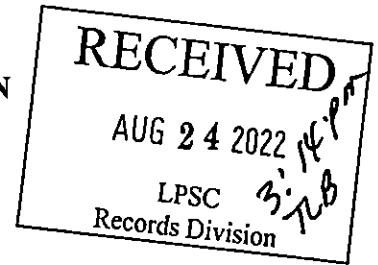


BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

DOCKET NO. S-36343

NORTHEAST TELEPHONE SERVICES, INC.,
EX PARTE.



In re: Petition for designation as a Lifeline-Only Eligible Telecommunications Carrier within Louisiana.

STAFF REPORT AND RECOMMENDATION

I. Overview

The Louisiana Public Service Commission Staff ("Staff") respectfully submits this Staff Report and Recommendation regarding the petition ("Petition") of Northeast Telephone Services, Inc., ("Company" or "NTS") seeking designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e) of the Communications Act of 1934, as amended ("Act") (47 U.S.C. § 214(e)); 47 C.F.R. Part 54; and the Louisiana Public Service Commission's ("Commission's") General Order No. R-27841 dated May 20, 2004 ("ETC General Order").¹ The Petition seeks this designation solely to provide Lifeline services to qualifying Louisiana consumers. For the reasons stated herein, Staff recommends that the Commission grant the Petition for ETC designation to provide Lifeline services.

II. Background and Procedural History

NTS was formed in 1986 and is a wholly owned subsidiary of Northeast Louisiana Telephone Company, Inc., which has been a rural Incumbent Local Exchange Carrier ("ILEC") since 1946. Currently, NTS operates as a Competitive Local Exchange Carrier ("CLEC")² and Internet Service Provider ("ISP"). Upon designation as a Lifeline-Only ETC, NTS will provide supported services,

¹ See Docket No. R-27841, Re: Louisiana Public Service Commission, ex parte, *In re: Establishment of public interest criteria applicable to telecommunications carriers seeking Eligible Telecommunications Carrier (ETC) designation pursuant to 47 USC 214(e)(2) in areas served by rural telephone companies.*

² See LPSC Docket No. S-34614, Northeast Telephone Services, Inc., ex parte. *In re: Request for a Certificate of Authority to Operate as a Competitive Local Exchange Carrier in Louisiana.*

including voice and broadband, throughout the designated area, and will offer Lifeline voice and broadband services to qualified low-income customers.

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 voice and below-minimum-standard broadband service for eligible low-income subscribers,³ 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).

On April 26, 2022, the Company filed its Petition with the Commission seeking to be designated as an ETC. Notice of the request was published in the Commission's Official Bulletin No. 1271 dated May 13, 2021, with an intervention period of fifteen days. No intervention or protest was filed. As set forth in the Petition, the Company plans to offer all of the supported services required by the Act through its own facilities or a combination of own facilities and resale of another carrier's services. Since the Company intends to provide support services by using its own facilities or a combination of own facilities and resale of another carrier's services, the Company does not need to seek FCC forbearance from the requirement that ETCs must provide services using their own facilities, at least in part.⁴

III. 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:

³ 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.*

⁴ See *In the Matter of Lifeline and Link-Up Reform and Modernization, Lifeline and Link-Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*"), at 158, ¶ 368 and at 160, ¶¶ 373, 379.

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.

Pursuant to Section 214(e)(2) of the Act (47 U.S.C. § 214(e)(2)),⁵ State commissions are given the authority to designate as ETCs those common carriers⁶ 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). 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

⁵ 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.”

⁶ “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).

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 the Company does not seek to provide wireless telephony services, i.e., commercial mobile radio services and private mobile radio services,¹⁰ and since some of the underlying FCC and Commission regulations have been repealed or waived¹¹ or were not subsequently adopted.¹²

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(6),(9) of the ETC General Order does not apply to this docket.

¹¹ For this reason, ordering paragraphs A(10),(13) of the ETC General Order does not apply to this docket.

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

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:

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. 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.
6. Compliance with all existing and future state and federal 911 and E-911 mandates.
7. Compliance with Sections 301A-C and 401 of the Commission's TSP Billing Order.

IV. 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.

After reviewing the Company's Petition, Staff finds that the Company meets all of the compliance requirements to be designated as an ETC. Based on the Company's Petition, the Company has demonstrated compliance with the requirements outlined in 47 U.S.C. § 214(e) 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 suspended or revoked ETC designation granted to the Company or suspended or delayed consideration of ETC designation requested by the Company. In addition, the Company currently holds the authority to operate as a telecommunications service provider Louisiana as a CLEC¹³ and is a wholly owned subsidiary of Northeast Louisiana Telephone Company, Inc., which has been a ILEC since 1946. The Company has informed Staff of an informal complaint with the FCC that has been resolved and closed.¹⁴ The Company has not disclosed any further complaints with state or federal regulators.

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

¹³ See LPSC Docket No. S-34614

¹⁴ NTS informed Staff that "there was an informal complaint lodged with the FCC in March 2021 (#4593709) by an ISP customer concerning the customary service charge of \$50 for on-site technician visits, which has been resolved and closed. The full complaint text was "My ISP charged me \$50.00 for a technician to plug in an uninterruptable power supply (UPS)." After responding with the attached letter via the CCC portal, the complaint was closed and removed from the Company's CCC portal.

to qualify for those services. The media of general distribution that the Company intends to utilize are newspaper, bill inserts, mail circular, website, radio and targeted advertising of residential customers who would potentially qualify for the program.

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.

NTS states that it will use its facilities based network to provide both voice and high-speed internet services to qualifying and eligible low-income customers. By offering this service, NTS states that it will further increase the choices available to consumers eligible for the Lifeline program. 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 increased competition for services. 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 of Multiple Designations on the Universal Service Fund.

NTS states that Lifeline support is portable because such support moves with the customer to the carrier of the customer's choice. 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. 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”¹⁵

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

The Company cites that it will make use of its current infrastructure to provide both voice and high speed broadband internet services for qualifying eligible low-income customers in its ETC designated area. NTS believes that because of their infrastructure there are no disadvantages to certifying the Company as an ETC for Lifeline purposes.

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

NTS certifies that it will comply with the service requirements applicable to Lifeline support. NTS also certifies that will provide high quality, high speed broadband internet services and voice service to qualifying and eligible low-income customers using its own FTTH facilities-based network.

5. 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.

NTS commits to providing supported service throughout its ETC designated area to all customers making a reasonable request pursuant to 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d). The Company also commits to providing service within a reasonable period of time to potential customers who are within NTS’s ETC Designated Area but outside of the existing network coverage. This commitment is contingent upon NTS being able to (1) modify, adjust, or replace network or customer facilities or (2) reselling services from another carrier’s facilities to provide the service.

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

¹⁵ 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.

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

7. Compliance with Sections 301A-C and 401 of the Commission's TSP Billing Order.

NTS already has a tariff on file with the LPSC for CMRS and Private Mobile Radio Services ("PMRS") services. This tariff identifies and describes terms, rates, and conditions of services offered in the State of Louisiana. NTS states that the 401(B) requirement is not applicable to this application.

V. Conclusion and Staff Recommendation

Staff finds 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 recommends 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 all of the following conditions:

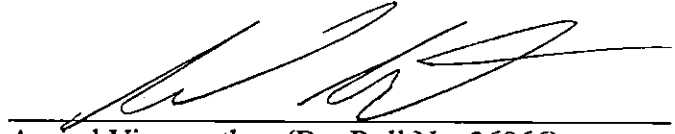
1. To the extent not already provided, the Company will provide Staff with a copy of the proposed media advertisement(s) for its federally supported services intended for general distribution in Louisiana for Staff approval within thirty (30) days of the date of issuance of an order in this proceeding.

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 shall file a new petition with the Commission if the Company seeks to amend its ETC designation to allow it to provide federally supported services through resale only or to provide wireless services or to provide any federally supported services outside the Designated Service Areas.
4. 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.

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Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of August, 2022, served copies of the foregoing pleading upon all known parties of this proceedings by electronic mail.



Arvind Viswanathan

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as of 8/24/2022**

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