

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. NUSF-85/
Application of Total Call) C-4550
Mobile, Inc., Gardena,)
California, seeking)
designation as an Eligible) GRANTED
Telecommunications Carrier,)
for the limited purpose of)
participating in the)
Lifeline program.) Entered: November 13, 2013

APPEARANCES:

For the Applicant:

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409 South 17th 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 December 20, 2012, Total Call Mobile, Inc., ("Total Call" 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. Total Call 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"). Total Call does not seek USF or NUSF high-cost support. Notice of the Application was published in The Daily Record, Omaha, Nebraska, on December 27, 2012. No protests or interventions were filed.

A Hearing on the Application was held on August 6, 2013, in the Commission Hearing Room, Lincoln, Nebraska, with appearances as shown above. The Company agreed to file certain late-filed exhibits with the Commission in response to Commission questions at the hearing. The late-filed exhibits were received on September 16, 2013.

E V I D E N C E

Hideki Kato, Chief Operating Officer for Total Call, testified at the hearing on behalf of the Company. Total Call's Application states that the Company provides prepaid and postpaid wireless services that are unique, easy to use, competitive and affordable for low-income users. The Company's application states it meets all the statutory and regulatory requirements for designation as an ETC and a Nebraska ETC in the State of Nebraska. The Company's application further states Total Call's service is especially attractive to low-income consumers because it provides affordable, easy to use service with access to emergency services and a reliable means of communications. Total Call does not conduct credit checks or require customers to enter into long-term contracts as a prerequisite to obtaining service.¹

Total Call's application states that Total Call is a Delaware corporation with its principal offices located in Gardena, California. Total Call has been designated a wireless ETC in Colorado, Kansas, Maine, Maryland, Michigan, Missouri, Nevada, Ohio, Texas, Utah, West Virginia, and Wisconsin.²

Total Call is a common carrier and reseller of commercial mobile radio services ("CMRS") that it provides on a prepaid and postpaid basis to consumers. Total Call resells service it obtains from its underlying wireless provider, Sprint PCS ("Sprint").³

Total Call is registered with the Nebraska Secretary of State's office and has been duly authorized to conduct business in Nebraska. Total Call has not been the subject of enforcement sanctions or ETC revocation proceedings in any state.⁴

¹ See Total Call Application, Hearing Ex. 1, at P. 3.

² See Total Call Data Request Responses, Hearing Ex. 4, at P. 1.

³ See Total Call Application, Hearing Ex. 1, at P. 3.

⁴ See Total Call Data Request Responses, Hearing Ex. 4, at P. 2.

The Company states in its application it is seeking statewide ETC designation in non-rural and rural service areas, but would only be serving in the territories served by Sprint in Nebraska for the limited purpose of participating in the Lifeline and NTAP programs. A list of the Sprint exchanges in which Total Call is requesting limited ETC and NETC designation are identified in Exhibit 7 attached to the Company's Application.⁵ Upon questioning at the hearing, Mr. Kato agreed that Total Call was seeking designation only in the wire centers served by Sprint and therefore would not be in a position to serve the entire state.⁶ Total Call filed a late-filed exhibit reaffirming it is only seeking ETC designation in the Sprint wire centers, and not statewide authority as originally stated in its application.⁷

The Company states its service offering will provide Lifeline customers with a choice of Lifeline Service Plans. Lifeline customers can choose a plan with 250 anytime minutes or texts per month at no charge or a number of what the Company calls 30-day plans which include a 1000 talk and text plan and three different unlimited talk, text, and/or data plans at a discounted rate. All plans include a free basic handset, voicemail, caller-ID, call waiting, customer service calls, 911 service, and balance inquiries. Each customer will also have the option of purchasing additional minutes or paying to upgrade from the basic handset.⁸

Mr. Kato detailed that Total Call operates on the internet and conducts mobile operations the company calls "street events" to promote Lifeline.⁹ Mr. Kato further testified that the company will send the free handsets to applicants in the mail only after the applicant has been determined eligible for NTAP by the Commission.¹⁰

Total Call stated that it satisfies both state and federal requirements to be designated as an ETC and NETC in Nebraska. Total Call 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

⁵ See Total Call Application, Hearing Ex. 1, at P. 15.

⁶ Application No. C-4550/NUSF-85, Hearing Transcript, 18:16 - 22:18. (Hereinafter "TR page number:line number").

⁷ Total Call Late Filed Exhibits, Hearing Ex. 10.

⁸ Total Call Late Filed Exhibits, Hearing Ex. 12.

⁹ TR 12:19 - 13:11.

¹⁰ ID.

that received approval on May 25, 2012.¹¹ A copy of the approved Compliance Plan was included with the Company's Application as Exhibit 5.

Total Call also states it 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, Total Call committed to comply with all the Nebraska-specific requirements for ETCs and NETCs, including only using the approved NTAP enrollment form, not distributing handsets until eligibility was determined by the Commission and all NTAP 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 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 Total Call 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

¹¹ *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").

utilizing either a wire or radio technology.¹² The FCC's rules also specifically provide that CMRS providers, like the Applicant, are treated as common carriers.¹³ Upon review of the application and testimony presented, the Commission finds that Total Call 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;
- c. access to emergency services; and
- d. toll limitation for qualifying low-income consumers.¹⁴

Voice Grade Access to the Public Switched Network

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

Local Usage

Total Call'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 Total Call's plan, eligible subscribers will receive 250 anytime prepaid minutes per month at no charge and with no additional activation fees or other charges.¹⁵

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

¹² See 47 C.F.R. § 153(10).

¹³ See 47 C.F.R. § 54.20.9(a).

¹⁴ See *Lifeline Reform Order* at pp. 207-208.

¹⁵ Total Call Late Filed Exhibits, Hearing Ex. 12.

customers, at no additional charge, are emergency service-compatible. Total Call 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.¹⁶

Toll Limitation for Qualified Low-Income Customers

Regarding toll limitations, the FCC has found that toll limitation would no longer be deemed a supported service.¹⁷ 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.¹⁸ Total Call 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.¹⁹

Other Services

In addition to the required supported services, Total Call 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.²⁰

Upon review of the application and testimony presented, the Commission finds that Total Call 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

¹⁶ See Total Call Application, Hearing Ex. 1, at P. 12.

¹⁷ See *Lifeline Reform Order* at ¶ 367.

¹⁸ *Id.* at ¶ 49.

¹⁹ See Total Call Application, Hearing Ex. 1, at PP. 12-13.

²⁰ *Id.* at P. 11.

must file a compliance plan with and receive FCC approval of such plan.²¹ Total Call states in its application that it has filed its Compliance Plan and received FCC approval on May 25, 2012.²²

We find that Total Call, 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 reasonable calculated to reach those that qualify for the service.

Based on the application, we find Total Call 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. Total Call's 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 its will utilize a wide variety of media outlets including direct mail and internet.²³

Designated Service Area

Initially Total Call's application requested statewide authority; however, the Sprint wire centers identified as the service area in which the Company intends to serve are not statewide. Therefore, we find Total Call is only seeking ETC designation in the areas identified in its application. Total Call's designation as an ETC shall be for the areas identified in Exhibit 7 to its application, served by Sprint. If the company at a later date is able to serve in other areas of the state, it shall apply for an expansion of its designated ETC area with the Commission.

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

²¹ See *Lifeline Reform Order* at ¶¶ 368, 373, and 379.

²² See Total Call Application, Hearing Ex. 1, at P. 11.

²³ *Id.* at P. 13.

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 Total Call 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 Total Call in the Company's 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 Sprint.²⁴ We find that Total Call 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, Total Call in its application demonstrated that it will provide its customers with the same level of emergency functionality as the ILECs provide to their own customers. Total Call, 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.²⁵

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 public interest consideration may include the benefits of increased consumer choice and the unique

²⁴ *Id.* at P. 16.

²⁵ *Id.* at P. 17.

advantages and disadvantages of the Applicant's service offerings.²⁶

In its application, Total Call states the public interest benefits of the Company's wireless service include lower priced and higher quality service by increasing the competition in the wireless market. The Company also 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.²⁷

The Company also states designating Total Call as an ETC will increase the provision of advanced communications services to low-income residents of Nebraska. Total Call 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, Total Call committed to comply with the applicable rules and regulations of the Commission. Based on the evidence before us, we conclude that Total Call's service offerings will provide a public interest benefit and its business plan provides a unique advantage to low-income consumers. We find Total Call 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". Total Call 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. Mr. Kato also expressed an understanding on behalf of the Company that all eligibility determinations of NTAP applicants are made exclusively by the Commission. Total Call further committed to

²⁶ See 47 C.F.R. § 54.202(c).

²⁷ See Total Call Application, Hearing Ex. 1, at PP. 21-23.

complying with those requirements recently adopted by the FCC in its *Lifeline Reform Order* to annually verify the eligibility of NTAP subscribers²⁸ in cooperation with NTAP Department of the Commission.

We do have concern with the ability of Total Call to comply with the Commission filing requirements in NTAP. During the application process, the Company demonstrated an issue with timely responding to requests for information and/or documents. While we do not think these issues constitute grounds to not grant the Company ETC status, we are concerned about its timely compliance with Commission rules and regulation and its responsiveness to Commission inquiries.

We therefore put Total Call on notice that the Commission will closely scrutinize its compliance with our rules and regulations and will take any and all administrative action it deems appropriate, including revocation of Total Call's ETC designation, if it becomes evident the Company is not in full compliance. Failure by the Company to comply with its commitments made to the Commission during this proceeding will not be tolerated.

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-4550/NUSF-85, should be and it is hereby granted and Total Call Mobile, Inc., 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.

²⁸ Lifeline Reform Order at PP. 240-242.

IT IS FURTHER ORDERED that Total Call Mobile, 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 FURTHER ORDERED that Total Call Mobile, Inc., shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1st each year hereafter.

IT IS FINALLY ORDERED that Total Call Mobile, 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 13th day of November, 2013.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Acting-Chair

ATTEST:

Executive Director

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NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Tim Schram
Gerald L. Up

//s//Rod Johnson

Acting-Chair

Rod Johnson

ATTEST:

Sue Meredith

Executive Director