

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	Application No. C-4571/
Application of Telrite	)	NUSF-88
Corporation d/b/a Life	)	
Wireless seeking designation	)	
as an Eligible	)	
Telecommunications Carrier	)	GRANTED
in the State of Nebraska for	)	
the limited purpose of	)	
participating in the	)	
Lifeline program.	)	Entered: May 29, 2013

APPEARANCES:

For the Applicant:

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409 South 17<sup>th</sup> Street  
Omaha, NE 68102

For the Commission:

Nichole A. Mulcahy  
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**Background**

By Application filed with the Nebraska Public Service Commission ("Commission") on January 11, 2013, and Amended Application filed with the Commission on February 25, 2013, Telrite Corporation d/b/a Life Wireless ("Telrite" 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. Life Wireless 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"). Telrite does not seek USF or NUSF high-cost support. Notice of the Application was published in The

Daily Record, Omaha, Nebraska, on January 18, 2013. No protests or interventions were filed.

A Hearing on the Application was held on May 7, 2013, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above.

#### E V I D E N C E

Brian Lisle, President of Telrite, testified at the hearing on behalf of the Company. Telrite's Amended Application states that Telrite provides prepaid wireless services that are unique, easy to use, competitive and affordable for low-income users. The Company's application and witness stated it meets all the statutory and regulatory requirements for designation as an ETC and a Nebraska ETC in the State of Nebraska. Mr. Lisle testified that Telrite's service is especially attractive to low income consumers, transient users, and other consumers who, due to restrictive credit criteria, deposit requirements, and long-term commitments of wireline and traditional wireless service providers are unable to procure service. Telrite is seeking ETC status to participate in Lifeline and NTAP, the name given to Lifeline in Nebraska, to provide Nebraska customers with access to affordable wireless services.<sup>1</sup>

Telrite's Application and witness stated that Telrite is a Georgia corporation with its principal offices located in Covington, Georgia. Telrite has been designated a wireless ETC in Illinois, Missouri, Rhode Island, Indiana, Oklahoma, South Carolina, Maine, Michigan, Texas, Arizona, and Puerto Rico, and has pending applications in Kansas, Washington, Wisconsin, Pennsylvania, Mississippi, Massachusetts, Iowa, Ohio, Kentucky, New Jersey and Utah.<sup>2</sup> Mr. Lisle further testified that the company had also been designated as an ETC in the State of Nevada.<sup>3</sup>

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<sup>1</sup> Application No. C-4571/NUSF-88, Prefiled Direct Testimony of Brian Lisle, Hearing Exhibit No. 5, at p. 2-3.

<sup>2</sup> See Telrite Amended Application, Hearing Ex. 1, at pp. 2-3.

<sup>3</sup> Application No. C-4571/NUSF-88, Hearing Transcript, 26:14-18. (Hereinafter "TR page number:line number").

Telrite is a common carrier and reseller of commercial mobile radio services ("CMRS") that it provides on a prepaid basis to consumers. Telrite resells service it obtains from its underlying wireless provider, AT&T.<sup>4</sup>

Telrite is registered with the Nebraska Secretary of State's office and has been duly authorized to conduct business in Nebraska. A copy of the applicable Certificate of Authority to Transact Business is attached to the Company's Amended Application as Exhibit B.<sup>5</sup> Telrite has not been the subject of enforcement sanctions or ETC revocation proceedings in any state.<sup>6</sup>

The Company states it is seeking ETC designation throughout the state in the non-rural territories served by AT&T in Nebraska for the limited purpose of participating in the Lifeline and NTAP programs. A list of the exchanges in which Telrite is requesting limited ETC and NETC designation are identified in Exhibit A attached to the Company's Amended Application.<sup>7</sup>

The Company states its service offering will provide Lifeline customers with a choice of two Lifeline Service Plans. Lifeline customers can choose between 125 or 250 anytime prepaid minutes per month at no charge. Minutes from the 125 minute plan do not expire, but roll over to the next month. Unused minutes on the 250 minute plan do not roll over. Both plans offer text messaging at 3 SMS per voice minute. Each customer will also have the option of purchasing additional bundles of minutes from any Company retail location, at any Money Gram location, or on the Company's website. Finally, each Lifeline customer will receive a free 911 compliant wireless handset from Telrite, delivered to the customer once eligibility for NTAP is established.<sup>8</sup>

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<sup>4</sup> See Telrite Amended Application, Hearing Ex. 1, at p. 11.

<sup>5</sup> *Id.* at p. 2.

<sup>6</sup> *Id.* at p. 8.

<sup>7</sup> *Id.* at p. 2.

<sup>8</sup> *Id.* at pp. 20-22.

Mr. Lisle stated that Telrite operates on a grassroots level with mobile operations that go into communities to promote Lifeline.<sup>9</sup> Mr. Lisle further testified that the company plans to go into smaller communities in Nebraska which is why the mobile setup to their business plan is beneficial to bring the Lifeline service to individuals.<sup>10</sup> Mr. Lisle also stated that Telrite employs tents, kiosks in malls, and store fronts to set up operations in different communities, however, ninety percent (90%) is the more mobile option of tents.<sup>11</sup>

Telrite stated that it satisfies both state and federal requirements to be designated as an ETC and NETC in Nebraska. Telrite has received forbearance from the Federal Communications Commission ("FCC") from the requirement to use its own facilities at least in part contained in Section 214(e)(1)(A). The Company filed a Compliance Plan with the FCC that received approval on December 26, 2012.<sup>12</sup> A copy of the approved Compliance Plan was included with the Company's Amended Application as Exhibit D.

Telrite also demonstrated that it is a common carrier as defined by the FCC and provides all the required services and functionalities to participate in the Lifeline and NTAP program. Further, the Company committed to advertising the availability of supported services using media of general distribution. Finally, Telrite committed to comply with all the Nebraska-specific requirements for ETCs and NETCs, including, but not limited to, only using the approved NTAP enrollment form and reporting requirements.

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

Section 214(e) of the Act sets forth the standards and processes for a state commission to grant carriers the design-

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<sup>9</sup> TR 10:21 - 11:1.

<sup>10</sup> TR 17:6-15.

<sup>11</sup> TR 12:17 - 13:4.

<sup>12</sup> *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, FCC 12-11 (rel. February 6, 2012)("Lifeline Reform Order").

nation 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 Telrite is only seeking ETC designation for purposes of participating in Lifeline and NTAP, the Commission will not consider the issues and requirements regarding high cost support.

The three general requirements listed in Section 214(e) are: 1) the carrier must be a common carrier; 2) the carrier must offer the services supported by the federal fund; and 3) the carrier must advertise the availability of those services. The carrier must also demonstrate the ability to fulfill the requirements throughout the service area for which the carrier is seeking ETC designation.

### **Common Carrier**

The Act defines a common carrier as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either a wire or radio technology.<sup>13</sup> The FCC's rules also specifically provide that CMRS providers, like the applicant, are treated as common carriers.<sup>14</sup> Upon review of the Application and testimony presented, the Commission finds that Telrite is a common carrier for purposes of ETC designation.

### **Supported Services**

Chapter 47 C.F.R. Sections 54.101(a) and 54.202(a) of the FCC's Rules and 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. The FCC's supported services were revised in its *Lifeline Reform Order* 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;

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<sup>13</sup> See 47 C.F.R. § 153(10).

<sup>14</sup> See 47 C.F.R. § 54.20.9(a).

- c. access to emergency services; and
- d. toll limitation for qualifying low-income consumers.<sup>15</sup>

#### *Voice Grade Access to the Public Switched Network*

Telrite provides voice grade access to the public switched network through the purchase of wholesale CMRS services from AT&T, its underlying carriers as required under 47 C.F.R. § 54.101(a).

#### *Local Usage*

Telrite's proposed low income wireless offering under its Lifeline Plan offers a choice of rate plans that provide customers with minutes of local use at no additional charge. Under Telrite's plans, eligible subscribers will receive 125 or 250 anytime prepaid minutes per month at no charge and with no additional activation fees or other charges.<sup>16</sup>

#### *Access to Emergency Services*

The Company states that it complies with all FCC regulations governing the deployment and availability of E911 compatible handsets. The handsets provided to eligible customers, at no additional charge, are emergency service-compatible. Telrite states it will provide its customers access to 911 or E911 services, and will comply with Commission requirements regarding E911-compatible handsets and the FCC's forbearance grant conditions relating to the provision of 911 and E911 services and handsets.<sup>17</sup>

#### *Toll Limitation for Qualified Low-Income Customers*

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<sup>15</sup> 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.

<sup>16</sup> See Telrite Amended Application, Hearing Ex. 1, at pp. 20-21.

<sup>17</sup> See Telrite Amended Application, Hearing Ex. 1, at pp. 9-10.

Regarding toll limitations, the FCC has found that toll limitation would no longer be deemed a supported service.<sup>18</sup> The FCC further found that ETCs that provide Lifeline customers with a set amount of minutes and do not distinguish between toll and non-toll calls are not required to provide toll limitation service.<sup>19</sup> Telrite provides prepaid wireless services, which by its very nature, provides effective toll limitation, providing a set amount of minutes and not distinguishing between toll and non-toll minutes.<sup>20</sup>

#### *Other Services*

In addition to the required supported services Telrite will also provide all the services and functionalities supported by the universal service program such as 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.<sup>21</sup>

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

#### **Facilities Requirement**

Section 009.02A2 of the Commission Rules 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.

However, 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.<sup>22</sup> Telrite states in its Amended Application that it

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<sup>18</sup> See *Lifeline Reform Order* at ¶ 367.

<sup>19</sup> *Id.* at ¶ 49.

<sup>20</sup> See *Virgin Mobile Order*, 24 FCC Rcd at 3394 ¶ 34.

<sup>21</sup> See Telrite Amended Application, Hearing Ex. 1, at p. 11.

<sup>22</sup> See *Lifeline Reform Order* at ¶¶ 368, 373, and 379.

has filed its Compliance Plan and received FCC approval on December 26, 2012.<sup>23</sup>

We find that Telrite with the approval of its Compliance Plan by the FCC has met the requirements of Rule Section 009.02A2.

### **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 reasonably calculated to reach those that qualify for the service.

Based on the Application, we find Telrite 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. Telrite's Amended Application states that the Company will specifically target its advertising so as to reach its intended market base of low-income consumers. The Company states it will utilize a wide variety of media outlets including print, audio video, web, and outdoor signage.<sup>24</sup>

### **Designated Service Area**

We find Telrite has properly identified the service area in which it is seeking ETC designation. Telrite seeks designation as an ETC in the non-rural areas identified in Exhibit A to its Amended Application, served by AT&T.

### **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 Telrite has demonstrated and committed to

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<sup>23</sup> See Telrite Amended Application, Hearing Ex. 1, at p. 11.

<sup>24</sup> See Telrite Amended Application, Hearing Ex. 1, at pp. 11-12.



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 Telrite in the Company's Amended Application, the Company is currently able to provide the Supported Services throughout its requested service areas by reselling the service which it obtains from its underlying facilities-based provider AT&T.<sup>25</sup> We find that Telrite has demonstrated an ability and commitment to satisfy its obligation to provide service upon reasonable request throughout the Company's requested service areas.

### **Ability to Remain Functional in Emergency Situations**

Section 009.02A7 of the Commission's Rules requires an ETC applicant to demonstrate an ability to remain functional during emergency situations. This provision of the Rules only applies to companies seeking high-cost support, however, Telrite in its Amended Application demonstrated that it will provide its customers with the same level of emergency functionality as the ILECs provide to their own customers. Telrite through its underlying carrier will provide access to a reasonable amount of back-up power to ensure functionality without an external power source, reroute traffic around damaged facilities, and has the capability of managing traffic spikes resulting from emergency situations.<sup>26</sup>

### **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,

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<sup>25</sup> See Telrite Amended Application, Hearing Ex. 1, at p. 13.

<sup>26</sup> See Telrite Amended Application, Hearing Ex. 1, at pp. 14-15.

and necessity. The public interest consideration may include the benefits of increased consumer choice and the unique advantages and disadvantages of the Applicant's service offerings.<sup>27</sup>

In its Amended Application, Telrite states the public interest benefits of the Company's wireless service include a larger local calling area, the convenience and security afforded by a mobile telephone service, the opportunity for customers to control cost by receiving a preset amount of monthly airtime at no charge, with the ability to purchase additional usage as needed, and 911 and E911 service.<sup>28</sup>

The Company also states designating Telrite as an ETC will increase the provision of advanced communications services to low-income residents of Nebraska. Telrite committed to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service and further committed to satisfying all applicable state and federal guidelines related to consumer protection and service quality standards. Additionally, Telrite committed to comply with the applicable rules and regulations of the Commission. Based on the evidence before us, we conclude that Telrite's service offerings will provide a public interest benefit and its business plan provides a unique advantage to low-income consumers. We find Telrite has demonstrated that its designation as an ETC would be consistent with the public interest, convenience, and necessity.

### **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". Telrite in its Application committed to complying with the Commission's orders, rules and regulations regarding NTAP including the requirement to use only the Commission's approved NTAP Application Form, requirements regarding additions and removals of NTAP subscribers from the NTAP program and the semiannual reporting of NTAP customer lists. Telrite further committed to complying with those requirements recently adopted

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<sup>27</sup> See 47 C.F.R. § 54.202(c).

<sup>28</sup> See Telrite Amended Application, Hearing Ex. 1, at p. 17.

by the FCC in its *Lifeline Reform Order* to annually verify the eligibility of NTAP subscribers<sup>29</sup> in cooperation with NTAP Department of the Commission.

### **Conclusion**

In summary, upon review of the Application and evidence presented at the hearing, we find the Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e), the supplemental requirements set out in the *Lifeline Reform Order*, and applicable state and federal law for the designation of eligible telecommunications carriers in the proposed geographic area for the limited purpose of participation in the Lifeline and Nebraska Telephone Assistance Program and the Application should be approved.

### **O R D E R**

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-4571/NUSF-88 should be, and it is hereby granted and Telrite Corporation d/b/a Life Wireless, is designated as an eligible telecommunications carrier in the State of Nebraska for 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 Telrite Corporation d/b/a Life Wireless, 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 FURTHER ORDERED that Telrite Corporation d/b/a Life Wireless, shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1<sup>st</sup> each year hereafter.

IT IS FINALLY ORDERED that Telrite Corporation d/b/a Life Wireless 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.

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<sup>29</sup> Lifeline Reform Order at pp. 240-242.

MADE AND ENTERED at Lincoln, Nebraska, this 29<sup>th</sup> day of May, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Executive Director

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MADE AND ENTERED at Lincoln, Nebraska, this 29<sup>th</sup> day of May, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Tim Schram* Vice Chair  
*Frank E. Landis*

ATTEST:

*Red Larson*  
*Gerald L. Vay*

*Steve Meradith*  
Executive Director

//s// Frank E. Landis