schmick testified that TerraCom has existing Indiana resale agreements with Sprint and Verizon Wireless. He indicated that the roaming charges shown in TerraCom's Terms and Conditions are a pass-through of charges in TerraCom's agreements with Verizon Wireless and Sprint, and are not charges created by TerraCom. When asked what TerraCom's activation charge pays for, Mr. Schmick testified that the charges have been in existence for some time, they are customary,

and they exist in lieu of any contract or termination fee. Mr. Schmick stated that the activation charge is designed to recover TerraCom's upfront costs of provisioning, as well as the costs TerraCom incurs for verifying Lifeline eligibility. Mr. Schmick testified that the activation charge is the same for Lifeline and non-Lifeline customers. The Presiding Officers noted that TerraCom's website advertises a \$25 incentive fee for customer referrals. Mr. Schmick confirmed that the incentive fee has mostly been used in the wireline context, but it would also apply to Lifeline customers. He confirmed that the incentive fee is not intended to promote Lifeline in lieu of advertising. Rather, he noted that TerraCom has spent approximately \$3 million in advertising and will continue those efforts using television, print, and direct mail.

At the evidentiary hearing, Mr. Schmick provided additional information regarding TerraCom's facilities. He indicated that since TerraCom has been a wireline carrier for many years, it has been investing in facilities for some time. Mr. Schmick stated that TerraCom's Class 4/5 switch is able to provide all of the ETC checklist services, and TerraCom's switch is used to handle calls where efficiency dictates. He explained that from the tandem and where efficient, certain calls are handed off to TerraCom's switch. Additionally, Mr. Schmick testified that TerraCom's switch handles every customer call to Directory Assistance (either calls to 411 or 555-1212); every call to Customer Care (calls to 611); every toll-free call to Customer Care; and every customer call to top-up minutes. Mr. Schmick stated that routing for traffic on the TerraCom network starts within the wireless carrier's network. Depending upon the type of traffic, TerraCom decides whether the call is handled by the TerraCom switch or by the wireless carrier. He noted that TerraCom's switch, like the switches used by wireless carriers, has high capacity (DS3). He explained that, depending upon the type of traffic, the trunks carry the call using SIP protocol, if efficient. In a late-filed confidential exhibit, Mr. Schmick provided a diagram of TerraCom's network architecture, along with additional information on TerraCom's provision of service. He testified that the TerraCom switch is a soft switch, meaning that computer software is the driving force for its operation. He noted the switch resides in a collocation cage in a Tier 1 collocation hotel in Oklahoma, and includes redundancy and battery backup. In response to a question about the switch, Mr. Schmick stated that the switch is marketed as both a wireline and a wireless switch because of its capability to route both types of traffic and noted that switches with this capability are becoming the norm.

Finally, in response to questioning about TerraCom's status as a facilities based provider or reseller, Mr. Schmick testified that he considers TerraCom to be facilities based. TerraCom's Class 4/5 switch handles all of TerraCom's traffic in four service categories as well as additional traffic when efficient. Mr. Schmick noted that TerraCom's intended ownership of retail outlets in Indiana may also constitute facilities ownership in a sense. Mr. Schmick testified that TerraCom initially invested in facilities many years ago to serve its wireline customers, and is now investing in facilities to serve its wireless customers. Because TerraCom owns facilities, Mr. Schmick confirmed that TerraCom has not requested forbearance of the facilities ownership requirement from the FCC. Mr. Schmick explained that the facilities ownership requirement was originally imposed in the high cost ETC context out of the FCC's concern for double dipping by resellers and to ensure that the USF subsidy was only happening once. He explained that the same concern is not present in the Lifeline only ETC context because USF support is tied to the customer. Mr. Schmick noted that the FCC has determined that a carrier qualifies as an ETC if it offers service through its own facilities or in combination of resale and its own facilities.

(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, other pertinent state and federal statutes, rules and orders, 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 TerraCom met those requirements.

Mr. Keen testified that his research revealed that TerraCom is a privately owned telecommunications company headquartered in Oklahoma City, Oklahoma that has operated wireline networks for approximately seven years, and has recently started its wireless operations. He stated that TerraCom currently serves both wireline and non-Lifeline wireless customers in Oklahoma and Texas, and wireless Lifeline customers in Maryland, Arkansas and West Virginia. Mr. Keen indicated that TerraCom is a public utility under Indiana Code §8-1-2-1 *et seq.* because it owns and operates a Network Access CII Controller and Class 4/5 switch located in Oklahoma City and it will resell prepaid wireless service in the same vein as TracFone. Mr. Keen stated that when the Indiana Low Income Assistance Program ("ILAP") goes into effect, TerraCom will seek approval of an offering with the additional state discount, and it to receive approximately \$200,400 per year from the ILAP.

Mr. Keen testified that approval of TerraCom 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 C-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.

Mr. Keen testified that the OUCC is not satisfied with the current Indiana Lifeline take rate, which was below ten percent in 2010. Mr. Keen stated that the approval of TerraCom as a C-ETC can assist in increasing the penetration rate or reduce the number of individuals that are not connected to the PSTN. He indicated that introducing additional wireless prepaid C-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 a finite number of eligible Indiana households.

Mr. Keen analyzed TerraCom's commitment to Indiana by examining the economic impact the company can have directly or indirectly through job growth and the potential to localize the revenue generated from Hoosiers for service provided within Indiana. He testified that TerraCom indicated that its business plans for Indiana envision a distribution center and TerraCom branded retail locations in Indianapolis and Gary with an additional 15-20 authorized TerraCom locations serving the state.

Mr. Keen summarized the current requirements for designation as an ETC in Indiana and discussed the application of these requirements to TerraCom. Mr. Keen also noted that the OUCC believes that TerraCom can meet the nine mandated service requirements of 47 C.F.R. § 54.202(a). Mr. Keen testified that the OUCC examined TerraCom's ETC designations in other

states and did not find any information that would stop the OUCC from supporting TerraCom's ETC designation in Indiana.

Mr. Keen offered an analysis of several public interest factors and concluded that granting C-ETC status to TerraCom is consistent with the public interest. Mr. Keen noted that the ETC designation will offer customers increased competitive choice; TerraCom's designation will produce an economic benefit to the state; TerraCom has committed to serve as a Carrier of Last Resort in all areas in Indiana in which it has wireless coverage, to the extent that it is able to do so as a reseller; TerraCom will offer a minimum of 250 free monthly anytime prepaid minutes with no recurring charges; TerraCom will offer a 50% reduction in its activation charge, payable with no interest over twelve months; and TerraCom has committed to comply with the applicable provisions of the CTIA. Mr. Keen concluded that the OUCC recommends that the Commission award TerraCom an ETC designation and require TerraCom to provide annual information on service outages, unfulfilled service requests, complaints, service quality and CTIA Code compliance, emergency functionality, local usage, and equal access. The OUCC also recommended certain procedures to ensure that TerraCom properly deactivates a Lifeline account if the customer has no usage for ninety consecutive days; that TerraCom be required to offer a minimum of 250 free minutes per month to eligible customers and file tariffs reflecting changes; that TerraCom file its annual Lifeline Verification survey by August 31 of each year; that TerraCom file a quarterly IURC report on enrollments and deactivations; that TerraCom deal directly with customers and require each customer to self certify eligibility under penalty of perjury; and that TerraCom pay all applicable fees.

5. Commission Discussion and Findings. Based on the evidence in the record and the discussion below, we find that Petitioner meets the eligibility criteria for ETC designation as contained in Section 214(e)(1) and related FCC rules, and for the limited purpose of offering Lifeline service in Indiana, and satisfies the public interest analysis the Commission is required to perform under the 2005 FCC ETC Order. Petitioner's request for Link Up reimbursement is addressed in Section (h) 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 any 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 TerraCom 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, TerraCom 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, TerraCom will offer users the ability to send and receive local phone calls wherever the Company offers service. Mr. Schmick noted that TerraCom 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. Based on the evidence, we find that Petitioner’s offering will be comparable to the underlying ILEC plans, and therefore satisfies this requirement.

(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. Evidence submitted by TerraCom demonstrates that it will rely upon Sprint-Nextel and Verizon Wireless, to provide access to 911 services, similar to pure wireless resellers that require FCC forbearance from Section 214(e) of the Telecommunications Act. Further, TerraCom committed that it would seek certification with all public safety answering points (“PSAPs”) in Indiana and maintain copies of those certifications.¹ Given the fact that TerraCom has no history of providing wireless services in Indiana and given the importance of public safety, we find that TerraCom, consistent with conditions met by TracFone and i-wireless, must seek certification from each PSAP where TerraCom seeks to provide Lifeline service confirming that the carrier provides its subscribers with 911 and E911 access prior to providing Lifeline services in Indiana. First, TerraCom must request certification from each applicable PSAP and notify the PSAP that TerraCom may self-certify compliance if the PSAP has neither provided certification nor made an affirmative finding that the carrier does not provide its customers with access to 911 and E911

¹ TerraCom Inc’s Submission of Direct Testimony and Exhibits, filed May 13, 2011, pg. 8

service within the PSAP's service area within 90 days of the request. The evaluation period is tolled whenever a PSAP reasonably requests information or equipment to evaluate the TerraCom's requests until TerraCom responds with that information or equipment. If the PSAP determines that TerraCom will not offer its Lifeline customers appropriate access to emergency services or has concerns regarding TerraCom's ability and if the PSAP notifies TerraCom of its concerns during the evaluation period, the evaluation period is extended by an additional 90 days and the carrier may not self-certify compliance until it has addressed the PSAP's concerns. Second, before self-certifying, TerraCom must obtain from its underlying wireless carrier in that area certification that the underlying carrier routes emergency calls from TerraCom's customers to the PSAP in the same manner that it routes emergency calls from its own customers. Third, TerraCom must provide the PSAP with a copy of the relevant self-certifications at the time it is effective. Fourth, if a PSAP finds that TerraCom does not provide its customers with 911 and E911 access after TerraCom has self-certified that it does, TerraCom must notify the Commission of this finding upon receiving notice and must explain how it plans to meet the PSAP concerns and provide Lifeline customers with appropriate 911 and E911 access.

(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. See *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 TerraCom 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.** Mr. Schmick testified that TerraCom will make a 250-minute offering, which will include several functions and features. 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. Schmick explained that calls will begin on the underlying networks of Verizon Wireless and Sprint, and certain non-emergency calls will be routed through TerraCom's switch. 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. We are administratively aware that Verizon Wireless also has programs, policies, and facilities in place to properly respond to emergency situations. In its petition, TerraCom states that its switching center where its facilities are located is capable of remaining fully functional with both generator and battery back-up.² Based on the foregoing, we find that Petitioner satisfactorily meets the requirement to remain functional in emergency situations.

(e) **Advertising Requirements.** TerraCom demonstrated that it will broadly advertise the availability and rates for its Lifeline services using media of general distribution that may include advertisements in print, television and radio in conformance with state and federal regulations. 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). TerraCom has indicated that it will serve the wire centers of AT&T Indiana and Frontier North.³ It has provided a map of its coverage area indicating that it has the ability to serve these areas.

(g) **Public Interest Considerations.** As noted above, the designation of TerraCom as an ETC requires a public interest analysis. 2005 FCC ETC Order, ¶¶42 and 43. In the absence of statutory structures 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

² Verified Petition of TerraCom, filed April 12, 2011, pg. 10

³ TerraCom Inc.'s First Amendment to Petition for Designation as an Eligible Telecommunications Carrier, filed April 28, 2011, Revised Exhibit D.

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.** The record indicates that TerraCom will use funds from the federal Lifeline program to provide supported services to Lifeline customers. TerraCom met this burden of proof for the Lifeline program. We find that TerraCom’s plans are consistent with current FCC regulations on the use of such funds.

(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, TerraCom 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 unproductive 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 additional safeguards on TerraCom. To ensure that TerraCom’s Lifeline offering does not unnecessarily increase USF expenditures, we condition our ETC designation on TerraCom’s adoption of policies to control waste, fraud and abuse of the Lifeline program, such as terminating service to inactive customers after 90 days; dealing directly with the customer; and obtaining documentation from the customer which demonstrates eligibility among other conditions enumerated in this Order. Provided these requirements are satisfied, along with other conditions and safeguards promulgated in this Order and in FCC rules to deter waste fraud and abuse, we find that TerraCom’s Lifeline only designation should not have an excessive impact on the universal service fund.

(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. TerraCom stated in its Verified Petition that it will comply with the CTIA Code as a condition of its ETC designation. Mr. Keen testified that the OUCC anticipates that TerraCom 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

TerraCom seeks ETC designation to serve only non-rural wire centers in the service territories of AT&T and Frontier North as indicated in its revised Exhibit D, filed April 28, 2011. *See* 2005 FCC ETC Order.

(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 three prepaid wireless carriers. We agree with Mr. Keen that TerraCom's Lifeline offering brings increased consumer choice to the Lifeline eligible customers in Indiana and that this offering may reach a particular segment of Lifeline eligible customers that have not yet been reached. 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. The Petitioner presented one Lifeline plan where eligible customers will receive 250 anytime prepaid minutes per month at no charge. Unused minutes will roll over from month to month. Additional minutes may be purchased in blocks priced at \$5.00 for 60 minutes and increasing incrementally to \$60 for an additional 1700 minutes. Blocks of minutes available from TerraCom break down into rates ranging from \$0.04 to \$0.08 per minute. In addition, customers receive a handset free of charge.⁴ The OUCC did not dispute the affordability of Petitioner's rates. Accordingly, we find that the designation of TerraCom as an ETC would serve the public interest by ensuring the availability of telecommunications services at just, reasonable and affordable rates. Therefore, TerraCom should file tariffs consistent with the testimony filed herein prior to offering Lifeline services in Indiana.

(vii) **Advantage & Disadvantages of the Offering.** The record reflects that Petitioner's Lifeline service offering is comparable to the Virgin Mobile and ILEC Lifeline plans. Accordingly, we find that TerraCom has satisfied this criterion of our public interest inquiry.

(viii) **Facilities-Ownership.** TerraCom provides service through a combination of its own facilities and resale of wireless service from other carriers. TerraCom is the first carrier using this combination to request an Indiana ETC designation for Lifeline and Link Up. In its 1997 Universal Service Report and Order, the FCC examined the requirement of 47 U.S.C. § 214(e)(1) that provides in pertinent part that "a common carrier designated as an ETC ... shall ... offer services ... using its own facilities or a combination of its own facilities and resale of another carrier's services..."⁵ In the context of a request for ETC designation for high cost universal service support, the FCC specifically examined the eligibility of a carrier that provides service through a combination of its own facilities and resale of another carrier's service and concluded that "a carrier need not offer universal service wholly over its own facilities in order

⁴ TerraCom, Inc.'s Submission of Direct Testimony and Exhibits, filed May 13, 2011, pg. 14

⁵ *In the Matter of Federal State Joint Board on Universal Service Funding, Report and Order*, CC Docket 96-45, FCC 97-157, Rel. May 8, 1997.

to be designated as eligible because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale.”⁶

The FCC also found that “the statute does not dictate that a carrier use a specific level of its own facilities in providing the services designated for universal service support given that the statute provides only that a carrier may use a combination of its own facilities and resale and does not qualify the term ‘own facilities’ with respect to the amount of facilities a carrier must use.”⁷ Accordingly, the FCC noted there is no requirement that the carrier provide services “predominantly” over its own facilities.⁸ The FCC noted that “the statute does not require a carrier to use its own facilities to provide each of the designated services but, instead, permits a carrier to use its own facilities to provide at least one of the supported services.”⁹ The FCC observed that by including carriers relying on a combination of facilities and resale within the class of carriers eligible to receive universal service support, and by declining to specify the level of facilities required, the United States Congress sought to accommodate the various entry strategies of common carriers seeking to compete in high cost areas.¹⁰

TerraCom does not own any facilities in Indiana; however, the company states that it owns and operates a Network Access Call Controller and a Class 4/5 switch located in Oklahoma City, Oklahoma. Both facilities provide enhanced call routing and control for calls going to Interexchange Carriers, Directory Assistance and/or Operator Service providers. Mr. Scmick’s testimony indicates that, both facilities provide PSTN-grade service capable of routing local, long distance (both domestic and international) as well as Directory Assistance, Operator Services and Toll Free calls. However, routing of specific calls will be determined based upon the efficiency of a particular call route. In addition, TerraCom leases capacity on PRI/DS3 facilities as needed in Oklahoma City, Oklahoma which serve to route calls. TerraCom provided evidence under confidential seal that indicated certain types of Lifeline calls will be routed through TerraCom’s switch in Oklahoma City. Based upon the applicable federal rules in effect at the time TerraCom submitted its application, we find that TerraCom meets the standards for facilities established by the FCC in its May 8, 1997 *Universal Service Order*.¹¹

⁶ *Id.* at ¶169 (footnote omitted).

⁷ *Id.*

⁸ *Id.* at ¶170.

⁹ *Id.* at ¶169.

¹⁰ *Id.*

¹¹ On November 18, 2011, the FCC issued an order concerning USF and Intercarrier Compensation (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, effective December 29, 2011 (“*USF/ICC Order*”). In the *USF/ICC Order*, the FCC amended 47 C.F.R. §54.101 to specify that the functionalities of eligible voice telephony services include: 1) voice grade access to the public switched network or its functional equivalent; 2) minutes of use for local service provided at no additional charge to end users; 3) toll limitation to qualifying low-income consumers; and 4) access to 911 and enhanced 911 emergency services to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems. In an Order on Reconsideration issued December 23, 2011 (FCC 11-189), the FCC clarified the intent of the rule revision: “Therefore, to be in compliance with our rules, Lifeline-only carriers that seek ETC designation after the December 29, 2011 effective date of the *USF/ICC Order*, as well as such carriers that had previously obtained ETC designation prior to December 29, 2011 on the basis of facilities associated solely with, for example, access to operator service or directory assistance, must either use their own facilities, in whole or in part, to provide the supported “voice telephony service,” or obtain forbearance from the “own facilities” requirement from the Commission.” The record in this Commission proceeding closed before the

(ix) Deployment of, or Improvement to, Indiana Network Facilities. The record reflects that TerraCom depends in part upon the facilities of Sprint Nextel and Verizon Wireless for its service, and that TerraCom uses its Oklahoma switch for certain types of calls. We noted in our Virgin Mobile ETC Order that Sprint Nextel is constantly upgrading and expanding its Indiana network and infrastructure, directly benefiting Indiana consumers. Based on the competitive forces at work in the wireless industry, we expect that Verizon Wireless takes similar steps to improve and expand its network facilities. Ultimately, we conclude that TerraCom's patronage of Verizon Wireless and Sprint Nextel will spur those companies to maintain and improve their Indiana network facilities. As such, we are satisfied that TerraCom's reliance on the Sprint Nextel and Verizon Wireless networks will contribute to a demand for Indiana network facilities and 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)(1)(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 TerraCom through Sprint Nextel and Verizon Wireless to accommodate requests for service as required by the 2005 FCC ETC Order. If the potential customer is within TerraCom's designated service area indicated in Exhibit D of its Petition, as amended, TerraCom will provide service on a timely basis. If the potential customer is within the designated service area, but outside existing network coverage, TerraCom through Sprint Nextel or Verizon Wireless 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.

See Re Designation of Eligible Telecommunications Carriers, Cause No. 41052 ETC 47 (IURC 3/17/2007) at 10-11. 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

FCC took this action, and therefore, we will not deny the Petition on this basis. However, based upon the FCC's orders and rule revisions, TerraCom may need to obtain forbearance from the "own facilities" requirement by July 1, 2012, unless it obtains its own eligible voice telephony services in compliance with the new FCC rules.

competitively neutral to designate an ETC permitting it to collect public funds, yet not contribute its fair share to public interest funds from which its network and its customers benefit. TerraCom has testified to its willingness to comply 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 § 8-1-6, the InTRAC fee pursuant to Indiana Code § 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. Schmick indicated that due to the prepaid nature of its business, TerraCom 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 TerraCom as an ETC will promote the public interest and further the goals of the Act.

(h) Petitioner's request for Link Up reimbursement. Pursuant to 47 C.F.R. § 54.411(a)(1), the purpose of Link Up support is a reduction of the carrier's customary charge for commencing telecommunications service for a single telecommunications connection as a consumer's principal place of residence. Further, the "reduction shall be half of the customary charge or \$30.00, whichever is less." *Id.*

If TerraCom's request for Link Up support were approved, TerraCom would be compensated \$30.00 from the universal service fund for each Lifeline customer initiated in Indiana. However, TerraCom has not demonstrated that its \$60.00 initiation fee is a customary charge. Since TerraCom currently serves no customers in Indiana, TerraCom failed to demonstrate that it has non-Lifeline customers that routinely pay the \$60.00 initiation fee. In TerraCom's sample advertisement provided in Exhibit C of its Direct Testimony, there is only a disclosure of a possible activation fee in tiny print at the bottom of the Company's advertising. In addition, TerraCom did not provide any cost support, or other data justifying the \$60.00 activation fee.

Furthermore, TerraCom's request for Link Up support is not in the public interest, due to the fact it would unnecessarily impact the federal universal service fund, without providing added value or a unique offering to Indiana Lifeline customers. Indiana currently has three prepaid wireless ETCs that initiate service to Lifeline customers free of charge without impacting the Link Up fund, thereby demonstrating the feasibility of doing so. Granting Link Up support to TerraCom would create an unfair advantage for TerraCom over the three previously approved prepaid wireless ETCs by providing an additional subsidy without added service benefits. Additionally, the Commission is administratively aware that the FCC has not granted Link Up support to any prepaid wireless carrier seeking forbearance.¹² For all these reasons, we find that Petitioner's request for ETC designation to receive Link Up support should be denied.

6. Regulatory Oversight. This Commission has previously recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order

¹² *In the Matter of Telecommunications Carriers Eligible for Universal Service Support, PlatinumTel, LLC, CAL Communications, Inc. and ReCellular Inc, Petitions for Forbearance*, WC Docket No. 09-197, Released September 23, 2011, Par. 21

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 Commission Investigation of Universal Service Reform*, Cause No. 40785, 1997 Ind. PUC LEXIS 354 (IURC November 15, 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.

In previous ETC designations of prepaid wireless Lifeline providers, the Commission (and the FCC) imposed a condition that the ETC deal directly with the customer as an additional safeguard to prevent abuse of the Lifeline program. Mr. Schmick testified that TerraCom employees will be the gate keepers of the process and review every application before reimbursement. Mr. Schmick stated that, "If contractors are used and there are ever any issues with any contractor, TerraCom will deal with such issues in a timely manner and terminate the relationship where warranted."¹³ Unlike previous carriers, details on the type and expertise of the contractor were not provided. In the absence of a clear plan which details the type(s) of contractors and how they will be trained and used to assure compliance with the Lifeline program, TerraCom must deal directly with the customer or provide detailed information regarding its contractors in its compliance plan.

Further, in the course of the Commission's review of compliance filings, we may find that it is appropriate to initiate a review of TerraCom's compliance with federal and state ETC obligations since TerraCom has no previous history of providing wireless services in Indiana.

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

¹³ TerraCom, Inc.'s Submission of Direct Testimony, filed May 13, 2011, pg. 11

Part 4 in Commission's Rules Concerning Disruptions to Communications Services, ET 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. To the extent that Petitioner relies on the facilities of a carrier that is designated as an ETC in Indiana and is also subject to this reporting requirement, Petitioner may join in the report filed by the underlying carrier 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.

TerraCom's compliance filings should be filed under this Cause, due on August 15th of each year beginning in 2012, unless otherwise directed by the Commission.

8. Conditions on TerraCom's Designation as an Eligible Telecommunications Carrier. In accordance with the Commission's findings above, TerraCom shall be subject to the following conditions:

- (a) TerraCom 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, TerraCom 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. 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 TerraCom will no longer report the customer on FCC Form 497.
- (b) TerraCom shall offer Lifeline eligible customers a minimum of 250 free minutes per month and, for additional minutes, charge per minute rates as provided in Mr. Schmick's testimony. Prior to providing Lifeline service in Indiana, TerraCom shall file a tariff of their proposed offering and notify the Commission in the form of a new tariff if any terms, conditions or allocation of free minutes change.
- (c) TerraCom shall provide its Lifeline customers with 911 and enhanced 911 access regardless of activation status and availability of prepaid minutes as of the date it provides Lifeline services in Indiana.
- (d) TerraCom shall provide its Lifeline customers with E911-compliant handsets and replace, at no additional charge, noncompliant handsets of existing customers who obtain Lifeline supported services as of the date it provides Lifeline services in Indiana.
- (e) TerraCom shall obtain a certification from each PSAP where it seeks to provide Lifeline service confirming that TerraCom provides its customers with 911 and E911 access or self-certifying that it does so if certain conditions are met, consistent with our findings in section 5(b)(v).
- (f) TerraCom shall establish safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. 54.401(a)(1) and 54.405 and abide by the FCC's 2011 Duplicative Program Payments Order, which requires ETCs to explain to consumers in plain, easily comprehensible language that they are not permitted to receive more than one Lifeline subsidy.¹⁴
- (g) TerraCom shall provide the Commission with a copy of its annual Lifeline Verification survey results that it files with the USAC by August 31 of each year.

¹⁴ *Lifeline and Link Up Reform and Modernization, Federal-State Joint Board on Universal Service, Lifeline and Link Up*, Report and Order, CC Docket No. 96-45, WC Docket Nos. 11-42, 03-109, 26 FCC Red 9022 at para. 9 (2011).

- (h) On a quarterly basis TerraCom shall provide the number of Indiana Lifeline customers that it enrolled during the previous quarter, with the data listed separately for each month. In these quarterly reports, TerraCom shall also report the number of deactivated Lifeline customers for each month in the previous quarter and the reasons for deactivation (e.g., no usage for 90 consecutive days, unsuccessful annual verification, or voluntary exit). Quarterly reports shall be filed with the Commission no later than 30 days after the end of each quarter. TerraCom will continue to make such quarterly filings until otherwise instructed by the Commission.
- (i) To safeguard against misuse of the Lifeline service plan, TerraCom 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.
- (j) TerraCom 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.
- (k) In the event the ILAP becomes law, TerraCom shall seek IURC approval of its new Lifeline offering subject to the additional Indiana discount.
- (l) TerraCom shall contribute to the InTRAC Fund on a monthly basis in an amount equal to the Commission approved InTrac monthly surcharge (currently \$0.03) multiplied by the number of active TerraCom accounts during each month, consistent with Cause No. 39880 and Indiana Code § 8-1-2.8.
- (m) TerraCom shall pay applicable fees, such as the public utility fee, pursuant to Indiana Code § 8-1-6, the InTRAC fee pursuant to Indiana Code § 8-1-2.8, the IUSF fee pursuant to the Commission's Final Order in Cause 42144, the wireless emergency enhanced 911 fee pursuant to Indiana Code § 36-8-16.5-30.5 and any other applicable fees.
- (n) TerraCom shall submit a compliance plan indicating how it will implement the above conditions prior to offering Lifeline service in Indiana. The Commission will have 30 days to approve the compliance plan or request additional modifications if necessary.

We therefore find, based on the evidence presented, that TerraCom has met all of the ETC eligibility requirements and that the public interest supports granting ETC status to

TerraCom for the purpose of participation in the Lifeline program. We find that making this prepaid service available to eligible customers will increase customer choice and will not adversely affect the USF. TerraCom has demonstrated that it has the ability 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, TerraCom's compliance with this Order and its eligibility for ETC designation. We further find that TerraCom 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. TerraCom, Inc.'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.

2. TerraCom, Inc.'s request for Link Up reimbursement shall be and hereby is denied.

3. TerraCom, Inc.'s request for authority to apply for or receive universal service funds from the Lifeline program pursuant to 47 U.S.C. § 254 shall be and hereby is granted, subject to Petitioner's compliance with the terms, conditions and reporting requirements of this Order and other applicable laws.

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

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT ABSENT:

APPROVED: JAN 25 2012

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


Brenda A. Howe
Secretary to the Commission