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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF APPLICATION OF TAG) CAUSE NO. 41052 ETC 68
MOBILE, LLC FOR DESIGNATION AS A)
NON-RURAL WIRELESS ELIGIBLE) APPROVED:
TELECOMMUNICATIONS CARRIER)
MAY 28 2014

ORDER OF THE COMMISSION

Presiding Officers:
Carol A. Stephan, Commission Chair
Gregory R. Ellis, Administrative Law Judge

On April 29, 2013, TAG Mobile, LLC (“Petitioner” or “TAG”) filed its 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, TAG seeks designation as an ETC pursuant to § 214(e)(2)¹ of the Federal Communications Act of 1934, as amended (“Act”) solely to provide wireless services supported by the Federal Universal Service Fund’s (“USF”) Lifeline program. TAG does not seek authority to provide services supported by the USF’s high-cost program.

On August 13, 2013, TAG pre-filed its direct testimony and exhibits. After reviewing the Petition and the pre-filed testimony and exhibits submitted in this Cause, the Commission issued a docket entry on August 23, 2013 with questions for TAG. TAG submitted responses to the docket entry questions on October 18, 2013. The Commission issued additional docket entry questions to TAG on November 1, 2013 to which TAG submitted its responses the same day. TAG submitted supplemental responses to the docket entry questions on February 19, 2014.

On February 25, 2014, pursuant to notice duly published as required by law, an evidentiary hearing was convened at 9:30 a.m., in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the Indiana Office of the Utility Consumer Counselor (“OUCC”) were present and participated. The testimony and exhibits of Petitioner were admitted into the record without objection. No members of the general public appeared or sought to testify at the hearing.

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

¹ 47 U.S.C. § 214 (2012) (originally enacted as Act of June 19, 1934, ch. 652, Title VII, § 707, 48 Stat. 1105).

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 § 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 the Petitioner and the subject matter of this Cause.

2. Petitioner’s Characteristics. TAG is organized and exists under the laws of the state of Texas with its principal office located at 1330 Capital Parkway, Carrollton, TX 75006. TAG is a communications service provider that offers resold commercial mobile radio service (“CMRS”) as acknowledged by the Commission in its Certificate of Territorial Authority (“CTA”) Order issued in Cause No. 44397 on October 30, 2013. TAG has been authorized by the Indiana Secretary of State to conduct business in Indiana. TAG has been certified to provide 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*.² We also note that on February 6, 2012, the FCC released its *Lifeline Reform Order*,³ 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 have granted, and denied, Lifeline only ETC designations to other communications services providers. In each of the Orders where we granted Lifeline only ETC

² *Connect America Fund*, 26 FCC Rcd 17663 (2011) (“*USF/ICC Transformation Order*”).

³ *Lifeline and Link Up Reform and Modernization*, 27 FCC Rcd 6656 (2012) (“*Lifeline Reform Order*”).

designation, we have imposed certain requirements and reporting obligations as a condition of the ETC designation.

Through the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*,⁴ 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 five-year service improvement plan pursuant to 47 C.F.R. § 54.202.

The FCC's *Lifeline Reform Order*⁵ 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.”⁶ 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.⁷

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,

⁴ *Connect America Fund*, 27 FCC Rcd 605(2012) (“*USF/ICC Clarification Order*”).

⁵ *Lifeline Reform Order*, at 6659.

⁶ *Id.*, at 6819.

⁷ *Id.*

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 advertising 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 adopting the FCC's ETC guidelines, we adopt the guidelines and requirements set forth in the *Lifeline Reform Order*, as well as the requirements of the *USF/ICC Transformation Order* and the *USF/ICC Clarification Order*, in addressing the Petitioner's requested relief.

4. Petitioner's Evidence.

A. Direct Testimony. TAG pre-filed the direct testimony of Charles L. Schneider, Jr., its President and Chief Executive Officer ("CEO"), in support of the Petition.⁸ Mr. Schneider testified that TAG is a prepaid wireless and Lifeline supported wireless service provider. He indicated TAG Mobile currently offers Lifeline supported service in 16 states and its prepaid division is authorized to do business in all 50 states, Washington DC and Puerto Rico. He stated that TAG seeks designation as an ETC for the limited purpose of receiving low income support only.

Mr. Schneider testified that TAG meets the FCC's requirement of technical and financial capability to provide Lifeline service. He noted that TAG received approval of its FCC Compliance Plan on August 8, 2012. He stated TAG Mobile meets the requirement of 47 C.F.R. § 54.202(A)(5) indicating that TAG's terms and conditions include details on the number of minutes provided as part of the plan, details on any additional charges and associated rates for its service plans.

Mr. Schneider provided testimony regarding the process TAG will use to ensure only eligible consumers receive Lifeline service. He indicated that TAG ensures only eligible low-income consumers receive Lifeline supported service by accessing state databases where available or by requiring each customer to self-certify under penalty of perjury that he or she does not receive a Lifeline discount for any other phone. TAG also requires Lifeline customers to provide copies of applicable documentation demonstrating that they are eligible for Lifeline service based on their current participation in a qualifying low-income program or based upon their income meeting the state mandated requirement. Mr. Schneider stated TAG will also utilize any available state databases to verify a customer's continued eligibility to receive Lifeline service. If any customer's eligibility cannot be verified through their state's database or if the customer resides in a state that does not utilize a database, TAG will obtain a signed certification form from the customer that meets the requirements of 47 C.F.R. § 54.410(d). Mr. Schneider also testified that TAG will deactivate Lifeline subscribers for non-use, noting that if the line still shows no usage after day 59 the line will be deactivated within five days.

Mr. Schneider stated that the FCC and the Indiana Commission have established the requirements for designation of ETCs in Indiana. He testified that TAG satisfies all of the

⁸ At the evidentiary hearing, Mr. Schneider testified he became the President and CEO of TAG in November 2013 after Frank Del Col, left the employ of TAG. Mr. Schneider adopted the pre-filed direct testimony of Mr. Del Col as his own.

requirements for certification as an ETC. He indicated TAG is currently designated as a common carrier for purposes of obtaining ETC designation by virtue of being a registered CMRS provider. TAG will make available service offerings comparable to the incumbent ILEC offerings in the service areas for which it seeks ETC designation. TAG's initial Lifeline service offering will include a free plan providing 250 minutes of local and domestic toll usage. Mr. Schneider noted that all TAG wireless plans include the following customer features at no additional charge: caller ID, call waiting, call forwarding, three-way calling and voicemail. He stated that TAG will provide Lifeline service throughout its designated service area. Mr. Schneider testified that TAG will serve all consumers within its ETC service area to the extent that it is able. He indicated that TAG Mobile is able to remain functional in emergency situations due to the fact that TAG's services will be provided through resale. All services will be as reliable and provide all of the back-ups and contingency plans of its underlying wireless carriers. He stated that TAG's service offerings differ from other carrier's offerings in that it provides customers the benefit of value services at a much lower cost. Mr. Schneider further indicated TAG is positioned to offer a selection of prepaid programs for customers who no longer qualify for Lifeline service or wish to enhance their current Lifeline service.

Mr. Schneider also provided testimony regarding TAG's marketing of its proposed Lifeline service. He indicated that TAG will advertise the availability of its low-income offerings and charges for such offerings using media of general distribution to include radio, television, and newsprint ads. TAG will also use a network of storefront locations that will distribute and advertise TAG marketing materials. Mr. Schneider stated that TAG will comply with all applicable consumer protection requirements including compliance with the protection of Customer Proprietary Network Information ("CPNI") as required by Federal law and with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service as required by 47 C.F.R § 54.202(a)(3) if designated as a wireless ETC. He noted TAG has the ability to collect fees and surcharges required by Indiana law from its customers who purchase TAG minutes. TAG also has the ability to report such revenues when required by Indiana law. Schneider testified that if designated as an ETC, TAG is willing to comply with the same conditions the Commission has imposed on other Lifeline ETC designees.

B. Oral Testimony at Hearing. Mr. Schneider provided oral testimony at the evidentiary hearing in response to questions from the Presiding Officers. Mr. Schneider indicated that TAG will resell the wireless services of Sprint, T-Mobile, and Verizon. He stated that TAG has a contract with Sprint for wireless service, while the contracts with T-Mobile and Verizon are through intermediaries. He also noted that TAG is currently providing service in fifteen states with ETC applications pending in approximately eight other states.

Mr. Schneider also responded to questions from the Presiding Officers regarding its operations in Indiana. He testified that TAG will have zero employees in Indiana and it does not intend to have any employees in Indiana, but will use contractors and agents to enroll Lifeline participants. Mr. Schneider stated TAG will use special events, tents, the internet, television advertising, and radio advertising to market its Lifeline offerings. TAG will verify eligibility through an electronic application process. He also noted that TAG will utilize Universal Service Administrative Company and a third party, CGM, LLC, to safeguard against applicants receiving multiple Lifeline service providers.

5. Docket Entry Responses. The Presiding Officers issued a docket entry on August 23, 2013 in this proceeding seeking, among other things, to understand the relationship of TAG and the carriers with which TAG intends to resell their wireless services in Indiana. Specifically, the Presiding Officers inquired as to the terms of the agreements with Verizon and Sprint. TAG's docket entry response of October 18, 2013 failed to respond to this question. On November 1, 2013, the Presiding Officers issued a second docket entry seeking additional information including documentation of the agreements TAG indicated it has with Sprint and Verizon Wireless. TAG submitted its response to the second docket entry the same day it was issued. The response included a one page excerpt of an agreement between Coast to Coast Cellular, Inc. and DPI Mobile, LLC for CMRS and/or data service provided by Verizon. TAG also included a one page excerpt of an agreement between Sprint and DPI Mobile, LLC.

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). TAG seeks ETC designation in Indiana for the limited purpose of offering wireless Lifeline service to low-income customers. Accordingly, TAG'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). TAG filed an application for a CTA to offer resold CMRS with Commission on September 23, 2014 which was granted in the Order issued on October 30, 2013 in Cause No. 44397. As a company authorized to provide wireless telecommunications services, we find that TAG is a "common carrier" for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1).

B. Required Service Offerings. In order to be designated as an ETC in Indiana, TAG 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 TAG meets this requirement. No evidence was presented that if TAG is granted ETC designation its 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 TAG 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*, at 6389. As the record demonstrates, TAG intends to offer users the ability to send and receive local phone calls wherever it offers service. Mr. Schneider testified that TAG’s initial Lifeline service offering will include a free plan providing 250 minutes of local and domestic toll usage and all plans include the following features at no cost: caller ID, call waiting services, call forwarding, three-way calling, and voicemail. Based on the evidence, we find that TAG’s proposed offerings will be comparable to the underlying ILEC plans, and therefore find that TAG satisfies this requirement.

iii. Access to Emergency Services. As part of a universal service offering and as required by 47 C.F.R. § 54.101(a), eligible voice telephony services must provide access to the emergency services provided by local government or other public safety organizations, such as 911 and E-911, to the extent the local government in an eligible carrier’s service area has implemented 911 or E-911 systems. Although TAG’s Petition indicated all of the phones that TAG distributes are capable of delivering automatic numbering information and automatic location information, and otherwise satisfy applicable state and Federal E-911 requirements, TAG did not provide sufficient evidence to support this claim. In addition, TAG has not demonstrated it has an agreement in place with any wireless carrier to provide 911 to Indiana customers. TAG did not provide any documentation indicating an agreement with T-Mobile. TAG only provided one page excerpts from agreements between Coast to Coast Cellular and DPI Mobile for Verizon service; and Sprint and DPI Mobile. The ability to reach a public emergency service provider by dialing 911 is a required service in any universal service offering. Based on the foregoing, we find that TAG has not satisfied this requirement.

iv. Toll Limitation for Qualifying Low-Income Consumers. Voice telephony services eligible for Federal universal service support mechanisms must provide toll limitation services to qualifying low-income consumers only for service plans for which the ETC charges a fee for toll calls, either domestic or international, that is in addition to per month or per billing cycle price of the consumer’s Lifeline service.⁹ TAG will not specifically provide toll limitation services which allow low-income customers to avoid unexpected toll charges. However, since TAG intends to offer prepaid wireless service, customers cannot be disconnected for failure to pay toll charges nor are there additional charges for exceeding their minutes. Further, TAG does not differentiate local and long distance usage and all usage is paid in advance. Therefore, TAG’s proposed prepaid wireless Lifeline plans would effectively provide toll blocking to qualified Lifeline customers, at no charge, as part of its Lifeline offerings. Accordingly, the Commission is satisfied that TAG meets the toll limitation 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

⁹ *Lifeline and Link Up Reform and Modernization*, 26 FCC Rcd 9022, 9027-9028 (2011) ¶ 230

any, for toll calls, and rates for each such plan. TAG provided evidence that its initial Lifeline service offering will include 250 minutes of local and domestic toll usage and include the following features at no cost: caller ID, call waiting services, call forwarding, three-way calling, and voicemail. The testimony of Mr. Schneider demonstrates that TAG agrees to comply with all applicable Lifeline requirements upon designation as an ETC.

D. Functionality in Emergency Situations. 47 C.F.R. § 54.202(a)(2) requires an ETC to provide a “[d]emonstration of the carrier’s ability to remain functional in emergency situations.” Mr. Schneider indicated TAG is able to remain functional in emergency situations because its services will be provided through resale of underlying carriers services. TAG’s services will be as reliable and provide all of the back-ups and contingency plans of the underlying wireless carriers. Notwithstanding, Mr. Schneider’s testimony, the Commission is not satisfied that TAG will be able to meet this requirement if granted ETC designation. As discussed above, TAG has failed to demonstrate that it has agreements in place with Verizon, Sprint, or T-Mobile that will allow it to remain functional in emergency situations.

E. Advertising Requirements. TAG 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. TAG 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 the evidence in the record indicates that TAG will comply with 47 U.S.C. § 214(e)(1)(B) and all applicable advertising requirements if it is granted ETC designation.

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). TAG is authorized to provide telecommunications service throughout the State of Indiana. However, TAG has provided conflicting information regarding its proposed service area. TAG submitted Exhibit C to its Petition with a list of wirecenters that it proposes as its designated service area. TAG also submitted two different maps in response to two sets of docket entry questions from the Commission indicating its wireless coverage area. However, TAG did not demonstrate it has agreements in place with the facilities-based wireless providers that serve its proposed designated service area. Based upon the foregoing TAG has not adequately defined its proposed designated service area for Lifeline ETC purposes.

G. Facilities-Ownership. TAG is not a facilities-based CMRS provider and proposes to resell the services of other wireless carriers. Federal rules prohibit pure resellers from being designated as ETCs. However, the FCC can grant wireless resellers who seek ETC designation for the limited purpose of providing Lifeline services forbearance from the facilities requirement of 47 U.S.C. § 214(e)(1)(A) if the reseller files a compliance plan that is approved by the FCC and complies with certain 911 requirements. *See 2012 Lifeline Reform Order*, at 6813-6814. The evidence shows that TAG’s compliance plan was approved by the FCC’s

Wireline Competition Bureau on August 8, 2012. Accordingly, we find that TAG has secured the required forbearance from the FCC for the facilities ownership requirement.

We however note the Commission has, in prior Orders granting ETC designation to wireless resellers, required the reseller to obtain certification regarding 911 capabilities from each public safety answering point in its proposed service area. This requirement was consistent with Federal requirements. The FCC has since determined that resellers no longer need to obtain individual certifications, but that states may impose a self-certification requirement. *Lifeline Reform Order*, at 6815. In an effort to ensure the availability of information concerning the provision of, and access to, 911 and E-911 services, it is necessary to have a clear understanding of where a wireless reseller ETC is obligated to provide 911 services and which facilities-based wireless carrier(s) services an ETC is reselling. As discussed above, we find that TAG has failed to clearly identify its proposed designated service area or demonstrate that it has agreements in place with Verizon, Sprint, or T-Mobile to provide service.

H. Public Interest Consideration. As noted above and in accordance with 47 C.F.R. § 54.202(b), the designation of TAG as an ETC requires a public interest analysis. *See also 2005 FCC ETC Order*, at 6389-6390. 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*, at 6388.

i. Use of Lifeline Funding. The record indicates that TAG intends to use funds from the Federal Lifeline program to provide supported services to Lifeline customers. We also note that TAG will be subject to Federal recordkeeping and auditing requirements in 47 C.F.R. § 54.417 and 47 C.F.R. § 54.420 respectively if granted ETC designation. We find that TAG’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 service support disbursements. *See, e.g., Perry-Spencer Communications, Inc.*, Cause No. 41052 ETC 53, 2008 Ind. PUC LEXIS 510, at *33 (IURC July 24, 2008). Notably, however, TAG 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 the low-income universal service fund support is only paid to the carrier actually serving a given 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 further note that 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. 47 C.F.R. § 54.202(a)(3). Mr. Schneider stated that TAG will comply with all applicable consumer protection requirements including compliance with the protection of CPNI and with the CTIA Consumer Code for Wireless Service if designated as a wireless ETC and we have no evidence to the contrary.

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 C.F.R. § 54.202(c). That type of analysis is not possible due to the fact that TAG 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 TAG’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, at 6388. TAG presented evidence that its initial Lifeline offering is free eligible retail customers and includes 250 minutes including such additional features as caller ID, call waiting, call forwarding, three-way calling and voicemail. This package is similar to other prepaid wireless ETC offerings previously approved by this Commission. The evidence presented supports the affordability of this plan.

vii. Advantages and Disadvantages of the Offering. The record reflects that TAG’s proposed service offering is similar to several prepaid wireless Lifeline-only ETCs designated by the Commission. However, we note that TAG has failed to clearly identify its proposed designated service area or demonstrate that it has agreements in place with the wireless providers from which it intends resell services. Therefore, we are unable to determine whether TAG’s designation as an ETC will satisfy this criterion of our public interest inquiry.

viii. Commitment to Provide Service upon Reasonable Request. As discussed above, we find that TAG has failed to clearly identify its proposed designated service area or demonstrate that it has agreements in place with Verizon, Sprint, or T-Mobile to provide service. TAG has not demonstrated that it satisfies the requirements of 47 C.F.R. § 54.405(a).

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. TAG provided testimony which indicated 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 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).

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.

We have previously noted that it is 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. The record demonstrates that TAG is a new entrant, but it has not met the minimum requirements proffered by the FCC and this Commission to become an ETC. Contrary to TAG's assertion that it meets the FCC's requirement of technical and financial capability to provide Lifeline service because its compliance plan was approved by the FCC, the extent of evidence in the record that would demonstrate the company has sufficient financial and technical ability is lacking. Further, it is unclear whether TAG proposes to exist solely on income from the USF or other sources of revenue; and TAG does not have a history of providing any telecommunications services in Indiana. Accordingly, we find TAG has made an insufficient showing of financial and technical ability to provide Lifeline services.

We therefore find, based on the evidence presented as measured against multiple criteria identified by the FCC and this Commission as discussed in detail above, it is not in the public interest to grant TAG ETC status.

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

1. TAG'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.

STEPHAN, MAYS, WEBER, AND ZIEGNER CONCUR:

APPROVED: MAY 28 2014

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



Brenda A. Howe
Secretary to the Commission