

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the)	Application No. C-4464/
Application of TerraCom,)	NUSF-81
Inc., Oklahoma City,)	
Oklahoma, for designation as)	
an eligible)	GRANTED
telecommunications carrier)	
in the State of Nebraska.)	
)	
)	Entered: August 7, 2012

APPEARANCES:

For the Applicant:

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For the Commission:

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Background

By Application filed with the Nebraska Public Service Commission ("Commission") on April 13, 2012, TerraCom, Inc. ("TerraCom" or "Company"), seeks designation as an Eligible Telecommunications Carrier ("ETC") for the limited purpose of receiving federal and state universal service support for participating in the low income programs of the Federal Universal Service Fund ("USF"), the Lifeline program, and the Nebraska Universal Service Fund ("NUSF"), called the Nebraska Telephone Assistance Program ("NTAP"), on a wireless basis. TerraCom seeks designation pursuant to Section 214(e) of the Telecommunications Act of 1996, as amended (the "Act"), and provisions of Nebraska Administrative Code, Title 291, Chapter 5 and Chapter 10, ("Commission Rules"). TerraCom does not seek USF or NUSF high-cost support. Notice of the Application was published in The Daily Record, Omaha, Nebraska, on April 18, 2012. No protests or interventions were filed.

A Hearing on the Application was held on July 11, 2012, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

O P I N I O N A N D F I N D I N G S

TerraCom is an Oklahoma corporation with its principal offices located in Oklahoma City, Oklahoma. TerraCom has been providing service to low income consumers for over eight (8) years. The Company plans to operate in Nebraska under the name Nebraska TerraCom, Inc. TerraCom is registered with the Nebraska Secretary of State's office and has been duly authorized to conduct business in Nebraska as Nebraska TerraCom, Inc. A copy of the applicable Certificate of Authority to Transact Business is attached to the Company's application as Exhibit C.

The Company seeks ETC designation throughout the CenturyLink non-rural service territories in Nebraska for the limited purpose of participating in the Lifeline and NTAP programs. A list of the exchanges in which TerraCom is requesting limited ETC and NETC designation are identified in Exhibit A attached to the Company's Application.

TerraCom is a wireline and wireless ETC in Oklahoma and Texas, and a wireless ETC in Arkansas, Maryland, West Virginia, Nevada, Iowa, Puerto Rico, Wisconsin, Indiana, and the Territory of the Virgin Islands. The Company has applications pending before the Federal Communications Commission (FCC) for ETC designation in Mississippi, Minnesota, Arizona, New Mexico, and Colorado. Terracom has not been the subject of any formal or informal investigations by any state or federal agency, or the Universal Service Administration Company.

Dale Schmick, Executive Vice President of TerraCom, testified at the hearing on behalf of the Company. Mr. Schmick testified that TerraCom expressly tailors its services to low-income consumers and is seeking ETC status to participate in Lifeline and NTAP to provide Nebraska customers with access to affordable wireless services.¹ Mr. Schmick stated that it is the company's belief that there are a number of customers eligible for low-income programs that are not currently participating in

¹ Application No. C-4464/NUSF-81, Hearing Transcript, 5:8 - 6:2. (Hereinafter "TR page number:line number").

the program in Nebraska and especially the non-rural areas served by CenturyLink, where TerraCom is seeking designation.² Mr. Schmick further testified that TerraCom is currently a Lifeline ETC in 13 states, and carefully researches each new marketplace to assess the needs of the customers in that marketplace before pursuing ETC status to serve in those areas.³ Mr. Schmick also stated TerraCom is not a "one size fits all" company, but works to address the specific needs of consumers to provide opportunities to meet those needs.⁴ Finally, Mr. Schmick testified that TerraCom intends to seek authority to expand its designated service area to provide Lifeline and NTAP programs in other areas of Nebraska.⁵

Requirements for ETC Designation

In 1997, the FCC released its *Universal Service Report and Order* in CC Docket 96-45, FCC 97-157 (released May 8, 1997) ("Universal Service Order"), which implemented several sections of the Act. The FCC's Universal Service Order provides that only eligible telecommunications carriers designated by a state commission shall receive federal universal service support. Section 214(e) of the Act delegates to the states the ability to designate a common carrier as an ETC for a service area designated by the State commission. A service area is the geographic area established for the purpose of determining the universal service obligation and support eligibility of the carrier. The FCC also provided that "competitive neutrality" should be an added universal service principle.

Section 214(e) of the Act sets forth the standards and processes for a state commission to grant carriers the designation of a federal eligible telecommunications carrier. Nebraska Administrative Code, Title 291, Chapter 5, §§ 009.01-009.02C and Chapter 10, § 004 of the Commission Rules contain the requirements for Commission designation of ETCs and NETCs. The Commission's rules largely reflect the FCC requirements. As TerraCom is only seeking ETC designation for purposes of participating in Lifeline and NTAP, the Commission will not

² TR 4:20-25.

³ TR 5:4-11.

⁴ TR 5:16 - 6:2.

⁵ TR 4:25 - 5:4.

consider the issues and requirements regarding high cost support.

Public Interest

Rule 009.02A1 of Chapter 5 of the Commission Rules requires any company seeking ETC designation to demonstrate that such designation is consistent with the public interest, convenience, and necessity.

The FCC has identified various factors to be considered in determining whether an ETC designation will serve the public interest. These factors include: (1) the benefits of increased consumer choice and (2) the unique advantages and disadvantages of the Applicant's service offerings.⁶

Consumer Choice

In its Application, TerraCom states designation as a low income wireless ETC and NETC will provide an additional valuable alternative to existing telecommunications services currently available in the service area sought by TerraCom. The Company also states designating TerraCom as an ETC will promote competition and facilitate the provision of advanced communications services to low-income residents of Nebraska. We have previously determined that there are many benefits that will come with competition, among them the incentive for the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.⁷

As an ETC and NETC, TerraCom will be able to use low-income, federal and state universal service support to offer service to subscribers who are eligible for Lifeline/NTAP assistance. We consider wireless service a significant service option for Lifeline consumers. TerraCom's mobile service offerings include much larger local calling areas, which could substantially benefit low-income consumers who may otherwise be required to pay long distance service charges to reach family, employers and social service or medical providers. TerraCom's service also offers convenience and security afforded by a mobile telephone service and as TerraCom operates in a prepaid

⁶ See 47 C.F.R. § 54.202(c).

⁷ *Viaero Wireless*, PP. 11-12; *Wyoming Order*, ¶¶ 17, 22.

business model, it provides customers with an opportunity to control costs by not requiring customers to sign a plan with a monthly fee for service. Customers instead will receive a preset amount of monthly airtime at no charge to the customer, and have the ability to purchase additional airtime as necessary in different increments. TerraCom affirms in its application that it will use all USF and NUSF support to provide service to qualifying customers with no monthly recurring charges, ensuring the customer received 100% of all universal service support funding.

Advantages and Disadvantages of TerraCom's Service Offerings

We next consider the unique advantages and disadvantages related to TerraCom's service offerings. As a threshold, TerraCom's service offerings will offer consumers the intrinsic benefits of mobility. Mobility is an important part of the public interest analysis. While the benefit of mobility in and of itself may not be a sufficient reason to designate a carrier as an ETC, the Commission also considers TerraCom's service offerings, pricing plans, proposed coverage area and other network qualities in its assessment of this Application.

We find that TerraCom offers consumers a variety of service offerings that includes a wireless handset at no cost to the subscriber with 250 free minutes per eligible user per month. Eligible customers will be able to obtain service from TerraCom with no additional activation fees or other charges.⁸ NTAP customers have the option of purchasing additional minutes in \$5 increments ranging from \$5 to \$30, as well as \$50 and \$60 increments. TerraCom customers may purchase additional time by calling TerraCom directly, visiting TerraCom's web site or visiting a TerraCom authorized retail location. Further, TerraCom states in its application it is beginning to offer smart phone options with opportunities to purchase different data plans starting at \$10 per month which can be added to the Lifeline voice and text plan. TerraCom also offers larger local calling areas; free long distance; unlimited calls to emergency services; unlimited calls to customer care; and free texting. We have previously determined that access to these types of services and features will benefit consumers in Nebraska:

⁸ See TerraCom Verified Application, Hearing Ex. 3, at P. 11.

Western Wireless also offers in its application additional benefits to the public interest, including increased choices, an expanded calling area and the benefits of mobility. These benefits are every bit as valuable, if not more so, to the rural customers as to the urban customer.⁹

In addition, we find that TerraCom offers enhanced services comparable to those provided by other carriers, including voicemail, caller ID, 3-way calling, call forwarding, and call waiting.¹⁰ Accordingly, we find that the unique advantages of TerraCom's service offerings will provide a public interest benefit.

Supported Services

Section 009.02A2 of the Commission Rules require an ETC to demonstrate that it will offer the services that are supported by federal universal service using either its own facilities or a combination of its own facilities and resale of another carrier's services. Lifeline is a component of one of four separate universal service fund mechanisms designated as low-income support mechanisms¹¹ and defined in 47 C.F.R. § 54.401 as, "a retail local service offering available only to qualified low-income consumers."¹² Section 214(e)(1) of the Act provides that an ETC Applicant shall:

[T]hroughout the service area for which such designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254...; and

(B) advertise the availability of such services and the charges therefore using media of general distribution.

⁹ In the Matter of the Application of GCC License Corporation seeking designation as an Eligible Telecommunications Carrier (ETC), Docket C-1889, Order Granting ETC Status and Issuing Findings, ¶ 17 (Nov. 21, 2000); Viaero Wireless, PP. 9-10.

¹⁰ See TerraCom Verified Application, Hearing Ex. 3, at P. 10.

¹¹ 47 C.F.R. § 54.8(a)(1).

¹² 47 C.F.R. § 54.401(a)

The FCC's supported services are found in 47 C.F.R. §54.101(a) and were revised on December 23, 2011, and are as follows:

- a. voice-grade access to the public switched network or its functional equivalent;
- b. minutes of use for local service without additional charge to the end user;
- c. access to emergency services; and
- d. toll limitation for qualifying low-income consumers.¹³

TerraCom provides voice grade access to the public switched network as required under 47 C.F.R. § 54.101(a) with a functionality that enables a user to transmit and receive voice communications. TerraCom's proposed low-income wireless offering under its Lifeline Plan offers a local usage plan comparable to the one offered by CenturyLink in the Service Area, as well as a variety of plans to suit different needs. Under TerraCom's plan, eligible subscribers receive 250 free minutes per month with no additional activation fees or other charges.¹⁴ Further, TerraCom states it provides plans similar to the plans offered by other wireless ETCs in Nebraska.

The Company states that all of the handsets provided to eligible customers at no additional charge or smart phones for some additional cost are emergency service-compatible. TerraCom stated it would provide its customers access to 911 or E911 services, regardless of whether the customer has minutes remaining on the plan and will not deduct such calls from the customer's usage. Further, the Company committed to ensuring that all of its Lifeline customers have 911 complaint handsets, including replacing any non-conforming handsets in use by Lifeline customers. Regarding toll limitations, the FCC has found that prepaid wireless services, by their very nature, provide effective toll limitation.¹⁵

¹³ See Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform - Mobility Fund, 76 Fed. Reg. 73830 (2011)(to be codified at 47 C.F.R. pts. 0,1,20,36,51,54,61,64 and 69)("CAF Order") at ¶ 78.

¹⁴ See TerraCom Verified Application, Hearing Ex. 3, at P. 11.

¹⁵ See *Virgin Mobile Order*, 24 FCC Rcd at 3394 ¶ 34.

In addition to the required supported services, TerraCom will also provide dual tone multi-frequency signaling, or its functional equivalent, single-party service or its functional equivalent, access to operator services, access to interexchange services, and access to directory assistance by dialing 411 on the wireless handset.¹⁶

Upon review of the Application and testimony presented, the Commission finds that TerraCom has the ability and has committed to provide the supported services listed above.

Facilities Requirement

Section 009.02A2 of the Commission Rules also requires an ETC to demonstrate that it will offer the supported services above using either its own facilities or a combination of its own facilities and resale of another carrier's services.

TerraCom's verified Application states the Company will make service available to consumers using its own network infrastructure, as well as through reliance on resold services. TerraCom states that its facilities are located in Oklahoma, but will provide service to TerraCom's Nebraska customers. However, we need not make a determination on whether TerraCom meets the facilities requirement in Section 009.02A2 of the Commission's Rules as the FCC, in its Lifeline Reform Order has granted blanket forbearance to all carriers seeking only Lifeline support. Carriers wishing to avail themselves of the forbearance must file a compliance plan with and receive FCC approval of such plan.¹⁷ TerraCom states in its verified Application that it has filed its Compliance Plan and received FCC approval.¹⁸

We find that TerraCom has met the requirements of Rule Section 009.02A2 and demonstrated the ability and commitment to provide the Supported Services listed above using its own

¹⁶ See TerraCom Verified Application, Hearing Ex. 3, at P. 20.

¹⁷ *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*, Report and Order and Further Notice of Proposed Rulemaking, Docket Nos. 96-45, 03-109, 11-42, and 12-23, (rel. February 6, 2012) ("Lifeline Reform Order").

¹⁸ See TerraCom Verified Application, Hearing Ex. 3, at P. 17 and Exhibit H.

network facilities or a combination of its own facilities and the resale of another carrier's services.

Advertising Supported Services

Section 009.02A3 of the Commission Rules requires an ETC to advertise the availability of supported services and related charges using media of general distribution. ETCs must also publicize the availability of Lifeline or NTAP services in a manner reasonable calculated to reach those that qualify for the service.

Based on the Application, we find TerraCom has provided sufficient commitments to advertise the availability of such services and charges using media of general distribution and in a manner that is designed to reach those likely to qualify for such services. TerraCom's verified application states that the Company will use a wide range of media resources, including television, radio, newspaper, print, direct mail and the Internet, along with direct contact with customers through outreach events, direct sales, neighborhood agents, and TerraCom branded or authorized retail outlets.

Provisioning of Continuous Service

Rule 009.02A4 of the Commission Rules requires that an ETC not only demonstrate the ability and commitment to providing the supported services listed above, but must also demonstrate the ability to continuously provide such services in its designated Service Area. We find upon our review of the Application and testimony that TerraCom has demonstrated and committed to providing the supported services listed above continuously throughout its Service Area.

Provision of Service to Requesting Customers

Section 009.02A5 of the Commission's Rules require an ETC to demonstrate its commitment to provide service throughout the designated area to all customers who make reasonable request for service.

As demonstrated by TerraCom in the Company's Application, the Company is currently able to provide the Supported Services throughout its requested service areas using its own network infrastructure, as well as through reliance on resold services. Following designation, if a potential subscriber is within the Company's designated ETC service area, but outside of TerraCom's

existing network coverage, the Company certifies it will follow the graduated service extension process set forth in Section 009.02A5 of the Commission Rules.

We find based on the extent of the Company's current coverage, and its implementation of appropriate service standards and processes, that TerraCom has demonstrated an ability and commitment to satisfy its obligation to provide service upon reasonable request throughout the Company's requested service areas.

Other Issues

The Commission will also consider whether TerraCom's designation as a Wireless ETC will significantly impact the USF. As TerraCom is applying for ETC designation only for the purposes of providing Lifeline and NTAP discounts to qualified low-income consumers, and is not seeking high cost funds, the Commission is satisfied that TerraCom's designation will impose a negligible burden on the USF. The FCC has said, "the potential growth of the fund associated with high-cost support distributed to competitive ETCs is not relevant to carriers seeking support associated with the low-income program."¹⁹ The FCC has further stated the total effect of additional low-income-only ETC designations would be a minimal impact on the USF and be outweighed by the benefit of increasing eligible participation in NTAP and the Lifeline program, furthering the statutory goal of providing access to low-income consumers.²⁰ We therefore conclude that granting TerraCom's Application will not impose a burden on the universal service fund.

Under FCC Rules, those carriers seeking ETC designation must demonstrate that it will satisfy applicable consumer protection and service quality standards.²¹ In its Application, TerraCom committed to satisfy all such consumer protection and service quality standards, as well as all applicable state specific consumer protection and service quality standards for providing local exchange services.

¹⁹ Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i), CC Docket No. 96-45, Order, 20 FCC Rcd 15095 (2005) ("TracFone Forbearance Order") at ¶ 17.

²⁰ *Id.*

²¹ 47 C.F.R. § 54.202(a)(3), 62 Fed. Reg. 15,978 at ¶ 28.

Accordingly, based on the evidence presented, we find that TerraCom has satisfied the requirement to demonstrate it will comply with applicable consumer protection and service quality standards. If TerraCom's service quality is inadequate, customers will drop the service, and the Company will not receive universal service support for those customers, which gives TerraCom an incentive to provide quality service.

Nebraska ETC Designation

Rule 004.04A and 004.04B of Chapter 10 of the Commission Rules requires carriers designated as ETC for purposes of receiving USF support to participate in NTAP and comply with Section 006 of Chapter 10 of the Commission Rules or the "NTAP Rules". TerraCom in its verified Application is seeking designation as a Nebraska ETC for purposes of participating in the NTAP program. TerraCom intends to offer NTAP services, and it is committed to doing so in compliance with the Commission's orders, rules and regulations regarding NTAP including the requirement to use only the Commission's NTAP Application Form, requirements regarding additions and removals of NTAP subscribers from the NTAP program and the semiannual reporting of NTAP customer lists. TerraCom further committed to complying with those requirements recently adopted by the FCC in its Lifeline Reform Order to annually verify the eligibility of NTAP subscribers²² in cooperation with NTAP Department of the Commission.

Conclusion

In summary, upon review of the application and evidence presented at the hearing, we find TerraCom's application for federal ETC and state NETC designation for the limited purpose of participation in the Lifeline and Nebraska Telephone Assistance Program should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-4464/NUSF-81, should be and it is hereby granted and TerraCom, Inc., is designated as an eligible telecommunications carrier in the State of Nebraska for

²² Lifeline Reform Order at PP. 240-242.

the limited purpose of receiving federal universal service support to participate in the Lifeline program as requested in the Application consistent with the findings and conclusions made herein.

IT IS FURTHER ORDERED that TerraCom, Inc., is hereby declared to be a Nebraska Eligible Telecommunications Carrier for the limited purpose of receiving state universal service support to participate in the Nebraska Telephone Assistance Program.

IT IS FINALLY ORDERED that TerraCom, Inc. shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its receipt of federal universal service support effective as of the date of this Order.

MADE AND ENTERED at Lincoln, Nebraska, this 7th day of August, 2012.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram

Gave Boyle

Gerald H. Coy

//s// Rod Johnson

Chairman

Rod Johnson

ATTEST:

Paul S. J. J.

Executive Director