



Agenda Date: 12/19/12
Agenda Item: 4B

STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 9th Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

TELECOMMUNICATIONS

IN THE MATTER OF THE APPLICATION OF T-MOBILE) ORDER
NORTHEAST LLC FOR LIMITED DESIGNATION AS AN)
ELIGIBLE TELECOMMUNICATIONS CARRIER FOR)
PURPOSES OF LIFELINE SUPPORT ONLY) DOCKET NO. TO12030233

Parties of Record:

Michele K. Thomas, Esq., T-Mobile USA, Inc.
Stefanie A. Brand, Esq., Director, Division of Rate Counsel

BY THE BOARD:

On March 13, 2012, T-Mobile Northeast LLC, a wholly-owned subsidiary of T-Mobile USA, Inc. doing business as T-Mobile (herein after "T-Mobile" or "Company"), filed a verified Petition with the Board of Public Utilities ("Board") pursuant to 47 U.S.C. § 214(e)(2), for designation as an Eligible Telecommunications Carrier ("ETC") for the limited purpose of receiving Lifeline support from the Federal Universal Service Fund ("FUSF") for providing Lifeline service to qualified low-income consumers within its service area in New Jersey as identified in Exhibit A ("ETC Service Area"). T-Mobile also requests that the Board send the appropriate notice of Order designating T-Mobile as an ETC to the Federal Communications Commission ("FCC") and the Universal Service Administrative Company ("USAC").

T-Mobile is a facilities-based wireless telecommunications carrier with its own switching, cell sites, and associated telecommunications facilities in New Jersey and throughout its proposed designated ETC service area. The Company uses radio licenses issued by the FCC to provide Commercial Mobile Radio Service ("CMRS") and will use its own network facilities throughout New Jersey to provide Lifeline service to consumers in its requested ETC Service Area. According to the Company, the designation of T-Mobile as an ETC in New Jersey will promote the public interest by providing eligible low-income consumers a choice for their Lifeline telecommunications needs, resulting in a higher level of service quality and lower prices for Lifeline services in New Jersey. The Company avers that it meets all statutory and regulatory prerequisites for ETC designation and therefore should be granted ETC status in New Jersey.

At this time T-Mobile, through its corporate affiliates, has been designated as an ETC in thirty jurisdictions including the District of Columbia and Puerto Rico. The states in which T-Mobile is designated as an ETC are: Alabama, Arizona, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Virginia, and Washington.

The Board has the authority to designate T-Mobile as an ETC pursuant to Section 214(e)(2) of the Communications Act, as amended.¹ According to the FCC, a carrier must meet the following criteria for designation as an ETC:

- 1) common carrier status;
- 2) offer all of the supported services in its Lifeline service offering;
- 3) offer Lifeline service throughout its designated ETC service area;
- 4) advertise the availability of Lifeline service; and
- 5) meet all other requirements for designation as an ETC for purposes of providing Lifeline service.

According to the Company's petition, it satisfies the existing criteria established under federal law,² the FCC rules and orders,³ and applicable New Jersey requirements. In particular, T-Mobile proffers that it:

1. is a common carrier;⁴
2. will offer the services supported by federal universal service support mechanisms within its Lifeline service offerings, which will be made available to qualifying low-income consumers;⁵
3. will use its own facilities to provide the supported services;⁶
4. will provide Lifeline service, including all of the supported services, throughout its designated service area;⁷
5. will advertise the availability of its Lifeline universal service offerings and charges for such offerings using media of general distribution;⁸
6. will meet the additional application requirements established by the FCC.⁹

¹ 47 U.S.C. § 214(e)(2).

² 47 U.S.C. § 214(e)(1).

³ 47 C.F.R. § 54.201(d). In its *USF/ICC Transformation Order*, the FCC modified the required supported services in 47 C.F.R. § 54.101 and the additional requirements for designation as an ETC in 47 C.F.R. § 54.202. In the *Matter of Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking*, FCC 11-161, released November 18, 2011 ("*USF/ICC Transformation Order*").

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

⁵ 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. §§ 54.201(d)(1) and 54.405.

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

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

⁸ 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2); 47 C.F.R. § 54.405.(b), (c), and (d).

⁹ 47 C.F.R. § 54.202 (a)(1)(ii) requires the submission of a five-year build plan, but this requirement only applies to carriers receiving high-cost universal service support, and therefore is not applicable to T-Mobile, as a recipient of low-income support only.

- a) will certify as necessary, compliance with the service requirements applicable to the support that it receives;¹⁰
 - b) will maintain the ability to remain functional in emergency situations;¹¹
 - c) will satisfy consumer protection and service quality standards;¹²
 - d) will demonstrate it is financially and technically capable of providing Lifeline service;¹³ and
 - e) provides information on its Lifeline service offering.¹⁴
7. will comply with all applicable reporting and record keeping requirements;¹⁵ and,
 8. will take steps to limit fraud, waste and abuse of the FUSF.¹⁶

As a CMRS provider, T-Mobile is regulated as a common carrier, subject to all applicable regulations and therefore, meets the ETC requirement of being a common carrier. It also provides each of four services supported by federal universal service support mechanisms and will provide toll-limitation service for qualifying low-income consumers upon designation as an ETC as set forth below.¹⁷

1. Voice Grade Access To The Public Switched Telephone Network¹⁸ – T-Mobile meets this requirement through its provision of mobile voice communications service and interconnection to the public switched telephone network.
2. Local Usage – an amount of minutes of use provided free of charge to end users.¹⁹ T-Mobile meets this requirement by providing an amount of local usage free of charge in each universal service rate plan.
3. Access To Emergency Services– access to emergency services includes access to both 911 and E911 services to the extent the local government has implemented such services.²⁰ T-Mobile meets this requirement by providing 911 service and meeting all requests for E911 service from local public service answering points.
4. Toll Limitation For Qualifying Low-Income Consumers – toll limitation means both toll blocking and toll control, or, if a carrier is not capable of providing both toll blocking and toll control, then toll limitation is defined

¹⁰ 47 C.F.R. § 54.202 (a)(1)(i).

¹¹ 47 C.F.R. § 54.202(a)(2).

¹² 47 C.F.R. § 54.202(a)(3).

¹³ 47 C.F.R. § 54.202(a)(4).

¹⁴ 47 C.F.R. § 54.202(a)(5).

¹⁵ 47 C.F.R. §§ 54.416, 54.417 and 54.422.

¹⁶ See *In the Matter of Lifeline and Link Up Reform and Modernization, Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 11-42, FCC 12-11, released February 6, 2012 (“Lifeline Reform Order”). The FCC adopted comprehensive reforms to the federal low-income program, including steps to limit fraud, waste and abuse within the program.

¹⁷ In the *USF/ICC Transformation Order*, the FCC revised the supported services to eliminate the requirement to offer dual tone multi-frequency signaling, single party service, access to operator service, access to interexchange service, and directory assistance. Nonetheless, T-Mobile continues to provide these services and functionalities as part of its universal service offerings, including Lifeline service.

¹⁸ 47 C.F.R. § 54.101(a).

¹⁹ 47 C.F.R. § 54.101(a).

²⁰ 47 C.F.R. § 54.101(a).

as either toll blocking or toll control.²¹ Upon implementing any Lifeline service offering that distinguishes between toll and non-toll calls, T-Mobile will offer toll limitation to qualifying low-income consumers at no additional charge. However, T-Mobile's typical service offerings do not distinguish between toll and non-toll calls and therefore toll limitation service is not applicable.²²

The Company states that it will advertise the availability of, and charges for, its low-income service offerings using media of general distribution, and will undertake outreach initiatives to increase consumer awareness of its Lifeline service offering, consistent with all applicable requirements.²³ T-Mobile currently offers and advertises its wireless telecommunications services, including those offerings that include all of the supported services, using radio, television, billboards, print, internet, and targeted mailings, among others. In addition, T-Mobile maintains various retail stores and authorized dealer locations throughout its proposed ETC designated service area. T-Mobile will use the appropriate media outlets to advertise its universal service offerings in a manner consistent with applicable requirements.

T-Mobile will serve all consumers within its ETC service area, and certifies that it will comply with the service requirements applicable to the low-income support that it receives, consistent with 47 C.F.R. § 54.202(a)(1)(i).

In addition, T-Mobile has demonstrated that it has the "ability to remain functional in emergency situations."²⁴ As demonstrated in its Emergency Operation Plan, T-Mobile has a reasonable amount of back-up 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.

In the *Lifeline Reform Order*, the FCC adopted a rule, 47 C.F.R. § 54.202(a)(4), requiring Lifeline-only ETC applicants to demonstrate financial and technical capability of providing Lifeline service in compliance with applicable requirements. According to the Company, it is a well-established facilities-based wireless telecommunications carrier with a long history of providing service in the state to non-Lifeline consumers and does not rely exclusively on USF disbursements. T-Mobile receives revenue from several non-USF sources, is currently a Lifeline service provider in numerous states, and has not been subject to ETC enforcement or revocation proceedings in any state. T-Mobile has agreed to comply with all applicable New Jersey-specific requirements for a facilities-based wireless carrier providing Lifeline services.

In its *Lifeline Reform Order* released on February 6, 2012, the FCC adopted comprehensive reforms to the low-income program to revise and modernize the Lifeline service requirements and implement measures to address fraud, waste, and abuse within the system. T-Mobile has

²¹ 47 C.F.R. § 54.101(a); 47 C.F.R. § 54.400(d).

²² In its *Lifeline Reform Order*, the FCC stated "[i]n this Order, we relieve ETCs of the obligation to offer toll limitation service (TLS) in the first instance if their Lifeline offering does not distinguish in the pricing of toll and non-toll calls, which may relieve many ETCs of the obligation to offer TLS." *Lifeline Reform Order* at para. 238. T-Mobile has not previously and has no plans in the future to seek reimbursement for any toll limitation services provided to Lifeline customers.

²³ See 47 C.F.R. §§ 54.401-54.417; 54.405(b) and 54.411(d). In its *Lifeline Reform Order*, the FCC also adopted specific requirements for Lifeline advertising, which T-Mobile will comply with. See *Lifeline Reform Order* at paras. 275-282.

²⁴ 47 C.F.R. § 54.202(a)(2).

indicated that it has thoroughly reviewed the *Lifeline Reform Order* and all newly-adopted requirements and will implement the internal controls and processes to ensure compliance with the FCC's final rules and any subsequent FCC orders.²⁵

Upon designation as an ETC, T-Mobile will initially make available to qualified low-income consumers a discounted service offering that meets all applicable Lifeline requirements. It has also indicated that it reserves the right to make additional offerings in the future and agrees to comply with all state and federal requirements. As implemented in other areas where the Company has been designated as an ETC, T-Mobile's planned initial Lifeline service offering will include:²⁶

- \$9.99 per month Lifeline rate;
- 145 Whenever minutes[®], 500 night minutes, and 500 weekend minutes per month;
- additional minutes priced at \$0.05 per minute;
- competitive terms and conditions of service; and
- an affordable handset.

T-Mobile's planned Lifeline service offering provides consumers additional benefits. For example, calls to 911 and to customer service (dialing 611 from the mobile handset) will be free calls, regardless of whether the customer has sufficient remaining minutes available in his account, and those calls will not be deducted from the monthly included minutes or charged as additional minutes. Additionally, qualified consumers who subscribe to T-Mobile's Lifeline offering are not charged a fee for local number portability or the federal Universal Service Fund. In addition to voice services, Lifeline customers will also have access to a variety of other standard features at no additional charge, including voice mail, caller identification and call-waiting services.

DISCUSSION

On February 6, 2012, the FCC released its Order on the Modernization of Lifeline and Link-Up revising its rules in an effort to combat waste, fraud and abuse that had been systemic to the program. In approving ETC petitions, the Board is cognizant of the fact that while the FCC's new rules go a long way to correct past problems, some new provisions in the rules have created potentially new avenues for waste, fraud and abuse.

In particular, the new rules clarify that there is only a single Lifeline subscription allowed per household, but the definition of a household now includes the concept of an "economic unit" and permits commercially zoned areas to be eligible for Lifeline support. Therefore, if a customer is able to demonstrate that there are multiple economic units at a single address, each unit would be eligible to receive Lifeline support.

In addition, residences of multiunit living facilities like rooming houses, single-room occupancy buildings, lodging houses, and shelters, which some argued are maintained in commercially zoned areas, will also be eligible. The Board is concerned that the expanded definitions in the newly revised rules may have unintended consequences.

²⁵ T-Mobile notes that the *Lifeline Reform Order* may be subject to petitions for reconsideration and/or clarification.

²⁶ See 47 C.F.R. Section 54.202(a)(5).

Consistent with the FCC's efforts to minimize and eliminate waste, fraud and abuse for Lifeline subscribers, we will require T-Mobile, in addition to the federally required data, to compile and maintain New Jersey-customer specific qualifying information including at a minimum, the name, address, telephone number, and all other identifying data required by the FCC, when evaluating a Lifeline application for non-traditional living situations. T-Mobile shall comply with said requirements related to ensuring that all customers that receive Lifeline support are receiving only one line of supported service per household based upon the newly revised FCC concept of "economic unit" or that the customer is qualified to claim eligibility at a non-traditional living situation such as a group living facility. New Jersey specific customer information shall be summarized by lines per qualified address and filed along with the data and information required in (6) below.

Board Staff reserves the right to initiate an investigation and suspend the additional provision of service at a location or address if anomalies are uncovered which suggest that an inordinate number of individuals are qualified at the location or address. The system supporting such data and information must be fully functional prior to initiating Lifeline service in New Jersey. T-Mobile must comply with all of these requirements in addition to any other state or federal database that is required pursuant to the rules. In addition, T-Mobile shall be required to make such data available to Board Staff electronically which could readily permit the review of such customers/living arrangements so that periodic audits may be conducted if anomalies are uncovered.

The Board further requires the Company to adhere to the following:

- 1) to deal directly with its customers to certify and verify Lifeline eligibility;
- 2) to participate in any initiative to combat fraudulent activation of Lifeline accounts, such as multiple accounts at one address;
- 3) T-Mobile shall ensure that 100% of federal low income Universal Service Funds flow through directly to Lifeline customers, as required;
- 4) T-Mobile shall file within 30 days of approval of its ETC application its terms and conditions of service, and rate plans including its Lifeline discounts available to qualifying low-income customers. Further, T-Mobile shall have the ongoing obligation to notify the Board of any future changes to its rates, terms, or conditions;
- 5) T-Mobile shall develop and include language to be used in all advertising of Lifeline services and on its website which directs customers to the Board's Telecommunications Division for complaints regarding Lifeline issues. T-Mobile shall file such proposed language within 30 days of approval of its ETC application, and Board Staff shall have the right to review and make changes to any proposed language;
- 6) T-Mobile shall file the following information no later than 30 days following the six-month reporting period ending June 30th and December 31st each year and thereafter for its New Jersey operations, unless otherwise ordered by the Board:

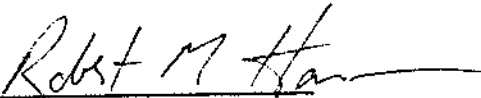
- i. T-Mobile shall report all instances in which it receives Lifeline customer complaints, including the nature and number of customer complaints and their resolution.
- 7) The Company shall fully comply with all FCC rules and reporting requirements, USAC audit requirements and submit to the Board total federal funds received and the number of customers served in New Jersey consistent with the dates in (6) above. This information must be submitted with a certification made by an officer of the Company attesting to its accuracy;
- 8) the Company shall provide any other data or information deemed necessary by Board Staff;
- 9) T-Mobile did not seek and is not granted through this Order access to funds from the federal Universal Service Fund for the purpose of providing service to high-cost locales;
- 10) T-Mobile's ETC designation shall also be conditioned upon the satisfactory resolution of complaints filed with the Board's Telecommunications Division and T-Mobile will provide a point of contact for the Board's Telecommunications Division through which all Lifeline complaints will be transmitted;
- 11) the Company will be subject to audit at the discretion of the appropriate state agencies, including, but not limited to, the Board, the Department of Human Services, the Department of Community Affairs, and the Department of Health;
- 12) the Company must submit to Staff a copy of its Lifeline Application form which includes all state and federal eligibility programs, including the following two unique NJ-specific programs:
 - ii. Pharmaceutical Assistance to the Aged and Disable (PADD);
 - iii. Fuel Assistance: Home Energy Assistance Program.
- 13) T-Mobile's ETC designation may, at any time, be suspended or revoked by order of the Board.

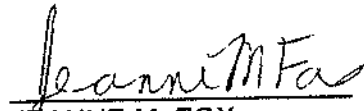
In addition, the Company must agree to participate in and, if ordered by this Board, contribute to the funding of any state verification database initiative in New Jersey. T-Mobile, in its petition and responses to Staff's discovery requests, has indicated that it intends to comply with the FCC and Board requirements. The Board is satisfied that T-Mobile's petition meets or exceeds the relevant criteria established to receive approval from this Board. Therefore, the Company's Petition is **HEREBY APPROVED** as conditioned herein. The Board **DIRECTS** that the Director of the Division of Telecommunications, with the assistance of the Office of the Attorney

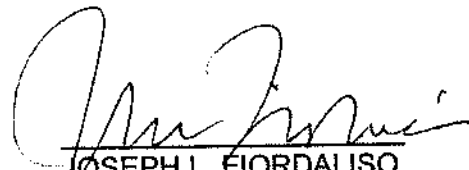
General, if such assistance is deemed necessary, send the appropriate notice of this Order designating T-Mobile as an ETC to the FCC and USAC.

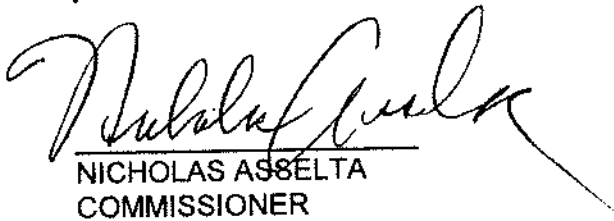
DATED: 12/19/12

BOARD OF PUBLIC UTILITIES
BY:


ROBERT M. HANNA
PRESIDENT


JEANNE M. FOX
COMMISSIONER

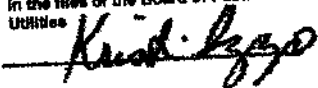

JOSEPH L. FIORDALISO
COMMISSIONER


NICHOLAS ASSELTA
COMMISSIONER


MARY-ANNA HOLDEN
COMMISSIONER

ATTEST: 
KRISTI IZZO
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



In the Matter of the Application of T-Mobile Northeast LLC for Limited Designation as an Eligible Telecommunications Carrier for Purposes of Lifeline Support Only
BPU Docket No. TO12030233

SERVICE LIST

Michele K. Thomas, Esq.
Principal Corporate Counsel
T-Mobile USA, Inc.
4 Sylvan Way
Parsippany, NJ 07054
Michele.Thomas@T-Mobile.com

Mark P. Trincherio, Esq.
Davis Wright Tremaine LLP
1633 Broadway, 27th Floor
New York, NY 10019-6708
marktrincherio@dwt.com

Kristi Izzo, Secretary
Board of Public Utilities
44 South Clinton Ave., 9th Floor
PO Box 350
Trenton, NJ 08625
Kristi.Izzo@bpu.state.nj.us

John DeLuca
Division of Telecommunications
Board of Public Utilities
44 South Clinton Ave., 9th Floor
PO Box 350
Trenton, NJ 08625
John.deluca@bpu.state.nj.us

Anthony Centrella, Director
Division of Telecommunications
Board of Public Utilities
44 South Clinton Ave., 9th Floor
PO Box 350
Trenton, NJ 08625
Anthony.centrella@bpu.state.nj.us

Stefanie A. Brand, Esq.
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
sbrand@rpa.state.nj.us

Carol Artale, Esq.
Counsel's Office
Board of Public Utilities
44 South Clinton Ave., 9th Floor
PO Box 350
Trenton, NJ 08625
Carol.artale@bpu.state.nj.us

Harold Bond
Division of Telecommunications
Board of Public Utilities
44 South Clinton Ave., 9th Floor
PO Box 350
Trenton, NJ 08625
Harold.bond@bpu.state.nj.us

Valerie Haynes, Director
Case Management
Board of Public Utilities
44 South Clinton Ave., 9th Floor
PO Box 350
Trenton, NJ 08625
Valerie.Haynes@bpu.state.nj.us

Ayelet Hirsch Korn, DAG
Alex Moreau, DAG
Dept. of Law & Public Safety
Division of Law
123 Halsey Street, 5th Floor
P.O. Box 45029
Newark, NJ 07101
Ayelet.HirschKorn@dol.lps.state.nj.us
Alex.Moreau@dol.lps.state.nj.us

Christopher J. White
Division of Rate Counsel
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101
cwhite@rpa.state.nj.us