

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF AFFORDABLE PHONE	)	
SERVICES, INC. FOR DESIGNATION AS AN	)	CASE NO.
ELIGIBLE TELECOMMUNICATIONS CARRIER	)	2009-00158
IN THE COMMONWEALTH OF KENTUCKY	)	

O R D E R

On April 17, 2009, Affordable Phone Services, Inc. ("Affordable Phone"), a competitive local exchange carrier, filed a petition under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier ("ETC") to receive federal universal service support for service offered throughout its service area in the state of Kentucky.<sup>1</sup> Affordable Phone requests only low-income support and is not seeking high-cost support.<sup>2</sup>

The petition states that: (1) Affordable Phone meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;<sup>3</sup> (2) Affordable Phone requests designation throughout each of the designated areas within its service coverage;<sup>4</sup> (3) in accordance with 47 U.S.C. § 214(e)(2), Affordable

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<sup>1</sup> Affordable Phone requests ETC designation in the service territory of BellSouth Telecommunications, Inc. d/b/a AT&T Kentucky. Petition at 1.

<sup>2</sup> Id. at 1.

<sup>3</sup> Id. at 1.

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

Phone is entitled to be designated as an ETC in non-rural wirecenters;<sup>5</sup> and (4) designation of Affordable Phone as an ETC for the designated areas served in Kentucky will serve the public interest.<sup>6</sup>

On March 12, 2009, the Commission set forth a procedural schedule that included opportunity for public comment, discovery, and a hearing request. The procedural schedule is now complete. No request for a public hearing in this matter has been received by the Commission. For these reasons, the Commission finds that this matter is now ripe for a decision.

#### 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 common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.

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).

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<sup>5</sup> Id. at 8.

<sup>6</sup> Id.

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.

As outlined in 47 C.F.R. § 54.201(d), an ETC petition must contain the following: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c); (2) a certification that the petitioner offers or intends to offer the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services”; (3) a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution”; and (4) if the petitioner meets the definition of a “rural telephone company” pursuant to 47 U.S.C. § 153(37), an identification of its study area or, if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests an ETC designation from the Commission.

#### OFFERING THE SERVICES DESIGNATED FOR SUPPORT

Affordable Phone has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service mechanism. Affordable Phone 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). Affordable Phone has also certified that, in compliance with 47 C.F.R § 54.405, it will make available and advertise Lifeline and Link-Up services to qualifying low-income consumers.

### ADVERTISING SUPPORTED SERVICES

Affordable Phone has demonstrated that it satisfies the requirement of 47 U.S.C. § 214(e)(1)(B) to advertise the availability of the supported services and the charges therefore using media of general distribution. In its petition, Affordable Phone states that it will publicize the availability of Lifeline and Link-Up in a manner reasonably designed to reach those likely to qualify for those services, as required by 47 C.F.R. §§ 54.405(b) and 54.411(d). Affordable Phone shall also be required to advertise each of the supported services on a regular basis in newspapers, magazines, television, and radio, in accordance with 47 C.F.R. § 54.201(d)(2).

### NON-RURAL STUDY AREAS

The Federal Communications Commission ("FCC") has previously found designation of additional ETCs in areas served by non-rural telephone companies to be in the public interest, based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of 47 U.S.C. § 214(e)(1).<sup>7</sup>

### OFFERING THE SUPPORTED SERVICES USING A CARRIER'S OWN FACILITIES

Affordable Phone's petition contains an unusual request in that this carrier states that it is seeking support only for the provision of Lifeline and Link-Up services and,

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<sup>7</sup> See, e.g., Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC Rcd 39 (2000).

specifically, is not requesting high-cost support.<sup>8</sup> Typically, an ETC petition before this Commission states that a carrier is seeking an ETC designation so it may receive federal universal service support for a combination of both low-income and high-cost support. Affordable Phone states that its target market is Lifeline and Link-up customers and it will offer all of the services outlined under 47 U.S.C. § 254(c) through facilities obtained as unbundled network elements (“UNEs”) or the equivalents thereof. Affordable Phone does not have its own network infrastructure within the state of Kentucky. It provides services to its customers by reselling service purchased from other carriers and through UNEs, allowing for the end-to-end switching and delivery of telephone calls. Affordable Phone contends that its use of UNEs, including loops, as defined in 47 U.S.C § 251, or the equivalents, commingled with 47 U.S.C. § 271 elements,<sup>9</sup> meets the federal regulation definition of “facilities.”<sup>10</sup>

As discussed previously in this Order, 47 C.F.R. § 54.201(d) defines the requirements that a carrier must fulfill in order to be granted ETC status. Under section (d), the carrier must provide the supported services by “either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the

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<sup>8</sup> See, e.g., Case No. 2008-00234, Petition of dPi Teleconnect, LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky (Ky. PSC Nov. 14, 2008); Case No. 2008-00539, Petition of New Talk, Inc. for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky (Ky. PSC May 22, 2009); and Case No. 2009-00051, Petition of Everycall Communications, Inc. d/b/a Local USA d/b/a All American Home Phone for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Kentucky (Ky. PSC July 13, 2009).

<sup>9</sup> This combination of UNEs and loops would be provided pursuant to an agreement between Affordable Phone and another carrier. See 47 U.S.C. § 271.

<sup>10</sup> See footnote 9 of the petition.

services offered by another eligible telecommunications carrier).” The next section, 47 C.F.R. § 54.201(e), defines the term “facilities” to mean “any physical components of the telecommunications network that are used in the transmission or routing of the service that are designated for support pursuant to subpart B of this part.” 47 C.F.R. § 54.201(f) provides that “the term ‘own facilities’ includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term ‘facilities’ under this subpart.”<sup>11</sup>

Affordable Phone has requested to become an ETC but is only seeking authorization to receive low-income support and is not requesting high-cost support. The Commission has not found any evidence that the FCC, either by statute or regulation, restricts the certification and designation of ETC status to carriers who agree to multiple areas of support. Although Affordable Phone’s petition is unusual, there is no basis for denying the request for ETC designation simply on the basis that it seeks only one form of support. For the purpose of being designated with ETC status, the FCC explicitly prohibits a carrier from being designated as eligible to receive federal universal service funding if that carrier offers the supported services solely through resale.<sup>12</sup> Affordable Phone has stated that it provides service to Kentucky telephone customers through resale and through the purchase or lease of UNEs owned by other carriers.<sup>13</sup> As the FCC defines a carrier’s purchase or lease of UNEs as a satisfactory method of having its “own facilities” under 47 C.F.R. § 54.201(f), and having considered

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<sup>11</sup> See, e.g., 47 C.F.R. §§ 51.307–51.318, which outline the requirements for carrier access to and use of UNEs.

<sup>12</sup> 47 C.F.R. § 54.201(i).

<sup>13</sup> Petition at 2-4.

all other requirements for the petition, the Commission finds that Affordable Phone's request for an ETC designation should be granted. However, as Affordable Phone has certified the use of universal service funding to one specific area, the Commission will grant only an ETC designation limited to low-income support. Should Affordable Phone seek to receive high-cost funds, it will be required to file a certification with this Commission under 47 U.S.C. § 254(e) in order to be granted extension of its ETC designation.

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

1. Affordable Phone is designated as an ETC for the entire service area of AT&T Kentucky, a non-rural incumbent local exchange carrier.
2. During the current certification period, Affordable Phone shall be eligible to receive federal Universal Service Fund support for only low-income support, as provided herein.
3. Affordable Phone shall offer low-income universal support services to consumers in its service area.
4. Affordable Phone 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), Affordable Phone shall be precluded from offering universal service support exclusively through the resale of another carrier's services.

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

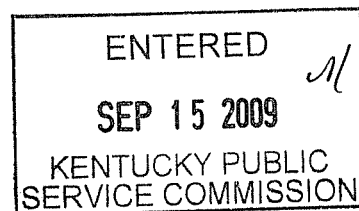
7. As provided herein, Affordable Phone shall file a separate petition for the extension of its ETC designation for other areas of universal service support if it desires such additional support in the future.

8. By September 1, 2010, and by each September 1 thereafter, Affordable Phone shall make its annual certification filing in Administrative Case No. 381.<sup>14</sup>

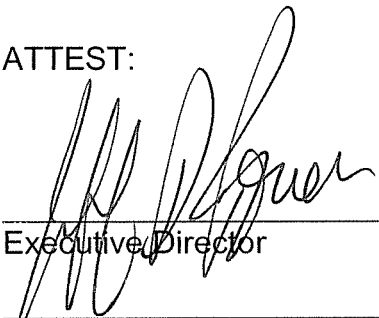
9. If Affordable Phone decides to seek high-cost support in the future, it shall make its extension request by separate pleading.

10. A copy of this Order shall be served upon the FCC and the Universal Service Administrative Company.

By the Commission



ATTEST:

  
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Executive Director

<sup>14</sup> Administrative Case No. 381, A Certification of the Carriers Receiving Federal Universal Service High-Cost Support.



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