



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 12-4

August 30, 2012

T-Mobile Northeast LLC Petition for Limited Designation as an Eligible Telecommunications Carrier for Purposes of Low Income Support Only

ORDER APPROVING PETITION

I. INTRODUCTION

The Department of Telecommunications and Cable (“Department”) grants, subject to the conditions set forth herein, the petition (“Petition”) for limited designation as an Eligible Telecommunications Carrier (“ETC”) of T-Mobile Northeast LLC (“T-Mobile”) pursuant to 47 U.S.C. § 214(e)(2) of the Communications Act of 1934, as amended (“Act”). On March 8, 2012, T-Mobile, which is a wholly-owned subsidiary of T-Mobile USA, Inc., filed the Petition. Petition at 1. T-Mobile seeks ETC designation within its service area in Massachusetts (“Designated Service Area”)¹ for the purpose of offering Lifeline wireless service to eligible low-income customers and receiving federal Universal Service Fund (“USF”) support for such services.² *Id.* T-Mobile has also requested protective treatment of certain confidential

¹ T-Mobile’s Designated Service Area is shown in Exhibit B to the Petition, which includes the telephone company wire centers and study areas identified in Exhibit A to the Petition. Petition at 7.

² Lifeline is a universal service support mechanism designed to provide low-income consumers with discounted monthly telephone service for a single line per residence. *See In re Lifeline & Link-Up*, 19 F.C.C.R. 8302, *Report & Order & Further Notice of Rulemaking* at 8306-8307 (rel. Apr. 29, 2004). Granting T-Mobile’s request for designation as an ETC in Massachusetts will enable it to receive federal

information submitted as part of its Petition, which is granted to the extent discussed below. As for T-Mobile's request for designation as a limited ETC, the Department has reviewed the standards that must be applied when evaluating any prospective ETC provider. *See generally* 47 C.F.R. Part 54 §§ 54.400-54.422 *et seq.* *See also Fed.-State J. Bd. on Universal Serv.*, 20 F.C.C.R. 6371, *Rep. & Order* (rel. Mar. 17, 2005) ("*Universal Service Order*"); *In the Matter of Connect Am. Fund, Rep. & Order & Further Notice of Proposed Rule Making*, FCC 11-161 (rel. Nov. 18, 2011) ("*USF/ICC Transformation Order*"); *In the Matter of Lifeline & Link Up Reform & Modernization, Rep. & Order & Further Notice of Proposed Rule Making*, FCC 12-11 (rel. Feb. 6, 2012) ("*Lifeline Reform Order*"). After reviewing the evidentiary record in this proceeding, the Department finds that T-Mobile meets these standards, and therefore it grants T-Mobile's Petition, subject to the conditions specified herein.

II. PROCEDURAL HISTORY

T-Mobile seeks limited designation as an ETC in order to offer Lifeline services throughout its Designated Service Area in Massachusetts and receive USF support for such services. Petition at 1. T-Mobile is not requesting high-cost support. *Id.*

On April 2, 2012, the Department issued a Notice of Public Hearing, Order of Notice, Procedural Schedule, and the Department's First Set of Information Requests. *T-Mobile Northeast LLC Petition for Limited Designation as an Eligible Telecommunications Carrier for Purposes of Low Income Support Only*, D.T.C. 12-4 ("Docket") at 1. On April 25, 2012, T-Mobile responded to the Department's thirty-two information requests, and on April 30, 2012, supplemented its responses to information requests 11, 28, and 32. *Id.* Also on April 25, 2012, T-Mobile filed a Motion for Protective Treatment of Confidential Information of the redacted

reimbursements from the Low Income Program of the USF for every qualifying low-income customer throughout its Designated Service Area to whom it provides with Lifeline service.

portions of its responses to information requests 15(d), 28, 31, and 32(c). *Id.* On May 3, 2012, T-Mobile filed proof of publication of this proceeding with the Department. *Id.*

On May 16, 2012, the Department held a public hearing and an evidentiary hearing. No members of the public appeared at the hearing and no parties intervened. Gene DeJordy, consultant for T-Mobile, and Rhonda Thomas, T-Mobile's Regulatory Manager for Universal Service, offered testimony during the evidentiary hearing. Evidentiary Hearing Transcript ("Tr.") at 8. During the evidentiary hearing, the Department reviewed T-Mobile's Petition and its responses to the Department's information requests. On June 1, 2012, T-Mobile filed its Post-Hearing Brief of T-Mobile Northeast LLC ("Post-Hearing Brief") and its responses to the 14 record requests made by the Department at the evidentiary hearing. On that date, T-Mobile also requested confidential treatment of portions of its response to record request 10 and its entire response to record request 11. The evidentiary record consists of T-Mobile's Petition; Curriculum Vitae of Gene DeJordy; Curriculum Vitae of Rhonda Thomas; T-Mobile's responses to the Department's thirty-two information requests ("IR 1-1" through "IR 1-32"); the testimony at the evidentiary hearing; T-Mobile's proof of publication; T-Mobile's responses to the Department's fourteen record requests ("RR 1" through "RR 14"); and T-Mobile's letter to the Department dated August 14, 2012, regarding Lifeline terms and conditions ("August 14, 2012 Letter").

III. MOTION FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION

T-Mobile seeks limited protective treatment for portions of its responses to multiple information requests and record requests issued by the Department in this proceeding. The Department, pursuant to G. L. c. 25C § 5 may protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided during the course

of proceedings. For the reasons discussed below, T-Mobile has established sufficient grounds to afford this information protection from disclosure.

A. Background

On April 25, 2012, T-Mobile filed Objections and Responses to the First Set of Information Requests of the Department. With its filing, T-Mobile included a Motion for Protective Treatment on Confidential Information (“Motion”), seeking to protect, for a period of five years, portions of its responses³ to the following information requests:

IR 1-15(d): T-Mobile projections of the number of potentially eligible Lifeline subscribers not currently enrolled in the Lifeline Program in Massachusetts.

IR 1-28: Information concerning the number and location of cell facility locations in Massachusetts.

IR 1-31: A detailed breakdown of the number of T-Mobile Massachusetts employees by job category.

IR 1-32(c)(1)-(6): Detailed information regarding T-Mobile Financial Releases as of year-end 2011.

Motion at 2-5. On April 30, 2012, T-Mobile supplemented its responses to IR 1-11, IR 1-28, and IR 1-32.

On June 1, 2012, T-Mobile filed its Post-Hearing Brief and responses to the Department’s record requests. In the cover letter to the filing, T-Mobile asserted that its responses to RR 10 and RR 11 contained confidential materials, the substance of which were already the subject of T-Mobile’s Motion. The redacted portions of the public response to RR 10 (a) and (c) concern the number and location of T-Mobile’s closest cell-on-wheels (“COWs”) to Massachusetts and the hours of back-up power its fixed generators in Massachusetts can provide.

³ The Department interprets “portions of its responses” to refer to the redacted segments of T-Mobile’s responses to the filed public version of T-Mobile’s Objections and Responses to the First Set of Information Requests of the Department. Specifically, T-Mobile filed redacted responses to IR 1-15(d), supplement to IR 1-28(a) and (b)(referencing Exh. H), IR-31, and supplement to IR 1-32(c)(1).

The redacted response to RR 11 concerns T-Mobile's plans for capital expenditure in Massachusetts during 2012.

As support for its Motion, T-Mobile contends the information for which it seeks protection constitutes proprietary and competitively sensitive information because: (1) it is the result of internal business projections, sales plans, and measuring mechanisms; (2) it could place T-Mobile at a competitive disadvantage by providing its competitors with detailed information regarding T-Mobile's business operations, financial condition, revenue stream, and projected business plans; (3) it is information T-Mobile does not otherwise make publicly available; and (4) T-Mobile's interest in maintaining the confidentiality of the data far outweighs any benefit obtained through public disclosure. Motion at 3-5.

B. Analysis

All documents and data received by the Department are generally considered public records and, therefore, are to be made available for public review under a general statutory mandate. *See* G. L. c. 66, § 10; G. L. c. 4, § 7(26). "Public records" include "all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any officer or employee of any agency, executive office, department, board, commission, bureau, division or authority of the commonwealth, or of any political subdivision thereof, or of any authority established by the general court to serve a public purpose unless such materials or data fall within [certain enumerated] exemptions." G. L. c. 4, § 7(26). Materials that are "specifically or by necessary implication exempted from disclosure by statute" are excluded from the definition of "public records." G. L. c. 4, § 7(26)(a).

Chapter 25C, § 5 of the Massachusetts General Laws permits the Department to “protect from public disclosure trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter.” In applying this exception, there is a presumption that “the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection.” G. L. c. 25C, § 5.

Chapter 25C, § 5 provides a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute “trade secrets, confidential, competitively sensitive or other proprietary information.” Second, the party seeking protection must overcome the G. L. c. 66, § 10, statutory presumption that all such information is public by “proving” the need for its non-disclosure. Third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. *See Investigation by the Dep’t of Telecomms. & Energy on its own Motion into the Appropriate Regulatory Plan to succeed Price Cap Regulation for Verizon New England, Inc. d/b/a Verizon Massachusetts’ intrastate retail telecomms. servs. in the Commw. of Mass., D.T.E. 01-31, Phase I, Hearing Officer Ruling on Verizon Massachusetts’ Motions for Confidential Treatment*, (Aug. 29, 2001) (citing G. L. c. 25, § 5D, the prior applicable standard, which contains the same language as G. L. c. 25C, §5).

As to the first prong, the Department has previously recognized the competitively sensitive nature of facilities location information, equipment information, and network structure information. *See Petition of YourTel America, Inc. for Designation as Eligible Telecomms.*

Carrier, D.T.C. 11-1, *Hearing Officer Ruling on Motion for Protection from Pub. Disclosure*, (July 6, 2011) (summarizing previous Department rulings concerning facility location, equipment, and network structure and concluding consistent with such past precedent that disclosure of such information could put a carrier at a competitive disadvantage). The Department has also recognized the competitively sensitive nature of company product marketing/advertising practices; internal training materials, policies, and procedures; confidential calculations; financial materials; and personnel information. *See Application of BLC Mgmt., LLC d/b/a Angles Commc'ns Solutions for Certification as an Eligible Telecomms. Carrier*, D.T.C. 09-2, *Order* (Aug. 23, 2010); *Review by the Cable Television Div. of the Dep't of Telecomms. & Energy of FCC Forms 1240 & 1205 filed by Time Warner Cable, Inc.*, CTV 04-5 Phase II, *Rate Order*, (Nov. 30, 2005) (personnel information including the number of and total compensation paid employees are competitively sensitive). Accordingly, the Department finds the redacted information in T-Mobile's responses to IR 1-15(d), IR 1-28(a) and (b)(referencing Exh. H), IR 1-31, IR 1-32(c)(1), RR 10(a) and (c), and RR 11 for which T-Mobile seeks protection is competitively sensitive to T-Mobile.

As to the second prong, the Department has long held it will not automatically grant requests for protective treatment stating, "[c]laims of competitive harm resulting from public disclosure, without further explanation, have never satisfied the Department's statutory requirement of proof of harm." *See Review by the Dep't of Telecommns. & Cable of FCC Forms 1240 and 1205 filed by CoxCom, Inc. d/b/a Cox Commc'ns New England*, D.T.C. 08-8, *Hearing Officer Ruling on Motion of CoxCom, Inc., d/b/a Cox Commc'ns New England for Protective Order*, (June 23, 2009) (citing *AT&T Broadband/Verizon Interconnect Agreement*, D.T.E. 99-42/43, 99-52, at n.31 (2000); *Interlocutory Order on Verizon MA's Appeal of Hearing Officer*

Ruling Denying Motion for Protective Treatment, D.T.E. 01-31 Phase I, at 7 (“*Interlocutory Order*”)(Aug. 29, 2001)). The Department accepts T-Mobile’s assertion that it does not make information it considers proprietary available to the public. Motion at 3-5. Furthermore, the Department has consistently found the type of information T-Mobile seeks to protect to warrant protection from public disclosure. *See Petition of YourTel America, Inc. for Designation as Eligible Telecomms. Carrier*, D.T.C. 11-1, *Hearing Officer Ruling on Motion for Protection from Pub. Disclosure*, (July 6, 2011); *Application of BLC Mgmt., LLC d/b/a Angles Commc’ns Solutions for Certification as an Eligible Telecomms. Carrier*, D.T.C. 09-2, *Order* (Aug. 23, 2010); *Review by the Cable Television Div. of the Dep’t of Telecomms. & Energy of FCC Forms 1240 & 1205 filed by Time Warner Cable, Inc.*, CTV 04-5 Phase II, *Rate Order*, (Nov. 30, 2005). Accordingly, the Department finds that T-Mobile has satisfied its burden to demonstrate that protection is warranted.

Turning to the third prong, protection should be afforded only to the extent needed. Here, T-Mobile claims, “it is not attempting to make broad assertions of confidentiality with regard to its responses, but rather has tailored its request to protect only the truly proprietary and competitively sensitive portions of its responses to the requests.” Motion at 5. T-Mobile has limited its request for confidential treatment to five years when it projects the information will no longer be competitively sensitive. *Id.* at 5-6. Therefore, the Department finds that protecting only the redacted portions of T-Mobile’s publicly filed responses to IR 1-15(d), IR 1-28(a) and (b), IR 1-31, IR 1-32(c)(1), RR 10(a) and (c), and RR 11 and limiting the protection to a five year period fulfills the requirement that protection is limited to that necessary to meet the demonstrated need. *See Petition of YourTel Am., Inc. for Designation as an Eligible Telecommns. Carrier*, D.T.C. 11-1, *Hearing Officer Ruling on Motion for Protection from Pub.*

Disclosure, at 6 (July 6, 2011) (finding that limiting protection to specific portions of information requests to a five year period satisfied the requirement that protection be limited to that necessary to meet the demand).

C. Conclusion

Accordingly, the Department concludes that T-Mobile has satisfied its burden of showing a need for protection from public disclosure under the statute, and the Department grants T-Mobile's Motion for Protective Treatment of Confidential Information.

IV. PETITION FOR ETC DESIGNATION

T-Mobile has petitioned the Department for ETC designation in order to provide Lifeline service in Massachusetts. State regulatory commissions, upon request and consistent with the public interest, convenience, and necessity, shall designate more than one common carrier as an ETC for a service area designated by the state commission if the carrier meets the requirements of the Act. 47 U.S.C. § 214(e). The Federal Communications Commission ("FCC") emphasized in its *Universal Service Order* that state regulatory commissions should conduct a rigorous ETC designation process. *Universal Service Order* at 6396. After reviewing the evidentiary record in this proceeding, the Department, for the reasons discussed below, grants T-Mobile's Petition, subject to the conditions specified herein.

A. ETC Requirements

Under 47 U.S.C. § 254(e) and the applicable FCC rules, only a carrier designated as an ETC is eligible to receive USF support⁴ for a designated service area. 47 U.S.C. §§ 214(e), 254(e); 47 C.F.R. § 54.201. In Massachusetts, the Department exercises jurisdiction over carriers pursuant to G. L. c. 159, § 12. The Department has broad power to regulate telephone

⁴ USF support is in turn categorized as high cost; low-income; rural health care; and schools and libraries. See 47 C.F.R. 54.701(A)(b).

service, including the designation of a carrier as an ETC. 47 U.S.C. § 214(e)(2); G. L. c. 159

§12. Accordingly, it is the Department's responsibility to determine whether a carrier such as T-Mobile meets the ETC service requirements.

In order for the Department to grant ETC designation, T-Mobile must establish that it meets the following requirements:

1. T-Mobile is a "common carrier" as defined by the Federal Telecommunications Act of 1996, § 3(10). 47 U.S.C. § 214(e)(1); 47 C.F.R. §§ 20.9, 54.201(d).
2. T-Mobile will offer the required supported services (47 U.S.C. § 214(e)(1)(A); 47 C.F.R. §§ 54.101(a), 54.201(d)(1))⁵ to qualifying low-income consumers (47 C.F.R. § 54.405(a)), throughout its designated service area, using its own facilities, or a combination of its own facilities and the resale of another carrier's services. 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).⁶
3. T-Mobile will advertise the availability of supported services and charges therefore in media of general distribution throughout its designated service area (47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2)), and "[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service." 47 C.F.R. § 54.405(b).⁷
4. T-Mobile is financially and technically capable of providing the supported services. 47 C.F.R. § 54.201(h).

⁵ The FCC modified the required supported services in 47 C.F.R. § 54.101 in the *USF/ICC Transformation Order* at para. 76-78 n.114, and affirmed the modification in its *Order on Reconsideration*, FCC 11-189 (rel. Dec. 23, 2011). These supported services include: 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 emergency services (911 or enhanced 911), to the extent implemented; and toll limitation services for qualifying low-income consumers if the carrier distinguishes between toll and non-toll calls in pricing of the service. See 47 C.F.R. § 54.401(a)(2).

⁶ Although not directly relevant here, since T-Mobile contends that it provides service using its own facilities, the Department notes that the FCC granted a blanket forbearance from the "own-facilities" requirement of 47 U.S.C. 214(e)(1)(A), provided carriers meet certain conditions. *Lifeline Reform Order* at 373. Among those conditions, carriers seeking to take advantage of forbearance must submit a compliance plan to the FCC detailing how the carrier will provide service and safeguard against fraud and abuse. *Id.* at 379.

⁷ Additionally, when effective, ETCs must disclose on all materials describing the service that the ETC is offering the service; the offer is a Lifeline service; Lifeline is a government program; the service is non-transferable; only eligible consumers may enroll in the program; and the program is limited to one discount per household. See 47 C.F.R. § 54.405(c), (d).

5. T-mobile will comply with additional FCC requirements;⁸ the procedures and requirements set forth in the *Lifeline Reform Order* in accordance with established effective dates;⁹ and additional requirements imposed by the Department, as discussed on page 20, *infra*.
6. Finally, T-Mobile's designation as an ETC must be consistent with the public interest, convenience, and necessity. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.202(b).

B. The Department's Analysis

Based on its review of the evidentiary record, the Department finds that T-Mobile satisfies requirements (1) through (5) above. Furthermore, the Department is persuaded that T-Mobile's designation as an ETC is consistent with the public interest, convenience, and necessity. Therefore, T-Mobile is granted ETC designation subject to the conditions set forth below.

1. *T-Mobile is a common carrier.*

To meet the first ETC requirement, T-Mobile must establish that it is a common carrier. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d). "Common carrier" is defined as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio[.]" 47 U.S.C. § 153(11). T-Mobile states that it is a Commercial Mobile Radio Service

⁸ These additional requirements include: certifying that it will comply with the service requirements applicable to the support it receives; demonstrating its ability to remain functional in emergency situations; demonstrating it will satisfy applicable consumer protection and service quality standards; submitting information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers. See 47 C.F.R. § 54.202(a)(1)(i), (2), (3), (5). A carrier need not provide a five-year plan describing proposed improvements to its network if it is only seeking low cost support. 47 C.F.R. § 54.202(a)(1)(ii).

⁹ These procedures and requirements include:

- (i) screen applicants using the National Lifeline Accountability Database to be established as set forth in 47 C.F.R. § 54.404(b)(1)-(10);
- (ii) comply with the carrier's obligations to offer Lifeline, including de-enrollment requirements, when effective, as established in rule 47 C.F.R. § 54.405(a)-(e)(1)-(4);
- (iii) certify that it is prepared to comply with the subscriber eligibility and determination and certification requirements established in 47 C.F.R. § 54.410(a)-(g) to the extent applicable;
- (iv) comply with annual certifications required by ETCs established in rule 47 C.F.R. § 54.416(a), (b);
- (v) comply with record keeping requirements established in 47 C.F.R. § 54.417;
- (vi) comply with audit requirements, to the extent applicable, established in rule 47 C.F.R. § 54.420; and
- (vii) comply with annual reporting requirements established in 47 C.F.R. § 54.422.

(“CMRS”) provider and, as such, pursuant to 47 C.F.R. § 20.9 is regulated as a common carrier, subject to all applicable regulations. Petition at 5; Tr. at 13; Post-Hearing Brief at 8. Under 47 U.S.C. 332(c)(1)(a)¹⁰ and 47 C.F.R. § 20.9, a CMRS provider is a common carrier. Therefore, the Department finds that T-Mobile is a “common carrier.” *See In the Matter of the Application of Virgin Mobile USA, L.P.’s Petition for Limited Designation as an Eligible Telecommunications Carrier*, D.T.C. 10-11, Order Approving Petition at 6 (Sept. 9, 2011) (“*Virgin Mobile ETC Order*”) (finding Virgin Mobile’s CMRS services satisfied the definition of common carrier).

2. *T-Mobile will offer the supported services to eligible low-income consumers throughout its Designated Service Area using its own facilities.*

T-Mobile must demonstrate that it will offer the supported services to eligible low-income consumers throughout its Designated Service Area using its own facilities or a combination of its own facilities and the resale of another carrier’s services. 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. §§ 54.101(a); 54.201(d)(1); 54.405(a). “Supported services” include 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 emergency services (911 or enhanced 911), to the extent implemented; and toll limitation services for qualifying low-income consumers if the carrier distinguishes between toll and non-toll calls in pricing of the service.¹¹ *See* 47 C.F.R. § 54.101; 47 C.F.R. § 54.401(a)(2).

T-Mobile has demonstrated that it offers the voice telephony services supported by the Lifeline program. Specifically, T-Mobile asserts that its planned Lifeline offerings, along with

¹⁰ “A person engaged in the provision of a service that is a commercial mobile service shall, insofar as such person is so engaged, be treated as a common carrier....” 47 U.S.C. 332(c)(1)(a)

¹¹ T-Mobile states that it does not distinguish between toll and non-toll calls in the pricing of its service and therefore asserts that it is not required to provide toll limitation services. Petition at 6.

any future Lifeline offerings, will include all of the voice-based supported services as well as access to T-Mobile's network that is capable of serving customers with advanced communications needs. *See* IR 1-9; IR 1-10; Tr. 13-14. In addition, T-Mobile states it is committed to making a basic voice plan that includes the supported services available to eligible Lifeline customers. Tr. at 80. For eligible Lifeline subscribers, T-Mobile's \$19.99 plan includes a \$10.00 per month discount¹² toward the monthly rate of \$19.99.¹³ Petition at 12-13. As a result, Lifeline subscribers will pay \$9.99 each month. Tr. 36-37. The \$19.99 plan includes 145 whenever minutes, 500 night minutes, and 500 weekend minutes. Petition at 12-13; IR 1-10. The plan also includes the following free services: voice mail, caller ID, call waiting, customer service, local number portability, and E911 access.¹⁴ Petition at 12-13; IR 1-6; IR 1-7; IR 1-8, and IR 1-14. The plan does not include broadband access or free text messaging. IR 1-7(a), (b). There are no rollover minutes. IR 1-7(d). Additional minutes cost \$0.05 per minute (Petition at 13) and texts cost \$0.20 per text (IR 1-7(a)). There are no domestic roaming charges. IR 1-14(a). Additionally, with the \$19.99 plan, Lifeline customers must either purchase a handset (Petition at 13) or use their own, if compatible with T-Mobile's network (IR 1-13); pay a \$35.00 activation fee (IR 1-7(h); Tr. at 49-51); pay \$1.99 per call for directory assistance (RR 14); be subject to late payment fees which are the greater of \$5.00 or 1.5% of the outstanding payment (RR 6); and in the event service is disconnected, pay a reactivation fee in the amount of \$20.00 (*id.*). T-Mobile also intends to make its Wal-Mart Family Mobile plan, priced at \$45.00 per month, available to eligible Lifeline subscribers for \$35.00 per month (after application of the

¹² The monthly discount includes the \$9.25 flat rate Lifeline subsidy (*Lifeline Reform Order* at para. 58) plus an additional \$0.75 discount by T-Mobile. Tr. at 37; IR 1-6(a).

¹³ The \$19.99 plan is available to non-Lifeline customers, but it is not widely advertised. Tr. at 23.

¹⁴ T-Mobile will provide Lifeline customers with 911 or E911 access in the event their plan minutes are exhausted or expired or their handset is inactive. No fee will be imposed for this service. IR 1-8.

\$10.00 monthly discount) that includes unlimited talk, text, and data (250MB-3G speed).¹⁵ Tr. at 83; RR 8 (Exh. D)¹⁶; Aug. 14, 2012 Letter.

T-Mobile initially planned to require subscribers to its \$19.99 Lifeline plan to enter into a one-year service contract, and sought the right to impose a \$200.00 fee for early termination of that service contract (Tr. at 52-53, 57; IR 1-13; IR 1-20). T-Mobile subsequently informed the Department that after a review of its offerings, and to meet the “ever-changing needs of eligible Lifeline customers,” as of August 29, 2012, it will no longer impose a service contract, or include an early termination fee on its \$19.99 Lifeline plan or its Wal-Mart Family Mobile plan. Aug. 14, 2012 Letter. The Department finds that T-Mobile’s proposed Lifeline plans satisfy the “supported services” requirements of 47 C.F.R. § 54.401(a)(2).

The Department further finds that T-Mobile has demonstrated that it will offer the supported services to eligible low-income customers throughout its Designated Service Area using its own facilities in satisfaction of 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. §§ 54.101(a), 54.201(d). Petition at 7; IR 1-28; IR 1-29; IR 1-32. Indeed, T-Mobile already provides wireless service over its existing network infrastructure in Massachusetts. Petition at 10; IR 1-28; IR 1-29; IR 1-32.

¹⁵ ETCs may allow eligible Lifeline customers to apply the Lifeline discount to bundled packages of voice and data services and family shared calling plans. See *Lifeline Reform Order* at para. 315.

¹⁶ The Wal-Mart Family Mobile plan requires no credit check and no annual contract. Subscribers to this plan must purchase a handset or use an existing handset compatible with T-Mobile’s network and must purchase a starter kit to activate for \$29.99. Additional 3G data can be purchased as follows: additional 1 GB of 3G speed for \$10.00 and additional 3GB of 3G speed for \$20.00. International roaming and long distance calls to Mexico, Canada and 12 other countries cost \$0.05 per minute. RR 8 (Exh. D); Tr. at 82.

3. *T-Mobile will advertise the availability of the supported services in accordance with regulatory requirements.*

T-Mobile must advertise the availability of supported services and charges thereof in media of general distribution throughout its Designated Service Area. 47 U.S.C. 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2). T-Mobile must also “[p]ublicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.” 47 C.F.R. § 54.405(b). Finally, T-Mobile must disclose on all materials describing the service that T-Mobile is offering the service; the offer is a Lifeline service; Lifeline is a government program; the service is non-transferable; only eligible consumers may enroll in the program; and the program is limited to one discount per household. 47 C.F.R. § 54.405(c), (d). For the reasons discussed below, the Department is persuaded that T-Mobile is prepared to satisfy these requirements.

T-Mobile states it will advertise the availability of, and charges for, its Lifeline service offerings¹⁷ using media of general distribution and that it currently advertises its wireless telecommunications services, which include the supported services, using radio, television, billboards, print, internet, and targeted mailings. Petition at 7; IR 1-15; Tr. 14-15. T-Mobile also states that it maintains various retail stores and authorized dealer locations throughout its proposed ETC designated service area. IR 1-16. In addition, T-Mobile asserts it will undertake outreach initiatives to increase consumer awareness of T-Mobile’s Lifeline service offering. IR 1-15. In particular, T-Mobile states it will distribute Lifeline literature to locations where those likely to be eligible for Lifeline might frequent such as hospitals, clinics, hospices, senior centers, unemployment offices, Social Security offices, and welfare offices. Tr. at 118; Post-Hearing Brief at 9. Finally, T-Mobile certifies it will comply with the specific advertising requirements set forth in 47 C.F.R. § 54.405(c), (d). Petition at 7, n.30; IR 1-15(b).

¹⁷ T-mobile states that it will clearly disclose in its advertising the terms and conditions associated with its Lifeline plans including any activation fee, contract commitments, and early termination fees. Tr. at 78-79.

Accordingly, the Department finds that T-Mobile has demonstrated it will satisfy these ETC requirements and directs T-Mobile to provide to the Department copies of all advertising and marketing materials distributed in Massachusetts to promote Lifeline services. *See Virgin Mobile ETC Order* at 9-10 (“...ETCs must provide the Department with copies of all advertising and marketing materials distributed in Massachusetts to promote Lifeline services”).

4. *T-Mobile is financially and technically capable of providing the supported services.*

A state commission may not designate a common carrier as an ETC unless the carrier has demonstrated that it is financially and technically capable of providing the supported services. 47 C.F.R. § 54.201(h). The Department finds that T-Mobile has met these requirements.

The relevant considerations for a showing of financial and technical capability include: “whether the applicant previously offered services to non-Lifeline consumers, how 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 action or ETC revocation proceedings in any state.” *Lifeline Reform Order* at 388. T-Mobile has shown that it is a well-established, facilities-based wireless telecommunications carrier with a long history of providing service in Massachusetts to non-Lifeline consumers, and it does not rely exclusively on USF disbursements. Petition at 10; IR-32. T-Mobile further establishes that it receives revenue from several non-USF sources, is currently a Lifeline service provider in numerous states, and has not been subject to ETC enforcement or revocation proceedings in any state. Petition at 10; IR-32. T-Mobile states that it has the capability to provide Lifeline service immediately to Massachusetts consumers upon receiving ETC designation, and that its Global Service for Mobile Communications (“GSM”) network provides customers with access to a worldwide mobile wireless technology. IR 1-17;

Tr. at 128. T-Mobile further certifies that it is a viable, ongoing entity for the purpose of conducting business in Massachusetts and offering Lifeline services to subscribers. Tr. at 116; IR 1-32(a). Therefore, the Department is persuaded that T-Mobile has demonstrated that it is financially and technically capable of providing the supported services in compliance with 47 C.F.R. § 54.201(h).

5. *T-Mobile will comply with additional FCC requirements; the procedures and requirements set forth in the Lifeline Reform Order; and additional requirements imposed by the Department.*

As explained below, the Department is persuaded that T-Mobile is prepared to comply with additional FCC requirements, the procedures and requirements set forth in the *Lifeline Reform Order*, and additional requirements imposed by the Department.

(a) Additional FCC Requirements

Additional FCC requirements include: (1) a certification by the carrier that it will comply with the service requirements applicable to the support it receives; (2) demonstration by the carrier of its ability to remain functional in emergency situations; (3) demonstration by the carrier that it will satisfy applicable consumer protection and service quality standards; and (4) submission by the carrier of information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers. 47 C.F.R. § 54.202(a)(1)(i), (2), (3), (5). T-Mobile states it will serve all consumers within its Designated Service Area and will certify, as necessary, compliance with the service requirements applicable to the low-income support it receives, consistent with 47 C.F.R. § 54.202(a)(1)(i). Petition at 8; IR 1-30.

T-Mobile also asserts that it has the ability to remain functional in emergency situations and has a reasonable amount of back-up power to ensure functionality without an external power source consistent with 47 C.F.R. § 54.202(a)(2). Petition at 8; IR 1-18. T-Mobile explains it has

the ability to reroute traffic around damaged facilities through deployment of COWs throughout its network, thus, enabling it to respond to emergencies in Massachusetts rapidly. Petition at Exhibit C; RR 10(a). T-Mobile states that it works closely with the Massachusetts Emergency Management Agency before, during, and after emergencies to provide vital service and prioritizes service and restoration for major evacuation routes, hospitals, airports and port facilities to ensure the safety and security of Massachusetts citizens. RR 10(d), (e).

T-Mobile asserts it will satisfy applicable consumer protection and service quality standards in accordance with 47 C.F.R. § 54.202(a)(3). Petition at 8; IR 1-20. T-Mobile states it abides by the CTIA-The Wireless Associations’s Consumer Code for Wireless Service and maintains policies for consumer privacy protections. *Id.* at 8-9; IR 1-21. T-Mobile certifies “that it is willing to (i) provide reporting of consumer complaints to the Department regarding T-Mobile’s Lifeline service; and (ii) participate in dispute resolution by the Department’s consumer division to resolve Lifeline subscriber disputes (including eligibility disputes, program offering issues and limited equipment related issues, but not matters related to rates of entry) received by the Lifeline subscriber.”¹⁸ IR 1-21(b); *see also* IR 1-20. T-Mobile will also include the Department’s contact information in its marketing materials for Lifeline service.¹⁹ IR 1-20; Tr. at 95-96; RR 9.

Additionally, T-Mobile has, consistent with 47 C.F.R. § 54.202(a)(5), submitted detailed information describing the terms and conditions of the Lifeline service plans it intends to offer in Massachusetts. Petition at 12-13; IR 1-7 (Exh. C); IR 1-11 (Exh. D); IR 1-13; IR 1-15(c); IR 1-

¹⁸ T-Mobile asserts that its certification “shall not be construed as a waiver of any rights T-Mobile may have to compel arbitration of: (a) disputes related to rates or entry; (b) disputes involving non-Lifeline issues; or (c) disputes involving Lifeline-related issues that the customer submits to any tribunal other than this Department.” IR 1-21(b).

¹⁹ T-Mobile has agreed that it will include notice of the Department’s dispute resolution procedures for Lifeline-related issues in its advertising, application forms, and any Lifeline specific Terms and Conditions. RR 9; Tr. 95-97.

25(c); RR 8 (Exh. D); August 14, 2012 Letter. T-Mobile is also prepared to notify the Department 30 days in advance of any future changes to the rates, terms, or conditions of its Lifeline service offerings. Tr. at 120; Petition at 10; IR 1-6(b).

In view of these representations and commitments by T-Mobile, the Department finds that T-Mobile is prepared to comply with the additional FCC requirements.

(b) Lifeline Reform Order Procedures and Requirements

T-Mobile has represented to the Department that it will comply with the procedures and requirements established by the FCC in the *Lifeline Reform Order*. Petition at 11; Post-Hearing Brief at 14-15. These procedures and requirements include:

- (i) screen applicants using the National Lifeline Accountability Database to be established as set forth in 47 C.F.R. § 54.404(b)(1)-(10);
- (ii) comply with the carrier's obligations to offer Lifeline, including de-enrollment requirements, when effective, as established in rule 47 C.F.R. § 54.405(a)-(e)(1)-(4);
- (iii) certify that it is prepared to comply with the subscriber eligibility and determination and certification requirements established in 47 C.F.R. §54.410(a)-(g) to the extent applicable;
- (iv) comply with annual certifications required by ETCs established in rule 47 C.F.R. § 54.416(a), (b);
- (v) comply with record keeping requirements established in 47 C.F.R. § 54.417;
- (vi) comply with audit requirements, to the extent applicable, established in rule 47 C.F.R. § 54.420; and
- (vii) comply with annual reporting requirements established in 47 C.F.R. § 54.422.

Upon review of the record, the Department finds that T-Mobile has agreed to and certified it will comply with these requirements. See IR 1-16; IR 1-19; IR 1-22; IR 1-23; IR 1-24; IR 1-26; IR 1-27; Tr. at 122.

(c) Department Requirements

T-Mobile has also represented to the Department that it will comply with the requirements established by the Department in the *Virgin Mobile ETC Order*. Petition at 10; Post-Hearing Brief at 17-18. In particular, T-Mobile has agreed to the following:

- (i) provide quarterly reporting to the Department of customer accounts terminated for inactivity (Tr. at 111-112);
- (ii) provide reporting of consumer complaints to the Department regarding its Lifeline service and agree to participate in dispute resolution by the Department's Consumer Division (IR 1-20; IR 1-21; Tr. at 96);
- (iii) provide reporting to the Department of USF support received for Massachusetts consumers (Petition at 10-11);
- (iv) file with the Department, within 60 days of the approval of its Petition, its terms and conditions of service, applicable to qualifying Lifeline service customers, and agree to an ongoing obligation to notify the Department of any future changes to its rates, terms, or conditions 30 days prior to implementing such changes (Petition at 10-11; IR 1-6(b); Tr. at 80; 120);
- (v) include the Department's contact information for consumer complaints in its marketing materials for its Lifeline service (IR 1-20; Tr. at 94-95; 96-97); and
- (vi) provide Public Safety Answering Points ("PSAP") self-certification to the Department (Tr. at 108).

Accordingly, the Department concludes that T-Mobile is prepared to comply with the additional FCC requirements, the procedures and requirements set forth in the *Lifeline Reform Order*, and the additional requirements imposed by the Department.

6. T-Mobile's designation as an ETC is consistent with the public interest, convenience, and necessity.

Prior to designating a common carrier as an ETC, the Department must make an affirmative finding that such designation is "consistent with the public interest, convenience and

necessity.” *Universal Service Order* at 6388; *Virgin Mobile ETC Order* at 10; *Petition of VCI Co. for designation as an eligible telecomms. carrier in Mass. pursuant to Sections 214(e)(2) and 214(e)(6) of the Commc’ns Act of 1934, as amended*, D.T.E./D.T.C. 07-8, *Order* at 11-12 (May 21, 2008) (“*VCI Order*”). T-Mobile bears the burden of proving that granting its Petition is in the public interest. *See Universal Service Order* at 6390 (“In determining whether an ETC has satisfied these [public interest] criteria, the Commission places the burden of proof upon the ETC applicant” (citing *Advantage Cellular ETC Designation Order* at para. 16; *Highland Cellular ETC Designation Order*, 19 FCC Rcd at 6431, para. 20; *Virginia Cellular ETC Designation Order*, 19 FCC Rcd at 1574, para. 26)). For the reasons discussed below, the Department is satisfied that granting T-Mobile ETC designation is in the public interest.

“In analyzing whether a petition for ETC designation is in the public interest, the Department considers multiple factors, including the benefits of increased consumer choice and the unique advantages and disadvantages of the carrier’s service offering.” *Virgin Mobile ETC Order* at 10. *See also Universal Service Order* at 6388, 6390. This test must be applied in a consistent manner with the principles of preserving and advancing universal service and ensuring that quality services are available at just, reasonable, and affordable rates. 47 U.S.C. § 254(b)(1)-(2). Other factors that may be relevant in analyzing whether ETC designation is in the public interest include: the availability of new choices for customers; affordability; quality of service; service to unserved or underserved customers; comparison of benefits relative to public cost; and considerations of material harm. *See Universal Service Order* at 6389, n.111; *Virgin Mobile ETC Order* at 10 (Finding other factors relevant in making a public interest determination including availability of new choices for consumers, affordability, quality of service, service to unserved or underserved customers, and a comparison of the benefits relative to public cost).

The Department has recognized “the importance of Lifeline [] services for low-income Massachusetts residents, and [it] considers increased competition for Lifeline [] customers to be a worthy goal.” *VCI Order* at 15. New entrants in the Lifeline service market should encourage existing ETCs to offer better service and terms to their subscribers. *See In the Matter of Telecomms. Carriers Eligible for Universal Service Support; i-wireless, LLC Amended Petition for Designation as an Eligible Telecommunications Carrier*, WC Docket No. 09-197, *Order*, June 13, 2012 at para. 27 (“*i-wireless Order*”). However, as the FCC notes, “the value of increased competition, by itself, is unlikely to satisfy the public interest test.” *Universal Service Order* at 6390. As each petitioner seeking ETC designation will likely be unique, the Department’s exercise is necessarily fact-specific to each petition. *Id.* at 6391. Accordingly, the Department evaluates the particular advantages or disadvantages of the services offered by T-Mobile, their affordability, and considerations of material harm in determining whether designating T-Mobile as an ETC is in the public interest. *Id.*

T-Mobile contends that it satisfies the public interest standard by its ability to provide low-income consumers in Massachusetts with competitive alternatives to existing Lifeline service offerings, access to its high quality global network, and award winning customer service. *Petition* at 14-17; *Post-Hearing Brief* at 5-7; *IR* 1-21. According to T-Mobile, its \$19.99 plan, available to qualifying Lifeline customers at a discounted rate of \$9.99 each month, includes a total of 1,145 minutes per month with a per-minute overage rate of only \$0.05. *Petition* at 12-13; *Tr.* at 72; *Post-Hearing Brief* at 5. T-Mobile contends that while existing ETC providers in Massachusetts offer Lifeline plans at no up-front cost to eligible customers, T-Mobile’s \$19.99 plan provides considerably more minutes than current ETC providers with a low overage rate. *Tr.* at 68; 71-72. Rhonda Thomas, T-Mobile’s Regulatory Manager for Universal Service,

testified that T-Mobile intends to expand its Lifeline offerings in Massachusetts to include a large suite of affordable plans with many additional service choices, a variety of price points, and a broad lineup of phones, including smartphones. Tr. at 86-87; RR 3; RR 8 (Exh. D). *See also* Post-Hearing Brief at 6. According to T-Mobile, Lifeline subscribers can purchase new low-cost voice handsets from the company “at the \$19.99 or \$24.99 range.” Tr. at 46-47; 58. Free handsets are available to T-Mobile customers, including Lifeline customers, who elect to enter into a two-year service contract for a voice and data plan. Tr. at 46; RR 3. Lifeline subscribers may also use their own handsets if compatible with T-Mobile’s network. IR 1-13; Tr. at 59; RR 3.

T-Mobile further states it is committed to providing quality service and customer assistance. IR 1-21; Post-Hearing Brief at 11-12. Additionally, T-Mobile argues that its network will allow low-income consumers to access its GSM network, providing consumers with access to a worldwide mobile wireless technology. Tr. at 127-128; Post-Hearing Brief at 6. Finally, T-Mobile contends that it will continue to invest millions of dollars into the expansion, upgrade, and operation of its network for the benefit of all of T-Mobile’s customers. Petition at 17; IR 1-9; Post-Hearing Brief at 6-7.

The Department is persuaded that T-Mobile’s designation as an ETC is consistent with the public interest, convenience, and necessity. 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.202(b). T-Mobile is committed to making an affordable basic voice plan available to eligible Lifeline customers. Tr. at 80. The \$19.99 plan will be available to Lifeline customers without the imposition of a long-term contract or early termination fee. Aug. 14, 2012 Letter. Additionally, the availability of T-Mobile’s Wal-Mart Family Mobile plan and a variety of handset options for Lifeline customers will enhance customer choice for low-income consumers in Massachusetts.

Tr. at 18; 26. Furthermore, T-Mobile is a facilities-based provider with its own switching cell sites and network facilities in Massachusetts. Tr. at 17; 69-70. T-Mobile has the capacity to deliver Lifeline service to eligible low-income consumers throughout its service area and is continuing to invest in and build out its network for the benefit of all T-Mobile customers. Tr. at 70; Post-Hearing Brief at 7.

The Department recognizes that eligible Lifeline customers in Massachusetts can subscribe to voice service offered by competitive wireless ETC providers at no up-front cost to Lifeline subscribers.²⁰ T-Mobile, on the other hand, will charge \$9.99 per month (after application of the discount) for its basic Lifeline voice service, impose a \$35.00 activation fee, and charge an additional cost for a handset (unless provided by the customer). T-Mobile's contention is that its network, greater number of plan minutes, and broad range of equipment choices make its service offering as good as, if not better, in terms of its value to consumers as compared to its competitors. The Department need not address this particular contention, because the eligible Lifeline customer will determine which type of plan best suits his or her needs.

What the Department does consider, however, is whether the variety of T-Mobile's service plans and handset options that will be available to low-income Massachusetts consumers,

²⁰ TracFone currently offers Massachusetts Lifeline subscribers three monthly service options: 250 free voice minutes (no roll over minutes) without texting; 125 free minutes (roll over minutes apply) with texting at 1 text per minute of use; or 80 free minutes (roll over minutes apply) with texting at a rate of 3 texts per minute of use. Virgin Mobile currently offers Massachusetts Lifeline subscribers a monthly plan consisting of 250 free minutes and 250 free text messages. Lifeline subscribers can purchase additional minutes from Virgin Mobile at a cost of \$5.00 for 250 additional minutes and 250 additional text messages; \$20.00 for 750 additional minutes and 750 additional text messages; or \$30 for unlimited minutes, text messages, and data services. TracFone's and Virgin Mobile's basic Lifeline offerings are free to eligible subscribers after the application of the subsidized discount; include a free handset; and do not require an activation fee, a service contract, or early termination fee. *See* SafeLink Massachusetts Lifeline Certification Form, *available at* <https://www.safelinkwireless.com/Safelink/blank-application/massachusetts> and Assurance Wireless - Program description, <http://www.assurancewireless.com/public/MorePrograms.aspx>.

in addition to the no up-front cost options currently available, will provide a benefit to those consumers. Upon examination of the record, the Department finds that the additional competitive choice created by T-Mobile's unique service offerings is consistent with the public interest, and therefore T-Mobile has met its obligation to establish that allowance of its Petition is consistent with the public interest, convenience and necessity.

C. Conclusion

Based on the Department's review of the evidentiary record, the Department is convinced that T-Mobile has satisfied the ETC service requirements and that T-Mobile's designation as an ETC is consistent with the public interest, convenience, and necessity.

V. ORDER

Accordingly, after notice, hearing, and consideration, it is hereby

ORDERED: Consistent with the above, and subject to the aforementioned conditions, the Department hereby GRANTS T-Mobile Northeast LLC's Petition for Limited Designation as an Eligible Telecommunications Carrier for Purposes of Low Income Support Only;

FURTHER ORDERED: T-Mobile Northeast LLC's Motion for Protective Treatment of Confidential Information is GRANTED with respect to its redacted responses to information requests 15(d), 28(a) and (b)(referencing Exh. H), 31, and 32(c)(1), and record requests 10(a) and (c) and 11; and it is

FURTHER ORDERED: In accordance with 47 C.F.R. §54.401(d), T-Mobile Northeast LLC must file information with the Universal Service Administrator Corporation ("USAC") demonstrating that T-Mobile Northeast LLC's plans meet the criteria set forth in this subpart (47 C.F.R. §54.401) and 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 plans, additional charges, if any, for toll calls, and rates for such plans.

By Order of the Department:

*/s/ Geoffrey G. Why*_____
Geoffrey G. Why
Commissioner

RIGHT OF APPEAL

Appeals of any final decision, order, or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable state and federal laws.