

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF AMERICAN BROADBAND  
AND TELECOMMUNICATIONS COMPANY FOR  
LIMITED DESIGNATION AS AN ELIGIBLE  
WIRELESS TELECOMMUNICATIONS CARRIER

CASE NO.  
2013-00175

ORDER

On May 1, 2013, American Broadband and Telecommunications Company (“American Broadband”) a reseller of Commercial Mobile Radio Service, also known as a Mobile Virtual Network Operator, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (“ETC”). American Broadband seeks only to receive federal low-income Universal Service Fund (“USF”) support for wireless services.<sup>1</sup> American Broadband seeks ETC designation only for the purpose of participation in the Lifeline program. American Broadband does not seek high-cost support.

The application states that: (1) American Broadband meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;<sup>2</sup> (2) American Broadband requests designation in the underlying carriers’ licensed service areas in Kentucky;<sup>3</sup> (3) in accordance with 47 U.S.C. § 214(e)(2), American Broadband

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<sup>1</sup> American Broadband requests ETC designation in non-rural exchanges of BellSouth Telecommunications, LLC, d/b/a AT&T Kentucky, Cincinnati Bell Telephone Company and Windstream Kentucky East, LLC. App. at p. 7 and FN. 6.

<sup>2</sup> *Id.* at pp. 11-20.

<sup>3</sup> *Id.* at p. 16.

seeks to be designated as an ETC solely to provide Lifeline service to Qualifying Kentucky Customers;<sup>4</sup> and (4) designation of American Broadband as an ETC for the designated areas served in Kentucky will serve the public interest.<sup>5</sup>

American Broadband's planned wireless Lifeline offering, American Assistance, will provide eligible customers with a free cell phone, 250 free monthly minutes, and 250 free text messages. This plan is wholly supported by the federal USF and is provided at no cost to the customer. Customers will have several options to add additional minutes or text messages for an additional fee. In addition to voice services, Lifeline customers also will have access to a variety of other standard features at no additional charge, including caller I.D., call waiting, and voicemail.<sup>6</sup>

Consumers will be enrolled by two methods: person-to-person sign up at areas set up at state government agencies or by application submitted by the individual.<sup>7</sup> American Broadband employees or agents will explain the eligibility requirements for the program and certify the applicant's eligibility.<sup>8</sup> Company personnel will determine the customer's eligibility by using databases and reviewing documentation.<sup>9</sup>

American Broadband has stated in its application that it will pay all applicable federal, state, and local regulatory fees, including universal service and E911 fees.<sup>10</sup>

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<sup>4</sup> *Id.* at p. 6.

<sup>5</sup> *Id.* at pp. 20-24.

<sup>6</sup> *Id.* at p. 7.

<sup>7</sup> *Id.* at Exhibit C, p. 6.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> App. at p. 20.

The Commission interprets this to mean that American Broadband will submit to the Commission the Kentucky Universal Service Fee and the Kentucky Telecommunications Relay Service and Telecommunications Access Program fee for each customer, and that American Broadband will remit the statewide wireless 911 fee to the Commercial Mobile Radio Services Board. American Broadband states it will not provide toll-limitation services, since its calling plans are toll free for all calls.<sup>11</sup>

#### 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, 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.

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<sup>11</sup> *Id.* at p. 13.

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>12</sup> The Commission likewise collects similar information pursuant to that 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>13</sup> (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor 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 to be designated as an ETC from the Commission.<sup>14</sup>

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

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<sup>12</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>13</sup> Lifeline Reform Order, FCC 12-11 at ¶ 368 (adopting a blanket forbearance of the facilities requirement of section 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>14</sup> Section 214(e)(6).

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>15</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>16</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>17</sup> The Kentucky Lifeline program provides additional reimbursement to ETCs for providing eligible consumers with discounts of up to an additional \$3.50 on the monthly cost of their telephone service.<sup>18</sup>

As described below, American Broadband 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 American Broadband's

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<sup>15</sup> 47 C.F.R. § 54.202(a).

<sup>16</sup> 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

<sup>17</sup> 47 C.F.R. § 54.403(a)(1).

<sup>18</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. The Commission notes that American Broadband has specifically stated in its application that it will not be seeking funds from the State Program. App. at 2.

compliance with the representations and commitments made by American Broadband in its application and the FCC's rules. American Broadband must also comply with the conditions set forth in its compliance plan.<sup>19</sup>

#### 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 section 254(c) of the Act.<sup>20</sup> American Broadband 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. American Broadband 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 licensed service areas of its underlying carriers.<sup>21</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 and the resale of another carrier's services.<sup>22</sup> In its Lifeline Reform Order,<sup>23</sup> the FCC

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<sup>19</sup> App. at Ex. C.

<sup>20</sup> See 47 U.S.C. § 214(e)(1)(A); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22948, ¶ 2.

<sup>21</sup> Specifically, American Broadband 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) Lifeline service plans that do not distinguish between toll and non-toll calls in the pricing of service. See application at pp. 10-13. In the Lifeline Reform Order, the FCC adopted rules that provide that toll-limitation service is no longer necessary for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of service. See Lifeline Reform Order at ¶ 49.

<sup>22</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 Wireless, 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>23</sup> See generally Lifeline Reform Order.

decided to forbear, on its own motion, from applying the facilities requirement of 47 U.S.C. § 214(e)(1)(A) to any telecommunications carrier that seeks limited ETC designation to participate in the Lifeline program, conditioned on the ETC's compliance with certain 911 requirements and the ETC's filing with and approval by the FCC of a compliance plan describing the ETC's adherence to certain protections prescribed by the FCC. American Broadband opted to pursue forbearance. On May 25, 2012, the FCC approved American Broadband's Compliance Plan ("Compliance Plan").<sup>24</sup> A copy of the approved Compliance Plan and the FCC Public Notice of Approval was included with the application as Exhibit C.

American Broadband, in its provision of wireless services, will offer resold services which American Broadband will obtain from its underlying wireless provider, Sprint PCS. This service area footprint of its underlying carriers allows American Broadband to provide coverage throughout many markets where eligible consumers need service. Through its service arrangements, American Broadband 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>25</sup> American Broadband has committed to advertise

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<sup>24</sup> Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-42 et al., Public Notice, DA 12-1286 (August 8, 2012).

<sup>25</sup> 47 U.S.C. § 214(e)(1)(B); Section 214(e)(6) Public Notice, 12 FCC Rcd at 22949, ¶ 4.

the availability of the supported services using media of general distribution.<sup>26</sup> In addition, American Broadband 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>27</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 the benefit, and that the consumer may receive no more than one benefit at a time from the program.<sup>28</sup> American Broadband has demonstrated its commitment to comply with these FCC rules regarding marketing of Lifeline service.<sup>29</sup>

#### Designated Service Areas

Petitioners for ETC designation must provide a detailed description of the geographic service area for which they seek designation.<sup>30</sup> In its application, American Broadband seeks designation as a limited ETC, eligible only for Lifeline support, in the non-rural exchanges of BellSouth Telecommunications, LLC dba AT&T Kentucky, Cincinnati Bell Telephone Company, Windstream Kentucky East, LLC, and Windstream Kentucky West, LLC.<sup>31</sup>

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<sup>26</sup> App. at p. 14.

<sup>27</sup> *Id.* at p. 15.

<sup>28</sup> Lifeline Reform Order at ¶¶ 274-77; 47 C.F.R. § 54.405.

<sup>29</sup> App. at p. 16.

<sup>30</sup> Section 214(e)(6), Public Notice, 12 FCC Rcd at 22949, ¶ 5.

<sup>31</sup> App. at p. 7 and Exhibit B.

### 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>32</sup> American Broadband has done so and 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>33</sup> We also find that American Broadband's sample Lifeline certification forms used for consumer enrollment, and attached as exhibits to its application, satisfy the FCC's rules.<sup>34</sup>

### Ability to Remain Functional in Emergency Situations

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.<sup>35</sup> Since American Broadband is providing service to its customers through other carriers, it is able to provide to its customers the same ability to remain functional in emergency situations as currently provided by the other carriers to their 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 American Broadband has demonstrated its ability to remain functional in emergency situations.

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<sup>32</sup> 47 C.F.R. § 54.202(a)(1)(i).

<sup>33</sup> App. at p. 16 and Ex. C.

<sup>34</sup> App. Ex. C; 47 C.F.R. § 54.410 (setting forth the Commission rules on subscriber eligibility determination and certification); and Lifeline Reform Order at Appendix C (setting forth certification requirements for Lifeline subscribers).

<sup>35</sup> 47 C.F.R. § 54.202(a)(2).

### 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>36</sup> American Broadband has committed to providing applicable consumer-protection and service-quality standards including compliance with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.<sup>37</sup>

The Commission finds that American Broadband'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>38</sup> American Broadband states that it offers wireline and wireless service to both Lifeline and non-Lifeline consumers and has done so since 2004,<sup>39</sup> American Broadband is designated as an ETC in Indiana, Michigan, Ohio, Wisconsin, and West Virginia.<sup>40</sup> American Broadband states in the application that it has not been subject to enforcement action or ETC revocation proceedings in any state.<sup>41</sup> American Broadband states in the application that it is financially able to provide Lifeline-supported services; the company receives revenue from its local and long-distance services; and is therefore not exclusively

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<sup>36</sup> 47 C.F.R. § 54.202(a)(3).

<sup>37</sup> App. at p. 17; *See also* 47 C.F.R. § 54.202(a)(3).

<sup>38</sup> 47 C.F.R. § 54.202(a)(4); *See also* Lifeline Reform Order at ¶ 387.

<sup>39</sup> App. at p. 18.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 19.

dependent on Lifeline for its revenue.<sup>42</sup> The Commission finds that American Broadband is financially and technically capable of providing Lifeline-supported services.

Information Regarding the Terms and Conditions of Lifeline Plans

Petitioners for ETC designation must submit information regarding the terms and conditions of any voice telephony plans they offer to Lifeline subscribers.<sup>43</sup> American Broadband's planned wireless Lifeline offering, American Assistance, will provide eligible customers with a free cell phone, 250 free monthly minutes, and 250 free text messages. This plan is wholly supported by the federal USF and at no cost to the customer. Customers will have several options to add additional minutes or text messages for an additional fee. In addition to voice services, Lifeline customers also will have access to a variety of other standard features at no additional charge, including caller I.D., call waiting, and voicemail.<sup>44</sup>

American Broadband will also make available to Lifeline customers the ability to purchase additional bundles of minutes in various denominations. Customers may purchase minutes by calling 611 or the company's toll-free number.<sup>45</sup> Calls to 911 emergency services and customer service are free, regardless of service activation or availability of minutes.<sup>46</sup>

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<sup>42</sup> *Id.* at p. 18.

<sup>43</sup> 47 C.F.R. § 54.202(a)(5).

<sup>44</sup> *Id.* at p. 5.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

The Commission finds that American Broadband offers a variety of plan options that will serve Lifeline customers.

#### Public Interest Analysis

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest,<sup>47</sup> and we find that American Broadband offers a Lifeline plan that will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice, high-quality service offerings, and mobility. New entrants in the Lifeline service market should incent existing ETCs to offer better service and terms to their subscribers.

American Broadband will provide competitive wireless services throughout its service area in Kentucky. American Broadband is a reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in 47 C.F.R. § 54.101(a), ensuring that American Broadband can provide services to customers throughout the service area.<sup>48</sup>

The Commission recognizes that the designation of American Broadband as an ETC also creates competitive pressure for other wireline and wireless providers within the proposed service areas. Therefore, in order to remain competitive in low-income markets, all providers will have greater incentives to improve coverage, increase service offerings, and lower prices. This provides incentives to provide improved consumer services and, consistent with federal law, benefits consumers by allowing American Broadband to offer the services designated for support at rates that are “just,

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

<sup>48</sup> App. at pp. 20-22.

reasonable, and affordable.”<sup>49</sup> American Broadband plans to offer an easy-to-use, competitive, and affordable wireless telecommunications service, which it will make available to qualified consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional services.<sup>50</sup>

In order to promote public safety and safeguard against waste, fraud, and abuse in the Lifeline program, we find it necessary to require American Broadband to comply with certain conditions. The designation of American Broadband as a limited ETC is conditioned on American Broadband’s compliance with: (1) the representations and commitments made by American Broadband in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order.<sup>51</sup>

Subject to the above-stated conditions, we find that designating American Broadband as an ETC eligible only to receive Lifeline support is in the public interest.

#### Regulatory Oversight

Pursuant to 47 U.S.C. § 254(e), the 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>52</sup> An ETC

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<sup>49</sup> 47 U.S.C. § 254(b)(1).

<sup>50</sup> App. at p. 21.

<sup>51</sup> See *generally* Lifeline Reform Order.

<sup>52</sup> 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 section 54.313 of the FCC’s rules.

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>53</sup>

As previously noted, American Broadband has an approved compliance plan that currently governs its provision of Lifeline service.<sup>54</sup> In providing Lifeline services pursuant to the conditional ETC designation granted herein, American Broadband must comply with the measures described in its existing compliance plan and in its application, as well as the FCC's rules.

Finally, we note that 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>55</sup> The petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service Administration Company ("USAC") upon request. We further emphasize that, 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.<sup>56</sup> The FCC also may assess forfeitures for violations of FCC rules and orders.<sup>57</sup>

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<sup>53</sup> See TracFone Forbearance Order, 20 FCC Rcd at 15105-06, ¶ 26.

<sup>54</sup> Lifeline and Link Up Reform and Modernization et al., WC Docket No. 11-42 et al., Public Notice, DA 12-828 (May 25, 2012).

<sup>55</sup> 47 U.S.C. §§ 220, 403.

<sup>56</sup> See Federal-State Joint Board on Universal Service; Western Wireless 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>57</sup> See 47 U.S.C. § 503(b).

### Annual Certification and Verification

Each year American Broadband 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>58</sup> The Commission finds that American Broadband's plan to meet the annual certification and verification requirements is in accordance with the FCC's requirements.

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

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

2. American Broadband is designated as a limited ETC for the purpose of offering Lifeline service only in the underlying carrier's licensed service areas in Kentucky.

3. During the current certification period, American Broadband shall be eligible to receive federal USF support for Lifeline.

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

5. American Broadband shall comply with the FCC's annual certification process for Lifeline customers.

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<sup>58</sup> Administrative Case No. 2012-00146, Lifeline Reform (Ky. PSC May 1, 2012).

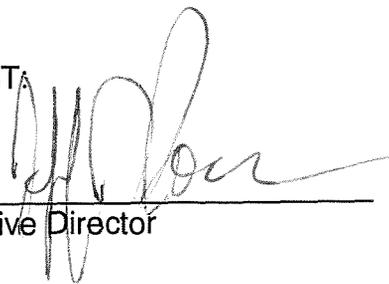
6. American Broadband is a utility as defined by KRS 278.010(3)(e) and shall comply with the requirements set forth in KRS 278.130 to KRS 278.150.

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

By the Commission

ENTERED  
NOV 05 2013  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST



Executive Director

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