

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Air Voice Wireless, LLC
Designated Eligible Carrier
Application

Case No. PU-22-158

ORDER ON ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION

June 29, 2022

Preliminary Statement

On March 29, 2022, Air Voice Wireless, LLC (Air Voice), a Michigan limited liability company with its principal offices located at 9920 Brooklet Dr, Houston, TX 77099, filed an application for designation as an eligible telecommunications carrier (ETC) for the purpose of receiving federal universal service support for low-income consumers under 47 CFR Part 54 Subpart E. This designation is also known as Lifeline-only ETC designation. Air Voice proposes to provide Lifeline universal services to eligible low-income customers as a commercial mobile radio service (CMRS) carrier throughout every telephone exchange in North Dakota.

On April 13, 2022, the Commission issued a Notice of Opportunity for Hearing (Notice) providing until May 23, 2022, for comments and requests for hearing. No comments or requests for hearing were received. The Notice identified the issues to be considered in this matter are:

1. Is the applicant qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service funding?
2. What ETC universal service support area should be designated?
3. Is designation of the applicant as an ETC in the public interest?

The Notice stated that the Commission can determine the matter without a formal hearing.

On May 9, 2022, the Commission submitted a certification to Air Voice for its signature. On May 13, 2022, the Company filed a signed Certification Relating to Order Provisions.

On June 8, 2022, the Commission held an Informal Hearing to discuss the issues with Air Voice.

ETC Designation

The Telecommunications Act of 1996 provides financial support for universal services to common carriers that have been designated as ETCs and that (1) offer the universal services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services and (2) advertise the universal services, advertise the availability of such services, and advertise the charges for such services, using media of general distribution.

In its *Report and Order and Further Notice of Proposed Rulemaking* released February 6, 2012, in Docket No. FCC 12-11 at paragraph 368, the Federal Communications Commission (FCC) found that it would forbear from the "own-facilities" requirement contained in section 214(e)(1)(A) for carriers that seek to become, Lifeline-only ETCs, subject to the following conditions: (1) the carrier must comply with certain 911 requirements and (2) the carrier must file, and the FCC must approve, a compliance plan providing specific information regarding the carrier's service offerings and outlining the measures the carrier will take to implement Lifeline service obligations as well as further safeguards against waste, fraud and abuse the FCC may deem necessary.

Under 47 CFR 54.201, a carrier seeking Lifeline-only ETC designation must demonstrate that it is financially and technically capable of providing Lifeline service in compliance with 47 CFR Subpart E. Air Voice is seeking Lifeline-only ETC designation.

Both federal law and state law give the Commission the authority to designate a common carrier as an ETC. In areas served by a rural telephone company, the Commission must find that ETC designation is in the public interest.

Air Voice, was organized and incorporated in the state of Michigan on May 7, 1999. Air Voice is a common carrier and reseller of commercial mobile radio service, and will offer all of the services and functionalities detailed in Section 54.101(a) of the FCC Rules. Air Voice generates revenues from non-Lifeline services and has access to capital from its investors; and currently provides services to approximately 70,000 customers. Therefore, Air Voice is not solely dependent on reimbursements from the Universal Service Fund. Air Voice proposes to provide services to customers by using the underlying networks for AT&T Mobility, LLC and T-Mobile USA, Inc. on a wholesale basis in order to provide the best coverage and service available for subscribers. Air Voice is currently authorized as a wireless ETC in the states of California, Kentucky, Michigan, Mississippi, New York, Ohio, Oklahoma, Pennsylvania, South Carolina and Wisconsin. Air Voice has not been subject to any enforcement action at the FCC or in any state.

Air Voice will offer telecommunications services primarily to eligible low-income subscribers.

Air Voice will offer plan options including 1000 anytime prepaid minutes, unlimited text messages, 4.5GB data, and LTE or 5G network coverage at a net cost to an eligible non-tribal Lifeline customer of \$0 per month. Air Voice will also offer a tribal option with unlimited anytime minutes, unlimited text messages, unlimited data, and LTE or 5G network coverage at a net cost to an eligible tribal Lifeline customer of \$0 per month. Air Voice will offer to all customers a free handset or SIM card, custom calling features at no charge including 911, Caller ID, Call Waiting, Voicemail and the ability to use voice minutes for domestic long distance.

Air Voice seeks only Lifeline support from the low-income mechanism of the federal Universal Service Fund and does not seek support from the high-cost support mechanism. This program is designed to reduce the monthly cost of telecommunication services for eligible consumers, is distributed on a per-customer basis, and is directly reflected in the price that the eligible customer pays. Because Air Voice does not seek support from the high-cost support mechanism, designation of Air Voice as a Lifeline-only ETC will not pose any adverse effect on the growth in the high-cost portions of the Universal Service Fund (USF), nor will it create or contribute to an erosion of high-cost funding from any rural or nonrural telephone company. Increasing the number of designated Lifeline-only ETCs in North Dakota will provide the opportunity for increased participation by eligible consumers in the Lifeline program.

NDAC § 69-09-05-12(6)(a) requires a full description of available services in the ETC's official telephone directory. Since Air Voice is a CMRS provider, it does not have an official telephone directory in North Dakota and requests a waiver from this requirement pursuant to NDAC §§ 69-09-05-12(2)(c) and (d).

The FCC approved Air Voice's Compliance Plan on December 26, 2012, and thereby granted Air Voice forbearance from the statutory requirement that Air Voice provide service using its own facilities in order to be designated as a Lifeline-only ETC.

The Certification Relating to Order Provisions as signed by Henry Do, CEO of Air Voice and filed on May 13, 2022 is incorporated by reference and attached to this order.

Consumers eligible for the Lifeline discounts offered by Air Voice will receive the benefits of nationwide calling areas and the convenience and security of mobile telephone service. Air Voice will bring increased customer choice and the benefits of competition.

Universal Service Support Area

The Commission must establish a geographic area (service area) for the purpose of determining universal service obligations and support mechanisms for the designated ETC. 47 U.S.C. § 214(e)(5).

The Act defines service area:

SERVICE AREA DEFINED-- The term "service area" means a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In its *Memorandum Opinion and Order*, FCC 13-44, released April 15, 2013, the Federal Communications Commission determined that carriers may be designated as a Lifeline-only ETC in partial rural service areas.

In this proceeding, Air Voice is requesting ETC designation in all North Dakota telephone exchanges.

Air Voice has demonstrated that it is financially and technically capable of providing Lifeline service in compliance with 47 CFR Subpart E.

Based on the evidence in this proceeding, Air Voice is qualified under the Telecommunications Act of 1996, Section 214(e) for designation as an ETC eligible to receive federal universal service support for low-income consumers under 47 CFR Part 54 Subpart E.

It is in the public interest that Air Voice be designated as a Lifeline-only ETC in all North Dakota telephone exchanges.

Air Voice is registered with the Commission to provide commercial mobile radio and long-distance services.

Air Voice Wireless, LLC is registered with the Secretary of State of North Dakota and Air Voice Wireless, LLC is in good standing.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Order

The Commission orders:

1. Air Voice Wireless, LLC is designated as an eligible telecommunications carrier for the purpose of receiving federal universal service support for low-income consumers under 47 CFR Part 54 Subpart E. The designated service area in this proceeding consists of all study areas in North Dakota.
2. Air Voice Wireless, LLC shall comply with the applicable annual reporting requirements set forth in North Dakota Administrative Code §69-09-05-12.1.
3. Under North Dakota Administrative Code §69-09-05-12(2)(c) and (d), Air Voice Wireless, LLC is granted a waiver of the requirements of North Dakota Administrative Code § 69-09-05-12(6)(a) regarding the publication of a full description of its services in an official telephone directory.
4. The May 13, 2020, Certification Relating to Order Provisions is incorporated by reference and attached to this Order.

PUBLIC SERVICE COMMISSION


Randy Christmann
Commissioner


Julie Fedorchak
Chairman


Sheri Haugen-Hoffart
Commissioner

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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**Air Voice Wireless, LLC
CERTIFICATION RELATING TO ORDER PROVISIONS**

I am Henry Do, a representative of Air Voice Wireless, LLC (Air Voice) with authority to bind Air Voice and I certify that:

1. Air Voice is seeking designation as a Lifeline-Only Eligible Telecommunications Carrier (Lifeline-Only ETC)) for all non-rural telephone company wire centers within the state of North Dakota, all rural telephone company study areas within the state of North Dakota, and all Tribal areas within the non-rural and rural telephone company areas within the state of North Dakota. Which is the entire state of North Dakota.

2. For the telephone exchanges enumerated, Air Voice understands and agrees to the conditions and criteria set forth in Chapter 49-21 of the North Dakota Century Code and Chapter 69-09-05 of the North Dakota Administrative Code that pertain to Lifeline-Only Eligible Telecommunications Carriers (Lifeline Only ETC) , and Air Voice will be responsible for compliance with this Certification, the Public Service Commission's order in this proceeding, and conditions and criteria set forth in the applicable federal and state laws and rules pertaining to Lifeline-Only ETCs.

The provision in Chapter 69-09-05 of the North Dakota Administrative Code requiring the ETC to describe services in the "carrier's official telephone directory" is not applicable because Air Voice has no such directory.

3. Air Voice agrees to comply with all statements, processes and procedures set forth in its Application for designation as a Lifeline-Only ETC in the enumerated telephone exchanges. Air Voice agrees that all statements made and matters set forth in its Application are true and correct to the best of Air Voice's knowledge, information, and belief.

4. Air Voice will use the federal low-income universal service support it receives only for the provision of services for which the support is intended.

5. Air Voice meets all of the prerequisites to be designated as a Lifeline-Only ETC throughout the proposed ETC Designated Area in this proceeding.

6. Air Voice provides each of the services supported by federal universal service support mechanisms, specified in Federal Communications Commission's (FCC's) rules, 47 C.F.R. § 54.101, and will offer these supported services in North Dakota upon

designation as a Lifeline-Only ETC, including voice grade access, minutes of use for local service at no additional charge, access to emergency services and toll limitation services.

7. Air Voice will provide service on a timely basis to requesting customers within the applicant's proposed designated service area where the applicant's network already passes the potential customer's premises.
8. Air Voice will provide service within a reasonable period of time, if the potential customer is within Air Voice's proposed designated service area but outside its existing network coverage, if service can be provided at reasonable cost by:
 - (a) Modifying or replacing the requesting customer's equipment;
 - (d) Adjusting network or customer facilities; or
 - (e) Reselling services from another carrier's facilities to provide service.
9. Air Voice will not seek Universal Service Fund high-cost support for any telephone exchanges in its designated service area in North Dakota.
10. Air Voice will use all available means to ensure customers are eligible for the Lifeline program at the time of sign-up and recertification in accordance with the federal eligibility criteria in 47 C.F.R. § 54.409 and the relevant proof documentation specified in 47 C. F. R. § 54.410. Air Voice will check all available databases including the National Lifeline Accountability Database to prevent duplication and determine eligibility.
11. Air Voice has taken, and will continue to take, steps to work with its underlying carriers to remain functional in emergency situations by: (1) maintaining a reasonable amount of backup power to ensure functionality without an external power source; (2) maintaining the ability to re-route traffic around damaged facilities and to manage traffic spikes resulting from emergency situations; and (3) establishing procedures for employees to follow in an emergency to prevent or minimize interruption or impairment of telecommunications services.
12. Air Voice will meet or exceed applicable consumer protection and quality standards and will comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service
13. Air Voice will advertise the availability of the supported services detailed in its Application, and the corresponding rates and charges, in a manner designed to inform the general public within North Dakota. This advertising will occur through a combination of media channels, such as television and radio, newspaper, magazine and other print advertisements, outdoor advertising, direct marketing, and the Internet.
14. Air Voice will offer the services described in its Application.
15. Air Voice understands and agrees that if Air Voice has not advertised its Lifeline services or signed up any North Dakota customers within 12 months of the

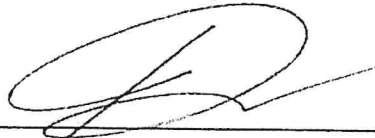
effective date of Air Voice's designation as a Lifeline-only ETC, the Public Service Commission may revoke Air Voice's Lifeline-only ETC designation and North American may reapply to be designated as a Lifeline-only ETC In North Dakota.

16. Air Voice will comply with all applicable annual reporting requirements associated with being an ETC in North Dakota including filing with the Public Service Commission a copy of each report filed with the FCC, within 30 days of filing with the FCC.
17. Air Voice understands and agrees that its ability to offer service is subject to suspension or revocation for failure to comply with the Public Service Commission's orders, or applicable statutes, rules, regulations, standards, and other authorizations.
18. Air Voice agrees to maintain the records to demonstrate that Air Voice has complied with the requirements of the Public Service Commission's order(s) and that Air Voice will preserve records demonstrating compliance for Public Service Commission inspection at any reasonable time upon reasonable notice.
19. Air Voice understands and agrees that, to the extent there are any conflicts or inconsistencies between Air Voice's Application and the provisions in this Certification, the Certification provisions control.

Dated this 9 day of May, 2022.

AIR VOICE Wireless, LLC

By:



Henry D. O.

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C.E.O.