ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman	√		
Veleta	√		
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF DISH WIRELESS L.L.C. D/B/A GEN MOBILE FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF INDIANA FOR THE LIMITED PURPOSE OF PROVIDING LIFELINE SERVICE TO QUALIFIED HOUSEHOLDS)

CAUSE NO. 41052 ETC 98

APPROVED: OCT 31 2023

ORDER OF THE COMMISSION

Presiding Officers:
David E. Ziegner, Commissioner
Greg S. Loyd, Administrative Law Judge

On April 4, 2023, DISH Wireless L.L.C. d/b/a Gen Mobile ("Petitioner" or "DISH Wireless") filed its Verified Petition ("Petition") with the Indiana Utility Regulatory Commission ("Commission"). In its Petition, DISH Wireless requested designation as an eligible telecommunications carrier ("ETC") pursuant to 47 USC § 214(e)(2) of the Federal Communications Act of 1934, as amended (the "Act"), solely to provide wireless services supported by the Federal Universal Service Fund's ("USF") Lifeline program. Petitioner did not seek authority to provide services supported by the USF's high-cost program.

On June 6, 2023, Petitioner pre-filed its exhibits and the direct testimony of Robert Yap, DISH Wireless' Vice President of the Gen Mobile brand. On June 20, 2023, the Office of the Indiana Utility Consumer ("OUCC") filed its Notice of Intent Not to File Testimony.

The Presiding Officers issued Docket Entries on July 13, 2023 and July 25, 2023 requesting information from Petitioner to which Petitioner responded on July 20, 2023 and July 26, 2023, respectively.

On July 27, 2023, the Commission conducted an evidentiary hearing at 1:00 p.m. in Hearing Room 224 at the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Counsel for Petitioner and the OUCC appeared and participated at the hearing, during which Petitioner's testimony and exhibits were admitted into evidence without objection.

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

1. <u>Notice and Jurisdiction</u>. Notice of the hearing in this Cause was given and published by 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, which enable 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 over communications service providers pursuant to Ind. Code § 8-1-2.6-13, including the designation of communications service providers as ETCs under 47 U.S.C. § 214. The Commission therefore has jurisdiction over the Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics. DISH Wireless is a Colorado limited liability company wholly owned by DISH Wireless Holding L.L.C., which is ultimately owned by DISH Network Corporation, whose principal offices are located in Colorado. DISH Wireless' principal office is located at 9601 S. Meridian Boulevard, Englewood, Colorado 80112. DISH Wireless is registered with the Indiana Secretary of State's Office as a business entity and is authorized to do business in the State of Indiana under an assumed business name, Gen Mobile. On January 2, 2020, the Commission granted DISH Wireless a Certificate of Territorial Authority as a communications service provider to provide telecommunications services, specifically resold and facilities-based commercial mobile service and information services in the form of mobile broadband and internet access and mobile texting, in Indiana. *Dish Wireless L.L.C.*, Cause No. 45313, 2020 WL 70827 (IURC Jan. 2, 2020). DISH Wireless is also a common carrier and telecommunications carrier as defined by 47 U.S.C. § 153 of the Act.

3. Requested Relief. DISH Wireless requests ETC designation pursuant to 47 USC § 214(e)(2) of the Act, solely to provide wireless services supported by the USF Lifeline program.

4. Petitioner's Evidence. Mr. Yap testified that DISH Wireless provides prepaid wireless telecommunications services to consumers by using a combination of its own facilities and on a resale basis by using the networks of its underlying carriers, AT&T and T-Mobile. He indicated that DISH Wireless has been designated as an ETC in Colorado, Oklahoma, New York, Wisconsin, and Tennessee and has been authorized by the California Public Utilities Commission to provide California Lifeline services. DISH Wireless currently provides telecommunications service in Indiana under the Gen Mobile brand name. Mr. Yap noted that DISH Wireless is currently contributing to the USF on behalf of its customers.

Mr. Yap testified that DISH Wireless is a common carrier that offers the services that are supported by the Lifeline program of the USF. He addressed DISH Wireless' satisfaction of the requirements for ETC designation in Indiana. Mr. Yap stated that DISH Wireless will provide prepaid wireless services to consumers using a combination of its facilities and/or resale of another carrier's services. He testified that DISH Wireless is able to provide all of the following services and functionalities required by Section 54.101(a) and meets the standards described in Section 54.202(a) of the FCC's Rules.

He explained that DISH Wireless will provide voice grade access to the public switched telephone network or its functional equivalent. He reviewed DISH Wireless' Lifeline plan offerings, which include 1,000 voice minutes, 1,000 text messages, and 4.5 gigabytes of data per month available to all qualifying low-income Indiana consumers at a net cost of $0.00 after application of Lifeline support. All plans will include voicemail, caller ID, call waiting, and directory assistance at no additional cost. Mr. Yap said DISH Wireless does not differentiate between local calls and domestic long-distance calls. Further, DISH Wireless will provide its

Lifeline customers with the ability to contact 911 emergency services regardless of activation status or availability of minutes as of the date it provides Lifeline services in Indiana.

Mr. Yap added that DISH Wireless will comply with FCC requirements that it offer Lifeline customers access to emergency services provided by local government or other public safety organizations, such as 911 and E911, to the extent the local government in an eligible carrier's service area has implemented these systems. He said for services utilizing underlying carriers (i.e., AT&T and T-Mobile), DISH Wireless also complies with the FCC's regulations with reliance from its underlying carriers for resold services governing the deployment and availability of E-911 compatible handsets based upon the underlying carriers' E-911 compliant services.

Mr. Yap noted that DISH Wireless provides service in Indiana by a combination of using its own facilities and reselling service, which it obtains from its underlying facilities-based providers, AT&T and T-Mobile. AT&T and T-Mobile's networks are operational. He further noted that DISH Wireless is building out an advanced nationwide 5G network of its own and recently launched 5G broadband service in over 130 cities, including in Indiana. In areas of Indiana where service on DISH Wireless' own network is not yet available or where the Company does not yet offer Lifeline products on its own network, DISH wireless will provide service on a resale basis.

Mr. Yap testified that DISH Wireless will comply with all applicable consumer protection and service quality standards for universal service programs. He affirmed DISH Wireless' commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service. He testified that DISH Wireless is also committed to comply with the Lifeline certification and verification requirements and to pay all applicable Indiana public interest fees, including the Indiana Telecommunications Relay Access Corporation fee, the Indiana Universal Service Fund surcharges established in Commission Cause No. 42144, the statewide E911 fee, and the Telecommunications Public Utility Fee.

Mr. Yap provided evidence in support of a finding that DISH Wireless is financially and technically capable of providing Lifeline services throughout the State of Indiana. He sponsored DISH Network Corporation's February 23, 2023 Form 10-K, admitted as part of Schedule 3 of Petitioner's Exhibit 3, which demonstrates Petitioner's parent company's financial position and ability to aid Petitioner in honoring its service obligations to customers. He added that DISH Wireless will not rely exclusively on revenues from the USF to operate. Further, Mr. Yap stated that the proposed Lifeline offerings will be overseen by a team of personnel with substantial industry experience with the requirements of the federal Lifeline program and marketing the program to the low-income consumer sector. Further, DISH Wireless has been designated as an ETC in five jurisdictions.

Mr. Yap testified that DISH Wireless will advertise the availability of the supported services and the charges for Lifeline services using media of general distribution and also through various other marketing channels that may include direct mail, email, local and community outreach events, and targeted online electronic advertising. DISH Wireless will advertise its services in a manner reasonably designed to reach those likely to qualify for Lifeline service. He indicated that DISH Wireless will explain in clear, easily understood language the following disclosures in all marketing materials related to the supported service: DISH Wireless' offering is a Lifeline-supported service; only eligible consumers may enroll in the program; Lifeline support is limited to one benefit per household, consisting of either wireline or wireless service; and Lifeline is a government benefit program.

Mr. Yap testified that DISH Wireless has the ability to remain functional in emergency situations. DISH Wireless' greenfield 5G network operates in a cloud-native environment that is not encumbered by traditional technology and will be more flexible and resilient in the event of service outages once the construction is complete. He noted that DISH Wireless currently relies on mobile virtual network operator partner networks that are designed to remain functional even without external power sources, are able to re-route traffic around damaged facilities, and can manage traffic spikes that may occur in emergency situations.

Mr. Yap further asserted in his testimony that DISH Wireless will not seek USF reimbursement for new subscribers until they have activated the service. DISH Wireless will deactivate an account upon the specified timeframe for non-usage, which is currently a period of 45 days (30 days of non-usage with 15 days to cure the non-usage). He added that DISH Wireless will comply with Section 54.410(f) of the FCC's Rules governing annual subscriber re-certification of eligibility and will coordinate with the Universal Service Administrative Company's National Verifier and the National Lifeline Accountability Database systems to manage additional de-enrollments related to the Universal Service Administrative Company-administered benefit transfers and failure to re-certify. He explained DISH Wireless' safeguards to prevent customers from receiving multiple Lifeline subsidies at the same address.

Mr. Yap testified in support of a finding that DISH Wireless' ETC designation in Indiana would serve the public interest. DISH Wireless' Lifeline service will provide low-income Indiana consumers with greater access to voice and broadband services. He noted the public interest benefits associated with DISH Wireless' wireless service include expanding consumer choice by offering plans that alleviate customer concerns regarding deposits, hidden costs, varying monthly charges, and long-term contract issues. Mr. Yap stated that introducing DISH Wireless into the market as an additional wireless ETC provider will afford low-income Indiana residents a wider choice of providers and available services. In the Lifeline context, the entry of additional providers increases competitive choice for lower-income customers who may not be the focus of wireless carriers' marketing efforts. Launching Gen Mobile Lifeline options in Indiana will add affordable, innovative mobile wireless choices to the marketplace, and could spur other ETCs to expand and improve their own Lifeline service offerings in Indiana. Granting ETC designation to DISH Wireless will promote competition for the benefit of consumers and will have desirable effects upon the Indiana market for Lifeline services by making these services more available and accessible, thereby supporting the Act's goals of universal service.

Mr. Yap testified that for the Lifeline program, ETCs receive support for customers that they obtain. The amount of support available to an eligible subscriber is the same whether the support is given through a company such as DISH Wireless or an incumbent local exchange carrier operating in the same service area. The number of eligible individuals for Lifeline is the same regardless of the Petitioner's designation as an ETC. DISH Wireless will increase the amount of USF for Lifeline in situations where it obtains Lifeline customers who have not already enrolled in the Lifeline program through a different ETC. Mr. Yap stated that DISH Wireless' ability to increase the Lifeline participation rate of qualified low-income individuals furthers the policy goal of providing all individuals with affordable access to telecommunications service. He suggested any incremental increases in Lifeline expenditures are outweighed by the significant public interest benefits of expanding the availability of affordable wireless services to low-income consumers.

5. Docket Entry Responses. The Presiding Officers issued Docket Entries on July 20, 2023 and July 26, 2023, requesting information that the Commission's General Administrative Order 2019-05 requires ETC applicants provide the Commission, as well as details regarding Petitioner's rates and charges and its service coverage area. Petitioner timely responded to each of these requests.

In its response to the July 20, 2023 Docket Entry and pursuant to General Administrative Order 2019-5, Appendix A ("Appendix A") at ¶ 3, Petitioner provided proof of registering its assumed business name with the Indiana Secretary of State. Petitioner also provided additional information regarding its billing rates and details regarding its service coverage area. In particular, we note Schedule 2 of Petitioner's Exhibit 3 includes a coverage map depicting DISH Wireless' facilities-based 5G service coverage area (as of December 31, 2022) and that DISH Wireless provided the approximate number of customers in Indiana that receive service from a combination of the company's own 5G facilities and the facilities of its network partners. DISH Wireless expects to deploy additional facilities to increase coverage for Lifeline services in Indiana.

In its response to the July 26, 2023 Docket Entry and pursuant Appendix A at ¶ 3, DISH Wireless provided a copy of its Verified Notice of Change in a Certificate of Territorial Authority to Provide Communications Services within the State of Indiana filed in Cause No. 45313. This notice reflects the Petitioner's acquisition of Boost Mobile, Ting Mobile, Republic Wireless, and Gen Mobile. Petitioner's response to the July 26, 2023 Docket Entries DISH Wireless also provided certain clarification of its rates charged to customers and the certification required by Appendix A at ¶ 18.

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; (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).

Petitioner seeks designation in Indiana for the limited purpose of offering federally supported, discounted wireless Lifeline service to low-income customers. We therefore evaluate the Petition solely based on the required criteria for an ETC applicant seeking support from the USF to provide service to assist low-income customers by provision of a monthly discount on telecommunications costs. Based on the evidence in the record, we find that DISH Wireless meets the eligibility criteria for ETC designation as contained in Section 214(e)(1) of the Act and related FCC rules and regulations, for the limited purpose of offering Lifeline service in Indiana and satisfies the public interest analysis called for in *Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 6371, 6389-6390 (2005) ("*2005 FCC ETC Order*").

47 USC § 254(e) mandates that common carriers designated by a state commission as an ETC shall offer Federal universal support "either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and . . . advertise the availability of such services and the charges therefor using media of general distribution."

A. Common Carrier Status. The first requirement for ETC designation is a petitioner's status as a common carrier. A common carrier is generally defined by 47 U.S.C. § 153(11) as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio . . . ." On January 2, 2020, the Commission granted DISH Wireless L.L.C. a Certificate of Territorial Authority as a communications service provider to provide telecommunications services, specifically commercial mobile radio services. *DISH Wireless L.L.C.*, Cause No. 45313 (IURC Jan. 2, 2020). Further, Mr. Yap testified that the Petitioner will provide voice telephony as a supported service. As a provider of wireless telecommunications services, we find that DISH Wireless is a "common carrier" for purposes of obtaining ETC designation under Section 214(e)(1) of the Act.

B. Required Service Offerings. The evidence confirms that upon designation as an ETC in Indiana, DISH Wireless will provide all of the functionalities required of an ETC in *Lifeline and Link Up Reform and Modernization* ("*Lifeline Reform Order*"), 27 FCC Rcd 6656 (2012), pursuant to 47 C.F.R. § 54.101(a). Pursuant to 47 C.F.R. § 54.101(a), eligible voice telephony services must provide: (1) voice-grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) access to the emergency services provided by local government or other public safety organizations to the extent implemented; and (4) toll limitation services to qualifying low-income consumers. Joint Petitioners meet the four voice telephony service requirements as follows:

i. Voice Grade Access to the Public Switched Telephone Network. Pursuant to 47 C.F.R. § 54.101(a), eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent. Mr. Yap testified that DISH Wireless will provide voice grade access to the public switched network. No evidence was presented that DISH Wireless' customers would not be able to transmit and receive calls on the public switched telephone network in accordance with the federal rules. Accordingly, we find that DISH Wireless satisfies this requirement.

ii. Local Usage. Eligible voice telephony services must provide "minutes of use for local service at no additional charge to end users" as part of a universal service offering. 47 C.F.R. § 54.101(a). As the record demonstrates, DISH Wireless will offer users the ability to send and receive local phone calls wherever the Petitioner offers service. Mr. Yap testified that Petitioner intends to offer service that includes 1,000 anytime monthly minutes which may be used for local and/or domestic long-distance calls. Based on the evidence, we find that Petitioner satisfies the local usage requirement.

iii. Access to Emergency Services. As part of a universal service offering 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." 47 C.F.R. § 54.101(a). Mr. Yap testified that DISH Wireless will provide access to emergency services in conformance with the FCC's rules and comply with the FCC's regulations governing the deployment and availability of E-911 compatible handsets. Based on the foregoing, we find that DISH Wireless has satisfied this requirement.

iv. <u>Toll Limitation for Qualifying Low-Income Consumers</u>. A toll limitation service, as defined by 47 C.F.R. § 54.400(b)-(d), 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. In the *Lifeline Reform Order*, the FCC stated that toll limitation would no longer be deemed a supported service. *See Lifeline Reform Order* at ¶ 367. "ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set number of minutes that do not distinguish between toll and non-toll calls." *See Lifeline Reform Order* at ¶ 49. Petitioner's services are offered on a prepaid basis. Moreover, Petitioner's proposed service includes 1,000 minutes that is not offered on a distance-sensitive basis and local and domestic long-distance minutes are treated the same. Accordingly, we find that Petitioner satisfies this requirement.

C. <u>Lifeline Service Offering Requirements</u>. 47 C.F.R. § 54.202(a) 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, as well as the terms and conditions of any broadband internet access service plans offered to Lifeline subscribers, including details on the speeds offered, data usage allotments, additional charges for particular uses, if any, and rates for each such plan.

Mr. Yap provided evidence that DISH Wireless will offer several Lifeline plans, including 1,000 voice minutes, 1,000 text messages, and 4.5 gigabytes of data per month available to all qualifying low-income Indiana consumers at a net cost of $0.00 after application of Lifeline support. All plans will include voicemail, caller ID, call waiting, and directory assistance at no additional cost. Mr. Yap indicated that DISH Wireless will meet the minimum service standard under 47 C.F.R. § 54.408 for mobile broadband internet access service speed and data usage allowance. DISH Wireless does not charge Lifeline customers for calls to its customer service department. Calls to 911 emergency services are always free and will be completed regardless of how many minutes are available on the customer's account (even if that number is zero). Additional minutes or data may be purchased by the customer. The record reflects Petitioner's commitment to provide Lifeline-supported services that will meet or exceed the minimum service standards set forth in 47 C.F.R. § 54.408. Thus, the evidence shows that the Petitioner satisfies the Lifeline service offering requirements in 47 C.F.R. § 54.202(a).

D. <u>Functionality in Emergency Situations</u>. 47 C.F.R. § 54.202(a)(2) requires an ETC to "[d]emonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations." Mr. Yap certified that DISH Wireless has the ability to remain functional in emergency situations through the capabilities of its greenfield 5G network and its mobile virtual network operator partner networks, which includes each of these requirements. Based on this evidence, we find that Petitioner meets the requirement to remain functional in emergency situations.

E. Consumer Protection and Service Quality. 47 C.F.R. § 54.202(a)(3) requires an ETC to "[d]emonstrate that it will satisfy applicable consumer protection and service quality standards." Petitioner commits to comply with all applicable state and federal requirements related to consumer protection and service quality standards, including such requirements in effect for universal service programs. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("Code") will satisfy this requirement." Mr. Yap stated that DISH Wireless commits to fully complying with the Code and its consumer protection requirements. We therefore find that Petitioner meets the applicable consumer protection requirements.

F. Financial and Technical Capability. 47 C.F.R. § 54.202(a)(4) requires an ETC to "[d]emonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E." 47 C.F.R. 54.201(h) states that "[a] state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving [Lifeline-only support] 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."

The FCC stated that relevant considerations for such a showing include how long the company has been in business and whether the applicant previously offered services to non-Lifeline consumers, intends to rely exclusively on USF disbursements to operate, receives or will receive revenue from other sources, and has been subject to enforcement action or ETC revocation proceedings in any state. *Lifeline Reform Order* ¶ 388.

Petitioner provided testimony and exhibits to support a finding that DISH Wireless is financially and technically capable of providing Lifeline services. We find that DISH Network Corporation's (the parent company of DISH Wireless) Form 10-K demonstrates that this parent company has the financial position to support DISH Wireless in honoring DISH Wireless' service obligations. DISH Wireless's financial capability to provide Lifeline service is further evidenced by the Mr. Yap's testimony that the company will not rely exclusively on the USF to operate.

Schedule 1 to Petitioner's Exhibit 4 indicates that DISH Wireless was organized approximately seven years ago and has been designated as an ETC in five jurisdictions. Mr. Yap sponsored Petitioner Exhibit 2, Exhibit B that sets forth the experience and education of key personnel at DISH Wireless. Based on the evidence in the record, the Commission is satisfied that Petitioner possesses the financial and technical ability to provide Lifeline services. The evidence also establishes that Petitioner already serves Indiana residents from a combination of the Company's own 5G facilities and the facilities of its network partners.

G. Advertising Requirements. Pursuant to 47 C.F.R. § 54.201(d)(2), a common carrier designated as an ETC eligible to receive universal support must advertise, using media of general distribution, the availability of these services and the related charges. 47 C.F.R.

§ 54.405(b) requires a carrier "to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service." Mr. Yap affirmed in the Petition that the company's advertising will include the disclosures required by 47 C.F.R. § 54.405(c). He testified that DISH Wireless 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. Mr. Yap explained this advertising will occur through a combination of media of general distribution, such as direct mail, email, local and/or community outreach events, and targeted online electronic advertising. Based on the foregoing, we find that the evidence in the record indicates that DISH Wireless will comply with 47 U.S.C. § 214(e)(1)(B) and all applicable advertising requirements.

H. Petitioner's Designated ETC Service Area. Petitioner requests designation as an ETC that is statewide in scope, to allow the provision of Lifeline service wherever its underlying, facilities-based providers have wireless coverage and its current Indiana service area as identified by zip code, rate center, and a coverage map in Exhibit A attached to Petitioner's Exhibit 2. 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). The Commission's General Administrative Order 2019-5 requires petitioners to specify the designated service area for which ETC designation is sought, provide detailed service area map in a zipped shapefile or geodatabase format; a list of incumbent local exchange carrier exchanges that fall within its proposed designated service area; and mobile wireless coverage area maps that demonstrate Petitioner's underlying facilities-based mobile wireless carriers' coverage area has the ability to serve Petitioner's entire proposed designated service area.

Exhibit A of Petitioner Exhibit 2 includes coverage area maps of its underlying carriers, T-Mobile and AT&T, and a list of incumbent local exchange carrier exchanges that fall within Petitioner's proposed designated service area. Schedule 2 attached to Petitioner's Exhibit 3 shows the Indiana cities or counties that are currently served by Petitioner's own 5G facilities

DISH Wireless is authorized to provide telecommunications service throughout the State of Indiana within the network coverage areas of its underlying carriers and within the coverage area of DISH Wireless' own network. Mr. Yap stated Petitioner is actively constructing wireless facilities around the country and it is well positioned to identify opportunities to target buildouts in underserved areas.

Given that Petitioner did not provide the map in the required geospatial format as required by General Administrative Order 2019-05, Petitioner shall file in this Cause a detailed service area map in a zipped shapefile or geodatabase format depicting the overall service area included in Exhibit 2, including the covered zip codes, rates centers, coverage areas of underlying wireless carrier partners and Petitioner's own facilities-based 5G network, or provide a statement explaining how this poses a hardship within 60 days of the issuance of this Order.

The Commission notes that Lifeline-only ETCs have been referenced by other ETCs seeking to relinquish ETC obligations. The Commission emphasizes that it is essential that Petitioner respond to inquiries regarding its ability to serve customers in the event another ETC serving the same designated service area or portion thereof seeks relinquishment of its obligations as an ETC under Section 214(e)(4) of the Act or in the event no common carrier will serve a community pursuant to Section 214(e)(3) of the Act. DISH Wireless has certified to doing so in Schedule 2 contained in Petitioner's Exhibit 4 of Petitioner's Response to the Second Set of Data Requests from the Commission, which was filed in this Cause on July 26, 2023.

I. Facilities Ownership. In general, Section 214 of the Act requires ETCs to provide the supported services using their facilities, at least in part. Gen Mobile-branded service plans are currently supported by AT&T and T-Mobile's networks. DISH Wireless' facilities-based 5G service coverage area (as of December 31, 2022) is depicted in the coverage map attached as Schedule 2 to Petitioner's Exhibit 3. This map indicates that such coverage includes many of Indiana's larger cities and suburban areas. In areas of Indiana where service on DISH Wireless' own network is not yet available or where the Petitioner does not yet offer Lifeline products on its own network, DISH Wireless will provide service on a resale basis on the networks of AT&T and/or T-Mobile. DISH Wireless demonstrated in Schedule 3 of Petitioner's Exhibit 3 that it has agreements in place with AT&T and T-Mobile in Indiana that will enable DISH Wireless to provide supported services throughout its proposed designated service area. Its resold coverage area is shown in the map contained in Exhibit A attached to Petitioner's Exhibit 2. DISH Wireless also provided information regarding the number of customers that receive service from a combination of the company's own 5G facilities and the facilities of its network partners. Additionally, the FCC has acknowledged DISH Wireless' commitment to building its 5G infrastructure. *See Order of Modification and Extension of Time to Construct*, DA 20-1072 WT Docket 18-197 (rel. Sept. 11, 2020). In addition, Mr. Yap testified that DISH Wireless expects to deploy additional facilities to increase coverage for Lifeline services in Indiana. Accordingly, pursuant to 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.101(b), DISH Wireless will offer Gen Mobile-branded services that are designated for federal universal support using a combination of its own facilities and/or resale of another carrier's services.

J. Public Interest Considerations. As noted above and in accordance with 47 C.F.R. § 54.202(b), the designation of DISH Wireless as an ETC requires a public interest analysis. In the absence of statutory strictures for evaluating the public interest, the FCC recommended the following analysis:

> The public interest benefits of a particular ETC designation must 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 telecommunications 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 (citations omitted).

One of the principal goals of the Act is to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies to all citizens, regardless of the geographic location or income.

Designating Petitioner as an ETC will help expand broadband internet service to an underserved portion of Indiana consumers by allow the company to provide low-income consumers Lifeline offerings. We therefore find designation of Petitioner as an ETC in its designated Indiana service area will promote the public interest.

i. **Use of Lifeline Funding.** The record indicates that DISH Wireless will use funds from the federal Lifeline program to provide supported services to Lifeline customers. DISH Wireless has met its burden of proof for the Lifeline program. We find that the Petitioner's plans are consistent with current FCC regulations on the use of such funds.

ii. **Impact on the Federal 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 WL 9832656 at *10 (IURC July 24, 2008). Notably, however, DISH 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 the low-income USF support is only paid to the carrier actually serving a given customer. Yet, we also recognize that costs for the low-income portion of the USF are increasing. 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.

iii. **Consumer Protection.** We found above that Petitioner meets applicable consumer protection requirements.

iv. **Creamskimming.** "Creamskimming" is a practice by which a communications service provider attempts to provide service only to low-cost customers while disregarding less profitable customers. On April 15, 2013, the FCC released an Order granting forbearance from the requirement in 47 U.S.C. § 214(e)(5) and 47 U.S.C. § 54.207(b) that the service area of an ETC conform to the service area of rural local exchange carriers serving the same area. *Telecommunications Carriers Eligible for Support*, 28 FCC Rcd. 4859 (2012). This order applies to telecommunication carriers that seek limited designation as an ETC to participate only in the Lifeline program. *Id.* at 1-2. A creamskimming analysis is therefore not necessary for this Petition.

v. **Increased Customer Choice.** DISH Wireless' Lifeline service offerings will bring increased competitive choice to Lifeline eligible customers in Indiana and may reach a particular segment of Lifeline eligible customers that have not yet been reached. DISH Wireless is also unique as a Lifeline-only ETC in that it has its own network facilities rather than strictly relying upon its mobile virtual network operator partners. Further, Mr. Yap stated Petitioner is continuing to expand its facilities-based network and has the ability to serve unserved and underserved areas in Indiana. We therefore find that DISH Wireless' designation as a Lifeline-only ETC will increase the level of customer choice and may promote competition by expanding the availability of wireless services to qualifying income-eligible Indiana customers, leading to lower prices.

vi. <u>Affordable Rates</u>. We must also consider whether the requested ETC designation will "ensur[e] the availability of quality telecommunications services at just, reasonable, and affordable rates . . ." *2005 FCC ETC Order* at 6388. DISH Wireless presented evidence that its Lifeline offering is free to eligible retail customers after application of Lifeline support and includes 1,000 voice minutes, 1,000 text messages, and 4.5 gigabytes of data per month. DISH Wireless' Lifeline offering also includes calling features including voicemail, caller ID, call waiting, call forwarding, and customer assistance at no additional cost. DISH Wireless allows customers to purchase additional minutes or data. The OUCC did not dispute the affordability of DISH Wireless' rates. Based on the evidence, we find that the Petitioner intends to offer telecommunications services, including broadband service and voice telephony, at just, reasonable, and affordable rates.

vii. <u>Advantages and Disadvantages of the Offering</u>. The record reflects that DISH Wireless' Lifeline service offering will expand available, accessible service options for additional Lifeline-eligible Indiana households. Petitioner's proposed offering will also advance the Act's principal goals of securing lower prices, higher quality services for consumers, and expand access to wireless mobile telecommunications services. Accordingly, we find that DISH Wireless has satisfied this criterion of our public interest inquiry.

viii. <u>Commitment to Provide Service upon Reasonable Request</u>. DISH Wireless provided evidence that, to the extent it does not currently have wireless coverage within a portion of its proposed ETC service area, it will consider requests for service, consistent with its universal service obligations. Further, over time, DISH Wireless will expand its coverage to serve consumers throughout its ETC service area. We find that DISH Wireless' commitments satisfy the requirements of 47 C.F.R. § 54.405(a). Accordingly, we find that DISH Wireless has demonstrated its willingness and ability to provide service throughout its requested service area.

ix. <u>Additional Public Interest Analysis</u>. ETC designation confers both benefits and burdens upon the petitioning communications 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. Mr. Yap testified about DISH Wireless's willingness to comply with Indiana laws and policies regarding public interest funds for which the Commission has administrative oversight, including the public utility fee pursuant to Indiana Code § 8-1-6; the Indiana Telecommunications Relay Access Corporation fee pursuant to Indiana Code § 8-1-2.8; and the Indiana Universal Service Fund surcharges pursuant to the Commission's Order in *Commission Investigation of Universal Service Reform,* Cause No. 42144, 2004 WL 1170315 (IURC Mar. 17, 2004). Based on the foregoing public interest analysis, we conclude that designating DISH Wireless as an ETC will promote the public interest and further the goals of the Act.

7. **Conclusion.** Based on the evidence presented as discussed above and subject to compliance requirements, the prospective reporting requirements, and conditions set forth in this Order, the Commission finds that that DISH Wireless has met all of the ETC eligibility requirements, and that the public interest supports granting ETC status to DISH Wireless in its proposed designated service area for the limited purpose of participation in the Lifeline program. The Commission has the statutory authority to investigate, as it deems necessary, Petitioner's compliance with this Order and eligibility for ETC designation in Indiana.

8. **Regulatory Oversight.** This Commission has recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy in order to secure and maintain their ETC status in Indiana. *See* e.g., *Nextel*, Cause No. 41052 ETC 43, 2004 WL 1170027 (IURC March 17, 2004). Such regulatory requirements stem from the FCC's mandate that state commissions certify that federal USF support is being used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended," consistent with 47 U.S.C. § 254(e). Absent such a certification, carriers will not receive such support. In order for this Commission to satisfy its ETC certification requirements to the FCC, it requires ETC applicants to file a tariff with the Commission. *See Commission Investigation of Universal Service Reform*, Cause No. 40785, 1997 WL 34880503 (IURC Nov. 15, 1997). Accordingly, we find that Petitioner's terms and conditions of service should be incorporated into its Lifeline tariff for Indiana and shall be filed in this Cause as a compliance filing prior to Petitioner making its universal service offering available to eligible consumers in Indiana.

We further find that beginning in 2024, Petitioner shall provide the Commission a copy of its annual certifications and Lifeline recertification results pursuant to 47 C.F.R. § 54.416, as well as a copy of its annual report filed pursuant to 47 C.F.R. § 54.422.

9. **Prospective ETC Reporting Requirements.** We find that DISH Wireless shall be required to meet the prospective reporting requirements consistent with the federal rules in 47 C.F.R § 54.422. DISH Wireless' compliance filings shall be filed under this Cause at the same time it files its annual report pursuant to 47 C.F.R. § 54.422, unless otherwise directed by the Commission.

10. **Additional Conditions on DISH Wireless' Designation as an ETC.** In accordance with the Commission's findings above, DISH Wireless shall be subject to the following conditions:

i. Petitioner shall provide a detailed service area map in a zipped shapefile or geodatabase format or provide an explanation as to why this poses a hardship within 60 days of the issuance of this Order.

ii. Pursuant to 47 C.F.R. § 54.410(f) and 47 C.F.R. § 54.416, Petitioner shall provide the Commission with a copy of its Lifeline re-certification results that it files annually with Universal Service Administrative Company and the FCC.

iii. Consistent with 47 C.F.R. § 54.407(c)(1), Petitioner will only receive universal service support once a subscriber activates service. Petitioner will deactivate an account in accordance with federal regulations regarding non-usage and shall report annually the number of subscribers de-enrolled for non-usage under 47 C.F.R. § 54.405(e)(3). This de-enrollment information must be reported by month and must be submitted to the Commission at the time an ETC submits its annual certification report pursuant to 47 C.F.R. § 54.416.

iv. Prior to providing Lifeline service in Indiana, Petitioner shall file in this Cause an informational tariff and notify the Commission of changes in its terms, conditions, or free minute allocations in the form of a new tariff. The informational tariff shall clearly identify any distinctions between Lifeline offerings through its resale partners and Lifeline offerings on its facilities-based network and update the tariff if new Lifeline plans are available as Petitioner's 5G network is deployed.

v. Petitioner shall provide its Lifeline customers with 911 and E-911 access regardless of activation status and availability of prepaid minutes as of the date it provides Lifeline services in Indiana.

vi. Petitioner shall establish safeguards and comply with 47 C.F.R. § 54.405 to prevent its customers from receiving multiple Lifeline subsidies at the same address. Petitioner will abide by the FCC's *Lifeline Reform Order* by explaining to prospective customers in plain, easily comprehensible language that they are not permitted to receive more than one Lifeline subsidy.

vii. Petitioner shall pay all fees applicable to telecommunications carriers, such as the public utility fee, pursuant to Ind. Code ch. 8-1-6; the Indiana Telecommunications Relay Access Corporation fee, pursuant to Ind. Code § 8-1-2.8; the Indiana USF fee, to the extent applicable, pursuant to the Commission's Order in Cause No. 42144; the statewide E911 fee, pursuant to Ind. Code §§ 36-8-16.6 and 36-8-16.7; the Underground Plant Protection (811) fee, pursuant to Ind. Code ch. 8-1-26; and any other applicable fees.

viii. If another ETC serving Petitioner's service area relinquishes its ETC designation pursuant to Section 214(e)(4) of the Act, or if no common carrier will provide the services that are supported by federal universal service support mechanisms pursuant to Section 214(e)(3) of the Act, the Commission is required to ensure that all customers will continue to be served. Petitioner shall respond to Commission inquiries in a case involving its service area, or portions thereof, in the event that such a situation occurs.

ix. Petitioner shall publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service and comply with safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. § 54.405.

9. Confidentiality. On July 18, 2023, Petitioner filed its Motion for Protection of Confidential and Proprietary Information with a supporting affidavit asserting that certain information to be submitted to the Commission was trade secret information as defined in Ind. Code § 24-2-3-2 and should be treated as confidential in accordance with Ind. Code §§ 5-14-3-4 and 8-1-2-29. A Docket Entry was issued on July 19, 2023, in which the Presiding Officers determined the information should be held confidential on a preliminary basis, after which the information was submitted under seal. After review of the information and consideration of the affidavit, we find the information is trade secret information as defined in Ind. Code § 24-2-3-2, is exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, and shall be held confidential and protected from public access and disclosure by the Commission.

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

1. Petitioner's request for designation as an eligible telecommunications carrier for the limited purpose of offering Lifeline service to qualifying households, for the service area identified in DISH Wireless L.L.C.'s evidence, is granted.

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

3. Petitioner shall provide a detailed service area map in a zipped shapefile or geodatabase format or provide an explanation as to why this poses a hardship within 60 days of the issuance of this Order.

4. Petitioner's terms and conditions of service shall be incorporated into its Lifeline tariff for Indiana and filed in this Cause prior to Petitioner making its universal service offering available to eligible consumers in Indiana.

5. The information submitted under seal in this Cause pursuant to Petitioner's request for confidential treatment is determined to be confidential trade secret information as defined in Ind. Code § 24-2-3-2 and shall continue to be held as confidential and exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29.

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

<u>HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR</u>:

APPROVED: OCT 31 2023

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

Dana Kosco
Digitally signed by Dana Kosco
Date: 2023.10.31 10:17:31 -04'00'

Dana Kosco
Secretary of the Commission