

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF DISH WIRELESS L.L.C.)	
D/B/A GEN MOBILE FOR DESIGNATION AS AN)	
ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE)	CASE NO.
COMMONWEALTH OF KENTUCKY FOR THE LIMITED)	2023-00079
PURPOSE OF OFFERING LIFELINE SERVICE TO)	
QUALIFIED HOUSEHOLDS)	

ORDER

On March 6, 2023, Dish Wireless L.L.C. d/b/a Gen Mobile (Dish Wireless), a common carrier, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (ETC). Dish Wireless seeks only to receive federal low-income Universal Service Fund (USF) support for wireless services.¹ Dish Wireless is a limited liability company (LLC), with its parent company, DISH Network Corporation (DISH Network) based in Colorado, which provides resold wireless telecommunications services operating in Kentucky and other states, using the Gen Mobile brand name and other brand names.² Dish Wireless seeks ETC designation for the limited purpose of participation in the Lifeline program to provide Lifeline service under the Gen Mobile brand to qualifying Kentucky customers.³

¹ Application at 1.

² Application at 2.

³ Application at 1.

The application states that: (1) Dish Wireless meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;⁴ (2) Dish Wireless requests designation in the underlying carriers' licensed service areas in Kentucky;⁵ (3) in accordance with 47 U.S.C. § 214(e)(2), Dish Wireless seeks to be designated as an ETC to provide serve low-income Kentucky customers, supplement available support to current Affordable Connectivity Program (ACP) customers and provide new underserved customers the opportunity to benefit from Lifeline programs;⁶ (4) designation of Dish Wireless as an ETC for the designated areas served in Kentucky will serve the public interest.⁷ Dish Wireless's Lifeline-supported plans under the Gen Mobile brand, will be offered to prepaid customers for \$10 a month and higher.⁸ 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. Dish Wireless has stated in its application that it will pay all applicable federal, state, and local regulatory fees, including universal service and 911/E911 fees.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

⁴ Application at 5.

⁵ Application at 3.

⁶ Application at 4.

⁷ Application at 15.

⁸ Application at 4.

⁹ Application at 13.

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.¹⁰ The Commission likewise collects similar information pursuant to that notice. A carrier seeking ETC designation 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;"¹¹ (2) establish

¹⁰ *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).

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

that it will advertise its universal service offerings and the charges thereof, using media of general distribution;¹² (3) certify that it will comply with the service requirements applicable to the support that it receives;¹³ and (4) establish that it will be able to remain functional during emergency situations.¹⁴

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.¹⁵

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.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.

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

¹³ 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 provider's 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.

¹⁴ 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).

¹⁵ 47 C.F.R. § 54.202(a).

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

As described below, Dish Wireless 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 Dish Wireless's compliance with the representations and commitments made by Dish Wireless 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).¹⁷ Dish Wireless 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. Dish Wireless 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.¹⁸ Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer-protection and service-quality standards.¹⁹ Dish Wireless has committed to providing applicable consumer protection and service-quality standards,²⁰ and it will be subject to reporting requirements to the FCC to ensure that it complies with the service requirements.²¹

¹⁷ See 47 U.S.C. § 214(e)(1)(A); § 214(e)(2); Public Notice, 12 FCC Rcd at 22948, paragraph 2.

¹⁸ Specifically, Dish Wireless 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 6–7.

¹⁹ 47 C.F.R. § 54.202(a)(3).

²⁰ Application at 9.

²¹ Application at 6–7.

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 and the resale of another carrier's services.²² Dish Wireless, in the form of Gen Mobile service plans, are currently supported by AT&T and T-Mobile's networks.²³ DISH Network is also building out an advanced 5G network of its own.²⁴ For those areas of Kentucky not yet serviced by DISH Network, Dish Wireless will provide service on a resale basis on the AT&T or T-Mobile's networks.²⁵ Thus, Dish Wireless 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.²⁶ Dish Wireless has committed to advertising the availability of the supported services using media of general distribution.²⁷ In addition, Dish Wireless has committed to advertising and promoting the availability of Lifeline

²² 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(f)*, CC Docket No. 96-45, Order, 20 FCC Red 15095 (2005) (*TracFone Forbearance Order*).

²³ Application at 7.

²⁴ Application at 7.

²⁵ Application at 7.

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

²⁷ Application at 8.

services in a manner reasonably designed to reach those likely to qualify for Lifeline.²⁸ 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.²⁹ Dish Wireless 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.³⁰ Dish Wireless will provide service to its customers through its greenfield 5G network which operates in a cloud-native environment, which is more flexible and resilient than traditional technology, in the event of service outages.³¹ Dish Wireless's reliance on mobile virtual network operator partner networks 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 Dish Wireless has demonstrated its ability to remain functional in emergency situations.³²

²⁸ Application at 8.

²⁹ Lifeline Reform Order at paragraphs 274-77; 47 C.F.R. § 54.405.

³⁰ 47 C.F.R. § 54.202(a)(2)

³¹ Application at 10.

³² Application at 10.

Public Interest Analysis

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest.³³ Dish Wireless will offer gigabit broadband services as well as supported telephone service that will provide a variety of benefits to customers in these high-cost areas, including increased consumer choice and high-quality service offerings. Moreover, new entrants in the telephone and broadband market should incentivize existing ETCs to offer better service and terms to their subscribers.

Dish Wireless will provide competitive wireless services throughout its service area in Kentucky. Dish Wireless will be a facilities-based wireless service provider and will offer all the services and functionalities detailed in 47 C.F.R. § 54.101(a), ensuring that Dish Wireless can provide services to customers throughout the service area.³⁴

The Commission recognizes that the designation of Dish Wireless 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 Dish Wireless to offer the services designated for support at rates that are "just, reasonable, and affordable."³⁵ Dish Wireless plans to offer affordable wireless

³³ See 47 U.S.C. § 214(e)(6) and 47 C.F.R. § 54.202(b).

³⁴ Application at 15.

³⁵ 47 U.S.C. § 254(b)(1).

telecommunications and high-speed broadband services to consumers as well as qualified low-income consumers.³⁶

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."³⁷ 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.³⁸ 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.³⁹ The FCC also may assess forfeitures for violations of FCC rules and orders.⁴⁰

³⁶ Application at 14–15.

³⁷ 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.

³⁸ 47 U.S.C. §§ 220, 403.

³⁹ 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).

⁴⁰ See 47 U.S.C. § 503(b).

Annual Certification and Verification

Each year Dish Wireless 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.⁴¹

IT IS THEREFORE ORDERED THAT:

1. Dish Wireless is designated as a limited ETC for the purpose of offering Lifeline service only in Kentucky in the designated service area in its application at Exhibit 3.
2. Dish Wireless shall be eligible to receive federal and state USF support for Lifeline.
3. Dish Wireless shall advertise the availability of and charges for these services using media of general distribution.
4. Dish Wireless shall comply with the FCC's annual certification process for Lifeline customers.
5. Dish Wireless 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.

⁴¹ Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).

PUBLIC SERVICE COMMISSION

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