

# STATEMENTS OF POLICY

## Title 52—PUBLIC UTILITIES

### PENNSYLVANIA PUBLIC UTILITY COMMISSION

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[ M-2010-2164741/57-280 ]

#### Designation and Annual Recertification of Eligible Telecommunications Carriers

The Pennsylvania Public Utility Commission (Commission), on July 15, 2010, adopted a final policy statement which sets forth applicable standards for eligible telecommunications carrier designation.

Public Meeting held  
July 29, 2010

*Commissioners Present:* James H. Cawley, Chairperson; Tyrone J. Christy, Vice Chairperson; John F. Coleman, Jr.; Robert F. Powelson Wayne E. Gardner

*Final Policy Statement on Commonwealth of Pennsylvania's Guidelines for Designation and Annual Recertification as an Eligible Telecommunications Carrier (ETC) for Purposes of Federal Universal Service Support; Doc. No. M-2010-2164741*

#### Final Policy Statement Order

This Commission has not, to date, formally considered the recommendations of the Federal Communications Commission (FCC) on the new standards applicable for petitions for designation as an ETC to receive Federal universal service support and annual ETC recertification announced in the FCC's ETC Order. CC Docket 96-45 (Order entered March 17, 2005).<sup>1</sup> By our Order today, we do so to provide consistent standards upon which to review all future petitions for ETC designation and annual ETC recertification before this Commission.

So that future petitions and all annual recertification of ETCs provide the complete and necessary information for meaningful review, we adopt the Federal and State minimum standards discussed in this order. We adopt these standards in order that petitioners will have a clear understanding of the Commission's expectations and to meet the expressed goal of the FCC, that a "more rigorous ETC designation process . . . will improve the long-term sustainability of the universal service fund."<sup>2</sup> To establish uniform administrative practices, and to adequately inform the regulated community of the newly adopted applicable standards, the Commission issues this Statement of Policy setting forth these newly adopted standards.

All future petitions for ETC designation should specifically address each provision of 47 CFR 54.201—54.209, any other applicable Federal standards and all Pennsylvania-specific standards. Petitioners should explain how each Federal and Pennsylvania provision is satisfied including why a particular provision is inapplicable under the circumstances.

<sup>1</sup> On a case by case basis, this Commission has required parties seeking designation as ETCs to satisfy the FCC's standards for designation and has informally applied the FCC's annual recertification and reporting requirements for ETCs. By this order, we formally adopt the FCC's designation and annual certification and reporting requirements for any ETC that receives state or federal support for designated services in the Commonwealth.

<sup>2</sup> In *RE: Federal-State Joint Board on Universal Service*, Report and Order at CC Docket No. 96-45 (Entered March 17, 2005) (ETC Order) at para. 2.

#### I. Background

The current standards established by the FCC for ETC designation evolved over the course of years based upon a series of decisions and consideration of the designation's practical impact upon the USF Fund. On May 8, 1997, the FCC issued a Report and Order (Universal Service Order) governing implementation of the universal service provisions of the Telecommunications Act of 1996 (TA-96). Section VI of the Universal Service Order discussed the requirements for a carrier seeking designation as an ETC under TA-96. Those requirements are codified at 47 CFR 54.101, 54.201—54.203 and 54.205—54.209. The FCC requires the state commissions to designate eligible carriers under 47 CFR 54.201—54.203 and designate service areas consistent with 47 CFR 54.207.

On March 17, 2005, the FCC issued its Report and Order at CC Docket No. 96-45 (ETC Order) adopting the recommendation of the Federal-State Joint Board on Universal Service issued February 27, 2004. That order advised setting minimum requirements for the designation of an ETC for the long range success and continued viability of the Universal Service Fund. The more rigorous ETC designation requirements were designed to "ensure that only ETCs that can adequately provide universal service will receive ETC designation, thereby lessening fund growth attributable to the designation." *Id.* at para. 5.

In particular, the Joint Board recommended more stringent factual reviews of ETC applications, including a case-by-case determination that the applications are in the public interest and increasing annual certification and reporting requirements for all existing ETCs.<sup>3</sup> The FCC has adopted additional eligibility and reporting requirements for carriers seeking ETC designation and carriers already designated as ETCs in Federal Report and Order FCC 05-46 adopted on February 25, 2006.

Although the FCC's standards on ETC designation are not binding upon state commissions considering a petition for ETC designation, the FCC strongly urged state commissions to adopt the Federal standards set forth in its ETC orders on all future ETC applications. We conclude that applying those in this Commonwealth will further the FCC's goal as well as our goal of ensuring an effective ETC process in this Commonwealth.

Consequently, all future Commission review of petitions for ETC designation will be governed by 47 U.S.C.A. § 214(e),<sup>4</sup> the FCC's discussion of ETC designations in the Universal Service Order,<sup>5</sup> the additional standards for ETC designation set forth in the FCC's ETC Order of May 17, 2005, subsequent order on certification and reporting of February 2006, and the FCC's rules governing ETC designation and annual certification set forth in

<sup>3</sup> ETC Order, CC Docket 96-45 (Order entered March 17, 2005) para. 21-68.

<sup>4</sup> Section 214(e)(1) requires an ETC to offer the services supported by federal universal service mechanisms and advertise the availability of those services and the charges for them in media of general distribution. Section 214(e)(2) permits a state commission to designate a common carrier, either upon the state commission's motion or upon request, for rural areas and requires each designation for other areas so long as the carrier meets the criteria of Section 214(e)(1). Section 214(e)(3) authorizes the FCC to require a carrier to service underserved areas for interstate purposes and authorizes state commissions to designate a carrier for intrastate purposes for similar underserved areas. Section 214(e)(4) authorizes a carrier to relinquish its designation as a carrier in any area served by more than one eligible carrier. Section 214(e)(5) defines a service area as the geographic area established by the state commission for universal service purposes which, for rural areas, is coterminous with the study area unless determined otherwise by states and the FCC after consultation with the Federal-State Joint Board. Section 214(e)(6) directs the FCC to designate where carriers are not subject to the state's jurisdiction. See, 47 U.S.C.A. 214(e).

<sup>5</sup> Universal Service Order, para. 127—199 in Section VI.

47 CFR 54.101,<sup>6</sup> 54.201—54.203<sup>7</sup> and 54.205—54.209,<sup>8</sup> as well as any further amendment or criteria established by the FCC. The standards that will be applied to future petitions are outlined below.

#### A. FCC Requirements For Eligible Telecommunications Service Designation

Under section 214(e)(2) of the Act, the state commission “shall upon its own motion or upon request designate a common carrier that meets the requirements of [§ 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the State Commission.” Section 214(e)(2) of the Act further provides, in the case of areas not served by a rural telephone company, that the state commission shall designate more than one common carrier as an ETC, consistent with the public interest, convenience, and necessity. Upon designation as an ETC, the carrier shall be able to receive universal support in accordance with section 254 of the Act.

1) The requirements for designation as an ETC in section of 214(e)(1) of the act and 47 CFR 54.201(d)(1) and (2) are that the carrier must be a “common carrier” and:

a. Offer the services that are supported by Federal universal support mechanisms under section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another ETC).

b. Advertise the availability of these services and the charges therefore using the media of general distribution.

2) Additional requirements for ETC designation were adopted by the FCC in its March 17, 2005 Order, which are codified in 47 CFR 54.202(a)(1)—(5).<sup>9</sup> The additional requirements provide that a carrier requesting designation as an ETC must:

<sup>6</sup> 47 CFR 54.101 confines federal universal service support to (1) voice grade access to the public switched network; (2) local usage consisting of an amount of use of exchange service prescribed by the Commission provided free of charge to end users; (3) dual tone multi-frequency Signaling or its equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income consumers. However, Section 101(c) allows a state commission to grant ETC designation even though access to 911 or Enhanced-911 (E-911) services, toll limitation, or single-party service is not provided so long as “exceptional circumstances” are shown and the exception does not extend beyond the time needed to complete the necessary network upgrades.

<sup>7</sup> A carrier is eligible under Section 201 so long as they offer the services set forth in Section 101, either through their own facilities or a combination of facilities, and advertise the availability of the federal universal support services using media of general distribution. States cannot require the use of facilities within the designated service area nor can states designate a carrier that provides services “purely” through resale. Since then, the FCC granted a limited number of wireless providers forbearance from the statutory obligation to own facilities as a precondition to receiving ETC designation. In addition the PaPUC has decided to make wireless ETC designations in Pennsylvania under federal law as well. *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.C.S. § 214(e)(1)(A) and 47 CFR § 54.201(i)*, Docket No. 96-45, 20 FCC Rcd 15095, 15098-9, para. 5 (2005) (TracFone Forbearance Order); *In the Matter of Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, FCC Docket No. 96-45 (March 5, 2009), para. 1 (Virgin Mobile Forbearance Order). This Policy Statement provides guidance in light of those developments, in a regulatory neutral manner, as required by 47 U.S.C.A. § 253.

The additional requirements for ETC designation were adopted by the FCC in its March 17, 2005 Order are codified at Section 202(a)(1)—(5). Section 203 authorizes the FCC or the Commission to designate carriers in unserved areas for interstate or intrastate purposes, respectively.

<sup>8</sup> Section 207 defines a service area to be a geographic area established by a state commission for the purpose of determining universal service. For a rural carrier, the service area is coterminous with such a carrier’s study area. However, the FCC or the Commission can propose alternative service areas. Section 207(c) established the process and requirements that govern a state’s proposed alternative service area while Section 207(d) governs an equivalent FCC process.

<sup>9</sup> We note that the new standards adopted by the FCC originated from the wireless-specific orders issued by the FCC on ETC designation of wireless carriers. However, as noted by the FCC in its March 17, 2005 Order, setting forth the ETC designation process, “although specific requirements set forth in this Report and order may be relevant only for wireless ETC applicants and some may be relevant for wireline ETC applicants, this ETC designation framework generally applies to any type of common carrier that seeks ETC designation before the [FCC] under 214(e)(6) of the Act.” March 17, 2005 Order at para. 17.

Under Secretarial Letter at Docket M-00960799, dated February 26, 2009 the Commission accepts jurisdiction of applications for ETC designation from wireless carriers.

a. Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service (47 CFR 54.202(a)(1)(i)).

b. Provide service on a timely basis to requesting customers within the applicants’ service area where the applicants’ network already passes with the potential customers premises (47 CFR 54.202(a)(1)(i)(A)).

c. Provide service within a reasonable period of time, if the potential customer is within the applicant’s licensed service area but outside its existing network coverage, if service can be provided at reasonable cost by:

i. Modifying or replacing the existing customer’s equipment.

ii. Deploying a roof mounted antenna or other equipment.

iii. Adjusting the nearest cell tower.

iv. Adjusting network or customer facilities.

v. Reselling services from another carrier’s facilities to provide service.

vi. Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment (47 CFR 54.202(a)(1)(i)(B)).

d. Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of backup power to ensure functionality without an external power source, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations (47 CFR 54.202(a)(2)).

e. Demonstrate that it will satisfy applicable consumer protection and service quality standards (47 CFR 54.202(a)(3)).

f. Demonstrate that it offers a local usage plan comparable to the one offered by the incumbent LEC in the service areas for which it seeks designation (47 CFR 54.202(a)(4)).

g. Certify that the carrier acknowledges that the Commission may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area (47 CFR 54.202(a)(5)).

3) The FCC’s Order released August 10, 2000, provides that section 214(e)(1) of the Act does not require a carrier to provide the supported services throughout a service area prior to being designated an ETC.

#### B. Pennsylvania-Specific Minimum Requirements For ETC Designation

In addition to the previously-stated additional FCC requirements, which we today formally adopt, the Public Utility Code sets forth certain minimum requirements for ETCs which seek low income support from Lifeline and Link-up America programs.

See, 66 Pa.C.S. § 3019(f) which provides:

##### Lifeline service.

(1) All eligible telecommunications carriers certified to provide local exchange telecommunications service shall provide Lifeline service to all eligible telecommunications customers who subscribe to such service.

(2) All eligible telecommunications customers who subscribe to Lifeline service shall be permitted to subscribe to any number of other eligible telecommu-

nications carrier telecommunications services at the tariffed rates for such services.

(3) Whenever a prospective customer seeks to subscribe to local exchange telecommunications service from an eligible telecommunications carrier, the carrier shall explicitly advise the customer of the availability of Lifeline service and shall make reasonable efforts where appropriate to determine whether the customer qualifies for such service and, if so, whether the customer wishes to subscribe to the service.

(4) Eligible telecommunications carriers shall inform existing customers of the availability of Lifeline service twice annually by bill insert or message. The notice shall be conspicuous and shall provide appropriate eligibility, benefits and contact information for customers who wish to learn of the Lifeline service subscription requirements.

(5) When a person enrolls in a low-income program administered by the Department of Public Welfare that qualifies the person for Lifeline service, the Department of Public Welfare shall automatically notify that person at the time of enrollment of his or her eligibility for Lifeline service. This notification also shall provide information about Lifeline service including a telephone number of and Lifeline subscription form for the person's current eligible telecommunications carrier or, if the person does not have telephone service, telephone numbers of eligible telecommunications carriers serving the person's area that the person can call to obtain Lifeline service. Eligible telecommunications carriers shall provide the Department of Public Welfare with Lifeline service descriptions and subscription forms, contact telephone numbers and a listing of the geographic area or areas they service, for use by the Department of Public Welfare in providing the notifications required by this paragraph.

(6) No eligible telecommunications carrier shall be required to provide after the effective date of this section any new Lifeline service discount that is not fully subsidized by the Federal Universal Service Fund.

Additionally, this Commission set forth procedures and guidelines in its Lifeline Order of May 23, 2005, *In Re: Lifeline and Link-Up Programs*, Docket No. M-00051871.<sup>10</sup>

For consistency, and in consideration of competitive neutrality, we expect all ETC carriers to follow the same rules and guidelines regarding the offerings of Lifeline and Link-Up programs in this Commonwealth.

Under 47 CFR 54.409 of the FCC's regulations, this Commonwealth is a nondefault state<sup>11</sup> which mandates its own rules and guidelines separate though similar to the FCC's rules regarding the Lifeline programs and there are contributions other than Federal universal service fund contributions being made toward the Lifeline/Link-Up credit. The significance of being a nondefault state is that the Commission or the State legislature can establish rules specific to this Commonwealth to address any issues that may be unique to this Commonwealth. Whereas, a default state does not man-

date Lifeline/Link-Up programs; thus, carriers operating in default states are required to follow the FCC's regulations and the Lifeline/Link-Up eligibility requirements are directed by the FCC. See 47 CFR 54.409(b).

In this Commonwealth, only Verizon North and Verizon PA are required to provide support to the Lifeline program (Lifeline 100 only). Because Verizon is mandated to contribute to its Lifeline programs, the Commonwealth qualifies as a nondefault state according to the FCC rules. None of the other ETCs who offer Lifeline are required to provide support for this program.

Further, all non-Verizon ETC carriers receiving Lifeline/Link-Up support are required to submit annually a Lifeline Tracking Report to our Bureau of Consumer Services. Our interest is in maintaining a competitively neutral playing field among telecommunications carriers, as well as simplicity in enforcement of Lifeline rules and regulations.

Finally, to establish uniform petitions for administrative purposes, and to adequately inform the regulated community of the applicable standards for ETC designation and annual recertification for purposes of Federal universal service support, we shall issue this Final Statement of Policy setting forth the applicable standards for ETC designation, and annual recertification and reporting as outlined herein, and follows as Annex A. In addition, supplemental information on ETC designation and annual certification will be provided on our web page for the general public and carriers interested in seeking ETC designation and annual certification from this Commission.

The Final Statement of Policy on guidelines for ETC Designation, annual recertification and reporting requirements for ETCs, follows as Annex A, shall be published in the *Pennsylvania Bulletin*; Therefore,

*It Is Ordered That:*

1. Future petitions seeking designation as an ETC for purposes of Federal universal service support in this Commonwealth must, at a minimum, address the Federal and Pennsylvania requirements for designation set forth in this order.

2. Annual recertification for ETC designation must satisfy the applicable Federal regulations governing the annual reporting recertification requirements for designation as an ETC.

3. The Secretary shall submit this order and Annex A to the Governor's Budget Office for review of fiscal impact.

4. The Secretary of the Commission shall certify this order and Annex A and deposit them with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

5. This final statement of policy shall become effective upon publication in the *Pennsylvania Bulletin*.

6. The contact person for this matter is Elizabeth Lion Januzzi, Assistant Counsel, Law Bureau, (717) 772-0696.

ROSEMARY CHIAVETTA,  
*Secretary*

*(Editor's Note: Title 52 of the Pa. Code is amended by adding a statement of policy in § 69.2501 to read as set forth in Annex A.)*

**Fiscal Note:** 57-280. No fiscal impact; (8) recommends adoption.

<sup>10</sup> Except that paragraphs 9 and 10 of the Order were subsequently modified to change the date verifications are due the Universal Service Administration Company (USAC) from December to August 31 of each year. *In Re: Lifeline and Link-Up Programs*, Order, M-00051871, January 24, 2008.

<sup>11</sup> *Report and Order and Further Notice of Proposed Rulemaking In the Matter of Lifeline and Link-Up*, CC Docket No. 04-87, WC Docket No. 03-109, Appendix G lists 16 default states and the Commonwealth is not listed.



## Annex A

## TITLE 52. PUBLIC UTILITIES

## PART I. PUBLIC UTILITY COMMISSION

## Subpart C. FIXED SERVICE UTILITIES

**CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES COMMONWEALTH REQUIREMENTS FOR DESIGNATION AND ANNUAL RECERTIFICATION AND REPORTING REQUIREMENTS OF ELIGIBLE TELECOMMUNICATION CARRIERS FOR PURPOSES OF FEDERAL UNIVERSAL SERVICE SUPPORT—STATEMENT OF POLICY**

**§ 69.2501. Standards applicable for designation and annual certification as an eligible telecommunications carrier, for purposes of obtaining Federal universal service support.**

(a) Petitions for designation in this Commonwealth as an eligible telecommunications carrier (ETC), for purposes of obtaining Federal universal service support, should be evaluated under:

(1) Section 214(e) of the Telecommunications Act of 1934 (47 U.S.C. § 214(e)), regarding extension of lines or discontinuance of service; certificate of public convenience and necessity.

(2) The Federal Communications Commission's (FCC's) discussion of ETC designations in the Universal Service Order, Report and Order at CC Docket No. 96-45 (May 8, 1997).

(3) The standards in the FCC's Report and Order at CC Docket No. 96-45 (March 17, 2005).

(4) The FCC's rules governing ETC designations in 47 CFR 54.101, 54.201—54.203 and 54.205—54.209.

(b) Petitions for designation as an ETC seeking low income support from Lifeline and Link-up America programs should satisfy the minimum standards established in 66 Pa.C.S. § 3019(f) (relating to lifeline service) and comply with the Commission's Lifeline and Link-Up Order, *In Re: Lifeline and Link-Up Programs*, Docket No. M-00051871, Final Order May 23, 2005, except that verifications should be submitted annually to Universal Service Administrative Company (USAC) on or before August 31 of each year. Petitions should affirm that the applying carrier will submit annual Lifeline Tracking Reports by June 30 of each year. The form is available on the Commission's web site at [www.puc.state.pa.us](http://www.puc.state.pa.us), Online Forms, Telecommunications.

(c) Petitions for ETC designation should specifically address the enumerated criteria in subsections (a) and (b), set forth specific statements regarding which criteria are applicable and inapplicable, and explain why all applicable criteria are satisfied.

[Pa.B. Doc. No. 10-1879. Filed for public inspection October 1, 2010, 9:00 a.m.]