

Staff Briefing Papers

Meeting Date November 2, 2017

Agenda Item *1

Company Assist Wireless, Inc.

Docket No. **P6978/M-17-213**

**In the Matter of Assist Wireless’s Petition for ETC
Designation in Minnesota**

- Issues
1. Whether Assist Wireless, Inc. has the intent and capability to offer and advertise voice telephony service to Lifeline-qualified customers throughout its requested service area.
 2. Whether designation of Assist Wireless, Inc. as an ETC, limited to the provision of Lifeline service, is in the public interest.

Staff Michael McCarthy Michael.mccarthy@state.mn.us 651-201-2208

✓ **Relevant Documents**

Date

Assist Wireless Petition for ETC Designation	July 7, 2017
Third Notice of Extension Variance	July 13, 2017
Department of Commerce Comments	August 14, 2017
Department of Public Safety 911 Certification	August 29, 2017
Assist Wireless Reply Comments	August 30, 2017

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

I. Statement of the Issues

Whether Assist Wireless, Inc. has the intent and capability to offer and advertise voice telephony service to Lifeline-qualified customers throughout its requested service area.

Whether designation of Assist Wireless, Inc. as an ETC, limited to the provision of Lifeline service, is in the public interest.

II. Background

On March 16, 2017, Assist Wireless, Inc. (Assist Wireless) filed a petition seeking designation as an Eligible Telecommunication Carrier (ETC) in Minnesota for the purpose of receiving federal universal service support solely for providing Lifeline service to qualified customers.

On three occasions, the Minnesota Public Utilities Commission (Commission) extended the initial period for comments, at the request of the Department of Commerce (Department). The most recent extension requested comments by August 16, 2017.

On August 14, 2017 the Department filed Comments providing analysis of Assist Wireless's eligibility for ETC designation and recommendations for conditions.

On August 29, 2017 the Minnesota Department of Public Safety submitted certification of Assist Wireless's 911 requirements.

On August 30, 2017 Assist Wireless filed Reply Comments challenging one of the Department's recommendations.

III. Parties' Comments

A. Comments by the Department of Commerce

In its introductory comments the Department defers related regulatory history and review of applicable Federal law to earlier ETC designation dockets in which the Commission recognized the use of 16 criterion for ETC eligibility presented in Table 1 – Criteria for Approval of Eligible Telecommunications Carrier Designation. The Department then assesses the company's filing compliance with each criterion, noting shortcomings to be remedied through conditions to be included in the Commission's Order. Staff refers readers to the Department's Comments on pages 4 through 11 for the Department's assessment and recommendations on pages 11 and 12.

B. Reply Comments by Assist Wireless

On August 30, 2017 Assist Wireless filed Reply Comments asking that the Commission reject the Department's recommendation for a "service improvement plan" addressed in Criterion 10. In doing so, Assist Wireless presents on page 2 these considerations:



- Such a plan must demonstrate “how signal quality, coverage, or capacity will improve due to the receipt of high-cost support.” [Commerce Comments, p. 11] As stated in its Petition, Assist does not request high cost support. Assist only requests reimbursement from the low-income Lifeline program. [Assist Petition, p.17]
- Moreover, as set forth in the *Lifeline and Link Up Reform Order*, a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC.

In support of its second point, Assist Wireless notes the *Lifeline and Link Up Reform Order* at ¶ 386 states:

Second, we amend section 54.202 to clarify that ***a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan*** as part of its application for designation as an ETC. In the USF/ICC Transformation Order and FNPRM, the Commission included a new requirement in section 54.202, requiring a common carrier seeking to be designated as an eligible telecommunications carrier by the Commission to submit a five-year plan describing proposed network improvements and upgrades. Given that Lifeline-only ETCs are not receiving funds to improve or extend their networks, we see little purpose in requiring such plans as part of the ETC designation process. [Emphasis added.]

[See *In the Matter of Lifeline and Link Up Reform and Modernization, et al.*, WC Docket No. 11-42 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (Rel. Feb. 6, 2012). Also see 47 C.F.R. §54.202 a) 1) (ii).]

C. Department of Public Safety

On August 29, 2017 the Minnesota Department of Public Safety filed a letter with attachments in this proceeding indicating that it:

“... certified on behalf of all Minnesota 911 Public Safety Answering Points (PSAP) for Assist Wireless as required as part of the company’s request for approval to become an Eligible Telecommunications Carrier and provide Lifeline wireless telephone services to customers in Minnesota.”

IV. Staff Analysis

Staff agrees with Assist Wireless’s assertion that it is not required to provide a 5-year network improvement plan. Not requiring such a plan is also consistent with other recent Lifeline-only ETC designation decisions by the Commission (e.g., North American Local, Docket No. 16-299).

Future use of the Department’s Table 1 – Criteria for Approval of Eligible Telecommunications Carrier Designation should modify Criterion 10 to reflect updated wording of 47 C.F.R. §54.202 a) 1) (ii).

Staff notes that at the time of its analysis, the Department did not yet have certification from the Minnesota Department of Public Safety that Assist Wireless had met its 911 obligations.

Therefore, staff concurs with the Department's analysis and recommendations except for:

- directing Assist Wireless to submit a network improvement plan and
- further need for 911 certification.

Staff has made some non-substantive edits for clarity and precision to the Department recommendations d, f and g below. Staff notes that in reply comments, Assist only addressed the Department's recommendation on a network improvement plan and has not indicated whether it agrees to comply with the conditions previously proposed by the Department, and now augmented by Staff.

As has been consistent in other recently approved Lifeline-only ETC designations, Staff recommends adding conditions "i" through "l" to address the following needs:

- Condition i Ensures up-to-date consistency over time between the Minnesota informational tariff and information posted on the company's web site;
- Condition J Addresses the need to update the Minnesota informational tariff when changes occur and to notify the State when those changes occur;
- Condition k Addresses need for the Commission and Department to be aware of unmet customer requests for service and the reason meeting such requests would be unreasonable;
- Condition l Addresses payment of 911 fees and Telecommunications Access Minnesota (TAM) fees.

To provide a clear indication when the company is deemed an ETC, staff proposes condition "m" to provide completeness review of compliance filings by the Department and a clear determination that all conditions have been met.

V. Revised Decision Options and Recommendations

Options

1. Find that upon the Department's verification that the conditions below have been completed, Assist Wireless 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 Assist Wireless's petition for ETC status for the limited purpose of providing Lifeline service to qualifying Minnesota customers, effective upon receipt of the Department's letter of verifying that the following conditions have been completed:



- a. Within 30 days of the Commission order in this matter, submit an update to its advertising plan that addresses outreach in the Fargo, Mankato and Rochester markets (criterion 6);
- b. Within 30 days of the Commission order in this matter, submit its informational tariff (criterion 7);
- c. Include in its information tariff Assist Wireless's commitment to follow the CTIA's Consumer Code for Wireless Service and include a copy of the code (criterion 8);
- d. Certify in a compliance filing that it will provide rate, terms, and conditions that match the best terms, rates and conditions offered in other jurisdictions.
- e. Within 30 days of the Commission order in this matter, submit proposed 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. (*Staff note: following the submission of its proposed policies, any concerned commenter may choose to file comments.*)
- f. Certify in a compliance filing that it will provide the customer the detailed information in writing, at the time of enrollment, of repair and replacement policies for phones and accessories (batteries, chargers) and purchase options.
- g. Certify in a compliance filing that it will provide cell phone instruction manuals to its Lifeline customers.
- h. Within 30 days of this Order, Assist Wireless must file a copy of the instructional materials that it provides to its Lifeline customers.
- i. Certify in a compliance filing that it will 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.
- j. Certify in a compliance filing that it will 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. Assist Wireless must submit a revised tariff or customer service agreement page to reflect such changes.
- k. Certify in a compliance filing that it 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.
- l. Certify in a compliance filing that it shall comply with the collection and remittance provisions of Minn. Stat. §§ 403.11 and 237.52.
- m. Upon Assist Wireless's completion of all conditions, the Department will file a letter to the record affirming that all conditions have been completed.

2. Deny ETC status to Assist Wireless

Recommendation: Staff recommends Option 1, as modified.