

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

JOINT PETITION FOR THE TRANSFER OF THE)
ELIGIBLE TELECOMMUNICATIONS CARRIER) CASE NO.
DESIGNATION OF SOUTHEAST TELEPHONE,) 2010-00340
INC. TO SE ACQUISITIONS, LLC)

ORDER

On August 23, 2010, SouthEast Telephone, Inc. ("SouthEast") and SE Acquisitions, LLC ("SEA") jointly submitted a petition for the transfer of SouthEast's Eligible Telecommunications Carrier ("ETC") designation to SEA. SouthEast has been granted ETC designation by the Commission on November 26, 2002 and January 28, 2009.¹

SEA is a wholly-owned subsidiary of Lightyear Network Solutions, Inc. SEA was formed in order to acquire and operate the assets of SouthEast. Following completion of the transaction, SEA will operate under the name SouthEast Telephone. SEA has notified the Commission of its intention to provide internet, local and long-distance telecommunications service in Kentucky. SouthEast is a privately held corporation with a principal business address of 106 Scott Avenue, Pikeville, Kentucky. On September 28, 2009, SouthEast filed a voluntary petition for relief under Chapter 11 of Title 11, U.S.C. §§ 101 et seq., *as amended*, in the United States Bankruptcy Court of the

¹ Case No. 2002-00080, SouthEast Telephone, Inc. Petition for Designation as an Eligible Telecommunications Carrier (Ky. PSC Nov. 26, 2002) and Case No. 2009-00005, Supplemental Petition of SouthEast Telephone, Inc., for Designation as an Eligible Telecommunications Carrier in Additional Service Areas (Ky. PSC Jan. 28, 2009).

Eastern District of Kentucky, Pikeville Division ("Bankruptcy Court"), Case No. 09-70731-wsh. As a debtor and debtor-in-position, SouthEast continues to operate its business and provide telecommunications services to its customers.

On June 28, 2010, SouthEast and SEA entered into an Asset Purchase Agreement whereby SEA has agreed to purchase substantially all of the assets of SouthEast, including SouthEast's telecommunication equipment and customer accounts. The Bankruptcy Court approved this transaction on August 16, 2010. Under terms of the transaction, all management, personnel, and operations of SouthEast will continue to operate from their present headquarters in Pikeville, Kentucky. In accordance with terms of the Asset Purchase Agreement, the transfer of the ETC designation is necessary.

SEA has requested that the Commission transfer the ETC designation of SouthEast to SEA for the receipt of federal universal service support for those areas in which SouthEast was previously designated as an ETC. SEA is presently not an ETC in Kentucky for the purpose of receiving federal universal service support and is requesting that the ETC designation be transferred to SEA for the non-rural areas set forth in Exhibit D of the petition.

SEA states that it will abide by the commitments made by SouthEast in its ETC application. Specifically, consistent with 47 U.S.C. § 214(e)(1)(A) of the Federal Communications Act ("the Act") and 47 C.F.R. § 54.201(d) of the Federal Communications Commission's ("FCC") rules, SEA commits to offer the 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.

throughout the ETC-designated areas upon reasonable request, and to advertise the availability of such services and the charges for those services using media of general distribution. In addition, SEA commits to continue to participate in the federal Lifeline and Link-Up programs in compliance with the FCC's requirements.

In this Order, the Commission considers whether SEA meets the requirements under the Act and the FCC's rules to be designated as an ETC in the requested areas. Although SEA received approval for the transfer and control of SouthEast, this Commission has not previously determined whether SEA meets the requirements of the Act to be designated an ETC. After review of the record, we conclude that SEA meets the requirements to be designated as an ETC and that the designation shall be effective upon close of the transaction.

SEA has also established through the required certifications and related filings that it offers the services supported by the federal universal service support mechanisms. In addition, SEA certifies that it offers the supported services using its own facilities. Consistent with the requirements of 47 U.S.C. § 214(e)(1)(A), SEA has committed to advertise the availability of the supported services and the related charges "using media of general distribution."

All ETCs, as well as SEA, are required under 47 U.S.C. § 254(e) to use high-cost support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended" and must, under 47 C.F.R. §§ 54.313 and 54.314, certify annually that they are in compliance with this requirement. In addition, SEA must report certain information to the FCC and the Universal Service Administrative Company

("USAC") for the area in which it is designated as an ETC pursuant to 47 C.F.R. § 54.209.

The Commission finds that reliance on SEA's commitments to meet these requirements is reasonable and consistent with the public interest and the Act. The FCC may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas in which it is designated as an ETC. SEA will be required to provide such records and documentation to the FCC and USAC upon request. We further emphasize that, if SEA fails to fulfill the requirements of the Act, the FCC, the Commission's rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation.

The Commission therefore finds that the transfer of the ETC designation of SouthEast to SEA for those areas in which SouthEast was previously designated as an ETC should be approved.

IT IS HEREBY ORDERED that:

1. The transfer of the ETC designation of SouthEast to SEA for those areas in which SouthEast was previously designated as an ETC as set forth in Exhibit D of the application is approved.
2. During the current certification period, SEA shall be eligible to receive federal and state Universal Service Fund support.
3. SEA shall offer low-income universal support services to consumers in its service area.

4. SEA shall offer these services using its own facilities or a combination of its own facilities and resale of another carrier's services, including the services offered by another ETC.

5. Pursuant to 47 C.F.R. § 54.201(i), SEA shall be precluded from offering universal service support exclusively through the resale of another carrier's services.

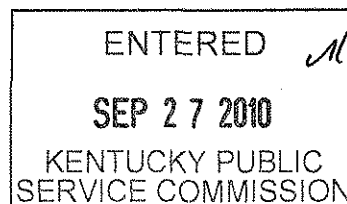
6. SEA shall advertise the availability of and charges for these services using media of general distribution.

7. SEA must file its annual certification with the Commission by September 1 in accordance with the requirements of Administrative Case No. 381.²

8. SEA must comply with the Commission's annual certification process for Lifeline customers in accordance with the requirements of Administrative Case No. 360.³

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

By the Commission



ATTEST



Executive Director

² Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support (Ky. PSC Sept. 24, 2008).

³ Administrative Case No. 360, An Inquiry Into Universal Service and Funding Issues (Ky. PSC May 24, 2007).

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