

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF Q LINK WIRELESS LLC)
FOR DESIGNATION AS AN ELIGIBLE) CASE NO.
TELECOMMUNICATIONS CARRIER IN THE) 2012-00473
COMMONWEALTH OF KENTUCKY)

ORDER

On October 22, 2012, Q Link Wireless LLC (“Q Link”), a reseller of Commercial Mobile Radio Service, also known as a Mobile Virtual Network Operator, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (“ETC”). Q Link seeks to receive both federal low-income and Kentucky Universal Service Fund (“USF”) support for wireless services.¹ Q Link seeks ETC designation only for the purpose of participation in the Lifeline program. Q Link does not seek high-cost support.

The application states that: (1) Q Link meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;² (2) Q Link requests designation in the underlying carrier’s licensed service areas within the non-rural exchanges of BellSouth Telecommunications, LLC dba AT&T Kentucky, Cincinnati Bell Telephone Company and Windstream Kentucky East, LLC;³ (3) In accordance with 47

¹ Q Link requests ETC designation in the underlying carrier’s (Sprint Spectrum L.P. (“Sprint”)) licensed service area within the non-rural exchanges of BellSouth Telecommunications, LLC dba AT&T Kentucky, Cincinnati Bell Telephone Company and Windstream Kentucky East, LLC. App. at pp. 1, 3, and 14.

² Id. at pp 9-17.

³ Id. at p. 14 and Exhibit 5.

U.S.C. § 214(e)(2), Q Link seeks to be designated as an ETC solely to provide Lifeline service to Qualifying Kentucky Customers;⁴ and (4) Designation of Q Link as an ETC for the designated areas served in Kentucky will serve the public interest.⁵

Q Link's planned wireless Lifeline offering will provide eligible customers with the following three alternative Lifeline plans:

1. 68 monthly anytime minutes that roll over and free international long distance and text messaging at the rate of one-third of one minute per text;
2. 125 monthly anytime minutes that roll over and text messaging at the rate of one minute per text; or
3. 250 monthly anytime minutes that do not roll over and text messaging at the rate of one minute per text.

Lifeline customers will receive a free handset and have the ability to purchase additional airtime. In addition to voice services, Lifeline customers also will have access to a variety of other standard features at no additional charge, including voicemail, caller I.D., and call-waiting services.⁶

Consumers will be enrolled by calling a toll-free number or by accessing Q Link's website, which will contain a link to information regarding its Lifeline service plans, including a detailed description of the program and state-specific eligibility criteria.⁷ Customers may then obtain a form that must be returned to the Company.

⁴ Id. at p. 1.

⁵ Id. at pp. 18-22.

⁶ Id. at p. 5.

⁷ Id. at p. 6.

Q Link has stated in its application that it will submit to the Commission the Kentucky USF fee and the Kentucky Telecommunications Relay Service and Telecommunications Access Program fee for each customer.⁸ Q Link also states that it will remit the statewide wireless 911 fee to the Commercial Mobile Radio Services Board.⁹ Q Link states it will not provide toll-limitation services, since its calling plans do not charge any fees for toll calls.¹⁰

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific federal universal service support.” Pursuant to 47 U.S.C. § 214(e)(1)(A) and (B), a common carrier designated as an ETC must offer the services supported by the federal universal service support mechanisms, using either its own facilities or a combination of its own facilities and resale of another carrier’s services throughout its designated service area, and it must advertise the availability and charges for those services.

Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1).

⁸ Id. at p. 18.

⁹ Id.

¹⁰ Id. at p. 12.

Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

Requirements for ETC Designation by the Federal
Communications Commission (“FCC”)

In 1997, the FCC issued a Public Notice setting forth the procedures a carrier must use when requesting designation as an ETC from the FCC.¹¹ The Kentucky Public Service Commission likewise collects similar information pursuant to that Notice. A carrier seeking ETC designation must file a petition providing the following: (1) a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c) of the Telecommunications Act of 1996 (“the Act”); (2) certification that the petitioner offers the supported services using either its own facilities or a combination of its own facilities and resale of another carrier’s services;¹² (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution; and (4) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests to be designated as an ETC from the Commission.¹³

¹¹ Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice, 12 FCC Rcd 22947, 22948 (1997) (Section 214(e)(6) Public Notice).

¹² Lifeline Reform Order, FCC 12-11 at ¶. 368 (adopting a blanket forbearance of the facilities requirement of section 214(e)(1)(A) for non-facilities based carriers that seek limited ETC designation to participate in the Lifeline program) (“Lifeline Reform Order”). In the Matter of Lifeline and Link Up Reform and Modernization, WC Docket No. 11-42; Lifeline and Link Up, WC Docket No. 03-109; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Advancing Broadband Availability Through Digital Literacy Training, WC Docket No. 12-23; Report and Order and Further Notice of Proposed Rulemaking Adopted: January 31, 2012 Released: February 6, 2012.

¹³ Section 214(e)(6).

In addition, the FCC's rules require that in order to be designated as an ETC, a petitioner must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy applicable consumer-protection and service-quality standards; (4) demonstrate that it is financially and technically capable of providing the Lifeline service; and (5) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan.¹⁴

Prior to designating an ETC pursuant to section 214(e)(6), the Commission must determine whether such designation is in the public interest.¹⁵ In determining the public interest, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the petitioner's service offering.

The federal universal service Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying consumers. The Lifeline program reimburses ETCs for providing qualifying low-income consumers with discounts of \$9.25 off the monthly cost of their telephone service.¹⁶ The Kentucky Lifeline program

¹⁴ 47 C.F.R. § 54.202(a).

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

¹⁶ 47 C.F.R. § 54.403(a)(1).

provides additional reimbursement to ETCs for providing eligible consumers with discounts of up to an additional \$3.50 off the monthly cost of their telephone service.¹⁷

As described below, Q Link has provided the Commission with the information required for designation as an ETC in the service area at issue.¹⁸ We find that the public interest supports such designation, subject to Q Link's compliance with the representations and commitments made by Q Link in its application and the FCC's rules. Q Link must also comply with the conditions set forth in its compliance plan.¹⁹

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

Petitioners for ETC designation must certify that they offer all services designated for support by the Commission pursuant to section 254(c) of the Act.²⁰ Q Link has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as a limited ETC, the voice telephony services supported by the Lifeline program. Q Link certifies that it now provides, or will provide throughout its designated service area, the services and functionalities enumerated in 47 C.F.R. § 54.101(a) throughout the licensed service areas of its underlying carrier.²¹

¹⁷ Administrative Case No. 360, An Inquiry into Universal Service and Funding Issues (Ky. PSC May 22, 1998), at 37, determining Kentucky USF support of \$3.50 per line per month.

¹⁸ App. at p. 15.

¹⁹ App. Ex. 3.

²⁰ See 47 U.S.C. § 214(e)(1)(A); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22948, ¶ 2.

²¹ Specifically, Q Link certifies that it provides voice telephony services supported by federal universal service support mechanisms, as set forth in 47 C.F.R. § 54.101, which includes: (1) voice-grade access to the public switched telephone network; (2) local usage; (3) access to emergency services; and (4) Lifeline service plans that do not distinguish between toll and non-toll calls in the pricing of service. See application at pp. 11-12. In the Lifeline Reform Order, the FCC adopted rules that provide that toll-limitation service is no longer necessary for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of service. See Lifeline Reform Order at ¶ 49.

OFFERING THE SUPPORTED SERVICES USING A CARRIER'S OWN FACILITIES

In general, petitioners for ETC designation must certify that they will offer the supported services using either their own facilities or a combination of their own facilities and the resale of another carrier's services.²²

In its Lifeline Reform Order,²³ the FCC decided to forbear, on its own motion, from applying the facilities requirement of Section 214(e)(1)(A) to any telecommunications carrier that seeks limited ETC designation to participate in the Lifeline program, conditioned on the ETC's compliance with certain 911 requirements and the ETC's filing with and approval by the FCC of a compliance plan describing the ETC's adherence to certain protections prescribed by the FCC. Q Link opted to pursue forbearance. On August 8, 2012, the FCC approved Q Link's Compliance Plan ("Compliance Plan").²⁴ A copy of the approved Compliance Plan and the FCC Public Notice of Approval was included with the application as Exhibit 3.

Q Link, in its provision of wireless services, will offer resold services which Q Link will obtain from its underlying wireless provider, Sprint. This service area footprint of its underlying carrier allows Q Link to provide coverage throughout many markets where eligible consumers need service. Through its service arrangements, Q Link has shown it is able to offer all of the services and functionalities supported by the universal-service program, as detailed in 47 C.F.R. § 54.101(a), throughout its service area.

²² 47 U.S.C. § 214(e)(6) Public Notice, 12 FCC Rcd at 22949; See also 47 U.S.C. § 214(e)(1)(A); Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order").

²³ See generally Lifeline Reform Order.

²⁴ Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-42 et al., Public Notice, DA 12-1286 (August 8, 2012).

ADVERTISING SUPPORTED SERVICES

Petitioners for ETC designation must advertise the availability of the supported services and the charges thereof using media of general distribution and provide a description of how they will do so.²⁵ Q Link has committed to advertise the availability of the supported services using media of general distribution.²⁶ In addition, Q Link has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.²⁷ To increase accountability within the program and to target support where it is needed most, the FCC has adopted rules requiring ETCs to explain in their marketing materials that Lifeline service is a government benefit, that the individual must be eligible to receive the benefit, and that the consumer may receive no more than one benefit at a time from the program.²⁸ Q Link has demonstrated its commitment to comply with these FCC rules regarding marketing of Lifeline service.²⁹

Designated Service Areas

Petitioners for ETC designation must provide a detailed description of the geographic service area for which they seek designation.³⁰ In its application, Q Link

²⁵ 47 U.S.C. § 214(e)(1)(B); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22949, ¶ 4.

²⁶ App. at p. 12.

²⁷ Id. at p. 13.

²⁸ Lifeline Reform Order at ¶¶ 274-77; 47 C.F.R. § 54.405.

²⁹ App. at pp. 12 – 14.

³⁰ Section 214(e)(6), Public Notice, 12 FCC Rcd at 22949, ¶ 5.

seeks designation as a limited ETC, eligible only for Lifeline support, in the licensed service area of its underlying carrier, in Kentucky.³¹

Compliance with Applicable Service Requirements

Petitioners for ETC designation must certify that they will comply with all service requirements applicable to the support they receive.³² Q Link has done so and has demonstrated its commitment to comply with the FCC's Lifeline rules, and specifically to comply with the rules regarding consumer enrollment and certification of eligibility.³³ We also find that Q Link's sample Lifeline certification forms used for consumer enrollment, and attached as exhibits to its application, satisfy the FCC's rules.³⁴

Ability to Remain Functional in Emergency Situations

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.³⁵ Since Q Link is providing service to its customers through another carrier, it is able to provide to its customers the same ability to remain functional in emergency situations as currently provided by the carrier to its own customers. Such service includes access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability of managing traffic spikes resulting from

³¹ App. at p. 14. and Ex. 5

³² 47 C.F.R. § 54.202(a)(1)(i).

³³ App. at p. 17 and Ex. 3.

³⁴ App. Ex. 3; 47 C.F.R. § 54.410 (setting forth the Commission rules on subscriber eligibility determination and certification); and Lifeline Reform Order at Appendix C (setting forth certification requirements for Lifeline subscribers).

³⁵ 47 C.F.R. § 54.202(a)(2).

emergency situations. We find that Q Link has demonstrated its ability to remain functional in emergency situations.

Satisfaction of Applicable Consumer Protection and Service-Quality Standards

Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer protection and service-quality standards.³⁶ Q Link has committed to providing applicable consumer protection and service-quality standards.³⁷

Financial and Technical Capability

Petitioners for ETC designation must demonstrate that they are financially and technically capable of providing Lifeline-supported services.³⁸ Q Link states that it intends to launch its retail and Lifeline wireless service simultaneously. Q Link is designated as an ETC in Colorado, Maryland, and Wisconsin. Q Link states in the application that it has not been subject to enforcement action or ETC revocation proceedings in any state. Q Link states in the application that it is financially able to provide Lifeline-supported services; the company does not, and does not intend to, offer exclusively Lifeline-supported services-and is therefore not exclusively dependent on Lifeline for its revenue. Q Link is capable of honoring its service obligations to customers and regulatory obligations to state and federal regulators. The senior management of Q LINK has experience in the telecommunications industry and the company will benefit from the managerial and technical capability of its underlying

³⁶ 47 C.F.R. § 54.202(a)(3).

³⁷ App. at pp.15-16; See also 47 C.F.R. § 54.202(a)(3).

³⁸ 47 C.F.R. § 54.202(a)(4); See also Lifeline Reform Order at ¶ 387.

carrier.³⁹ We find that Q Link is financially and technically capable of providing Lifeline-supported services.

Information Regarding the Terms and Conditions of Lifeline Plans

Petitioners for ETC designation must submit information regarding the terms and conditions of any voice telephony plans they offer to Lifeline subscribers.⁴⁰ Q Link's planned wireless Lifeline offering will provide eligible customers with the following three alternative Lifeline plans:

1. 68 monthly anytime minutes that roll over, free international long distance, and text messaging at the rate of one-third of one minute per text;
2. 125 monthly anytime minutes that roll over and text messaging at the rate of one minute per text; or
3. 250 monthly anytime minutes that do not roll over and text messaging at the rate of one minute per text.

Lifeline customers will receive a free handset and will be able to purchase additional airtime. In addition to voice services, a variety of other standard features will be available to Lifeline customers at no additional charge, including voicemail, caller I.D., and call-waiting services.⁴¹

Customers can purchase additional bundles of minutes in denominations of \$9.99, \$19.99, \$29.99, and \$59.99. Air-time replenishment cards will be made available at retail outlets throughout the company's service area. Customers may also add minutes by calling Customer Service or via the company's website.

³⁹ App. at p. 17.

⁴⁰ 47 C.F.R. § 54.202(a)(5).

⁴¹ App. at pp. 4-5.

Q Link does not require credit checks or long-term service contracts for its prepaid customers. Q Link customers do not have a fixed local calling area; all Q Link plans include domestic long distance at no extra per minute charge and nationwide digital coverage on the Sprint Network. Q Link blocks roaming ability of its Lifeline handsets. Calls to 911 emergency services and customer service are free, regardless of service activation or availability of minutes.⁴²

Public Interest Analysis

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest,⁴³ and we find that Q Link offers a Lifeline plan that will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice, high-quality service offerings, and mobility. New entrants in the Lifeline service market should incent existing ETCs to offer better service and terms to their subscribers.

Q Link will provide competitive wireless services throughout its service area in Kentucky. Q Link is a reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in Section 54.101(a) of the FCC Rules, ensuring that Q Link can provide services to customers throughout the service area.

Designation of Q Link as an ETC also creates competitive pressure for other wireline and wireless providers within the proposed service areas. Therefore, in order to remain competitive in low-income markets, all providers will have greater incentives to improve coverage, increase service offerings, and lower prices. This results in

⁴² Id. at p. 5. See also Q Link's approved compliance plan, attached to the application as Exhibit 3, contains Exhibit F detailing Q Link's standard customer terms and conditions in connection with its wireless service offering.

⁴³ See 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

improved consumer services and, consistent with federal law, benefits consumers by allowing Q Link to offer the services designated for support at rates that are “just, reasonable, and affordable.” Q Link will offer an easy to use, competitive, and highly affordable wireless telecommunications service, which it will make available to qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional services.

In order to promote public safety and safeguard against waste, fraud, and abuse in the Lifeline program, we find it necessary to require Q Link to comply with certain conditions. The designation of Q Link as a limited ETC is conditioned on Q Link’s compliance with: (1) the representations and commitments made by Q Link in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.⁴⁴

Subject to the above-stated conditions, we find that designating Q Link as an ETC eligible only to receive Lifeline support is in the public interest.

Regulatory Oversight

Under section 254(e) of the Act, the petitioners are required to use the specific universal-service support they receive “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁴⁵ An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.⁴⁶

⁴⁴ See generally Lifeline Reform Order.

⁴⁵ 47 U.S.C. § 254(e). We note that because petitioners are not eligible to receive federal universal service high-cost support, they are not required to file reports and certifications pursuant to section 54.313 of the FCC’s rules.

⁴⁶ See TracFone Forbearance Order, 20 FCC Rcd at 15105-06, ¶ 26.

As previously noted, Q Link has an approved compliance plan that currently governs its provision of Lifeline service.⁴⁷ In providing Lifeline services pursuant to the conditional ETC designation granted herein, Q Link must comply with the measures described in its existing compliance plan and in its application, as well as the FCC's rules.

Finally, we note that the Commission or the FCC may institute an inquiry on its own motion to examine the petitioner's records and documentation to ensure that the universal-service support they receive is being used for the purpose for which it was intended.⁴⁸ The petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service Administration Company ("USAC") upon request. We further emphasize that, if the petitioner fails to fulfill the requirements of the Act, the FCC's rules, or the terms of this Order after it begins receiving universal-service support, the Commission may exercise its authority to revoke such petitioner's ETC designation.⁴⁹ The FCC also may assess forfeitures for violations of FCC rules and orders.⁵⁰

ANNUAL CERTIFICATION AND VERIFICATION

Each year Q Link will require all Lifeline subscribers to recertify their head of household status, certify that only one Lifeline discount is received at their household, and document their continued program eligibility for Lifeline in accordance with the

⁴⁷ Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-42 et al., Public Notice, DA 12-1286 (August 8, 2012).

⁴⁸ 47 U.S.C. §§ 220, 403.

⁴⁹ See Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, ¶ 15 (2000); See also 47 U.S.C. § 254(e).

⁵⁰ See 47 U.S.C. § 503(b).

annual Lifeline Certification and Verification for USAC that is due annually.⁵¹ The Commission finds that Q Link's plan to meet the annual certification and verification requirements is in accordance with the FCC's requirements.

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The designation of Q Link as a limited ETC is conditioned on Q Link's compliance with: (1) the representations and commitments made by Q Link in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.

2. Q Link is designated as an ETC for the purpose of offering Lifeline service only in the underlying carrier's licensed service area within the non-rural exchanges of BellSouth Telecommunications, LLC dba AT&T Kentucky, Cincinnati Bell Telephone Company and Windstream Kentucky East, LLC.

3. During the current certification period, Q Link shall be eligible to receive federal and Kentucky USF support for Lifeline.

4. Q Link shall advertise the availability of and charges for these services using media of general distribution.

5. Q Link shall comply with the FCC's annual certification process for Lifeline customers.

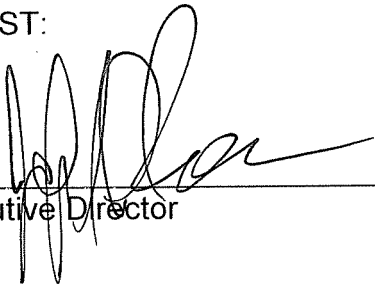
6. A copy of this Order shall be served upon the FCC and the USAC.

⁵¹ Administrative Case No. 2012-00146, Lifeline Reform (Ky. PSC May 1, 2012).

By the Commission

ENTERED
MAR 08 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2012-00473

Honorable Matthew R Malone
Attorney at Law
Hurt, Crosbie & May PLLC
The Equus Building
127 West Main Street
Lexington, KENTUCKY 40507