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BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

DOCKET NO. S-35903

CITY OF LAFAYETTE, LOUISIANA, D/B/A LUS FIBER,
EX PARTE

In re: Petition for Designation as an Eligible Telecommunications Carrier.

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 the City of Lafayette, Louisiana, d/b/a LUS Fiber, (“LUS Fiber” or “Company”) seeking designation as an Eligible Telecommunications Carrier (“ETC”). LUS Fiber is requesting designation as an ETC for the purpose of participating in Federal low-income Lifeline Program to be allowed to offer Federal Lifeline benefits to eligible and qualifying customers in additional census blocks (the “Designated Service Areas”) located in Lafayette, Louisiana. For the reasons stated herein, Staff recommends LUS Fiber’s petition for its designation as an ETC in the city of Lafayette, Louisiana, for the purposes of receiving low-income Federal support, be granted.

II. Background and Procedural History

LUS Fiber is the trade name of the Communications System Department of Lafayette City-Parish Consolidated Government, a political subdivision of the State of Louisiana. Pursuant to the Home Rule Charter of Lafayette City-Parish Consolidated Government, the City of Lafayette, Louisiana (the “City”) also retains its status as a political subdivision of the State of Louisiana, and the governing authority of LUS Fiber is the Lafayette City Council. The principal place of business of LUS Fiber is located at 700 St. John Street, Suite 300, Lafayette, Louisiana 70501. LUS Fiber currently operates a 100 percent fiber optic network (the “Communications System”) that is used to provide communications to retail and wholesale customers, as well as within the City’s utilities system, parts of Lafayette Parish local government, parts of the Lafayette Parish

School System, and the University of Louisiana-Lafayette. LUS Fiber also holds a Louisiana statewide video franchise and will soon provide services to portions of St. Martin and Iberia Parishes pursuant to a \$3.1 million dollar grant from the Economic Development Administration of the United States Department of Commerce.

The present Communications System backbone includes multiple 10-gigabit circuits deployed in multiple loops for greater redundancy that span the entire City of Lafayette and connect with the national fiber backbone through contacts with multiple providers. The Communications System consists of a 125-mile, multiple-strand fiber backbone system providing wholesale broadband and high-speed Internet access with direct connections to major Tier 1 providers. The backbone system serves as the core network to provide broadband and high-speed internet to wholesale customers and voice, video, Internet, and data services to retail customers. The Communications System maintains several wholesale contracts with major carriers, internet service providers, and application service providers that provide bandwidth, Internet, and telephone services on a retail basis to medium and large business customers. Currently, wholesale customers currently account for approximately 10 percent of the annual Communications System.

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,¹ 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 March 3, 2021, the Company filed its Petition with the Commission seeking its designation as an Eligible Telecommunications Carrier. Notice of the request was published in the Commission's Official Bulletin No. 1240 dated March 5, 2021, with an intervention period of

¹ *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.*

twenty-five 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.²

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:

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)),³ State commissions are given the authority to designate as ETCs those common carriers⁴ 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

² 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.

³ 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."

⁴ "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).

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 services⁵ must offer broadband services 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.⁶

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

⁵ 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 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.”

⁶ 47 C.F.R. § 54.101(d) (2021).

for those services through media of general distribution.⁷ 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 prepermitted 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,⁸ and since some of the underlying FCC and Commission regulations have been repealed or waived⁹ or were not subsequently adopted.¹⁰ 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.

⁷ Additional obligations apply to ETCs receiving Lifeline support for offering Lifeline services to low-income consumers. *See* 47 C.F.R. § 54.405 (2016).

⁸ For this reason, ordering paragraphs A(6),(9) of the ETC General Order does not apply to this docket.

⁹ For this reason, ordering paragraphs A(10),(13) of the ETC General Order does not apply to this docket.

¹⁰ For this reason, ordering paragraph A(12) of the ETC General Order does not apply to this docket.

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.

In the course of reviewing the Petition, Staff requested 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. The Company informed Staff that it had no other applications pending before another jurisdiction. After reviewing the Company's Petition and responses to Staff's questions, Staff finds that the Company meets all of the compliance requirements to be designated as an ETC.

Based on the Company's Petition and its responses, 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. Further the Company is unaware of any complaints or allegations being filed at the FCC level. Staff requested LUS Fiber provide staff with information regarding the proposed expansion into St. Martin and Iberia Parishes. After extensive conversations, LUS Fiber provided Letters of Support from Mr. Chester R. Ceders, St. Martin Parish President, Mr. M. Larry Richard, Iberia Parish President, and Ms. Jennifer Stelly, Executive Director of St. Martin Economic Development Authority. Staff is satisfied with this response from LUS Fiber.

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 to qualify for those services.

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. The Company's designation as an ETC would allow the Company to provide residential telephone and high-speed broadband internet services to low-income Lifeline-eligible customers. 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. Finally, expansion of LUS Fiber's ETC designation will serve the public interest by providing Lifeline eligible customers a greater range of choices.

Staff agrees with the FCC that granting the Company's ETC designation will result in increased competitive choice. If the Commission grants LUS Fiber's ETC designation, 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.

Lifeline subsidies are portable, i.e., they move with the customer to the customer's carrier of choice. Accordingly, in the event that a customer changes carriers, there would be no increase in Lifeline support. If the Company provides Lifeline service to an entirely new recipient, there would be an increase in universal service funding, but such an increase would be relatively minimal and, in any case, outweighed by the increased benefits of greater access to low-income consumers.

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.

Finally, 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 customers.”¹¹

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

LUS Fiber intends to use its own fiber-based facilities network to provide voice services and high-speed broadband internet service to qualifying and eligible low-income customers in its ETC designated area. The Company posits that there are no disadvantages to LUS Fiber’s competitive service offering for low-income customers.

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

The Company is committed to providing high quality service to qualifying customers. LUS Fiber will comply with this commitment by making use of its already in existence fiber based facilities 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 Area, but Outside the Existing Coverage Area.

LUS Fiber states that it will provide voice and/or broadband, to the best of its ability, within ten 10 business days upon the request of a customer within its proposed expanded, Lifeline-only ETC designation area as soon as LUS Fiber has deployed fiber and launched broadband and voice services in the area. If the Company cannot provide reasonably service a customer, then it will report the unfulfilled request within thirty (30) days of such a determination.

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

LUS Fiber certifies that it will continue to comply with all existing and future State and Federal requirements regarding consumer protection and service quality standards.

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

The Company states that it will commit to satisfying all applicable state and federal requirements regarding consumer protection and service quality standards, reporting consumer

¹¹ 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 Red 15095 (2005) at ¶ 17.

protection and service quality information annually in accordance with 47 C.F.R. §54.422, and satisfying all consumer protection and service quality standards.

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 application for ETC designation is consistent with the Commission's public interest criteria as adopted in its ETC General Order. Thus, Staff finds that application for ETC designation to allow the Company to offer Federal Lifeline benefits to eligible and qualifying customers delineated herein is in the public interest.

Accordingly, Staff recommends that the Commission grant the Company's Petition to expand its ETC designation in order to be allowed to offer Federal Lifeline benefits to eligible and qualifying customers located within the Designated Service Areas designated by the Company's Petition, 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.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of February, 2023, served copies of the foregoing pleading upon all known parties of this proceedings by electronic mail.


Arvind Viswanathan

**Service List for S-35903
as of 2/23/2023**

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