

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF CELLULAR SERVICES, LLC FOR)	CASE NO.
DESIGNATION AS AN ELIGIBLE)	2019-00362
TELECOMMUNICATIONS CARRIER)	

ORDER

On September 27, 2018, Cellular Services, LLC (Cellular Services), a Competitive Local Exchange Carrier, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (ETC). Cellular Services seeks to receive federal and state Universal Service Fund (USF) support for wireline voice and broadband internet services.¹

The application states that: (1) Cellular Services meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;² (2) Cellular Services requests designation in its service area in Kentucky;³ (3) in accordance with 47 U.S.C. § 214(e)(2), Cellular Services seeks to be designated as an ETC to provide high-speed broadband internet access and voice services to qualifying Lifeline customers in Kentucky;⁴ and (4) designation of Cellular Services as an ETC for

¹ Cellular Services requests ETC designation for Low-Income support in the exchanges of Ashland, Catlettsburg, Grayson, Greenup, Inez, Meads, Olive Hill, Paintsville, and Prestonsburg in local area and transport area (LATA) 466. BellSouth Telecommunications, LCC d/b/a AT&T Kentucky or Windstream Kentucky East, LCC serve these exchanges. Application at 1.

² *Id.* at 2.

³ *Id.* at 2.

⁴ *Id.* at 2–3.

the designated areas served in Kentucky will serve the public interest.⁵

Cellular Services is a wholly owned direct subsidiary of Foothills Rural Telephone Corporation (Foothills Telephone), a non-profit, member-owned telephone cooperative.⁶ Foothills Telephone is an incumbent local service provider also operating in Kentucky in the same LATA as Cellular Services. Cellular Services plans to build a fiber network throughout the service area through the use of in-house personnel of Foothills Telephone.⁷ With the backing of its parent, Foothills Telephone, Cellular Services has the financial and technical capabilities to pay for and construct the fiber-optic network throughout the proposed ETC service area for the provision of voice and broadband services.⁸

The Commission requires that the Kentucky Universal Service support and the Kentucky Telecommunications Relay Service and Telecommunications Access Program support be collected for each wireline customer. Cellular Services is already collecting and remitting all applicable federal, state, and local regulatory fees, including 911/E911 fees imposed on customers. Cellular Services will provide toll-limitation services to low-income consumers as provided in 47 C.F.R. §§ 54.400–54.423.⁹

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier [ETC]

⁵ *Id.* at 1.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ *Id.*

⁹ Application at 4.

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)(2), state commissions bear the primary responsibility for performing ETC designations.¹⁰ State commissions 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).

Requirements for ETC Designation by the
Federal Communications Commission (FCC)

As required by 47 U.S.C. § 214(e)(1), a provider seeking ETC designation must establish that it will (1) 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 and (2) advertise its universal service offerings and the charges thereof, using media of general distribution.¹² In addition, FCC regulations require a petitioner seeking an ETC designation to: (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.¹³ Also, before designating an additional ETC for an area served by a rural

¹⁰ See *also* KRS 278.040 (giving the Commission general jurisdiction over the services and rates of utilities); KRS 278.542(1) (indicating that limitations on the Commission’s jurisdiction over telephone utilities in KRS 278.541 to KRS 278.544 should not affect the Commission’s jurisdiction over federal universal service fund and lifeline program eligibility).

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

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).

telephone company, the Commission must determine that the designation is in the public interest.¹⁴

Cellular Services has provided the Commission with the information indicating that it can satisfy the requirements for designation as an ETC in the service area at issue. Further, the Commission finds that the public interest supports such designation, subject to Cellular Services' compliance with the representations and commitments made by Cellular Services in its application and the FCC's rules.

Offering the Services Designated for Support

Cellular Services has demonstrated through the required certifications and related filings that it now offers or will offer the services designated for support over its own network upon designation as an ETC. Cellular Services also certified that it now provides, or will provide, the services and functionalities enumerated in 47 C.F.R. § 54.101(a) throughout the designated service area.¹⁵ Thus, Cellular Services has shown it is able to offer all of the services and functionalities supported by the universal-service program, as required by 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.101(a), throughout its service area.

Generally, Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer-protection and service-quality standards.¹⁶ The FCC waived this

¹⁴ 47 U.S.C. § 214(e)(2).

¹⁵ Specifically, Cellular Services certifies that it will provide voice telephony 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 4.

¹⁶ 47 C.F.R. § 54.202(a)(3).

requirement 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.¹⁷ Nevertheless, Cellular Services has committed to providing applicable consumer-protection and service-quality standards,¹⁸ and it will be subject to reporting requirements to the FCC to ensure that it complies with the service requirements.¹⁹ Thus, the Commission finds that Cellular Services' commitments provide sufficient consumer protection and service quality to consumers.

Cellular Services is a subsidiary of Foothills Telephone, an incumbent local exchange carrier with the experience of designing, constructing, and maintaining its fiber plant. Cellular Services also has the support of its parent company Foothill Telephone.²⁰ Based on the foregoing, the Commission finds that Cellular Services is financially and technically capable of providing Lifeline services.

Advertising Supported Services

Cellular Services has committed to advertising the availability of the supported

¹⁷ 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 Rcd. 5949, 6010-3, paragraphs 172-8 (2016).

¹⁸ Application at 4. See also 47 C.F.R. § 54.202(a)(3).

¹⁹ 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 Rcd. 5949, 6010-3, paras. 172-8 (2016) (requiring all CAF II auction recipients to file information regarding the number and location of supported customers, certify that they have met their final service milestones for the prior year, and provide the total amount of Phase II support, if any, that they used for capital expenditures in the previous year among other things); *In the Matter of Connect America Fund*, WC Docket No. 10-90, DA 18-710, paras. 2 (July 6, 2018) (establishing certain testing requirements, including the voice quality testing requirements for high latency providers, and requiring that the results of those tests be filed with FCC as part of each providers annual report); see also 47 U.S.C. § 503(b)(1)(B)(stating that any person who is determined to have willfully or repeatedly failed to comply with any rule, regulation, or order issued by the FCC "shall be liable to the United States for a forfeiture penalty).

²⁰ Application at 4.

services using media of general distribution.²¹ In addition, Cellular Services has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.²² 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.²³ Cellular Services has demonstrated its commitment to comply with these FCC rules regarding the marketing of supported service.²⁴ Thus, Cellular Service's has indicated that it will comply with the requirements of 47 U.S.C. § 214(e)(1)(B).

Ability to Remain Functional in Emergency Situations

Cellular Services will provide service to its customers through its fiber-optic network. 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. Thus, the Commission finds that Cellular Services has demonstrated its ability to remain functional in emergency situations.²⁵

²¹ Application at 2.

²² *Id.*

²³ Lifeline Reform Order at ¶¶ 274-77; 47 C.F.R. § 54.405.

²⁴ Application at 5.

²⁵ *Id.* at 4.

Public Interest Analysis

The Commonwealth has recognized the benefit of high-cost support for voice telephony service and in expanding broadband and the record indicates that granting Cellular Services' ETC designation is likely to result in expanded service. Granting Cellular Services' designation as an ETC in the telephony and broadband market should create competitive pressure on existing ETCs to offer better service and terms to their subscribers. Further, consistent with federal law, the designation benefits consumers by allowing Cellular Services to offer the services designated for support at rates that are "just, reasonable, and affordable."²⁶ Cellular Services plans to offer affordable wireline telecommunications and high-speed broadband services to consumers as well as qualified low-income consumers.²⁷ Thus, the Commission finds that designating Cellular Services as an ETC is in the public interest.

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."²⁸ 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.²⁹ The petitioner is required to provide such records and

²⁶ 47 U.S.C. § 254(b)(1).

²⁷ Application at 4–5.

²⁸ 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.

²⁹ 47 U.S.C. §§ 220, 403.

documentation to the Commission, the FCC, or Universal Service Administration Company (USAC) upon request. If the petitioner fails to fulfill the requirements of the 1996 Telecommunications Act,³⁰ 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.³¹ The FCC also may assess forfeitures for violations of FCC rules and orders.³²

Annual Certification and Verification

Each year Cellular Services 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.³³

IT IS THEREFORE ORDERED that:

1. Cellular Services petition that it be designated as an ETC is hereby granted.
2. Cellular Services is designated as an ETC for the purpose of receiving High-Cost and Low-Income support from the Federal USF and Low-Income support from the Kentucky USF in the exchanges of Ashland, Catlettsburg, Grayson, Greenup, Inez, Meads, Olive Hill, Paintsville, and Prestonsburg.
3. Cellular Services shall advertise the availability of and charges for these

³⁰ 47 U.S.C. Section 151 *et seq.*

³¹ 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).

³² See 47 U.S.C. § 503(b).

³³ Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).

services using media of general distribution.

4. Cellular Services shall comply with the FCC's annual certification process for Lifeline customers.

5. Cellular Services is a utility under the definitions contained in KRS 278.010(3) and shall include revenue generated from the sale of intrastate wireline 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 closed and removed from the Commission's docket.

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By the Commission

ENTERED
MAR 26 2020 rca
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2019-00362

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