

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION**
Harrisburg, PA. 17105-3265

Public Meeting held July 29, 2010

Commissioners Present:

James H. Cawley, Chairman
Tyrone J. Christy, Vice Chairman
John F. Coleman, Jr.
Robert F. Powelson
Wayne E. Gardner

Final Policy Statement on
Commonwealth of Pennsylvania's Guidelines for
Designation and Annual Recertification as an Eligible
Telecommunications Carrier (ETC) for purposes of Federal
Universal Service Support

Docket No. M-2010-2164741

FINAL POLICY STATEMENT ORDER

This Commission has not, to date, formally considered the recommendations of the Federal Communications Commission (FCC) on the new standards applicable for petitions for designation as an eligible telecommunications carrier (ETC) to receive federal universal service support and annual ETC recertification announced in the FCC's ETC Order. CC Docket 96-45 (Order entered March 17, 2005)¹. By our Order today, we do so to provide consistent standards upon which to review all future petitions for ETC designation and annual ETC recertification before this Commission.

¹ On a case by case basis, this Commission has required parties seeking designation as ETCs to satisfy the FCCs standards for designation and has informally applied the FCC's annual recertification and reporting requirements for ETCs. By this order, we formally adopt the FCCs designation and annual certification and reporting requirements for any ETC that receives state or federal support for designated services in the Commonwealth.

In order that future petitions and all annual recertification of ETCs provide the complete and necessary information for meaningful review, we adopt the federal and state minimum standards discussed in this order. We adopt these standards in order that petitioners will have a clear understanding of the Commission's expectations and to meet the expressed goal of the FCC, that a "more rigorous ETC designation process...will improve the long-term sustainability of the universal service fund."² In order to establish uniform administrative practices, and to adequately inform the regulated community of the newly adopted applicable standards, the Commission issues this Policy Statement setting forth these newly adopted standards.

All future petitions for ETC designation should specifically address each provision of 47 C.F.R. § 54.201-209, any other applicable federal standards and all Pennsylvania-specific standards. Petitioners should explain how each federal and Pennsylvania provision is satisfied including why a particular provision is inapplicable under the circumstances.

I. BACKGROUND

The current standards established by the FCC for ETC designation evolved over the course of years based upon a series of decisions and consideration of the designation's practical impact upon the USF Fund. On May 8, 1997, the FCC issued a Report and Order (Universal Service Order) governing implementation of the universal service provisions of the Telecommunications Act of 1996 (TA-96). Section VI of the Universal Service Order discussed the requirements for a carrier seeking designation as an ETC under TA-96. Those requirements are codified at 47 C.F.R. § 54.101, § 54.201-203, and § 54.205-209. The FCC requires the state commissions to designate eligible

² In *RE: Federal- State Joint Board on Universal Service*, Report and Order at CC Docket No. 96-45 (Entered March 17, 2005) (ETC Order) at para. 2.

carriers pursuant to 47 C.F.R. §§ 54.201-203 and designate service areas consistent with 47 C.F.R. § 54.207.

On March 17, 2005, the FCC issued its Report and Order at CC Docket No. 96-45 (ETC Order) adopting the recommendation of the Federal-State Joint Board on Universal Service issued February 27, 2004. That order advised setting minimum requirements for the designation of an ETC for the long range success and continued viability of the Universal Service Fund. The more rigorous ETC designation requirements were designed to “ensure that only ETCs that can adequately provide universal service will receive ETC designation, thereby lessening fund growth attributable to the designation.” *Id.* at para. 5.

In particular, the Joint Board recommended more stringent factual reviews of ETC applications, including a case-by-case determination that the applications are in the public interest and increasing annual certification and reporting requirements for all existing ETCs.³ The FCC has adopted additional eligibility and reporting requirements for carriers seeking ETC designation and carriers already designated as ETCs in Federal Report and Order FCC 05-46 adopted on February 25, 2006.

Although the FCC’s standards on ETC designation are not binding upon state commissions considering a petition for ETC designation, the FCC strongly urged state commissions to adopt the federal standards set forth in its ETC orders on all future ETC applications. We conclude that applying those in Pennsylvania will further the FCC’s goal as well as our goal of ensuring an effective ETC process in Pennsylvania.

³ ETC Order, CC Docket 96-45 (Order entered March 17, 2005) para. 21-68.

Consequently, all future Commission review of petitions for ETC designation will be governed by 47 U.S.C. §§ 214(e),⁴ the FCC's discussion of ETC designations in the Universal Service Order,⁵ the additional standards for ETC designation set forth in the FCC's ETC Order of May 17, 2005, subsequent order on certification and reporting of February 2006, and the FCC's rules governing ETC designation and annual certification

⁴ Section 214(e)(1) requires an ETC to offer the services supported by federal universal service mechanisms and advertise the availability of those services and the charges for them in media of general distribution. Section 214(e)(2) permits a state commission to designate a common carrier, either upon the state commission's motion or upon request, for rural areas and requires each designation for other areas so long as the carrier meets the criteria of Section 214(e)(1). Section 214(e)(3) authorizes the FCC to require a carrier to service underserved areas for interstate purposes and authorizes state commissions to designate a carrier for intrastate purposes for similar underserved areas. Section 214(e)(4) authorizes a carrier to relinquish its designation as a carrier in any area served by more than one eligible carrier. Section 214(e)(5) defines a service area as the geographic area established by the state commission for universal service purposes which, for rural areas, is coterminous with the study area unless determined otherwise by states and the FCC after consultation with the Federal-State Joint Board. Section 214(e)(6) directs the FCC to designate where carriers are not subject to the state's jurisdiction. See, 47 U.S.C. 214(e).

⁵ Universal Service Order, ¶¶127-199 in Section VI.

set forth at 47 C.F.R. § 54.101,⁶ §§ 54.201-203,⁷ and §§ 54.205-209⁸, as well as any further amendment or criteria established by the FCC. The standards that will be applied to future petitions are outlined below.

A. FCC Requirements For Eligible Telecommunications Service Designation

Under § 214(e)(2) of the Act, the state commission “shall upon its own motion or upon request designate a common carrier that meets the requirements of [§ 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the State Commission.” Section 214(e)(2) of the Act further provides, in the case of areas not served by a rural telephone company, that the state commission shall designate more than

⁶ 47 C.F.R. § 54.101 confines federal universal service support to (1) voice grade access to the public switched network; (2) local usage consisting of an amount of use of exchange service prescribed by the Commission provided free of charge to end users; (3) dual tone multi-frequency Signaling or its equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. However, Section 101(c) allows a state commission to grant ETC designation even though access to 911 or Enhanced-911 (E-911) services, toll limitation, or single-party service is not provided so long as “exceptional circumstances” are shown and the exception does not extend beyond the time needed to complete the necessary network upgrades.

⁷ A carrier is eligible under Section 201 so long as they offer the services set forth in Section 101, either through their own facilities or a combination of facilities, and advertise the availability of the federal universal support services using media of general distribution. States cannot require the use of facilities within the designated service area nor can states designate a carrier that provides services “purely” through resale. Since then, the FCC granted a limited number of wireless providers forbearance from the statutory obligation to own facilities as a precondition to receiving ETC designation. In addition the PaPUC has decided to make wireless ETC designations in Pennsylvania under federal law as well. *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, Docket No. 96-45, 20 FCC Rcd 15095, 15098-9, para. 5 (2005) (TracFone Forbearance Order); *In the Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, FCC Docket No. 96-45 (March 5, 2009), para. 1 (Virgin Mobile Forbearance Order). This Policy Statement provides guidance in light of those developments, in a regulatory neutral manner, as required by 47 U.S. C. § 253.

The additional requirements for ETC designation were adopted by the FCC in its March 17, 2005 Order are codified at Section 202(a)(1)-(5). Section 203 authorizes the FCC or the Commission to designate carriers in unserved areas for interstate or intrastate purposes, respectively.

⁸ Section 207 defines a service area to be a geographic area established by a state commission for the purpose of determining universal service. For a rural carrier, the service area is coterminous with such a carrier’s study area. However, the FCC or the Commission can propose alternative service areas. Section 207(c) established the process and requirements that govern a state’s proposed alternative service area while Section 207(d) governs an equivalent FCC process.

one common carrier as an eligible telecommunications carrier, consistent with the public interest, convenience, and necessity. Upon designation as an ETC, the carrier shall be able to receive universal support in accordance with § 254 of the Act.

- 1) The requirements for designation as an ETC set forth in § 214(e)(1) and 47 C.F.R. § 54.201(d)(1) and (2) are that the carrier must be a “common carrier” and:
 - a. Offer the services that are supported by Federal universal support mechanisms under § 254(c), either 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).
 - b. Advertise the availability of such services and the charges therefore using the media of general distribution.
- 2) Additional requirements for ETC designation were adopted by the FCC in its March 17, 2005 Order, which are codified at 47 C.F.R.

§ 54.202(a)(1)-(5).⁹ The additional requirements provide that a carrier requesting designation as an ETC must:

- a. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service (47 C.F.R. § 54.202(a)(1)(i)).

⁹ We note that the new standards adopted by the FCC originated from the wireless-specific orders issued by the FCC on ETC designation of wireless carriers. However, as noted by the FCC in its March 17, 2005 Order, setting forth the ETC designation process, “although specific requirements set forth in this Report and order may be relevant only for wireless ETC applicants and some may be relevant for wireline ETC applicants, this ETC designation framework generally applies to any type of common carrier that seeks ETC designation before the [FCC] under 214(e)(6) of the Act.” March 17, 2005 Order at para. 17.

Pursuant to Secretarial Letter at Docket M-00960799, dated February 26, 2009 the Commission accepts jurisdiction of applications for ETC designation from wireless carriers.

- b. Provide service on a timely basis to requesting customers within the applicants' service area where the applicants' network already passes with the potential customers premises (47 C.F.R. § 54.202(a)(1)(i)(A)).
- c. Provide service within a reasonable period of time, if the potential customer is within the applicant's licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:
 - i. Modifying or replacing the existing customer's equipment.
 - ii. Deploying a roof mounted antenna or other equipment.
 - iii. Adjusting the nearest cell tower.
 - iv. Adjusting network or customer facilities.
 - v. Reselling services from another carrier's facilities to provide service.
 - vi. Employing, leasing, or constructing an additional cell site, cell extender, repeater, or other similar equipment (47 C.F.R. § 54.202(a)(1)(i)(B)).
- d. Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of backup power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations (47 C.F.R. § 54.202(a)(2)).
- e. Demonstrate that it will satisfy applicable consumer protection and service quality standards (47 C.F.R. § 54.202(a)(3)).
- f. Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation (47 C.F.R. § 54.202(a)(4)).

- g. Certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area (47 C.F.R. § 54.202(a)(5)).
- 3) The FCC's Order released August 10, 2000, provides that § 214(e)(1) of the Act does not require a carrier to provide the supported services throughout a service area prior to being designated an ETC.

B. Pennsylvania-Specific Minimum Requirements For ETC Designation

In addition to the above-stated additional FCC requirements, which we today formally adopt, the Public Utility Code sets forth certain minimum requirements for ETCs which seek low income support from Lifeline and Link-up America programs. *See*, 66 Pa. C.S. § 3019(f) which provides:

Lifeline service.-

- (1) All eligible telecommunications carriers certificated to provide local exchange telecommunications service shall provide Lifeline service to all eligible telecommunications customers who subscribe to such service.
- (2) All eligible telecommunications customers who subscribe to Lifeline service shall be permitted to subscribe to any number of other eligible

telecommunications carrier telecommunications services at the tariffed rates for such services.

- (3) Whenever a prospective customer seeks to subscribe to local exchange telecommunications service from an eligible telecommunications carrier, the carrier shall explicitly advise the customer of the availability of Lifeline service and shall make reasonable efforts where appropriate to determine whether the customer qualifies for such service and, if so, whether the customer wishes to subscribe to the service.
- (4) Eligible telecommunications carriers shall inform existing customers of the availability of Lifeline service twice annually by bill insert or message. The notice shall be conspicuous and shall provide appropriate eligibility, benefits and contact information for customers who wish to learn of the Lifeline service subscription requirements.
- (5) When a person enrolls in a low-income program administered by the Department of Public Welfare that qualifies the person for Lifeline service, the Department of Public Welfare shall automatically notify that person at the time of enrollment of his or her eligibility for Lifeline service. This notification also shall provide information about Lifeline service including a telephone number of and Lifeline subscription form for the person's current eligible telecommunications carrier or, if the person does not have telephone service, telephone numbers of eligible telecommunications carriers serving the person's area that the person can call to obtain Lifeline service. Eligible telecommunications carriers shall provide the Department of Public Welfare with Lifeline service descriptions and subscription forms, contact telephone numbers and a listing of the geographic area or areas they service, for use by the Department of Public Welfare in providing the notifications required by this paragraph.

- (6) No eligible telecommunications carrier shall be required to provide after the effective date of this section any new Lifeline service discount that is not fully subsidized by the Federal Universal Service Fund.

Additionally, this Commission set forth procedures and guidelines in its Lifeline Order of May 23, 2005, *In Re: Lifeline and Link-Up Programs*, Docket No. M-00051871¹⁰.

For consistency, and in consideration of competitive neutrality, we expect all ETC carriers to follow the same rules and guidelines regarding the offerings of Lifeline and Link-Up programs in Pennsylvania.

Pursuant to 47 C.F.R. § 54.409 of the FCC's regulations, Pennsylvania is a non-default state¹¹ which mandates its own rules and guidelines separate though similar to the FCC's rules regarding the Lifeline programs and there are contributions other than federal universal service fund contributions being made toward the Lifeline/Link-Up credit. The significance of being a non-default state is that the Commission or the state legislature can establish rules specific to Pennsylvania to address any issues that may be unique to the Commonwealth. Whereas, a default state does not mandate Lifeline/Link-Up programs; thus, carriers operating in default states are required to follow the FCC's regulations and the Lifeline/Link-Up eligibility requirements are directed by the FCC. *See Section 54.409(b)*.

In Pennsylvania, only Verizon North and Verizon PA are required to provide support to the Lifeline program (Lifeline 100 only). Because Verizon is mandated to contribute to its Lifeline programs, Pennsylvania qualifies as a non-default state

¹⁰ Except that paragraphs 9 and 10 of the Order were subsequently modified to change the date verifications are due the Universal Service Administration Company (USAC) from December to August 31 of each year. *In Re: Lifeline and Link-Up Programs*, Order, M-00051871, January 24, 2008.

¹¹ *Report and Order and Further Notice of Proposed Rulemaking In the Matter of Lifeline and Link-Up*, CC Docket No. 04-87, WC Docket No. 03-109, Appendix G lists 16 default states, and Pennsylvania is not listed.

according to the FCC rules. None of the other ETCs who offer Lifeline are required to provide support for this program.

Further, all non-Verizon ETC carriers receiving Lifeline/Link-Up support are required to submit annually a Lifeline Tracking Report to our Bureau of Consumer Services. Our interest is in maintaining a competitively neutral playing field among telecommunications carriers, as well as simplicity in enforcement of Lifeline rules and regulations.

Finally, in order to establish uniform petitions for administrative purposes, and to adequately inform the regulated community of the applicable standards for ETC designation and annual recertification for purposes of federal universal service support, we shall issue this Final Policy Statement setting forth the applicable standards for ETC designation, and annual recertification and reporting as outlined herein, and attached as ANNEX A. In addition, supplemental information on ETC designation and annual certification will be provided on our web page for the general public and carriers interested in seeking ETC designation and annual certification from this Commission.

The Final Policy Statement on guidelines for ETC Designation, annual recertification and reporting requirements for ETCs, attached as ANNEX A, shall be published in the Pennsylvania Bulletin; **THEREFORE,**

IT IS ORDERED:

1. All future petitions seeking designation as an eligible telecommunications carrier for purposes of federal universal service support in Pennsylvania must, at a

minimum, address all the federal and Pennsylvania requirements for designation set forth in this order.

2. Annual recertification for ETC designation must satisfy the applicable federal regulations governing the annual reporting recertification requirements for designation as an eligible telecommunications carrier.

3. That the regulations of the Commission at 52 Pa. Code Chapter 69 are amended by adding a statement of policy at Section 69.2501 as set forth in ANNEX A.

4. That the Secretary shall submit this order and ANNEX A to the Governor's Budget Office for review of fiscal impact.

5. That the Secretary of the Commission shall certify this order and ANNEX A and deposit them with the Legislative Reference Bureau for Publication in the *Pennsylvania Bulletin*.

6. That this final policy statement shall become effective upon publication in the *Pennsylvania Bulletin*.

7. That the contact person for this matter is Elizabeth Lion Januzzi, Assistant Counsel, Law Bureau (717)772-0696.

BY THE COMMISSION


Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: July 29, 2010

ORDER ENTERED: August 2, 2010

ANNEX A
TITLE 52. PUBLIC UTILITIES
PART 1. PUBLIC UTILITY COMMISSION
Subpart C. FIXED SERVICE UTILITIES
CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND
GUIDELINES ON FIXED UTILITIES

COMMONWEALTH REQUIREMENTS FOR DESIGNATION AND ANNUAL
RECERTIFICATION AND REPORTING REQUIREMENTS OF ELIGIBLE
TELECOMMUNICATION CARRIERS (ETCS) FOR PURPOSES OF FEDERAL
UNIVERSAL SERVICE SUPPORT-STATEMENT OF POLICY

§69.2501. Standards applicable for designation and annual certification as an eligible telecommunications carrier, for purposes of obtaining federal universal service support

- (a) All petitions for designation in the Commonwealth of Pennsylvania as an Eligible Telecommunications Carrier (ETC), for purposes of obtaining federal universal service support, should be evaluated pursuant to:
 - (1) 47 U.S.C. §§ 214(e)(relating to extension of lines or discontinuance of service; certificate of public convenience and necessity).
 - (2) The Federal Communications Commission's (FCC) discussion of ETC designations in the Universal Service Order, Report and Order at CC Docket No. 96-45 (May 8, 1997).
 - (3) The standards set forth in the FCC's Report and Order at CC Docket No. 96-45 (March 17, 2005).
 - (4) The FCC's rules governing ETC designations set forth at 47 C.F.R. § 54.101, §§ 54.201-203, and §§ 54.205-209.

- (b) All petitions for designation as an ETC seeking low income support from Lifeline and Link-up America programs should satisfy the minimum standards established at 66 Pa. C.S. § 3019(f)(relating to lifeline service) and comply with the Commission's Lifeline and Link-Up Order, *In Re: Lifeline and Link-Up Programs*, Docket No. M-00051871, Final Order May 23, 2005, except that verifications should be submitted annually to Universal Service Administrative Company (USAC) on or before August 31 of each year.

Petitions should affirm that the applying carrier will submit annual Lifeline Tracking Reports by June 30 of each year. The form is available on the Commission's website at www.puc.state.pa.us, Online Forms, Telecommunications.

- (c) All petitions for ETC designation should specifically address the enumerated criteria set forth in (a) and (b), set forth specific statements regarding which criteria are applicable and inapplicable, and explain why all applicable criteria are satisfied.