

**BEFORE THE PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSISSIPPI**

**IN RE: IN THE MATTER OF
ELIGIBLE TELECOMMUNICATIONS CARRIER
DESIGNATION FOR FEDERAL
UNIVERSAL SERVICE SUPPORT**

Docket No. 2005-AD-662

**ORDER ON REHEARING REFORMING AND MODERNIZING UNIVERSAL
SERVICE SUPPORT
AND ADOPTING CHANGES OF FCC ORDER 11-161**

COMES NOW, the Mississippi Public Service Commission ("Commission") and issues this Order on Rehearing. Being duly advised in the premises and familiar with its files and records on this issue, the Commission finds as follows:

I. Procedural History

1. On April 6, 2007, the Commission issued an Order Establishing Requirements for Eligible Telecommunications Carriers ("ETCs"). In said Order, the Commission determined, *inter alia*, that ETCs shall demonstrate a commitment to meeting consumer protection and service quality standards, shall comply with the Commission's Rules and Regulations Governing Public Utility Service, and shall comply with the service quality standards designated for each carrier. The Order was amended on November 3, 2009, to expand the ETC Checklist related to the requirement of Quarterly Progress Reports by ETCs.

2. On December 15, 2009, the Commission issued an Order Opening Docket for Consideration of Additional Consumer Protection and Service Quality Standards, to consider setting additional consumer protection and service quality standards for ETCs classified as wireline and wireless carriers. At that time, the Commission bifurcated this proceeding in order to adequately differentiate the consideration of wireline and wireless consumer protection and service quality issues, noting the initial proceeding would only address consumer protection and service quality standards for wireline ETCs.

3. On March 14, 2012, the Commission issued an Order Opening Docket for Consideration on FCC Order 11-161 Reforming and Modernizing Universal Service Support, and requested that comments be filed by April 13, 2012, with reply comments due by April 27, 2012. The Commission acknowledges the comments filed by Cellular South Licenses, LLC; BellSouth Telecommunications, LLC d/b/a AT&T Mississippi; New Cingular Wireless, LLC d/b/a AT&T Mobility; Dixie-Net Communications, Inc.; and Mississippi Rural Incumbent Local Exchange Companies. Also acknowledged are the intervenors, which include MCImetro Access Transmission Services, LLD d/b/a Verizon Access Transmission Services; TTI National, Inc., Teleconnect Long Distance Systems & Services Company; MCI Communications Services, Inc. d/b/a Verizon Business Services; Verizon Long Distance LLC; Verizon Enterprise Solutions, LLC; Verizon Select Services, Inc.; Budget Prepay, Inc. d/b/a Budget Phone; Virgin Mobile USA, LP; and OneLink Wireless, Inc.

4. On August 7, 2012, the Commission issued an Order Reforming and Modernizing Universal Service Support. The Order adopted a checklist which contained the requirements for initial designation as an ETC and all requirements for annual reporting and certification.

5. On September 5, 2012, AT&T filed a Motion for Rehearing and Request for a Stay to “(i) reconsider its August 7, 2012 Order Reforming and Modernizing Universal Service Support and Adopting changes to FCC Order 11-161, and (ii) stay the effective date of the Order pending the Commission’s consideration of [AT&T’s] motion, including the eligible telecommunications carrier (“ETC”) checklist (“Checklist”) that the Commission adopted in its August 7, 2012 Order.

6. On September 11, 2012, the Commission granted AT&T’s Motion for Rehearing and denied AT&T’s Request for a Stay.

7. On September 28, 2012, the Mississippi Public Utilities Staff (“Staff”) filed Comments on Rehearing.

II. Commission Authority

8. On October 27, 2011, the Federal Communications Commission (“FCC”) adopted its Report and Order and Further Notices of Proposed Rulemaking in WC Docket No. 11-161, released November 18, 2011 (“ETC/USF Reform Order” or “FCC Order”). The ETC/USF Reform Order charges states with the authority and obligation to certify that all federal high-cost and CAF support is being used by carriers in a manner for which the support is intended. See, FCC Order, ¶ 609. The FCC Order clarifies that “the specific reporting and certification requirements adopted [in the FCC Order] are a floor rather than a ceiling for the states.” *Id.* at ¶ 574. The FCC Order explains that:

In section 254(f), Congress expressly permitted states to take action to preserve and advance universal service, so long as not inconsistent with the Commission’s universal service rules. The statute permits states to adopt additional regulations to preserve and advance universal service so long as they also adopt state mechanisms to support those additional substantive requirements. Consistent with this federal framework, state commissions may require the submission of additional information that they believe is necessary to ensure that ETCs are using support consistent with the statute and [the FCC’s] implementing regulations, so long as those additional reporting requirements do not create burdens that thwart achievement of the universal service reforms set forth in [the FCC] Order.

Id. at ¶ 574, citing 47 U.S.C.A. § 254(f).

9. Section 77-3-35 of the Mississippi Code of 1972, as amended, states that “[t]he maintenance of universal telephone service in Mississippi is a continuing goal of the [C]ommission and [] the public interest requires that the [C]ommission be authorized and encouraged to formulate and adopt rules and policies that will permit the [C]ommission, in the exercise of its expertise, to regulate and control the provision of telecommunications services to

the public. . .” M.C.A. §77-3-35(2)(a). Mississippi law requires the Commission to “adopt all rules and regulations necessary for implementing [] subsection (2)(a).” *Id.*

10. Moreover, the Commission “may apply standards adopted by the Federal Communications Commission that are generally applicable to companies that are designated and operate as eligible telecommunications carriers . . .” *Id.* Should the Commission apply standards adopted by the FCC, “the [C]ommission may exercise its authority to ensure that [] carriers . . . comply with those standards, only to the extent permitted by and consistent with applicable federal laws and regulations.” *Id.*

11. Section 77-3-35 explicitly authorizes the Commission to regulate and further the provision of universal service, and the Commission’s authority is supplemented by federal law and FCC orders. M.C.A. §77-3-35. In the context of universal service, the Commission retains authority to require additional reporting and certification requirements in addition to the FCC national framework that it believes is necessary to ensure that ETCs are using USF support for the provision, maintenance and upgrading of facilities and service for which the support is intended. This docket represents a continuing and open proceeding, in which the Commission and the Staff will continue to monitor and investigate compliance with this and related orders.

III. Adopted Checklist




This Commission adopts the revised all-inclusive checklist attached hereto as Exhibit “A” which is in conformance with the terms of this Order and is incorporated herein by reference. This adopted checklist shall be complied with by both previously designated ETCs, regardless of type of carrier, as well as future designated ETCs.

IT IS, THEREFORE, ORDERED that:

1. All of the requirements for initial designation of ETCs, as described herein, shall apply to any pending or any future filings seeking ETC designation;

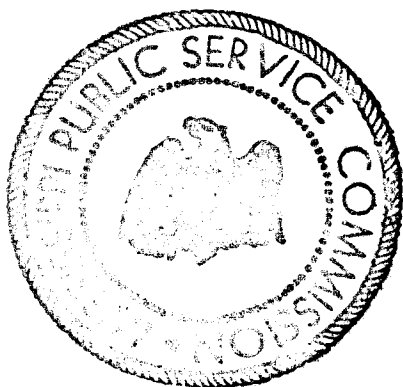
2. All of the requirements for the annual reporting and certification, as described herein, shall apply to all ETC carriers;
3. All ETC carriers shall comply with the adopted checklist and all requirements discussed herein, which conform to the ETC/USF Reform Order. Should the ETC/USF Reform Order be revised by the FCC, ETCs shall comply with such revisions;
4. The Commission will rescind any ETC designation for failure of an ETC to comply with any of the requirements of the ETC/USF Reform Order, any portion of the Federal Communications Act, or any other requirements imposed by this Commission, including the provisions contained herein and in the adopted checklist attached as Exhibit "A"; and
5. This Commission may require the submission of any other relevant and material information on a case-by-case basis, which is necessary to ensure that ETCs are operating in accordance with applicable state and federal requirements.

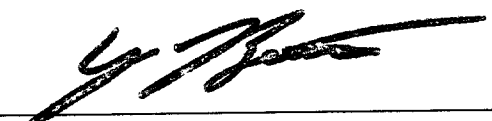
This Order shall be deemed issued on the day it is served upon the parties herein by the Executive Secretary of the Commission who shall note the service date in the file of this Docket.

Chairman Leonard Bentz voted ; Vice-Chairman Lynn Posey voted ; and Commissioner Brandon Presley voted .

Dated, this the 15th day of November, 2012.

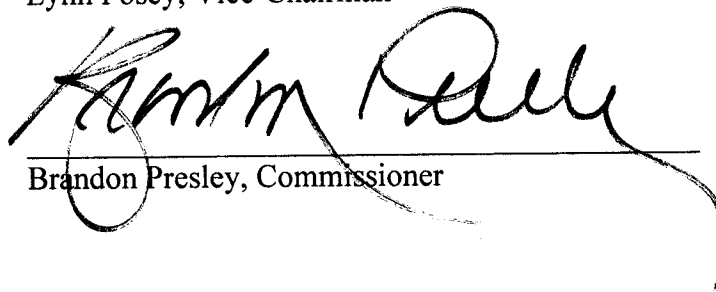
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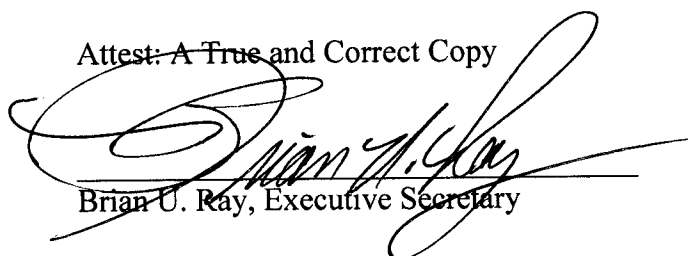

Leonard Bentz, Chairman



Lynn Posey, Vice-Chairman


Brandon Presley, Commissioner

Attest: A True and Correct Copy


Brian U. Ray, Executive Secretary

Effective this the 15th day of November, 2012.

ELIGIBLE TELECOMMUNICATIONS CARRIER ("ETC") CHECKLIST
Revised to reflect changes of FCC Order 11-161

The technical characteristics and broadband build-out obligations under each of the new Connect America Fund ("CAF") components are summarized as follows:¹

1. Price Cap CAF Phase I – extends broadband to areas lacking 768 kbps according to the National Broadband Map and carrier's best knowledge to speed of at least 4 Mbps/1Mbps to a specified number of locations, depending on level of incremental support. This phase requires latency sufficient for real-time applications, including VoIP and usage at levels comparable to terrestrial residential fixed broadband service in urban areas.
2. Price Cap CAF Phase II – extends broadband to supported locations; supported locations do not include areas where there is an unsubsidized competitor offering 4 Mbps/1Mbps. This phase requires speed of at least 4 Mbps/1Mbps to all supported locations, with at least 6 Mbps/1.5 Mbps to a number of supported locations to be specified by model. It also requires latency sufficient for real-time applications, including VoIP and usage at levels comparable to terrestrial residential fixed broadband service in urban areas.
3. Areas with no terrestrial backhaul – requires speed of at least 1 Mbps/256 kbps in locations where carrier would otherwise be obligated to provide 4 Mbps/1Mbps.
4. Mobility Fund, Phase I – provides coverage of between 75 and 100 percent of road miles in unserved census blocks OR for Tribal Mobility Fund – provides coverage of between 75 and 100 percent of population in unserved census blocks within Tribal lands. This phase of the Mobility Fund requires 3G or 4G technology, latency sufficient for real-time applications, and usage at levels comparable to mobile 3G/4G offerings in urban areas.
5. In rate-of-return areas, legacy support is reformed to begin the transition toward a more incentive-based form of regulation with better incentives for efficient operations.

I. Initial ETC Designation

A. Eligibility Requirements²

1. Commitment and Ability to Provide the Supported Services

a. Required Services

Voice telephony services shall be supported by federal universal service support mechanisms. ETC applicants must establish their ability to provide certain services using either their own facilities or a combination of their own facilities and resale of another carrier's services, pursuant to, *inter alia*, 47 U.S.C. § 214(e), 47 C.F.R. § 54.101, 47 C.F.R. § 54.201, and 47 C.F.R. § 54.202 as follows:

- i. Voice grade access to the public switched network or its functional equivalent;
- ii. Minutes of use for local service provided at no additional charge to end users;
- iii. Access to emergency services provided by local government or other public safety organizations such as 911 and enhanced 911; and
- iv. Toll limitation services for qualifying low-income customers, to the extent required by 47 C.F.R. § 54.401(a)(2).

¹ FCC Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, ¶ 105 (rel Nov 18, 2011).

² The ETC checklist is not to be used as a replacement for carrier obligations under the Certificate Proceedings of RP 7 of the Commission's Public Utilities Rules of Practice and Procedure ("Commission Procedural Rules"). ETC applicants that are subject to said provision are expected to initially meet the requirements of RP 7 before receiving consideration for designation as an ETC under the requirements detailed herein if applicable.

b. Supporting Documentation

ETC applicants must also provide the following:

- i. Documentation that the carrier does or will advertise the availability of the above-mentioned services and their associated charges in a media of general distribution and that they include Lifeline and Link-Up services in its advertising materials;³
- ii. Information on all Lifeline plans to be offered and, if applicable to the ETC, Lifeline tariffs which conform to the provisions of RP 9.113 of the Commission's Procedural Rules;
- iii. The identity and telephone number of a designated representative with authority to resolve customer service, quality of service, and/or Lifeline or Link-Up inquiries;
- iv. Written commitment that the carrier will offer supported services in its designated service area in compliance with 47 U.S.C. § 214(e)(1);
- v. Written statement that the carrier is in full compliance with all applicable Commission orders, rules, and regulations (carrier must be in good standing with the Commission); and
- vi. Documentation that the carrier fulfills the FCC requirements regarding the specific fund component for which it seeks designation. See generally, 47 C.F.R. § 54.7; see also, e.g., 47 C.F.R. 54.312 (CAF Phase I requirements), 47 C.F.R. 54.1005 (Mobility Fund requirements).

c. Initial Filing Requirements

ETC applicants must comply with all FCC requirements set forth in 47 C.F.R. §§ 54.201 and 54.202. At the time of filing for designation, the ETC applicant shall be expected to submit a five year plan that describes with specificity the proposed improvements or upgrades to the applicant's network throughout its proposed service area and shall fulfill all FCC requirements for the federal program for which they seek designation. Each applicant shall estimate the area and population that will be served as a result of the improvements and will include the following information:⁴

- i. Proposed use of the funds;
- ii. Build-out plan for areas where facilities are unserved or underserved;
- iii. Explanation of how universal service funds will be used to improve network coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support; and
- iv. Map(s) depicting existing facilities, coverage area and planned sites of new facilities upon designation as an eligible carrier.

Low income only ETC applicants will not be required to submit a five year plan but must supply information consistent with FCC Order 11-161, Commission Order in Docket No. 07-AD-487, and applicable FCC Lifeline rules.

³ Link Up services were removed from non-Tribal lands effective April 2, 2012 (See Lifeline and Link Up Reform Modernization et al., Report and Order and Further Notice of Proposed Rulemaking, WC Dkt Nos 11-42 et al, CC Dkt No. 96-45, FCC 12-11 (rel Feb. 6, 2012), as well as 47 C.F.R. §§ 54.413 and 54.414).

⁴ This information should be furnished on a wire center-by-wire center basis throughout the ETC's designated service area and census block if applicable for support sought or required by the FCC. Where it is not possible to provide such detailed information by wire center, this information must be furnished on a county-by-county basis. See CFR 47 §54.202 (a)(1)(ii).

d. Adequate Financial Resources

ETC applicants must fully report financial condition and operations to the Commission, pursuant to ¶ 598 of FCC Order 11-161 and 47 C.F.R. § 54.202(a)(4):

- i. ETC applicants shall demonstrate financial stability by providing all financial documentation that is required pursuant to Appendix "A," Schedule 1, of the Commission's Procedural Rules if applicable;
- ii. ETC applicants shall file annual reports with the Commission as required under RP 16.101 of the Commission's Procedural Rules, if applicable to the carrier; and
- iii. All ETC applicants who have not received a Certificate of Public Convenience and Necessity within the State of Mississippi shall file a full and complete audit report of their financial condition and operations certified by an independent certified public accountant in a form satisfactory to the Commission. This report shall include balance sheets, income statements, and cash flow statements, along with necessary notes to clarify the financial statements. The income statements shall itemize revenue by its sources. An ETC applicant may request a waiver of this requirement if it can demonstrate to the Staff that the requirement is burdensome.

2. Ability to Remain Functional in Emergency Situations

a. Emergency Operations

ETC applicants shall demonstrate their ability to remain functional in emergency situations consistent with 47 C.F.R. § 54.202(a)(2), and shall file with the Commission current contact information of person(s) designated as the applicant's contact(s) for emergency situations. The Commission shall evaluate carriers on a case-by-case basis to determine whether each meets the FCC requirements, considering factors including but not limited to whether the carrier:

- i. Has a reasonable amount of backup power to ensure functionality without an external power source;
- ii. Is able to reroute traffic among damaged facilities; and
- iii. Is capable of managing traffic spikes resulting from emergency situations.

b. Outage Reporting

ETCs shall adhere to the FCC reporting requirements concerning outages and shall provide copies of such reports to the Commission, upon request.

3. Satisfaction of Consumer Protection and Service Quality Standards

ETC applicants shall demonstrate commitment to meeting applicable consumer protection and service quality standards. See, e.g., C.F.R. 47 § 54.202(a)(3).

a. Wireless ETCs

Wireless ETC applicants shall meet this requirement by:

- i. Compliance with the CTIA Consumer Code;
- ii. Submission to the Commission the number of consumer complaints per 1000 handsets, as required in annual ETC filing; and
- iii. Other presented commitments will be evaluated on a case-by-case basis consistent with the FCC rules.

b. Wireline ETCs

Wireline ETC applicants shall meet this requirement by:

- i. Compliance with the Commission's Rules and Regulations Governing Public Utility Service ("Commission's Service Rules") if applicable to carrier;

- ii. Compliance with designated service quality standards applicable for each carrier;
- iii. Submission to the Commission the number of consumer complaints per 1000 access lines as required in annual ETC filing;
- iv. Compliance with all applicable federal standards and requirements; and
- v. Other presented commitments will be evaluated on a case-by-case basis consistent with the FCC rules.

4. Voice Telephony Service

Pursuant to 47 C.F.R. § 54.101, ETC applicants must identify their specific voice telephony service offerings and, if applicable, proposed tariff at the time of filing. However, it is mandatory that each ETC applicant commit to furnish Lifeline service to qualified consumers in accordance with the FCC's rules contained in 47 C.F.R. Part 54, Subpart E. Pursuant to 47 C.F.R. § 54.101, ETCs' voice telephony service offerings shall include:

- a. The size of the local calling scope, if applicable;
- b. Minutes of use for local service provided at no additional charge to end users;
- c. Access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and
- d. Toll limitation services to qualifying low-income consumers; however, toll limitation service does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service, pursuant to 47 C.F.R. § 54.401.

5. Additional requirements for low-income only ETC applicants

- a. For companies seeking ETC designation for purposes of receiving low income support only, the applicant must submit information describing the terms and conditions of any Lifeline service plans offered to Lifeline subscribers, including details regarding the number of minutes provided as part of the plan and/or any additional charges. To the extent the ETC offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.
- b. For companies seeking low income support, they must demonstrate that they are financially and technically capable of providing the Lifeline service in compliance with 47 C.F.R. §§ 54.201(h) and 54.400–54.422 ("Subpart E"), FCC orders, including FCC Order 12-11, and Commission Order in Docket No. 07-AD-487, as applicable.

B. Public Interest Analysis

Consistent with 47 U.S.C. § 214(e)(2), 47 U.S.C. § 254, 47 C.F.R. § 54.201(c), and 47 C.F.R. § 54.202(b), *inter alia*, the Commission shall consider whether each carrier has satisfied "the public interest criteria" in both rural and non-rural areas, on a case-by-case basis, considering the general goals of:

- 1. Preserving and advancing universal service;
- 2. Ensuring the availability of quality telecommunications services at just, reasonable and affordable rates; and
- 3. Promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.

C. Administrative Requirements for ETC Designation Proceedings

1. Service Requirements

All carriers who submit a filing for ETC status must, concurrently with their filing, serve notice of their filing upon each previously designated ETC, including each ILEC/ETC in the affected service area. The ETC applicant must also file a certificate verifying the date that this service was provided.

2. Provisions that will be Included in Orders

Future ETC designation orders adopted by the Commission will include the following provisions:⁵

- a. Name of each ILEC study area in which an ETC has been designated;
- b. Clear statement of whether the ETC has been designated in all or part of each ILEC's study area;
- c. List of all wire centers in which the ETC has been designated, using either the wire center's common name or the Common Language Location Identification ("CLLI") Code;
- d. Identification of any required follow-up filings or other conditions imposed prior to the ETC designation being final;⁶
- e. Provision of any other relevant and necessary information; and
- f. Effective date of the order.

II. Annual Reporting and Certification Requirements

A. Annual Filing Requirements⁷

The filing requirements shall be submitted on or before July 1st of each calendar year for the Commission's use in complying with the certification requirements set forth by the FCC and as required in the applicable Section of the Code of Federal Regulations indicated below:

1. 47 C.F.R. § 54.313 (Annual reporting requirements for high-cost recipients as delineated by price cap and rate-of-return companies)
2. 47 C.F.R. § 54.422 (Annual reporting for eligible telecommunications carriers that receive low-income support)
3. 47 C.F.R. § 54.1009 (Annual reporting requirements for Mobility Fund recipients)
4. Additional annual filing requirements will include:
 - a. Description and samples of marketing for required services and Lifeline offerings using media of general distribution;
 - b. Sufficient support documentation to substantiate annual filing;
 - c. Updated contact information of person(s) designated as the carrier's contact(s) in emergency situations;
 - d. Contact information of person designated to resolve informal complaints which include name, address, telephone number, fax number, and email address;
 - e. Copy of Lifeline application; and
 - f. Number of Lifeline customers served at December 31.

B. Certification Requirements

The ETC shall annually certify the following:

1. The ETC is able to function in an emergency;

⁵ These requirements are subject to change pursuant to amendments made by the Universal Service Administration Company (USAC), which is the administrator of Universal Service funds.

⁶ The Commission will notify USAC when conditions have been met.

⁷ The Commission reserves the right to periodically request additional relevant information from ETCs as allowed by the FCC. The ETC will supply information requested in a timely manner and within twenty (20) days of request.

2. The ETC is complying with all applicable service quality standards and consumer protection rules;
3. The wireless ETC carrier considered "Zap the Gap" data in its determination of areas for service improvements;
4. The ETC is providing and improving broadband at applicable FCC standards associated with the specific high-cost support it receives;
5. The ETC is promptly restoring service when there are service interruptions;
6. The ETC is complying with the FCC reporting requirements concerning outages;
7. The ETC is in compliance with the FCC Lifeline requirements and Commission Order in Docket No. 07-AD-487;
8. The ETC has used federal support for the preceding calendar year and will use support in the upcoming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended (see 47 C.F.R. § 54.314(a));
9. The ETC is complying with the federal service requirements applicable to the support that it receives as set forth by the FCC and this Order; and
10. The ETC is advertising the required supported services throughout its service area.

C. Annual Reports

If applicable to the carrier, ETCs shall file annual reports with the Commission as required under Rule 16.101 of the Commission's Rules; Annual Reports must be filed with the Commission on or before May 1st of each calendar year as applicable.

D. Conditional ETC

Any conditional ETC who is awarded an FCC bid will comply with all applicable rules and filing requirements as specified by the FCC and the Mississippi Public Service Commission for the support they receive.