

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NUMBER S-37089

IM TELECOM, LLC D/B/A INFINITI MOBILE, EX PARTE.

Docket No. S-37089, In re: Petition for designation as an Eligible Telecommunications Carrier ("ETC") within Louisiana for the limited purpose of offering wireless lifeline services.

(Decided at the April 19, 2024 Business and Executive Session.)

ORDER

Background and Procedural History

On December 29, 2023, IM Telecom, LLC., d/b/a INFINITI Mobile ("INFINITI" or "Company") filed an application ("Application") with the Louisiana Public Service Commission ("LPSC" or "Commission") for the limited purpose of offering wireless Lifeline Services within Louisiana as an Eligible Telecommunications Carrier ("ETC"). Notice of the Company's request was published in the Commission's Official Bulletin No. 1314 dated January 5, 2024 with no interventions or protests received during the intervention period of twenty-five days.

INFINITI is an Oklahoma Limited Liability Company.¹ Its principal office is located at 500 N. Central Expressway, Suite 202, Plano, Texas 75074. Infiniti is a wholly owned subsidiary of Kona Tel, Inc., a Delaware corporation which acquired INFINITI on January 31, 2019, and received all required approvals from the FCC and state commissions. INFINITI is a provider of commercial mobile radio service ("CMRS") and provides prepaid wireless telecommunications services to consumers by using the underlying wireless networks of AT&T Mobility ("AT&T"), Verizon Wireless ("Verizon") and T-Mobile USA, Inc., ("T-Mobile") (collectively "Underlying Carriers") on a wholesale basis. INFINITI has been designated as a Lifeline-only wireless ETC in California, Georgia, Kentucky, Maryland, Nevada, New York, Oklahoma, Pennsylvania, South Carolina, Vermont and Wisconsin. INFINITI is also authorized by the FCC and USAC to participate in the Affordable Connectivity Program ("ACP") throughout the United States, including Louisiana.

Lifeline is the FCC's program to help make communications services more affordable for low-income consumers. Currently, the Lifeline program provides up to a \$9.25 monthly discount on bundled voice and minimum-standard or above-minimum-standard broadband service for eligible low-income subscribers, up to a \$5.25 monthly discount for standalone voice service or bundled

¹ Infiniti was organized in the State of Oklahoma on February 9, 2012.

voice and below-minimum-standard broadband service for eligible low-income subscribers,² and up to \$34.25 per month for those on Tribal lands. Subscribers may receive a Lifeline discount on either a wireline or a wireless service. Only ETCs may receive Lifeline support and provide Lifeline service to qualifying low-income consumers, and all ETCs must offer Lifeline service. 47 C.F.R. §§ 54.5,101(d),201(a)(1).

As set forth in the Petition, the Company plans to offer all of the supported services required by the Act through resale of another carrier's services. Under 47 U.S.C. § 214(e)(1)(A), state commissions are prohibited from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier's services. In this case, the Federal Communications Commission ("FCC") decided to conditionally forbear from the application of the Federal Act's facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.³ Specifically, the FCC determined that conditional forbearance from the facilities requirement would apply if the carrier: (1) complied with certain 911 requirements; and (2) filed and received approval of a compliance plan providing specific information regarding the carrier's service offerings and outlining other measures the carrier will take to implement the obligations contained in the Lifeline Reform Order. Infiniti as discussed below certified that it has and will continue to comply with the 911 requirements at the state and federal level. The Company has provided Staff with a copy of the FCC's approval of a compliance plan, and the Company certifies that it has met the requirements for conditional forbearance from the facilities requirement as evidenced by the FCC-approved Compliance plan.

Jurisdiction and Applicable Law

The Commission exercises jurisdiction over public utilities and common carriers in Louisiana, including Louisiana telecommunications service providers, pursuant to Louisiana Constitution, Article IV, Section 21(B), which states:

The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

² But see 47 C.F.R. § 54.403(a)(2)(iv). "On December 1, 2021, standalone voice service, or voice service not bundled with broadband which meets the minimum standards set forth in § 54.408, will not be eligible for Lifeline support unless the [Federal Communications] Commission has previously determined otherwise." *Id.*

³ *Lifeline Reform Order* paragraph 368.

Pursuant to Section 214(e)(2) of the Act (47 U.S.C. § 214(e)(2)),⁴ State commissions are given the authority to designate as ETCs those common carriers⁵ that meet the service requirements found in 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101, thereby entitling them to Universal Service Fund (“USF”) support in accordance with 47 U.S.C. § 254.

To be eligible for ETC designation, 47 U.S.C. § 214(e)(1) mandates that a common carrier “offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, 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 eligible telecommunications carrier); and...advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1). The FCC has decided to conditionally forbear from the application of the Federal Act’s facilities requirement to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program.⁶ This forbearance is conditionally based upon the company providing: (1) compliance with certain 911 requirements; and (2) filing and receiving approval of a compliance plan providing specific information regarding the carrier’s service offerings and outlining other measures the carrier will take to implement the obligations contained in the Lifeline Reform Order. Finally, a State commission must find the designation of an ETC consistent with the public interest, convenience, and necessity, particularly in the case of an additional ETC for an area served by a rural telephone company. 47 U.S.C. § 214(e)(2).

FCC regulations regarding ETC obligations supplement these statutory requirements. In particular, 47 C.F.R. § 54.101 requires the following:

1. An ETC must offer voice telephony service as set forth in 47 C.F.R. § 54.101(a)(1).
2. An ETC subject to a high-cost public interest obligation to offer broadband Internet access services⁷ must offer broadband services

⁴ See Section 214(e)(2) of the Act (47 U.S.C. § 214(e)(2)), which provides in pertinent part the following: “A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission.”

⁵ “The term ‘common carrier’ or ‘carrier’ means any person engaged as a common carrier for hire in interstate or foreign communications by wire or radio or in interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this Act; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.” 47 U.S.C. § 153(10).

⁶ *Lifeline Reform Order* paragraph 368.

⁷ Effective February 8, 2021, broadband Internet access services are no longer services supported by the universal service Lifeline program. Nevertheless, the FCC has preserved its authority to fund broadband Internet access services through the Lifeline program. See *Mozilla Corp. v. Fed. Comm’n Comm’n*, 940 F.3d 1 (D.C. Cir. 2019); *In the Matter of Restoring Internet Freedom, Bridging the Digital Divide for Low-Income Consumers, and Lifeline and Link Up Reform and Modernization*, WC Docket No. 17-108, WC Docket No. 17-287, WC Docket No. 11-42, Order on

within the areas where it receives high-cost support consistent with obligations particular to certain support programs, none of which apply to this case.

3. An ETC must comply with 47 C.F.R. §§ 54.400-423 relating to USF support for low-income consumers through the Lifeline program.⁸

Thus, under applicable law and regulations, the Commission must conduct a two-fold analysis prior to approving or denying a request for ETC designation. First, the Commission must determine whether the Company complies with 47 U.S.C. § 214(e)(1)-(2) and applicable FCC regulations, i.e., generally whether the Company offers supported universal services consistent with its regulatory obligations and whether the Company advertises the availability of and charges for those services through media of general distribution.⁹ Second, the Commission must determine whether granting the Company's Petition would be in the public interest. Additionally, the Commission may also consider factors reviewed by the FCC in its consideration of requests for ETC designation under 47 U.S.C. § 214(e)(6); nevertheless, as these factors are merely persuasive and not binding upon the Commission's evaluation of petitions for ETC designation, Staff has pretermitted discussion of the FCC's non-binding criteria.

Consistent with the above federal and State authority, the Commission issued the ETC General Order which created a list of thirteen public interest criteria to be applied on a case-specific basis to all requests for ETC designation in areas served by rural telephone carriers. Some of the public interest factors enumerated in the ETC General Order do not apply in this instance, since some of the underlying FCC and Commission regulations have been repealed or waived¹⁰ or were not subsequently adopted.¹¹ Accordingly, Staff has applied the remaining, applicable public interest criteria of the ETC General Order in its review of the specific facts presented by the Company's Petition.

Those criteria, as applicable to current, non-wireless ETC designation requests, are as follows:

Remand, FCC 20-151 (rel. Feb. 6, 2012); Order on Remand, 86 Fed. Reg. 994,1021 (Jan. 7, 2021) (to be codified at 47 C.F.R. § 54.101). *But see* 47 C.F.R. § 54.400(l) (2021), which contains the following definition of broadband Internet access service: "'Broadband Internet access service' is defined as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service."

⁸ 47 C.F.R. § 54.101(d) (2021).

⁹ Additional obligations apply to ETCs receiving Lifeline support for offering Lifeline services to low-income consumers. *See* 47 C.F.R. § 54.405 (2016).

¹⁰ For this reason, ordering paragraphs A(10),(13) of the ETC General Order does not apply to this docket.

¹¹ For this reason, ordering paragraph A(12) of the ETC General Order does not apply to this docket.

1. Benefits of increased competitive choice resulting from the designation.
2. Impact of multiple designations on the Universal Service Fund.
3. Unique advantages and disadvantages of the competitive service offering.
4. Commitment to quality of service by the competitive provider.
5. Fore wireless carriers, compliance with the CTIA Consumer Code for Wireless Services and submission of the number of consumer complaints per 1000 mobile headsets to the LPSC on a quarterly basis.
6. Information regarding the number of requests for service in the designated area that go unfulfilled and adoption of a process setting forth specific steps that will be considered if a request for service is received from a customer within the designated ETC service area, but outside the existing signal coverage area.
7. Compliance with all existing and future state and federal 911 and E-911 mandates.
8. Compliance with Sections 301A-C and 401 of the Commission's TSP Billing Order.

Staff Review

A. Compliance with 47 U.S.C. § 214(e) and 47 C.F.R. Part 54, Subparts B, C, and E

Section 214(e)(2) of the Act grants this Commission the primary responsibility for determining whether to approve a common carrier's request for designation as an ETC. Specifically, the Act provides that the Commission may in an area served by a rural telecommunications carrier, and shall in all other areas, designate more than one common carrier as an ETC for a service area designated by the Commission if the carrier meets the requirements of the Act. *See* 47 U.S.C. § 214(e)(2). The Company meets the definition of a common carrier.

In the course of reviewing the Petition, Staff issued one set of data requests to the Company requesting additional information on the Company's compliance with ETC designation requirements as well as its history of regulatory compliance in other jurisdictions, including the Company's prior and pending ETC applications and designations, if any. After reviewing the

Company's Petition and responses to Staff's set of data requests, Staff finds that the Company meets all of the compliance requirements to be designated as an ETC.

After reviewing the Company's Petition, and its responses to Staff's set of data requests, the Company has demonstrated compliance with the requirements outlined in 47 U.S.C. § 214(e)¹² and 47 C.F.R. § 54.101. The Company offers eligible voice telephony services with the functionalities supported by federal universal service support mechanisms in the Designated Service Areas. Eligible voice telephony service must provide:

1. Voice grade access to the public switched network;
2. Minutes of use for local service provided at no additional charge to end-users;
3. Access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911 (E-911), to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and
4. Toll limitation for qualifying low-income consumers.

The Company has committed to provide all of the supported services enumerated under 47 U.S.C. § 254(c) and 47 C.F.R. § 54.101(a) at the required levels of service quality provided by applicable regulations.

Further support for the Company's compliance is found in its regulatory history and current scope of service. The Company and its affiliates and subsidiaries have never been denied ETC designation by any jurisdiction, nor has any jurisdiction been suspended other than Wisconsin which was reinstated as set forth in the Company's application.¹³ Finally, according to the Company, under current ownership, there have been no complaints against the Company before federal and State regulatory authorities to date.

In its Petition, the Company indicated that it will advertise its federally supported services through media of general distribution as required by the FCC's rules. The Company will announce and advertise telecommunications services as an ETC in its Designated Service Areas and will publicize the availability of Lifeline services in a manner reasonably designed to reach those likely

¹² Tempo has provided evidence of a conditional forbearance from the FCC. The Company has further provided evidence of complying with 911 standards as well as a FCC-approved Compliance Plan.

¹³ See Wisconsin PSC Docket No. 9694-T1-101

to qualify for those services. The media of general distribution that the Company intends to utilize are direct mailing, internet, radio, television, and print advertising.

For the foregoing reasons, the Company's commitments, history of compliance to date, and planned advertising campaign justify the requested ETC designation, if the designation is determined to be in the public interest.

B. Public Interest Analysis

As set forth in 47 U.S.C. § 214(e)(2) and as previously discussed, State commissions are vested with the primary responsibility and authority for designating common carriers as ETCs. In connection with their reviews, State commissions must not only find that the applying carrier has proved that it in fact offers or will offer supported universal services, but the commissions must also find that the designation of the applying carrier is in the public interest. For this Commission, such a determination is made by reviewing the relevant criteria established by the ETC General Order as applied on a case-specific basis. What follows is Staff's analysis of each public interest criterion applicable to the specific facts presented by this Company's Petition.

1. Benefits of Increased Competitive Choice Resulting from ETC Designation.

The Company submitted reasons why granting it ETC designation will benefit the public interest. By offering these services, INFINTI states that it will further increase the choices available to consumers eligible for the Lifeline program. Increasing customer choice promotes competition and innovation, thus spurring other carriers to target low-income consumers with service offerings tailored to their needs, ultimately resulting in improved service to consumers. The FCC has acknowledged the benefits to customers of being able to choose from among a variety of telecommunications service providers. Increasing customer choice promotes competition and innovation.

Staff agrees with the Company that the designation will result in promoting competition for the benefit of consumers, and will have desirable effects upon the Louisiana market for Lifeline services by making these services more available and accessible, thereby supporting the goals of universal service. Designation of INFINTI as an ETC will help ensure that quality services are available at "just, reasonable, and affordable rates". If the Commission grants the request, it should create competitive pressure for other wireline providers within the proposed service area. Thus,

carriers will have incentive to provide better quality service, more service options, and potentially decrease prices.

2. Impact on the Universal Service Fund.

INFINITI states it will only increase the amount of USF Lifeline funding in situations where it obtains Lifeline customers not already enrolled in another ETC's Lifeline program; thus, the number of persons eligible for Lifeline support is the same regardless of the number of ETCs. Designating the Company as an ETC would only increase the amount of USF Lifeline funding in situations where it obtains customers not already enrolled in another ETC Lifeline program. Infiniti utilizes safeguards such as NLAD and the National Verifier, which screens for non-eligible customers or customers who are already receiving Lifeline support from another ETC.

The FCC has recognized that "any increase in the size of the [universal service] fund would be minimal and would be outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers"¹⁴

3. Unique Advantages and Disadvantages of the Competitive Service Offering.

At this time, INFINITI plans on providing access to competitive, and highly affordable wireless telecommunications service, which benefits qualifies consumers who either have no other service alternatives or who choose a wireless prepaid solution in lieu of more traditional service. Infiniti provides a larger calling area (as compared to traditional wireline carriers), the convenience and security afforded by mobile service, and a generous amount of voice and broadband access included without cost, as well as free access to caller ID, call waiting, and Voicemail features, and access to 911 services regardless of the number of voice minutes remaining on the Lifeline consumer's plan. These consumer services are an invaluable resource for cash-strapped consumers, and the prepaid nature of the service also provided an alternative for "unbaked" consumers. INFINITI'S lifeline offering will be provided over its Underlying Carriers' networks. INFINITI'S prepaid wireless service is likely to be an especially attractive option for low-income consumers because it alleviates customer concerns regarding hidden costs, varying monthly charges and long-term contract issues.

4. Commitment to Quality of Service by the Competitive Provider.

¹⁴ Application of "TracFone Wireless, Inc. for Forbearance from 47 U.S.C. 214(e)(1)(A) and 47 C.F.R. 54.201(i), Order, 20 FCC Rcd 15095 (2005) at para. 17.

In accordance with 47 C.F.R. § 54.202(a)(3), an ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards, and wireless applicants may satisfy this requirement with a commitment to comply with the Cellular Telecommunications and Internet Association's ("CTIA") Consumer Code for Wireless Service. INFINITI hereby commits to comply with the CTIA Consumer Code for Wireless Service.

5. Submission of records and documentation, on a quarterly basis, declaring the carrier's plans for use of universal service funding received as a result of this Commission's designation, including updates as to the progress of said projects.

INFINITI commits, to the extent required by the Commission, to submission of records and documentation, on a quarterly basis, declaring the carrier's plans for use of universal service funding received as a result of this Commission's designation, including updates as to the progress of said projects

6. Information Regarding the Number of Requests of Service in the Designated Area that Go Unfilled and Adoption of a Process Setting Forth Specific Steps that will be Considered if a Request for Service is Received from a Customer Within the Designated ETC Service Area, but Outside the Existing Signal Coverage Area.

INFINITI commits to providing information regarding the number of requests for service in the designated area that go unfulfilled and adoption of a process setting forth specific steps that will be considered if a request for service is received from a customer within the designated ETC service area, but outside the existing signal coverage area

7. Compliance with All Existing and Future State and Federal 911 and E-911 Mandates.

INFINITI certifies that it will comply with all existing and future state and federal 911 and E911 mandates.

8. Compliance with Sections 301A-C and 401 of the Commission's TSP billing order.

Pursuant to General Order dated June 1, 2020 in Docket No. U-24856 - In re: Customer Service Regulations for Telecommunications Service Providers, wireless TSPs were exempted from Sections 301A-C and 401 of the Commission's TSP Billing Order.

II. Staff Recommendation

On March 6, 2024, Staff filed its Staff Report and Recommendation. In this Report and Recommendation, Staff found that the Company has demonstrated, consistent with the

requirements of the Act, applicable FCC regulations, and the ETC General Order, that it will make available to its customers' universal service offerings that provide all of the services supported by the federal universal service program and that it will appropriately advertise the availability of those services. The Company has committed to provide all of the services supported by the federal universal service program as defined by 47 C.F.R. § 54.101. Finally, the Company has represented that it will advertise the availability of those services using media of general distribution and in a manner reasonably designed to reach those likely to qualify for those services.

Additionally, following its review, Staff is of the position that granting ETC designation to the Company is consistent with the Commission's public interest criteria as adopted in its ETC General Order. Thus, Staff finds that designation of the Company as an ETC for the limited purposes delineated herein is in the public interest.

Accordingly, Staff recommended that the Commission grant the Company's Petition to be designated as an ETC in the Designated Service Areas so that the Company may provide supported voice and broadband services solely for the purpose of receiving Lifeline support, subject to certain conditions.

Commission Action

On motion of Chairman Francis, seconded by Commissioner Skrmetta, and unanimously adopted, the Commission voted to accept the Staff Report and Recommendation filed into the record on March 6, 2024.

THEREFORE, IT IS ORDERED:

The Staff Report and Recommendation filed into the record on March 6, 2024 is adopted. The Company is designated as an ETC in the Designated Service Area so that the Company may provide supported voice and broadband services solely for the purpose of receiving Lifeline support, subject to the following conditions:

1. To the extent not already provided, the Company will provide Staff with a copy of the proposed media advertisement(s) for its federally supported services intended for general distribution in Louisiana for Staff approval within thirty (30) days of the date of issuance of an order in this proceeding. Staff will approve or provide recommended changes to the proposed media advertisement(s) within thirty (30) days of receipt of the same.

2. The Company will comply with the requirements set forth in 47 C.F.R. § 54.422(c), which mandates that certain information be filed with the Administrator (i.e., the Universal Service Administrative Company) upon a State commission designating an ETC, within sixty (60) days of the issuance of an order from the Commission designating the Company as an ETC. The Company shall file proof of such compliance into the record of this docket within thirty (30) days of performing such compliance.
3. The Company's ETC designation is conditioned upon full and timely compliance with all applicable rules and regulations of State and federal agencies, including, but not limited to, the rules and regulations of the Commission and the FCC. The Commission reserves the right to suspend or revoke the Company's ETC designation in the event of non-compliance and/or untimely compliance with the same.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
May 13th, 2024



A handwritten signature in blue ink, appearing to read "Brandon M. Frey".

BRANDON M. FREY
SECRETARY

/S/ MIKE FRANCIS
DISTRICT IV
CHAIRMAN MIKE FRANCIS

/S/ DAVANTE LEWIS
DISTRICT III
VICE CHAIRMAN DAVANTE LEWIS

/S/ FOSTER L. CAMPBELL
DISTRICT V
COMMISSIONER FOSTER L. CAMPBELL

/S/ ERIC F. SKRMETTA
DISTRICT I
COMMISSIONER ERIC F. SKRMETTA

/S/ CRAIG GREENE
DISTRICT II
COMMISSIONER CRAIG GREENE