

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF PEOPLES TELECOM, LLC FOR )  
DESIGNATION AS AN ELIGIBLE ) CASE NO.  
TELECOMMUNICATIONS CARRIER IN THE ) 2017-00061  
COMMONWEALTH OF KENTUCKY )

O R D E R

On February 3, 2017, Peoples Telecom, LLC (“Peoples Telecom”), a facilities-based wireline provider, also known as a Competitive Local Exchange Carrier, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (“ETC”). Peoples Telecom seeks to receive federal high-cost, and federal and state low-income Universal Service Fund (“USF”) support for wireline services.<sup>1</sup>

The application states that: (1) Peoples Telecom meets all the requirements for designation as an ETC to serve the designated area in the commonwealth of Kentucky;<sup>2</sup> (2) Peoples Telecom requests designation in its service area in Kentucky;<sup>3</sup> (3) in accordance with 47 U.S.C. § 214(e)(2), Peoples Telecom seeks to be designated as an

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<sup>1</sup> Peoples Telecom requests ETC designation in BellSouth Telecommunications, LLC dba AT&T Kentucky (“AT&T Kentucky”) exchange of Beattyville and in the exchanges of Berea, East Bernstadt, Irvine, Livingston, London, Manchester, Mt. Vernon, and Oneida, of Windstream Kentucky East, LLC (“Windstream”), Application at 1 and Footnote 1.

<sup>2</sup> Application at 1–4.

<sup>3</sup> *Id.* at 1 and Footnote 1.

ETC;<sup>4</sup> and (4) designation of Peoples Telecom as an ETC for the designated area served in Kentucky will serve the public interest.<sup>5</sup>

Peoples Telecom is a facilities based wireline carrier operating in eastern Kentucky and is wholly owned by Peoples Rural Telephone Cooperative Corporation, Inc. (“Peoples Rural”) located in McKee, Kentucky.<sup>6</sup> Peoples Telecom began providing service in 2015 as a wireline telecommunications provider via its own facilities. Peoples Telecom has deployed or will deploy its facilities to the exchanges in which it seeks ETC designation and will serve customer in those exchanges that are on its network.

#### 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

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<sup>4</sup> *Id.* at 1.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* at 2.

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 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.<sup>7</sup> The Commission likewise collects similar information pursuant to that Public 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;<sup>8</sup> (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.<sup>9</sup>

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<sup>7</sup> *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).

<sup>8</sup> *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"). *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.

<sup>9</sup> 47 U.S.C. § 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.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup> The Kentucky Lifeline program currently provides additional reimbursement to ETCs for providing eligible consumers with

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<sup>10</sup> 47 C.F.R. § 54.202(a).

<sup>11</sup> 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

<sup>12</sup> 47 C.F.R. § 54.403(a)(1).

discounts of up to an additional \$3.50 off the monthly cost of their telephone service.<sup>13</sup>

As described below, Peoples Telecom 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 Peoples Telecom's compliance with the representations and commitments made by Peoples Telecom 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).<sup>14</sup> Peoples Telecom 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. Peoples Telecom 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 requested exchanges.<sup>15</sup>

#### 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

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<sup>13</sup> 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.

<sup>14</sup> See 47 U.S.C. § 214(e)(1)(A); § 214(e)(6) Public Notice, 12 FCC Rcd at 22948, ¶ 2.

<sup>15</sup> Specifically, Peoples Telecom 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) Toll Limitation services to qualifying Low-income consumers. See application at 3.

and the resale of another carrier's services.<sup>16</sup> Peoples Telecom will provide the supported services using its own network infrastructure consisting of switching, trunking, and network equipment.<sup>17</sup> In addition, Peoples Telecom will have the ability to lease facilities provided by other carriers to link its switch to exchange toll and local traffic.<sup>18</sup> Through its own facilities and service arrangements, Peoples Telecom 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.<sup>19</sup> Peoples Telecom has committed to advertise the availability of the supported services using media of general distribution.<sup>20</sup> In addition, Peoples Telecom has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.<sup>21</sup> 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

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<sup>16</sup> 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 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 Rcd 15095 (2005) ("TracFone Forbearance Order").

<sup>17</sup> Application at 3.

<sup>18</sup> *Id.* at 4.

<sup>19</sup> 47 U.S.C. § 214(e)(1)(B); § 214(e)(6) Public Notice, 12 FCC Rcd at 22949, ¶ 4.

<sup>20</sup> Application at 4.

<sup>21</sup> *Id.*

the benefit, and that the household may receive no more than one benefit at a time from the program.<sup>22</sup> Peoples Telecom has demonstrated its commitment to comply with these FCC rules regarding marketing of Lifeline service.<sup>23</sup>

#### Designated Service Area

Petitioners for ETC designation must provide a detailed description of the geographic service area for which they seek designation.<sup>24</sup> In its application, Peoples Telecom seeks designation ETC in the exchanges of the incumbent local exchange carriers of AT&T Kentucky and Windstream as listed in Exhibit C to the Application.<sup>25</sup>

#### 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.<sup>26</sup> The Commission finds that Peoples Telecom 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.<sup>27</sup>

#### Ability to Remain Functional in Emergency Situations

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.<sup>28</sup> Peoples Telecom provides service to its customers through

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<sup>22</sup> *Lifeline Reform Order* at ¶¶ 274-77; 47 C.F.R. § 54.405.

<sup>23</sup> Application at 4.

<sup>24</sup> Section 214(e)(6), Public Notice, 12 FCC Rcd at 22949, ¶ 5.

<sup>25</sup> Application at 4 and Exhibit C.

<sup>26</sup> 47 C.F.R. § 54.202(a)(1)(i).

<sup>27</sup> Application at 5.

<sup>28</sup> 47 C.F.R. § 54.202(a)(2).

its own facilities and the facilities of the incumbent carrier with which it shares ownership, Peoples Rural; therefore, it is able to provide to its customers the same ability to remain functional in emergency situations as is currently provided by Peoples Rural to its 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 Peoples Telecom has demonstrated its ability to remain functional in emergency situations.<sup>29</sup>

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.<sup>30</sup> Peoples Telecom has committed to providing applicable consumer-protection and service-quality standards, including protection of customer information and certifying compliance with the FCC on an annual basis.<sup>31</sup> The Commission finds that Peoples Telecom'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.<sup>32</sup> Peoples Telecom states that it has been providing services since 2015. Peoples Telecom is wholly owned by

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<sup>29</sup> Application at 5.

<sup>30</sup> 47 C.F.R. § 54.202(a)(3).

<sup>31</sup> Application at 5; *See also* 47 C.F.R. § 54.202(a)(3).

<sup>32</sup> 47 C.F.R. § 54.202(a)(4); *See also* Lifeline Reform Order at ¶ 387.

Peoples Rural, an incumbent local exchange carrier.<sup>33</sup> Based on the foregoing, the Commission finds that Peoples Telecom is financially and technically capable of providing supported services.

#### Public Interest Analysis

Prior to designating an ETC for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.<sup>34</sup> Peoples Telecom is requesting designation in areas served by non-rural telephone companies, therefore a determination of public interest is not necessary.

#### 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.”<sup>35</sup> 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.<sup>36</sup>

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.<sup>37</sup> The petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service

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<sup>33</sup> Application at 2.

<sup>34</sup> 47 U.S.C. § 214(e)(2)

<sup>35</sup> 47 U.S.C. § 254(e). We note that because petitioner currently is not eligible to receive federal universal service high-cost support, it has not been required to file reports and certifications pursuant to 47 C.F.R. § 54.313.

<sup>36</sup> See *TracFone Forbearance Order*, 20 FCC Rcd at 15105-06, ¶ 26.

<sup>37</sup> 47 U.S.C. §§ 220, 403.

Administration Company ("USAC") upon request. We further emphasize that, if the petitioner fails to fulfill the requirements of the 1996 Telecommunications Act,<sup>38</sup> 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.<sup>39</sup> The FCC also may assess forfeitures for violations of FCC rules and orders.<sup>40</sup>

Annual Certification and Verification

Each year Peoples Telecom 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.<sup>41</sup>

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

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

2. Peoples Telecom is designated as an ETC in its service area in Kentucky as stated in the Appendix to this Order.

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<sup>38</sup> 47 U.S.C § 251 *et seq.*

<sup>39</sup> 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 Rcd 15168, 15174, ¶ 15 (2000); See also 47 U.S.C. § 254(e).

<sup>40</sup> See 47 U.S.C. § 503(b).

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

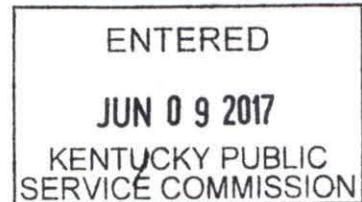
3. During the current certification period, Peoples Telecom shall be eligible to receive federal and state USF support.

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

5. Peoples Telecom 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.

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Adina R. Mathews".

Adina R. Mathews

Executive Director

## APPENDIX

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2017-000061 DATED **JUN 09 2017**

Exchange Name	Incumbent Local Exchange Carrier
Beattyville	BellSouth Telecommunications, LLC dba AT&T Kentucky
Berea	Windstream Kentucky East, LLC
East Bernstadt	Windstream Kentucky East, LLC
Irvine	Windstream Kentucky East, LLC
Livingston	Windstream Kentucky East, LLC
London	Windstream Kentucky East, LLC
Manchester	Windstream Kentucky East, LLC
Mt. Vernon	Windstream Kentucky East, LLC
Oneida	Windstream Kentucky East, LLC

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