

Resolution T-17759
CD/CEM

DRAFT

Agenda ID# 20341

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Communications Division
Carrier Oversight and Program Branch**

**RESOLUTION T-17759
March 17, 2022**

R E S O L U T I O N

RESOLUTION T-17759. Approving DISH Wireless, LLC to be authorized as a California LifeLine Provider to offer prepaid wireless telephone services supported by the California LifeLine Program throughout California.

SUMMARY

This Resolution approves the request of DISH Wireless, LLC (DISH) (U-4533-C), a wireless reseller to operate as an authorized California LifeLine Service Provider doing business as (dba) Gen Mobile, to provide only California LifeLine discounted prepaid wireless telephone services to eligible low-income households throughout California, where its underlying carrier T-Mobile, provides wireless service as indicated in Attachment A. DISH seeks California LifeLine support only and does not seek federal Lifeline fund support or authority to serve federally recognized Tribal Lands at this time. DISH currently provides telecommunications services in California dba Boost Mobile and Republic Wireless.

This Resolution specifically approves the following prepaid wireless plans as eligible for California LifeLine support: ¹

- Basic Plan – California LifeLine Unlimited Talk, Text & 4.5 GB data for \$0 per month (Free handset) Retail price: \$27.50.
- Standard Plan - California LifeLine Unlimited Talk, Text & 6 GB data for \$0 per month (Free handset) Retail Price: \$40.00.
- California LifeLine Unlimited Talk, Text & 7 GB Plan Upgrade Option – Unlimited talk and unlimited text messages for \$10.00 per month with a temporary promotional discount of \$25.15. Retail price: \$50.00.
- California LifeLine Unlimited Talk, Text & 8 GB Plan Upgrade Option – Unlimited talk and unlimited text messages for \$20.00 per month with a temporary promotional discount of \$25.15. Retail price: \$60.

¹ Service plans must be updated according to CPUC's D.20-10-006. Also see *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, Order, WC Dkts. 11-42, 09-197, & 10-90, (DA 20-1358), Released November 16, 2020.

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DISH's rate plans are subject to a \$39 activation fee, which the company will seek reimbursement from the California LifeLine Program for eligible households. DISH is responsible for any activation/connection fee that is not eligible for reimbursement from the California LifeLine Program.

Gen Mobile's Advice Letter

On February 12, 2021, Gen Mobile Inc., (GenMobile) (U-4521-C) submitted Advice Letter (AL) 4 to the California Public Utilities Commission (CPUC) requesting authorization to be a California LifeLine provider to offer discounted prepaid wireless telephone services to eligible households in California.² On September 29, 2021, Gen Mobile advised Staff DISH was purchasing the assets of Gen Mobile through an Asset Purchase Agreement. On October 1, 2021, the purchase was completed. On December 14, 2021, GenMobile withdrew AL 4 so that the new owner, DISH, can seek California LifeLine authority on its own behalf and under the dba GenMobile.

DISH's Advice Letter

On October 13, 2021, DISH filed AL 12 to update its fictitious business name statement as filed with the County of Sacramento adding Gen Mobile as a dba consistent with CPUC General Order (GO) 96-B 7.1.³

October 26, 2021, DISH filed Tier 3 Advice Letter AL 13 to the CPUC requesting authorization to be a California LifeLine provider to offer discounted prepaid wireless telephone services to eligible households in California.⁴

DISH proposes to offer four plans at this time. DISH does not seek federal Lifeline fund support. It proposes to offer a company discount equal to the federal Lifeline monthly support of \$9.25⁵ until DISH becomes an Eligible Telecommunications Carrier (ETC).

Furthermore, DISH's rate plans are subject to a \$39 activation fee which would be waived for California LifeLine participants. DISH will seek the \$39 activation reimbursement from the California LifeLine Program no more than two times annually per eligible California LifeLine household, in accordance with Decision (D.) 14-01-036.

² Gen Mobile, Inc. AL 4.

³ DISH AL 12.

⁴ DISH AL 13.

⁵ 47 C.F.R. §§ 54.400 *et seq.* contains the Federal Communications Commission's (FCC) Lifeline rules issued to implement § 254 of the Act.

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BACKGROUND

California LifeLine Requirements

The purpose of the California LifeLine Program is to provide high quality, residential telephone service at affordable rates to low-income citizens of California. The California Legislature directed the CPUC to ensure that the program has essential consumer protections and is competitively neutral. A carrier seeking to be a California LifeLine provider must comply with the CPUC's LifeLine rules and requirements set forth in Public Utilities Code § 871 et seq., General Order (GO) 153, and various CPUC decisions including but not limited to, D.20-10-006, D.17-01-032, D.14-01-036, D.10-11-033. The carrier must also comply with all applicable CPUC rules, orders, decisions, resolutions, the Public Utilities Code, and federal Lifeline rules.

In order to become a California LifeLine provider, a carrier must generally demonstrate the following:

1. It has a valid, active operating authority issued by the CPUC;⁶
2. It is current in its remittance of CPUC User Fees and public purpose program surcharges;⁷
3. Its proposed offerings meet the CPUC's California LifeLine service elements;⁸
4. Its disclosures, schedule of rates and charges, and terms and conditions are thorough and consistent with state and federal rules.
5. Its marketing and selling methods are consistent with D.14-01-036 and 47 Code of Federal Regulations (C.F.R.) § 54.405(b); and
6. Its provisioning process is consistent with and in compliance with the California LifeLine Administrator's enrollment process, validation checks, transmission requirements, and efforts to prevent waste, fraud, and abuse.⁹

When a wireless telecommunications carrier becomes a California LifeLine provider, it is authorized to provide California LifeLine services statewide without any geographic

⁶ See OP 3 of D.14-01-036.

⁷ See GO 153 §§ 9.5.3.1., 9.8.5, 9.8.6, 9.9.2, 10, and 11 and OP 21 of D.13-05-035.

⁸ See OP 26.a. of D.14-01-036, Attachment D; See also GO 153, Appendix A in D.14-01-036.

⁹ On February 14, 2014, the CPUC's Communications Division issued an administrative letter titled "Guidance for Service Providers Interested in Offering California LifeLine Wireless Services Consistent with Decision 14-01-036." (Administrative Letter) (http://www.cpuc.ca.gov/NR/rdonlyres/AEBD2120-0BE44811B54564AF0349382F/0/CDAdvice_Letter_Filing_Components_CaLLWireless_APPROVED_021414.pdf). This Administrative Letter provides instructions and guidance for a carrier seeking to become a California LifeLine provider to offer California LifeLine wireless services.

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restrictions. A wireless carrier also must demonstrate that its proposed offerings meet the California LifeLine wireless service elements. The CPUC adopted the California LifeLine wireless service elements in D.14-01-036, set forth in GO 153, Appendix A-2.

Some of the key service elements are as follows:

- The provider must offer participants the ability to place and receive voice-grade calls over all distances using the public switched telephone network or successor network.
- The provider must offer free, unlimited access to public safety N11s (211, 311, 511, 711, and 811) for California LifeLine eligible plans with 1,000 or more voice minutes, and to 911 emergency services for all California LifeLine eligible plans.
- The provider must offer services on a non-discriminatory basis to any customer residing in the service territory.
- The provider must offer to California LifeLine participants all handsets on the same basis as it offers to retail customers.
- The provider must offer all plans that meet or exceed the California LifeLine service elements and are consistent with the rules on a discounted basis; and
- The provider must provide free, unlimited access to customer service representatives in the same language in which the California LifeLine service was originally sold or marketed.

In addition, the carrier must comply with the California LifeLine wireless service terms and conditions adopted in D.14-01-036, D.20-10-006, set forth in GO 153, Appendix A-2, including, but not limited to:

- The provider must exempt participants from paying CPUC user fees, surcharge, and taxes.
- The provider must not assess a fee to participants for paying their bills in person by cash, check, or other form of payment.
- The provider must allow participants to terminate service without incurring early termination fees.
- The provider must allow participants to return their handsets within three days of service activation for free, without incurring a restocking fee; and
- The provider must allow participants to purchase additional data at the lowest rate that is offered to retail customers.

To ensure that participants are adequately informed of the service plans, the California LifeLine provider must prominently disclose and disseminate terms and conditions, program information, and enrollment process to potential and existing participants in compliance with rules including, but not limited to, GO 153, sections 4 and 5,

D.14-01-036, D.20-10-006, Public Utilities Code § 876, and 47 C.F.R. § 54.405(c).

Additionally, service providers must submit their marketing materials, including scripts

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to the Communications Division (CD) for review and approval prior to dissemination and/or availability to the public.¹⁰

Notice/Protests

DISH served its AL 13 filing via email to all parties on the California LifeLine service list and the AL 13 appeared in the Commission's Daily Calendar on October 29, 2021. No protests were received.

DISCUSSION

This Resolution recommends approval of DISH Wireless, LLC to be authorized as a California LifeLine Provider to offer prepaid wireless telephone services supported by the California LifeLine Program throughout California.

Company Overview

DISH Wireless LLC, is a Colorado corporation with its principal office located at 1325 Pacific Highway, Unit 2804, San Diego, CA. On May 4, 2020, DISH received its CPUC Wireless Identification Registration ("WIR") number U-4533-C to provide resold wireless service. As a registered Commercial Mobile Radiotelephone Services (CMRS) provider in California, DISH is required to report and pay public purpose program surcharges and user fees on its California intrastate telecommunications services revenues.

On October 1, 2021, DISH acquired the assets of Gen Mobile, Inc., a Delaware corporation with its principal office located at 2215 Artesia Blvd., #1243, Redondo Beach, CA. On April 9, 2018, Gen Mobile a registered CMRS provider in California received its Wireless Identification Registration (WIR) number U-4521-C.

Compliance with California LifeLine Program

Since DISH is offering prepaid wireless service, it is exempt from California LifeLine Program's pre-qualification requirement. However, DISH will work through the California LifeLine's Administrator to enroll and determine eligibility before providing services to Californians.

¹⁰ See OP 24.c of D.14-01-036.

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DISH proposes to market and distribute new or refurbished data-capable handsets to potential California LifeLine participants in multiple ways: 1) online marketing, 2) in-person at retail locations, 3) provide a Subscriber Identity Module (SIM) card if subscribers use their own device, and 4) mail or over the telephone. DISH will not activate the service prior to shipping the handset. The subscriber completes the activation process by making the first outbound call. However, DISH commits to comply with the California LifeLine Administrator's enrollment and eligibility processes and will not seek reimbursement for the service until the customer activates the service from the handset. DISH will make all plans and handsets available to California LifeLine participants as it does with its retail customers.

DISH did not seek exemptions from the All Plans Requirement and the All Handsets Requirement. If DISH wishes to seek exemptions, in the future, they must file a Tier 2 advice letter explaining their proposed plans and phones they intend to offer or plans or phones they do not propose to offer to LifeLine subscribers and the reasons why such plans or phones should not be available to LifeLine subscribers¹¹.

D.14-01-036 requires that the discount for the pre-paid telephone service begin with the date of application approval notification or the service activation date, whichever is later. DISH proposes to distribute handsets upon the consumer's completion of the enrollment process at the company's retail locations or event locations.

DISH states that it will utilize CGM, LLC's electronic enrollment application. CGM LL stores and manages customer data for wireless California LifeLine service providers. They automate the process of gathering and analyzing data of California LifeLine customers for several service providers that provide California LifeLine services. Prior to submission to the California LifeLine Administrator, DISH will use the status code 53 process¹², for all of its sales channels, including in-person enrollment.

Since December 2010, the CPUC has required carriers with limited ETC designation offering federal Lifeline service in California to clearly label its service. Although DISH

¹¹ See OP 24.b.iv of D.14-01-036.

¹² The Administrator developed a special process, "Status Code 53 Process," for telephone service providers offering pre-paid telephone services waiving the pre-qualification requirement. The Status Code 53 Process requires California LifeLine providers to send an updated record with the Service Start Date and telephone number to the Administrator. California LifeLine providers are only supposed to send this particular type of update record after confirming the consumer has made an outbound call.

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is not requesting an ETC designation, Staff also recommends that DISH clearly label its wireless telephone service plans approved in this Resolution as “California LifeLine wireless service plans” and refer to the California LifeLine Program, where applicable, in DISH’s terms and conditions, disclosures, website, and marketing materials. Staff will review and approve all terms and conditions, disclosures, and marketing materials including, but not limited to, customer service representative scripts, internet marketing, and posters and brochures, prior to publication and distribution.

Compliance with the California LifeLine Administrator’s Requirements

The California LifeLine Administrator is the sole entity responsible for determining eligibility and administering the enrollment process for both the California LifeLine Program and the federal Lifeline program. Service providers that participate in the federal and/or state program must comply with the eligibility requirements and the Administrator’s enrollment process.

DISH must: 1) comply with the Administrator’s enrollment and de-enrollment processes, transmission requirements, eligibility rules, and validation checks; and 2) facilitate, participate in, and comply with the Administrator’s enrollment process to eliminate waste, fraud, and abuse¹³.

Currently, DISH lacks experience with the California LifeLine Program and the Administrator’s enrollment process, protocols, transmission requirements, etc. and is only in the preliminary stages of becoming and operating as a California LifeLine provider. Staff recommends that DISH work with the Administrator and Staff to finalize its provisioning process and solidify its understanding of the program’s processes prior to the company launching its services.

Staff finds that the proposed California LifeLine wireless telephone service plans indicated below meet the California LifeLine Program requirements and are eligible for reimbursement from the California LifeLine Fund. Staff recommends approval of the following California LifeLine wireless service plans:

¹³ DISH AL 13, page 8.

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- California LifeLine Unlimited Talk, Text & 4.5 GB Plan Upgrade Option - for \$0.00 per month
- California LifeLine Unlimited Talk, Text & 6 GB Plan Upgrade Option – for \$0.00 per month.
- California LifeLine Unlimited Talk, Text & 7 GB Plan Upgrade Option – for \$10.00 per month with a temporary promotional discount of \$25.15.
- California LifeLine Unlimited Talk, Text & 8 GB Plan Upgrade Option – for \$20.00 per month with a temporary promotional discount of \$25.15.

DISH requests a waiver of the California LifeLine pre-qualification requirement for its prepaid California LifeLine wireless service plans, since it will offer them on a prepaid basis. Staff recommends that the Commission grant DISH’s request because it is consistent with D.14-01-036. However, this waiver does not apply to post-paid telephone service plans. If DISH decides to offer any California LifeLine wireless telephone service plans on a post-paid basis in the future, it must comply with the pre-qualification requirement unless it is granted a waiver.

Compliance with Commission User Fee and Surcharge Obligations

Staff has verified that DISH is current with its payment of the annual CPUC User Fees and public purpose program surcharges. DISH is required to continue to remain current with its payments. Failure to comply may lead to enforcement action including, but not limited to, revocation of DISH’s WIR, authority to operate as a California LifeLine provider, and denial of California LifeLine reimbursements.

Future Changes to California LifeLine Supported Service Plans

Dish is applying to be a California LifeLine service provider in this resolution. Once approved, DISH will be required to provide California LifeLine service without geographic restrictions. DISH is not applying to provide California LifeLine services in federally recognized Tribal lands at this time. In the event that DISH may change its service areas associated with its designation in California, Staff recommends as follows:

1. For changes to its approved California Lifeline provider designated service area, the company should file a Tier 2 advice letter that describes the areas to be served, a list of the geographic service areas, and a map in Shapefile format of the proposed area.
2. For future changes to DISH’s California LifeLine supported service plans, the company shall file a Tier 2 advice letter that describes the change(s).

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Public Interest Determination

Before recommending designation of a carrier as a California LifeLine provider, Staff must determine that doing so would be in the public interest for California consumers.¹⁴ Designating DISH as a California LifeLine provider will serve the public interest because it increases consumer choices to low-income populations in a wide service area. Upon review, Staff finds that DISH meets the criteria for public interest determination.

Price Analysis

When analyzing California LifeLine plan pricing, Staff relies on competitive forces to determine reasonable plan prices and compares proposed offerings to currently available California LifeLine plans and non-Lifeline, retail plan prices. Staff evaluated DISH's proposed offerings using the expected monthly cost to low-income consumers based on mobile average minutes of use¹⁵ and other LifeLine wireless plans.

The charts on the next page compares DISH's voice and text plan to similar existing plans in the market.

¹⁴ *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Dkt 96-45 (FCC 05-46), released Mar 17, 2005 ¶ 40 and CPUC Resolution T-17002, *Appendix A, Section II-G: Public Interest Determination*.

¹⁵ *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Dkt. No. 16-137 (DA 16-1061) (*Nineteenth Report*). The FCC's Nineteenth Mobile Wireless Competition Report included data from the second half of 2015 submitted by industry carriers. The report analyzes competition across the entire mobile wireless marketplace. Staff's analysis used the 760 average minutes of use (MOU) for wireless voice (excluding most data-only devices) as a base to evaluate these Lifeline plan offerings (B. Usage, para 125, Chart VII.B.1, pg. 95, reflects average billable minutes of use).

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California LifeLine 4.5 GB Plan – Unlimited Talk and Text for \$0.00 per month

U-# and Approving Authority	U-4533-C AL 13 10/26/21	U-4436-C AL46 3/20/2021	U-4423-C AL33 1/06/2021	U-4458-C AL34A 12/01/2020
Comparable w/Call Wireless Plans	DISH 4.5 GB Unlimited Talk & Text plus Plan	Boomerang Communications 4.5 GB Basic Plan Unlimited Talk & Text Plus Plan	Global Connection Inc., Unlimited 4.5 GB Unlimited Talk & Text	Amerimex Communication Corp. Basic Unlimited Voice, Text, & 4.5 GB
Imputed or Comparable Retail Plan Price	\$27.50	\$59.10	\$28.00	\$49.25
Federal Lifeline	\$9.25-9.25	\$9.25	\$9.25	\$9.25
Tribal Lands	\$-	\$-	\$-	\$-
California LifeLine	\$12.85	\$ 12.85	\$12.85	\$12.85
Company Discount/Credit	\$5.40	\$37.00	\$5.90	\$27.15
Plan Price to California LifeLine Customer per Advice Letter	\$0.00	\$0.00	\$0.00	\$0.00
Avg. MOU*	760	760	760	760
Basic Plan Minutes (allowance)	Unlimited	Unlimited	Unlimited	Unlimited
Texts included (texts: minutes)	Unlimited	Unlimited	Unlimited	Unlimited
Data included	4.5 GB	4.5 GB	4.5 GB	4.5 GB
Avg. Excess MOUs	-	-	-	-
Cost per Minutes in Excess of Allowance	\$0.00	\$0.00 \$18.99 for 2GB	\$0.00 \$10 for 1.5GB; \$20 for 3GB; and \$30 for 8 GB	\$0 \$5 for 500MB; and \$10 for 1GB
Cost of Excess Minutes**	\$0.00	\$0.00	\$0.00	\$0.00
Total Cost to California LifeLine Customer with 615 MOU	\$0.00	\$0.00	\$0.00	\$0.00
* Updated Average Minutes of Use (MOU) based on FCC 16-1061 19th Mobile Wireless Competition Report adopted September 23, 2016, chart VII.B.1., Average MOU per Subscriber per Month, 2009-2015. Avg MOU 760, Year 2015.				
Underlying carriers (T-Mobile, AT&T, Verizon)	TM	A, TM, V	A, TM, V	TM

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California LifeLine Unlimited Talk, Text & 6 GB Plan – Unlimited talk and unlimited text messages for \$0.00 per month.

U-# and Approving Authority	U-4533-C AL 13 10/26/21	U-4372-C AL34 4/08/2021	U-4451-C AL30 1 2/01/2020	U-4231-C AL51 11/23/20
Comparable ETC w/Call Wireless Plans	DISH Unlimited Talk, Text & 6 GB	I wireless, LLC 6 GB	Air Voice Wireless, LLC Unlimited Talk & Text with 6GB Data	TracFone SafeLink Unlimited Talk & Text
Imputed or Comparable Retail Plan Price	\$40.00	\$45.00	\$30.00	\$29.88
Federal Lifeline	\$9.25	\$9.25	\$5.25-9.25	\$9.25
Tribal Lands	\$-	\$-	\$-	\$-
California LifeLine ¹⁶	\$16.23	\$14.85	\$14.85	\$14.85
Company Discount/Credit*	\$25.15	\$0	\$5.90	\$5.78
Plan Price to California LifeLine Customer per Advice Letter	\$0.00	\$1.00	\$0.00	\$0.00
Avg. MOU*	760	760	760	760
Basic Plan Minutes	Unlimited	Unlimited	Unlimited	Unlimited
Texts included	Unlimited	Unlimited	Unlimited	Unlimited
Data included	6 GB	6 GB	6 GB	6 GB
Avg. Excess MOUs	-	-	-	-
Cost per Minutes in Excess of Allowance	-	-	-	\$5 for 500MB. and \$10 for 1GB
Cost of Excess Minutes**	\$0.00	\$0.00	\$0.00	\$0.00
Total Cost to California LifeLine Customer with 615 MOU	\$0.00	\$0.00	\$0.00	\$0.00
* Updated Average Minutes of Use (MOU) based on FCC 16-1061 19th Mobile Wireless Competition Report adopted September 23, 2016, chart VII.B.1., Average MOU per Subscriber per Month, 2009-2015. Avg MOU 760, Year 2015.				
Underlying carriers (T-Mobile, AT&T, Verizon)	TM			TM, A, V

¹⁶ See Notice of Specific Support Calculation for 2021 letter issued November 2, 2021, of new Specific Support Amount (SSA), effective January 1, 2022.

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California LifeLine Unlimited Talk, Text & 7 GB Plan – Unlimited talk and unlimited text messages for \$10.00 per month.

U-# and Approving Authority	U-4533-C AL 13 10/26/21	U-4231-C AL51 11/10/2020	U-4451-C AL30 12/01/2020
Comparable ETC w/Call Wireless Plans	DISH Unlimited Talk, Text & 7 GB	TracFone SafeLink Unlimited Talk & Text With 8 GB	Air Voice Wireless, LLC Unlimited Talk & Text with 8 GB
Imputed or Comparable Retail Plan Price	\$50.00	\$29.88	\$49.10
Federal Lifeline		\$9.25	\$5.25 - 9.25
Tribal Lands	\$-	\$-	\$-
California LifeLine	\$14.85	\$14.85	\$14.85
Company Discount/Credit*	\$25.15	\$0	\$0 - 4.00
Plan Price to California LifeLine Customer per Advice Letter	\$10.00	0	0
Avg. MOU*	760	760	760
Basic Plan Minutes (allowance)	Unlimited	Unlimited	Unlimited
Texts included (texts: minutes)	Unlimited	Unlimited	Unlimited
Data included	7 GB	8 GB	8 GB
Avg. Excess MOUs	-	-	-
Cost per Minutes in Excess of Allowance	-	-	-
Cost of Excess Minutes**	\$0.00	\$0.00	\$0.00
Total Cost to California LifeLine Customer with 615 MOU	\$0.00	\$0.00	\$0.00
* Updated Average Minutes of Use (MOU) based on FCC 16-1061 19th Mobile Wireless Competition Report adopted September 23, 2016, chart VII.B.1., Average MOU per Subscriber per Month, 2009-2015. Avg MOU 760, Year 2015.			
Underlying carriers (T-Mobile)	TM	A, TM, V	

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California LifeLine Unlimited Talk, Text & 8 GB Plan – Unlimited talk and unlimited text messages for \$20.00 per month.

U-# and Approving Authority	U-4533-C AL 13 10/26/21	U-4231-C AL51 11/10/2020	U-4451-C AL30 12/01/2020
Comparable ETC w/Call Wireless Plans	DISH Unlimited Talk, Text & 8 GB	TracFone SafeLink Unlimited Talk & Text With 8 GB	Air Voice Wireless, LLC Unlimited Talk & Text with 8 GB
Imputed or Comparable Retail Plan Price	\$60.00	\$29.88	\$49.10
Federal Lifeline		\$9.25	\$5.25 - 9.25
Tribal Lands	\$-	\$-	\$-
California LifeLine	\$14.85	\$14.85	\$14.85
Company Discount/Credit*	\$25.15	\$0.00	\$0-4.00
Plan Price to California LifeLine Customer per Advice Letter	\$20.00	\$0.00	\$0.00
Avg. MOU*	760	760	760
Basic Plan Minutes (allowance)	Unlimited	Unlimited	Unlimited
Texts included (texts: minutes)	Unlimited	Unlimited	Unlimited
Data included	8 GB	8 GB	8 GB
Avg. Excess MOUs	-		-
Cost per Minutes in Excess of Allowance	-		-
Cost of Excess Minutes**	\$0.00	\$0.00	\$0.00
Total Cost to California LifeLine Customer with 615 MOU	\$0.00	\$0.00	\$0.00
* Updated Average Minutes of Use (MOU) based on FCC 16-1061 <i>19th Mobile Wireless Competition Report</i> adopted September 23, 2016, chart VII.B.1., <i>Average MOU per Subscriber per Month, 2009-2015</i> Avg MOU 760, Year 2015.			
Underlying carriers (T-Mobile)	TM	A, TM, V	

Staff finds that DISH’s prepaid wireless plans are equal or better value based on comparable offerings and plan pricing for low-income customers and recommends approval

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Minimum Service Standards for Lifeline Services

Per D.21-09-023 ¹⁷and GO 153 the current minimum service levels for wireless Lifeline plans in California are unlimited voice and text, and 4.5 GB ¹⁸of mobile data per month.

Due Diligence Review

An integral part of Staff's processing of a California LifeLine designation request is a due diligence review to determine if the carrier has engaged in behavior that may call into question its fitness to be granted California LifeLine designation to serve California consumers. The due diligence review includes, but is not limited to, conducting independent research about a carrier's past operations to provide the Commission with information that may be pertinent in deciding whether to grant the California LifeLine designation request. Typical research methods include performing Lexis/Nexis legal resource searches, internet searches, reviewing industry and trade publications, querying other governmental agencies, contacting the Federal Communications Commission (FCC) and the Universal Service Administrative Company (USAC), reviewing a company's history of operations, and consulting with the Commission's Consumer Protection and Enforcement Division and Consumer Affairs Branch. DISH has not been subject to any enforcement sanctions in California.

Staff did not discover any substantial issues that would lead to a denial of DISH's request for authority to operate as a California LifeLine wireless provider in the state of California. If substantive issues emerge after this Resolution's effective date, the Commission has authority to pursue an enforcement action which may include, but is not limited to the following: fines, penalties, and the revocation of the California LifeLine authority, wireless identification registration authority and denial of its California LifeLine disbursements.

Safety Considerations

Given that safety and emergency communications are common concerns for all of California's wireless customers, Staff recommends that the Commission require DISH to fully and clearly inform prospective California LifeLine participants that access to Enhanced 911(E-911) and/or 911 may be limited or unavailable in the event of an emergency or power outage. Such disclosures include, but are not limited to, clear statements on marketing materials and conspicuous placement on the public

¹⁷ See OP 3 of D.21-09-023.

¹⁸ See G.O. 153 Appendix A-2, 3.a.

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website in the form of information content on webpages, footnotes, and/or listings on a frequently asked questions (FAQ) webpage.

COMMENTS

In compliance with P.U. Code § 311(g), the Commission emailed a Notice of Availability (NOA) on February 8, 2022, informing all parties on the Eligible Telecommunications Carrier service list, Rulemaking 20-20-008 service list, California LifeLine Administrative Committee and California Lifeline Working Group of the availability of this Resolution for public comments at the Commission's website www.cpuc.ca.gov. The NOA also informed parties that the final conformed Resolution adopted by the Commission will be posted and available on the same website.

FINDINGS AND CONCLUSIONS:

1. DISH Wireless, LLC (DISH) is a Colorado corporation with its principal office located at 1325 Pacific Highway, Unit 2804, San Diego, CA.
2. On May 4, 2020, DISH received its Wireless Identification Registration (WIR) ([insert number] to provide resold wireless service.
3. On October 1, 2021, DISH purchased GenMobile, Inc. through an Asset Purchase Agreement.
4. On October 13, 2021, DISH filed AL 12 to update its licensing information adding the fictitious business name (dba) Gen Mobile.
5. On October 26, 2021, DISH submitted Tier 3 Advice Letter (AL) 13 requesting authorization to offer prepaid wireless service to low-income households as a California LifeLine Provider.
6. DISH does not seek federal high-cost fund support.
7. DISH does not propose to offer federal LifeLine service in Tribal Lands at this time.
8. DISH commits to comply with the California LifeLine Program's enrollment process, including all eligibility rules and validation checks, and to provide the Administrator all required information for the Administrator to determine eligibility.
9. Failure to comply with CPUC user fee and public purpose program surcharge remittance and reporting requirements may lead to enforcement action which may include but is not limited to assessment of fees and and/or interest, revocation of DISH's WIR operating authority in California.
10. DISH should file a Tier 2 Advice Letter for any future changes to its approved

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designated service areas, or any request to serve Tribal Lands. This request shall include a description of the areas to be served; a list of the geographic areas; and a map(s) in Shapefile format of the proposed service area.

11. DISH should file a Tier 2 Advice Letter for any future changes to its approved California LifeLine service plans.
12. DISH commits to offer four prepaid California LifeLine supported wireless plans, for the following prices:
 - California LifeLine Unlimited Talk, Text & 4.5 GB Plan for \$0.00 per month
 - California LifeLine Unlimited Talk, Text & 6 GB Plan Upgrade Option – Unlimited talk and unlimited text messages for \$0.00 per month.
 - California LifeLine Unlimited Talk, Text & 7 GB Plan Upgrade Option – Unlimited talk and unlimited text messages for \$10.00 per month with a temporary promotional discount of \$25.15.
 - California LifeLine Unlimited Talk, Text & 8 GB Plan Upgrade Option – Unlimited talk and unlimited text messages for \$20.00 per month with a temporary promotional discount of \$25.15.
13. Staff conducted a due diligence review to determine DISH's fitness as it relates to business practice behavior and customer protection that may call into question its fitness to be granted designation as a California LifeLine provider to serve California consumers and did not find any issues that would prevent this type of designation.
14. The Commission may pursue an enforcement action which may include fines, penalties, denial, suspension, and/or revocation of DISH's California LifeLine designation status if substantive issues emerge after this Resolution's effective date.
15. As a California LifeLine provider, DISH is authorized to provide discounted wireless services to low-income households in California in the service area of its underlying service provider, T-Mobile.
16. Staff recommends approval of DISH's request to operate as a California LifeLine Provider contingent on the following:
 - File required annual reports and compliance reports with the Commission.
 - Continue to comply with CPUC User Fee and surcharge remittance and reporting requirements. Failure to do so may result in enforcement action including penalties, fines, denial, suspension, and/or revocation of its wireless identification registration, and/or authority to operate as a California LifeLine provider in California and denial and/or

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suspension of its California LifeLine reimbursements, following fines, penalties, and the revocation of the California LifeLine authority, wireless identification registration authority and denial of its California LifeLine disbursements.

- Provide terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, to the CPUC California LifeLine Staff for review and approval prior to dissemination and/or availability to the public.
- Post safety related information about wireless telephone service coverage limitations on distributed terms and conditions, disclosures, marketing materials, including scripts used by customer service representatives, and on its company website.
- Abide by all applicable state and federal consumer protection rules, including CPUC General Order 168, which is the *Consumer Bill of Rights Governing Telecommunications Services*, and comply with the CTIA-The Wireless Association's *Consumer Code for Wireless Service*, and comply with directions to carriers regarding unlocking of phones; and
- Comply with all applicable CPUC Decisions regarding emergency consumer protections and service quality rules.

17. On February 8, 2022, the Commission emailed a draft of this Resolution to the Eligible Telecommunications Carrier, the California LifeLine Rulemaking R.20-02-008, and the Administrative Committee and Working Group service list for public comments.

THEREFORE, IT IS ORDERED that:

1. The Commission approves DISH Wireless LLC (DISH) (U-4533-C) as a California LifeLine Provider to offer prepaid wireless services supported by the California LifeLine Program where its underlying carrier, T-Mobile, provides coverage.
2. The Commission approves the following prepaid wireless service plans for California LifeLine support:
 - California LifeLine Unlimited Talk, Text & 4.5 GB Plan for \$0.00 per month.
 - California LifeLine Unlimited Talk, Text & 6 GB Plan Upgrade Option – Unlimited talk and unlimited text messages for \$0.00 per month.
 - California LifeLine Unlimited Talk, Text & 7 GB Plan Upgrade Option – Unlimited talk and unlimited text messages for \$10.00 per month

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with a temporary promotional discount of \$25.15.

- *California LifeLine Unlimited Talk, Text & 8 GB Plan Upgrade Option – Unlimited talk and unlimited text messages for \$20.00 per month with a temporary promotional discount of \$25.15.*

3. DISH's designation as a California LifeLine prepaid wireless service provider shall be contingent upon the following:

- File required annual reports and compliance reports with the Commission.
- Continue to comply with CPUC User Fee and surcharge remittance and reporting requirements. Failure to do so may result in enforcement action including penalties, fines, denial, suspension, and/or revocation of its wireless identification registration, and/or authority to operate as a California LifeLine provider in California and denial and/or suspension of its California LifeLine reimbursements.
- Provide terms and conditions, disclosures, and marketing materials, including scripts used by customer service representatives, to the CPUC California LifeLine Staff at CaLL_marketing@cpuc.ca.gov for review and approval prior to offering service, dissemination and/or availability to the public.
- Post safety related information about wireless telephone service coverage limitations on distributed terms and conditions, disclosures, marketing materials, including scripts used by customer service representatives, and on its company website.
- Abide by all applicable state and federal consumer protection, including CPUC General Order 168, which is the *Consumer Bill of Rights Governing Telecommunications Services*, and comply with the CTIA-The Wireless Association's Consumer Code for Wireless Service, as it is amended, and comply with directions to carriers regarding unlocking of phones; and
- Comply with applicable CPUC Decisions regarding emergency consumer protections and service quality rules.

4. DISH shall file a Tier 2 Advice Letter to request approval for any future changes to its approved designated service area. This request shall describe the areas to be served and include a list of the geographic areas and a map(s) in Shapefile format of the proposed service area.

5. DISH shall file a Tier 2 advice letter to request approval for any future changes including, but not limited to, terms and conditions to the approved California

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LifeLine wireless service plans.

6. DISH shall comply with General Order 153 and the California LifeLine Administrator's enrollment process including, but not limited to, validation checks, transmission requirements, and efforts to prevent waste, fraud, and abuse.
7. DISH shall clearly label the wireless telephone service plans approved in this Resolution as "California LifeLine wireless service plans" and refer to the California LifeLine Program, where applicable, in DISH's terms and conditions, disclosures, and marketing materials.
8. DISH shall work with the California LifeLine Administrator and Staff to finalize its provisioning process and solidify its understanding of the program's processes prior to the company launching its services.
9. DISH shall notify the California LifeLine Administrator and obtain prior approval from Staff of any changes to DISH's provisioning process and operations including, but not limited to, its service activation method.
10. DISH shall comply with all CPUC rules, orders, decisions, and resolutions, the California Public Utilities Code, and Lifeline rules. Failure to do so may result in fines, penalties, denial, suspension, and/or revocation of its wireless identification registration, and/or authority to operate as a California LifeLine provider in California and denial and/or suspension of its California LifeLine reimbursements.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held

March 17, 2022, the following Commissioners voting favorable thereon:

Rachel Peterson
Executive Director

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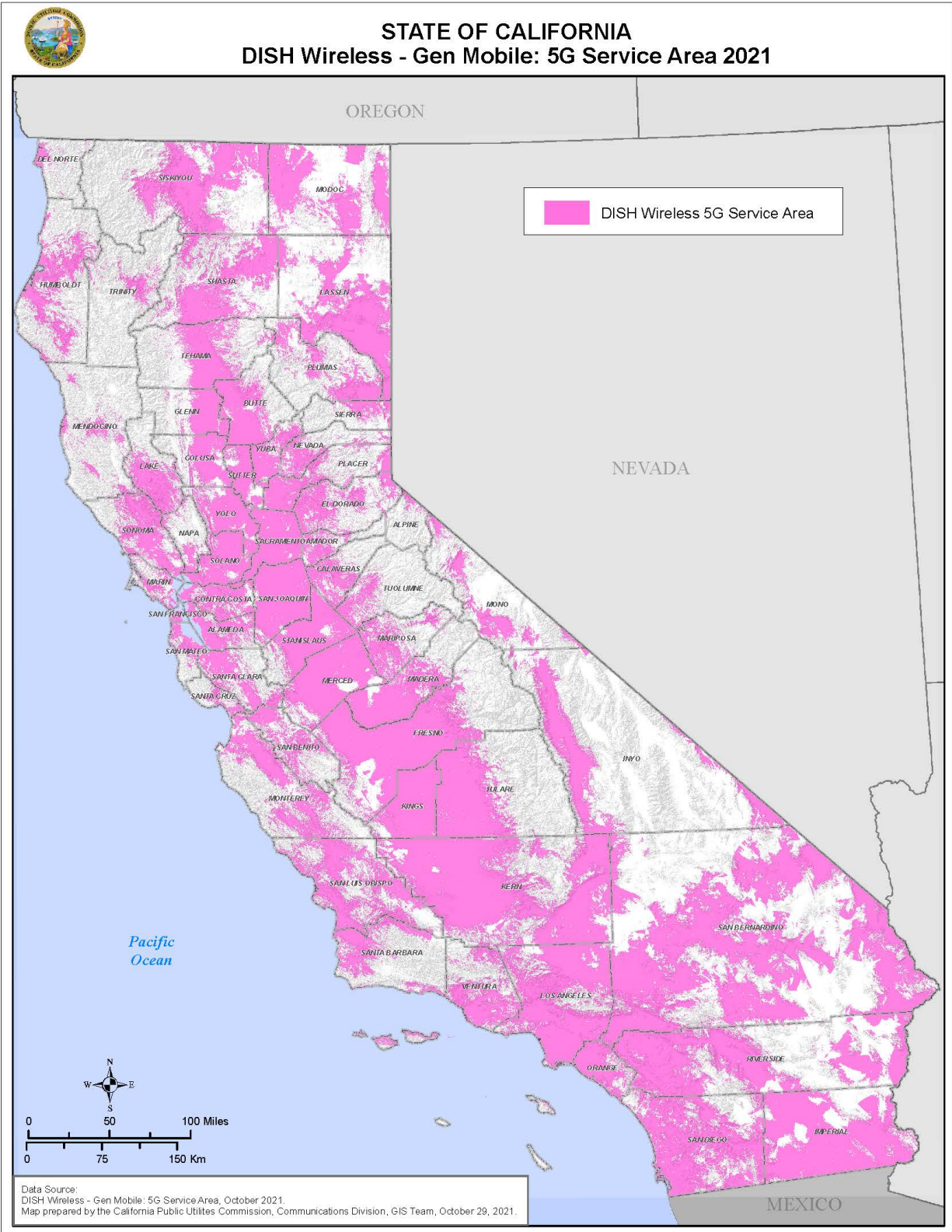
March 17, 2022

ATTACHMENT A

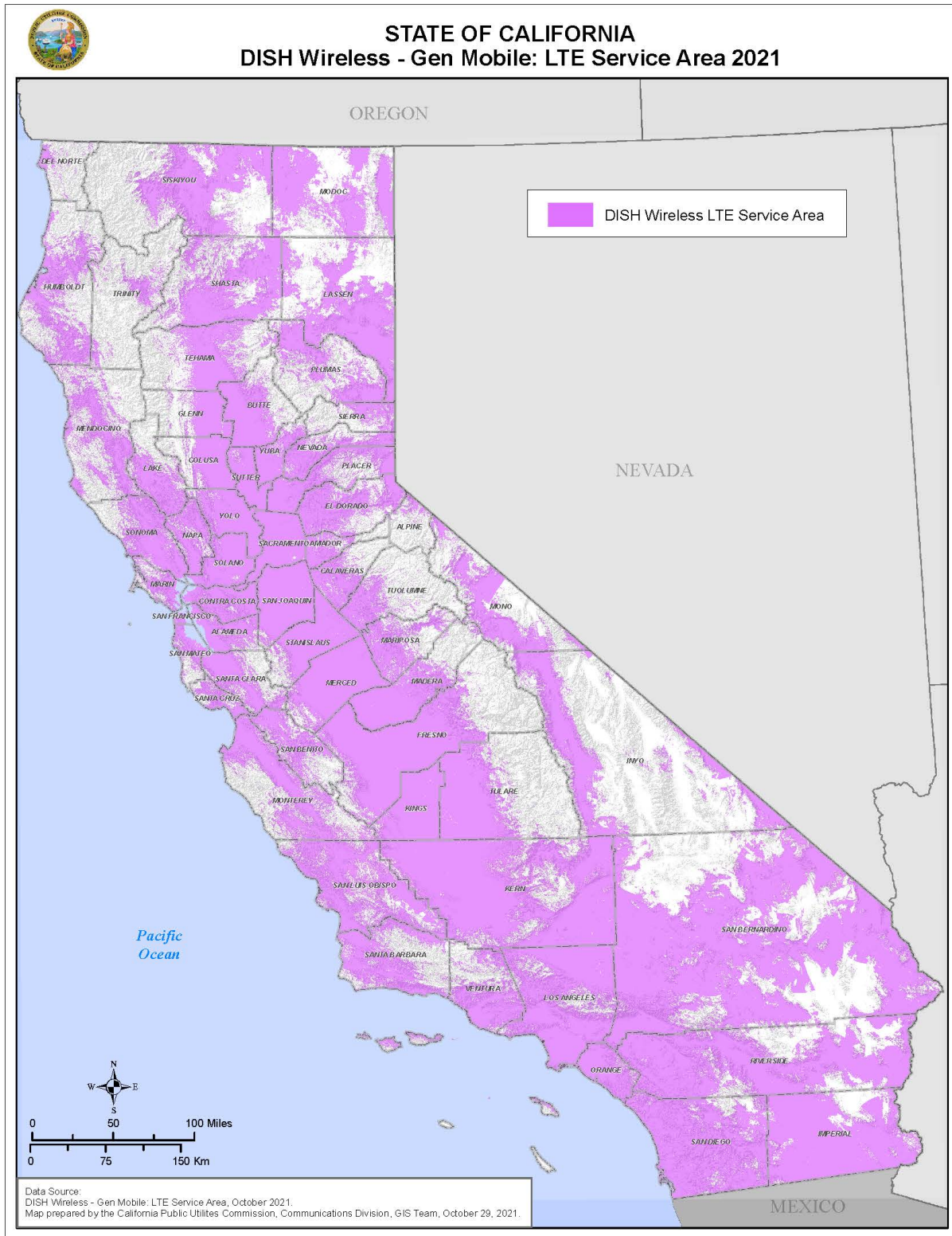
Resolution T-17759
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ATTACHEMENT A1



ATTACHEMENT A-2



Decision No. R22-0303

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 22A-0042T

IN THE MATTER OF THE APPLICATION OF DISH WIRELESS L.L.C. FOR
DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(E)(6) OF THE COMMUNICATIONS
ACT OF 1934, 47 C.F.R. §§ 54.201(D) AND 54.202, AND 4 CCR 723-2-2187.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
STEVEN H. DENMAN
GRANTING AMENDED APPLICATION
SUBJECT TO CONDITIONS**

Mailed Date: May 13, 2022

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A. The Commission Orders That:21

I. STATEMENT

1. This Recommended Decision grants, with reasonable conditions, the Amended Application of DISH Wireless L.L.C. (Applicant or DISH Wireless) for Designation as a Lifeline-Only Eligible Telecommunications Carrier.

A. Procedural History.

2. On January 21, 2022, DISH Wireless filed an Application with the Colorado Public Utilities Commission (Commission), seeking designation as an Eligible Telecommunications Carrier (ETC) in the State of Colorado. DISH Wireless asserted two reasons for filing the Application: (1) an ETC designation will allow DISH Wireless’s Affordable Connectivity Program subscribers to access funds under the Lifeline program; and (2) designating DISH Wireless as an ETC will better position it to pursue broadband infrastructure funding under the Infrastructure Act and to meet the needs of underserved populations in Colorado.¹ The Application sought a waiver of Rule 2187(d)(XI) of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* (CCR)

¹ Application at p. 1 and Fn. 1. Applicant states that the Infrastructure Investment and Jobs Act (Infrastructure Act), signed into law on November 15, 2021, modifies and extends the Emergency Broadband Benefit Program to a long-term broadband affordability program called the Affordable Connectivity Program. See Infrastructure Investment and Jobs Act of 2021, H.R. 3684, 117th Cong. (2021).

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723-2.² Rule 2187(d)(XI) requires that an application for ETC designation include “a two-year build-out plan demonstrating how high-cost universal service support will be used to improve the applicant’s coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support.”

3. On January 24, 2022, the Commission issued a Notice of Application Filed (Notice), giving notice of the filing of the Application and setting a period of 30 days, or to and including February 23, 2022, for interested persons to intervene.³ Since DISH Wireless did not file testimony with its Application, it sought a Commission decision within 250 days, or by October 12, 2022.⁴

4. On January 26, 2022, Commission Staff sent to counsel for DISH Wireless, a deficiency letter, noting the failure of the Application to “include either a description of such service area by metes and bounds or the underlying carrier’s exchange area map displaying the applicant’s service area,” as required by Rule 2187(d)(II) of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 CCR 723-2.⁵

5. On February 7, 2022, Applicant filed a “Supplement to the Application of DISH Wireless L.L.C. for Designation as an Eligible Telecommunications Carrier” (Supplement),

² Application at p. 10. While the filed Application included Rule 2187(d)(VIII) in the waiver request, the Supplement filed on February 7, 2022 (*see* ¶ 4 at p. 3 of this Decision) clarified that it was an error and that DISH Wireless was not seeking a waiver of Rule 2187(d)(VIII).

³ The Notice gave Commission Staff an additional seven days, or until March 2, 2022, within which to intervene.

⁴ The Notice stated incorrectly that Applicant sought a Commission decision within 210 days. Senate Bill (SB) 21-272 (Section 9 at page 9) amended § 40-6-109.5(2), C.R.S., to state that, “In the case of any application not accompanied by prefiled testimony and exhibits, the commission shall issue its decision no later than two hundred fifty days after the application is deemed complete” SB 21-272 became effective on June 10, 2021, before this Application was filed. The January 24, 2022 Notice in this proceeding should have stated the 250-day decision deadline. Decision No. R22-0177-I, ¶ 2 at pages 2 and 3 (issued on March 23, 2022) corrected this error in the Notice.

⁵ Deficiency Letter at p. 1. (Emphasis omitted)

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which attached, as Confidential Exhibit 1, a map of the proposed area for ETC designation based on DISH Wireless's deployment of retail wireless services in Colorado, rather than an underlying carrier's exchange area map or a service area description by metes and bounds. DISH Wireless asserted that a metes and bounds or carrier exchange area map description was unduly burdensome and impractical, and that Confidential Exhibit 1 provided a helpful description of the proposed ETC area for the Commission's consideration. Applicant requested a waiver of Rule 2187(d)(II).⁶

6. During the Commission's Weekly Meeting held on March 16, 2022, this matter was referred to an Administrative Law Judge (ALJ) for disposition.⁷ This proceeding was subsequently assigned to the undersigned ALJ.

7. In Decision No. R22-0177-I (issued on March 23, 2022), the ALJ noted the filing of the Notice of Intervention as of Right, Entry of Appearance, and Notice Pursuant to Rule 1007(a) and Rule 1401, and Request for Hearing, filed by Trial Staff of the Colorado Public Utilities Commission (Staff) on March 1, 2022. Decision No. R22-0177-I acknowledged Staff's intervention as of right.

8. Decision No. R22-0177-I also granted motions for permissive intervention filed on February 23, 2022 by the Adams County E-911 Emergency Telephone Service Authority, the Arapahoe County E-911 Authority, and the Jefferson County Emergency Communications

⁶ Supplement at p. 2. In the Supplement, Applicant clarified that it was not seeking a waiver of Rule 2187(d)(VIII). 4 CCR 723-2. See Application at p. 10.

⁷ The Application was automatically deemed complete on March 16, 2022 by operation of Rule 1303(c)(IV) of the Rules of Practice and Procedure, 4 CCR 723-1.

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Authority (collectively, the AAJ Authorities); and by NE Colorado Cellular, Inc., doing business as Viaero Wireless (Viaero).

9. The Parties to this proceeding are DISH Wireless, Staff, the AAJ Authorities, and Viaero.

10. Decision No. R22-0177-I scheduled a remote prehearing conference for April 6, 2022 at 2:00 p.m., in accordance with Rule 1409(a) of the Rules of Practice and Procedure, 4 CCR 723-1. Decision No. R22-0177-I also ordered the Parties to consult prior to the Prehearing Conference with respect to numerous procedural matters and acceptable hearing dates. If the Parties could reach agreement on a procedural schedule, hearing dates, and the other procedural matters, DISH Wireless was directed to make a filing, no later than April 1, 2022, stating those agreements and whether it would be necessary to hold the Prehearing Conference.

11. On April 1, 2022, DISH Wireless filed an Unopposed Motion to Postpone the Prehearing Conference (PHC Motion). DISH Wireless stated that it intended to file an Amended Application, seeking designation as a Lifeline-only ETC in the State of Colorado. DISH Wireless also asserted that postponement of the Prehearing Conference will afford the Parties additional time to engage in discussions to resolve other issues in this proceeding identified by the Parties in their intervention pleadings.⁸ The PHC Motion was unopposed.⁹

12. Decision No. R22-0212-I (issued on April 4, 2022) granted the PHC Motion and waived response time, pursuant to Rule 1308(c) of the Rules of Practice and Procedure,

⁸ PHC Motion at pp. 1 and 2 [Footnote omitted].

⁹ PHC Motion at p. 2. *See* Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

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4 CCR 723-1. DISH Wireless was ordered to file an Amended Application by 5 p.m. on Friday, April 15, 2022.¹⁰

13. Decision No. R22-0212-I vacated the remote prehearing conference scheduled for April 6, 2022 at 2:00 p.m.

14. On April 15, 2022, DISH Wireless filed an Unopposed Motion to Amend Application and Waive Response Time (Motion to Amend). Along with the Motion to Amend, it filed the verified Amended Application of DISH Wireless L.L.C. for Designation as a Lifeline-only Eligible Telecommunications Carrier, along with three exhibits: (1) DISH Wireless Affordable Connectivity Program (ACP) Supported Service Plans; (2) DISH Wireless Proposed Coverage Map; and (3) a Certificate of Fact of Good Standing issued by the Colorado Secretary of State. The Motion to Amend was not opposed by the other Parties, and DISH Wireless requested a waiver of response time to the Motion to Amend.¹¹

15. In the Motion to Amend, DISH Wireless outlined the changes in the Amended Application and contended that the Amended Application could resolve many, or all, of the issues that have been raised in this proceeding.¹² Finally, DISH Wireless asserted that the Amended Application limits the scope of its request for Lifeline-only ETC status, constituted a restrictive amendment, and thus was not required to be re-noticed.¹³

¹⁰ If DISH Wireless did not file an Amended Application by that date, it was ordered instead to file a consensus procedural schedule by 5 p.m. on April 15, 2022, consistent with directives given in Decision No. R22-0177-I.

¹¹ Motion to Amend at p. 4. *See* Rule 1400(a) of the Rules of Practice and Procedure, 4 CCR 723-1.

¹² Motion to Amend at p. 3.

¹³ Motion to Amend at pp. 3 and 4.

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16. Decision No. R22-0240-I (issued on April 19, 2022) granted the Motion to Amend, accepted the Amended Application, and waived response time pursuant to Rule 1308(c) of the Rules of Practice and Procedure, 4 CCR 723-1.

17. In Decision No. R22-0240-I, the ALJ agreed with DISH Wireless that the Amended Application would limit the scope of the original Application, sought Lifeline-only ETC status, and thus constituted a restrictive amendment. Therefore, the ALJ concluded that, pursuant to Rule 1309(a) of the Rules of Practice and Procedure, 4 CCR 723-1, a new Notice of Application Filed for the Amended Application was not required to be issued by § 40-6-108(2)(a), C.R.S., and Rule 1206 of the Rules of Practice and Procedure, 4 CCR 723-1, which do not apply to restrictive amendments to applications already filed with the Commission.¹⁴

18. The Motion to Amend stated that Staff, AAJ Authorities, and Viaero were evaluating the Amended Application to assess its impact on their positions in this proceeding and on their individual interventions. Therefore, Decision No. R22-0240-I ordered Staff, AAJ Authorities, and Viaero to withdraw their individual interventions not later than 5 p.m. on April 29, 2022. Alternatively, the Parties were ordered to file by the same date, a consensus procedural schedule and proposed hearing dates consistent with the directives in Decision No. R22-0177-I.

¹⁴ See Decision No. R22-0240-I, ¶¶ 16 through 18 at p. 5. Rule 1309(a) of the Rules of Practice and Procedure, 4 CCR 723-1, states:

In complaint proceedings or after the close of the intervention and notice period, if any, the commencing party shall obtain leave of the Commission to amend or supplement. Except in complaint proceedings, whenever a commencing party amends or supplements a pleading, other than through a restrictive amendment, the commencing party, or the Commission, as applicable, shall provide new notice consistent with rule 1206 or 1207. All applicable timelines run from the date of the most recent amendment or supplement, except that a restrictive amendment shall not change applicable timelines.

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19. The Amended Application stated that DISH Wireless would provide a performance bond as a condition of approval of its Amended Application, in an amount to be negotiated with Staff and reported in a filing in this proceeding.¹⁵ On April 28, 2022, DISH Wireless filed a Notice of DISH Wireless L.L.C.'s Commitment to Post a Performance Bond (Bond Notice), committing to post a Performance Bond in the amount of \$50,000 and file it with the Commission within 30 days of a final Commission decision granting the Amended Application.¹⁶

20. On April 28, 2022, Viaero filed a Notice of Withdrawal of Intervention, stating that as a result of the filing of the Amended Application and certain other commitments made by DISH Wireless, all matters with which Viaero had an interest have been resolved. Therefore, Viaero withdrew its intervention.

21. On April 29, 2022, AAJ Authorities filed a Notice of Withdrawal of Intervention, stating that they were satisfied with DISH Wireless' commitment to pay 911 fees. Therefore, AAJ Authorities withdrew their intervention.

22. On April 29, 2022, Staff filed a Notice of Withdrawal of Intervention and Request for Hearing, stating that Staff is satisfied that the Amended Application adequately addresses the issues identified by Staff in its Notice of Intervention. Therefore, Staff withdrew its intervention and request for hearing.

23. In rendering this Recommended Decision, the ALJ has carefully reviewed and considered all the pleadings filed by DISH Wireless, Staff, AAJ Authorities, and Viaero, even if this Decision does not specifically address all of the pleadings. The ALJ also has carefully

¹⁵ See Amended Application at pp. 10 and 11 and Footnote No. 15.

¹⁶ Bond Notice at p. 2.

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reviewed and considered all arguments made by the Parties even if this Decision does not specifically address all of those arguments.

24. In accordance with § 40-6-109, C.R.S., the ALJ transmits to the Commission the record in this proceeding along with a written recommended decision, and the ALJ recommends that the Commission enter the following order.

II. FINDINGS AND CONCLUSIONS

A. Preliminary Findings.

25. The Commission has jurisdiction over the subject matter of this proceeding.

26. The Commission has jurisdiction over DISH Wireless, Staff, AAJ Authorities, and Viaero – the Parties to this proceeding.

27. All intervenors have now withdrawn their interventions. Rule 1403(c) of the Rules of Practice and Procedure, 4 CCR 723-1, provides that, “If all parties withdraw their interventions before completion of a hearing, the matter may be determined as an uncontested proceeding.” Therefore, this proceeding is now uncontested.

28. Since the Amended Application is uncontested, it may be addressed without a hearing through the Commission’s modified proceedings procedure, in accordance with Rule 1403(a) of the Rules of Practice and Procedure, 4 CCR 723-1.¹⁷ The Amended Application is verified.

¹⁷ Rule 1403(a) provides in pertinent part that, “The Commission may determine any application ... without a hearing and without further notice, upon ... its own motion ..., if the application ... is uncontested or unopposed, if a hearing is not ... required by law, and if the application ... is accompanied by a sworn statement verifying sufficient facts and supported by attachments and/or exhibits that adequately support the filing.”

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29. As the Applicant and the proponent of an order, DISH Wireless bears the burden of proof by a preponderance of the evidence.¹⁸ The preponderance standard requires that the evidence of the existence of a contested fact outweighs the evidence to the contrary. A party has met this burden of proof when the evidence, on the whole, slightly tips in favor of that party.¹⁹

30. Even though the Amended Application is now uncontested, DISH Wireless still bears the burden to prove by a preponderance of the evidence or facts that the Amended Application should be granted. That is, DISH Wireless' filings must demonstrate by a preponderance of the evidence or facts that the Amended Application should be granted.

31. In its Amended Application, DISH Wireless requests that the Commission designate it a Lifeline-only ETC, pursuant to 47 U.S.C § 214(e)(6), 47 *Code of Federal Regulations* (C.F.R.) §§ 54.201(d) and 54.202, and Rule 2187 of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 CCR 723-2, for the limited purpose of providing wireless Lifeline service to eligible individuals in the State of Colorado. At this time, DISH Wireless does not seek any funding that requires a broader ETC designation.

32. Congress gives primary authority for ETC designations to state commissions, and this Commission has not disclaimed jurisdiction over ETC designations.²⁰ Accordingly, the Commission has jurisdiction in this matter and is authorized to act upon DISH Wireless' Amended Application.

¹⁸ Rule 1500 of the Rules of Practice and Procedure, 4 CCR 723-1; §§ 13-25-127(1) and 24-4-205(7), C.R.S.

¹⁹ See *Mile High Cab, Inc. v. Colorado Public Utilities Commission*, 302 P.3d 241, 246 (Colo. 2013); *Swain v. Colorado Department of Revenue*, 717 P.2d 507, 508 (Colo. App. 1985).

²⁰ 47 U.S.C. § 214(e)(6); 4 CCR 723-2-2187.

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B. DISH Wireless.

33. DISH Wireless is a wholly owned subsidiary of DISH Network Corporation (DISH Network), which is a connectivity company headquartered in Colorado that has provided service in the pay-TV market since 1980. In 2020, DISH Wireless entered the terrestrial retail wireless business by acquiring the Boost Mobile brand as well as other brands and customer assets. Using its own licensed wireless spectrum assets, DISH Wireless is now building the nation’s first virtualized, cloud-native, Open RAN-based terrestrial 5G broadband network.

34. Although its 5G network is under construction, DISH Wireless has already been competing in the retail wireless space and provides wireless telecommunications service as a Mobile Virtual Network Operator (MVNO) through the Boost Mobile, Ting Mobile, Republic Wireless, and GenMobile brand names. DISH Wireless is an approved provider in the Federal Communications Commission’s (FCC’s) Emergency Broadband Benefit (EBB) program and its successor, the ACP.²¹ DISH Wireless currently uses T-Mobile’s facilities to provide discounted mobile broadband service in all 50 states, including plans bundling voice and broadband service.²² Available plans from DISH Wireless include unlimited talk, text, data, and email at various data speeds with domestic voice roaming and HD video streaming options under the ACP’s monthly \$30 subsidy for eligible consumers. In addition, DISH Wireless has entered into a new MVNO partnership with AT&T Corp. (AT&T) that will enhance DISH Wireless’s rural

²¹ The Infrastructure Investment and Jobs Act (Infrastructure Act), signed into law on November 15, 2021, modifies and extends the Emergency Broadband Benefit Program to a long-term broadband affordability program called the Affordable Connectivity Program, or ACP. *See* Infrastructure Investment and Jobs Act of 2021, H.R. 3684, 117th Cong. (2021).

²² *See* 47 C.F.R. § 54.1602(b) (“a bundle of broadband internet access service along with fixed or mobile voice telephony service, text messaging service, or both” is an EBB-eligible plan).

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roaming capabilities and increase its capacity to meet the connectivity needs of underserved populations.²³

35. DISH Wireless seeks a Lifeline-only ETC designation in Colorado so that it can supplement the amount of support available to its current ACP customers and invite new, underserved customers to benefit from the Lifeline program.

C. Federal and State Statutory and Regulatory Requirements for an ETC Designation

36. An application for ETC designation in Colorado must meet specific statutory and regulatory requirements. These include: (1) a certification that the applicant offers or intends to offer all services designated for support by the FCC pursuant to § 254(c) of the Communications Act; (2) a certification that the applicant offers or intends to offer the supported services on a common carrier basis either using its own facilities or a combination of its own facilities and resale of another carrier's services; (3) a description of how the applicant advertises the availability of the supported services and the charges therefor using media of general distribution; (4) a detailed description of the geographic service area for which the applicant requests to be designated as an ETC; and (5) a certification that neither the applicant, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.²⁴

37. An applicant for ETC designation in Colorado must also demonstrate its ability to meet certain service standards. An applicant seeking an ETC designation must: (1) certify that it

²³ In July 2021, DISH announced a long-term strategic Network Services Agreement with AT&T that will make the carrier the primary network services partner for DISH MVNO customers. The agreement accelerates DISH Wireless's expansion of retail wireless distribution to rural markets where DISH Network provides satellite TV services and optimizes AT&T's transport and roaming capabilities. Amended Application, Fn. 3 at p. 3.

²⁴ 47 U.S.C. § 214(e)(1) and (5); 47 C.F.R. § 54.201(d)(1) and (2); 47 C.F.R § 54.207(a). *See also* 4 CCR 723-2-2187.

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will comply with the service requirements applicable to the support that it receives; (2) submit a five-year service plan (applicable only to high cost areas); (3) demonstrate its ability to remain functional in emergency situations; and (4) demonstrate its ability to satisfy applicable consumer protection and service quality standards.²⁵

38. Finally, prior to designating a carrier as an ETC, the Commission must determine whether such designation is in the public interest.²⁶ When making a public interest determination, the Commission will consider the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offerings.²⁷

D. The Amended Application Satisfies All of the Statutory and Regulatory Requirements for a Lifeline-only ETC Designation.

39. Based upon a review of the verified Amended Application and the three attached Exhibits, the ALJ finds and concludes that DISH Wireless has satisfied all of the statutory and regulatory requirements for a Lifeline-only ETC designation.

1. DISH Wireless Provides a Common Carrier Service.

40. DISH Wireless provides, among other things, CMRS services that are regulated pursuant to the common carrier requirements of the Communications Act.²⁸ Therefore, DISH Wireless meets the common carrier requirement for ETC designation pursuant to § 214(e)(1) of the Communications Act and § 54.201(d) of the FCC's rules.

²⁵ 47 C.F.R. § 54.202(a).

²⁶ 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.202(b).

²⁷ See, e.g., *Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

²⁸ See 47 U.S.C. § 153(11) (defining a common carrier as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio;" 47 U.S.C. § 332(c)(1)(A) (treating commercial mobile service providers as common carriers). See Rule 2187(d)(V) of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 CCR 723-2.

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41. As found previously, DISH Wireless currently provides wireless telecommunications service in Colorado as an MVNO through the Boost Mobile, Ting Mobile, Republic Wireless, and GenMobile brand names. It also will be providing wireless telecommunications service in the future under the brand name DISH Wireless.

2. DISH Wireless Will Offer the Services Designated for Lifeline Support Using a Combination of Its Own Facilities and Resale.

42. DISH Wireless offers the supported service – voice service meeting the standards set in the FCC’s rules.²⁹ DISH Wireless is currently providing mobile terrestrial voice and broadband service, including ACP-supported service to low-income consumers. The available service plans are listed and described in Exhibit 1 to the Amended Application.

43. DISH Wireless is building out a nationwide 5G network with over 40 cities under construction.³⁰ In areas where service on DISH Wireless’ own network is not yet available, DISH Wireless commits to provide Lifeline service on a resale basis on the networks of T-Mobile and/or AT&T.

44. Therefore, the ALJ finds and concludes that DISH Wireless will offer services that are designated for federal Lifeline support using its own facilities or a combination of its own facilities and resale of another carrier’s services.³¹

²⁹ See 47 C.F.R. § 54.101(a). DISH Wireless’s voice service provides voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier’s service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers. *Id.* See also 47 U.S.C. § 214(e)(1)(A).

³⁰ See Amended Application, Fn. 11 at page 7.

³¹ See 47 U.S.C. § 214(e)(1)(A), 47 C.F.R. § 54.101(b), and Rules 2187(d)(IV) and (VII), 4 CCR 723-2.

3. DISH Wireless Will Provide Lifeline Service Throughout its Designated Service Area.

45. Pursuant to 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d), as an ETC, DISH Wireless must provide service in the same 50-state footprint where it currently offers ACP service. Moreover, pursuant to 47 C.F.R. § 54.202(a)(1)(i), DISH Wireless commits to provide Lifeline service throughout its service area in Colorado (excluding any federally-recognized tribal lands) on a timely basis to all customers making a reasonable request for service where facilities are available. DISH Wireless currently operates as an MVNO in Colorado and is subject to an FCC requirement to provide facilities-based 5G broadband service to at least 70 percent of the population of the United States by June 14, 2023. At that time, DISH Wireless expects that its 5G network will include coverage in, at least, several Colorado cities.

46. DISH Wireless specifically requests designation as a Lifeline-only ETC in the areas depicted on the coverage map, attached to the Amended Application as Exhibit 2, excluding any federally-recognized tribal lands. To the extent necessary, DISH Wireless requested a waiver of Rule 2187(d)(II) of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 CCR 723-2, which requires describing its proposed ETC service area by metes and bounds or the underlying carrier's exchange area map. DISH Wireless contends that attempting to create a metes and bounds description by physical survey of the geographic areas covered by the Amended Application would be unduly burdensome and impractical. DISH Wireless also asserts that its service territory, which is based on wireless networks, does not precisely correlate with the exchange area maps of underlying wireline carriers.

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47. The ALJ finds that DISH Wireless has stated good cause to grant the requested waiver of Rule 2187(d)(II). The ALJ agrees that for DISH Wireless to attempt to create a metes and bounds description by physical survey of the geographic areas covered by the Amended Application would be unduly burdensome and impractical. The coverage map in Exhibit 2 shows DISH Wireless's service area overlaid on the wireline exchange areas, and Exhibit 2 meets the purpose of Rule 2187(d)(II) and is consistent with past Commission ETC decisions.³²

4. DISH Wireless Will Advertise the Availability of Its Lifeline Services and Charges Using Media of General Distribution.

48. Pursuant to 47 U.S.C. § 214(e)(1)(B), 47 C.F.R. § 54.201(d)(2), and Rule 2187(d)(II), 4 CCR 723-2, DISH Wireless commits to advertise the availability of its voice and broadband services through various marketing channels that may include direct mail, email, local and community outreach events, and targeted online electronic advertising. Additionally, DISH Wireless will publicize the availability of Lifeline service in ways that are reasonably designed to reach those who will likely qualify for the service, including DISH Wireless's current ACP customer base.

5. DISH Wireless Will Comply with Service Requirements Applicable to the Lifeline Support It Receives.

49. Pursuant to 47 C.F.R. § 54.202(a)(1)(i), DISH Wireless commits to comply with the service requirements applicable to the Lifeline supported services that it will be offering in the identified Colorado service areas. While DISH Wireless is not currently authorized to receive any form of high-cost support, DISH Wireless commits to providing service consistent

³² See, e.g., *Application of LiveWire Networks, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Colorado for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Decision No. R20-0684 at ¶ 38 (issued on September 24, 2020) in Proceeding No. 20A-0213T; (“LiveWire has satisfied Rule 2187(d)(II) by providing maps of the exchange service area.”).

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with the Lifeline requirements. DISH Wireless agrees to provide timely service to all customers within those service areas where coverage is available.

6. DISH Wireless Commits to Comply with Commission Rules.

50. DISH Wireless has affirmed, pursuant to Rule 2187(d)(VIII), 4 CCR 723-2, that it is currently, and will remain, in compliance with Commission rules.

51. The ALJ finds that the FCC's five-year plan requirement does not apply to applicants such as DISH Wireless, seeking ETC designation only to receive Lifeline support.³³ DISH Wireless will offer services that are designated for federal Lifeline support using its own facilities or a combination of its own facilities and resale of another carrier's services. Moreover, the requirement in Rule 2187(d)(XI), 4 CCR 723-2, that an ETC applicant provide a two-year buildout plan applies only to those seeking high cost universal service support. Because DISH Wireless does not seek high cost universal service support, the ALJ finds that Rule 2187(d)(XI) is not applicable here. However, DISH Wireless requested a waiver of Rule 2187(d)(XI) to the extent necessary. Even though the ALJ has found that Rule 2187(d)(XI) is not applicable, the ALJ will grant the requested waiver of Rule 2187(d)(XI), to the extent necessary.

7. DISH Wireless Will Satisfy Consumer Protection and Service Quality Standards.

52. DISH Wireless commits to comply with all applicable service requirements for the Lifeline universal service program and further commits to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.

³³ 47 C.F.R. § 202(a)(1)(ii).

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53. The ALJ finds that DISH Wireless has demonstrated that it will satisfy consumer protection and service quality standards, as required by Rule 2187(d)(X), 4 CCR 723-2.

8. DISH Wireless Will Remain Functional During Emergencies.

54. DISH Wireless is able to remain functional in emergency situations, as required by 47 C.F.R. § 54.202(a)(2). DISH Wireless's MVNO partner networks 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. Similarly, the 5G network DISH Wireless is constructing is designed to remain functional in emergency situations.

55. The ALJ finds that DISH Wireless has demonstrated the necessary abilities to remain functional in emergency situations, as required by Rule 2187(d)(IX), 4 CCR 723-2.

9. DISH Wireless Will Comply with Any Other Applicable Requirements.

56. DISH Wireless' Certificate of Fact of Good Standing, certified by the Colorado Secretary of State, was attached to the Amended Application as Exhibit 3. DISH Wireless is in good standing.

57. First, DISH Wireless possesses the financial and technical capability to provide Lifeline service consistent with the FCC's rules. DISH Wireless is a wholly owned subsidiary of DISH Network, a Fortune 200 company. DISH Network's total revenue for the year 2021 was \$17.88 billion, compared to \$15.49 billion in 2020 and its diluted earnings per share were \$3.79

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in 2021, compared to \$3.02 in 2020. DISH Wireless is therefore financially capable of providing Lifeline service. To provide additional financial assurances, DISH Wireless will provide a performance bond as a condition of obtaining Commission approval of its Amended Application.³⁴

58. DISH Wireless is technically capable of providing Lifeline service. DISH Wireless currently provides ACP service to subscribers nationwide, including unlimited talk, text, data, and email at various data speeds with domestic voice roaming and HD video streaming options. As previously found, DISH Wireless has entered into a new MVNO partnership with AT&T that will enhance DISH Wireless's rural roaming capabilities and increase its capacity to meet the connectivity needs of underserved populations.

59. Second, DISH Wireless has affirmed that it will offer local usage plans that meet the minimum service standards as prescribed by the FCC in order to receive Lifeline support.

60. Third, DISH Wireless has affirmed that it will satisfy the requirements for an initial determination of a subscriber's Lifeline eligibility and certification requirements pursuant to the FCC's rules.

61. Fourth, DISH Wireless has been paying, and commits to continue to pay, applicable E911, 988, telecommunications relay service, high cost, and any other surcharges that currently apply to, or may apply in the future to, the provision of wireless services under federal or state law.

³⁴ See Bond Notice filed by DISH Wireless on April 28, 2022, and ¶ 18 at page 7 of this Decision.

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62. Moreover, DISH Wireless has confirmed that, consistent with applicable law, it will calculate the E911 surcharges based upon the value of the service (including the support received through the Lifeline program).³⁵

63. The ALJ finds that DISH Wireless has demonstrated that it is financially and technically capable of providing the Lifelines service in compliance with 47 C.F.R. § 54.400, Subpart E, and has provided the affirmative statements required by Rule 2187(d)(X), 4 CCR 723-2.

64. Finally, DISH Wireless has certified that it is not subject to denial of federal benefits, including FCC benefits, in accord with §5301 of the Anti-Drug Abuse Act of 1988.

E. Conclusions.

65. DISH Wireless has satisfied all of the statutory and regulatory requirements for a Lifeline-only ETC designation.

66. By designating DISH Wireless as a Lifeline-only ETC, the Commission will advance the public interest. The people of Colorado increasingly need greater access to broadband services, and low-income Coloradans in particular are suffering from the lack of affordable and available broadband access. Consumers will benefit by being able to choose from a larger variety of Lifeline service providers, and increased competition may incentivize other providers to offer more competitive Lifeline offerings – perhaps resulting in more options and higher quality services for Colorado consumers.

³⁵ The ALJ construes DISH Wireless's commitments regarding payment and calculation of E911 surcharges discussed in Paragraph Nos. 60 and 61 of this Decision to mean, and so finds, that DISH Wireless will follow the applicable provisions related to emergency telephone services and surcharges enacted in House Bill 20-1293, codified at § 29-11-100.2 *et seq.*, C.R.S., which became effective on July 10, 2020.

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67. The Amended Application will be granted. DISH Wireless will be designated as a Lifeline-only ETC in the State of Colorado.

68. DISH Wireless will be granted a waiver from Rule 2187(d)(II), 4 CCR 723-2, to allow DISH Wireless to describe its Colorado service area using the coverage map in Exhibit 2 to the Amended Application, which shows DISH Wireless's service area overlaid on the wireline exchange areas of other Colorado telecommunications providers.

69. DISH Wireless will be granted a waiver from Rule 2187(d)(XI), 4 CCR 723-2, requiring that an ETC applicant provide a two-year buildout plan to the extent such a waiver is necessary.

70. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order:

III. ORDER

A. The Commission Orders That:

1. The Amended Application of DISH Wireless L.L.C. (DISH Wireless) for Designation as a Lifeline-only Eligible Telecommunications Carrier (Amended Application) filed by DISH Wireless on April 15, 2022 is granted, consistent with the findings and conclusions in this Decision.

2. DISH Wireless shall be designated as a Lifeline-only Eligible Telecommunications Carrier in the State of Colorado.

3. DISH Wireless's request for a waiver of Rule 2187(d)(II) of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* 723-2, is granted consistent with the findings and conclusions in this Decision.

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4. DISH Wireless's request for a waiver of Rule 2187(d)(XI) of the Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* 723-2, is granted consistent with the findings and conclusions in this Decision.

5. The Amended Application is granted subject to the following conditions:

- a. DISH Wireless shall post a Performance Bond in the amount of \$50,000 within 30 days of a final Commission decision granting the Amended Application.
- b. The Performance Bond shall list the Commission as payee in the event funds need to be requested and disbursed.
- c. In the event funds need to be disbursed, one-half of the \$50,000 bond, (\$25,000) will be allocated for payments to the Colorado High Cost Support Mechanism. The remaining amount would be allocated equally (\$8,333 each) for payments to applicable 911, 988, and telecommunications relay service funds.
- d. The Performance Bond shall be maintained for a total of three years from the effective date of the final Commission decision approving the Amended Application.
- e. Within 30 calendar days of a final Commission decision granting the Amended Application, DISH Wireless shall file with the Commission, written evidence of posting the Performance Bond that contains the terms and conditions set forth in this Decision.

6. DISH Wireless shall comply with the agreements and commitments it made in the Amended Application and with the terms and conditions stated in this Decision.

7. Proceeding No. 22A-0042T is closed.

8. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

9. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

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a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

10. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Doug Dean'.

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

STEVEN H. DENMAN

Administrative Law Judge

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on November 17, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 22-C-0431 - Petition of DISH Wireless L.L.C. dba Gen
Mobile for Designation as an Eligible
Telecommunications Carrier.

ORDER APPROVING DESIGNATION
AS ELIGIBLE TELECOMMUNICATIONS CARRIER

(Issued and Effective November 28, 2022)

BY THE COMMISSION:

INTRODUCTION

By petition dated July 22, 2022, pursuant to Section 214 of the Communications Act of 1934, as amended (47 U.S.C. §214) and Section 5 of the New York Public Service Law (PSL), as amended, DISH Wireless L.L.C. dba Gen Mobile (DISH Wireless or the Company) seeks Commission designation as an eligible telecommunications carrier (ETC) in order to receive federal universal service support for offering wireless Lifeline service.¹

¹ PSL §5 was amended effective December 6, 2019, to allow the Commission to designate CMRS providers as ETCs for Lifeline purposes (PSL §5(6)(c)).

By this Order, the Commission finds that DISH Wireless, a provider of commercial mobile radio service (CMRS) meets the requisite Federal Communications Commission's (FCC) criteria for Lifeline-only ETC designation and that such designation is in the public interest.

BACKGROUND

Lifeline Service and the Targeted Accessibility Fund

Consistent with promoting and ensuring that all residents have access to affordable basic telephone service, the FCC's Lifeline Program offers federally discounted service to qualifying low-income consumers. Section 214(e)(2) of the Federal Communications Act of 1934 as amended provides state public utility commissions with the primary responsibility for the designation of ETCs who would thereupon be eligible to receive federal universal service funding. In New York, PSL §5(6)(a) suspended Commission regulation over cellular service. However, with the enactment of the amended PSL §5(6)(c) on December 6, 2019, Commission jurisdiction to designate commercial mobile radio or cellular telephone service providers as an ETC for purposes of providing lifeline services was authorized.

In New York, the Targeted Accessibility Fund (TAF) provides a supplemental discount to Lifeline customers.² TAF is

² The TAF was established by the Commission in June 1998 through Opinion 98-10 to fund specific programs such as Lifeline, Enhanced 911 (E911) and Telecommunications Relay Service (TRS) for the deaf and hard-of-hearing. See, Case 94-C-0095, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Opinion and Order Establishing Access Charges and Instituting a Targeted Accessibility Fund (issued June 2, 1998).

currently funded through assessments on all certified wireline telecommunications carriers operating in New York State. Although wireless carriers were previously exempted from TAF participation, on November 29, 2017, Section 92-h was added to the PSL to allow eligible wireless providers the option to participate in TAF for the sole purpose of receiving TAF support for Lifeline service. Specifically, PSL section 92-h states, in part: “[i]f such a [wireless] provider elects to participate in the fund, the provider shall assume all rights and obligations associated with such participation under the Commission's orders, on the same basis as other participants.”³

Petitioner

DISH Wireless, a Colorado company, provides prepaid wireless telecommunications services to consumers by using the underlying wireless networks of AT&T and T-Mobile (the Underlying Carriers) to offer wireless service to low-income New Yorkers. DISH Wireless offers plans that include “talk, text, and data at various speeds,” and is a participating provider in the FCC’s Affordable Connectivity Program. DISH Wireless states that it is designated as an ETC in Colorado; has applications for designation as an ETC pending in Alabama, Connecticut,

³ In response to the enactment of §92-h, ten wireless companies have filed petitions with the Commission requesting to participate in TAF. Four of those ten companies (Buffalo-Lake Erie Wireless Systems Co., LLC, Assurance Wireless USA, L.P., TracFone Wireless, Inc. and Telrite Corporation) have withdrawn their petitions. By letter to all parties from ALJ Sayre on June 2, 2021, and Department Staff’s withdrawal from settlement negotiations, any further settlement discussions have been placed in the hands of the remaining participating companies. See, Case 20-C-0314, Petitions of Wireless Carriers Pursuant to Public Service Law 92-h to Participate in the New York State Targeted Accessibility Fund and for Establishment of Distribution.

Delaware, Florida, Maine, New Hampshire, North Carolina, Tennessee, Virginia, and the District of Columbia; the Company is also authorized in California to provide "California LifeLine," a state discount program for low-income consumers.

LEGAL AUTHORITY

47 U.S.C. section 214 requires state commissions to designate common carriers⁴ as ETCs for the purpose of determining universal service obligations and eligibility to receive federal universal service funding. Section 214 also requires state commissions to define the service area of the carriers and, when appropriate, to grant waivers of certain requirements. In cases in which an ETC applicant petitions for designation in a rural service area already served by an ETC, the state commission is required to find that such designation is in the public interest.

Pursuant to PSL §5(6)(c) (effective December 6, 2019), the Commission now has jurisdiction to designate "any commercial mobile radio or cellular telephone service provider[]" as an ETC

⁴ Under 47 U.S.C. section 153(11), the term "common carrier" or "carrier" refers "any person engaged as a common carrier for hire, in interstate or foreign communication by wire [wireline] or radio [wireless] or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." Under 47 U.S.C. section 153(33), the term "mobile service" includes "a radio communication service carrier on between mobile stations or receivers."

for purposes of providing lifeline services.⁵ Amended subsection 5(6)(c) states, in its entirety:

Notwithstanding paragraph a of this subdivision, the commission may designate any commercial mobile radio or cellular telephone service providers as an eligible telecommunications carrier for purposes of providing lifeline service, in addition to any commercial mobile radio or cellular telephone service providers designated as such pursuant to 47 U.S.C. Section 214(e) and 47 U.S.C. Section 214(e)(2), without requiring any such provider to obtain a certificate of public convenience and necessity pursuant to section ninety-nine of this chapter. The commission is authorized to promulgate all rules and regulations necessary to implement the provisions of this paragraph.

THE PETITION

As a CMRS provider, DISH Wireless requests ETC designation for the sole purpose of receiving federal universal service support to provide Lifeline services to qualified low-income customers in New York. DISH Wireless's petition is solely for designation as an ETC to provide Lifeline services. At this time, DISH Wireless does not through its petition seek a distribution pursuant to New York's TAF.

DISH Wireless requests ETC designation throughout all of New York State in order to allow the Company to provide Lifeline service wherever its Underlying Carriers have facilities and wireless coverage. DISH Wireless states that it satisfies each of the federal statutory and regulatory requirements for ETC designation.

⁵ Prior to the enactment of PSL §5(6)(c), wireless companies were required to petition the FCC prior to being designated as an ETC in New York. The Commission previously did not entertain wireless ETC designation requests without prior FCC action.

Noting that Section 214(e)(1)(A) of the Act (47 U.S.C. §214(e)(1)(A)) requires ETCs to provide services using their own facilities, at least in part, DISH Wireless states it will utilize both its own facilities as well as the facilities of the Underlying Carrier to provide service. The Company further states that it is able to provide all of the supported services that are required to be provided by ETCs pursuant to 47 C.F.R. §54.101(a):

- a) Voice grade access to the public switched telephone network;
- b) Local usage at no additional charge;
- c) Access to emergency services, including access to 911 or E911;
- d) Lifeline and free toll limitation services for qualifying low-income customers; and,
- e) Voice telephony service.

DISH Wireless commits that it will meet or exceed the minimum service standards set forth by the FCC for both its Lifeline-supported voice services and its Lifeline-supported mobile broadband internet access services.⁶ The Company also represents that it is financially and technically capable of providing the supported Lifeline service. It asserts that it will satisfy the ETC requirements adopted by this Commission and the FCC, including:

- a) Provide Service Throughout Designated Service Area - DISH Wireless certifies that it will provide service in New York by using resold service which it obtains from the Underlying Carriers. DISH Wireless states the Underlying Carriers' networks are operational and largely built out. As such, the Company states it will be able to commence offering its Lifeline service to all locations served by the Underlying

⁶ See 47 C.F.R. Section 54.408.

Carriers very soon after receiving approval. DISH Wireless will advertise the availability and charges for such services in media of general distribution as required by 47 U.S.C. §214(e) (1) (B).

- b) Ability to Remain Functional in an Emergency - DISH Wireless states that it will use the Underlying Carriers' networks and facilities and states that each of those carriers has the ability to ensure the functionality of its service without an external power source and that the Underlying Carriers are able to re-route traffic when facilities are damaged and are capable of managing traffic spikes resulting from emergency situations. In response to Department Staff Information Requests, the Company states that its Underlying Carriers have repeatedly certified to the FCC that their networks function in emergency situations and that the Underlying Carriers provide the same functionality to DISH Wireless and its customers that they provide to themselves and their own customers.

- c) Satisfaction of Applicable Consumer Protection and Service Quality Standards - DISH Wireless states that it will, as a wireless service provider, comply with all applicable requirements as set forth by the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.

- d) Lifeline Certification and Verification - Consistent with 47 C.F.R §54.409, the Company states that it will certify that a consumer's household meets applicable income requirements. DISH Wireless also asserts it will notify consumers that the service must be personally activated by the subscriber, and that the subscriber must use their service every thirty days. The Company states that it will obtain this certification annually and shall ensure that only eligible consumers are participating in Lifeline through the National Lifeline Eligibility Verifier.

DISCUSSION AND CONCLUSION

DISH Wireless seeks Commission designation as an ETC solely to receive federal universal service support for providing wireless Lifeline service in New York. The Commission finds that DISH Wireless will provide the requisite voice and mobile broadband internet access services and that the Company satisfies all FCC and Commission criteria for Lifeline-only ETC designation. Accordingly, granting Lifeline-only ETC designation to DISH Wireless will serve the public interest.

As an ETC, DISH Wireless will provide another option for discounted basic service to meet the needs of New York's Lifeline-eligible consumers. In addition, as DISH Wireless offers mobile broadband services, many Lifeline-eligible customers will have the opportunity to receive more advanced telecommunications services.

By this Order, the Commission's designation of DISH Wireless as an ETC is limited to the provision of Lifeline services. This Order in no way gives DISH Wireless the authority or designation to participate in the New York State's TAF. The participation of wireless providers in TAF is currently pending before the Commission, as noted above.

The Commission finds that designation of DISH Wireless as an ETC is in the public interest, and therefore approves the Company's petition requesting designation as a Lifeline-only ETC for purposes of participating in federal universal service low-income support programs.

The Commission orders:

1. The petition of DISH Wireless L.L.C. dba Gen Mobile, for designation as an eligible telecommunications carrier for the purpose of receiving federal universal service support for low-income programs, is approved consistent with the discussion in the body of this Order.

2. The case is closed.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF DISH WIRELESS L.L.C.
FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER
PURSUANT TO SECTION 214(e)(6) OF THE
TELECOMMUNICATIONS ACT OF 1996, 47
C.F.R. SECTIONS 54.201(d) AND 54.202,
AND OAC 165:55-23-2

CAUSE NO. PUD 202200020
(ECF CASE NO. PUD 2022-000020)

ORDER NO. 732327

HEARING: January 26, 2023, in Courtroom B (live and virtual teleconference)
2101 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105
Before Linda S. Foreman, Administrative Law Judge

APPEARANCES: A. Chase Snodgrass and V. Glenn Coffee, Attorneys *representing* DISH
Wireless L.L.C.
Jeff W. Kline, Deputy General Counsel *representing* Public Utility
Division, Oklahoma Corporation Commission

**FINAL ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS CARRIER
DESIGNATION**

The Corporation Commission (“Commission”) of the State of Oklahoma being regularly in session and the undersigned Commissioners present and participating, there comes on for consideration and action the Application of DISH Wireless L.L.C. (“DISH Wireless” or “Applicant”) for an order of the Commission designating Applicant as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Telecommunications Act of 1934, as amended (“Act”), 47 U.S.C. § 214(e)(2), and Section 54.201 of the Federal Communications Commission’s (“FCC”) rules, 47 C.F.R. § 54.201, and OAC 165:55-23-2.

I. PROCEDURAL HISTORY

On March 4, 2022, DISH Wireless filed its Application seeking designation as an ETC. DISH Wireless requested that it be designated as eligible to receive all available support.

On March 8, 2022, DISH Wireless filed a Motion for Protective Order along with a Notice of Hearing setting the Motion for Protective Order for hearing on March 17, 2022.

On March 9, 2022, DISH Wireless filed an Amended Notice of Hearing setting the Motion for Protective Order for hearing on March 24, 2022.

On March 24, 2022, the Motion for Protective Order was heard and recommended by the Administrative Law Judge (“ALJ”).

On April 7, 2022, the Commission issued Order No. 724772, Order Granting Motion for Protective Order.

On May 9, 2022, DISH Wireless filed an Amended Application narrowing the requested relief to include ETC designation for Lifeline services only, noting a scrivener’s error citation and providing a corrected citation/reference.

On July 15, 2022, DISH Wireless filed a Supplemental Informational Filing noting and providing Trade Name Report for Gen Mobile.

On December 5, 2022, DISH Wireless filed the Direct Testimony of Robert Yap on Behalf of Dish Wireless L.L.C. in support of its Application.

On January 18, 2023, the Testimony of Kale Leeper, Public Utility Regulatory Analyst for the Public Utility Division (“PUD”) of the Commission was filed.

On January 19, 2023, a Notice of Hearing was filed setting the Hearing on the Merits for January 26, 2023.

On January 26, 2023, the Case came on for hearing before the ALJ upon proper notice being given. After introducing the filed testimonies into evidence, hearing the statements from counsel, and reviewing the documents filed in the record, the ALJ recommended that the ETC designation should be granted.

II. SUMMARY OF THE EVIDENCE

A. Testimony of Robert Yap on behalf of Applicant

On December 5, 2022, DISH Wireless filed the Direct Testimony of Robert Yap, Vice President of Gen Mobile, a DISH Wireless brand, supporting its Application to be designated as a Lifeline only ETC in the geographic area specified in the Application.

Mr. Yap testified that as Vice President of Gen Mobile, his responsibilities include day-to-day operations of the brand: sales, operations, finance, and compliance. He testified that he has a B.A. in Economics from Northwestern University and a J.D. from George Washington University School of Law. Additionally, he noted that his experience includes 20 years of legal, regulatory, and telecommunications experience. Mr. Yap testified that he has worked as a corporate attorney at McDermott, Will & Emory, as General Counsel and as an executive at several telecommunications companies, including at Gen Mobile, Inc. which he co-founded. He also testified that in October 2021, assets of Gen Mobile, Inc. were acquired by DISH Wireless, including the rights to the name and brand as well as its subscriber base and operations.

Mr. Yap testified that DISH Wireless is petitioning to be designated as a Lifeline-only ETC for the entire geographic area of the State of Oklahoma, to include each exchange, under the “Gen Mobile” trade name. He further ratified and confirmed statements and assertions made in DISH Wireless’s Application as amended.

Mr. Yap discussed DISH Wireless’s parent company, DISH Network Corporation, noting that it is a connectivity company headquartered in Colorado that has served as a disruptive force

in the pay-TV market since 1980. He indicated that DISH Wireless entered the retail wireless business by acquiring the Boost Mobile brand in 2020 and the Gen Mobile brand in 2021, as well as other brands and customer assets. Now, using its own licensed wireless spectrum assets, DISH Wireless is building the nation’s first virtualized, cloud-native, Open RAN-based 5G broadband network. He testified that to facilitate the buildout, DISH Wireless has entered into multi-year agreements with over 30 partners, including Mavenir, Amazon, Dell, CISCO, VM Ware, IBM, Oracle, Nokia, Fujitsu, MTI, Intel, AltioStar, Samsung, and Qualcomm.

Mr. Yap testified that even as the 50 state network is under construction, DISH Wireless has already been competing in the retail wireless space and is an approved provider in the Federal Communications Commission’s Affordable Connectivity Program (“ACP”). Mr. Yap also indicated that under the Gen Mobile brand and other brand names, DISH Wireless currently uses AT&T and T-Mobile’s facilities to provide discounted mobile broadband service in all 50 states, including plans bundling voice and broadband service. The AT&T and T-Mobile partnerships enhance DISH Wireless’s rural capabilities and increase its capacity to meet the connectivity needs of underserved populations.

Mr. Yap testified that DISH Wireless has an application for ETC designation pending with the Federal Communications Commission (“FCC”) (for the states of Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, North Carolina, and the District of Columbia, the “Non-Jurisdictional States”) and also has an application for ETC designation pending in the state of New York. He indicated that DISH Wireless is currently designated as a wireless ETC in Colorado and authorized by the California Public Utilities Commission (“CPUC”) to provide California LifeLine, and plans to file for ETC status in other states over time.¹

Mr. Yap testified that DISH Wireless has never been subject to an enforcement action in any state or by the FCC. He also testified as to the plans and services DISH Wireless intends to offer and whether DISH Wireless contributes funding to support universal service.

Mr. Yap went on to testify about the requirements for ETC designation and demonstrated that DISH Wireless meets to requirements of each criteria. He also testified that granting DISH Wireless’s Application for designation as a Lifeline only ETC is in the public interest because, amongst other reasons, it will promote competition for the benefit of consumers and will have desirable effects upon the Oklahoma market for Lifeline services by making these services more available and accessible, supporting the goals of universal service.

B. Testimony of Kale Leeper on behalf of PUD

Kale Leeper is employed as a Public Utility Regulatory Analyst in PUD. He is responsible for the review and analysis of assigned cases, to include requesting and analyzing data acquired through discovery. Additionally, he develops appropriate recommendations in collaboration with others in PUD and counsel for PUD. He is also responsible for initial review of applications for ETC designation, applications seeking CCN authority in Oklahoma, and applications seeking approval of initial telecommunications tariffs.

¹ Since the filing of Mr. Yap’s Direct Testimony, the New York State Public Service Commission has granted DISH Wireless ETC designation in New York.

Mr. Leeper testified that DISH Wireless is requesting designation as an ETC within the State of Oklahoma. DISH Wireless is requesting designation as an ETC in order to be eligible to receive support from the federal Universal Service Fund for low-income consumers only.

Mr. Leeper testified that a state commission may designate as an ETC any common carrier that, throughout the service area for which designation of ETC status is sought, offers services that are supported by federal universal service support mechanisms, either using its own facilities or a combination of its own facilities and resale of another carrier's services, and advertises the availability of such services. In areas served by a Rural Local Exchange Carrier ("RLEC"), the Commission must also make a "public interest" finding in accordance with 47 U.S.C. § 214(e)(2). Mr. Leeper testified that the rules applicable to DISH Wireless's request for ETC designation for purposes of participation in federal universal service support programs are found at 47 U.S.C. § 214(e), 47 C.F.R. § 54.101, 47 C.F.R. § 54.201, 47 C.F.R. § 54.202, and 47 C.F.R. § 54.207. In addition to the federal requirements, Oklahoma's rules regarding ETC designation are found at OAC 165:55-23-2. DISH Wireless requested ETC designation for the sole purpose of receiving support for low-income customers under 47 C.F.R. §54 Subpart E, and is not required to provide a build-out plan as indicated in 47 C.F.R. §54.202(a)(1)(ii). The FCC has granted forbearance from these restrictions for some qualifying carriers seeking designation for participation in the Lifeline program only. The FCC, in reviewing ETC designation applications in those circumstances where a state does not perform that function, has issued Orders that provide guidance as to the application of its rules. In addition, the FCC issued its ETC Designation Order, which also clarified the application of the rules to the ETC designation process. These additional FCC Orders are considered by PUD in reviewing ETC designation applications.

Mr. Leeper testified that DISH Wireless's Application, Amended Application, and Supplemental Informational Filing contained all of the information required by OAC 165:55-23-2(a), and the supporting information was consistent with the obligations required by OAC 165:55-23-2(c). DISH Wireless requested ETC designation throughout all exchanges in the State of Oklahoma, to the extent that DISH Wireless's underlying carriers have facilities and coverage in these exchanges. There are multiple RLECs whose territory is included in DISH Wireless's requested service territory. There is at least one ETC in addition to the Incumbent Local Exchange Carrier ("ILEC") designated in each of the exchanges where DISH Wireless is requesting ETC designation. DISH Wireless is a common carrier pursuant to 47 C.F.R. §54.5, cellular mobile radio service ("CMRS") providers are, as telecommunications carriers, deemed to be common carriers.

Mr. Leeper testified that DISH Wireless, in its Application and the written Direct Testimony of Robert Yap, affirmed that it will offer voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems, toll-limitation services to qualifying low-income consumers, and eligible Broadband Internet Access Services which provides the capability to transmit and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, as provided in 47 C.F.R. §§54.400 through 54.422. These assertions

are consistent with the requirements found at 47 C.F.R. §54.101. DISH Wireless stated that it will offer low-income supported services throughout the area for which ETC designation is being requested, to the extent that its underlying carriers have facilities and coverage and/or to the extent that future wireless facilities deployed by DISH Wireless have coverage. DISH Wireless requested designation in all exchanges of each RLEC. DISH Wireless stated in its Application, the written Direct Testimony of Robert Yap, and in response to Data Request No. 1-5 that it will, in the beginning, provide all of the supported services using a combination of resold services from its underlying carriers, AT&T and T-Mobile.

Mr. Leeper testified that DISH Wireless stated in its Application and the written Direct Testimony of Robert Yap that it will advertise the availability of the supported services in a manner reasonably designed to reach those consumers who qualify for the supported services. This includes email, local and community outreach events, online advertising, and social media. DISH Wireless also stated it will comply with OAC 165:55-23-16 when marketing its Lifeline services. DISH Wireless stated that it will provide the supported services as described in its current rates and terms and conditions of service. DISH Wireless's current rates, terms, and conditions are available on the Gen Mobile website at www.genmobile.com. Upon DISH Wireless receiving ETC designation, it will apply the Lifeline discount, as required, and will comply with all the requirements for providing low-income support outlined in 47 C.F.R. §54 Subpart E and OAC 165:55-23. In the Direct Testimony of Robert Yap, DISH Wireless committed to complying with all FCC and Commission rules governing the Lifeline program, which include, but are not limited to, rules regarding initial subscriber eligibility certification, annual recertification, de-enrollment for non-usage of service, mobile marketing, recordkeeping, and auditing requirements.

Mr. Leeper testified that DISH Wireless's parent company, DISH Network Corporation, has offered satellite television in the United States for many years and entered the wireless communications market in 2019. Additionally, DISH Network Corporation is a publicly traded company with a market cap of \$8.3 billion. For these reasons, DISH Wireless has demonstrated that it is financially and technically sufficient to support the ETC designation. DISH Wireless demonstrated a reasonable commitment to providing high service quality. DISH Wireless is able to remain functional in emergency situations because its underlying providers, AT&T and T-Mobile, have largely built-out networks with a reasonable amount of back-up power. DISH Wireless will utilize the National Verifier and National Lifeline Accountability Database for enrollment and determination of subscriber eligibility. In response to Data Request No. 1-6, DISH Wireless described its internal training processes that are in place to ensure compliance with Lifeline program rules. Additionally, DISH Wireless's Lifeline offerings for both non-Tribal and Tribal customers meet the required FCC minimum service standards. Further, DISH Wireless demonstrated adequate financial capability and technical expertise. For all of these reasons, PUD believes that granting the requested ETC designation is in the public interest for the requested rural service territories.

Mr. Leeper testified that it is his recommendation that DISH Wireless met the requirements for designation as a wireless ETC for purposes of providing Lifeline service throughout the entire State of Oklahoma, to the extent that its underlying carriers have facilities and coverage. Additionally, DISH Wireless has demonstrated sufficient financial and technical capabilities.

PUD recommends a finding that designation of DISH Wireless as an ETC is in the public interest, and that an Order should be issued granting the requested Lifeline-only ETC designation.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

THE COMMISSION FINDS that it has jurisdiction over the above-captioned Case pursuant to the provisions of 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201 and Art. IX §18 of the Oklahoma Constitution.

THE COMMISSION FURTHER FINDS that notice was proper and given as required by law and the rules of the Commission.

THE COMMISSION FURTHER FINDS that DISH Wireless, L.L.C. d/b/a Gen Mobile has met all state and federal requirements for designation as a Lifeline only Eligible Telecommunications Carrier throughout the requested service territory and exchanges.

THE COMMISSION FURTHER FINDS that the designation of DISH Wireless, L.L.C. d/b/a Gen Mobile as a Lifeline only Eligible Telecommunications Carrier in the requested service territory and exchanges is in the public interest.

THE COMMISSION FURTHER FINDS that by granting the requested relief, DISH Wireless, L.L.C. d/b/a Gen Mobile is eligible to receive all available support from the Federal Universal Service Fund for support of low-income customers in each exchange within the geographic boundaries of the State of Oklahoma.

IV. ORDER

THE COMMISSION THEREFORE ORDERS that DISH Wireless, L.L.C. d/b/a Gen Mobile is hereby designated as a Lifeline only Eligible Telecommunications Carrier in each exchange within the geographic boundaries of the State of Oklahoma.

THIS ORDER SHALL BE EFFECTIVE immediately.

CORPORATION COMMISSION OF OKLAHOMA



J. TODD HIETT, Chairman



BOB ANTHONY, Vice Chairman



KIM DAVID, Commissioner

DONE AND PERFORMED THIS 22nd DAY OF February, 2023.

BY ORDER OF THE COMMISSION:



STACY D. MARSEE, Acting Secretary



REPORT OF THE ADMINISTRATIVE LAW JUDGE

The foregoing findings, conclusions and order are the report and recommendation of the undersigned Administrative Law Judge.

/s/ Linda S. Foreman
LINDA S. FOREMAN
Administrative Law Judge

February 3, 2023
Date

SERVICE DATE
Apr 25, 2023

PUBLIC SERVICE COMMISSION OF WISCONSIN

Petition of DISH Wireless L.L.C. for Designation as an Eligible
Telecommunications Carrier

11104-TI-100

Final Decision

This is the Final Decision in the investigation to determine whether to designate DISH Wireless L.L.C. (DISH) as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Stat. § 196.218(4)(b). Designation as an ETC makes a provider eligible to receive federal Universal Service Fund (USF) monies. DISH is seeking designation solely for the purpose of receiving federal USF support for low-income programs. This Final Decision designates DISH as an ETC only for the purposes of receiving low-income financial support throughout the zip codes shown in Appendix B.

Introduction

DISH filed an application for designation as an ETC, for the limited purposes of receiving federal low-income program support on January 20, 2023. ([PSC REF#: 456961](#)) The carrier filed a revised list of zip codes for which it is seeking ETC designation on January 27, 2023. ([PSC REF#: 457377.](#)) The Commission issued a notice requesting comments on February 16, 2023, with comments due on or before March 2, 2023. ([PSC REF#: 459465](#)). No comments were filed.

Findings of Fact

1. DISH is a wireless provider registered to provide service in Wisconsin.
2. DISH has committed to providing service to all requesting customers, and to advertising the availability of its service, throughout the area in which it is designated as an ETC as required under 47 U.S.C. § 214(e).

3. DISH operates its own network, and therefor meets the “own-facilities” requirement found in 47 U.S.C. § 214(e)(1)(A) as part of that approval.

4. DISH has requested designation as a “federal-only” ETC pursuant to Wis. Stat. § 196.218(4)(b).

5. It is reasonable and in the public interest to designate DISH as an ETC for the purpose of receiving federal Lifeline support in the zip codes shown in Appendix B, as indicated in its application and consistent with this Final Decision.

Conclusions of Law

1. The Commission has jurisdiction and authority under Wis. Stat. §§ 196.02, 196.016, and 196.218; Wis. Admin. Code ch. PSC 160; 47 U.S.C. §§ 214 and 254; and other pertinent provisions of Wis. Stat. ch. 196 and the Federal Telecommunications Act of 1996 to make the Findings of Fact and to issue this Final Decision.

2. Pursuant to Wis. Stat. § 15.02(4), the Commission has delegated to the Administrator of the Division of Digital Access, Consumer and Environmental Affairs those lawful functions enumerated above.

Opinion

ETC status was created by the 1996 Telecommunications Act and codified in 47 U.S.C. § 214(e)(2). Under FCC regulations 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.201(b), state commissions designate providers as ETCs. Designation as an ETC is required if a provider is to receive federal universal service funding. ETC designation is also required to receive funding from the state USF for the Lifeline or High-Rate Assistance Credit programs.

The FCC has established a set of minimum criteria that all ETCs must meet, which, is codified at 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(a), *et seq.* DISH has committed to meeting those requirements.

Wis. Stat. § 196.218(4)(b) allows a wireless provider to be designated as a “federal-only” ETC. A federal-only ETC does not need to meet state ETC requirements, except where those requirements mirror federal requirements. Federal-only ETCs are not eligible to receive state USF support.

The FCC has determined that an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area for which designation is sought is served by a rural or non-rural provider.¹ The Commission finds that it is in the public interest to designate DISH as an ETC in the areas for which DISH requests such designation. The Commission finds that DISH meets the requirements for ETC designation, for the limited purpose of obtaining federal Lifeline support.

As part of the public interest determinations for other ETCs, the Commission has considered whether there is a concern that an ETC will “cream skim” the most profitable customers. While it may not be necessary to do so in the Lifeline-only ETC context,² the Commission staff has investigated this issue. Since DISH has requested ETC status for the entirety of its service area, the Commission finds no evidence of cream-skimming in this docket.

¹ *In the Matter of Federal-State Joint Board on Universal Service*, 20 F.C.C.R. 6371, 6373, ¶ 3 (2005).

² The FCC has identified that with respect to at least some low-income, wireless ETCs that are not seeking high-cost support, “cream skimming” is not a significant concern. *NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F. R § 54.207(b) Cricket Communications, Inc. Petition for Forbearance*, 26 F.C.C.R. 13,723, 13,729 (2011).

Order

1. DISH Wireless L.L.C. is designated as an ETC, for the purpose of receiving federal Lifeline support, throughout the zip codes shown in Appendix B.

2. DISH Wireless L.L.C. is an ETC within the meaning of 47 U.S.C. § 214(c), and is eligible to receive federal USF funding, for Lifeline service, pursuant to 47 U.S.C. § 254(2).

This Final Decision constitutes the Commission's certification to that effect.

3. Jurisdiction is maintained.

4. This Final Decision is effective the day after the date of service.

Dated at Madison, Wisconsin, April 25, 2023

For the Commission:



Joe Fontaine
Division Administrator
Division of Digital Access, Consumer, and Environmental Affairs

JF:PRJ:jac DL:01940204

See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
4822 Madison Yards Way
P.O. Box 7854
Madison, Wisconsin 53707-7854

**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of the date of service of this decision, as provided in Wis. Stat. § 227.49. The date of service is shown on the first page. If there is no date on the first page, the date of service is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of the date of service of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of the date of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission serves its original decision.³ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: March 27, 2013

³ See *Currier v. Wisconsin Dep't of Revenue*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

APPENDIX A

The persons listed below are defined by Wis. Admin. Code § PSC 2.02(7), (10), and (12) as parties in this docket and participated therein.

PUBLIC SERVICE COMMISSION OF WISCONSIN
(not a party but must be served)
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LYNDALL.NIPPS@DISH.COM

APPENDIX B

Dish Wireless is designated as an ETC in the following zip codes.

53001 53002 53003 53004 53005 53006 53007 53010 53011 53012 53013 53014 53015 53016
53017 53018 53019 53020 53021 53022 53023 53024 53027 53029 53032 53033 53034 53035
53036 53037 53038 53039 53040 53042 53044 53045 53046 53047 53048 53049 53050 53051
53056 53057 53058 53059 53061 53063 53065 53066 53069 53070 53072 53073 53074 53075
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Zip Codes, continued

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