

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

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BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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|----------------------------|---|-------------------------|
| In the Matter of IM        | ) | Application No. C-4856/ |
| Telecom, LLC, d/b/a        | ) | NUSF-107                |
| Infiniti Mobile, Tulsa,    | ) |                         |
| Oklahoma, for Designation  | ) | DENIED                  |
| as an Eligible             | ) |                         |
| Telecommunications Carrier | ) | Entered: June 6, 2017   |
| in the State of Nebraska.  | ) |                         |

APPEARANCES:

For the Applicant:

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For the Commission:

Shana Knutson  
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Lincoln, NE 68508

**Background**

By application filed with the Nebraska Public Service Commission ("Commission"), IM Telecom, LLC, d/b/a Infiniti Mobile, ("Infiniti Mobile" or "Company"), of Tulsa, Oklahoma, seeks designation as an Eligible Telecommunications Carrier ("ETC") for the purpose of 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"). Notice of the amended Application was published in The Daily Record, Omaha, Nebraska, on July 18, 2016.

Infiniti Mobile seeks ETC 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").

A hearing on the application was held on December 6, 2016, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above. The Company agreed to file late-filed exhibits with the Commission. The late-filed exhibits were received on December 13, 2016.

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

Applicant is an Oklahoma limited liability company, which is authorized to transact business in the State of Nebraska. The pre-filed testimony of Trevan Morrow states that the Company is a reseller of commercial mobile radio services ("CMRS") and provides prepaid wireless telecommunications services to consumers by using the Sprint Spectrum L.P. ("Sprint") and Verizon Wireless ("Verizon") underlying networks. Infiniti Mobile is a Mobile Virtual Network Operation ("MVNO") and has a direct reseller agreement with ZefCom, LLC, ("Telispire") to obtain access to the underlying networks of both Sprint and Verizon.<sup>1</sup>

Trevan Morrow, the COO of Infiniti Mobile, offered pre-filed testimony. Due to the unavailability of Mr. Morrow, Mr. Gregg Iser, the CEO of Infiniti Mobile, testified at the hearing on behalf of the Company.

Applicant seeks a Lifeline-only ETC designation. In his testimony, Mr. Gregg Iser stated that Infiniti Mobile intended to offer a 750 minute talk with unlimited text plan to Nebraska consumers, with a free headset, for lifeline eligible consumers. This was not the plan originally specified in their application, but Mr. Gregg Iser testified that they intended to update their plan to this new level.

Applicant submitted in the pre-filed testimony of Trevan Morrow that Infiniti Mobile had obtained forbearance of the facilities requirement by meeting the requisite criteria laid out by the FCC. Infiniti Mobile filed a Compliance Plan with the FCC outlining measures Infiniti Mobile will take to implement the obligation contained in the *Lifeline and Link Up Reform and Order*. This Compliance Plan was approved by the FCC on August 8, 2012, and was attached to their Application as Exhibit 4.

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<sup>1</sup> Pre-Filed Testimony of Trevan Morrow, p. 1.

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

Lifeline is a program which provides eligible low-income subscribers with discounted telephone and broadband service. The program is funded by the federal universal service fund and supplemented by states in many cases including Nebraska which provides an additional \$3.50 per line of support. Pursuant to 47 U.S.C. § 214(e), states are given the role to determine which carriers are eligible to participate in the Lifeline program.<sup>2</sup> Rules promulgated by the FCC under § 214 provide guidance for state commissions designating eligible telecommunications carriers. In addition, our rules provide additional requirements for the designation and retention of Eligible Telecommunications Carrier (ETC) status.

In order to be designated as an ETC, the carrier must be a "common carrier"; the carrier must offer the services supported by the federal fund; and the carrier must advertise the availability of those services. In addition, the carrier must demonstrate the ability to fulfill the requirements throughout the service area for which the carrier is seeking ETC designation. When the designation overlaps the areas in which rural telecommunications carriers operate, the Commission must also find it to be in the public interest.

Sections 54.201 and 54.202 of the FCC's rules, which govern ETC designations by states and the FCC, respectively, require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules. Among the relevant considerations for such a showing would be whether the Applicant previously offered services to non-Lifeline consumers, how long it has been in business, whether the Applicant intends to rely exclusively on USF disbursements to operate, whether the Applicant receives or will receive revenue from other sources, and whether it has been subject to enforcement action or ETC revocation proceedings in any state.

We now consider the evidence presented by the Applicant against these requirements.

The pre-filed testimony of Mr. Trevan Morrow which was adopted by the alternative live witness, Mr. Gregg Iser stated

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<sup>2</sup> See 47 U.S.C. Section 214(e) of the Telecommunications Act of 1996 (the Act).

that Infiniti Mobile is an Oklahoma limited liability company, authorized to transact business in the State of Nebraska. Infiniti is a reseller of commercial mobile radio services (CMRS) and provides prepaid wireless telecommunications services by using Sprint, Verizon and underlying networks of other carriers. Infiniti does not own facilities in Nebraska. In addition, Mr. Iser testified that Infiniti Mobile has been in operation since 2012. Mr. Iser testified that Infiniti Mobile had received authorization to provide Lifeline service in roughly 8 states. As a reseller of telecommunications services, Infiniti Mobile takes advantage of the FCC's grant of forbearance from the Commission's requirement that a carrier offer its services in part over its own facilities.<sup>3</sup> In accordance with the forbearance requirements, Infiniti Mobile filed a Compliance Plan with the FCC outlining the measures it will take to implement the obligations contained in the Lifeline and Link Up Reform Order. Infiniti Mobile committed to providing Lifeline service in Nebraska in accordance with the Compliance Plan.

Infiniti Mobile, in response to the Commission's data requests, filed an unaudited balance sheet, income tax statements, training manual and service agreements with the underlying wireless carriers they intend to use to offer the proposed service. All of these documents were marked as confidential and proprietary. Infiniti Mobile also provided a copy of its Compliance Plan with the FCC. Infiniti Mobile stated that it does not intend to offer non-Lifeline, retail plans in the State of Nebraska.<sup>4</sup>

Upon questioning, Mr. Iser testified that the Oklahoma Commission denied its application to expand its authority as an ETC. Mr. Iser further testified that the Kansas Corporation Commission staff recommended denial of Infiniti Mobile's ETC application and that it was working with the Kansas Commission on those issues.

Upon review of the information before us, we have concerns with the financial and technical abilities of the Applicant to

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<sup>3</sup> 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 11-42, WC Docket 03-109, CC Docket 96-45, WC Docket 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (2012) (Lifeline and Link Up Reform Order) para. 368.

<sup>4</sup> See Application at 17 n. 32.

provide the service throughout the proposed designated service area. Accordingly, we deny the application but invite the Applicant to reapply for designation once the Applicant can provide the Commission with stronger evidence of financial competency.

The financial documents were marked unaudited, for internal management use only, and confidential. The information provided initially demonstrated net losses experienced by the Applicant in years 2014 and 2015. Accordingly, at the hearing, updated financial information was requested by the staff and provided to the Commission as a late-filed exhibit.

The updated financial information, provided through the late-filed exhibit, appears to have been prepared by "Bean Counter, Inc." The financial documents were unsigned and did not contain the name or contact information of the reviewing accountant. Certain line categories such as "ask my accountant" were not detailed sufficiently to provide the Commission's accounting staff information as to what those categories were and what they included. The majority of the fixed assets of the Company were vehicle expenses and seemingly not directly related to the provision of telecommunications services.<sup>5</sup> In addition, the net losses experienced by the Applicant and the level of positive equity in the Company does not meet the Commission's general standards for granting a competitor a certificate to do business in the state.<sup>6</sup> Even though the Applicant filed two letters of credit, the letters appear to be tied to purchasing additional phone assets or providing outstanding invoices for accounts receivable in return for credit.<sup>7</sup>

We are also concerned about the Applicant's heavy reliance on USAC disbursements. Practically speaking, Applicant does almost

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<sup>5</sup> In the financial information provided by Infiniti, it appears that, according to the balance sheet, 76.1% of total assets for the company are made up of two vehicles, totaling \$206,652.50.

<sup>6</sup> See Neb. Admin. R & Regs., tit. 291, ch. 5, §002.501C10 ("For purposes of determining evidence of adequate financing, the following minimum criteria shall be met... a minimum positive capitalization of \$200,000.")

<sup>7</sup> Infiniti provided a letter from Digicell International, Inc., which stated that Infiniti Mobile had been issued a credit limit of \$1,000,000 to purchase mobile phones and accessories from them. Additionally, Infiniti provided a letter from LSQ Funding Group, LC, which indicated that Infiniti has an Accounts Receivable facility of \$10,000,000 with them.

exclusively rely on USF disbursements to operate as a Lifeline provider. Mr. Gregg Iser testified that he believed that approximately 90 percent of Infiniti's overall revenue comes from USAC disbursements for Lifeline customers. However, according to the financial information provided by Applicant, in 2015, USAC disbursements accounted for roughly 98.5 percent of Infiniti's overall revenue. Infiniti's data responses also indicated that non-USAC revenue comes from retail services from monies garnered through the sale of upgraded handset devices and top-up revenue. It is unclear whether any revenue comes from the offering of retail wireless services not directed at Lifeline customers. The Commission is concerned that the overwhelming majority of Infiniti's revenue does come from USAC disbursements. Further, these disbursements have been significantly reduced over time, from a high of \$572,215 in November of 2013 to \$87,992 in September of 2016.

Previously, the Applicant's ETC Application for an extension of its ETC designation was denied in its home operating state of Oklahoma.<sup>8</sup> Oklahoma's Corporation Commission Staff recommended denial of Infiniti's Application due to concerns including: the possibility of duplicate subscribers it found when reviewing Infiniti's subscriber records; instances of improperly recertifying Lifeline subscribers; instances of Infiniti collecting Lifeline support for customers outside the Company's designated ETC service area; Infiniti's inability to meet the advertising requirement; Infiniti's lack of sufficient financial resources; and Infiniti's lack of sufficient business plan. Staff further stated that Infiniti was struggling in its duty to serve throughout the ETC designated area. According to the Order, the Oklahoma Commission denied the request in part because Infiniti Mobile did not demonstrate that it was financially and technically capable of providing the Lifeline service in the requested expanded service area and it was not in the public interest to grant the request.

Based upon the information we have in the record, we are not convinced that the Applicant has sufficient financial and technical capability for ETC designation. We find Applicant has not met the requirements in 47 C.F.R. §§ 54.201 and 54.202 as being

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<sup>8</sup> See *In Application of TM Telecom, LLC d/b/a Infiniti Mobile to Expand the Service Territory Applicable to its Eligible Telecommunications Carrier Designation*, 2015 Okla. PUC Lexis 398, Order No. 647172 (November 24, 2015), Cause No. PUD 201400305.

financially and technically capable to offer Lifeline-Only support in its requested service areas.

**Public Interest**

47 C.F.R. § 54.202(b) and 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. Rule 009.02A4 of the Commission Rules requires that an ETC not only demonstrate the ability and commitment to provide 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 because of concerns regarding the financial state of Infiniti Mobile, the ability of Infiniti to continue to provide service throughout the proposed service area is in question and contrary to public interest.

Although we find the Applicant does not meet the financial and public interest standards for designation as an ETC in Nebraska, Infiniti Mobile may re-apply after 90 days from the date of this Order and provide the Commission with updated financial information which better demonstrates its ability to provide Lifeline service throughout the proposed service area that such designation would be in the public interest.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of IM Telecom, LLC d/b/a Infiniti Mobile should be and it is denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 6<sup>th</sup> day of June, 2017.

COMMISSIONERS CONCURRING:

*Mary Riddis*  
*Crystal Knowles*  
*Ed Huse*

//s//Frank E. Landis  
//s//Tim Schram

NEBRASKA PUBLIC SERVICE COMMISSION

*Tim Schram*  
Chairman

ATTEST:

*Shana Knize*  
Deputy Director