ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE DESIGNATION OF ELIGIBLE TELECOMMUNICATIONS CARRIERS BY THE INDIANA UTILITY REGULATORY COMMISSION PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 AND RELATED FCC ORDERS	))))))	**CAUSE NO. 41052 ETC 64** **APPROVED:** FEB 20 2013

ORDER OF THE COMMISSION

Presiding Officers:
James D. Atterholt, Chairman
David E. Veleta, Administrative Law Judge

On June 1, 2012, True Wireless, LLC ("Petitioner" or "True Wireless") filed its Verified Petition for Designation as an Eligible Telecommunications Carrier ("ETC") in the State of Indiana for the Limited Purpose of Offering Wireless Lifeline Service to Qualified Households with the Indiana Utility Regulatory Commission ("Commission"). In its Petition, True Wireless sought designation as an ETC pursuant to Section 214(e)(2) of the Federal Communications Act of 1934, as amended ("Act") solely to provide wireless service supported by the Federal Universal Service Fund's ("USF") Lifeline program. True Wireless did not seek authority to provide services supported by the USF's high-cost program.

On July 25, 2012, True Wireless pre-filed its direct testimony and exhibits. On August 30, 2012, the Indiana Office of the Utility Consumer Counselor ("OUCC") filed a Notice of Intent Not to File Testimony in this proceeding. On September 12, 2012, the Commission issued a docket entry with questions for True Wireless to which True Wireless submitted responses on September 17, 2012, and revised responses on September 25, 2012. On September 25, 2012, pursuant to a preliminary determination of confidentiality, True Wireless provided additional confidential responses.

On September 20, 2012, pursuant to notice duly published according to law, an evidentiary hearing was convened at 10:00 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, True Wireless and the OUCC appeared and participated. No members of the general public were present or sought to testify. The testimony and exhibits of Petitioner were admitted into evidence without objection.

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 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's Orders in Cause Nos. 40785, 41052, and 42067. The Commission also has jurisdiction pursuant to Indiana Code § 8-1-2.6-13(d)(5)(B). The Commission therefore has jurisdiction over Petitioner and the subject matter of this Cause.

2. **Petitioner's Characteristics.** True Wireless is a communications service provider that offers resold commercial mobile radio service ("CMRS") as acknowledged by the Commission in its CTA order issued in Cause No. 44208 on July 31, 2012. True Wireless is a provider of wireless voice, messaging, and data services, and is a common carrier as defined by 47 C.F.R. § 20.9 and a telecommunications carrier as defined by 47 U.S.C. § 153.

3. **Requirements for ETC Designation.** The Commission's November 5, 1997 Order in Cause No. 40785 ("40785 Order") 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 universal services or functionalities set out in 47 C.F.R. § 54.101(a). We note that the FCC modified the list of supported services that must be offered by ETC designees in the *USF/ICC Transformation Order.*[1] We also note that on February 6, 2012, the FCC released its *Lifeline Reform Order,*[2] which is discussed in more detail below. In addition to offering the delineated universal services, to be eligible for designation as an ETC, applicants are required by 47 C.F.R. § 54.405 to offer qualifying low-income customers Lifeline 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 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 supported services and the Lifeline programs using media of general distribution throughout the service areas for which the designation is requested. Pursuant to the 40785 Order, carriers seeking ETC designation in Indiana are also required to file proposed tariffs and boundary maps depicting the area for which ETC designation is sought.

On March 17, 2005, the FCC released 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 FCC Rcd. 6371, 6389-6390 (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, the Commission issued the first "Lifeline only" ETC designation to Virgin Mobile in Cause No. 41052 ETC 55 ("Virgin Mobile ETC Order"). Subsequently, we granted Lifeline only ETC designations to TracFone Wireless, Inc. in Cause No. 41052 ETC 54; i-Wireless, LLC in Cause No. 41052 ETC 56; TerraCom, Inc. in Cause No 41052 ETC 60; Telrite Corporation in Cause No. 41052 ETC 58; T-Mobile Central LLC and Powertel/Memphis, Inc. in Cause No. 41052 ETC 61; Budget Mobile in Cause No. 41052 ETC 63; American Broadband in Cause No. 41052 ETC 62; Cricket Communications in Cause No. 41052 ETC 57; and Nexus Communications, Inc. in Cause No. 41052 ETC 59. In each of these Orders, we imposed certain requirements and reporting obligations as a condition of the ETC designation.

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[1] *Connect America Fund,* 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*").
[2] *Lifeline and Link Up Reform and Modernization,* 27 FCC Rcd 6656 (2012) ("*Lifeline Reform Order*").

Through the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order,*[3] the FCC revised the ETC designation eligibility requirements by: (1) eliminating the requirement to offer dual tone multi-frequency signaling, single party service, access to operator service, access to interexchange service, and directory assistance from the supported services found in 47 C.F.R. § 54.101(a) to be included in universal service offerings; (2) requiring carriers to certify compliance with the service requirements applicable to the support received, consistent with 47 C.F.R. § 54.202(a)(1)(i); (3) eliminating the additional requirement of offering local usage and providing equal access found in 47 C.F.R. § 54.202; and (4) eliminating the requirement that Lifeline only applicants submit a 5-year service improvement plan pursuant to 47 C.F.R. § 54.202.

The FCC's *Lifeline Reform Order*[4] is designed to:

> ...substantially strengthen protections against waste, fraud, and abuse; improve program administration and accountability; improve enrollment and consumer disclosures; initiate modernization of the program for broadband; and constrain the growth of the program in order to reduce the burden on all who contribute to the Universal Service Fund.

The *Lifeline Reform Order* changed the requirements pertaining to state ETC designations found in 47 C.F.R. § 54.201(h). In the Order, the FCC concluded that "in order to ensure Lifeline-only ETCs, whether designated by the [FCC] or the states, are financially and technically capable of providing Lifeline services, we now include an explicit requirement in section 54.202 that a common carrier seeking to be designated as a Lifeline-only ETC demonstrate its technical and financial capacity to provide the supported service."[5] Relevant considerations for such a showing include whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.[6]

The *Lifeline Reform Order* modified and added new requirements for ETC designation that apply to ETC applications filed with state commissions that specifically adopt the additional requirements. The requirement to demonstrate financial and technical capability was added in 47 C.F.R. § 54.202(a)(4). The requirement to offer a Lifeline plan comparable to the incumbent local exchange carrier ("ILEC") in the service areas for which it seeks designation was replaced with 47 C.F.R. § 54.202(a)(5), which requires ETC applicants to explain the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. Additionally, once designated by this Commission as a Lifeline ETC, the designee's Lifeline offerings must reflect a uniform $9.25 per month federal reimbursement of the Lifeline discount; include specific disclosures in advertisimg and outreach; include required processes for determining initial and ongoing eligibility; and comply with the reporting and compliance obligations set forth herein. In keeping with the Commission's past practice of adoptimg the FCC's ETC guidelines, we adopt the guidelines and requirements set forth in the *Lifeline Reform Order,* as well as the

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[3] *Connect America Fund,* 27 FCC Rcd 605(2012) ("*USF/ICC Clarification Order*").
[4] *Lifeline Reform Order* at 6659.
[5] *Id.* at 6819.
[6] *Id.*

requirements of the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*, in addressing the Petitioner's requested relief.

4. **Evidence Presented.** Kevin Brian Cox, the Chief Executive Officer of True Wireless testified in support of the Petition. Mr. Cox set forth the FCC's requirements for designation as a Lifeline-only ETC, including the changes made as a result of the *Lifeline Reform Order* and the *USF/ICC Transformation Order*. Mr. Cox testified that True Wireless meets the requirements to be designated as an ETC. He testified that True Wireless is a common carrier that offers the services that are supported by the Lifeline Program of the Federal Universal Service Fund.[7] These services are embodied in the recently-revised FCC rule 47 C.F.R. § 54.101(a), which states that the supported services are "voice telephony services. . . [which must include] voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services. . .."

Mr. Cox testified that True Wireless's service will meet all the technical elements of the supported service. Specifically, Mr. Cox testified that True Wireless will provide voice grade access to the public switched network, that it will provide local usage at no additional charge to end users, access to emergency services to the extent available by the local government or public safety organization, and toll limitation service. Moreover, Mr. Cox testified that True Wireless would comply with all new requirements imposed in the FCC's *Lifeline Reform Order*, which include providing the supported services, as defined in the revised rule 47 C.F.R. § 54.101(a), to qualified Lifeline subscribers. Mr. Cox also testified that True Wireless will advertise the availability of and the charges for its universal service qualifying offers in accordance with 47 C.F.R. § 54.201(d)(2).

In addition, Mr. Cox discussed how True Wireless meets the additional requirements adopted by the FCC in its 2005 ETC Order. Specifically, he testified that True Wireless will provide service throughout its proposed designated service area to all customers making a reasonable request for service (previously embodied in 47 C.F.R. §§ 54.202(a)(1)(A) and 54.202(a)(1)(B)), and after the FCC's *Lifeline Reform Order*, embodied in revised 47 C.F.R. § 54.101(b). Further, Mr. Cox testified that True Wireless meets the requirement to demonstrate the capability to remain functional in emergency situations (revised 47 CFR § 54.202(a)(2)). In addition, Mr. Cox stated that True Wireless will satisfy applicable consumer protection and service quality standards (revised 47 CFR § 54.202(a)(3)). Furthermore, Mr. Cox opined that True Wireless will offer a local usage plan comparable to that offered by the incumbent local exchange carrier ("ILEC") (which exceeds the requirements in revised 47 CFR § 54.202(a)(4)); and True Wireless will comply with all requirements in the Lifeline Reform Order as they become effective.

Mr. Cox explained how designating True Wireless as an ETC would benefit the public interest, highlighting the benefits of increased competitive choice, the unique advantages of True Wireless's service offerings, True Wireless's wireless Lifeline plan, and the impact on the Universal Service Fund. Mr. Cox described True Wireless's 60-day non-usage policy and True Wireless's commitment to follow certification and verification procedures to make sure that its customers are eligible to receive Lifeline benefits. Mr. Cox also explained that, consistent with the requirements

[7] 47 CFR § 54.101.

of the FCC and the Commission's ETC order, True Wireless will comply with applicable annual reporting requirements. In addition to the federal reporting requirements, Mr. Cox testified that True Wireless would voluntarily commit to comply with the quarterly and annual reporting requirements imposed by the Commission on TracFone as a condition for approval as an ETC in Indiana. Mr. Cox explained how True Wireless would comply with the changes implemented by the FCC's *Lifeline Reform Order* by complying with new advertisement and disclosure policies and practices and by complying with new policies pertaining to subscriber eligibility, initial certifications, and annual verifications.

Mr. Cox testified that True Wireless will offer two service packages, a 250 minute plan, and a 90 minute plan that includes text messages valued at one talk minute per message sent or received. Mr. Cox testified that, consistent with 47 CFR § 54.202(a)(4), as amended by the *Lifeline Reform Order*, True Wireless has the financial and technical capabilities to provide Lifeline service in Indiana. Mr. Cox also explained that True Wireless is willing to comply with the Commission's requirements as listed on pages 22 and 23 of its January 25, 2012 Order in Cause No. 41052-ETC-60, including implementing a non-usage plan, offering a 250 minute Lifeline service plan, and submitting a compliance plan.

5. Docket Entry Response. The Presiding Officers issued a Docket Entry in this proceeding seeking among other things to understand the relationship of True Wireless and Associated Telecommunications Management Services ("ATMS"). Specifically, the Presiding Officers inquired as to the relationship of Mr. Cox with ATMS and Mr. Thomas Biddix. True Wireless's Docket Entry response stated that True Wireless was previously owned by a company that was owned by Mr. Biddix, who also owns ATMS. True Wireless explained further that Mr. Cox has since severed all affiliations and ties with Mr. Biddix. Furthermore, the Presiding Officers requested an update on the status of the May 25, 2012 compliance plan which True Wireless submitted to the FCC. True Wireless's Docket Entry response stated that it expects the FCC to approve its compliance plan shortly.

6. Commission Discussion and Findings. Universal service funds are provided in four areas: (1) funds to support service to high cost areas; (2) provision of discounted telecommunications and internet access to eligible schools and libraries (also known as the "E-Rate" program); (3) funds to assist low-income customers by provision of a monthly discount on telecommunications costs; and (4) provision of discounted service to rural health care providers. *Comprehensive Review of Universal Service Fund Management, Administration and Oversight*, 22 FCC Rcd 16372, 16374 (2007). True Wireless seeks ETC designation in Indiana for the limited purpose of offering wireless Lifeline service to low-income customers. Accordingly, True Wireless's application does not implicate the other three USF programs.

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(11) 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 True 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. In order to be designated as an ETC in Indiana, True Wireless will need to provide all of the technical functionalities required in the *Lifeline Reform Order* and pursuant to 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). We find that True Wireless meets this requirement. No evidence was presented that True Wireless'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 True Wireless 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, which exceeds the requirements in revised 47 C.F.R. § 54.202(a)(4). In analyzing whether an ETC applicant's plan is comparable to the underlying ILEC's, the FCC and this Commission review 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, True Wireless will offer users the ability to send and receive local phone calls wherever it offers service. Mr. Cox noted that True Wireless intends to offer Lifelme customers access to a variety of other features at no cost, including voice mail, caller I.D., call waitmg services, and call forwarding. Based on the evidence, we find that True Wireless's offerings will be comparable to the underlying ILEC plans, and therefore find that True Wireless satisfies this requirement.

iii. *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. Mr. Cox testified that all of the phones that True Wireless distributes are capable of delivering automatic numbering information ("ANI") and automatic location information ("ALI"), and otherwise satisfy applicable state and federal E-911 requirements. Mr. Cox testified that True Wireless would comply with the requirement to provide access to emergency services pursuant to 47 C.F.R. 54.101.

iv. *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. True Wireless indicates that it will provide toll blocking to qualified Lifeline customers, at no charge, as part of its Lifeline offerings. Accordingly, we find True Wireless has satisfied this requirement.

C. Lifeline Service Offering Requirements. 47 C.F.R. § 54.202(a)(5) requires common carriers seeking designation as an ETC to submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. Mr. Cox provided evidence that True Wireless will offer two Lifeline plans, a 250 minute non-text message plan and a 90 minute plan with SMS text messaging available at a rate of one text per minute of airtime. Mr. Cox testified that all plans will mclude caller ID, call

waiting and basic voice messaging service. Mr. Cox opined that usage cards that supply additional minutes may be purchased in denominations of $10.00, $20.00, and $30.00. The evidence shows that True Wireless agrees to comply with all applicable Lifeline requirements upon designation as an ETC.

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. § 54.202(a)(2). True Wireless has certified that it has the ability to remain functional in emergency situations, which includes access to reasonable amounts of back-up power, rerouting of traffic around damaged facilities, and the capability to manage traffic spikes resulting from emergency situations. As such, the Commission is satisfied that True Wireless is able to meet this requirement.

E. Advertising Requirements. True Wireless has demonstrated that it will advertise the availability of the supported services, and the corresponding rates and charges, in a manner designed to inform the general public within the designated service area. This advertising will occur through a combination of media of general distribution, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet. True Wireless has all demonstrated that it will comply with the requirements of the *Lifeline Reform Order*, including the requirements that advertisements display the disclosures described in that Order. Based on the foregoing, we find that the evidence in the record indicates that True Wireless will comply with all applicable advertising requirements.

F. Petitioner's Designated ETC Service Area. The FCC's rules define "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). True Wireless is authorized to provide telecommunications service throughout the State of Indiana. However, True Wireless has provided conflicting information regarding its proposed service area. Although Mr. Cox stated that True Wireless only seeks designation for non-rural areas of the state, Petitioner's Exhibit A lists Indiana rate centers that include the rural areas of Ligoneir, Monon, Mulberry and several other rate centers served by rural telephone companies. These rural telephone companies are defined under federal rules as rural service territories pursuant to 47 U.S.C. § 153 (37). Thus, it is unclear whether True Wireless intends to service rural areas. Based upon the foregoing True Wireless has not adequately defined its proposed designated service area for Lifeline ETC purposes.

G. Facilities-Ownership. True Wireless plans to provide prepaid service through the provision of resold wireless services. The record reflects that True Wireless requested blanket forbearance from the FCC pursuant to the *Lifeline Reform Order* from the "own facilities" requirement of Section 214(e)(1)(A) of the Act on May 25, 2012. The FCC enumerated that blanket forbearance shall be granted on two conditions: (1) the carrier must comply with certain 911 requirements...; and (2) the carrier must file, and the [FCC] must approve, a compliance plan providing specific information regarding the carrier's service offerings...[8] True Wireless has not submitted any evidence that its Compliance Plan has been approved. While the Commission has found that in some ETC petitions filed prior to the release of the *Lifeline Reform Order* that it is not in the public interest to delay the proceeding until the approval of a compliance plan, True Wireless

[8] Lifeline Reform and Modernization Order, ¶ 368

filed its petition well after the effective date of the *Lifeline Reform Order*. Accordingly, we find that True Wireless has not secured the required forbearance from the FCC from the facilities ownership requirement.

H. Public Interest Consideration. As noted above, the designation of True 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.* True Wireless testified that it will use funds from the federal Lifeline program to provide supported services to Lifeline customers. True Wireless has met its burden of proof for the Lifeline program. We find that True Wireless'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 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, True 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 unproductive growth of the fund and increased USF surcharges for all Indiana telecommunications customers. ETC designation of carriers that have not met the requisite criteria under state and federal rules would undermine key safeguards to protect the fund and have a negative impact on the fund.

iii. *Consumer Protection.* One of the requirements established by the 2005 FCC ETC Order was that, regardless of certification date, all ETCs must submit to the FCC, on an annual basis, certification that the ETC is complying with applicable service quality standards and consumer protection rules. Mr. Cox stated that True Wireless abides by the CTIA Consumer Code and commits to complying with the applicable consumer protection requirements.

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 type of analysis is not possible due to the fact that True Wireless has not clearly defined its proposed designated service area.

v. *Increased Customer Choice.* Currently in Indiana all ILECs are required to provide the Lifeline discount to eligible customers. In addition, several competitive ETCs have been designated in Indiana, many of which are prepaid wireless Lifeline-only ETCs that

provide services and Lifeline plans very similar to Petitioner's proposed offering. However, the Commission is unable to assess if Petitioner will provide the service in areas unserved by similar prepaid wireless providers due to the fact the proposed service area was not clearly defined. Therefore, we are unable to determine whether True Wireless's designation as an ETC will increase the level of customer choice.

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. True Wireless presented evidence that its Lifeline offering is free and includes a choice of 250 minutes, or 90 minutes with text messages, including a tariff submitted in response to the presiding officers' questions issued September 12, 2012. The evidence presented supports the affordability of these plans.

vii. ***Advantages and Disadvantages of the Offering.*** The record reflects, as mentioned above, that True Wireless's service offering is similar to several prepaid wireless Lifeline-only ETCs designated by the Commission. Accordingly, we find that True Wireless has satisfied this criterion of our public interest inquiry.

viii. ***Commitment to Provide Service upon Reasonable Request.*** True Wireless did not clearly define its proposed designated service area, thus True Wireless did not meet its burden of proof in this area.

ix. ***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 essential that the provider comply with its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoiding such obligations. We find that it would not be 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. True Wireless 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 ch. 8-1-6, the InTRAC fee pursuant to Indiana Code ch. 8-1-2.8, and the IUSF 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).

x. ***Determination of Financial and Technical Ability.*** In the *Lifeline Reform Order*, the FCC concluded that a common carrier seeking to be designated as a Lifeline-only ETC must demonstrate its technical and financial capacity to provide the supported service. The FCC provided that relevant considerations for such a showing include whether the applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state. The FCC added these criteria to compel a more rigorous review of companies prior to designating them as eligible to receive reimbursement from the federal universal service fund. In addition to the *Lifeline Reform Order*, the FCC adopted a new rule found in 47 C.F.R. 54.201(h) which states:

> A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E [Lifeline] of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part.

Although the FCC references as a possible criterion the length of time a Petitioner has been in business, it is certainly plausible that an adequately-funded, professionally-managed and sufficiently robust entrant which provides meaningful evidence to that effect should not be eliminated from consideration merely because of insufficient longevity. However, in this proceeding, True Wireless does not meet this minimum proffered by the FCC. Moreover, the extent of testimony in the record to demonstrate that the company has sufficient financial and technical ability is lacking. Further, True Wireless proposes to exist almost solely on universal service fund and ancillary revenues; and does not have a history of providing any telecommunications services in Indiana. Based on the evidence in the record, True Wireless has made an insufficient showing of financial and technical ability to provide lifeline services.

Based on the evidence in the record as measured against multiple criteria identified by the FCC as discussed in detail above, we find it is not in the public interest to grant True Wireless ETC status.

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

1. True Wireless's application for designation as an Eligible Telecommunications Carrier for the limited purpose of participation in the Universal Service Fund's Lifeline program, is hereby DENIED.

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

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

APPROVED: FEB 20 2013

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