

**BEFORE THE MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Amended Petition of AirVoice Wireless,)
LLC, d/b/a AirTalk Wireless for Designation)
Telecommunications Carrier)
for the Purpose of Providing) <u>Docket No. 22-2</u>
Lifeline Service)
)
)

**AMENDED PETITION OF AIRVOICE WIRELESS, LLC
D/B/A AIRTALK WIRELESS FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS CARRIER FOR THE
PURPOSE OF PROVIDING LIFELINE SERVICE**

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AirVoice Wireless, LLC d/b/a AirTalk Wireless (“AirVoice” or the “Company”), by its undersigned counsel, and pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”),¹ Sections 54.101 through 54.207 of the Rules of the Federal Communications Commission (“FCC”),² and the rules and regulations of the Massachusetts Department of Telecommunications and Cable (the “Department”),³ hereby submits this Amended Petition for Designation as an Eligible Telecommunications Carrier (“ETC”) in the Commonwealth of Massachusetts. AirVoice seeks an ETC designation solely to provide Lifeline service under the brand names AirTalk Wireless (“AirTalk”) to qualifying Massachusetts low-income consumers. AirVoice does not request ETC designation for the purpose of receiving support from any other Universal Service Fund (USF) programs.

As demonstrated herein, and as certified in Exhibit 1 to this Petition, the Company meets all the federal and Commonwealth statutory and regulatory requirements for designation as an ETC for the purpose of providing Lifeline service in Massachusetts. AirVoice respectfully

¹ 47 U.S.C. § 214(e)(2).

² 47 C.F.R. §§ 54.101-54.207.

³ Massachusetts Department of Telecom and Cable (“MA D.T.C.”), Massachusetts Lifeline Requirements (“MA D.T.C. Lifeline Requirements”); *see also* Mass. D.T.C. Orders in Investigation into the Implementation of the FCC Order Reforming the Lifeline Program, Docket 13-4.

requests that the Commission grant this Petition promptly so that AirTalk may provide Lifeline service to low-income Massachusetts households at the earliest practicable time. The addition of AirTalk as another Massachusetts Lifeline provider has taken on even greater significance and benefit for the public interest of Massachusetts consumers due to the recent end of the FCC's Affordable Connectivity Program. With Lifeline service again the primary tool for supporting affordable access to telecommunications service, eligible households will be more dependent on Lifeline providers for such affordable telecommunications. By designating AirVoice as an ETC in Massachusetts, the Department will support consumer choice and competition in the Massachusetts Lifeline market.

I. UPDATED DESCRIPTION OF AIRVOICE

AirVoice is a Michigan limited liability company, with its principal office located at 9920 Brooklet Drive, Houston, Texas 77099. AirVoice offers commercial mobile radio service ("CMRS" or "wireless service") on a prepaid basis. To provision its services in Massachusetts, AirVoice intends to offer wireless service through its underlying carrier, AT&T Mobility LLC (the "Underlying Carrier").⁴ AirVoice obtains the network infrastructure and wireless transmission facilities from its Underlying Carrier on a wholesale basis and operates as a Mobile Virtual Network Operator ("MVNO").

⁴ AT&T Mobility LLC is the wholesaler for the AirTalk Lifeline plan's national wireless voice calling, text message, and mobile data services. AirTalk's Lifeline offer also includes international calling provisioned by Elite Telecommunications.

AirVoice is an experienced wireless service provider and, through AirTalk, has provisioned Lifeline since 2013. Currently, the Company is an ETC providing Lifeline services in 36 jurisdictions.⁵ Nationally, AirTalk currently serves over 600,000 Lifeline customers.

AirVoice is a wholly owned subsidiary of VTel Holdings, LLC, a Texas limited liability company (“VTel”). VTel acquired AirVoice on December 31, 2021. Henry Hung Do has worked in the telecom industry for over 15 years and owns one hundred percent (100%) of the following entities:

- (a) VTel, which was formed to acquire 100% of the ownership interests in AirVoice;
- (b) Since February 6, 2019, Mr. Do has owned Cintex Wireless, LLC d/b/a Sfone Wireless, a Delaware limited liability company (“Cintex”). Cintex previously provided Lifeline-only wireless services and wireless service supported by the Affordable Connectivity Program (“ACP”). As of the end of ACP, Cintex has discontinued its wireless services;
- (c) Since April 13, 2017, Mr. Do has owned NewPhone Wireless, LLC, which is a Louisiana limited liability company (“NewPhone”). NewPhone previously provided non-Lifeline wireless service throughout the United States and provided Lifeline-only wireless services as an ETC in Louisiana, and wireless services supported by ACP in 45 jurisdictions. As of October 2023, NewPhone has withdrawn all of its ETC designations and thereafter discontinued its wireless services;
- (d) HTH Communications, LLC, a Texas limited liability company, a global and national mobile device distributor in the United States, which has been in business for more than fifteen (15) years;
- (e) SofTel Technologies, LLC, a Texas limited liability company, that provides distribution services to wireless providers; and
- (f) Softel Holdings, LLC, a Texas limited liability company which was formed to acquire 100% ownership interest in TAG Mobile, LLC (“TAG Mobile”), a

⁵ AirTalk currently has three pending ETC petitions in Florida, Kansas, and Maine, and plans to file petitions for ETC designations in Connecticut, Delaware, North Carolina, and Washington, D.C. in the near future.

limited liability company organized under the laws of the State of Texas. TAG Mobile provides wireless Lifeline services to customers in over 19 states.

An organizational chart depicting the structure and currently active entities owned by VTel and Mr. Do is included as Exhibit 2.

AirTalk does not require any service contract, credit checks, or deposits for its Lifeline services. AirTalk will manage all aspects of the customer experience, including price setting, handset selection, marketing materials, and live customer service. Unlike most Massachusetts Lifeline providers, AirTalk would provide a 4G device at no cost, assisting low-income households maintain affordable and robust wireless connectivity. The devices that AirTalk offers are 4G devices that currently retail for approximately \$100. AirVoice manages all aspects of the customer experience, including marketing, enrollment assistance to confirm eligibility for Lifeline, selection of a handset, and live 24/7 customer service.

As an ETC, AirTalk would provide Massachusetts consumers with another affordable prepaid wireless service option. AirTalk's Lifeline service offering will include: (1) unlimited voice calls, (2) unlimited text messaging, (3) unlimited international voice calling to 80+ countries; and (4) 5 GB of high speed data (4G or 5G speeds depending on network and device capabilities). All service offerings also include the following features at no charge: (1) Caller ID; (2) Call Waiting; (3) Call Forwarding; (4) 3-Way Calling; (5) Voicemail; (6) 411 Directory Assistance; (7) 24/7 customer care; and (8) the option for a consumer to "bring their own device." Lifeline customers would also receive a free 4G handset. A sample advertisement of AirVoice's proposed Lifeline offer in Massachusetts is included in Exhibit 3. In contrast to the current Lifeline offers in Massachusetts, AirVoice proposes to offer unlimited local, national and international (to 80+ countries) voice calling and a free 4G capable handset. There is currently a limited number of Lifeline providers that are actively marketing their plans in Massachusetts.

AirVoice’s Lifeline offering will increase competition and consumer choice for the benefit of eligible low-income households.

II. THE COMMISSION HAS AUTHORITY TO DESIGNATE WIRELESS CARRIERS AS ETCs FOR THE LIFELINE PROGRAM

Section 214(e)(2) of the Act provides state public utility commissions with the primary responsibility for the designation of ETCs.⁶ Under the Act, a state public utility commission, like the Department, with jurisdictional authority over ETC designations must designate a common carrier, including an MVNO,⁷ as an ETC if the carrier satisfies the requirements of Section 214(e)(1). The Department has previously exercised its authority to designate wireless carriers as ETCs.⁸ Therefore, the Commission has the authority to designate AirVoice as an ETC. As demonstrated below, AirVoice fulfills all the requirements for designation as an ETC in Massachusetts.

⁶ 47 U.S.C. § 214(e)(2).

⁷ With respect to wireless MVNOs like AirTalk, the FCC has issued an order forbearing the enforcement of the former requirement that all ETCs own the telecommunication network facilities over which they are provisioning Lifeline service. *See In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training*, WC Docket No. 11-42, WC Docket Nos. 03-109, 12-23, CC Docket No. 96-45, Report and Order, FCC 12-11 (rel. Feb. 6, 2012) (the “Lifeline Reform Order”) at ¶ 368 (forbearing enforcement of Section 214(e)(1)(A) and 47 C.F.R. § 54.201(i); *see also* 47 U.S.C. § 160(e)) (“A State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section.”)

⁸ *See e.g.*, Petition of Telrite Corporation d/b/a Life Wireless for Limited Designation as a Lifeline-Only Eligible Telecommunications Carrier, Docket No. 13-1 Order (Sept. 28, 2023).

III. AIRVOICE MEETS THE LEGAL REQUIREMENTS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Section 254(e) of the Communications Act (47 U.S.C. § 254(e)) provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.” Section 214(e)(2) of the Communications Act provides that a State commission “shall . . . upon request designate a common carrier that meets the requirements of paragraph (1) [of Section 214(e)] as an eligible telecommunications carrier for a service area designated by the State commission.” As applicable here, Section 214(e)(1) of the Act and Section 54.201(d) of the FCC’s rules provide that applicants for ETC designation must be common carriers that offer all of the services supported by universal service throughout their designated service area. ETCs must also commit to advertise the availability and rates of such services. AirVoice satisfies all of the applicable requirements, as further detailed below. In addition, AirVoice’s entry into the Lifeline market in Massachusetts will serve the public interest, as demonstrated below based upon the relevant public interest standards set by the FCC for ETC designations.⁹

A. AIRVOICE IS A COMMON CARRIER

AirVoice is a common carrier according to the definition in 47 C.F.R. § 153(11).¹⁰ The FCC has held that MVNO wireless service providers are common carriers for regulatory

⁹ See *Federal-State Joint Board on Universal Service*, FCC 05-46, ¶¶ 40-43 (2005) (Public Interest Order); see also *Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, DA 10-2433, ¶ 6 (rel. Dec. 29, 2010).

¹⁰ See 47 U.S.C. § 153(11) (defining a common carrier as “any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio . . .”).

purposes.¹¹ In addition, Section 332(c)(1)(A) of the Communications Act states that commercial mobile radio service providers will be regulated as common carriers.¹¹ The Company meets the common carrier requirement for ETC designation pursuant to Section 214(e)(1) of the Act and Section 54.201(d) of the FCC's rules.

B. AIRVOICE WILL OFFER THE SERVICES SUPPORTED BY FEDERAL UNIVERSAL SERVICE

AirVoice is able to provide all of the supported services required by Section 54.101(a) of the FCC's rules through the network of its Underlying Carrier. As set forth in Section 54.101(a)(1) of the FCC's rules, the Lifeline-supported services include voice telephony service and broadband Internet access service (BIAS).¹²

Voice Telephony Service

Eligible voice telephony services, as defined in 47 C.F.R. § 54.400 (m), must provide the following:

Voice Grade Access to the Public Switched Telephone Network. Voice telephone service requires "voice grade access to the public switched network or its functional equivalent."¹³ The

¹¹ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425 ¶ 37, 1454-55 ¶ 102 (1994) (wireless resellers are included in the statutory "mobile services" category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. § 332(c)(1)(A) ("mobile services" providers are common carriers); *see also PCIA Petition for Forbearance for Broadband PCS*, WT Docket No. 98-100, (Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16911 ¶ 111 (1998) ("We concluded [in the *Second Report and Order*] that CMRS also includes the following common carrier services: cellular service, ... all mobile telephone services and resellers of such services.") (emphasis added); *see also* 47 C.F.R. § 332(c)(1)(A) (treating commercial mobile service providers as common carriers).

¹² *See* 47 C.F.R. § 54.400(m) (defining "voice telephony service" as including voice grade access to the public switched network, minutes of use for local service provided at no additional charge, access to emergency services and toll limitation services); 47 C.F.R. § 54.400(l) (defining BIAS as a mass-market retail service that provides the capability to transmit data to and receive data from all or substantially all internet endpoints).

¹³ 47 C.F.R. § 54.400(m).

FCC describes “voice grade access” as the ability for a user to make and receive telephone calls within a specified bandwidth.¹⁴ AirVoice provides voice grade access to its end users through its wireless services that are purchased wholesale from the Underlying Carrier.

Local Usage at No Additional Charge. Voice telephony service also requires “minutes of use for local service provided at no additional charge to end users.”¹⁵ The FCC has “noted that many providers do not distinguish between local and long distance usage, and [has] concluded that carriers may satisfy the obligation to provide local usage via service offerings that bundle local and long distance minutes.”¹⁶ The FCC has further determined that Lifeline service offerings may fulfill the local usage requirement in the same manner.¹⁷ AirVoice provides customers the ability to make and receive unlimited local calls, wherever the Underlying Carrier provides service, and does not distinguish between local and long distance calling, thereby providing a nationwide calling area. As mentioned, and as presented in Exhibit 3, AirVoice’s Lifeline service includes unlimited voice calls at no-cost, allowing customers to make and receive an unlimited number of local calls at no additional charge.

Access to Emergency Services. Pursuant to 47 C.F.R. § 54.400(m), ETCs must provide “access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911 (“E911”), to the extent the local government in an eligible telecommunications carrier’s service area has implemented 911 or enhanced 911

¹⁴ See Federal-State Joint Board on Universal Service, First Report and Order, CC Docket No. 96-45, FCC 97-157, ¶ 63 (rel. May 8, 1997).

¹⁵ 47 C.F.R. § 54.400(m).

¹⁶ See *2012 Lifeline Reform Order* at ¶ 49.

¹⁷ *Id.*

systems.” Through its Underlying Carrier’s network, AirVoice provides unlimited voice calls. As required by the 2012 Lifeline Reform Order, AirVoice service affords access to 911/E911, as available in the customer’s location, regardless of whether their service has been disconnected.¹⁸ AirVoice will continue to implement E911 services consistent with the FCC’s rules and orders applicable to wireless resellers.

Toll Limitation. In its 2012 Lifeline Reform Order, the FCC provided that toll limitation would no longer be deemed a supported service.¹⁹ “ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.”²⁰ AirVoice’s Lifeline plan includes unlimited voice minutes. AirVoice’s Lifeline rate plan treats long distance minutes of use the same as any other voice usage and customers do not incur additional charges for toll services. For the foregoing reasons, the toll limitation requirement in 47 C.F.R. § 54.400(m) is not applicable to AirVoice.

Broadband Internet Access Service

AirVoice’s mobile BIAS provides Lifeline customers with “the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service ...” in accordance with 47 C.F.R. § 54.400(l). AirVoice provides BIAS to low-income consumers via the network of its Underlying Carrier.

¹⁸ See 2012 Lifeline Reform Order, ¶¶ 368, 373.

¹⁹ 2012 Lifeline Reform Order, ¶ 234.

²⁰ See *id.* ¶ 49.

C. AIRTALK WILL OFFER LIFELINE SERVICES CONSISTENT WITH THE FCC’S FORBEARANCE FROM ENFORCEMENT OF THE FACILITIES REQUIREMENT OF SECTION 214(e)(1).

AirTalk will offer the supported services of voice telephony service and BIAS using the wireless network facilities of its Underlying Carrier, as contemplated by the 2012 Lifeline Reform Order. Since the 2012 Lifeline Reform Order, the FCC has forbore from enforcement of the “own-facilities” requirement contained in Section 214(e)(1)(A) for carriers such as AirTalk that seek designation as Lifeline-only ETCs. The forbearance from the own-facilities requirement for Lifeline-only ETCs is subject to the following conditions²¹:

(1) the carrier must comply with certain 911 requirements [(a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order]; and

(2) the carrier must file, and the Bureau 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 obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.

With respect to the 911 requirements, AirTalk’s Lifeline service includes access to 911, and where locally supported E911, emergency services and offers handsets that are E911 compliant at no cost to the customer. Regardless of whether a customer has active or disconnected service, AirTalk customers can access 911, and E911 where locally available, wherever the Underlying Carrier provides coverage.

²¹ See 2012 Lifeline Reform Order, ¶¶ 368, 373, 379.

In accordance with the 2012 Lifeline Reform Order, AirVoice filed a Compliance Plan with the FCC, which the FCC approved on December 26, 2012. The FCC approved AirVoice's Revised Compliance Plan on December 23, 2021, as the final condition to the Company's transfer of control to VTel. A copy of the Company's current FCC-Approved Compliance Plan, dated from April 2024, is attached hereto as Exhibit 4.

As part of its current compliance plan, AirVoice has hired a full-time employee to serve as its Compliance Officer that is responsible for administering and monitoring AirVoice's compliance against its written policies and procedures. A copy of the Compliance Officer's resume is attached as Exhibit 5. Since VTel's acquisition of AirVoice in December of 2021, the AirVoice team developed a customized back-office system to protect against waste, fraud, and abuse and help ensure only eligible customers receive services supported by federal Lifeline funds (as described more fully in Section L below). The Company is committed to providing AirTalk Lifeline services in Massachusetts according to its compliance plan approved by the FCC, and as required by changes in applicable state and federal requirements.

D. AIRTALK WILL PROVIDE LIFELINE SERVICE THROUGHOUT ITS DESIGNATED SERVICE AREA

Pursuant to 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d),²² as an ETC, AirTalk will provide service throughout the Commonwealth of Massachusetts, including on federally recognized Tribal lands, subject to the coverage limits of the Underlying Carrier network. Pursuant to 47 C.F.R. § 54.202(a)(1)(i), the Company commits to provide service throughout its proposed service area on a timely basis to all customers making a reasonable request for service where facilities of the Underlying Carrier are available. AirTalk is requesting a statewide ETC

²² See 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d).

designation to allow the Company to provide Lifeline service wherever its Underlying Carrier's network provides coverage. AirTalk's proposed service area is based upon the coverage provided by its Underlying Carrier, which is detailed in the updated zip code listing in Exhibit 6.

E. AIRTALK WILL ADVERTISE ITS LIFELINE SERVICES AND APPLICABLE RATES USING MEDIA OF GENERAL DISTRIBUTION

AirTalk will advertise the availability of its Lifeline service and any applicable charges for its no cost offering of unlimited voice, texts, international calling to 80+ countries, and 4.5 GB of high speed mobile data using media of general distribution, as required by Section 214(e)(1)(B) and FCC's rules.²³ AirTalk will publicize the availability of Lifeline service throughout its designated ETC service area in a manner reasonably designed to reach those likely to qualify for the service. AirTalk relies on various means to advertise its Lifeline service to eligible consumers, including advertisements found on its website and other Internet sites.²⁴

F. AIRTALK WILL COMPLY WITH SERVICE REQUIREMENTS APPLICABLE TO THE SUPPORT IT RECEIVES

In accordance with 47 C.F.R. § 54.202(a)(1)(i), AirTalk certifies that it will comply with the service standards applicable to the support that it receives.

G. ABILITY TO REMAIN FUNCTIONAL IN EMERGENCY SITUATIONS

In accordance with 47 C.F.R. § 54.202(a)(2), AirTalk certifies that its Underlying Carrier's wholesale wireless service has the ability to remain functional in emergency situations. AirVoice understands that its Underlying Carrier has a reasonable amount of back-up power to

²³ 47 C.F.R. § 54.201(d)(2).

²⁴ Exhibit 7, Updated Sample Lifeline Advertisements.

ensure functionality without an external power source, the ability to reroute traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. As described above, AirTalk's service is provided on the Underlying Carrier's network which has a national footprint and is constantly evolving to achieve higher levels of reliability and resilience.

H. SATISFACTION OF CONSUMER PROTECTION AND CONSUMER SERVICE QUALITY STANDARDS

In accordance with 48 C.F.R. § 54.202(a)(3), an ETC applicant must certify that it will comply with all applicable consumer protection and service quality standards related to the Lifeline universal service programs. As stated in 47 C.F.R. § 54.202(a)(3), a wireless applicant's commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service (CTIA Consumer Code) will satisfy this consumer protection and service quality requirement.²⁵ AirTalk commits to complying with the CTIA Consumer Code in provisioning its Lifeline service to Massachusetts consumers.

AirTalk further commits to comply with the consumer safeguards set forth in the MA ETC Requirements, namely: (a) to work in good faith with Department staff to resolve Lifeline subscriber disputes; (b) to 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) to 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, as well as during the Lifeline application process (excluding on applications made through the National Verifier, as consistent with the

²⁵ See CTIA Consumer Code for Wireless Service (2020 copyright version) (available at <https://api.ctia.org/wp-content/uploads/2020/03/CTIA-Consumer-Code-2020.pdf>).

temporary waiver issued by the Department in November of 2019²⁶). In addition, AirVoice has a dedicated customer care team to address any customer complaints that are investigated or forwarded by the Department. In the event that AirTalk were to discontinue offering Lifeline service in Massachusetts, AirTalk commits to providing 60-days advanced notice to its Lifeline subscribers and the Department. AirTalk further commits to work in good faith to facilitate a smooth transition to an alternative ETC of the subscriber's choice.

I. AIRVOICE IS FINANCIALLY AND TECHNICALLY CAPABLE

The FCC's rules require carriers petitioning for ETC designation to demonstrate financial and technical capability to comply with the Commission's Lifeline service requirements.²⁷ Among the factors to be considered are: a carrier's prior offering of service to non-Lifeline subscribers, the length of time the carrier has been in business, whether the carrier relies exclusively on Lifeline reimbursement to operate, whether the carrier receives revenues from other sources, and whether the carrier has been the subject of an enforcement action or ETC revocation proceeding in any state.²⁸

AirVoice has successfully operated as a wireless provider of non-Lifeline services for over twenty-five (25) years. Since 1999, AirVoice has offered non-Lifeline wireless services as a reseller of commercial mobile services. Since December 2021, AirTalk has offered Lifeline service and currently provides service to over 600,000 Lifeline customers in 40+ states.

²⁶ See *Mass. D.T.C. Investigation into the Implementation of the FCC Order Reforming the Lifeline Program*, Docket 13-4 Provisional Order and Further Request for Comment (Nov. 11, 2019) (waiving on a limited and provisional basis the requirement to include on Lifeline applications the contact information for the Department's consumer division).

²⁷ 47 C.F.R. § 54.202(a)(4).

²⁸ See 2012 Lifeline Reform Order at ¶¶ 387-388.

AirVoice also generates substantial revenues from its offerings of non-Lifeline services and will not rely exclusively on Lifeline to fund its operations. (*See Confidential Exhibit 8 and Confidential Exhibit 9.*)

AirVoice has operated under its current ownership since December 31, 2021. Since that time AirVoice's new management has added financial, technical, and managerial support to the Company. The senior management of AirVoice has a significant depth of experience in the telecommunications industry and offers extensive telecommunications-specific business, technical, and managerial expertise to the AirTalk Lifeline service in particular. AirVoice's senior management team has over thirty years of combined experience working in the wireless telecom industry and over ten years of experience managing the non-Lifeline and Lifeline wireless service offered by AirVoice and its affiliates. In particular, the new management team has brought in-house its back office safeguards for its Lifeline enrollment and administration. The customized back office system was designed by AirVoice to meet its specific needs and the evolving requirements of the Lifeline program. AirVoice will also rely upon the substantial managerial and technical expertise of its Underlying Carrier.

With respect to technical expertise, AirVoice and its Underlying Carrier(s) have successfully partnered for over two decades to provision wireless services and Customer Care. Since its initial submission of this Petition, AirTalk has grown the footprint of its Lifeline service to a national level. Since the time of its initial 2022 Petition, AirTalk has received Lifeline ETC approvals from thirty additional jurisdictions. AirTalk now offers Lifeline in forty (40) jurisdictions.²⁹ Over the course of its tenure as a Lifeline provider, AirVoice has continued to

²⁹ Exhibit 9, Lists of Current and Pending States with ETC Designations.

augment its already considerable experience complying with the requirements of the federal Lifeline program.

J. TERMS AND CONDITIONS OF PROPOSED LIFELINE OFFERING

AirTalk's Lifeline plan will provide all required services detailed in 47 C.F.R.

§ 54.101(a) throughout Massachusetts. The Company further affirms that it has augmented its Lifeline-supported data and voice services to meet or exceed the minimum service standards set forth in 47 C.F.R. § 54.408, including as the FCC updates such standards. The devices that AirTalk provides for use with Lifeline mobile broadband service will be Wi-Fi enabled and will not impose any additional or separate tethering charge for mobile data usage below the minimum standard set forth in 47 C.F.R. § 54.408(b)(2). Furthermore, the devices that AirTalk offers for use with its mobile broadband service are capable of being used as a hotspot.³⁰

Attached as Exhibit 3 is a sample advertisement of AirTalk's currently proposed Lifeline service offering in Massachusetts. The Massachusetts Lifeline plan would include unlimited voice, unlimited international calling to 80+ countries, unlimited texts, and 4.5 GB of data. Additionally, customers will have the option to receive a 4G handset at no cost. Lifeline subscribers may purchase additional data, as needed. The current price range for additional, or "top-up", data allotments is \$2.99 for 512 MB/month, and up to \$26.99 for 5 GB/month.³¹ AirTalk's Lifeline service will also provide voice mail, caller ID, 3-way calling, 911 access, and 411 directory assistance at no additional charge.

³⁰ See 47 C.F.R. § 54.408(f).

³¹ See AirTalk Wireless, Top Up Webpage (<https://airtalkwireless.com/products/topup>) (last visited Sept. 20, 2024).

K. AIRTALK WILL COMPLY WITH LIFELINE CERTIFICATION AND ANNUAL RE-CERTIFICATION REQUIREMENTS

As mentioned, since the current owners acquired the Company, AirTalk has implemented internal back office safeguards and internal policies and procedures to supplement the National Lifeline Eligibility Verifier's ("National Verifier") certification of a consumer's eligibility for Lifeline assistance, in compliance with the FCC's Lifeline rules.³² When a consumer seeks to enroll in Lifeline, the consumer may use the AirTalk website to complete a Lifeline application: www.airtalkwireless.com. The website provides a description of the Lifeline offer and the enrollment and eligibility requirements. The consumers can then apply directly through the National Verifier online. AirTalk utilizes the standard Lifeline application forms that comply with the disclosure and information collection requirements of 47 C.F.R. § 54.410(d). Once the National Verifier and the AirVoice back office systems both certify and confirm the consumer's eligibility, the Company will notify the consumer that they are eligible and may activate their wireless Lifeline service. AirTalk only provides Lifeline-supported service to subscribers that the National Verifier affirms are eligible.

Through the National Verifier, all AirTalk subscribers are re-certified within 12 months after the subscriber's service initiation date and every subsequent 12-month period.³³ Further, the annual re-certification materials sent by the Company inform the customer of the eligibility recertification required to maintain their enrollment in Lifeline.³⁴

³² 2012 Lifeline Reform Order, ¶ 61; 47 C.F.R. § 54.410(a).

³³ 47 C.F.R. § 54.410(f).

³⁴ See 2012 Lifeline Reform Order ¶ 145.

L. AIRTALK HAS IMPLEMENTED MEASURES TO PREVENT WASTE, FRAUD, AND ABUSE

AirVoice has implemented several internal and back-office systems and processes to prevent waste, fraud and abuse related to the Lifeline program, including compliance with the following.

National Lifeline Accountability Database (NLAD) and National Verifier. AirTalk complies with the requirements of the NLAD and Section 54.404 of the Commission's rules.³⁵ The Company validates the applicant's Lifeline eligibility using the National Verifier, and the NLAD to verify the customer's identity and that customer's household is not otherwise receiving Lifeline service. AirTalk does not enroll or claim reimbursement for an applicant if the NLAD or the National Verifier cannot verify the identity of the applicant or the applicant's status as living, unless the applicant produces documentation to demonstrate his or her identity and status as living to the National Verifier.³⁶

One-Per-Household Certification. As required by the 2012 Lifeline Reform Order, Company personnel emphasize the "one Lifeline service per household" restriction in their direct sales and in online advertisement disclaimers shared with potential customers. The back office systems further screen potential Lifeline customers to ensure that each customer household is provided only one Lifeline benefit. If a prospective Lifeline subscriber provides the same address as a current Lifeline subscriber, the prospective subscriber completes the Independent Economic Household Worksheet (IEH Worksheet) via the National Verifier Consumer Portal.

³⁵ 47 C.F.R. § 54.404(b).

³⁶ See 47 C.F.R. § 54.404(b)(12).

Marketing Materials. AirTalk's marketing of Lifeline-supported offerings includes the following statements in compliance with FCC rules: (i) the service is a Lifeline service; (ii) Lifeline is a government assistance program; (iii) the service may not be transferred to someone else; (iv) consumers must meet certain eligibility requirements before enrolling in the Lifeline program; (v) the Lifeline program permits only one Lifeline discount per household; (vi) documentation is necessary for enrollment; and (vii) AirTalk is the provider of the services. These statements are included in all print, audio, video, and electronic materials (including online marketing) used to describe or enroll subscribers in the service offering, as well as application and certification forms.³⁷ The Lifeline applications provided to potential customers will also include the required disclaimers that Lifeline is a federal benefit and willful false statements to obtain federal benefits are punishable by fines, imprisonment, or expulsion from the Lifeline program.³⁸

Non-Usage. AirTalk further includes the following information about the non-usage rule in its communications to customers, namely: (1) the need for customers to use their service at least once every thirty (30) days to prevent de-enrollment, as required by 47 C.F.R. § 54.407(c)(2); (2) after 30 days of non-usage, customer notices that they must use the service within 15 days or their service will be terminated, as required by 47 C.F.R. § 54.405(e)(3); and (3) requiring the customers to activate their Lifeline service as required by 47 C.F.R. § 54.407(c)(1).

³⁷ See 2012 Lifeline Reform Order, ¶ 275; 47 C.F.R. § 54.405(c).

³⁸ See 47 C.F.R. § 54.410(d)(1).

Enrollment Representatives. AirVoice complies with the 2019 Lifeline Reform Order and Section 54.406 of the FCC’s rules regarding registration of enrollment representatives in the USAC Representative Accountability Database (“RAD”).³⁹ Specifically, AirVoice requires all of its AirTalk “enrollment representatives”⁴⁰ to register for a RAD ID before they can begin working with Lifeline enrollments.⁴¹ In compliance with FCC Lifeline rules, AirTalk does not offer or provide any commission-based compensation related to the Lifeline program to enrollment representatives or their direct supervisors.⁴² As AirTalk’s primary marketing and enrollment activities for its Lifeline services are all done online and AirTalk does not use in-person enrollment agents in the Commonwealth.

Training. All customer-facing employees and customer care representatives must demonstrate their understanding of AirTalk’s and the FCC rules and policies by completing AirTalk’s Lifeline training.

Back Office System Investments. Since the filing of its initial Petition, AirVoice has made substantial and ongoing investments in the back-office system to ensure the integrity and compliance of its systems for enrollment, identity verification, eligibility certification and re-

³⁹ See *Bridging the Digital Divide for Low-Income Consumers; Lifeline and Link Up Reform and Modernization; Telecommunications Carriers Eligible for Universal Service Support*, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 19-111 (rel. Nov. 14, 2019) (2019 Lifeline Reform Order); 47 C.F.R. § 54.406.

⁴⁰ See 47 C.F.R. § 54.400(p) (defining an “enrollment representative” as “[a]n employee, agent, contractor, or subcontractor, acting on behalf of an eligible telecommunications carrier or third-party entity, who directly or indirectly provides information to the Universal Service Administrative Company or a state entity administering the Lifeline Program for the purpose of eligibility verification, enrollment, recertification, subscriber personal information updates, benefit transfers, or de-enrollment.”).

⁴¹ See 47 C.F.R. § 54.406(a).

⁴² See 47 C.F.R. § 54.406(b).

certification. The AirVoice back-office system was a substantial upgrade in terms of the customization and increasing specificity of its program integrity safeguards, which are now customized to serve the Company's specific needs. Because the former resources that provided the program integrity were external, AirTalk's Lifeline administration now includes greater control and direct management of the safeguards against waste, fraud, and abuse.

In particular, the back office system provides the following safeguards on an ongoing basis: (1) Duplicate Same-Month Lifeline Subsidies (Double Dip): any name/address that is already receiving a Lifeline subsidy from the Company will be automatically checked and prevented from receiving a second Lifeline subsidy in that same month; and (2) Non-Usage/Inactive lines receiving subsidy: AirVoice's systems compare all subsidy requests to underlying network status to ensure that subsidies are requested only for active AirTalk Lifeline service lines. Moreover, AirVoice has implemented an internal auditing process to review NLAD and its own back office system's alerts as a final layer of fraud prevention. Since the implementation of the processes described above, AirTalk has ensured that it properly requests USF support and, if necessary, quickly works to remedy any overcollections that are discovered after the fact.⁴³

⁴³ The current owner of AirVoice acquired Cintex on February 6, 2019. Under prior ownership, Cintex underwent enforcement actions related to Lifeline that were concluded before the current owner of AirVoice, Mr. Do, acquired Cintex. Two years prior to Mr. Do's acquisition of Cintex, the FCC issued a consent decree, dated as of December 22, 2017, settling the Lifeline enforcement action against Cintex. As Cintex was under different ownership and management at the time of Cintex's activities related to the FCC enforcement action, that enforcement action is in no way attributable to Mr. Do. Furthermore, Cintex no longer provides Lifeline services as of May 2024, as noted in Section I.

Under the current ownership, there have been two FCC enforcement actions related to Lifeline. In both such matters, the current management resolved the investigations by USAC/FCC and returned the Lifeline reimbursements that FCC alleged were improper. The first matter involved an affiliate of AirVoice: NewPhone. The other matter related to a third-party contractor's enrollment systems under prior ownership and a website error during AirTalk's launch of its online enrollment system.

M. AIRTALK WILL COMPLY WITH ALL APPLICABLE REGULATIONS IMPOSED BY THE DEPARTMENT

AirVoice commits to complying with all the rules and regulations that the Commission may lawfully impose upon AirTalk's provision of service contemplated by this Petition, including the reporting requirements set by the Department.⁴⁴ AirVoice will provide the Department a copy of its annual certifications and Lifeline recertification results pursuant to 47 C.F.R. § 54.416 (i.e., FCC Form 555), as well as a copy of its annual report filed pursuant to 47 C.F.R. § 54.422 (i.e., FCC Form 481), and will comply with applicable Department

In the NewPhone investigation, the FCC Enforcement Bureau notified NewPhone about potentially improper claims on September 23, 2020, related to third-party field agents improperly enrolling customers.

By October 30, 2020, through collaboration with USAC, NewPhone submitted revised claims to return the overclaimed amounts. Pursuant to a consent decree adopted on December 16, 2021, NewPhone resolved the matter by making a \$100,000 settlement payment and implementing a revised compliance plan to further safeguard against any improper Lifeline claims. NewPhone no longer provides Lifeline services as of October 2023, as noted in Section I. Moreover, current ownership does not utilize third-party field agents, which was the issue in the NewPhone FCC enforcement action.

As noted in AirVoice's supplemental response dated April 19, 2024, to Staff's information request "D.T.C. 2-14", AirVoice entered into a consent decree to resolve both enrollment errors that occurred under the prior ownership and an enrollment process error that occurred shortly after the launch of its in-house back-office system in February 2022. According to the FCC Consent Decree dated February 28, 2024, AirTalk's newly launched back-office system required consumers applying for Lifeline-only benefits to also apply or transfer their Affordable Connectivity Program ("ACP") benefit to reimburse wireless service provided by AirVoice. This issue affected AirTalk's Lifeline enrollments in March 2022. This was a webscripting error during the early part of the system launch. In addition, before Mr. Do's acquisition of AirVoice, AirVoice's prior owners utilized a back-office service provided by a third-party, CGM, Inc. During the Emergency Broadband Benefit Program ("EBB"), CGM's back-office enrollment system required consumers applying for Lifeline to simultaneously apply or transfer their EBB support to AirTalk's service. This CGM issue occurred prior to Mr. Do's ownership. When AirVoice transitioned to its own back-office system, it discontinued the CGM process. Once the FCC informed AirVoice of the issue, it was quickly resolved and there are no current FCC enforcement inquiries. AirVoice resolved the investigation through the February 2024 Consent Decree, a settlement payment of \$150,000 (of which only \$16,666.67 was attributable to the webscripting problem that occurred during Mr. Do's ownership), and a revised compliance plan. *See* AirVoice Response to Information Request 2 -14 (Apr. 19, 2024) (citing FCC Order FCC DA 24-175, AirVoice Consent Decree (Feb. 28, 2024)); Exhibit # AirVoice Consent Decree ¶¶6-7 & n.33 (Feb. 28, 2024).

⁴⁴ *See* MA D.T.C. Lifeline Requirements.

reporting requirements for Lifeline ETCs.⁴⁵ AirVoice commits that 100% of federal universal service funds will flow through directly to Lifeline customers. In addition, AirVoice is prepared to comply with the Massachusetts State 911 Department's surcharge collection regulations pertaining to prepaid wireless providers. Further, AirVoice and its management will also make itself available to answer any questions or present additional testimony and other evidence about its services within the Commonwealth upon the Commission's request.

IV. DESIGNATING AIRTALK AS AN ETC WOULD PROMOTE THE PUBLIC INTERESTS IN LIFELINE COMPETITION, CONSUMER CHOICE, AND AFFORDABLE WIRELESS CONNECTIVITY

As noted above, AirTalk seeks designation as an ETC throughout Massachusetts, which includes rural and non-rural areas. Consequently, the Communications Act requires that the Department to determine that designating the Company as an ETC serves the public interest.⁴⁶ The FCC has identified three factors for determining whether designation of an additional ETC serves the public interest, namely: 1) the benefits of increased competitive choice; 2) the unique advantages of the applicant company's service offerings; and 3) the impact on the USF.⁴⁷ As described in the following paragraphs, AirTalk's proposed Lifeline offer provide equivalent or better levels of services relative to the offers from existing ETCs in Massachusetts each of these public interest criteria.

⁴⁵ AirVoice is prepared to adopt and comply with any new rules for Lifeline ETCs promulgated by the Department.

⁴⁶ See 47 U.S.C. § 214(e)(2).

⁴⁷ See Public Interest Order, ¶¶ 18, 44 and 54.

A. THE BENEFITS OF INCREASING THE COMPETITIVE CHOICES OF LIFELINE OFFERS AVAILABLE TO ELIGIBLE MASSACHUSETTS CONSUMERS

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the FCC for more than five decades.⁴⁸ AirVoice believes that many Massachusetts households, including low-income Lifeline-eligible households, view the portability and convenience of wireless voice and data services as a modern necessity, not a luxury. However, only 12 percent of eligible Massachusetts households are participating in the Lifeline program, which is less than the national average Lifeline participation rate of 20 percent.⁴⁹ This low participation rate demonstrates that the current Lifeline service offering in Massachusetts may not be meeting the needs of low-income consumers in Massachusetts.

The Department will serve the public interest by authorizing the entry of AirTalk's proposed Lifeline service offering into the Massachusetts Lifeline market because it will introduce more competition and consumer choice among the current five wireless ETCs, which is among the lowest numbers of wireless Lifeline providers in any U.S. jurisdiction. As demonstrated by USAC's Lifeline data, the current Lifeline households in Massachusetts overwhelmingly choose wireless Lifeline service.⁵⁰ Increased competition leads to additional consumer choices and delivery of greater value to consumers. AirTalk's bundled mobile voice

⁴⁸ See, e.g., *Specialized Common Carrier Services*, 29 FCC2d 870 (1971).

⁴⁹ USAC Program Data Website available at: <https://www.usac.org/wp-content/uploads/lifeline/documents/Data/Lifeline-Participation-Rate-1.xlsx>.

⁵⁰ USAC Program Data Website available at: <https://www.usac.org/wp-content/uploads/about/documents/fcc-filings/2024/first-quarter/low-income/LI05-Annual-Low-Income-Support-Claimed-by-State-and-Company-January-2020-through-September-2023.xlsx>.

and broadband data Lifeline service will provide consumers with an alternative and, in many cases, an enhanced level of wireless service compared to the Commonwealth's existing Lifeline offerings. AirTalk's designation as an ETC will also benefit Massachusetts consumers because Lifeline services provided by AirTalk will be no cost to the customer, helping to assure that quality services are available at "just, reasonable, and affordable rates" as envisioned in the Communications Act.⁵¹

B. ADVANTAGES OF AIRVOICE'S LIFELINE PLAN

AirTalk's designation as a Lifeline-only ETC will provide a valuable alternative to the existing Lifeline services available in Massachusetts, which typically do not afford consumers all of the benefits of AirTalk's proposed Lifeline service: unlimited voice, unlimited texts, unlimited international calls to 80+ countries, 4.5 GB of highspeed mobile data, and a free 4G handset.⁵² It is notable that most Massachusetts Lifeline providers do not provide unlimited voice, international calling, and a no-cost device.

In addition, AirTalk's proposed Lifeline plan will offer consumers the mobility of wireless voice and mobile data service with the additional benefits of features including caller ID, 3-way calling, and voice mail. Because AirTalk's Lifeline service requires no term contracts, no minimum service periods or volume commitments, no credit checks, and no early termination

⁵¹ 47 U.S.C. § 254(b)(1).

⁵² Based upon an initial market survey of current Lifeline offers available in Massachusetts, most Lifeline offers afford consumers the following level of wireless service: 1,000 minutes of voice calls, unlimited texts, and 4.5 GBs of data. That current standard level of service from the Lifeline plans currently available in Massachusetts lack several of the benefits that AirTalk proposes, including: a no-cost device, unlimited voice and international calls offered by AirTalk's Lifeline plan.

fees, the service will be available to all consumers who are Lifeline-eligible regardless of creditworthiness or whether they are banked or unbanked.

AirTalk's bundled mobile data and voice plan will comply with the minimum service standards set forth in Section 54.408 of the FCC's rules.⁵³ Pursuant to the FCC's rules, a bundled voice and broadband data service plan complies with the FCC's codified minimum service standards if either the voice portion or the broadband data portion of the plan meets the applicable minimum service standard.⁵⁴ In accordance with the FCC's minimum service standards for mobile broadband service, AirTalk's Lifeline plan offers 4.5 GB of mobile broadband data, and therefore, qualifies for federal broadband Lifeline support.⁵⁵

C. IMPACT ON THE UNIVERSAL SERVICE FUND

AirTalk seeks its ETC designation solely to enable it to offer Lifeline benefits to eligible low-income consumers in its Underlying Carrier's service area in Massachusetts. AirTalk does not seek access to funds from the federal or state USF for the purpose of obtaining high-cost support. Furthermore, any increase in the size of the fund would be outweighed by the benefit of increasing eligible participation in the Lifeline program, furthering the statutory goal of providing access to low-income consumers.

ETCs providing Lifeline service only receive USF support for those customers they enroll and who receive Lifeline service. If AirTalk acquires Lifeline customers currently served by other ETCs, AirTalk will gain the Lifeline support for those customers. However, the ETCs

⁵³ 47 C.F.R. § 54.408.

⁵⁴ See 47 C.F.R. § 54.401(b).

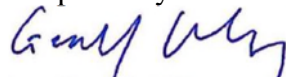
⁵⁵ 47 C.F.R. § 54.408(b)(2); see also *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, DA 23-621 (July 21, 2023).

losing Lifeline customers to AirTalk will lose the support. Accordingly, AirTalk will only increase the amount of USF Lifeline funding in situations where it obtains new Lifeline customers, *i.e.*, customers not currently enrolled in other ETCs' Lifeline programs.

V. CONCLUSION

Based on the foregoing, AirTalk's proposed Lifeline service fulfills the requirements for designation as an ETC for the purpose of providing service in Massachusetts. Accordingly, AirVoice respectfully requests that the Commission grant its Petition for designation as an ETC.

Respectfully submitted,



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October 2, 2024

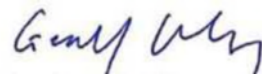
**BEFORE THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

In the Matter of Air Voice Wireless, LLC's)	
Petition for Limited Designation as an Eligible)	
Telecommunications Carrier in Massachusetts)	D.T.C. 22-2
for the Limited Purpose of Offering Wireless)	
Lifeline Service to Qualified Households)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the following documents upon all persons in the service list compiled by the Secretary of the Department in this proceeding and all parties of record in accordance with the requirements of 207 CMR 1.05(1) (Department's Procedural Rules).

Dated at Boston, Massachusetts this 2nd day of October, 2024.



Geoffrey Why
Attorney for AirVoice Wireless, LLC



COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 22-2 Service List

Petition of AirVoice Wireless, LLC, d/b/a AirTalk Wireless for Designation as an Eligible Telecommunications Carrier

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