ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE APPLICATION OF AIR VOICE WIRELESS, LLC FOR LIMITED DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER BY THE INDIANA UTILITY REGULATORY COMMISSION PURSUANT TO THE FEDERAL TELECOMMUNICATIONS ACT OF 1996 AND RELATED FCC ORDERS	)	**CAUSE NO. 41052 ETC 72**
	)	**APPROVED:** JAN 21 2015

ORDER OF THE COMMISSION

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

On December 20, 2013, Air Voice Wireless, LLC ("Applicant" or "Air Voice") filed its Application 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 Application, Air Voice 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. Air Voice does not seek authority to provide services supported by the USF's high-cost program.

Air Voice pre-filed direct testimony and exhibits constituting its case-in-chief on February 18, 2014. On the same date, Air Voice submitted its motion seeking a determination that designated confidential information ("Confidential Information") involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. The Confidential Information was granted protection on a preliminary basis through a docket entry on February 19, 2014.

The Commission held an Evidentiary Hearing in this Cause at 9:30 a.m. on October 2, 2014, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Applicant and the Indiana Office of Utility Consumer Counselor ("OUCC") were present and participated. Applicant's exhibits were admitted into the record without objection. No evidence was offered by the OUCC. No members of the general public appeared or sought to testify at the hearing.

Based upon the applicable law and the evidence presented, the Commission finds:

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[1] 47 U.S.C. § 214 (2012) (originally enacted as Act of June 19, 1934, ch. 652, Title VII, § 707, 48 Stat. 1105).

1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. 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 § 254 of the Act and in accordance with the Commission's Orders in Cause Nos. 40785, 41052, and 42067. Pursuant to Indiana Code § 8-1-2.6-13(c)(5)(B) the Commission has jurisdiction over the designation of ETCs under 47 § U.S.C. 214. Therefore, the Commission has jurisdiction over the Applicant and the subject matter of this Cause.

2. **Applicant's Characteristics.** Air Voice is organized and exists under the laws of the state of Michigan with its principal office located at 2425 Franklin Rd., Bloomfield Hills, MI 48302. Air Voice 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. 44512 on August 20, 2014.[2] Air Voice has been authorized by the Indiana Secretary of State to conduct business in Indiana. Air Voice 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*.[3] We also note that on February 6, 2012, the FCC released its *Lifeline Reform Order,*[4] 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 Application 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 Application is approved, 47 C.F.R. § 54.201(d)(2) will require Applicant 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*

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[2] Air Voice filed two previous applications for a CTA in Cause Nos. 44427 and 44477. Cause No. 44427 was dismissed without prejudice on April 2, 2014 because Air Voice failed to respond to questions raised by the Commission regarding the CTA application. Cause No. 44477 was dismissed without prejudice on June 30, 2014 because Air Voice failed to cure deficiencies in its CTA application that were noted by the Commission in a May 2, 2014 Docket Entry.

[3] *Connect America Fund,* 26 FCC Rcd 17663 (2011) ("*USF/ICC Transformation Order*").

[4] *Lifeline and Link Up Reform and Modernization,* 27 FCC Rcd 6656 (2012) ("*Lifeline Reform Order*").

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 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,*[5] 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*[6] 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."[7] 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.[8]

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

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

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 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 Applicant's requested relief.

4. Applicant's Evidence.

A. Pre-Filed Direct Testimony. Air Voice pre-filed the direct testimony of Jim Bahri, Owner and Chief Executive Officer ("CEO"), in support of its Application. Mr. Bahri testified that Air Voice is a prepaid wireless provider. He stated that Air Voice is a direct mobile virtual network operator ("MVNO") for AT&T Mobility ("AT&T"). He indicated that Air Voice was founded in 1999 and provides non-Lifeline wireless service to customers in 22 states including Indiana. Air Voice's ETC applications to provide Lifeline service as an ETC have previously been approved in the states of Michigan, Kentucky and Wisconsin. He noted that Air Voice seeks designation as an ETC for the limited purpose of receiving low income support only.

Mr. Bahri indicated that Air Voice plans to offer a basic service package to qualified Lifeline customers consisting of a free handset and 250 free monthly minutes. The free monthly minutes will automatically be added on to the customers' handset on their monthly anniversary date. He noted that customers can contact Air Voice customer service with any questions, concerns, or complaints. He stated that Air Voice intends to remit enhanced 911 ("E-911") fees in Indiana if granted ETC designation. Mr. Bahri also testified that in the event that there is an emergency, AT&T will be responsible for handling any emergency situation. He stated this is part of the MVNO agreement.

Mr. Bahri also provided testimony regarding Air Voice's marketing of its proposed Lifeline service. He indicated that 90% of its customers will be enrolled using the face-to-face enrollment process by a trained representative, while the remaining 10% will be signed up through other methods such as Feel Safe Wireless' website and mail in applications. He explained that all of Air Voice's field representatives will use an iPad or tablet to enroll eligible customers via software provided by CGM, LLC ("CGM"). He stated that the CGM application that Air Voice's field representatives utilize will collect customer information and allow the agent to activate the telephone on the spot. If the customer is approved, they will have a working telephone immediately after the application process is complete/approved. He also testified that Air Voice intends to market its Lifeline service through radio advertisements, television commercials, and direct mailing.

Mr. Bahri stated that Air Voice satisfies the requirements for ETC designation in Indiana and Air Voice will comply with all rules and regulations that the state of Indiana requires. He testified that Air Voice will provide good quality, low cost phone service over the network of AT&T. The functionalities will be the same as what AT&T Mobility provides to its customers. He explained that Air Voice 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 47 U.S.C. § 214(e). He indicated that Air Voice is currently offering Lifeline service in other states and is able to begin providing Lifeline Service in Indiana as soon as it is authorized to do so.

Mr. Bahri also testified that any impact on the USF is expected to be minimal if Air Voice is granted ETC status. He noted Air Voice has an approved compliance plan with the FCC and has agreed in that filing to comply with the Lifeline certification and verification requirements. He stated Air Voice will verify a customer's continued eligibility for the Lifeline discount on an annual basis. He noted that any customer that does not use their Lifeline service for 60 days will be entered into a 30 day grace period. During the grace period the customer will be notified that they need to use their service. If the customer's account does not show any activity during the 30 day grace period, Air Voice will deactivate services for that customer and will not seek reimbursement from the USF. He stated Air Voice is committed to complying with applicable consumer protection and service quality standards.

Mr. Bahri further stated that Air Voice has the financial and technical capabilities to provide lifeline service in Indiana. He noted that Air Voice has been offering prepaid wireless service since 1999 and provided a confidential copy of Air Voice's latest financial statements.

Mr. Bahri indicated that Air Voice's Lifeline service offers a number of benefits to qualifying customers, including increasing the opportunity to find jobs, access to health care services, connecting with family and their children's schools, as well as the ability to call for help in the event of an emergency. He concluded his testimony by stating that customers have access to InTrac services for speech and hearing impaired individuals pursuant to Indiana Code ch. 8-1-2.8. This will be provided through the MVNO agreement with AT&T.

B. <u>Oral Testimony at the Evidentiary Hearing</u>. Mr. Bahri provided oral testimony at the evidentiary hearing updating his pre-filed direct testimony. He indicated that since the filing of the Application, Air Voice has also obtained designation as an ETC in Ohio, Pennsylvania, and California.

In response to questions from the Presiding Officers regarding Air Voice's three attempts to obtain a CTA from the Commission, Mr. Bahri indicated that Air Voice had contracted with a compliance company to apply for the CTA. Air Voice was not aware of the lack of responses to the Commissions questions about the CTA applications. He indicated that the agent did not follow-up and is no longer used by Air Voice.

In response to questions from the Presiding Officers, Mr. Bahri also testified that Feel Safe Wireless is the brand name of Air Voice's Lifeline product. He indicated that Air Voice will be using the Feel Safe brand name to market the Lifeline service if granted ETC designation.

Mr. Bahri also responded to questions from the Presiding Officers regarding its operations in Indiana. He testified that Air Voice currently has approximately 5,000 non-Lifeline customers in Indiana. He also clarified that Air Voice contributes to the USF and does not currently contribute to the Indiana fund.

Mr. Bahri indicated that Air Voice currently has zero employees and no retail facilities in Indiana. Air Voice's business model is that in which it plans to find distributors and hire agents to enroll Lifeline participants. Mr. Bahri stated Air Voice will use retail stores and outdoor events to market its Lifeline offerings. He also noted that Air Voice will utilize a vendor, CGM, to verify information contained in the application and safeguard against applicants receiving multiple Lifeline service providers.

5. 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). Air Voice seeks ETC designation in Indiana for the limited purpose of offering wireless Lifeline service to low-income customers. Accordingly, Air Voice'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). Air Voice filed an application for a CTA to offer resold CMRS which was granted by the Commission in the Order issued on August 20, 2014 in Cause No. 44512. Although Air Voice obtained its CTA well after its Application for ETC was filed, it is a company authorized to provide wireless telecommunications services. Therefore, we find that Air Voice 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, Air Voice 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 Air Voice meets this requirement. No evidence was presented that if Air Voice 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 Air Voice 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, Air Voice intends to offer users the ability to send and receive local phone calls wherever it offers service. Mr. Bahri testified that Air Voice's initial Lifeline service offering will include a free plan providing 250 minutes of local and domestic toll usage. Exhibit F of the Application indicates that all plans include the following features at no cost: nationwide calling, long distance calling, caller ID, call waiting services, call forwarding, three-way calling, and text messaging. However, we note that Air Voice's Amended Compliance Plan that was submitted to the FCC, which is attached to the Application as Exhibit C, indicates that Lifeline customers have the option to purchase the text and data plans for an additional fee that are available to all Air Voice customers. Based on the evidence, we find that Air Voice's proposed offerings will be comparable to the underlying ILEC plans, and therefore find that Air Voice 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 Air Voice's Application indicated all of the phones that Air Voice distributes satisfy applicable state and federal E-911 requirements, Air Voice did not provide sufficient evidence to support this claim. In addition, Air Voice has not provided documentation or demonstrated it has an agreement in place with any wireless carrier to provide 911 to Indiana customers. Air Voice did not provide any documentation indicating an agreement with AT&T. 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 Air Voice 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, which is in addition to per month or per billing cycle price of the consumer's Lifeline service.[9] Although Air Voice did not indicate that it will specifically provide toll limitation services which allow low-income customers to avoid unexpected toll charges, it indicated in its Application that the inclusion of toll calling as a part of Air Voice's offering will allow consumers to avoid the risk of becoming burdened with large and unexpected charges for toll calling and unexpected overage charges. We also note that

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

since Air Voice intends to offer prepaid wireless service, customers cannot be disconnected for failure to pay toll charges. Further, Air Voice does not differentiate local and long distance usage and all usage is paid in advance. Therefore, Air Voice'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 Air Voice 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 any, for toll calls, and rates for each such plan. Air Voice 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: nationwide calling, long distance calling, caller ID, call waiting services, call forwarding, and three-way calling. Mr. Bahri provided testimony that Air Voice has an approved compliance plan with the FCC and has agreed in that filing to comply with the Lifeline certification and verification requirements. The evidence demonstrates that Air Voice 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. Bahri testified that in the event there is an emergency, AT& T will be responsible for handling any emergency situation as part of their MVNO agreement. The Application indicated that Air Voice is able to remain functional in emergency situations because its services will be provided through resale of underlying carriers services. Notwithstanding Mr. Bahri's testimony, the Commission is not satisfied that Air Voice will be able to meet this requirement if granted ETC designation. As discussed above, Air Voice has failed to demonstrate that it has an agreement in place with AT&T that will allow it to remain functional in emergency situations.

E. Advertising Requirements. Air Voice 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: radio, television, and direct mailing. Air Voice has also 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 Air Voice will comply with 47 U.S.C. § 214(e)(1)(B) and all applicable advertising requirements if it is granted ETC designation.

F. Applicant'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). Air Voice is authorized to provide telecommunications service throughout the State of Indiana. Air Voice submitted Exhibit B to its Application with a list of wirecenters that it proposes as its designated service area and indicated they are the same coverage area as Air Voice's underlying

provider, AT&T. However, Air Voice did not provide any supporting testimony, copies of maps, or copies of contracts that demonstrate it has an agreement in place with the facilities-based wireless provider that serves its proposed designated service area. Accordingly, we find that Air Voice has not provided sufficient evidence to support approval of its proposed designated service area for Lifeline ETC purposes.

G. Facilities-Ownership. Air Voice 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 Air Voice's compliance plan was approved by the FCC's Wireline Competition Bureau on December 26, 2012. Accordingly, we find that Air Voice 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 Air Voice has failed to demonstrate that it has an agreement in place with AT&T to provide service.

H. Public Interest Consideration. As noted above and in accordance with 47 C.F.R. § 54.202(b), the designation of Air Voice 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 Air Voice intends to use funds from the Federal Lifeline program to provide supported services to Lifeline customers. We also note that Air Voice 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 Air Voice'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, Air Voice 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 USF 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 USF 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). Air Voice's Application indicates that it will comply with all applicable consumer protection requirements including compliance with the protection of Customer Proprietary Network Information ("CPNI") and with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service if designated as an ETC. We note that no information was provided on how such consumer protection will be achieved, only the statement by Mr. Bahri that Air Voice is committed to complying with applicable consumer protection and service quality standards.

iv. *Creamskimming*. The FCC previously 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). On April 15, 2013, the FCC released an Order granting forbearance for Lifeline-only ETCs from the requirement in 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b) that the service area of a competitive ETC conform to the service area of rural local exchange carriers serving the same area. *See In re Telecomms. Carriers Eligible for Support*, 28 FCC Rcd 4859 (2013). Since Air Voice is seeking designation as a Lifeline-only ETC, this type of analysis is unnecessary.

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 Applicant's proposed offering. However, the Commission is unable to assess if Applicant 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 Air Voice'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. Air Voice presented evidence that its initial Lifeline offering is free to eligible retail customers and includes will include 250 minutes of local and domestic toll usage and include the following features at no cost: nationwide calling, long distance calling, caller ID, call waiting services, call forwarding, and three-way calling. 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 Air Voice's proposed service offering is similar to several prepaid wireless Lifeline-only ETCs designated by the Commission. However, we note that Air Voice 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 to resell services. Therefore, we are unable to determine whether Air Voice'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 Air Voice has failed to clearly identify its proposed designated service area or demonstrate that it has agreements in place with AT&T to provide service. Air Voice 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 USF, 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. Air Voice 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 USF. 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 an Applicant 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, Air Voice has not met the minimum requirements proffered by the FCC and this Commission to become an ETC. Contrary to Air Voice's assertion that it meets the FCC's requirement of technical and financial capability to provide Lifeline service because it has been offering wireless service since 1999 and it provided a copy of a confidential financial statement, the extent of evidence in the record that would demonstrate the company has sufficient financial and technical ability is lacking.

We also note that Air Voice finally obtained its CTA well after its ETC petition was filed and after three applications for a CTA, of which two were dismissed. This was due to inconsistencies in the CTA applications and lack of response to questions from the Commission, which also raises questions as to Air Voice's managerial and technical ability to effectively manage its operations. When questioned about this, Mr. Bahri indicated that Air Voice was not aware of the unresponsiveness to the Commission's docket entries regarding the CTA applications. In addition, Mr. Bahri testified that Air Voice has existing customers in Indiana. He also testified that the company does not contribute to the Indiana Universal Service Fund, a requirement of all telecommunications carriers pursuant to Cause No. 42144. Further, since Air Voice did not have a CTA, it was not contributing to the public utility fee as required by Indiana Code ch. 8-1-6. The fact that a telecommunications service provider is providing services yet did not conduct its due diligence before providing service by obtaining the proper certifications and by contributing to applicable public interest funds adds to the Commission's concerns. Finally, Air Voice did not register its assumed business name, Feel Safe Wireless, with the Indiana Secretary of State as set out in the Commission's ETC application requirements.[10] Accordingly, we find Air Voice has made an insufficient showing of financial and technical ability to provide Lifeline services in Indiana.

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 Air Voice ETC status.

6. <u>Confidential Information</u>. Air Voice seeks a determination that Confidential Information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. The request was supported by the affidavit of Mr. Bahri which indicated Air Voice's financial statements contain trade secrets. By the Commission's February 19, 2014 docket entry, the Presiding Officers granted Air Voice's request, finding the

[10] General Administrative Order 2013-2.

Confidential Information to be preliminarily confidential after which such information was submitted under seal. After reviewing the Confidential Information, we find all such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. Air Voice takes reasonable steps to maintain the secrecy of the information and disclosure of such information would cause harm to Air Voice. Therefore, we affirm the preliminary ruling and find this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, and held confidential and protected from public disclosure by this Commission.

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

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

2. The material submitted to the Commission under seal is declared to contain trade secret information as defined in Ind. Code § 24-2-3-2 and therefore is exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

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

STEPHAN, MAY-MEDLEY, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED: JAN 21 2015

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