

June 3, 2014

PUBLIC DOCUMENT

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Total Call Mobile, Inc. (TCM) Petition for Designation as an Eligible
Telecommunications Carrier (Low Income Only) in Minnesota**
Docket No. P6892/M-12-1182

Dear Dr. Haar:

Attached are the **PUBLIC** comments of the Minnesota Department of Commerce in the above referenced matter.

The petition was filed on October 29, 2012 by:

Hideki Kato
Chief Operating officer for Total Call Mobile

And

Robert Yap, Esq.
Chief Administrative Officer and General Counsel
Total Call International, Inc.
1411 W. 190th St., Suite 700
Gardena, GA 90248

The Department recommends that the Commission approve the petition with conditions. The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ KATHERINE DOHERTY
Rates Analyst

KD/lt
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

PUBLIC COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET No. P6891/M-12-1182

I. PROCEDURAL BACKGROUND

On October 29, 2012, Total Call Mobile, Inc. (TCM) filed a petition seeking designation as an Eligible Telecommunications Carrier (ETC) in Minnesota for the purpose of receiving federal universal service support solely for providing Lifeline (and Linkup) service to qualified customers.

Between November 2012 and August 2013 the Minnesota Public Utilities Commission (Commission) extended the initial comment period several times, at the request of the Department of Commerce.

On September 16, 2013, the Minnesota Department of Commerce (Department) filed a letter indicating that it had not received responses to its second and third requests for information from TCM (sent May 29 and May 30, 2013), and that the petition could not be considered complete until responses had been received.

- On February 25, 2014, the Department filed comments indicating that no responses had been received and recommending that the petition be denied.
- On February 25, 2014, TCM filed responses to the outstanding information requests.
- On February 28, 2014, the Department requested an extension to review the responses and file supplemental comments.
- On April 2, 2014, TCM filed responses to the Department's requests for additional clarifying information.
- On April 25, 2014, TCM filed a proposed informational tariff.

The Commission has extended the period for supplemental comments three times, at the Department's request, most recently to June 3, 2014.

II. APPLICABLE LAW

FCC Rules 47 C.F.R. §201(b) and (c) provide for state designation of ETCs, stating that:

b) A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.

c) Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

FCC Rule 47 C.F.R. 54.201 (d) requires that a common carrier designated as an eligible telecommunications carrier, must (throughout its designated service area):

- (1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, 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
- (2) Advertise the availability of such services and the charges therefore using media of general distribution.

FCC Rule 47 C.F.R. §54.101 (a) defines the supported services that must be offered by eligible telecommunications carriers and states:

- (a) *Services designated for support.* Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

FCC Rule 47 C.F.R. §54.202 sets forth specific requirements that common carriers must meet in order to be designated as an ETC under section 214 (e)(6) of the Telecommunications Act:

- (a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:
 - (i) Certify that it will comply with the service requirements applicable to the support that it receives.
 - (ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements. ***Except, a common carrier seeking designation as an eligible telecommunications carrier in order to provide supported services only under subpart E of this part does not need to submit such a five-year plan.***(emphasis added)
- (2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an

external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.

(5) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

b) Public interest standard. Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

47 C.F.R. §54.410 (a) as amended June 25, 2013, states that:

All eligible telecommunications carriers must implement policies and procedures for ensuring that their Lifeline subscribers are eligible to receive Lifeline services. An eligible telecommunications carrier may not provide a consumer with an activated device that it represents enables use of Lifeline-supported service, nor may it activate service that it represents

to be Lifeline service, unless and until it has (1) confirmed that the consumer is a qualifying low-income consumer pursuant to §54.409, and (2) completed the eligibility determination and certification required by this section and §§54.404-54.405, and completed any other necessary enrollment steps.

47 C.F.R §54.417(a) imposes record keeping requirements on ETCs, stating:

- (a) Eligible telecommunications carriers must maintain records to document compliance with all Commission and state requirements governing the Lifeline and Tribal Link Up program for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Notwithstanding the preceding sentence, eligible telecommunications carriers must maintain the documentation required in §54.410(d) and (f) for as long as the subscriber receives Lifeline service from that eligible telecommunications carrier.

47 C.F.R §54.422(a) sets forth the requirements for annual certifications required of all carriers (including Lifeline-only ETCs) that provide Lifeline service and receive low-income support, and states:

- (a) In order to receive support under this subpart, an eligible telecommunications carrier must annually report:
 - (1) The company name, names of the company's holding company, operating companies and affiliates, and any branding (a "dba," or "doing-business-as company" or brand designation) as well as relevant universal service identifiers for each such entity by Study Area Code. For purposes of this paragraph, "affiliates" has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended; and
 - (2) Information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may

- (3) provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

47 C.F.R. §54.422(b)¹ sets forth additional annual certifications required of eligible telecommunications carriers that receive Lifeline *only* support.

- (b) In order to receive support under this subpart, a common carrier that is designated as an eligible telecommunications carrier under section 214(e) (6) of the Act and does not receive support under subpart D of this part must annually provide:

- (1) Detailed information on any outage in the prior calendar year, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which the eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

- (i) At least ten percent of the end users served in a designated service area; or

- (ii) A 911 special facility, as defined in 47 CFR 4.5(e).

- (iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

- (A) The date and time of onset of the outage;

- (B) A brief description of the outage and its resolution;

- (C) The particular services affected;

- (D) The geographic areas affected by the outage;

- (E) Steps taken to prevent a similar situation in the future; and

- (F) The number of customers affected.

¹ Similar annual reporting requirements for ETCs that receive high cost support are set forth in 47 C.F.R. §54.313.

- (2) The number of complaints per 1,000 connections (fixed or mobile) in the prior calendar year;
- (3) Certification of compliance with applicable service quality standards and consumer protection rules;
- (4) Certification that the carrier is able to function in emergency situations as set forth in §54.202(a) (2).

47 C.F.R. §54.422(c) requires that:

All reports required by this section must be filed with the Office of the Secretary of the Commission, and with the Administrator. Such reports must also be filed with the relevant state commissions and the relevant authority in a U.S. territory or Tribal governments, as appropriate.

III. STATEMENT OF ISSUE

- Whether TCM has the intent and capability of offering and advertising voice telephony service to Lifeline-qualified customers throughout its requested service area.
- Whether designation of TCM as an ETC, limited to the provision of Lifeline service, is in the public interest.

IV. ANALYSIS

TCM is a Common Carrier

TCM, as a Commercial Mobile Radio Service (CMRS) provider, is a common carrier² as defined in 47 U.S.C. §153 (11).³

² TCM Petition, page 10.

³ 47 U.S.C. § 153 (11) states: 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 interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio TCM broadcasting shall not be deemed a common carrier.

TCM Will Offer Voice Telephony

TCM states that it provides voice grade access to the public switched network or its functional equivalent, minutes of use for local service provided at no additional charge to end users, and access to 911 and enhanced 911 emergency services.⁴

TCM acknowledges that 47 C.F.R 54.101(a) requires that toll limitation service be available to qualifying low-income consumers. The FCC, however, noted, in its Lifeline Linkup Reform Order that “ETCs are not required to offer toll limitation service to low income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.” TCM does offer a set amount of minutes that do not distinguish between toll and non-toll calls, and as prepaid services, TCM’s offerings inherently allow Lifeline subscribers to control their usage.⁵

TCM Has Received Forbearance from the Facilities Requirement

TCM provides service through resale of services obtained from underlying carriers. TCM does not meet the “own facilities” requirement, but received FCC approval of its Revised Compliance Plan (Compliance Plan) on May 25, 2012, enabling it to take advantage of the FCC’s blanket grant of forbearance from the facilities based requirement. TCM included a copy of the approved Compliance Plan with its October 29, 2012 filing.

TCM’s Requested Service Area

TCM provided a list of Minnesota wire centers throughout which it proposes to offer Lifeline service in Exhibit A attached to its proposed informational tariff provided on April 25, 2014. TCM has met the requirement to describe its requested service area.⁶

TCM’s Intent to Advertise the Supported Services throughout its Requested Service Area

47 C.F.R. §54.405 requires that ETCs make Lifeline service available to qualifying low-income consumers, and that the ETC “publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.”⁷

ETCs must “indicate on all materials describing the service, using easily understood language, that it is a Lifeline service, that Lifeline is a government assistance program, the

⁴ TCM initial petition, page 11-12).

⁵ Id. Page 12.

⁶ The Department notes that minor corrections to the list of wire centers may be made as a compliance item with the filing of a revised informational tariff. The Department will work with TCM to ensure that the service area description is consistent with Minnesota exchanges as defined by the Commission.

⁷ 47 C.F.R. §54.405 subparts (a) and (b).

service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household.⁸

TCM stated in its initial petition that:

[TCM] will advertise its services in a manner reasonably designed to reach those most likely to qualify for Lifeline services, and use multiple medi[a] for outreach, including direct mail and the internet. [TCM] will engage in advertising campaigns specifically targeted to reach those likely to qualify for Lifeline services, promoting the availability of cost-effective wireless services to this neglected consumer segment. [TCM] will also promote the availability of its Lifeline offerings by distributing brochures through various state and local social service agencies, if permitted, in order to inform customers of the availability of its Lifeline services.⁹

In response to the Department's information request #1 that TCM provide a formal advertising plan listing the specific means by which TCM will advertise the availability of its services, and the availability of Lifeline throughout its designated service area, TCM responded that:

[TRADE SECRET INFORMATION HAS BEEN EXCISED]

The Department inquired formally (in Information Request #24 sent May 30, 2013), whether, if designated as an ETC on a conditional basis, TCM would commit to file, within 30 days of the Commission's order, a formal advertising plan within 30 days of the Commission's order, including the following specifics:

- Details about the frequency of advertising and the frequency of "marketing events";
- A description of how the "marketing events" will be conducted (by whom, and where);
- The specific information that is to be communicated to consumers;
- Information that will be available on TCM's website; and
- Any other specific method by which TCM will advertise the availability of Lifeline service generally, and TCM's Lifeline offerings specifically.

⁸ Id., subpart (c).

⁹ TCM Initial Petition page 13.

On February 25, 2014, TCM responded to the information request stating that “if designated as an ETC on a conditional basis, TCM commits to filing a formal advertising plan with additional details about its marketing plans within 30 days of the Commission’s order.”¹⁰

The Department recommends that the Commission incorporate TCM’s commitment as a condition in its order, if TCM is designated as an ETC.

TCM’s Willingness to Comply with Applicable Service Requirements

TCM, if designated, will be bound by the service requirements codified in FCC Rules 47 C.F.R. 54.405, 54.407 and 54.410.

47 C.F.R. §54.405 subparts (a) and (b) require that ETCs a) must make Lifeline service available to low income consumers and b) must publicize the availability of Lifeline service “in a manner reasonably designed to reach those most likely to qualify for the service.

Subpart (c) requires specific disclosures in marketing materials.

47 C.F.R. §54.407 addresses reimbursement for offering Lifeline and states, in part:

Section 54.407(a) of the FCC’s rules requires that Lifeline support shall be provided directly to an eligible telecommunications carrier, based on the number of actual qualifying low income consumers it serves.” Pursuant to Section 54.407(b) of the rules, an ETC may receive Lifeline support ***only for qualifying low-income consumers***. A “qualifying low-income consumer” must meet the eligibility criteria set forth in Section 54.409 of the rules, including the requirement that he or she “must not already be receiving a Lifeline service,” and must, pursuant to Section 54.410(d) of the rules, certify his/her eligibility to receive Lifeline service.

Section 54.410(a) of the Commission’s rules requires further that ETCs have procedures in place “to ensure that their Lifeline subscribers are eligible to receive Lifeline services.” Such eligibility requires that a consumer seeking Lifeline service may not already receive Lifeline service. This obligation therefore requires, among other steps, that an ETC search its own internal records to ensure that the ETC does not provide duplicate Lifeline service to any subscriber.

¹⁰ TCM response to Department IR #24.

The FCC's rules further prohibit an ETC from seeking reimbursement for providing Lifeline service to a subscriber unless the ETC has confirmed the subscriber's eligibility to receive Lifeline service. In accordance with Section 54.410, before an ETC may seek reimbursement, it must receive a certification of eligibility from the prospective subscriber that demonstrates that the subscriber meets the income-based and program-based eligibility criteria for receiving Lifeline service, and that the subscriber is not already receiving Lifeline service.

TCM certifies in its FCC Compliance Plan that it does and will continue to comply with the service requirements applicable to the support it receives (as required by 47 C.F.R. 54.202(a)) and describes how it will comply with the FCC's new requirements, rules, and policies.

TCM has met the requirement to certify its intent to comply with the FCC's applicable service requirements.

TCM's Ability to Remain Functional in Emergency Situations

TCM states that it provides nationwide, prepaid and postpaid wireless telecommunications services to consumers by reselling the network services of Sprint.¹¹ TCM notes, on page 16 of its petition that it "provides service in Minnesota by reselling the services of its underlying wireless network carrier [and that] [t]hrough its agreement with its underlying carrier, Sprint PCS (Sprint), Total Call will provide its customers with the same ability to remain functional in emergency situations as is currently provided by the ILECs to their own customers."¹²

On February 25, 2014, TCM clarified its response, indicating that Total Call will provide its customers with the same ability to remain functional in emergency situations as is currently provided by its underlying carrier (Sprint) to its own customers.

The Department notes that Sprint has a significant presence in the state, and that Sprint has provided certification in other dockets before the Commission that it has reasonable amounts of back-up power to ensure functionality without an external power source, the ability to reroute traffic around the damaged facilities and the ability to manage traffic spikes resulting from emergency situations.

The Department believes sufficient information has been provided for the Commission to conclude, based on the certifications provided by TCM and by Sprint, that TCM has the capability of remaining functional in a variety of emergency situations.

¹¹ Id., Page 2.

¹² Id., page 16.

Service quality, Consumer Protection, and Customer Service Commitments

TCM states on pages 16-17 of its petition that it commits to comply with the Cellular Telecommunications and Internet Association (CTIA) Consumer Code, which the FCC has found to be an adequate commitment to consumer protection and service quality standards, since its inception. The CTIA code includes, among other requirements and voluntary commitments:

- Provisions related to disclosure of all rates, terms and conditions to consumers at the point of sale and on the carriers' websites.
- A commitment to make coverage maps available to consumers at the point of sale and on their websites.
- A commitment to provide specific disclosures in advertising.
- A commitment to provide ready access to customer service, specifically:
- Customers will be provided a toll-free telephone number to access a carrier's customer service during normal business hours.
- Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers' web sites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier's customer service departments.
- A commitment to respond promptly (in writing, within 30 days) to consumer inquiries and complaints received from government agencies.

TCM has met the requirements of 47 C.F.R. §54.202 (a) (2).

Financial and Technical Capability

Citing to the comments of the Indiana Commission (in the Lifeline-Linkup Reform Docket) that "companies that have made a business case to service a certain market in a state prior to receiving Lifeline subsidies may be less inclined to risk being cited for non-compliance with the program,"¹³ the FCC determined that a carrier seeking designation as an ETC for the purpose of offering only Lifeline service must demonstrate that it is financially and technically capable of providing the supported (Lifeline) service in compliance with the applicable rules.

Specifically, the FCC stated that "among the relevant considerations for such a showing would be whether the applicant previously offered services to non-Lifeline consumers, how

¹³ Lifeline-Linkup Reform Order, fn 1010.

long it has been in business, whether the applicant intends to rely exclusively on USF disbursements to operate, whether the applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement or ETC revocation in any state.”¹⁴

TCM states, in its FCC Compliance Plan that it currently offers nationwide non-Lifeline prepaid services using the Sprint network. TCM is a wholly owned subsidiary of Total Call International, a national prepaid telecommunications services provider, which has been providing telecommunications services to customers for over ten years. TCM states that it does not and has no intent to offer exclusively Lifeline supported services, and is therefore not exclusively dependent on universal service disbursements to operate. TCM indicates that it has not been the subject of any enforcement actions by the FCC, nor has it been subject to ETC revocation proceedings in any state.¹⁵

At the Department’s request, TCM has provided its most recently available (as of December 31, 2012) financial statements, which indicate significant assets and positive equity. The Department believes that TCM has adequately demonstrated its financial and technical ability to offer Lifeline service to qualified consumers in Minnesota.

TCM’s Description of its Lifeline Offerings

TCM offers Lifeline service under the name “Total Call Mobile.”

In its initial petition, TCM proposed to offer customers the following choices of Lifeline plans:

1. 150 minute per month plan which includes international calling to 250 select cities in 36 countries (listed in Exhibit 2 attached to its petition) at no charge.
2. 250 minutes at no charge, including texting at the rate of one text per minute.

In its February 25, 2014 responses to Department information requests, TCM proposed to amend its Lifeline offering to eliminate the 150 minute plan, and introduce 2 Lifeline plans for qualified residents of tribal lands. In response to Department information requests for clarification, TCM provided additional information and proposed revisions to its Lifeline offerings.

TCM’s newly proposed Lifeline offerings include the following:

¹⁴ Id., para. 388.

¹⁵ TCM FCC Compliance Plan, page 22-23.

Non-Tribal Service Offerings

Non-Tribal Plan 1: Lifeline 250 Minute Plan

- 250 anytime minutes per month (as an option, customer may use text, inbound or outbound, which consumes 1 plan minute)
- Additional usage is priced at 10 cents per minute and 5 cents per text message.

Non-Tribal Plans 2, 3 & 4: Lifeline Credit - Discount Plan (30-Day Plans)

Lifeline eligible non-tribal customers may choose the 30-day 1000 Minute plan; the 30-day Unlimited Talk & Text plan; the 30-day Unlimited Talk, Text & Data at a \$10 discount from retail price as follows:

- 1000 Minute Plan for 30 days at \$19.99 (retail price is \$29.99) (*i.e.*, Plan 2) – 250 anytime minutes per month (as an option, customer may use text, inbound or outbound, which consumes 1 plan minute)
- Unlimited Talk & Text for 30 days at \$29.99 (retail price is \$39.99) (*i.e.*, Plan 3)
- Unlimited Talk, Text & Data for 30 days at \$39.99 (retail price is \$49.99) (*i.e.*, Plan 4)

Tribal Plan 1: Unlimited Talk & Text Plan

- Net cost to Lifeline customer: \$0

Tribal Plan 2: Lifeline Credit - Discount Plan

- Lifeline eligible tribal customers may choose the 30-day Unlimited Talk, Text & Data at a \$39.99 discount off of retail price.
- All plans include a basic handset, voicemail, caller-id and call waiting, free calls to customer service and 911.

The Department believes that TCM has adequately described its Lifeline offerings to meet the requirements of 47 C.F.R. §54.202(a) (5).

PSAP Certification

The FCC determined, in the Lifeline-Linkup Reform order, that it would no longer require Lifeline-only ETC applicants (in petitions brought before the FCC) to obtain certification from each PSAP that the applicants' phones are 911 and E911 compliant. However, the FCC specifically preserved states' rights to do so.

The Department of Public Safety (DPS) conducts a streamlined review on behalf of all Minnesota PSAPS, requiring that the applicant submit a sample handset for testing to ensure that the applicant's handsets are 911 and E911 capable regardless of the activation status of the phone, and the availability of minutes. Given the critical nature of access to 911 and E911 service, the Department supports such a proactive process, and recommends that the Commission retain this requirement.

In addition, in order to provide certification, DPS requires that applicants certify that they will pay appropriately into the 911/TAM funds. This will occur in conjunction with the testing of handsets.

Effective May 24, 2013, Minnesota Statute 403.11 was amended to add (among other changes) the following section:

Subd. 3d. **Eligible telecommunications carrier; requirement.** No wireless communications provider may provide telecommunications services under a designation of eligible telecommunications carrier, as provided under Minnesota Rule 7811.1400, until and unless the commissioner of public safety certifies to the chair of the public utilities commission that the wireless telecommunications provider is not in arrears in amounts owed to the 911 emergency telecommunications service account in the special revenue fund.

The Department has ascertained that DPS will provide said certification (as appropriate) for ETC applicants as part of its initial certification process.

TCM has not yet obtained certification from DPS, but stated in response to the Department's query that it understands that it will need to complete DPS' certification process prior to beginning operations in Minnesota.

TCM Wireless Customer Terms and Conditions/Informational Tariff

Typically the Commission has required that an applicant submit and maintain an informational tariff or customer service agreement submitted by the ETC applicant (whether certification includes Lifeline-only or for the receipt of high-cost funds) for the purpose of disclosure, and to memorialize commitments that the applicant has made, and which the Commission has considered in its determination of whether to designate the applicant as an ETC. Typically the informational tariff that included the following:

- All rates associated with the universal service offering, including the cost of all equipment and installation charges and all other recurring and non-recurring charges.

- All terms and conditions of service associated with its universal service offering.
- Other services which may be added to the universal service offering.
- The specific exchange areas in which the ETC offers service.
- Commitment to provide clear notice to consumers of the Commission's contact information and the availability of this Commission in addressing customer questions, concerns, comments, and complaints.

TCM provided a proposed informational tariff on February 25, 2014, and has provided an amended tariff as of April 25, 2014 in response to the Department's expressed concerns. The Department has reviewed the amended tariff and believes that with minor modifications, which may be handled as a compliance matter, the tariff is complete and accurate and does not conflict with Minnesota Statutes, the Commission's rules, or Commission Orders with respect to prepaid wireless low-income only ETCs.

Public Interest

The Commission has found, in its consideration of past ETC applications, that, in general, the designation of qualified competitive ETCs is in the public interest and comports with Minnesota's telecommunications goals of supporting universal service, maintaining just and reasonable rates, promoting customer choice, encouraging fair and reasonable competition for telephone service in a competitively neutral manner, maintaining or improving quality of service, and promoting customer choice.

As the FCC stated in the Lifeline-Linkup Reform Order, a primary goal of universal service is to provide voice service to low-income consumers at an affordable rate. The FCC has recognized that "a cell phone can literally be a Lifeline for families and provide low-income families, in particular, the means to empower themselves."¹⁶

Designation of Lifeline-only ETCs like TCM enable low-income consumers, many of whom might not otherwise have access to wireless telephone service, to take advantage of the same wireless services provided to other wireless consumers. The prepaid feature may provide a viable option for Lifeline customers who are concerned about additional usage charges or long-term contracts. Clearly this is in the public interest.

Designation of additional wireless prepaid Lifeline-only ETCs will engender increased consumer choice and competition among Lifeline-only ETCs, which may encourage designated carriers to differentiate and enhance their offerings to attract additional customers.

¹⁶ Lifeline-Linkup Reform Order, para. 17.

In addition to the increased opportunity for low-income consumers to take advantage of Lifeline offerings and the general public interest aspects of increased competition and choice, the Commission has typically evaluated the unique advantages and disadvantages of the applicant's service offering(s), including its "affordability" and/or adequacy of "free" minutes offered, and other commitments that the carrier makes, on a case by case basis.

- **Affordability/Adequacy of Offering**

TCM's Lifeline offering, as noted above, includes 250 "free" minutes. Minutes may be used for texting at the rate of 1 text per minute.

TCM states that it provides a free E911 capable handset. Calls to TCM customer service, whether via the 1-800 customer service number, or via "6-1-1" from the customer's handset, are free (*i.e.*, available minutes are not decremented.) Plan minutes are not decremented for calls to 911. There are no activation fees, and no contracts or deposits are required.

The Commission has previously found Lifeline offerings of 250 free minutes adequate, and Lifeline eligible customers will also be permitted to apply a \$10.00 discount to certain of TCM's prepaid plans. Subscribers may purchase additional minutes at the rate of \$0.10 per minute, and texting at the rate of \$0.05/minute.

TCM has committed, in response to the Department's Information Request #26 that it will offer, in Minnesota, the highest number of free minutes of usage offered in any jurisdiction by TCM, and supplementary minutes offered at the lowest price offered in any other jurisdiction in which TCM provides wireless Lifeline service, provided that the available support is the same. If the Commission determines that TCM should be granted ETC status in Minnesota, the Department recommends that the Commission incorporate TCM's commitment as a condition.

- **The Commission's Expressed Expectations with Respect to Reasonable Customer Service Practices**

The Department notes that, largely in response to concerns expressed by consumer advocates in previous ETC designation dockets, the Commission has also made clear its expectations with respect to certain customer service policies and practices. To that end, the Commission has incorporated the following requirements in previous orders designating ETCs:

1. Customers should have access to *usable* phones. Frequent static or other interference on the line, lack of clarity, dropped calls, inability to place a call or receive a call under normal circumstances are not acceptable. If the buttons on phones are too small to use, for example, customers should have an opportunity to try a different make or model. Hearing-aid compatible handsets should be available to Lifeline-qualified customers, at no charge.
2. Policies regarding repair, maintenance, replacement of handsets, batteries, and chargers and options to purchase handsets should be clear to consumers, and available to consumers who do not have web access. The ETC should provide detailed information in writing, at the time of enrollment, of repair and replacement policies for phones and accessories (batteries, chargers) and purchase options.
3. Instruction manuals should be offered to consumers, and should be available upon request. It is not unreasonable to require that instruction manuals be provided to customers at the point of sale. If the ETC finds such a requirement burdensome, it should be required to make clear to customers, at the time of enrollment, the process for obtaining a manual.
4. Customers should have access to customer service without lengthy hold-times, and without use of air time minutes.
5. Consumers should have access to information, via telephone as well as website, on all Minnesota distribution events, locations, and times.¹⁷

The Department finds such principles reasonable and appropriate for application to all Lifeline-only ETCs including TCM.

Usable Phones

TCM stated in response to the Department's question that it provides a variety of refurbished CDMA handsets from manufacturers including Samsung, Motorola, LG, and Nokia, at no charge to the consumer, and that the selection of handsets available may vary. All TCM handsets are hearing aid compatible. Customers may use their own phones provided they are compatible with TCM's network, or purchase an upgraded set from TCM.

The Department notes that while neither the FCC nor this Commission have established specific requirements with respect to handset quality, it is reasonable to expect, as noted above, that any "free" phones offered to Lifeline-qualified customers are *usable*.

¹⁷ In the Matter of the Petition of Telrite Corporation for Designation as an Eligible Telecommunications Carrier, Docket No. P6962/M-11-132, *Order Granting ETC Designation*, Ordering paragraph 6 (a through e), November 28, 2012.

The Department recommends that the Commission make clear in its Order, as it has in previous orders, its expectation that:

Customers should have access to *usable* phones. Frequent static or other interference on the line, lack of clarity, dropped calls, inability to place a call or receive a call under normal circumstances are not acceptable. If the buttons on phones are too small to use, for example, customers should have an opportunity to try a different make or model. Hearing-aid compatible handsets should be available to Lifeline-qualified customers, at no charge.

Repair/Replacement Policies

In response to the Department's question about repair and replacement of defective handsets, TCM stated that the company will replace defective handsets within 90 days of first use at no charge, provided that the handset is not damaged "due to abuse or from water."¹⁸ After 90 days, the customer is responsible for the cost of replacing the handset. The cost of replacement, according to TCM's response, varies depending upon the type of handset the customer has chosen. A customer whose phone has been lost or stolen may obtain a new handset (and ensure that the existing service is suspended) by calling customer service. The customer is responsible for the replacement cost of the phone.

TCM has included a description of its repair/replacement policies in its informational tariff.

Operating Manuals

TCM states that it "provides a 'Getting Started' booklet at the time of service initiation that contains instructions on handset operation and use, as well as TCM's terms and conditions. Manuals can also be found online at totalcallmobile.com.¹⁹

Access to Customer Service

TCM customers may reach customer service without decrementing minutes by dialing 611 from their handsets. In addition customers may call TCM's toll free customer service number (800-550-5265) from another telephone without incurring charges.

The Department agrees with the Commission's statement that "Customers should have access to customer service without lengthy hold-times, and without use of air time minutes." The Commission may wish to incorporate its expectation as a condition to granting ETC status to TCM.

¹⁸ TCM response to Department IR#13.

¹⁹ TCM response to Department IR #10.

In-Person Distribution Events

TCM states that it intends to conduct in-person sales events and that “typically, in-person sales events are not pre-announced, but will take place where Lifeline customers are likely to be (e.g., events near benefits offices, non-profits, outdoor festivals, swap meets, etc.).”

The Department recommends that the Commission require that, to the extent that it is practical, TCM should endeavor to provide consumers with access to information via telephone as well as website, on its Minnesota distribution events, locations, and times. At a minimum, TCM should provide such information, when available, to social service agencies whose clients may qualify for Lifeline in order that consumers may make reasoned decisions about the Lifeline provider that best suits their needs.

Commitment to Serve Qualified Customers within its Service Area

TCM notes in its initial petition that its underlying carrier [Sprint] is “operational and largely built out. Thus TCM will be able to commence offering its Lifeline service to all locations served by its underlying carrier very soon after receiving approval from the Commission.”²⁰ TCM commits to provide the supported services on a timely basis to qualified requesting customers within its designated service area.”²¹

The Department recommends that if TCM determines that it cannot reasonably serve a consumer, it be required to report the unfulfilled request to the Department and the Commission within 10 days after making such a determination. TCM should be held to the same standard as are other ETCs, and should be required provide such notification within ten days of making the determination.

Reporting Requirements and Audits of Compliance

According to the FCC’s Rules, TCM, if designated, will be required to report annually on the following:

47 C.F.R §54.405 (e) (3) requires that eligible telecommunications carriers report annually, by month, the number of Lifeline subscribers de-enrolled for “non-usage.”

²⁰ TCM Initial Petition, page 15.

²¹ Id.

Reports required by 47 C.F.R. §54.422 (a):

- The company name, holding company, operating companies and affiliates; names by which the ETC does business, and/or brand designations.
- Details with respect to the rates, terms, and conditions of any voice telephony service plans offered to Lifeline – eligible subscribers

Reports required by 47 C.F.R 54.422(b):

- Detailed information on outages;
- The number of complaints per 1000 connections;
- Certification of compliance with service quality standards and consumer protection rules;
- Certification that the carrier is able to function in emergency situations.

Certifications and reports required by 47 C.F.R. §54.416

- Certification re: policies and procedures that the carrier has in place to ensure that Lifeline subscribers are eligible to receive Lifeline services;
- Certification that the carrier is in compliance with all federal Lifeline certification procedures;
- Report results of annual re-certification (of subscribers) efforts.

Record-Keeping required by 47 C.F.R. §54.417

- Documentation of compliance with FCC and state requirements governing Lifeline for three full preceding years and requirement to provide such documentation upon request from the FCC or the Universal service Administrative Company (USAC).

Reports required by 47 C.F.R. §54.422, and §54.416 must be filed with state commissions as well as with the FCC and the Universal Service Administrative Company (USAC).

47 C.F.R §54.420 (a) provides for audits, every two years, of overall compliance with rules and the company's internal controls for companies that receive \$5 million or more annually on a holding company basis.

47 C.F.R. §54.420 (b) provides for audits applicable to new eligible telecommunications carriers, conducted by USAC. The rule states that "[a]fter a company is designated for the first time in any state or territory, the Administrator will audit that new eligible telecommunications carrier to assess its overall compliance with the rules in this subpart and the company's internal controls regarding these regulatory requirements. This audit should be conducted within the carrier's first twelve months of seeking federal low-income Universal Service Fund support.

The Department believes that the reports and audits required by FCC rules provide adequate data for review of Lifeline-only ETC compliance. To the extent that the reports, customer complaints, or other issues warrant the Commission's review, the Department or other affected parties may bring those issues to the Commission on a case by case basis.

The Department believes that the Commission need take no action at this time with respect to a review specific to TCM.

V. COMMISSION ALTERNATIVES

1. Find that TCM has made a credible showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering, including "voice telephony" throughout its proposed service area, and that its designation for the provision of Lifeline is in the public interest. Grant TCM's petition for ETC status for the limited purpose of providing Lifeline service to qualifying Minnesota customers.
2. Find that TCM has not made a credible showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering, throughout its proposed service area, or that its designation for the provision of Lifeline service is not in the public interest. Deny TCM's petition for ETC status for the limited purpose of providing Lifeline service to qualifying Minnesota customers.
3. Find that TCM has made a credible showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering, throughout its proposed service area, and that its designation for the provision of Lifeline service is in the public interest subject to conditions. Approve TCM's petition for ETC status for the limited purpose of providing Lifeline service to qualifying Minnesota customers, conditioned upon some or all of the following:
 - a) TCM shall offer, in Minnesota, the highest number of free minutes of usage offered in any jurisdiction by TCM, and supplementary minutes offered at the lowest price offered in any other jurisdiction in which TCM provides wireless Lifeline service, provided that the available support is the same.
 - b) Within 30 days of the Commission's Order conditionally approving TCM's petition, TCM must submit a formal advertising and outreach plan listing the specific local and community newspapers and commercial broadcast stations in Minnesota through which it intends to advertise the availability of Lifeline service and a proposed schedule or anticipated frequency of such advertising.

- c) Within 30 days of the Commission's Order conditionally approving TCM's petition, TCM must file its updated informational tariff. TCM should also be required to ensure that the Terms and Conditions applicable to Minnesota customers, posted on its website, do not conflict with the terms and conditions included in its Minnesota informational tariff.
- d) TCM should be required to notify the Commission and the Department, in writing, immediately upon any change to the Lifeline offering terms, conditions, or rates, or if it seeks to withdraw its Lifeline offering or any portion thereof. TCM must submit a revised tariff or customer service agreement page to reflect such changes.
- e) TCM will report any unfulfilled requests of Lifeline-qualified customers. If it determines that it cannot reasonably serve a consumer, it will report the unfulfilled request to the Department and the Commission within 10 days after making such a determination.
- f) TCM shall comply with the collection and remittance provisions of Minn. Stat. §§403.11 and 237.52.
- g) TCM must complete the certification process required by the Department of Public Safety and file its certificate, signed by DPS, prior to operating in Minnesota.
- h) TCM shall provide customers with access to usable phones. Frequent static or other interference on the line, lack of clarity, dropped calls, inability to place a call, or receive a call under normal circumstances are not acceptable. If the buttons on phones are too small to use, for example, TCM shall provide customers an opportunity to try a different make or model. TCM must make hearing-aid compatible handsets available to Lifeline-qualified customers, at no charge.
- i) Policies regarding repair, maintenance, replacement of handsets, batteries, and chargers and options to purchase handsets must be clear to consumers, and available to consumers who do not have web access. TCM shall provide detailed information in writing, at the time of enrollment, of repair and replacement policies for phones and accessories (batteries, chargers) and purchase options.
- j) TCM shall offer instruction manuals to consumers at the point of sale and make them available upon request. TCM shall continue to maintain cell phone instruction manuals for the "free" handsets it distributes.

- k) TCM shall provide its customers access to customer service without lengthy hold-times and without use of air-time minutes.
- l) To the extent that TCM conducts, or employ agents to conduct, in-person distribution events, TCM should endeavor to provide consumers with access to information via telephone as well as website, on its Minnesota distribution events, locations, and times. At a minimum, TCM should provide such information, when available, to social service agencies whose clients may qualify for At provide such information, when available, to social service agencies whose clients may qualify for Lifeline in order that consumers may make reasoned decisions about the Lifeline provider that best suits their needs.

VII. DEPARTMENT RECOMMENDATION

The Department recommends Alternative 3. The Commission should approve TCM's petition for ETC status for the limited purpose of providing Lifeline service to qualifying Minnesota customers, conditioned upon TCM's satisfying requirements (a) through (l).

/lt

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Public Comments**

Docket No. P6892/M-12-1182

Dated this 3rd day of **June 2014**

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_12-1182_12-1182
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_12-1182_12-1182
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_12-1182_12-1182
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_12-1182_12-1182
Robert	Yap	roberty@totalcallusa.com	Total Call Mobile, Inc.	1411 W. 190th St., Suite 650 Gardena, CA 90248	Electronic Service	Yes	OFF_SL_12-1182_12-1182