



**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 13-1

September 28, 2023

Petition of Telrite Corporation d/b/a Life Wireless for Limited Designation as a Lifeline-Only Eligible Telecommunications Carrier

ORDER APPROVING PETITION

I. INTRODUCTION AND PROCEDURAL HISTORY

In this Order, the Department of Telecommunications and Cable (“Department”) grants the petition (“Petition”) of Telrite Corporation d/b/a Life Wireless (“Telrite” or the “company”) for limited designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to 47 U.S.C. § 214(e)(2). Telrite requests ETC designation solely to provide Lifeline service to qualifying Massachusetts consumers. The Department grants Telrite’s Petition because the Company meets the Federal Communications Commission’s (“FCC”) ETC requirements, the Department’s ETC requirements, and such designation is in the public interest.

The Department further grants, and provisionally denies, Telrite’s Motions for Protective Treatment (“Motions”) for certain information submitted in the course of this proceeding in the manner described below.

Telrite filed its initial Petition on January 8, 2013, but the Department granted Telrite’s request to stay the proceedings on November 5, 2013. With multiple pending petitions for ETC designation before it, the Department on July 23, 2020, issued a notice that required carriers that currently sought ETC status to file an affirmation of continued interest in the designation. Telrite filed its updated petition on August 24, 2020. On September 17, 2020, the Hearing Officer issued

a correspondence letter stating that the Hearing Officer would reach out to the parties in greater detail. On November 23, 2020, the Hearing Officer issued a Record Refresh Request to Telrite requesting: (1) updated docket filings, including responses to previously filed responses to the Department's Information Requests, (2) any other relevant information that might have changed since Telrite's Motion to Stay Proceeding filed on October 31, 2013, and (3) any other information that would assist the Department in reviewing the Petition. The Department received Telrite's responses on September 10, 2021 ("IR 1-1" through "IR 1-41"), along with a new Motion for a Protective Order relating to four exhibits.¹ The Department submitted a second set of Information Requests on February 1, 2022, and received Telrite's responses on February 28, 2022. ("IR 2-1" through "IR 2-7"). The Department submitted a third set of Information Requests on November 10, 2022, and received Telrite's responses on December 2, 2022 ("IR 3-1" through "IR- 3-4") as well as Telrite's third Motion for Protective Order. The Department received Telrite's responses to the Fourth Set of Information Requests on December 14, 2022. ("IR 4-1" through "IR 4-2"). Telrite's response to IR 4-2 was an updated response to IR 2-7. The Department held an evidentiary hearing on February 2, 2023. See generally Transcript ("Tr."). The Department received the responses to its record requests on February 15, 2023. ("IR 5-1" through "IR 5-6").

The evidentiary record consists of the Updated Petition, the Department's Correspondence Letter to Telrite, the Department's Record Refresh Request, Telrite's updated responses to the First Set of Information Requests, Telrite's Motions for Protection from Public Disclosure, Telrite's responses to the Department's Second Set of Information Requests,

¹ The Hearing Officer spoke to Telrite's counsel by telephone after not hearing from Telrite for many months to make sure that Telrite received the Record Refresh Request. Telrite's counsel stated that it received the request, its failure to respond to the Record Refresh Request constituted an oversight, and Telrite remained interested in receiving ETC designation.

Telrite's responses to the Department's Third Set of Information Requests, Telrite's responses to the Department's Fourth Set of Information Requests, the Evidentiary Hearing Transcript, and Telrite's Response to the Department's Fifth Set of Record Requests.

Motions for Protective Treatment

On September 9, 2013, Telrite filed its original Motion for Protective Treatment – requesting that many of its IRs responses be kept confidential. On September 10, 2021, Telrite filed its updated Responses to the First IRs. With its filing, Telrite included the Motion, seeking to protect from disclosure (i) customer counts set forth in Exhibit 3; (ii) the financial statements of Telrite as a private business corporation set forth in Exhibit 5; (iii) Telrite's internal business and financial projections for its operations set forth in Exhibit 6; and (iv) details of the privately-held ownership interests in Telrite set forth in Exhibit 11. On December 2, 2022, Telrite filed its Responses to the Third Set of IRs. With its filing, Telrite included a Motion that sought to protect its answer to IR 3-2 which requested “complete and detailed documentation of Telrite's market research for Massachusetts, including but not limited to any underserved groups or areas Telrite has identified and intends to target in Massachusetts.” On February 15, 2023, Telrite filed its response to the record requests from the evidentiary hearing and Telrite requested confidentiality for its response to IR 5-2, regarding Telrite's unaudited financial information for 2022. Telrite also requested confidentiality for its response to IR 5-6, which sought additional details regarding Telrite's market research, particularly the methodology behind Telrite's eligible Lifeline subscriber estimates.

In support for its Motions, Telrite contends the information for which it seeks protection constitutes confidential, proprietary and competitively sensitive information because: (1) it concerns Telrite's corporate and financial information; (2) the information's disclosure could

place Telrite at a competitive disadvantage by providing its competitors with valuable information about Telrite; (3) Telrite does not otherwise make this information publicly available and takes affirmative steps to protect it; and (4) Telrite's interest in maintaining the confidentiality of the data outweighs any benefit from public disclosure. Motions at 3-4.

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).

The Department is permitted 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." G.L. c. 25C, § 5; G.L. c. 4, § 7(26)(a). In applying this exemption, 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." *Id.*

Chapter 25C, § 5 provides a three-part standard for determining whether, and to what extent, information filed by a party during 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 statutory presumption that all such information is public by “proving” the need for its non-disclosure. *See* G.L. c. 66, § 10. 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* D.T.E. 01-31 Phase I, *Hearing Officer Ruling on Verizon Massachusetts’ Motions for Confidential Treatment* at 2-3 (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 recognized the competitively sensitive nature of companies’ confidential calculations and financial materials. *See Petition of Starlink Services, LLC for Designation as an Eligible Telecomms. Carrier*, D.T.C. 21-1, *Order* at 5 (June 7, 2021) (“*Starlink Order*”); *In re BLC Mgmt., LLC d/b/a Angles Commc’ns Solutions*, D.T.C. 09-2, *Order* at 5-6 (Aug. 23, 2010) (“*Angles Order*”). In this case, Telrite has submitted the Company’s audited financial statements, financial projections, and unaudited financial statements for 2022. *See* Exh.5, Exh.6 (*Conf*); IR 5-2. This type of information is exactly the type of information that the Department may protect from public disclosure. *See Starlink Order* at 5; *Angles Order* at 5-6. Revealing financial information and financial projections could allow Telrite’s competitors to have an unfair competitive advantage by allowing unique insight into the Company’s proprietary business model. Thus, Telrite’s financial information is competitively sensitive.

Turning to Telrite’s non-Lifeline subscriber counts, the Department has recognized that Lifeline-only ETCs’ non-Lifeline subscriber counts constitute proprietary information and warrant confidential treatment if not otherwise publicly available. *In re Budget PrePay, Inc.*, D.T.C. 11-12, *Hearing Officer Ruling* at 10 (Dec. 19, 2012) (“*Budget PrePay Ruling*”). Like in

the *Budget PrePay Ruling*, where the Department granted a wireless company's non-Lifeline subscriber count confidential status in a petition for Lifeline-only ETC designation, Telrite is requesting confidential status of its non-Lifeline subscriber counts in its petition for Lifeline-only ETC designation. Telrite, like Budget PrePay, does not publicize its non-Lifeline subscribership. Motion at 3. If this information became public, competitors could use their knowledge of Telrite's non-Lifeline business to gain a competitive edge by knowing where to better allocate their resources. The Department finds that Telrite's non-Lifeline subscriber counts are proprietary and that their disclosure could adversely affect Telrite's competitive position.

Turning to Telrite's ownership information, the Department has recognized that ownership structure constitutes competitively sensitive information. *See Petition of Charter Fiberlink MA-CCO, LLC and Time Warner Cable Information Services (Massachusetts), LLC for Designation as an Eligible Telecomms. Carrier*, D.T.C. 21-2, *Order* at 11 (June 4, 2021) ("*Charter Order*"). Like in *Charter* where the Company sought to protect an organizational chart describing the ownership structure of *Charter Fiberlink* and qualifying affiliates, Telrite is requesting confidential status of its shareholders and their respective ownership interests in the Company. *Charter Order* at 9. Telrite, like Charter, does not publish this information. If this information became public, competitors could use their knowledge to solicit investments in their companies and have those same shareholders divest from Telrite. Therefore, the Department finds that Telrite's shareholder information is proprietary and that such disclosure could adversely affect Telrite's competitive position.

Turning to Telrite's market research contained in IRs 3-2 and 5-6, the Department has held that a company's marketing information, such as subscriber statistics, are competitively sensitive. *See TracFone Wireless, Inc., Annual Verification of SafeLink Wireless Lifeline*

Subscribers, D.T.C. 09-9, *Order on Appeal of Hearing Officer Ruling on Motion for Protective Treatment* at 7 (June 30, 2010). The decision in *Tracfone* reasoned that “disclosure would permit competitors to determine whether and how to compete in this market.” *Id.* Telrite’s Response to IR D.T.C. 3-2 describes the types of data and methods Telrite uses to identify the number and location of current and potential Lifeline subscribers throughout Massachusetts. Similar to TracFone, where disclosure of subscriber statistics could provide new entrants with a roadmap for how to compete in the marketplace, Telrite’s competitors could use its market research as a guide to whether and how to compete in the competitive Lifeline market. Therefore, the Department finds that Telrite’s market research is proprietary and that such disclosure could adversely affect Telrite’s competitive position.

Regarding Telrite’s request for confidentiality of various items from its September 9, 2013, protective motion, the Department grants confidential status for the following documents based on the analysis of similar documents above:

1. Financial statements as a private corporation set forth in Exhibit D,
2. Internal three-year projection set forth in Exhibit E,
3. Customer account information set forth in Exhibit G,
4. Advertising and marketing plan contained in Exhibit L,
5. Internal audit results set forth in Exhibit M, and
6. Resale agreements with various entities contained in Exhibit O.

Furthermore, The Department has also held that internal training materials may be kept confidential. See *T-Mobile Northeast LLC Petition for Limited Designation as an Eligible Telecommunications Carrier for Purposes of Low Income Support Only*, DTC 12-4, *Order* at 7 (Aug 30, 2012). Therefore, the Department grants confidential status to Telrite’s internal training

materials contained in Exhibit J.

However, the Department provisionally denies Telrite's confidentiality request for 1) certain information in response D.T.C. 1-3 related to FCC investigations and Telrite's statements in response to the FCC's Notice of Apparent Liability dated June 2, 2008, and 2) customer complaint information set forth in Exhibit F. As the FCC reached a consent decree with Telrite in 2012, Telrite can no longer claim that the substance of this investigation is not public. *See* DTC IR 1-3, Attachment 2(a). In addition, the Department finds that Telrite has not provided sufficient explanation as to why its customer complaint information, set forth in Exhibit F, should be kept confidential. Should Telrite wish to receive confidential treatments of these items, the Department will provide Telrite 30 days from the date of this Order to petition the Department to explain why confidentiality is still needed.

As to the second prong, the Department has long held it will not automatically grant requests for protective treatment, stating that "[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 Starlink Order* at 6. The Department accepts Telrite's assertion that it does not make its financial statements, non-Lifeline subscriber counts, private ownership interests and its market research available to the public. *Motions* at 3. Furthermore, the Department has consistently found the type of information Telrite seeks to protect to warrant protection from public disclosure given the potential for competitive harms in the event of disclosure. *See Starlink Order; Angles Order; Budget PrePay Ruling*. Accordingly, the Department finds that Telrite has satisfied its burden to demonstrate that protection of this competitively sensitive information is warranted.

Turning to the third prong, protection should be afforded only to the extent needed. The

Department finds that a limitation on the protection Telrite seeks is appropriate. *See, e.g., Starlink Order* at 7 (granting confidential treatment of certain information for a period of five years); *In re Cox Com, Inc. d/b/a Cox Commc'ns New England*, D.T.C. 07-10, *Hearing Officer Ruling* at 5-6 (May 30, 2008). The Department grants confidential status to the information designated confidential above for a period of seven years from the date of this Order. *See* Motions at 4. Telrite may renew its request for confidential treatment at the end of that seven-year period with a showing of need for continuing protection. *See Starlink Order* at 7 (affording the provider an opportunity to renew its request for confidential treatment at the end of the initial confidentiality period).

The Department concludes that Telrite has satisfied its burden of showing a need for protection from public disclosure under the statute for the certain information described above, and the Department grants Telrite's Motions for Protective Treatment of Confidential Information with respect to that information for a period of seven years. However, the Department provisionally denies Telrite's confidentiality request for 1) certain information in response D.T.C. 1-3 related to FCC investigations and Telrite's statements in response to the FCC's Notice of Apparent Liability dated June 2, 2008, and 2) customer complaint information set forth in Exhibit F. The Department will provide Telrite **30 days** from the date of this Order to petition the Department to explain why confidentiality is needed for these two items.

II. PETITION FOR ETC DESIGNATION

Telrite has petitioned the Department for ETC designation solely to provide Lifeline service to qualifying Massachusetts consumers. Lifeline means a non-transferable retail service offering provided directly to qualifying low-income consumers, for which qualifying low-income consumers pay reduced charges as a result of application of the Lifeline support amount

described in 47 C.F.R. § 54.403, and which provides qualifying low-income consumers with voice telephony service or broadband internet access service as defined in 47 C.F.R. § 54.400. 47 C.F.R. § 54.401.

State commissions, upon request and consistent with the public interest, convenience, and necessity, shall designate a common carrier as an ETC for a service area designated by the state commission if the carrier meets certain requirements. 47 U.S.C. § 214(e)(2). The FCC has emphasized that state commissions should conduct a rigorous ETC designation process. *In re Fed.-State J. Bd. on Universal Serv., Rep. & Order*, FCC 05-46 (rel. Mar. 17, 2005) (“*Universal Service Order*”) ¶ 58. For the reasons set forth below, the Department grants Telrite’s Petition.

A. Jurisdiction

In Massachusetts, the Department exercises jurisdiction over carriers pursuant to G.L. c. 159, § 12. *See In re City of Westfield Gas + Elec. Light Dep’t*, D.T.C. 19-1, *Order Approving Petition* (Feb. 19, 2019); *Investigation by the Dep’t on its Own Motion into the Implementation in Mass. of the Fed. Commc’ns Comm’n’s Order Reforming the Lifeline Program*, D.T.C. 13-4, *Order Opening Investigation* (Apr. 1, 2013); *Investigation by the Dep’t on its Own Motion into the Lifeline & Link-Up Programs for Mass. Tel. Customers*, D.T.C. 10-3, *Order Opening Investigation* (Sept. 17, 2010); *In re T-Mobile Ne. LLC*, D.T.C. 12-4, *Order* (Aug. 30, 2012) (“*T-Mobile Order*”); G.L. c. 25C, § 8(b)(iv) (confirming the Department’s authority to designate wireless carriers as ETCs). Further, federal law grants the Department the authority to designate a carrier as an ETC. 47 U.S.C. § 214(e)(2). Accordingly, it is the Department’s responsibility to determine whether a carrier such as Telrite meets the ETC designation requirements. *Id.*

B. ETC Requirements

In order for the Department to grant Telrite’s request for ETC designation, Telrite must:

- 1) Be a “common carrier” as defined by federal law. 47 U.S.C. §§ 153, 214(e)(1).
- 2) Offer to qualifying low-income consumers services that meet the minimum service standards that are required by federal law for universal service support (“the required services”). 47 C.F.R. § 54.400 *et seq.*
- 3) Have a compliance plan approved by the FCC and commit to meeting the necessary 911 requirements. *See* 47 U.S.C. § 214(e)(1)(A); *In re Lifeline & Link Up Reform & Modernization*, WC Docket 11-42, Rep & Order & Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb 6, 2012) (“*Lifeline Reform Order*”) ¶¶ 361-381.”
- 4) Advertise throughout its designated service area the availability of the required services and “the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).²
- 5) Certify its commitment to meet the service requirements applicable to the type of universal service support it receives. 47 C.F.R. § 54.202(a)(1)(i).³
- 6) 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. 47 C.F.R. § 54.202(a)(2).
- 7) Demonstrate its ability to meet consumer protection and service quality standards. 47 C.F.R. § 54.202(a)(3).
- 8) Certify and demonstrate that it is financially and technically capable of providing the supported services. 47 C.F.R. §§ 54.201(h), 54.202(a)(4).
- 9) Certify that it will comply with:

(a) all federal Lifeline requirements under 47 C.F.R. §§ 54.400-54.423, and the

² ETCs must “[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). ETCs must indicate, using easily understood language, on all materials describing the service “that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household. For the purposes of this section, the term “materials describing the service” includes all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.” 47 C.F.R. § 54.405.

³ Although 47 C.F.R. § 54.202 establishes requirements for ETC designation by the FCC, the Department applies these criteria to applicants for ETC designation by the Department. *In re Virgin Mobile USA, L.P.*, D.T.C. 10-11, *Order Approving Petition* at 5 (Sept. 9, 2011) (“*Virgin Mobile Order*”); *T-Mobile Order* at 17-19.

Federal Communications Commission's *Lifeline Reform Order*;⁴ and

- (b) all Department Lifeline reporting and consumer protection requirements. D.T.C. 13-4, *Order Implementing Requirements & Further Request for Comment* at Appendix (Aug. 1, 2014).

10) Demonstrate that its 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).

C. Analysis

The Department finds that Telrite satisfies the requirements listed above. Furthermore, the Department finds that Telrite's designation as an ETC in the Service Area, which is the entire Commonwealth of Massachusetts, is consistent with the public interest, convenience, and necessity. Accordingly, the Department grants Telrite's ETC designation in the Service Area for the reasons discussed below.

1. *Telrite is a common carrier.*

To meet the first ETC requirement, Telrite must establish that it is a common carrier. 47 U.S.C. § 214 (e)(1); 47 C.F.R. § 54.201(d). Commercial mobile service providers are treated as common carriers for universal service purposes. *See* 47 U.S.C. § 332(c)(1)(A); 47 U.S.C. § 254. Telrite provides commercial mobile telecommunications services. *See* Petition at 9. Given that the definition mentioned above applies common carrier treatment to commercial mobile services, Telrite is a common carrier.

2. *Telrite will offer the supported services throughout the Service Area, including offering Lifeline services to low-income customers.*

Telrite must demonstrate that it will offer the supported services throughout the Service Area. 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. §§ 54.101(a), 54.201(d)(1), 54.405(a). "Supported

⁴ *In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Rep. & Order & Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012).

services” include qualifying broadband services; 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 emergency services (911 or E911), to the extent implemented. *See* 47 C.F.R. §§ 54.101, 54.401(a)(2).

Telrite states it will offer broadband Internet access service (“BIAS”) in the Service Area pursuant to 47 C.F.R. § 54.101(a)(2). *See* Petition at 11. Telrite provides BIAS to low-income consumers via resale of its underlying carrier’s mobile services. *Id.* Telrite also states that it provides voice grade access to the public switched telephone network through the resale of its underlying carrier networks. *Id.* at 10. Telrite states that it will provide these services throughout the Service Area. *Id.* Telrite also states it provides 911 and E911 access for all of its customers to the extent the local government in its service area has implemented 911 or E911 systems. *Id.* at 10. Telrite states calls to 911 emergency services will always be free and will be available regardless of service activation status or availability of minutes. *Id.* Telrite is also a reseller of AT&T services in Massachusetts with whom it has a contractual relationship for more than 15 years. IR 1-39. This Order does not doubt that AT&T has the ability to provide 911 services throughout the Commonwealth of Massachusetts and therefore concludes that Telrite can provide this service as well. Telrite currently provides Lifeline services to more than 150,000 customers outside of Massachusetts, further demonstrating that it can provide the necessary services throughout the Commonwealth of Massachusetts. IR 1-4. In sum, Telrite has committed to offering, and has demonstrated that it can offer, the supported services throughout the Service Area.

3. Telrite’s compliance plan has been approved by the FCC and Telrite will meet the necessary 911 requirements.

Despite the requirement in statute that ETCs must use their own facilities, at least partly,

to provide the supported services, the FCC granted forbearance from this “own-facilities” requirement contained in Section 214(e)(1)(A) for Lifeline-only ETCs meeting certain conditions. *Lifeline Reform Order* ¶¶ 368, 373, 379. In order to receive forbearance from the own-facilities requirement, a carrier must meet the following conditions: (1) the carrier must comply with certain 911 requirements and (2) the carrier must file, and the FCC must approve, a compliance plan providing specific information regarding the carrier’s service offerings and outlining the measures the carrier will take to implement the FCC’s Lifeline obligations. *Id.* ¶ 368.

Telrite filed its compliance plan with the FCC in 2012. *See* Petition at Exh. C. On December 26, 2012, the FCC approved Telrite’s compliance plan. FCC, Pub. Notice, Wireline Competition Bureau Approves the Compliance Plans of . . . Telrite Corporation, WC Docket Nos. 09-197 and 11-42, DA 12-2063 (rel. Dec. 26, 2012); Petition at 9 n.16. Telrite’s compliance plan included Telrite’s commitment to comply with the required 911 requirements. *See* Petition at Exh. C; *Lifeline Reform Order* ¶ 373. Given the FCC’s approval of Telrite’s compliance plan, the “own-facilities” requirement does not apply to Telrite.

4. Telrite will advertise the availability of the supported services in accordance with regulatory requirements.

Telrite must advertise the availability of supported services and charges in media of general distribution throughout the Service Area. 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2). Telrite states it will focus its marketing efforts on social media.⁵ *See* IR 1-31; IR 2-5. Telrite has provided sample advertisements to this effect. IR 1-31, Att. 10. Telrite states it will explain in clear, easily understood language the following in all marketing materials related to its

⁵ The Department reserves the right in future proceedings to determine whether exclusively advertising in social media satisfies the criteria of advertising in media of general distribution.

Lifeline service: (a) that the service is a Lifeline-supported service; (b) that only eligible consumers may enroll in the Lifeline program; (c) the documentation necessary for enrollment; and (d) that the benefit is limited to one per household consisting of either wireline or wireless service, and is non-transferrable. *See* Petition at 11; 47 C.F.R. § 54.405(c).

In addition, Telrite plans to use in person events to acquire subscribers in addition to online media. Specifically, Telrite plans “to coordinate advertising and outreach efforts with organizations such as the following: social service agencies; community centers; local Council on Aging centers; the United Way; and AARP.” IR 3-3. Telrite further identified during this proceeding what these events would look like and the marketing material that would be distributed. IR 5-4; 5-5. The Department finds this approach is in the public interest subject to compliance with local regulation and cooperation with locations hosting in person events. Other Lifeline providers previously held Lifeline in person events, targeted at locations catering to low-income residents and other public places, but such events have been largely discontinued. Potential subscribers may find one-on-one assistance in subscribing to Lifeline more useful than online subscription and verification. While in person contact serves the public interest, the Department has previously received complaints from other state agencies and local law enforcement of sales representatives for Lifeline providers disrupting public places or the normal course of business. Telrite must avoid aggressive or disruptive sales practices when promoting its Lifeline services in person. To this end, the Department requires Telrite to avoid using commissioned sales agents from promoting Lifeline subscriptions, as Telrite committed to at the evidentiary hearing. *See* Tr. at 33 (stating that agents can sign up customers for Telrite’s service directly, but those agents are not paid a commission); *See also* DTC IR 3-3 (for how Telrite states it will conduct (“site events”). Telrite also noted at the evidentiary hearing that it has a

unique setup where it can sign up the customer on a tablet without the customer having to mail any material. Tr. at 27-28. Telrite should continue this practice of making it as easy as possible for customers, once they have completed the appropriate diligence, to sign up for the Lifeline services. The Department encourages Telrite to cooperate with local stakeholders in locations it intends to hold in-person events and comply strictly with local laws and regulations. The Department does not prescribe a specific method for cooperating with other State and local agencies but will consider any complaints from local and state agencies when reviewing Telrite's continuing ETC designation.

The Department finds that Telrite has sufficiently demonstrated that it will advertise the availability of supported services in media of general distribution throughout the Service Area. Telrite, though, must comply with future updates to the Departments requirements in D.T.C.13-4, which potentially could further specify the manner in which online advertising must occur.

5. Telrite has certified its commitment to meet the service requirements applicable to the type of universal service support it receives.

Telrite must certify that it will comply with the service requirements applicable to the support that it receives. 47 C.F.R. § 54.202(a)(1)(i). In the Petition, Telrite committed to complying with applicable service requirements. Petition, Exh. C at 25. Telrite has also shown an ability to provide Lifeline services as it is designated as a wireless ETC in numerous other jurisdictions solely for the purpose of providing low-income lifeline service. IR 1-1. Therefore, the Department finds that Telrite has met its burden under this requirement.

6. Telrite has certified its commitment and demonstrated 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.

Telrite states that it can remain functional in emergency situations, as required by 47 C.F.R. § 54.202(a)(2). Petition at 14. Telrite originally intended to utilize T-Mobile’s and AT&T Mobility’s underlying wireless networks to provide service to its subscribers.⁶ *Id.* Telrite, however, stated at the beginning of record refresh request that it no longer intends to use T-Mobile service in Massachusetts. Therefore, even though the Petition mentions both AT&T and T-Mobile regarding emergency situations, the analysis below will only focus on AT&T. Telrite states that AT&T has access to 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 from emergency situations. *Id.* By ensuring that its customers have the same network functionality in emergency situations as its underlying provider, which is able to remain functional in emergency situations, Telrite has demonstrated its ability to remain functional in emergency situations.

7. Telrite has certified its commitment and demonstrated its ability to meet consumer protection and service quality standards.

An ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. 47 C.F.R. § 54.202(a)(3). Wireless applicants may satisfy this requirement by complying with the Cellular Telecommunications and Internet Association’s (“CTIA”) Consumer Code for Wireless Service. *Id.* Telrite commits to complying with the CTIA Consumer Code for Wireless Service. Petition at 14. Telrite states its intention to provide high-quality customer service so that customer complaints can be resolved in a timely manner. *Id.* For example, Telrite states customers can call customer service by dialing 611 from their Telrite handset and no minutes will be used for the call, or consumers can call 1-888-543-3620 from any

⁶ Telrite states that AT&T’s 3G network retirement will not affect Telrite customers in Massachusetts because Telrite plans on distributing only 4G-LTE compatible phones in Massachusetts. IR 2-4.

phone. *Id.* The Department holds that Telrite has demonstrated that it will meet the consumer protection and service quality standards for the type of support it receives.

8. Telrite has certified and demonstrated that it is financially and technically capable of providing the supported services.

Telrite has certified and demonstrated that it is financially and technically capable of providing Lifeline-supported services. Petition at 14-15; *see also* 47 C.F.R. §§ 54.201(h), 54.202(a)(4). 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 [universal service fund] 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* ¶ 388.

Telrite states that it has provided general communications services successfully for more than two decades and has access to sufficient funds to run its business. Petition at 14-15. Most critically, Telrite states its business is not solely dependent on reimbursements from the federal Universal Service Fund as Telrite generates non-Lifeline revenues from Telrite’s affiliated companies, Pure Talk Holdings, LLC and Locus Telecommunications, LLC, which do business as PureTalkUSA and h2o® Wireless. *Id.*; IR 1-10. Furthermore, the Department has reviewed Telrite’s financial documents and, based on that review, determines that Telrite is financially stable for the purposes of this ETC designation. *See* Exh.5, Exh. 6 (*confidential*); IR 5-2. Telrite had extensive litigation with the state of Nebraska due to its failure to follow Nebraska’s ETC rules, but the parties have reached a settlement. IR 1-3. Telrite states that it has met the commitments set forth therein, including compliance with the Nebraska Public Service Commission’s (“NPSC”) requirements. Nebraska has since been incorporated into the National

Verifier. IR 2-6. Telrite states it has not had any disputes with the NPSC since entering into the settlement agreement. *Id.* Telrite has also entered into two consent decrees with the FCC in the last 10 years as a result of allegations by the FCC of incorrectly reporting its revenue figures and duplicate billing. IR 1-3. As part of its settlement with the FCC, Telrite was required to submit compliance plans to the FCC that stated how the company would comply with the terms of the settlement. *See* IR 1-3, Attachment 2(a). The two consent decrees provided explicit detail as to how these compliance plans needed to be enforced. *Id.* Telrite has taken steps to properly report its revenue figures and detect and prevent duplicate reimbursement. IR 1-3. Telrite and its affiliates have experienced no similar issues since the consent decrees were entered in 2012 and 2017 respectively. IR 1-3.

As a result of the foregoing, the Department finds that Telrite has met its burden of showing that it is financially and technically capable of providing Lifeline service.

9. Telrite has committed to complying with FCC and Department requirements.

a. Federal Lifeline Procedures and Requirements

Lifeline procedures and requirements established by the FCC include:⁷

- 1) Screening applicants using the National Lifeline Accountability Database as set forth in 47 C.F.R. § 54.404(b)(1)-(12);
- 2) Complying with the carrier's obligations to offer Lifeline, including de-enrollment requirements, as established in 47 C.F.R. § 54.405(a)-(e);
- 3) Complying with minimum service standards and certain equipment requirements established in 47 C.F.R. § 54.408;
- 4) Certifying that the carrier is prepared to comply with the subscriber eligibility determination and certification requirements established in 47 C.F.R. § 54.410(a)-(h)

⁷ Although Telrite did not explicitly mention all applicable federal requirements in its Petition necessarily, Telrite asserts that it meets all the statutory and regulatory requirements for designation as an ETC and also that it will comply with the rules and regulations that the Department may lawfully impose. *See* Petition at 18-19. Thus, Telrite has committed to and must comply with all applicable federal requirements.

- to the extent applicable;
- 5) Complying with annual certification requirements established in 47 C.F.R. § 54.416(a), (b);
 - 6) Complying with recordkeeping requirements established in 47 C.F.R. § 54.417;
 - 7) Complying with audit requirements, to the extent applicable, established in 47 C.F.R. § 54.420; and
 - 8) Complying with annual reporting requirements established in 47 C.F.R. § 54.422.

Telrite has agreed to comply with all of the FCC's procedures and requirements. *See* Petition at 19. The Department finds that Telrite has met the certification requirement.

b. Department Requirements

Telrite has committed to meeting all Department ETC requirements that the DTC may lawfully impose, including those summarized below. *See* Petition at 19; *13-4 Order* at App.

A. Reporting Requirements

- 1) Telrite shall file with the Department, within 60 days of the approval of its Petition:
 - a. A copy of the Lifeline application form that it will use for consumers in Massachusetts;
 - b. Copies of all advertising and marketing materials that it plans to use in Massachusetts;
 - c. Its rates, terms and conditions of service, applicable to qualifying Lifeline service customers;
 - d. Contact information for its customer service designee; and
 - e. Its proposed methods and timing of annual Lifeline recertifications and a sample Lifeline recertification notice.
- 2) Telrite shall file with the Department by March 1 of each year:
 - a. A copy of certifications filed annually with Universal Service Administrative Company pursuant to 47 C.F.R. § 54.416(a);
 - b. The number of subscribers de-enrolled for non-usage, by month, pursuant to 47

C.F.R. § 54.416(b) (FCC Form 555 or its equivalent); and

- c. A report of marketing or promotional activities for the previous calendar year, including a description of media services used, methods of marketing, samples of advertisements published in Massachusetts, event appearances and zip codes of those events, and any other mass marketing activities conducted.
- 3) Telrite shall file with the Department by July 1 of each year:
- a. The company name, names of the company's holding company, operating companies and affiliates, and any branding as well as relevant universal service identifiers for each such entity by Study Area Code, as required by 47 C.F.R. § 54.422(a)(1) (part of FCC Form 481 or its equivalent);
 - b. 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, as required by 47 C.F.R. § 54.422(a)(2). If the plans offered to Lifeline subscribers are also generally available to the public, Telrite may provide summary information regarding such plans, such as a link to a public website outlining the terms and conditions of such plans (part of FCC Form 481 or its equivalent); and
 - c. A report of the number of complaints related to the Lifeline program during the previous calendar year per 1,000 Lifeline subscribers in Massachusetts (if not provided as part of FCC Form 481).
- 4) Telrite shall notify the Department of the following events within 30 days of any event's occurrence:
- a. Telrite's ETC designation has been suspended, revoked, relinquished, or in any way withdrawn or removed in any jurisdiction;
 - b. The FCC, a state utilities commission, a court, or any government agency has rendered or entered a finding, civil judgment, or settlement (including consent decrees and money judgments) related to the Lifeline program, or a criminal conviction (including plea agreements) related to a dishonest act, false statement, or misuse of the Lifeline program against Telrite, its executives, or its senior managers;
 - c. Any change(s) to Telrite's corporate ownership structure or principal address; and
 - d. Any material change(s) to its method(s) or timing of annual recertifications, or to the sample recertification notice filed after approval of the Petition.
- 5) Telrite shall provide to the Department a copy of any final audit report generated

pursuant to 47 C.F.R. § 54.420(b) within 30 days of the issuance of the final audit report.

- 6) By July 1 of each year, Telrite shall submit to the Department all information specified in 47 C.F.R. § 54.422(b) (as part of FCC Form 481 or its equivalent), including:
 - a. Detailed information on any outage in the prior calendar year, as that term is defined in 47 C.F.R. § 4.5(a), of at least 30 minutes in duration 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 C.F.R. § 4.5(e).
- Specifically, the 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.
- b. Certification of compliance with applicable service quality standards and consumer protection rules; and
 - c. Certification that the carrier is able to function in emergency situations as set forth in 47 U.S.C. § 54.202(a)(2).
- 7) Telrite shall notify the Department of any material change(s) to the rates, terms, or conditions of its Lifeline service in Massachusetts at least five business days prior to the implementation of the change(s).
- 8) By March 1 of each year, Telrite shall submit to the Department:
 - a. A public safety answering point (PSAP) self-certification, confirming that it provides its subscribers with 911 and E911 access; and
 - b. A certification that it paid all applicable 911 fees in the Commonwealth for the previous year.

B. Consumer Safeguards

- 1) Telrite shall:
 - a. Work in good faith with Department staff to resolve Lifeline subscriber disputes;
 - b. Include the Department's Consumer Division contact information on its website, Lifeline marketing materials (except for television and radio advertising), initial sales receipts for Lifeline service, and Lifeline terms and conditions; and
 - c. Include information about the availability of the Department's Consumer Division for handling Lifeline complaints on its website and in its Lifeline terms and conditions.
- 2) If Telrite plans to discontinue offering Lifeline service in Massachusetts, it must:
 - a. Notify Lifeline subscribers and the Department 60 days in advance of the planned discontinuance of Lifeline service in Massachusetts, and
 - b. Work in good faith with its Lifeline subscribers and the Department to facilitate a smooth transition of subscribers to alternative ETCs of the subscribers' choice.
- 3) Telrite shall update its Massachusetts Lifeline application within 30 days of changes in eligibility criteria, including Federal Poverty Guideline calculations.

Telrite has agreed to comply with the Department's Lifeline requirements. *See* Petition at 19; *13-4 Order*. Therefore, the Department find that Telrite has complied with this certification requirement.

10. Telrite'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." 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.202(b); *Universal Service Order*, ¶ 40; *T-Mobile Order* at 20-21. Telrite bears the burden of proving that its designation as an ETC in the Service Area is in the public interest. *See Universal Service Order*, ¶ 44. For the reasons discussed below, the Department finds that granting Telrite's 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.” *T-Mobile Order* at 21 (quoting *Virgin Mobile Order* at 10); see also *Universal Service Order*, ¶¶ 40-44. This test must be applied in a manner consistent 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 an 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*, ¶ 40 n.111.

As each petitioner seeking ETC designation will likely be unique, the Department’s exercise is necessarily fact-specific to each petition. *Universal Service Order*, ¶ 46. Accordingly, the Department evaluates the particular advantages or disadvantages of the services offered by Telrite, their affordability, and considerations of material harm in determining whether designating Telrite as an ETC is in the public interest. *Id.*

The Department and the Commonwealth have long recognized the importance of broadband expansion and access. See, e.g., *In re a Nat’l Broadband Plan for Our Future*, GN Docket No. 09-51, *Joint Comments of the Mass. Broadband Inst. & MDTC* at 16, 20-21 (June 8, 2009). Today, the importance of access to broadband service, including mobile broadband, is even more critical for business, education, and civic life. Allowing an additional Lifeline-only ETC to offer mobile voice and broadband Lifeline services to qualifying consumers will confer a

benefit upon Massachusetts residents. Indeed, Telrite's Lifeline service can be an important step to bridging the digital divide for Massachusetts's low-income residents.

Telrite's designation as a Lifeline-only ETC will increase competition in the Lifeline market, and the designation should increase eligible Lifeline subscriptions by increasing awareness of the Lifeline program generally. This is particularly notable in Telrite's case, because two wireless Lifeline-only ETCs have relinquished their ETC designation in the past 10 years. *See In re Budget PrePay, Inc. d/b/a Budget Mobile*, D.T.C. 17-3, *Order* (July 28, 2017); *In re T-Mobile Ne. LLC*, D.T.C. 14-5, *Order* (Dec. 18, 2014). Furthermore, the Department also recently approved TruConnect Communications, Inc ("TruConnect") as a Lifeline-only ETC in Massachusetts and Telrite provides another method for Massachusetts low-income consumers to access affordable voice, mobile and data service. This additional option should increase competition and provide increased options for consumers.

In addition, Telrite's Lifeline service plan will likely be highly competitive. Telrite states that its proposed initial Massachusetts Lifeline plan includes 500 talk minutes, unlimited texts, 4.5 GB of data,⁸ several of the most popular features and a smartphone, all free of charge. *See* Updated IR responses (page 1). Telrite's offerings have several features that will appeal to low-income consumers. *See* Petition at 21. Telrite states its Lifeline plans alleviate customer concerns regarding deposits, hidden costs, varying monthly charges and long-term contract issues. *Id.* Telrite does not impose credit checks, and providing an alternative for those low-income consumers unable to obtain credit as is required for post-paid services provided by traditional

⁸ The Department expresses concern regarding Telrite's data throttling practice. While the Department will not prohibit the practice at this moment, it encourages Telrite to review this practice upon issuance of this Order and reduce the practice of data throttling where possible to promote the public interest. The Department also notes the increased bundling of Lifeline and ACP options and reserves the right to modify this Order based upon potential changes in the ACP program. *See* DTC 5-1 (Exhibit 1).

carriers. *Id.* Through MoneyGram, Telrite states Lifeline subscribers have nationwide retail store access to purchase more minutes or data. *Id.* Designating Telrite as an ETC will also help increase consumers access to the Lifeline market given that Telrite uses AT&T Mobility – an underlying network that is not currently used by another ETC in Massachusetts. IR 3-4. The combination of using AT&T Mobility and Telrite’s in-person marketing approach should reach consumers not previously being reached. Thus, designating Telrite as an ETC should fill a void in the ETC marketplace that is not currently being served. *Id.*

Acting in the public interest dictates consumers receive complete and accurate information on these offerings before selecting a provider. As international calling options are a common additional feature, the Department orders that Telrite explicitly disclose its lack of an international offering in its terms and advertising to avoid customer confusion, to ensure that customers choosing Telrite are aware that they cannot purchase international calling minutes.

The Department finds that Telrite’s plan to introduce a unique, low-cost mobile voice and broadband option in the Service Area is consistent with the public interest. Accordingly, Telrite has met its obligation to establish that its ETC designation is consistent with the public interest, convenience, and necessity.

D. Conclusion

The Department finds that Telrite has satisfied federal ETC requirements, the Department’s ETC requirements, and that designation of Telrite as a Lifeline-only ETC is consistent with the public interest, convenience, and necessity.

III. ORDER

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

ORDERED: Consistent with the above, the Department hereby GRANTS Telrite's Petition for Designation as a Lifeline-only Eligible Telecommunications Carrier in the Service Area; and it is

FURTHER ORDERED: The Department hereby GRANTS in part Telrite's Motions for Protection from Public Disclosure, subject to the seven-year limitation established above, and provisionally DENIES Telrite's confidentiality request with respect to 1) responses to D.T.C. 1-3 related to FCC investigations and Telrite's statements in response to the FCC's Notice of Apparent Liability dated June 2, 2008, and 2) customer complaint information set forth in Exhibit F. Telrite may make a motion within **30 days** from the date of this Order to seek confidential treatment for these two items, as explained above.

By Order of the Department,

A handwritten signature in blue ink that reads "Karen Charles". The signature is written in a cursive, flowing style.

Karen Charles - Commissioner

RIGHT OF APPEAL

Pursuant to G.L. c. 25, § 5, and G.L. c. 166A, § 2, an appeal as to matters of law from any final decision, order or ruling of the Department may be taken to the Supreme Judicial Court for the County of Suffolk by an aggrieved party in interest by the filing of a written petition asking that the Order of the Department be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Department within twenty (20) days after the date of service of the decision, order or ruling of the Department, or within such further time as the Department may allow upon request filed prior to the expiration of the twenty (20) days after the date of service of said decision, order or ruling. Within ten (10) days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court for the County of Suffolk by filing a copy thereof with the Clerk of said Court. Appeals of Department Orders on basic service tier cable rates, associated equipment, or whether a franchising authority has acted consistently with the federal Cable Act may be brought to the Federal Communications Commission pursuant to 47 C.F.R. § 76.944.