

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF TOTAL CALL MOBILE, INC.)	
FOR LIMITED DESIGNATION AS AN ELIGIBLE)	CASE NO.
TELECOMMUNICATIONS CARRIER)	2014-00268

ORDER

On July 28, 2014, Total Call Mobile, Inc. ("Total Call"), 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"). Commission Staff issued two requests for information, the first on September 24, 2014, ("Staff's First Request") and the second on March 19, 2015, ("Staff's Second Request"). Total Call filed partial responses to Staff's First Request on October 28, 2014, and filed responses to the remaining requests on December 18, 2014. On December 29, 2014, Total Call submitted supplemental responses to Staff's First Request. Total Call submitted its responses to Staff's Second Request on May 18, 2015.

Total Call seeks to receive federal low-income Universal Service Fund ("USF") support for wireless services.¹ Total Call seeks ETC designation only for the purpose of participation in the Lifeline program. Total Call does not seek high-cost support.

¹ Total Call requests ETC designation in the service area of its underlying carrier, Sprint PCS, including both rural and non-rural exchanges of the incumbent carriers. Application at 1 and 3.

The application states that: (1) Total Call meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;² (2) Total Call requests designation in the underlying carrier's licensed service areas in Kentucky;³ (3) in accordance with 47 U.S.C. § 214(e)(2), Total Call seeks to be designated as an ETC solely to provide Lifeline service to qualifying customers in Kentucky;⁴ and (4) designation of Total Call as an ETC for the designated areas served in Kentucky will serve the public interest.⁵

Consumers may be enrolled in person at live events where sales representatives will assist applicants in filling out online applications.⁶ Consumers may also enroll by remitting an application, complete with supporting documentation, by mail. Consumers may either download an application from Total Call's website or call a toll-free number and request that an application be mailed to them.⁷ Total Call will require prospective customers to complete the Lifeline Application and certify that they meet eligibility criteria to participate in Lifeline.⁸ Company personnel will verify the customer's eligibility by using databases and reviewing documentation.⁹

² *Id.* at 1-2 and 10-20.

³ *Id.* at 15-16.

⁴ *Id.* at 1.

⁵ *Id.* at 21-22.

⁶ *Id.* at 7.

⁷ *Id.* at 6.

⁸ *Id.* at 6-7.

⁹ *Id.*

The Commission requires that the Kentucky Universal Service support and the Kentucky Telecommunications Relay Service and Telecommunications Access Program support be collected for each wireless customer. Total Call states that it will contribute to the statewide wireless 911 fee for wireless carriers.¹⁰ Total Call states it will not provide toll-limitation services, since its calling plans do not charge any fees for toll calls.¹¹

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). Also, before designating an additional ETC for

¹⁰ Total Recall’s Response to Staff’s First Request (filed Oct. 28, 2014), Item 12.

¹¹ *Id.* at 13-14.

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.¹² The 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 47 U.S.C. § 254(c); (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;¹³ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefore 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 designation as an ETC from the Commission.¹⁴

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

¹² *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).

¹³ *Lifeline Reform Order*, FCC 12-11 at ¶ 368 (adopting a blanket forbearance of the facilities requirement of 47 U.S.C § 214(e)(1)(A) for non-facilities based carriers that seek limited ETC designation to participate in the Lifeline program) ("Lifeline Reform Order"). See also *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.

¹⁴ 47 U.S.C. § 214(e)(6).

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.¹⁵

Prior to designating an ETC pursuant to 47 U.S.C. § 214(e)(6), the Commission must determine whether such designation is in the public interest.¹⁶ 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.¹⁷ The Kentucky Lifeline program 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.¹⁸

¹⁵ 47 C.F.R. § 54.202(a).

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

¹⁷ 47 C.F.R. § 54.403(a)(1).

¹⁸ 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.

As described below, Total Call has provided the Commission with the information required for designation as an ETC in the service area at issue. We find that the public interest supports such designation, subject to Total Call's compliance with the representations and commitments made by Total Call in its application and the FCC's rules. Total Call 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 47 U.S.C. § 254(c).²⁰ Total Call 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. Total Call 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 carriers.²¹

Offering the Supported Services Using a Carrier's Own Facilities

Generally, 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

¹⁹ Application, Exhibit 4.

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

²¹ Specifically, Total Call 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 12-14. 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.

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 47 U.S.C. § 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. Total Call opted to pursue forbearance. On May 25, 2012, the FCC approved Total Call's Compliance Plan ("Compliance Plan").²⁴ A copy of the approved Compliance Plan was included with the application as Exhibit 4.

Total Call, in its provision of wireless services, will offer resold services which Total Call will obtain from its underlying wireless provider, Sprint Wireless. The service-area footprint of its underlying carrier allows Total Call to provide coverage throughout many markets where eligible consumers need service. Through its service arrangements, Total Call 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.

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

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 (December 26, 2012).

description of how they will do so.²⁵ Total Call has committed to advertise the availability of the supported services using media of general distribution.²⁶ In addition, Total Call 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 Total Call 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, Total Call seeks designation as a limited ETC, eligible only for Lifeline support, in the rural and non-rural exchanges of the incumbent local exchange carrier of its underlying carrier, Sprint Wireless.³¹

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

²⁶ Application at 14-15.

²⁷ *Id.*

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

²⁹ Application at 15.

³⁰ 47 C.F.R. § 214(e)(6), Public Notice, 12 FCC Rcd at 22949, ¶ 5.

³¹ Application at 16, and Exhibit 7.

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 The Commission finds that Total Call 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 The Commission also finds that Total Call'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 Total Call provides service to its customers through other carriers; therefore, it is able to provide to its customers the same ability to remain functional in emergency situations as is currently provided by its underlying wireless provider to their respective 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 emergency situations. The Commission finds that Total Call has demonstrated its ability to remain functional in emergency situations.³⁶

³² 47 C.F.R. § 54.202(a)(1)(i).

³³ Application at 16-17.

³⁴ Application, Exhibit 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).

³⁶ Application at 17.

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.³⁷ Total Call has committed to providing applicable consumer-protection and service-quality standards, including compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.³⁸

The Commission finds that Total Call's commitments provide sufficient consumer protection and service quality to consumers.

Financial and Technical Capability

Petitioners for ETC designation must demonstrate that they are financially and technically capable of providing Lifeline-supported services.³⁹ Total Call states that it has been providing services for six years. Total Call is authorized to provide wireless service in 49 states. Total Call states that it provides both Lifeline and non-Lifeline services to customers and is therefore not dependent on universal service revenues alone. Total Call also has the support of its parent company, KDDI America, which is a subsidiary of KDDI of Japan, the second-largest carrier in Japan.⁴⁰ Based on the foregoing, the Commission finds that Total Call is financially and technically capable of providing Lifeline-supported services.

³⁷ 47 C.F.R. § 54.202(a)(3).

³⁸ Application at 18; *See also* 47 C.F.R. § 54.202(a)(3).

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

⁴⁰ Application at 20.

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.⁴¹ Total Call plans to offer a variety of wireless Lifeline plans. The basic wireless Lifeline plan will include a free basic phone and 250 minutes of nationwide coverage calling per month. Customers can chose enhanced Lifeline plans in which they select an upgraded service plan which will be discounted. Pre-paid Lifeline plans will not be charged an activation fee.⁴² Calls to 911 emergency services and customer service are free, regardless of service activation or availability of minutes.⁴³

Based on the foregoing, the Commission finds that Total Call offers plans that will serve Lifeline customers.

Public Interest Analysis

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest.⁴⁴ We find that Total Call offers Lifeline plans 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.

Total Call will provide competitive wireless services throughout its service area in Kentucky. Total Call is a reseller of commercial mobile radio service, and will offer all of

⁴¹ 47 C.F.R. § 54.202(a)(5).

⁴² Application at 22.

⁴³ *Id.* at 6, 13, and 22.

⁴⁴ See 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

the services and functionalities detailed in 47 C.F.R. § 54.101(a), ensuring that Total Call can provide services to customers throughout the service area.⁴⁵

The Commission recognizes that the designation of Total Call as an ETC also creates competitive pressure for other wireline and wireless providers that are designated as ETCs within the proposed service areas. In order to remain competitive in low-income markets, all providers will have greater incentive to improve coverage and customer service, increase service offerings, and lower prices. Consistent with federal law, the designation benefits consumers by allowing Total Call to offer the services designated for support at rates that are “just, reasonable, and affordable.”⁴⁶ Total Call plans to offer affordable wireless telecommunications service to qualified low-income consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional services.⁴⁷

In order to promote public safety and safeguard against waste, fraud, and abuse in the Lifeline program, the Commission finds it necessary to require Total Call to comply with certain conditions. The designation of Total Call as a limited ETC is conditioned on Total Call’s compliance with: (1) the representations and commitments made by Total Call in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.⁴⁸

Subject to the above-stated conditions, the Commission finds that designating Total Call as an ETC eligible only to receive Lifeline support is in the public interest.

⁴⁵ Application at 4 and 16.

⁴⁶ 47 U.S.C. § 254(b)(1).

⁴⁷ Application at 21-22.

⁴⁸ See, generally, *Lifeline Reform Order*.

Regulatory Oversight

Under 47 U.S.C. § 254(e), 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.”⁴⁹ 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.⁵⁰

As previously noted, Total Call has an FCC-approved compliance plan that currently governs its provision of Lifeline service.⁵¹ In providing Lifeline service pursuant to the conditional ETC designation granted herein, Total Call 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 it receives is being used for the purpose intended.⁵² 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

⁴⁹ 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 47 C.F.R § 54.313.

⁵⁰ See *TracFone Forbearance Order*, 20 FCC Rcd at 15105-06, ¶ 26.

⁵¹ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Public Notice, DA 12-828 (December 26, 2012).

⁵² 47 U.S.C. §§ 220, 403.

support, the Commission may exercise its authority to revoke such petitioner's ETC designation.⁵³ The FCC also may assess forfeitures for violations of FCC rules and orders.⁵⁴

Annual Certification and Verification

Each year Total Call 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 annual Lifeline Certification and Verification for USAC that is due annually.⁵⁵ The Commission finds that Total Call'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 Total Call as a limited ETC is conditioned on Total Call's compliance with: (1) the representations and commitments made by Total Call 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. Total Call is designated as an ETC for the purpose of offering Lifeline service only in the underlying carrier's licensed service area in Kentucky.

3. During the current certification period, Total Call shall be eligible to receive federal USF support for Lifeline.

⁵³ 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).

⁵⁴ See 47 U.S.C. § 503(b).

⁵⁵ Administrative Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).

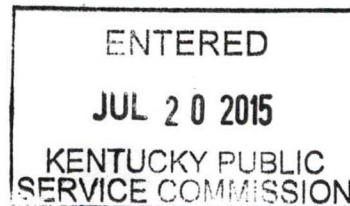
4. Total Call shall advertise the availability of and charges for these services using media of general distribution.

5. Total Call shall comply with the FCC's annual certification process for Lifeline customers.

6. Total Call shall file its specific Lifeline plan for Kentucky subscribers within 20 days of the date of this Order.

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

By the Commission



ATTEST:

A handwritten signature in blue ink, consisting of several loops and flourishes, positioned above a horizontal line.

Executive Director

*Total Call Mobile, Inc.
1411 W 190th Street, Suite 700
Gardena, CA 90248

*Robert Yap
Chief Legal Officer
1411 W. 190th Street, Suite 700
, CALIFORNIA 90248

*Mark S Yurick
Taft Stettinius & Hollister, LLP
65 E. State Street, Suite 1000
Columbus, OHIO 43215