

**PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application of TerraCom, Inc., for Designation as an Eligible
Telecommunications Carrier

9590-TI-100

DECISION

This is the Decision in the investigation to determine whether to designate TerraCom, Inc. (TerraCom), as an Eligible Telecommunications Carrier (ETC), pursuant to 47 U.S.C. § 214(e)(2) and Wis. Admin. Code § PSC 160.13. Designation as an ETC makes a provider eligible to receive State and Federal Universal Service Fund (USF) monies. TerraCom sought designation to receive USF only for the low-income programs of Lifeline and Link-Up and later modified its request to ETC designation for the Lifeline program only. This Decision addresses this modified request for designation as a Lifeline-only ETC. TerraCom is granted ETC designation subject to conditions.¹

Introduction

TerraCom filed a petition for designation as an ETC on February 4, 2011. TerraCom requested ETC designation in the wire centers served by Wisconsin Bell, Inc., (d/b/a AT&T Wisconsin), for the purpose of receiving low income program support. This application was affected by the Commission's docket relating to the proper reimbursement amount for wireless providers under the Link-Up program (docket 5-TI-2134). At its open meeting of November 17,

¹ The Commission identifies that this ETC designation is a provisional designation designed to ensure strict compliance with the conditions set forth below with respect to the integration of customers from Midwestern Telecommunications, Inc. (MTI). To the extent that no issues are identified with the integration of these customers within 120 days of the issuance of this Decision, the Decision will become final. This provisional designation has the same force and effect of a Final Decision for the purposes of USAC reimbursement when, consistent with the conditions set forth in this Decision, TerraCom is eligible for reimbursement.

2011, the Commission approved a process to address the issues relating to Link-Up reimbursement. At the same time, the Commission identified that it would process ETC designations for any companies that desired designation for the Lifeline program only.

TerraCom initially requested that its application be processed only after Commission action with docket 5-TI-2134 with respect to Link-Up reimbursement. On December 27, 2011, TerraCom modified this request, and elected to seek designation as a Lifeline-only ETC. The Commission issued a Notice of Investigation and Request for Comments on the Lifeline portion of this docket on December 30, 2011, with comments due on or before January 10, 2012. Only TerraCom filed comments. The Commission considered this matter at its open meeting of January 12, 2012.

Findings of Fact

1. TerraCom is a cellular mobile radio reseller offering prepaid wireless service in the wire centers served by Wisconsin Bell, Inc., (d/b/a AT&T Wisconsin).
2. TerraCom will not seek high cost support from the state or federal USF.
3. TerraCom has committed to providing service to all requesting customers, and to advertising the availability of its service, throughout the exchanges in which it provides service, as required under 47 U.S.C. § 214(e) and Wis. Admin. Code § PSC 160.13.
4. TerraCom has committed to providing service which meets the requirements set forth in Wis. Admin. Code § PSC 160.13, but sought waivers of some of the requirements.
5. TerraCom's business plan and status as a prepaid wireless provider together with the administrative difficulty of applying some requirements of Wis. Admin. Code ch. PSC 160 creates an unusual circumstance that justifies adopting different requirements concerning the pay phone requirement, the minimum monthly charge, and the minimum monthly discount.

6. It is reasonable to adopt a requirement concerning pay phones other than the one set forth in Wis. Admin. Code §§ PSC 160.13(1)(d) and PSC 165.088. It is reasonable to require TerraCom to work with other providers to ensure that there is at least one pay phone in each municipality.

7. It is reasonable to require TerraCom to provide a monthly credit in the form of minutes, in lieu of the dollar discounts set forth in Wis. Admin. Code § PSC 160.062(2)(b).

8. It is reasonable to *not* require TerraCom to charge a minimum monthly fee, as set forth in Wis. Admin. Code § PSC 160.062(2)(c).

9. It is reasonable to require that TerraCom discontinue service to, and collection of Lifeline support related to, any Lifeline phone with no usage in a 60-day period.

10. It is reasonable to require that TerraCom file periodic reports, as described in the opinion section of this decision, on the numbers of phones disconnected due to no usage in a 60-day period.

11. It is reasonable and in the public interest to designate TerraCom as an ETC for the purpose of receiving Lifeline support in the areas indicated in its application and consistent with this Decision.

12. It is reasonable to imposed additional conditions on TerraCom with respect to the transfer of customers from MTI.

13. It is reasonable to require TerraCom to verify Lifeline eligibility of any customers transferred from MTI using the Department of Health Services' CARES database or the Department of Revenue (DOR) procedures, as appropriate.

14. It is reasonable to require that at least one notice of transfer sent by TerraCom, or MTI acting jointly with TerraCom, provided to the former MTI customers be sent by the United States Postal Service (USPS).

15. It is reasonable to require TerraCom to meet other requirements, as described in this Decision, for the transfer of the former MTI customers.

16. It is reasonable to require TerraCom to periodically meet with Commission staff to discuss the status and progress in integrating the transferred MTI customers.

Conclusions of Law

1. The Commission has jurisdiction and authority under Wis. Stat. §§ 196.02 and 196.218; Wis. Admin. Code ch. PSC 160; 47 U.S.C. §§ 214 and 254; and other pertinent provisions of Wis. Stat. ch. 196 and the Federal Telecommunications Act of 1996 to make the Findings of Fact and to issue this Final Decision.

2. The Commission has the authority to adopt different ETC requirements under Wis. Admin. Code § PSC 160.01(2)(b).

Opinion

ETC status was created by the 1996 Telecommunications Act and codified in 47 U.S.C. § 214(e)(2). Under Federal Communications Commission (FCC) regulations, 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.201(b), state commissions designate providers as ETCs. Designation as an ETC is required if a provider is to receive federal universal service funding. ETC designation is also required to receive funding from the state universal service High Rate Assistance Credit program.

The FCC has established a set of minimum criteria that all ETCs must meet, which is codified at 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(a), *et seq.* States have the authority to adopt additional requirements, provided that the additional requirements are “not inconsistent with the [Federal Communication] Commission’s rules to preserve and advance universal service.” 47 U.S.C. § 254(f). The United States Court of Appeals for the Fifth Circuit upheld the states’ right to impose additional conditions on ETCs in *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 418 (5th Cir. 1999).

The Commission promulgated Wis. Admin. Code Chapter 160 and specifically § PSC 160.13 to govern ETC designations and requirements in Wisconsin. Those rules established the process for ETC designation and set forth a minimum set of requirements for providers seeking ETC designation from the Commission.

TerraCom plans to offer prepaid wireless Lifeline service without a monthly fee, in much the same manner as other providers previously designated as ETCs by the Commission.² Under its proposal, TerraCom would supply the Lifeline customer with a cell phone at no monthly charge. In place of the traditional Lifeline service discount to the monthly rate, TerraCom would provide a set amount of minutes, without charge, each month. Doing so would normally be at odds with Wis. Admin. Code § PSC 160.062(2)(c), which requires a minimum monthly charge for service.³ TerraCom seeks the same treatment as other prepaid wireless providers, namely

² Other providers include TracFone Wireless, Inc. (TracFone), (docket 9385-TI-100), Nexus Communication, Inc. (docket 7648-TI-101), and Millennium 2000, Inc., (docket 9593-TI-100.).

³ Wisconsin Admin. Code § PSC 160.062(2)(c) states: “Notwithstanding par. (b), in no case shall the Lifeline monthly rate be less than \$3 or more than \$15.”

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that no minimum charge apply. The Commission has the authority to do so under Wis. Admin. Code § PSC 160.01(2)(b).⁴

In the TracFone docket, the Commission was concerned that the lack of a minimum charge would eliminate automatic notification that a customer had lost, abandoned or otherwise ceased using the service. With traditional service, this becomes apparent when the customer stops paying his or her bills. In the earlier dockets, the Commission required the companies to develop a plan to monitor usage, to cease receiving subsidies for inactive phones, and to report certain information to the Commission on a quarterly basis. TerraCom has committed to discontinue service to any cell phone that does not have usage in a two-month period, and to not seek USF reimbursement from the Lifeline program for that phone. That commitment, coupled with the reporting requirements, would meet the objectives the Commission set forth in previous dockets.

TerraCom has requested that the monthly discount set forth in Wis. Admin. Code § PSC 160.062(2)(b) not be applied to TerraCom. Instead, TerraCom will provide a monthly discount in the form of a set number of minutes of use to such customers. Initially, TerraCom would provide customers 68 free minutes, in lieu of the monthly credit. In the future, this equivalency may change. As it did in the TracFone docket, the Commission delegates to the Administrator of the Telecommunications Division authority to approve or deny changes to the monthly minute allocation. Changes to the number of minutes may be approved without reopening the docket, issuing a notice or providing opportunity for comment.

⁴ Wisconsin Admin. Code § PSC 160.01(2)(b) states: "Nothing in this chapter shall preclude special and individual consideration being given to exceptional or unusual situations and upon due investigation of the facts and circumstances involved, the adoption of requirements as to individual providers or services that may be lesser, greater, other or different than those provided in this chapter."

Providing free monthly minutes of service in lieu of a monthly discount is an alternative approach to Lifeline service. TerraCom's business plan and status as a prepaid wireless provider together with the administrative difficulty of applying some requirements of Wis. Admin. Code ch. PSC 160 creates an unusual circumstance that justifies adopting different requirements concerning these items. The Commission adopted a different method of applying discounts and a different minimum charge in earlier dockets. It is reasonable to modify the monthly discount requirement in the administrative rules and adopt a similar approach to TerraCom as has been adopted in past dockets.

Also, in the earlier prepaid wireless ETC dockets, the Commission required the companies to make quarterly filings of the number of customers who were deactivated after 60 days of non-usage and the number of days between the 60th day and deactivation, reported as a range and an average. It is reasonable to apply the same reporting requirements to TerraCom.

TerraCom has also requested a waiver from the requirement that an ETC provide a pay phone in each municipality, as set forth in Wis. Admin. Code §§ PSC 160.13(1)(d) and PSC 165.088. In earlier dockets, the Commission determined that it would be burdensome and redundant for a prepaid wireless provider to provide a pay phone. Given this, it is reasonable to apply waiver of this requirement as has been done in the past. TerraCom is required to work with the other providers in their service areas to jointly ensure that pay phones are available.

The FCC has determined that an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where designation is sought is served by a rural or non-rural provider.⁵ The Commission finds that it is in the public

⁵ In the Matter of Federal-State Joint Board on Universal Service, 20 FCC Rcd. 6371, 6373, ¶ 3 (2005).

interest to designate TerraCom as an ETC in the areas for which TerraCom requests such designation. The Commission is guided by the factors set forth in Wis. Stat. § 196.03(6) when making this public interest determination. Although there are other ETCs in the areas at issue, designating TerraCom as an ETC will nonetheless increase competition in those areas and, consequently, will increase consumer choice. The Commission also notes that the prepaid wireless offering, especially TerraCom's Lifeline offering, will likely make service available to customers that would not otherwise be served.

TerraCom initially requested ETC designation for the purpose of receiving support for both Lifeline and Link-Up programs. TerraCom revised its request and is seeking Lifeline-only designation at this time. The Link-Up portion of the application will be deferred, pending a decision in docket 5-TI-2134. The Commission finds that TerraCom meets the requirements for ETC designation, for the limited purpose of obtaining Lifeline support.⁶

As part of the public interest determinations for other ETCs, the Commission has considered whether there is a concern that an ETC will "cream skim" the most profitable customers. While it may not be necessary to do so in the Lifeline-only ETC context,⁷ the Commission staff has investigated this issue. Since TerraCom has requested ETC status for the entirety of Wisconsin Bell, Inc.'s service territory, the Commission finds no evidence of cream-skimming in this docket.

⁶ TerraCom is a cellular mobile radio reseller. As such, it does not require certification from the Commission to operate.

⁷ The FCC has identified that with respect to at least some low-income, wireless ETCs that are not seeking high-cost support, "cream skimming" is not a significant concern. *NTCH, Inc. Petition for Forbearance from 47 U.S.C. § 214(e)(5) and 47 C.F.R. § 54.207(b) Cricket Communications, Inc. Petition for Forbearance*, 26 FCC Rcd 13,723, 13,729 (2011).

This docket presents a unique circumstance. TerraCom has negotiated a Customer Transfer Agreement with MTI under which it will assume service for all existing valid MTI customers. This transfer raises concerns, both for TerraCom and the Commission, because of the issues identified in dockets 7184-TI-102 and 7184-TI-103, where the Commission addressed several concerns with MTI's business practices, provisionally revoked MTI's ETC certification, and began proceedings to revoke MTI's certificate of authority. Subsequently, MTI identified that it will likely relinquish its ETC designation and certificate of authority and not remain in business in Wisconsin.

Transferring MTI's customers requires increased scrutiny because of the previously-identified problems and inconsistencies with the processes used to verify the MTI customers. Specifically, the Commission found numerous instances of phones being provided to customers who were not qualified, to customers who already had phones, or to customers who had not requested phones. The Commission also found numerous instances of phones that should have been disconnected pursuant to the Commission's 60-day rule, but which were still in operation. These are all indications that some customers in the MTI customer base may not qualify for Lifeline service. However, at this time, there is no way of knowing how many or which customers are inappropriately receiving Lifeline service or are inappropriately subject to reimbursement from the federal USF.

TerraCom is aware of these potential problems. In its Comments, it describes the process it will be using to filter and verify the customers it will serve, and the situations under which MTI customer accounts will be disconnected. TerraCom appears to be making a significant effort to select only the eligible customers, and reject those who are ineligible and seek

reimbursement from the USF only for those customers who are verified by TerraCom. Under these circumstances, it is reasonable to apply certain conditions to TerraCom's designation as an ETC. This will ensure that any inappropriate diversion of USF dollars due to invalid MTI customers ends.

The Commission requires TerraCom to immediately qualify all former MTI customers using the Department of Health Services' CARES database (for customers qualifying for lifeline under various low income programs) or the DOR procedures, for customers qualifying via the Homestead Tax Credit.⁸ Moreover, TerraCom may not receive Lifeline support for any transferred MTI customer, or any new customer, until that customer has been verified through the CARES or DOR processes.

The Commission also requires TerraCom to follow the transfer and verification provisions it set forth in the Customer Transfer Agreement reached between TerraCom and MTI.⁹ In addition, it is reasonable to require TerraCom to keep track of any returned mailings sent to the transferred MTI customers, and to report this information to the Commission. This

⁸ Since this is an immediate requirement, TerraCom cannot wait for the annual reverification process to comply with this condition.

⁹ Those conditions are identified as follows:

TerraCom shall review all subscriber records provided by MTI and qualify which Subscribers will continue to receive Services after the Transfer Date. The criteria TerraCom will use to determine which subscribers will continue to receive Services after the Transfer Date include, but are not limited to, the following:

- (a) Subscriber must show usage during the previous 60 days. Any Subscriber not showing usage within the previous 60 days from the date subscriber records are provided to TerraCom will be disconnected.
- (b) Any MTI Subscriber currently having Services with TerraCom will have their MTI account disconnected.
- (c) Any MTI Subscriber not having a verifiable address will have their MTI account disconnected.
- (d) Any MTI Subscriber defined as ineligible or considered a duplicate service pursuant to the FCC December 5, 2011 Enforcement Advisory for Lifeline providers.
- (e) TerraCom shall promptly notify the underlying carrier of its findings under this section and shall provide instruction to the underlying carrier as to the disposition of customers deemed Disconnected Subscribers.

The Commission interprets the requirement under (d) to require disconnection of any customer found to have duplicative service.

will provide some data as to how many of the MTI customers were potentially subject to Lifeline reimbursement, but did not exist or were potentially using false information.

It is reasonable for the Commission to require TerraCom to keep track of the number of customers disconnected due to each of the conditions imposed by the Commission, including the requirements identified in the Customer Transfer Agreement (i.e., how many were disconnected due to lack of address, how many already had service with TerraCom, etc.), and to report those results to the Commission. This will provide additional information on the extent of invalid customers in the MTI customer base, and allow the Commission to better prevent this sort of abuse in the future. In addition, requiring TerraCom to report on the number of customers who passed the screening provisions listed in the Customer Transfer Agreement but who failed the CARES or DOR verification, will provide additional information on the operations of the CARES system. TerraCom is therefore ordered to track these numbers and report them to the Commission.

The Commission also finds it reasonable to require that at least one notice of transfer TerraCom, or MTI acting jointly with TerraCom, provides to the former MTI customers be sent by the United States Postal Service (USPS). Such notice must also provide information on the availability of other service providers or the option to cease service rather than being transferred to TerraCom. This will allow customers to make an informed choice of service provider.

The Commission also directs TerraCom to hold periodic status meetings with Commission staff to address any issues which might occur with regard to the integration of the transferred MTI customers. The timing of the meetings shall be set by the Division Administrator for Telecommunications. Periodic meetings will maximize the value of the

information reported, while minimizing the cost and effort required collecting that information. Periodic meetings will also allow Commission staff and TerraCom to work cooperatively in resolving any outstanding problems.

Finally, as identified in Footnote 1, above, because of the issues identified with respect to the integration of transferred MTI customers, the Commission identifies this as a provisional ETC designation. After 120 days, unless the Commission takes action to modify or extend this time period, this Decision will automatically become the Final Decision.

Order

1. TerraCom is granted ETC status, for the purpose of receiving Lifeline support, throughout the wire centers served by Wisconsin Bell, Inc., subject to the conditions in this Decision.

2. This Decision is provisional for a period of 120 days after the date of mailing, to cover the period during which TerraCom will incorporate the MTI customer base. At the conclusion of that time, unless the Commission takes action to extend the provisional period, this order will become final.

3. TerraCom is an ETC within the meaning of 47 U.S.C. § 214(c), and is eligible to receive federal USF funding, for Lifeline service, pursuant to 47 U.S.C. § 254(2). This Decision constitutes the Commission's certification to that effect, subject to Order Points 1 and 2.

4. TerraCom is not required to meet the requirement under Wis. Admin. Code § PSC 165.088 that it provide a pay phone in each incorporated municipality. TerraCom is

required to work with other providers in its service territory to jointly ensure that pay phones are available.

5. TerraCom does not have to meet the monetary discount or minimum charge requirements under Wis. Admin. Code § PSC 160.062(2), but TerraCom is instead required to provide 68 minutes of free service per month to Lifeline customers. The Commission delegates to the Administrator of the Telecommunications Division authority to approve changes to that number of minutes. Changes to the number of minutes may be approved without reopening the docket, issuing a notice or providing opportunity for comment.

6. TerraCom shall deactivate any Lifeline phone that has had no usage in a 60-day period. TerraCom may not collect Lifeline support for phones deactivated in this manner.

7. TerraCom shall report, on a quarterly basis, the number of customers who were deactivated after 60 days of non-usage and the number of days between the 60th day and deactivation, reported as a range and an average.

8. The issue of whether TerraCom should be designated as an ETC for the purpose of receiving Link-Up support is deferred until after the Commission acts in docket 5-TI-2134. TerraCom is required to seek modification to this ETC designation should it desire Link-Up reimbursement or access to any other USF dollars.

9. TerraCom shall verify all customers transferred from MTI through the CARES/DOR process. TerraCom may not receive Lifeline reimbursement for any customer that is not verified through this process.

10. TerraCom shall notify any transferred MTI customers of the fact of their transfer and provide information on and an opportunity to choose a different service provider or to cease

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service. This notification may be performed in alternative ways, but at least one notice with the required information shall be sent by USPS to all of the transferred customers. TerraComm shall keep track of any returned mailings sent to the transferred MTI customers and report this information to the Commission.

11. TerraCom shall follow each of the provisions found in Section 3 of the Customer transfer Agreement. TerraCom shall keep track of the number of former MTI customers disconnected due to each of the conditions listed in the Customer Transfer Agreement and report those results to the Commission. TerraCom shall also report on the number of customers who passed the screening provisions listed in the Customer Transfer Agreement but who failed the CARES or DOR verification.

12. TerraCom is required to meet, periodically, with Commission Staff on a schedule determined by the Administrator of the Telecommunications Division.

13. Jurisdiction is retained.

14. This Decision is effective the day after mailing.

Dated at Madison, Wisconsin, January 13, 2012

By the Commission:



Sandra J. Paske
Secretary to the Commission

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See attached Notice of Rights

PUBLIC SERVICE COMMISSION OF WISCONSIN
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**NOTICE OF RIGHTS FOR REHEARING OR JUDICIAL REVIEW, THE
TIMES ALLOWED FOR EACH, AND THE IDENTIFICATION OF THE
PARTY TO BE NAMED AS RESPONDENT**

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.¹⁰ The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

¹⁰ See *State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.