

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC PETITION OF INTER MOUNTAIN)	
CABLE, INC. D/B/A MTS COMMUNICATIONS)	
FOR DESIGNATION AS AN ELIGIBLE)	CASE NO.
TELECOMMUNICATIONS CARRIER FOR)	2023-00289
PURPOSES OF OFFERING LIFELINE SERVICE)	
ONLY)	

ORDER

On September 6, 2023, Inter Mountain Cable, Inc. (Inter Mountain) d/b/a MTS Communications, a common carrier, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (ETC). Inter Mountain seeks ETC designation for the limited purpose of providing federal and Kentucky Universal Service Fund (KUSF) benefits to qualifying Kentucky consumers.¹ Inter Mountain is a profit-based corporation and facilities-based carrier, with principal offices located in Harold, Kentucky.² Inter Mountain is a competitive local exchange carrier and one of a group of companies operating in association with Gearheart Communications Company, Inc. (Gearheart Communications), which also includes Coalfields Telephone Company (Coalfields), an incumbent local exchange carrier (ILEC) an ETC providing service in Harold, Wheelwright, and Grethel, Kentucky.³ Inter Mountain seeks ETC

¹ Application at 1.

² Application at 1.

³ Application at 1–2.

designation for the limited purpose of participation in the Lifeline program to provide Lifeline-only service to qualifying Kentucky customers.⁴

The application states that (1) Inter Mountain meets all the requirements for designation as a Lifeline-only ETC to serve the designated areas in the state of Kentucky;⁵ (2) Inter Mountain requests designation in LATA 466 in Floyd, Letcher, and Pike counties, and a section of Johnson County, in Kentucky;⁶ (3) in accordance with 47 U.S.C. § 214(e)(2), Inter Mountain seeks to be designated as an ETC to serve low-income Kentucky customers and provide new underserved customers the opportunity to benefit from Lifeline programs;⁷ (4) designation of Inter Mountain as an ETC for the designated areas served in Kentucky will serve the public interest.⁸ The Commission requires that Kentucky Universal Service support and the Kentucky Telecommunications Relay Service and Telecommunications Access Program support, be collected from each customer. Inter Mountain has stated in its application that it will pay all applicable federal, state, and local regulatory fees, including universal service and 911/E911 fees.⁹

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

⁴ Application at 2.

⁵ Application at 4–8.

⁶ Application at 2–3.

⁷ Application at 3.

⁸ Application at 2–3.

⁹ Application at 4.

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, if 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.¹⁰ The Commission likewise collects similar information pursuant to that notice. A carrier seeking ETC designation must (1) establish that it will 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 (2) establish that it will advertise its universal service offerings and the charges thereof, using media

¹⁰ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communication Act*, 12 FCC Rcd 22947 (1997) (Section 214(e)(6) Public Notice).

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

of general distribution;¹² (3) certify that it will comply with the service requirements applicable to the support that it receives;¹³ and (4) establish that it will be able to remain functional during emergency situations.¹⁴

In addition, the FCC's rules require that, 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; and (3) demonstrate that it will satisfy applicable consumer-protection and service-quality standards.¹⁵

Prior to designating an ETC pursuant to 47 U.S.C. § 214(e)(2), the Commission must also determine whether such designation is in the public interest.¹⁶ 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.

As described below, Inter Mountain has provided the Commission with the information required for designation as an ETC in the service area at issue. The

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)(1)(i). The third and fourth requirements listed were adopted by regulation to apply to the FCC's review of a providers ETC status, but the Commission generally looks at the same requirements as the FCC in seeking to determine whether a provider meets the requirements for an ETC designation.

¹⁴ 47 C.F.R. § 54.202(a)(2); Notably, the FCC generally requires those seeking an ETC designation to file a five-year plan that describes the specific proposed improvements and upgrades that will be made to offer the supported service and to demonstrate their ability to satisfy applicable customer protection and service quality standards. However, the FCC waived those requirements 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. See *In the Matter of Connect America Fund*, 31 FCC Rcd 5949 (2016), 6010-12, paragraphs 172–178.

¹⁵ 47 C.F.R. § 54.202(a).

¹⁶ 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.202(b).

Commission finds that the public interest supports such designation, subject to Inter Mountain's compliance with the representations and commitments made by Inter Mountain 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).¹⁷ Inter Mountain has demonstrated through the required certifications and related filings that it now offers or will offer upon designation as an ETC, the voice telephone services supported by the Lifeline program.¹⁸ Inter Mountain 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 designated service area.¹⁹ Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer-protection and service-quality standards.²⁰ Inter Mountain has committed to providing applicable consumer protection and service-quality standards,²¹ and it will be subject to reporting requirements to the FCC to ensure that it complies with the service requirements.²²

¹⁷ See 47 U.S.C. § 214(e)(1)(A) and 214(e)(2); Section 214(e)(6), Public Notice at 22948, paragraph 2.

¹⁸ Application at 4.

¹⁹ Specifically, Inter Mountain certifies that it will provide voice telephone 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 4-6.

²⁰ 47 C.F.R. § 54.202(a)(3).

²¹ Application at 5.

²² Application at 5.

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.²³ Inter Mountain began operating as a competitive local exchange carrier in 2001, through a combination of its own facilities and resold services, currently providing service for approximately 25,000 residences in Kentucky, Virginia, and West Virginia.²⁴ Inter Mountain's affiliate, Gearheart Communications, has been a rural incumbent provider of local exchange service since 1953.²⁵ Inter Mountain will use its own wholly owned inter-office network facilities, leased facilities from Gearheart Communications, and East Kentucky Network, an affiliate of Gearheart Communications, for traffic exchange in LATA 466.²⁶ Inter Mountain will use third-party facilities for toll and international calling, collocation services and network diversity.²⁷ Inter Mountain will have the ability to provide service throughout its service area.²⁸

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

²³ 47 U.S.C. § 214(e)(6) Public Notice, 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).

²⁴ Application at 5–6.

²⁵ Application at 6.

²⁶ Application at 8.

²⁷ Application at 8.

²⁸ Application at 8.

description of how they will do so.²⁹ Inter Mountain has committed to advertising the availability of the supported services using media of general distribution.³⁰ In addition, Inter Mountain has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.³¹

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.³² Inter Mountain has demonstrated its commitment to comply with these FCC rules regarding the marketing of supported service.

Ability to Remain Functional in Emergency Situations

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.³³ Inter Mountain will provide emergency service to its customers by utilizing its underlying carrier networks, which are designed to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the

²⁹ 47 U.S.C. § 214(e)(1)(B) and § 214(e)(6); Section 214(e)(6) Public Notice, at 22949, paragraph 4.

³⁰ Application at 4.

³¹ Application at 5.

³² *In the Matter of Lifeline and Link Up Reform and Modernization Lifeline and Link Up Federal-State Joint Board on Universal Service Advancing Broadband Availability Through Digital Literacy Training*, 27 FCC Rcd 6656 (2012)), *amended sub nom* (Lifeline Reform Order), paragraphs 274–77; 47 C.F.R. § 54.405.

³³ 47 C.F.R. § 54.202(a)(2).

capability of managing traffic spikes resulting from emergency situations.³⁴ Inter Mountain has demonstrated its ability to remain functional in emergency situations.

Public Interest Analysis

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest.³⁵ Inter Mountain will offer broadband services as well as supported telephone service that will provide a variety of benefits to customers in these high-cost areas, including increased consumer choice and high-quality service offerings.³⁶ Moreover, new entrants in the telephone and broadband market should incentivize existing ETCs to offer better service and terms to their subscribers.

Inter Mountain will offer all the services and functionalities detailed in 47 C.F.R. § 54.101 (a), ensuring that Inter Mountain can provide services to customers throughout the service area.³⁷

The Commission recognizes that the designation of Inter Mountain as an ETC also creates competitive pressure for other providers that are designated as ETCs within the proposed service areas. To remain competitive in markets, all providers will have greater incentive to improve coverage and customer service, increase service offerings, and lower prices. Consistent with federal law, the designation benefits consumers by allowing Inter Mountain to offer the services designated for support at rates that are “just, reasonable, and affordable.”³⁸ Inter Mountain plans to offer affordable

³⁴ Application at 5.

³⁵ See 47 U.S.C. § 214(e)(6) and 47 C.F.R. § 54.202(b).

³⁶ Application at 2–3.

³⁷ Application at 2 and 4.

³⁸ 47 U.S.C. § 254(b)(1).

telecommunications and high-speed broadband services to consumers as well as qualified low-income consumers.³⁹

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.”⁴⁰ 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.⁴¹ The petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service Administration Company (USAC) upon request. 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.⁴² The FCC also may assess forfeitures for violations of FCC rules and orders.⁴³

³⁹ Application at 6.

⁴⁰ 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.

⁴¹ 47 U.S.C. §§ 220, 403.

⁴² 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 (2000), at 15174, paragraph 15. See also 47 U.S.C. § 254(e).

⁴³ See 47 U.S.C. § 503(b).

Annual Certification and Verification

Each year Inter Mountain 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.⁴⁴

IT IS THEREFORE ORDERED that:

1. Inter Mountain is designated as a limited ETC for the purpose of offering Lifeline service only in Kentucky in LATA 466.
2. Inter Mountain shall be eligible to receive federal and state USF support for Lifeline.
3. Inter Mountain shall advertise the availability of and charges for these services using media of general distribution.
4. Inter Mountain shall comply with the FCC's annual certification process for Lifeline customers.
5. Inter Mountain is a utility under the definitions contained in KRS 278.010(3) and shall include revenue generated from the sale of intrastate 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.

⁴⁴ Administrative Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ENTERED
JAN 02 2024
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

*Eileen M Bodamer
Bodamer Consulting, LLC
415 Hepplewhite Drive
Johns Creek, GEORGIA 30022

*Heather M Gearheart
General Counsel
Gearheart Communications Company, Inc. dba
20 Laynesville Road
Harold, KY 41635

*Inter-Mountain Cable, Inc. dba MTS
20 Laynesville Road
P. O. Box 160
Harold, KY 41635

*James Campbell
Gearheart Communications Company, Inc. dba
20 Laynesville Road
Harold, KY 41635