

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF I-WIRELESS, LLC'S)
APPLICATION FOR DESIGNATION AS AN) CASE NO. WIR-T-15-01
ELIGIBLE TELECOMMUNICATIONS)
CARRIER) ORDER NO. 33473
_____)

On October 20, 2015, i-wireless, LLC (the Company) applied to the Commission for an Order designating it as an eligible telecommunications carrier (ETC) to provide Lifeline service to qualifying Idaho consumers. The Company filed 15 exhibits, supporting its Application. On January 8, 2016, the Company filed a Letter with supplemental information, and on January 13, 2016, the Company filed a Notice of Mailing to Tribes. The Commission issued a Notice of Application and Notice of Modified Procedure on January 22, 2016. Order No. 33453. Staff filed timely comments. The Company did not file a reply. The Commission now approves the Company's Application.

BACKGROUND

A. The Universal Service Fund and Lifeline

The Federal Communications Commission (FCC) established the federal Universal Service Fund (USF) with the intent to make adequate, efficient communications available nationwide, at reasonable charges. *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training* ("Lifeline and Link Up Reform Order") 27 F.C.C.R. 6656, at 6660-62 (Feb. 6, 2012); 47 U.S.C. § 254(b).¹ Lifeline is a program supported by the USF that provides monthly discounts to eligible low-income subscribers in order to maintain access to communications networks. *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656 at 6662-63. High-cost support from the USF, through the Connect America Fund, addresses initial connections for services in high-cost areas. *See In the Matter of Connect America Fund*, 27 F.C.C.R. 4040, 17672-73 (Nov. 18, 2011) (goals for high-cost support include ensuring and advancing the availability of communications services).

¹ See also *Rural Telephone Coalition v. F.C.C.*, 838 F.2d 1307, 1315 (D.C. Cir. 1988).

Idaho has a state USF program, established in *Idaho Code* §§ 62-610 and 62-610A-610F. Idaho also has a Lifeline program known as the Idaho Telecommunications Service Assistance Program (ITSAP). *Idaho Code* § 56-901.

B. ETC Designation Requirements

Under the federal Telecommunications Act, a carrier designated as an ETC is eligible to receive federal support from the USF. 47 U.S.C. § 214(e). Jurisdiction to grant ETC designations rests with state commissions. 47 U.S.C. § 214(e)(2); *Idaho Code* §§ 62-610D(1), 62-615(1); Order No. 29841 (ETC Requirements Order). Under this authority, this Commission has granted ETC designations to numerous carriers in Idaho, including wireless carriers. *See e.g.* Order Nos. 29841, 32586, 32645.

To qualify as an ETC, an applicant must satisfy several requirements established in federal and state law. 47 U.S.C. § 214(e); Order No. 29841. Under the federal Telecommunications Act, the applicant must be a “common carrier” and must offer services supported under Section 254(c) of the Act “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(10), 214(e)(1)(A), 160(a)(3) (FCC has regulatory flexibility to forbear application where consistent with public interest). The Telecommunications Act also requires that the applicant “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B).

Under the Act, state commissions shall determine whether granting the requested ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2). In evaluating this public interest element, this Commission has generally considered two factors. *See* Order Nos. 33002 at 2-3, 33226 at 3. First, the Commission evaluates whether the carrier contributes to state assistance programs such as ITSAP and the Idaho Telecommunications Relay Services (TRS) program. *Id.*; *Idaho Code* § 61-1301. Second, the Commission considers if the designation is sought for only part of a rural telephone company’s study area, thus leaving some (perhaps less profitable) customers without service. *Id.* Such practice, known as “cream skimming,” is contrary to the public interest. *Id.*

Federal regulations include the following additional requirements which the Commission has adopted in evaluating applications for ETC designation: (1) compliance with service requirements applicable to support received; (2) submission of a plan for proposed

improvements or upgrades to the network, where applicable; (3) demonstrated ability to remain functional in emergencies without an external power source; (4) demonstrated willingness to satisfy consumer protection and service quality standards; (5) financial and technical capability to provide Lifeline service; (6) notice to affected Tribes where designation is sought for any part of Tribal lands. 47 C.F.R. § 54.202; “ETC Requirements Order” No. 29841.

For applicants seeking Lifeline-only ETCs, the FCC has waived the requirement to submit a network improvement and upgrade plan, noting that such ETCs do not receive funds to improve or extend their networks. *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656, ¶ 386. This Commission – which requires a two-year network improvement plan and progress report (Order No. 29841 at 18) where applicable – has also waived the requirement where a Lifeline-only ETC is requested. Order No. 33002 at 3, *citing Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656, ¶ 386.

THE APPLICATION

i-wireless provides commercial mobile radio service (CMRS) throughout the country, and prepaid wireless telecommunications services using the Sprint Spectrum, L.P. network “on a wholesale basis to offer nationwide service.” Application at 2-3. Using Sprint’s network, the Company operates as a Mobile Virtual Network Operator (MVNO). *Id.* at 3. The Company requests ETC designation “that is statewide in scope,” although it specifies geographic areas in Exhibit 14 to its Application. *Id.* at 21-22. The Company asks that its ETC designation include authority to participate in and receive reimbursement from Idaho’s Lifeline program, ITSAP. January 2016 Letter. i-wireless seeks designation solely to provide Lifeline services to qualifying Idaho customers, and will not seek high-cost funds from the federal USF. Application at 1.

The Company notes that it has requested and been designated as an ETC in 28 states: Arkansas, Arizona, California, Colorado, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Washington, West Virginia, and Wisconsin. Application at 3. It has been designated as an ETC by the FCC in the District of Columbia and the following nine states: Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, and Virginia. *Id.*, *citing In the Matter of*

Telecommunications Carriers Eligible for Universal Service Support, 27 F.C.C.R. 6263 (Jun. 13, 2012).

The Company reports that the FCC issued a Notice of Apparent Liability (NAL) to i-wireless in 2013, but has taken no action on the matter since the Company responded. Application at 9-12. The Company highlights that six states have considered the 2013 NAL in finding it appropriate to grant, continue, or expand i-wireless's ETC: Oregon, Pennsylvania, Nebraska, Georgia, Washington, and California. *Id.* at 12-14.

At the time i-wireless filed its Application here, the Company also had applications for ETC designation pending in Hawaii, Massachusetts, New Jersey, Oklahoma, and South Dakota. *Id.* at 3. The Company notes that it has never had a petition for ETC designation denied. *Id.*

The Company asserts that granting it ETC designation will “promote competition and innovation, and spur other carriers to target low-income consumers,” and “help assure that quality services are available at ‘just, reasonable, and affordable rates’” as contemplated in the Telecommunications Act. *Id.* at 28. Granting it ETC designation will, the Company states, “further the public interest by providing Idaho consumers, especially low-income consumers, with low prices and high quality services.” *Id.* at 26. “[D]esignating i-wireless as an ETC would significantly benefit low-income consumers eligible for Lifeline service in the State of Idaho – the intended beneficiaries of universal service.” *Id.*

STAFF COMMENTS

Staff reviewed the Company's Application and attachments for compliance with requirements established by the FCC and this Commission. Staff believes that i-wireless has satisfied public interest considerations, but recommended that, if granted, the ETC designation should include only those exchanges listed in the Company's Exhibit 14, rather than the entire state. Also, in light of the Company's FCC Forbearance Order (Exhibit 10), and language in Commission Order Nos. 29841 and 32501, Staff believes i-wireless is exempt from the “own facilities” requirement, and from the two-year network improvement plan requirement. Staff determined that the remaining federal and state requirements for ETC designation are satisfied. Staff therefore recommended that the Commission approve the Company's Application.

DISCUSSION AND FINDINGS

The Commission has authority to grant ETC designation to a telephone company under federal and state law. 47 U.S.C. § 214(e), *Idaho Code* §§ 62-610D, 62-615(1). The Commission has reviewed and considered the record in this case, including i-wireless's Application and exhibits, and Staff comments. We now make the following findings.

A. Common Carrier, Own-Facilities, and Advertising

We first address requirements listed in § 214(e)(1) of the federal Telecommunications Act. That provision requires an applicant to be a “common carrier” offering services “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(10), 214(e)(1)(A), 160(a)(3) (FCC has regulatory flexibility to forbear an application where consistent with the public interest). On the record before us, we find that i-wireless is a “common carrier,” and that the FCC has issued an order forbearing it from the own facilities requirement. Application at 4, 18, Exh. 10. Also, an applicant seeking ETC designation must “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B). Based on the record and the Company’s assurances, we find that this requirement is satisfied. Application at 20, Exh. 12.

B. Public Interest

Under the Act, state commissions shall determine whether granting the requested ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2). As to this requirement, we first consider whether the Company would contribute to the appropriate Idaho funds. Order Nos. 33002 at 2-3, 33226 at 3. Staff confirmed that i-wireless contributes to ITSAP. Comments at 5. We find that the Company’s contribution to ITSAP advances the public interest. Next we consider whether the Company is engaged in “cream skimming,” contrary to the public interest. Order Nos. 33002 at 2-3, 33226 at 3. i-wireless does not seek high-cost support – that is, support for customers to establish initial service. Rather, the Company asks to provide Lifeline for those who have already initiated service. For this reason, i-wireless’s requested ETC designation will not affect the availability of service, thus we find that a cream skimming analysis is inapplicable. We do however, find it appropriate and reasonable to limit i-wireless’s ETC designation to those exchanges identified in the Company’s Exhibit 14 – the areas that will be served – rather than the entire state.

As to the 2013 NAL, we believe the Company has implemented sufficient safeguards to address issues and public interest concerns raised in the NAL. We therefore find that i-wireless satisfies the public interest requirement.

C. Remaining Requirements

Finally, we address the six remaining requirements from federal regulations and our “ETC Requirements Order,” set forth above. 47 C.F.R. § 54.202; “ETC Requirements Order” No. 29841.

(1) Service Requirements for Support Received. We find that i-wireless has demonstrated compliance. Application at 18-20.

(2) Plan for Proposed Improvements or Upgrades to the Network. Consistent with our prior Orders, and that of the FCC, we find this requirement inapplicable because i-wireless seeks a Lifeline-only ETC designation for which it will receive no network improvement funds. Order Nos. 29841, 32501; *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656, ¶ 386 (requirement waived because Lifeline-only ETCs receive no network improvement funds).

(3) Ability to Remain Functional in Emergencies. We find the Company has demonstrated compliance. Application at 22.

(4) Willingness to Satisfy Consumer Protection and Service Quality Standards. We are satisfied with the Company’s assurances as to this requirement. *Id.* at 23.

(5) Financial and Technical Capability. Based on the Company’s assurances, we also find this requirement is satisfied. *Id.* at 24.

(6) Notice to Affected Tribes. Given the Company’s Notice of Mailing, we find this requirement is satisfied. Notice of Mailing to Tribes.

Based on the above findings, we conclude that i-wireless has satisfied the federal and state requirements for an ETC designation, and we therefore grant the Application for the state ITSAP and federal Lifeline programs, and for the exchanges listed in Exhibit 14.

ORDER

IT IS HEREBY ORDERED that the Commission approves i-wireless’s Application for designation as an eligible telecommunications carrier as discussed herein.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7)

days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. See *Idaho Code* § 61-626.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 2nd day of March 2016.



PAUL KJELLANDER, PRESIDENT

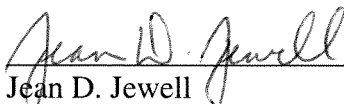


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jean D. Jewell
Commission Secretary

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