

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PETITION OF TERRACOM INC. D/B/A)	
MAXSIP TEL FOR DESIGNATION AS AN ELIGIBLE)	CASE NO.
TELECOMMUNICATIONS CARRIER IN THE)	2023-00200
COMMONWEALTH OF KENTUCKY)	

ORDER

On June 14, 2023, Terracom Inc. (Terracom) d/b/a Maxsip Tel (Maxsip), a provider of commercial mobile radio service (CMRS), equivalent to a common carrier,¹ filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (ETC). Terracom seeks to provide Lifeline-only service to qualifying Kentucky consumers and to participate in the Kentucky Universal Service Fund (KUSF).² Terracom is a corporation organized in Oklahoma, with principal offices located in Chattanooga, Tennessee.³ Terracom is owned by Global Reconnect, LLC (51 percent), a Delaware limited liability company, and Maxsip Tel LLC (49 percent), a New York limited liability company.⁴ Pursuant to a Stock Purchase Agreement by Terracom, Global Reconnect, LLC, and Maxsip, Maxsip will purchase the 51 percent issued and outstanding common stock shares owned by Global Reconnect, LLC upon

¹ Application at 10.

² Application at 2.

³ Application at 4.

⁴ Application at 4.

obtaining regulatory approvals for the stock purchase.⁵ Terracom filed its 5th Revised Compliance Plan with the Federal Communications Commission (FCC) on March 1, 2023.⁶ Terracom seeks ETC designation for the limited purpose of participation in the Lifeline program to provide Lifeline service to qualifying Kentucky customers.⁷

The application states that: (1) Terracom meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;⁸ (2) Terracom requests designation in the underlying carriers' licensed service areas in Kentucky;⁹ (3) in accordance with 47 U.S.C. § 214(e)(2), Terracom seeks to be designated as an ETC to serve low-income Kentucky customers, and provide new underserved customers the opportunity to benefit from Lifeline programs;¹⁰ (4) designation of Terracom as an ETC for the designated areas served in Kentucky will serve the public interest.¹¹ The Commission requires that Kentucky Universal Service support and the Kentucky Telecommunications Relay Service and Telecommunications Access Program support be collected from each wireless customer. Terracom has stated in its application that it will pay all applicable federal, state, and local regulatory fees, including universal service and 911/E911 fees.¹²

⁵ Application at 5.

⁶ Application, Exhibit 2.

⁷ Application at 2.

⁸ Application at 8.

⁹ Application at 11-12.

¹⁰ Application at 2.

¹¹ Application at 21-22.

¹² Application at 9.

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, if the requesting carrier meets the requirements of 47 U.S.C. § 214(e) (1). 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.¹³ The Commission likewise collects similar information pursuant to that notice. A carrier seeking ETC designation

¹³ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communication Act*, Public Notice, 12 FCC Rcd 22947, (1997) (Section 214(e)(6) Public Notice).

must (1) establish that it will provide the supported services in accordance with 47 U.S.C § 254 throughout its designated service area "either using its own facilities or a combination of its own facilities and resale of another carrier's services;"¹⁴ (2) establish that it will advertise its universal service offerings and the charges thereof, using media of general distribution;¹⁵ (3) certify that it will comply with the service requirements applicable to the support that it receives;¹⁶ and (4) establish that it will be able to remain functional during emergency situations.¹⁷

In addition, the FCC's rules require that, 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; and (3) demonstrate that it will satisfy applicable consumer-protection and service-quality standards.¹⁸

Prior to designating an ETC pursuant to 47 U.S.C. § 214(e)(2), the Commission must also determine whether such designation is in the public interest.¹⁹ In determining

¹⁴ 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).

¹⁵ 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

¹⁶ 47 C.F.R. § 54.202(a)(1)(i). The third and fourth requirements listed were adopted by regulation to apply to the FCC's review of a providers ETC status, but the Commission generally looks at the same requirements as the FCC in seeking to determine whether a provider meets the requirements for an ETC designation.

¹⁷ 47 C.F.R. § 54.202(a)(2); Notably, the FCC generally requires those seeking an ETC designation to file a five-year plan that describes the specific proposed improvements and upgrades that will be made to offer the supported service and to demonstrate their ability to satisfy applicable customer protection and service quality standards. However, the FCC waived those requirements for recipients of CAF II Auction funds in favor of reporting requirements it believes will permit it to monitor the use of CAF II Auction funds as they are used. See *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rule Making, WC Docket Nos. 10-90, 31 FCC Red. 5949, 6010-3, paragraphs. 172-8 (2016).

¹⁸ 47 C.F.R. § 54.202(a).

¹⁹ 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.202(b).

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.

As described below, Terracom has provided the Commission with the information required for designation as an ETC in the service area at issue. The Commission finds that the public interest supports such designation, subject to Terracom's compliance with the representations and commitments made by Terracom in its application and the FCC's rules.

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 Terracom has demonstrated through the required certifications and related filings that it now offers or will offer upon designation as an ETC, the voice telephone services supported by the Lifeline program.²¹ Terracom 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 designated service area.²² Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer-protection and service-quality standards.²³ Terracom has committed to providing applicable consumer

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

²¹ Application at 10-11.

²² Specifically, Terracom certifies that it will provide voice telephone and broadband 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) toll limitation services to qualifying low-income users. See Application at 10-11.

²³ 47 C.F.R. § 54.202(a)(3).

protection and service-quality standards,²⁴ and it will be subject to reporting requirements to the FCC to ensure that it complies with the service requirements.²⁵

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 facilities and the resale of another carrier's services.²⁶ However, the FCC has previously granted forbearance from enforcement of FCC's Rules (47 C.F.R. § 54.201(i))²⁷ which prohibited ETC designation to a telecommunications carrier that offered services exclusively through the resale of another carrier's services, if the carrier was exclusively seeking Lifeline-only ETC designation.²⁸ The FCC imparts that in order for a carrier to provide service through others' facilities, the carrier must comply with certain 911 requirements, and the carrier must file, and the FCC's Wireline Competition Bureau must approve, a compliance plan providing specific information regarding the carrier's service offerings. The FCC has approved such a compliance plan for Terracom.²⁹

²⁴ Application at 15.

²⁵ Application at 20.

²⁶ 47 U.S.C. § 214(e)(6) Public Notice, 12 FCC Red at 22949; See also 47 U.S.C. § 214(e)(1)(A); *Petition of TracFone Wireline, 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 Red 15095 (2005) (*TracFone Forbearance Order*).

²⁷ 47 C.F.R. § 54.201(i).

²⁸ *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at 368 (rel. Feb. 6, 2012) ("*Lifeline and Link Up Reform Order*").

²⁹ See, Application, Exhibit 2.

Terracom is seeking Lifeline-only ETC designation, and the FCC has approved its compliance plans, therefore the Commission finds that Terracom meets the qualifying requirements for forbearance from enforcement of 47 C.F.R. § 54.201(i). Terracom is currently supported by AT&T and T-Mobile's networks.³⁰ By utilizing its underlying carriers network infrastructure and wireless transmission facilities, Terracom is able to operate as a Mobile Virtual Network Operator.³¹ The underlying carrier is selected based on the best coverage available at the specific service address.³² Terracom will provide all service on a resale basis on the AT&T or T-Mobile's networks.³³ Thus, Terracom 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 description of how they will do so.³⁴ Terracom has committed to advertising the availability of the supported services using media of general distribution.³⁵ In addition, Terracom has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.³⁶

³⁰ Application at 4.

³¹ Application at 4.

³² Application at 4.

³³ Application at 7.

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

³⁵ Application at 13.

³⁶ Application at 13.

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, the individual must be eligible to receive the benefit, and the consumer may receive no more than one benefit at a time from the program.³⁷ Terracom has demonstrated its commitment to comply with these FCC rules regarding the marketing of supported service.

Ability to Remain Functional in Emergency Situations

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.³⁸ Terracom will provide emergency service to its customers by utilizing its underlying carriers networks, which are designed 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 Terracom has demonstrated its ability to remain functional in emergency situations.³⁹

Public Interest Analysis

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest.⁴⁰ Terracom will offer gigabit broadband services as well as supported Lifeline telephone service that will provide a variety of benefits to customers in these high-cost areas, including increased consumer choice and high-

³⁷ Lifeline Reform Order at paragraphs 274-77; 47 C.F.R. § 54.405.

³⁸ 47 C.F.R. § 54.202(a)(2)

³⁹ Application at 14.

⁴⁰ See 47 U.S.C. § 214(e)(6) and 47 C.F.R. § 54.202(b).

quality service offerings.⁴¹ It also appears that Terracom will utilize support from the Kentucky Universal Service Fund to provide each month an additional 1.5 gigabytes of data above the FCC minimums required of ETCs.⁴² Moreover, new entrants in the telephone and broadband market should incentivize existing ETCs to offer better service and terms to their subscribers.

Terracom will provide state-wide competitive wireless services in Kentucky. Terracom will be a pre-paid wireless service provider and will offer all the services and functionalities detailed in 47 C.F.R. § 54.101 (a), ensuring that Terracom can provide services to customers throughout the service area.⁴³

The Commission recognizes that the designation of Terracom as an ETC also creates competitive pressure for wireless providers that are designated as ETCs within the proposed service areas. To remain competitive in 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 Terracom to offer the services designated for support at rates that are "just, reasonable, and affordable."⁴⁴ Terracom plans to offer affordable wireless telecommunications and high-speed broadband services to consumers as well as qualified low-income consumers.⁴⁵

⁴¹ Application, Exhibit 5.

⁴² Application, Exhibit 5.

⁴³ Application at 22.

⁴⁴ 47 U.S.C. § 254(b)(1).

⁴⁵ Application at 22-23.

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."⁴⁶ Moreover, 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.⁴⁷ The petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service Administration Company (USAC) upon request. 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.⁴⁸ The FCC also may assess forfeitures for violations of FCC rules and orders.⁴⁹

Annual Certification and Verification

Each year Terracom will require all Lifeline subscribers to recertify their head of household status, certify that only one Lifeline discount is received at their household,

⁴⁶ 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.

⁴⁷ 47 U.S.C. §§ 220, 403.

⁴⁸ See *Federal-State Joint Board on Universal Service; Western Wireline Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Red 15168, 151 74, 1] 15 (2000); See also 47 U.S.C. § 254(e).

⁴⁹ See 47 U.S.C. § 503(b).

and document their continued program eligibility for Lifeline in accordance with the annual Lifeline Certification and Verification for USAC that is due annually.⁵⁰

Based upon the record the Commission finds that Terracom has met the requirements for being designated an ETC for the provision of Lifeline service. The Commission further finds that Terracom should be approved as an ETC and be eligible to seek cost support from the Federal and Kentucky Universal Service Funds.

IT IS THEREFORE ORDERED THAT:

1. Terracom is designated as a limited ETC for the purpose of offering Lifeline service only in Kentucky in the service areas of its underlying carriers.
2. Terracom shall be eligible to receive state USF support for Lifeline.
3. Terracom shall advertise the availability of and charges for these services using media of general distribution.
4. Terracom shall comply with the FCC's annual certification process for Lifeline customers.
5. Terracom is a utility under the definitions contained in KRS 278.010(3) and shall include revenue generated from the sale of intrastate wireless service, including Lifeline revenues, in its reports filed pursuant to KRS 278.140.
6. A copy of this Order shall be served upon the FCC and the USAC.
7. This case is hereby closed and will be removed from the Commission's docket.

⁵⁰ Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).


PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner



ATTEST:



Executive Director

*TERRACOM Inc. d/b/a Maxsip Tel
6650 E Brainerd Road, Suite 200
Chattanooga, TN 37421

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