



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

OFFICE OF CABLE TELEVISION
AND TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF AIRVOICE) ORDER
WIRELESS, LLC D/B/A AIRTALK WIRELESS FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER IN THE STATE) DOCKET NO. TE22030182
OF NEW JERSEY)

Parties of Record:

Lance J.M. Steinhart Esq., AirVoice Wireless, LLC d/b/a AirTalk Wireless
Brian O. Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:¹

On March 28, 2022, AirVoice Wireless, LLC d/b/a AirTalk Wireless (“AirVoice” or “Company”)², filed a petition with the New Jersey Board of Public Utilities (“Board”) requesting designation as an Eligible Telecommunications Carrier (“ETC”) to provide Lifeline³ service to qualifying New Jersey consumers. AirVoice seeks ETC designation solely for the purpose of providing Lifeline service and will not seek access to funds from the federal Universal Service Fund (“USF”) for participation in the Link-Up program or for providing service to high-cost areas.

The Lifeline program provides qualifying low-income consumers discounts for voice, broadband Internet, or bundled voice-broadband packages to help ensure access to affordable communications services. To be eligible for participation in the Lifeline program, the Federal Communications Commission (“FCC”) requires consumers to either have an income that is at or

¹ Commissioner Zenon Christodoulou abstained from voting on this matter.

² AirVoice is a Michigan limited liability company, formed in 1999 and a wholly owned subsidiary of VTel Holdings, LLC, a Texas limited liability company (“VTel”). AirVoice is currently designated as an ETC and providing Lifeline services in the following jurisdictions: California, Kentucky, Michigan, Mississippi, New York, Ohio, Oklahoma, Pennsylvania, South Carolina and Wisconsin. AirVoice also provides non-Lifeline mobile phone services and is an approved provider of broadband services under the FCC’s Affordable Connectivity Program (“ACP”).

³ Lifeline service is a federally funded program that is part of the Universal Service Fund and provides up to \$9.25/month subsidy directly to the ETC that serves the qualified low-income consumer. 47 C.F.R. § 54.403(a).

below 135% of the Federal Poverty Guidelines or participate in certain federal assistance programs, such as the Supplemental Nutrition Assistance Program (“SNAP”), Medicaid, Federal Public Housing Assistance, Supplemental Security Income, the Veterans and Survivors Pension Benefit, or certain Tribal Programs. 47 C.F.R. § 54.409.

The Board has jurisdiction to designate Wireless ETCs in accordance with Section 214(e)(2) of the federal Communications Act of 1934 (“Act”), as amended. The FCC has exclusive jurisdiction to regulate the rates and conditions of market entry of mobile services. 47 U.S.C. § 332(c)(3)(A). However, states are expressly permitted to regulate the “other terms and conditions” of commercial mobile services and approve ETC designations. Id.

In the petition, the Company avers that it meets all the statutory and regulatory requirements (see: *Lifeline and Link Up Reform Order*⁴, *the Lifeline Modernization Order*⁵, and *the Fifth Report and Order*⁶) for for designation as an ETC in the State of New Jersey. Section 214(e)(2) of the Act requires that ETCs meet the following criteria for designation as an ETC:

- 1) Common carrier status;
- 2) Offer all the supported services in its Lifeline service offering;
- 3) Offer Lifeline service throughout its designated ETC service area;
- 4) Advertise the availability of Lifeline service; and
- 5) Meet all of requirements for designation as an ETC for purposes of providing Lifeline services.

⁴ 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 No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (“Lifeline and Link Up Reform Order”).

⁵ In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund, WC Docket No. 11-42, WC Docket No. 00-197, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (hereinafter, “Third Report and Order” or “Lifeline Modernization Order”).

⁶ In the Matter of Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 17-287, WC Docket No. 11-42, WC Docket No. 09-197, 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) (hereinafter, “Fifth Report and Order”).

According to the Company's petition, AirVoice satisfies the existing criteria established under federal law⁷, the FCC rules and orders⁸, and applicable New Jersey requirements. AirVoice states that:

1. It is a common carrier.⁹
2. Will provide all supported services required by 47 C.F.R. §54.101(a).
3. Will advertise the availability of supported services and rates using media of general distribution as required by 47 C.F.R. § 54.201(d)(2).
4. Will provide Lifeline service wherever its underlying, facilities-based providers have wireless coverage.
5. Will certify and comply with the service requirements applicable to the support that it receives pursuant to 47 C.F.R. § 54.202(a)(1)(i).
6. Demonstrates it has the ability to remain functional in emergency situations pursuant to 47 C.F.R. § 54.202(a)(2).
7. Satisfies consumer protection and service quality standards pursuant to 47 C.F.R. § 54.202(a)(3).
8. Has demonstrated that it is financially and technically capable of providing Lifeline-supported services pursuant to 47 C.F.R. § 54.202(a)(4).
9. Will provide all services supported by the universal service program, as detailed in 47 C.F.R. § 54.101(a), throughout New Jersey.
10. Will comply with certification and verification requirements in accordance with 47 C.F.R. § 54.410.
11. Will comply with the requirements of the National Lifeline Accountability Database ("NLAD") and 47 C.F.R. § 54.404 of the FCC's rules.
12. Will provide the Board 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 Board reporting requirements for Lifeline ETCs.
13. Will comply with rules and regulations imposed by the Board.

⁷ 47 C.F.R. § 54.202(a)(1).

⁸ 47 C.F.R. § 54.201(d). In its USF/ICC Transformation Order, the FCC modified the required supported services in 47 C.F.R. § 54.101 and the additional requirements for designation as an ETC in 47 C.F.R. § 54.202. In the Matter of Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011 ("USF/ICC Transformation Order")

⁹ 47 U.S.C. § 332(c)(1)(A).

As a Commercial Mobile Radio Service (“CMRS”) provider and as a common carrier, AirVoice will provide prepaid wireless telecommunications services to consumers by using the underlying wireless networks of AT&T Mobility LLC and T-Mobile USA, Inc. (its “Underlying Carriers”) on a wholesale basis.

AirVoice avers that it is able to provide all of the supported voice telephony services required by 47 C.F.R. § 54.101(a) as follows:

1. Voice Grade Access to the Public Switched Telephone Network (“PSTN”) through the purchase of wholesale CMRS services from its Underlying Carriers.
2. Minutes of Use for Local Usage, at no additional charge by offering rate plans that provide its customers with minutes of use for local service at no additional charge.
3. Access to Emergency Services by providing 911 and Enhanced 911 access for all of its customers free of charge to the extent the local government in its service area has implemented 911 or E911 systems.
4. Toll Limitation to qualifying low-income consumers. The FCC has determined that toll limitation is no longer deemed a supported service¹⁰. Nonetheless, AirVoice’s offerings allow Lifeline subscribers to control their usage, as its wireless service is offered on a prepaid or pay-as-you-go basis. AirVoice’s service, moreover, is not offered on a distance-sensitive basis and local and domestic long-distance minutes are treated the same.

AirVoice recognizes that Section 214(e)(1)(A) of the Act states that ETCs shall offer services, at least in part, over their own facilities, and that Section 54.201(i) of the FCC’s Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier’s services. However, the FCC has granted forbearance from enforcement of this facilities requirement to carriers seeking Lifeline-only ETC designation.¹¹

Under Title I, section 10(e) of the Act (47 U.S.C. § 160(e)) it states that: “[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.” As such, AirVoice contends that the Board is required by Section 10(e) to act in accordance with the FCC’s grant of forbearance, and therefore, may not apply the facilities-based requirement to AirVoice. Therefore, AirVoice contends that the Board has the authority under Section 214(e)(2) of the Act to grant AirVoice’s request for designation as an ETC throughout the State of New Jersey.

AirVoice has the ability to provide all services supported by the USF, as detailed in 47 C.F.R. § 54.101(a), throughout New Jersey. AirVoice states in the petition that it intends to be a leader in the prepaid marketplace by offering consumers exceptional value and competitive amounts of voice and broadband usage. Upon designation as an ETC, AirVoice commits that its Lifeline-supported voice services will meet or exceed the minimum service standards set forth in 47 C.F.R.

¹⁰ Lifeline and Link up Reform Order at ¶ 367.

¹¹ Lifeline and Link up Reform Order at ¶ 368.

§ 54.408, including as such standards are updated going forward. AirVoice states that its Lifeline-supported broadband services will also meet the minimum service standards set forth in 47 C.F.R. § 54.408 for mobile broadband internet access services, including for service speed and data usage allowance, as such standards are updated going forward. To the extent AirVoice provides devices for use with Lifeline-supported broadband service, such devices will meet the equipment requirements set forth in 47 C.F.R. § 54.408(f), and AirVoice will not impose an additional or separate tethering charge for mobile data usage below the minimum standard. AirVoice proposes to offer its Lifeline customers the following:

- 1) 1,000 voice minutes,
- 2) unlimited text messages, and
- 3) 4.5 GB of data per month at no cost

AirVoice's proposed offering will also include:

1. Local and long-distance calling;
2. Access to the following custom calling features at no charge:
 - a. Caller ID;
 - b. Call Waiting;
 - c. Call Forwarding;
 - d. 3-Way Calling;
 - e. Voicemail; and
 - f. 411 service;
3. Text messaging;
4. Broadband access; and
5. The option for a consumer to "bring their own device".

AirVoice may offer user-friendly handsets or hotspot devices. According to the petition, the Company will not require service contracts from its customers, and will always ensure competitively low pricing for its services and products. AirVoice will manage all aspects of the customer experience, including setting service pricing, handset selection, marketing materials, and live customer service. Customers will be able to customize their AirVoice service to suit their needs with AirVoice's available bundles of minutes, broadband data, and text packages to supplement their monthly plan. If customers need additional minutes or data, they can purchase as set forth on AirVoice's website: <https://airtalkwireless.com/>. Lifeline customers that also elect to receive ACP benefits from AirVoice will receive unlimited talk and text with 15 GB data after application of Lifeline and ACP support.

Customers in New Jersey can apply to the National Eligibility Verifier ("National Verifier")¹² via mail or online. AirVoice will rely on the National Verifier to determine initial and ongoing eligibility of New Jersey Lifeline subscribers as required by the FCC. AirVoice utilizes the standard Lifeline application forms as required by FCC rules, and thus complies with the disclosure and information collection requirements in 47 C.F.R. § 54.410(d)¹³. In order to combat waste fraud and abuse,

¹² The National Verifier launched in New Jersey on October 11, 2019.

¹³ FCC Wireline Competition Bureau Provides Guidance on Universal Forms for the Lifeline Program, WC Docket No. 11-42, Public Notice, "Wireline Competition Bureau Provides Guidance on Universal Forms for the Lifeline Program," DA 18-161 (rel. Feb. 20, 2018). The standard application/certification forms are

the Company will comply with the requirements of the National Lifeline Eligibility Accountability Database to determine if a customer is currently receiving a Lifeline benefit.

The Company claims that designation of AirVoice as an ETC would further competition for wireless Lifeline service and would offer eligible consumers an additional choice of providers. The Company also states that it meets FCC requirements for designation as an ETC and such designation would serve the public interest.

By letter dated June 1, 2022, the New Jersey Division of Rate Counsel (“Rate Counsel”) submitted comments to the Board. Rate Counsel does not oppose approval if the Board determines that AirVoice meets the ETC designation requirements. Rate Counsel relies on the assertions provided by AirVoice in its petition that the terms of service proposed by the Company should benefit eligible Lifeline subscribers in New Jersey. Rate Counsel deems AirVoice’s service capabilities, proposed services and commitments to provide affordable prepaid mobile phone service and high-quality customer service, meet the regulatory requisites for ETC designation. Accordingly, Rate Counsel would not oppose Board action designating AirVoice Wireless, LLC d/b/a AirTalk Wireless as an eligible telecommunications carrier in the State of New Jersey. Rate Counsel believes approval would be in the public interest based upon AirVoice representations.

DISCUSSION

To qualify as a Lifeline-only ETC, carriers must offer Lifeline subscribers Lifeline-supported voice service (mobile or landline), broadband internet service, or a package of voice and broadband service. AirVoice has demonstrated that it meets or exceeds all of the current FCC requirements and has pledged to comply with any existing or proposed federal requirements. The Board, however, requires the Company to adhere to the following as conditions of approval:

- 1) To continue to work with the National Verifier in order to prevent waste, fraud, and abuse of the Lifeline program;
- 2) To submit to the Board total federal funds received and the number of customers served in New Jersey. This information must be submitted with a certification made by an officer of the Company attesting to its accuracy;
- 3) To provide any other data or information deemed necessary by Board Staff to evaluate compliance with all federal and state requirements;
- 4) To provide the Board 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 Board reporting requirements for Lifeline ETCs.

AirVoice, in its petition and responses to Board Staff’s discovery request, has indicated that it will comply with the FCC and Board requirements. The Board is satisfied that AirVoice meets and exceeds the relevant criteria established to receive approval from this Board. Therefore, the Company’s petition is **HEREBY APPROVED** as conditioned herein. The Board **DIRECTS** that the Director of the Office of Cable Television and Telecommunications, with the assistance of the Office of the Attorney General, if such assistance is deemed necessary, send the appropriate

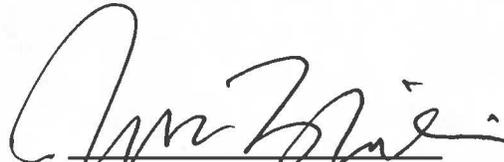
available on USAC’s website (See USAC, Lifeline Forms, <http://www.usac.org/li/tools/forms/default.aspx>).

notice of this Order designating AirVoice as an ETC to the FCC and Universal Service Administration Company. AirVoice ETC designation may, at any time, be suspended or revoked by order of the Board.

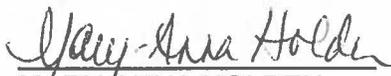
This Order shall be effective on August 24, 2022.

DATED: August 17, 2022

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

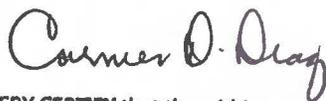


ROBERT M. GORDON
COMMISSIONER

ATTEST:



CARMEN D. DIAZ
ACTING SECRETARY



I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities.

IN THE MATTER OF THE PETITION OF AIRVOICE WIRELESS LLC D/B/A AIRTALK
WIRELESS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN
THE STATE OF NEW JERSEY

DOCKET NO. TE22030182

SERVICE LIST

Lance J.M. Steinhart, Esq.
AirVoice Wireless, LLC, LLC d/b/a AirTalk
Wireless
1725 Windward Concourse, Suite 150
Alpharetta, Georgia 30005
lsteinhart@telecomcounsel.com

Division of Rate Counsel

140 East Front Street, 4th Floor
Post Office Box 003
Trenton, NJ 08625-0003

Brian O. Lipman, Esq., Director
blipman@rpa.nj.gov

Maria Novas-Ruiz, Esq.
mnovas-ruiz@rpa.nj.gov

Dept. of Law & Public Safety

Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 112
Trenton, NJ 08625

Terel Klein, DAG
terel.Klein@law.njoag.gov

Steven Chaplar, DAG
steven.Chaplar@law.njoag.gov

Board of Public Utilities

44 South Clinton Ave.
Trenton, NJ 08625

Carmen D. Diaz, Acting Secretary
board.secretary@bpu.nj.gov

Stacy Peterson, Deputy Executive Director
stacy.peterson@bpu.nj.gov

Counsel's Office

Carol Artale, Esq., Deputy General Counsel
carol.artale@bpu.nj.gov

Lanhi Saldana, Esq.
lanhi.saldana@bpu.nj.gov

Office of Cable Television and
Telecommunications

Lawanda Gilbert, Director
lawanda.gilbert@bpu.nj.gov

Harold Bond, Deputy Director
harold.bond@bpu.nj.gov

Jimarli Figueiredo
jimarli.figueiredo@bpu.nj.gov

Joseph Costa
joseph.costa@bpu.nj.gov