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Attorney for the Commission Staff

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF THE APPLICATION OF)
Q LINK WIRELESS LLC FOR DESIGNATION) CASE NO. QLW-T-13-01
AS AN ELIGIBLE TELECOMMUNICATIONS)
CARRIER IN IDAHO)
)
) COMMENTS OF THE
) COMMISSION STAFF
)
)
)**

COMES NOW the Staff of the Idaho Public Utilities Commission, by and through its attorney of record, Neil Price, Deputy Attorney General, and in response to the Notice of Application and Notice of Modified Procedure issued in Order No. 32968 on January 24 2014, in Case No. QLW-T-13-01, submits the following comments.

BACKGROUND

On May 6, 2013, Q Link Wireless LLC (“Company” or “Q Link”) filed an Application, pursuant to 47 U.S.C. § 214(e)(2), Sections 54.101 through 54.207 of the Rules of the Federal Communications Commission (“FCC”), and the rules and regulations of the Idaho Public Utilities Commission (“Commission”), seeking designation as an eligible telecommunications carrier (“ETC”) in the State of Idaho as a Lifeline-only service provider to qualifying Idaho consumers.

The Application

Q Link is a Delaware corporation with its principal business office located in Dania, Florida.¹ Q Link provides commercial mobile radio service (“CMRS”) as a Mobile Virtual Network Operator (“MVNO”) and provides prepaid wireless telecommunications services similar to TracFone, Inc. and Virgin Mobile USA, L.P. The Company uses the network and facilities of Sprint Spectrum, L.P. (“Sprint”) Network and Sprint Nextel.²

Q Link attached a copy of its FCC-approved Compliance Plan granting forbearance to the FCC’s facilities requirement as a Lifeline only ETC. *See* Exhibit 4. Q Link commits to providing Lifeline service in Idaho in accordance with the Compliance Plan.³ Q Link has been designated as an ETC in 17 states: Arizona, Colorado, Kansas, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, Nevada, Ohio, Oklahoma, Pennsylvania, Texas, Utah, West Virginia, and Wisconsin. The Company has pending ETC Applications in several other states.⁴

Q Link states that it meets all of the Sections 214 and 254 requirements for designation as an ETC.⁵ The Company believes that granting its Application would “promote the public interest by providing a competitive choice for low-cost, high quality telecommunications services in Idaho.”⁶

Q Link’s Lifeline Service Offerings

The Company offers three basic Lifeline plans to eligible non-Tribal customers and a single plan to eligible Tribal customers. Q Link allows customers to purchase additional minutes by phone, on-line or through retail outlets. Q Link’s Lifeline plans include a free handset, custom calling package, and domestic long distance service. A detailed description of the Company’s Lifeline plans is attached to the Application as Exhibit 2.

The Federal Lifeline and Link Up Reform and Modernization Order

On February 6, 2012, the FCC released a Report and Order (“the Order”) to comprehensively reform the low-income program of the Universal Service Fund (“USF”). The

¹ Application at 2.

² *Id.* at 2-3.

³ *Id.* at 11.

⁴ *Id.* at 3.

⁵ *Id.* at 10.

⁶ *Id.* at 18.

Order substantially strengthens protections against waste, fraud, and abuse; improves program administration and accountability; improves enrollment and consumer disclosures; initiates modernization of the program for broadband; and constrains the growth of the program in order to reduce the burden on all who contribute to the USF.⁷ The Order also establishes stringent requirements for ETCs to obtain customer certifications in order to prevent duplication of lifeline benefits.

To conform to the Order, Q Link states that its operations in Idaho will not unduly burden the USF.⁸ The Company will obtain compensation for eligible customers. Q Link states that it will adhere to the safeguards outlined in the *Lifeline and Link-up Reform Order* in order to minimize the likelihood of customers/households receiving duplicate support.⁹

Q Link's Compliance Plan

Pursuant to the Order, the FCC approves compliance plans as a condition of obtaining forbearance from the facilities requirement of the Communications Act of 1934, as amended, for the provision of Lifeline service.¹⁰ In the Order, the FCC found that “a grant of blanket forbearance of the facilities requirement, subject to certain public safety and compliance obligations, is appropriate for carriers seeking to provide Lifeline-only service.”¹¹ Therefore, the FCC conditionally granted forbearance from the Act's facilities requirement to all telecommunications carriers seeking Lifeline-only ETC designation, subject to the following conditions: (1) compliance with certain 911 and enhanced 911 (E911) public safety requirements; and (2) Bureau¹² approval of a compliance plan providing specific information regarding the carrier and its service offerings and outlining the measures the carrier will take to implement the obligation contained in the Order. Q Link's compliance plan was reviewed and approved by the FCC on August 8, 2012.¹³

⁷ See *Lifeline and Link Up Reform and Modernization et al*, WC Dkt no. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11, at paras. 361-38, Appendix A (rel. Feb. 6, 2012).

⁸ Application at 21.

⁹ *Id.* at 7 & 8.

¹⁰ *Id.* at paras. 379-380 (rel. Feb. 6, 2012).

¹¹ FCC Public Notice DA 12-828, WC Docket Nos. 09-197 and 11-42 (rel. May 25, 2012 at 1-2).

¹² The FCC's Wireline Competition Bureau.

¹³ FCC Public Notice DA 12-1286, WC Docket Nos. 09-197 and 11-42 (rel. August 8, 2012).

STAFF ANALYSIS

Staff reviewed Q Link's Application, including the FCC-approved Compliance Plan,¹⁴ financial documents,¹⁵ and management information.¹⁶ In addition, Staff has conducted an analysis of the Company's fulfillment of the federal Telecommunications Act of 1996, the *Lifeline and Link Up Reform and Modernization Order* and of Commission Order No. 29841. Specific state and federal requirements for ETC designation are discussed in more detail as follows.

Public Interest Considerations

When applying the public interest test in an Application for ETC designation, Staff believes there are two primary considerations that merit discussion.

1. Contribution to the Idaho Programs. As in the TracFone (MNVO pre-paid wireless service provider) ETC Application, the Commission considered the Company's contribution to the Idaho Telephone Service Assistance Program ("ITSAP") fund and to the Idaho Emergency Communications Act ("IECA") fund and determined that it was in the public interest to require an ETC to contribute to these funds. *See* Case No. TFW-T-09-01; Order No. 32301 at 9. In the response to the First Production Request No. 2, Q Link states that it will contribute to the ITSAP and the IECA funds. Staff, therefore, believes Q Link meets this public interest test.

1. Cream Skimming analysis. In this public interest discussion, the Commission weighs whether the potential benefits of ETC designation outweigh the potential harms. One consideration is the Applicant's commitment to provide universal service throughout the rural areas or, if not, whether the potential for cream skimming exists.

Q Link requests ETC designation statewide, subject to the existence of its underlying carrier's facilities and corresponding coverage. The Company states that it "understands that its service may overlap with rural carriers in Idaho, but maintains that the public interest factors justify its designation in these carrier's service areas, because it seeks ETC designation solely to utilize USF funding to provide Lifeline service and does not seek and will not accept Link-Up or high cost support."¹⁷

¹⁴ Application, Exh. 4.

¹⁵ Compliance Plan, Exh. C, and Confidential Production Request Exh. 1 & 2.

¹⁶ *Id.* Exh. D.

¹⁷ Application at 14-15.

As in the Virgin Mobile ETC Application, Staff believes that the Company's exclusion of high-cost support in its Application makes this cream skimming analysis moot, as well as the rural versus non-rural service area considerations. *See* VMU-T-11-01, Order No. 32645 at 3. Staff believes that Q Link's ETC designation should not include the entire state. The Company's ETC designation should be limited to those exchanges listed in Exhibit 6.

Network Improvement Plan

In the Idaho ETC Designation Order, the two-year network improvement and progress report is required of all ETCs receiving high-cost support. *See* Commission Order No. 29841 at 18. With Cricket Communications, Inc.'s ETC Application, the Commission determined that a two-year network improvement plan was not applicable to Lifeline-only ETCs and granted Cricket's ETC designation. *See* CRI-T-11-01, Order No. 32501.

In the *USF/ICC Transformation Order*, the FCC amended section 54.202 to clarify that a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC. Because Lifeline-only ETCs are not receiving funds to improve or extend its networks, the FCC stated that it "saw little purpose in requiring such plans as part of the ETC designation process."¹⁸ Q Link's Application seeks only low-income USF support and a limited ETC designation. Thus, the requirement to provide a network improvement plan does not apply to this Application. Therefore, Staff believes Q Link is exempt from Idaho's two-year network improvement plan requirement.

Ability to Remain Functional in Emergencies

Q Link states that it has the ability to remain functional in emergency situations in accordance with the Idaho ETC Order and Section 54.202(a)(2) of the FCC's Rules, 47 C.F.R. § 54.202(a)(2). Q Link states that it provides the same ability to remain functional in emergency situations as currently provided by the ILECs to their own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source,

¹⁸ *See Lifeline and Link up Reform and Modernization et al*, WC Dkt no. 11-42 *et al*. Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at para 386.

the ability to reroute traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations.¹⁹

Other ETC Designation Requirements

Additional requirements for ETC designation are detailed in Appendix 1 of Order No. 29841 and are discussed in more detail below.

1. Common Carrier Status. Q Link is a common carrier as defined in U.S.C. Title 47. Application at 11.

2. Provide the Universal Services. Q Link will provide each of the supported services identified in Section 54.101 and Section 54.202(a) of the FCC's Rules (47 C.F.R. § 54.101(a) and 47 C.F.R. § 54.202(a). *Id.* at 12-13.

3. Advertising. Q Link will advertise the availability and rates for its services described in the Application through media of general distribution. *Id.* at 13-14.

4. The Commitment and Ability to Provide Supported Services. Q Link resells services. Q Link's network "is operational and largely built out and Q Link will be able to commence offering its Lifeline service to all locations served by its underlying carrier very soon after receiving approval by the Commission." *Id.* at 15.

5. A commitment to Consumer Protection and Service. Q Link commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards. The Company commits to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service. *Id.* at 16.

6. Description of the Local Usage Plan. Q Link states that an Applicant for ETC designation is no longer required to demonstrate that it offers a local usage plan that is "comparable" to the plan offered by the ILEC in the relevant service territory. Nevertheless, it will offer service plans comparable to the underlying ILEC plans, "but it also will exceed them in several aspects." *Id.* at 16.

7. Tribal Notification. The Company states that it will provide relevant and necessary Tribal notifications.

Staff believes Q Link meets the aforementioned applicable ETC designation requirements for Lifeline-only ETC designation.

¹⁹ Application at 15.

STAFF RECOMMENDATION

Staff has reviewed the Application of Q Link Wireless LLC for designation as a Lifeline-only ETC. Staff believes that the Application demonstrates that the Company has the requisite technical, financial and managerial expertise as well as the commitment to fulfill the obligations of an ETC in Idaho. The Company will provide all universal services supported by the federal USF throughout its underlying carrier's service territory; it has addressed all of the public interest questions that accompany an ETC Application; the Company's compliance plan has been approved by the FCC; and Q Link will provide multiple pricing plans which will increase customer choice for low-income service in Idaho.

Staff believes Q Link's Application for designation as an ETC is in the public interest and should be approved for those wire centers listed in Exhibit 6.

Respectfully submitted this 14th day of February 2014.



Neil Price
Deputy Attorney General

Technical Staff: Grace Seaman

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT I HAVE THIS 14TH DAY OF FEBRUARY 2014, SERVED THE FOREGOING **COMMENTS OF THE COMMISSION STAFF**, IN CASE NO. QLW-T-13-01, BY MAILING A COPY THEREOF, POSTAGE PREPAID, TO THE FOLLOWING:

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