



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

D.T.C. 20-2

August 19, 2021

Petition of TruConnect Communications, Inc. 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 TruConnect Communications, Inc.’s (“TruConnect” or “the Company”) petition (“Petition”) for limited designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to 47 U.S.C. § 214(e)(2). TruConnect requests ETC designation solely to provide Lifeline service to qualifying Massachusetts consumers. The Department grants TruConnect’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 TruConnect’s Motion for Protection from Public Disclosure (“Motion”) in the manner described below.

TruConnect filed its Petition on June 1, 2020.¹ On September 17, 2020, the Hearing Officer issued a correspondence letter stating that this proceeding had been docketed as D.T.C. 20-2 and the Hearing Officer would reach out to the parties in greater detail. On February 4,

¹ 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. On that same day, TruConnect filed its Affirmation of Interest.

2021, the Department issued its First Set of Information Requests (“First IRs”). The Department received TruConnect’s responses on March 1, 2021 (“IR 1-1” through “IR 1-23”), along with the Motion relating to the Company’s response to IR 1-3.² On March 29, 2021, the Department issued an Order of Notice that required TruConnect to publish a Notice of Public Hearing in the Boston Globe and Springfield Republican no later than April 15, 2021, and to make proof of such publication to the Department by April 27, 2021. On April 27, 2021, TruConnect filed proof that the Notice of Public Hearing was published in the Boston Globe on April 10, 2021, and in the Springfield Republican on April 13, 2021. TruConnect filed a supplemental response to IR 1-22 (“IR 1-22 Supplement”) on April 28, 2021, and a supplemental response to IR 1-7 on July 27, 2021.³ On April 29, 2021, the Department held a public and evidentiary hearing on the Petition. On May 13, 2021, TruConnect responded to the Department’s Record Requests (“RR-1” through RR-11”) from the hearing, adding RR-9 and RR-11 to its request for confidential treatment. The Department did not receive any public comments on the Petition or petitions to intervene in the proceeding.

The evidentiary record consists of the Petition, TruConnect’s Affirmation of Interest, the Department’s Correspondence Letter to TruConnect, TruConnect’s responses to the First IRs along with its supplemental responses, TruConnect’s Motion for Protection from Public Disclosure, TruConnect’s proof of publication of Notice of Public Hearing, the hearing transcript (“Tr.”), and TruConnect’s responses to the Department’s Record Requests.

² TruConnect’s Responses to the First IRs initially contained only a redacted version. Consistent with Department precedent and policy, on March 11, 2021, TruConnect filed an unredacted copy of its Responses. *See* 207 C.M.R. § 1.04(5)(e).

³ This supplemental response was necessary to complete the Company’s response to IR 1-7.

II. Motion for Protective Treatment

On March 1, 2021, TruConnect filed its Responses to the First IRs. With its filing, TruConnect included the Motion, seeking to protect portions of IR 1-3, in response to which TruConnect filed audited financial statements and non-Lifeline subscriber numbers. TruConnect subsequently included its responses to RR-9 (the Company's net revenue calculations and cost of revenue calculations) and RR-11 (the Company's number of Internet-On-The-Go (IOTG) and prepaid accounts) in its request for confidential treatment. RR-9; RR-11. As support for its Motion, TruConnect contends the information for which it seeks protection constitutes confidential, proprietary and competitively sensitive information because: (1) it concerns TruConnect's corporate and financial information; (2) the information's disclosure could place TruConnect at a competitive disadvantage by providing its competitors with valuable information about TruConnect; (3) it is information that TruConnect does not otherwise make publicly available and that TruConnect takes affirmative steps to protect; and (4) TruConnect's interest in maintaining the confidentiality of the data far outweighs any benefit obtained through public disclosure. Motion at 2-3.

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.” *Id.* § 7(26)(a).

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. 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 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 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, TruConnect has submitted the Company’s audited financial statements for calendar year 2019, including a balance sheet, a statement of income, and a statement of cash flows. *See* IR 1-3 at Exh. 1 (*confidential*); RR-9 (*confidential*); Motion at 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 audited financial information could allow TruConnect’s competitors to have an unfair competitive advantage by allowing a unique insight into the Company’s proprietary business model. Thus, TruConnect’s financial information is competitively sensitive.

Turning to TruConnect’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, TruConnect is requesting confidential status of its non-Lifeline subscriber counts in its petition for Lifeline-only ETC designation. TruConnect, like Budget PrePay, does not publicize its non-Lifeline subscribership. Motion at 2. If this information became public, competitors could use their knowledge of TruConnect’s non-Lifeline business to gain a competitive edge by knowing where to better allocate their resources. The Department finds that TruConnect’s non-Lifeline subscriber counts are proprietary and that their disclosure could adversely affect TruConnect’s competitive position.

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 TruConnect’s assertion that it does not make its audited financial statements and non-Lifeline subscriber counts available to the public. Motion at 2-3. Furthermore, the Department has consistently found the type of information TruConnect 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 TruConnect has satisfied its burden to demonstrate that protection of the 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 TruConnect 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) (same). The Department grants confidential treatment to TruConnect’s response to the requested part of IR 1-3, RR-9, and RR-11 for a period of seven years, as TruConnect requested, from the date of this Order. *See* Motion at 3. TruConnect 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 TruConnect has satisfied its burden of showing a need for protection from public disclosure under the statute, and the Department grants TruConnect’s Motion for Protective Treatment of Confidential Information for a period of seven years.

III. PETITION FOR ETC DESIGNATION

TruConnect has petitioned the Department for ETC designation solely to provide Lifeline service to qualifying Massachusetts consumers. 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 TruConnect’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 TruConnect meets the ETC designation requirements. *Id.*

B. ETC Requirements

In order for the Department to grant TruConnect’s request for ETC designation,

TruConnect must:

- 1) Be a “common carrier” as defined by federal law. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).
- 2) Offer the required supported services (47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.101(a), 54.201(d)(1)) to qualifying low-income consumers (47 C.F.R. § 54.405(a)) throughout its designated service area. 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).
- 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*”) ¶¶ 368-381.
- 4) Advertise the availability of supported services and “the charges therefor using 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).⁴
- 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).⁵
- 6) Certify its commitment and 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) Certify its commitment and demonstrate its ability to meet the 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).

⁴ ETCs must disclose on all materials describing Lifeline 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 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. The FCC has waived the requirement that a petitioner seeking a Lifeline-only ETC designation submit a five-year improvement plan. 47 C.F.R. § 54.202(a)(1)(ii).

9) Certify that it will comply with federal Lifeline procedures and requirements and requirements imposed by the Department, as discussed below.

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 TruConnect satisfies the requirements listed above.

Furthermore, the Department finds that TruConnect's designation as an ETC in the Service Area, which is the entire Commonwealth of Massachusetts,⁶ is consistent with the public interest, convenience, and necessity. Accordingly, the Department grants TruConnect's ETC designation in the Service Area for the reasons discussed below.

1. TruConnect is a common carrier.

To meet the first ETC requirement, TruConnect 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. TruConnect states that it is a resale-based Commercial Mobile Radio Service ("CMRS") provider. *See* Petition at 12. Given that the definition mentioned above applies common carrier treatment to commercial mobile services and TruConnect is a CMRS provider, TruConnect is a common carrier.

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

TruConnect must demonstrate that it will offer the supported services throughout the

⁶ *See* Petition at 15. The Department notes that despite its establishment of this Service Area, TruConnect's wireless coverage is necessarily subject to the existence of its underlying carrier's facilities and corresponding coverage. *See* RR-4 at Exh. 3 for a list of zip codes in which TruConnect provides "little or no coverage."

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 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).

TruConnect 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 14. TruConnect provides BIAS to low-income consumers via resale of its underlying carrier’s mobile services. *Id.* TruConnect also states that it provides voice grade access to the public switched telephone network through the purchase of wholesale CMRS services from its facilities-based underlying carrier. *Id.* at 13. TruConnect states that it will provide these services throughout the Service Area. *Id.* at 16. Specifically, TruConnect plans to offer unlimited voice minutes, unlimited text messages, and 4.5 GB of data, all at no charge to Lifeline subscribers. IR 1-22 Supplement. TruConnect will also offer its Lifeline subscribers a free SIM card, free calling to Canada, Mexico, and China, free calls to TruConnect’s customer service, free access to voicemail, caller-ID, call waiting, call forwarding, and 3-way calling. Petition at Exh. 2. TruConnect 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 13. TruConnect states calls to 911 emergency services will always be free and will be available regardless of service activation status or availability of minutes. *Id.* TruConnect currently provides Lifeline services in 31 jurisdictions, further demonstrating that it can provide the necessary services throughout the Commonwealth of Massachusetts. *Id.* at 18. In sum, TruConnect has committed to offering and demonstrated that it can offer the supported services throughout the Service Area.

3. *TruConnect's compliance plan has been approved by the FCC and TruConnect 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. TruConnect filed its compliance plan with the FCC in 2012.⁷ See Petition at Exh. 3. On December 26, 2012, the FCC approved TruConnect’s compliance plan. FCC, Pub. Notice, Wireline Competition Bureau Approves the Compliance Plans of . . . Telscape Communications, WC Docket Nos. 09-197 and 11-42, DA 12-2063 (rel. Dec. 26, 2012); Petition at 12 n.21. TruConnect’s compliance plan included TruConnect’s commitment to comply with the required 911 requirements. See Petition at Exh. 3; *Lifeline Reform Order* ¶ 373. Given the FCC’s approval of TruConnect’s compliance plan, the own-facilities requirement does not apply to TruConnect.

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

TruConnect must advertise the availability of supported services and charges in media of

⁷ The compliance plan was filed under the name Telscape Communications, Inc. (“Telscape”), TruConnect’s previous name. See IR 1-9, Exh. 3 for the Delaware Secretary of State Certificate of Amendment regarding the name change from Telscape to TruConnect. For clarity, the Department will refer to the compliance plan as TruConnect’s compliance plan.

general distribution throughout the Service Area. 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2). TruConnect states it will advertise its Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline service, using media such as print advertisements, direct marketing, social media, and the Internet. *See* Petition at 14, Exh. 1, Exh. 5; RR-5 & Exh. 4. TruConnect has provided sample advertisements to this effect. RR-5 & Exh. 4. TruConnect states it will explain in clear, easily understood language the following in all marketing materials related to its 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 15; 47 C.F.R. § 54.405(c). TruConnect has demonstrated that it plans to make the necessary effort to reach low-income consumers throughout the Service Area. TruConnect's marketing outreach will allow a variety of potential consumers to learn about its services given the variety of media in which TruConnect's advertisements will appear. Awareness should not be an impediment to prospective TruConnect customers accessing the service. The Department finds that TruConnect has demonstrated that it will advertise the availability of supported services in media of general distribution throughout the Service Area.

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

TruConnect 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, TruConnect committed to complying with applicable service requirements. Petition at 16, Exh. 1. The Department finds that TruConnect has met its burden under this requirement.

6. *TruConnect 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.*

TruConnect states that it has the ability to remain functional in emergency situations, as required by 47 C.F.R. § 54.202(a)(2). Petition at 16-17, Exh. 1. TruConnect intends to utilize T-Mobile's underlying wireless network to provide service to its subscribers.⁸ IR 1-18. TruConnect states that T-Mobile 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. Petition at 17. TruConnect also states that T-Mobile has certified to the FCC that it has the capability to remain functional in emergency situations. *Id.* At the evidentiary hearing in this proceeding, TruConnect described a mechanism it has in place to ensure that TruConnect subscribers receive the same network functionality as T-Mobile subscribers. Tr. at 18. 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, TruConnect has demonstrated its ability to remain functional in emergency situations.

7. *TruConnect 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

⁸ Despite the reference in the Petition, TruConnect does not intend to use Verizon's network. IR 1-18; *see also* Petition at 17.

(“CTIA”) Consumer Code for Wireless Service. *Id.* TruConnect commits to complying with the CTIA Consumer Code for Wireless Service. Petition at 17, Exh. 1. TruConnect further commits to (a) work in good faith with Department staff to resolve Lifeline subscriber disputes, (b) include information about the availability of the Department’s Consumer Division for handling Lifeline complaints on the Company’s website and in its Lifeline terms and conditions, and (c) provide the Department’s Consumer Division contact information on the Company’s website, printed Lifeline marketing materials, initial sales receipts for Lifeline service, and Lifeline terms and conditions. Petition at 17-18; *see also Investigation by the Dep’t on its Own Motion into the Implementation in Mass. of the Fed. Commc’n’s Comm’n’s Order Reforming the Lifeline Program*, D.T.C. 13-4, *Order Implementing Requirements* (Aug. 1, 2014) (“13-4 Order”); *infra* Section III.C.9.b. TruConnect has made clear its intentions to provide quality service and strong customer service so that customer complaints can be resolved in a timely manner. The Department holds that TruConnect has demonstrated that it will meet the consumer protection and service quality standards for the type of support it receives.

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

TruConnect has certified and demonstrated that it is financially and technically capable of providing Lifeline-supported services. Petition at 18-19, Exh. 1; *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.

TruConnect has been offering telecommunications services since 1998, and began providing non-Lifeline wireless service in 2012 and Lifeline wireless service in 2013. *See* Petition at 18. TruConnect currently provides Lifeline service in 31 jurisdictions. *Id.* However, TruConnect states that it does not rely or intend to rely exclusively on universal service funding, but has a non-Lifeline telecommunications business as well, including its Internet-On-The-Go (IOTG) and prepaid businesses. *Id.*; *see also* IR 1-3 (*confidential*); RR-9 (*confidential*); RR-11 (*confidential*); Tr. at 56 (*confidential*). Further, the Department has reviewed TruConnect's audited financial documents and, based on that review, determines that TruConnect is financially stable for purposes of this ETC designation. *See* IR 1-3 (*confidential*). TruConnect has stated that it has not had any state rescind, revoke, or otherwise terminate TruConnect's ETC designation. IR 1-5. Although a TruConnect affiliate, Sage Telecom Communications, LLC d/b/a TruConnect, had its Wisconsin ETC designation revoked in December 2017, the designation was reinstated effective August 28, 2018. IR 1-4. Otherwise, TruConnect's affiliates have not had an ETC designation revoked, rescinded, suspended, or otherwise terminated. IR 1-5.

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

9. *TruConnect has committed to complying with FCC and Department requirements.*

a. *Federal Lifeline Procedures and Requirements*

Lifeline procedures and requirements established by the FCC include:⁹

- 1) screening applicants using the National Lifeline Accountability Database as set forth

⁹ Although TruConnect did not necessarily explicitly mention all applicable federal requirements in its Petition, TruConnect 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 1-2, 19. Thus, TruConnect has committed to and must comply with all applicable federal requirements.

- 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) 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.

TruConnect has agreed to comply with all of the FCC's procedures and requirements. *See* Petition at 1-2, 5, 7, 8, 19, Exh. 1, Exh. 3. The Department finds that TruConnect will comply with applicable federal Lifeline requirements.

b. Department Requirements

TruConnect 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) TruConnect 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) TruConnect 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) TruConnect 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, TruConnect 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) TruConnect shall notify the Department of the following events within 30 days of any event's occurrence:
- a. TruConnect'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 TruConnect, its executives, or its senior managers;
 - c. any change(s) to TruConnect'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) TruConnect 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, TruConnect 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).
 - (iii) 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) TruConnect 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, TruConnect 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) TruConnect 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 TruConnect 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 smooth transition of subscribers to alternative ETCs of the subscribers' choice.

3) TruConnect shall update its Massachusetts Lifeline application within 30 days of changes in eligibility criteria, including Federal Poverty Guideline calculations.

TruConnect has agreed to comply with the Department's Lifeline requirements. *See* Petition at 19; *13-4 Order*.

10. TruConnect'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. TruConnect 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 TruConnect’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 TruConnect, their affordability, and considerations of material harm in determining whether designating TruConnect as an ETC is in the public interest. *Id.* TruConnect outlines several reasons why its ETC designation would be in the public interest, including but not limited to the ability of parents to contact their children, the ability of a person seeking employment to be

contacted by potential employers, and the ability to contact emergency services regardless of location. *See* Petition at 21. TruConnect also states that introducing another ETC into the marketplace will increase consumer choice, which promotes competition and ultimately a better result for consumers. *Id.* at 22-23.

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

In addition, TruConnect's designation as a Lifeline-only ETC will increase competition in the Lifeline market, and by increasing awareness of the Lifeline program generally, the designation should increase eligible Lifeline subscriptions. This is particularly notable in TruConnect's case, because two wireless Lifeline-only ETCs have relinquished their ETC designation. *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).

Moreover, TruConnect plans to bring unique Lifeline offerings to Massachusetts, solidifying the public interest of its ETC designation. Specifically, TruConnect plans to offer unlimited voice minutes as part of its free qualifying broadband Lifeline plan, which will be a clear benefit to Lifeline consumers, who still rely on voice communications. *See* IR 1-22

Supplement. This will be the only such wireless offering in Massachusetts.¹⁰ See DTC, *COVID-19 Response from Broadband and Telephone Service Providers*, <https://www.mass.gov/doc/massachusetts-providers-covid-responses/download> (last updated July 1, 2021) (“*Massachusetts Lifeline Offerings Summary*”). TruConnect also plans to offer free international calling to Canada, Mexico, and China, again the only such offering from a Lifeline-only wireless ETC in Massachusetts. Petition at 20-21; Tr. at 19; *Massachusetts Lifeline Offerings Summary*. TruConnect’s ETC designation thus will do more than simply insert another ETC into the market. TruConnect’s unique offerings will bring advantageous new and different options to low-income consumers.

The Department finds that TruConnect’s plan to introduce a unique, low-cost mobile voice and broadband option in the Service Area is consistent with the public interest. Accordingly, TruConnect 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 TruConnect has satisfied federal ETC requirements, the Department’s ETC requirements, and that designation of TruConnect as a Lifeline-only ETC is consistent with the public interest, convenience, and necessity.

¹⁰ Although ETCs may combine their Lifeline offerings with offerings under the Emergency Broadband Benefit Program, the Department’s analysis is limited to offerings under the Lifeline program only.

IV. ORDER

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

ORDERED: the Department hereby GRANTS TruConnect's Motion for Protection from Public Disclosure, subject to the seven-year limitation established above; and it is

FURTHER ORDERED: Consistent with the above, the Department hereby GRANTS TruConnect's Petition for Designation as a Lifeline-only Eligible Telecommunications Carrier in the Service Area.

By Order of the Department,



Karen Charles Peterson, 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.