

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**DISH Wireless L.L.C.
Designated Eligible Carrier
Application**

Case No. PU-23-84

ORDER ON ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION

February 21, 2024

Preliminary Statement

On March 6, 2023, DISH Wireless L.L.C. (Dish) 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 CFW Part 54 Subpart E. Such designation is also known as Lifeline-only ETC designation. Dish proposes to provide wireless prepaid Lifeline universal services to qualifying low-income North Dakota customers by using a combination of its own facilities and reselling another carrier's facilities.

On March 29, 2023, the Commission issued a Notice of Opportunity for Hearing (Notice) providing until May 12, 2023, for comments and requests for hearing. No 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 12, 2023, the Commission submitted a certification to Dish for its signature. On June 8, 2023, Dish filed a signed Certification Relating to Order Provisions.

On May 12, 2023, the Broadband Association of North Dakota (BAND) filed comments in regard to Dish's application.

On June 8, 2023, the Commission held an Informal Hearing to discuss the issues with Dish.

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.

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. Dish 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.

Dish was organized and incorporated in the state of Colorado on October 27, 2016. Dish 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. Dish generates revenues from non-Lifeline services and has access to capital from its investors. Therefore, Dish is not solely dependent on reimbursements from the Universal Service Fund. Dish 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. Dish is currently authorized as a wireless ETC in the states of Colorado, New York and Oklahoma. Dish has not been subject to any enforcement action at the FCC or in any state.

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

Dish will offer plan options including 1000 anytime prepaid minutes, 1000 text messages and 4.5GB data at a net cost to an eligible non-tribal Lifeline customer of \$0 per month. Dish will also offer a tribal option with unlimited anytime minutes, unlimited text messages and 11GB data at a net cost to an eligible tribal Lifeline customer of \$0 per month. Dish 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.

Dish 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 Dish does not seek support from the high-cost support mechanism, designation of Dish 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 Dish 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 Certification Relating to Order Provisions as signed by Alison Minea, Vice President of Regulator Affairs for Dish and filed on June 8, 2023, is incorporated by reference and attached to this order.

Consumers eligible for the Lifeline discounts offered by Dish will receive the benefits of nationwide calling areas and the convenience and security of mobile telephone service. Dish 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, Dish is requesting ETC designation in all North Dakota telephone exchanges.

Dish 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, Dish 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 Dish be designated as a Lifeline-only ETC in all North Dakota telephone exchanges.

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

DISH Wireless, L.L.C. is registered with the Secretary of State of North Dakota and Dish Wireless, LLC is in good standing.

The comments submitted by the BAND asserted that more information is needed to ascertain if Dish would be capable of serving customers at a level of service that meet the lifeline service standards in all areas of the state as required by the FCC. It also asserted that granting ETC status to Dish may not be in the public interest due to new ETCs eroding the BANDs customer base and thereby increasing the overall per customer cost and the fact that the primarily fiber based network provided by the BAND members provides significantly better broadband speeds to customers than the wireless network proposed by Dish, which is further evidenced by the significant difference in the FCC's lifeline service minimum standards for wireless versus fix broadband carriers.

The Commission appreciates the interest and comments of the BAND, however it has not been demonstrated that designation of Dish as a lifeline-only ETC in North Dakota would not be in the public interest, nor has sufficient evidence been submitted that demonstrates a smaller service area should be granted.

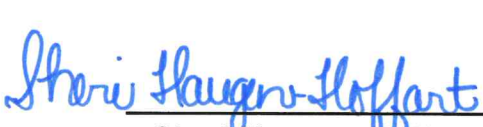
Having allowed all interested persons an opportunity to be heard and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Order

The Commission Orders:

1. DISH Wireless L.L.C. 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. DISH Wireless L.L.C. 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), DISH Wireless L.L.C. 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 June 8, 2023, Certification Relating to Order Provisions is incorporated by reference and attached to this Order.

PUBLIC SERVICE COMMISSION



Sheri Haugen-Hoffart
Commissioner



Randy Christmann
Chair



Julie Fedorchak
Commissioner

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**DISH Wireless L.L.C.
CERTIFICATION RELATING TO ORDER PROVISIONS**

I am Alison Minea, a representative of DISH Wireless L.L.C. dba Gen Mobile (DISH Wireless) with authority to bind DISH Wireless and I certify that:

1. DISH Wireless 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, DISH Wireless 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 DISH Wireless 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 DISH Wireless has no such directory.
3. DISH Wireless 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. DISH Wireless agrees that all statements made and matters set forth in its Application are true and correct to the best of DISH Wireless' knowledge, information, and belief.
4. DISH Wireless will use the federal low-income universal service support it receives only for the provision of services for which the support is intended.
5. DISH Wireless meets all of the prerequisites to be designated as a Lifeline-Only ETC throughout the proposed ETC Designated Area in this proceeding.
6. DISH Wireless 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. DISH Wireless 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. DISH Wireless will provide service within a reasonable period of time, if the potential customer is within DISH Wireless' 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. DISH Wireless will not seek Universal Service Fund high-cost support for any telephone exchanges in its designated service area in North Dakota.
10. DISH Wireless 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. DISH Wireless will check all available databases including the National Lifeline Accountability Database to prevent duplication and determine eligibility.
11. DISH Wireless 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. DISH Wireless 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. DISH Wireless 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. DISH Wireless will offer the services described in its Application.

15. DISH Wireless understands and agrees that if DISH Wireless has not advertised its Lifeline services or signed up any North Dakota customers within 12 months of the effective date of DISH Wireless' designation as a Lifeline-only ETC, the Public Service Commission may revoke DISH Wireless' Lifeline-only ETC designation and North American may reapply to be designated as a Lifeline-only ETC In North Dakota.
16. DISH Wireless 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. DISH Wireless 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. DISH Wireless agrees to maintain the records to demonstrate that DISH Wireless has complied with the requirements of the Public Service Commission's order(s) and that DISH Wireless will preserve records demonstrating compliance for Public Service Commission inspection at any reasonable time upon reasonable notice.
19. DISH Wireless understands and agrees that, to the extent there are any conflicts or inconsistencies between DISH Wireless' Application and the provisions in this Certification, the Certification provisions control.

Dated this 8 day of June, 2023.

DISH Wireless L.L.C.

By: 

Alison Minea

Its Vice President, Regulatory Affairs