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**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of )  
 )  
Federal-State Joint Board on Universal Service ) WC Docket No. 09-197  
 )  
FLATEL Wireless, Inc. dba ZING PCS )  
 )  
Petition for Limited Designation as an Eligible )  
Telecommunications Carrier in the States of )  
Alabama, Connecticut, Delaware, Florida, New )  
Hampshire, North Carolina, New York, )  
Tennessee, Texas, the Commonwealth of )  
Virginia, and the District of Columbia )

**PETITION FOR LIMITED DESIGNATION AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER IN THE STATES OF ALABAMA,  
CONNECTICUT, DELAWARE, FLORIDA, NEW HAMPSHIRE, NORTH CAROLINA,  
NEW YORK, TENNESSEE, TEXAS, THE COMMONWEALTH OF VIRGINIA, AND  
THE DISTRICT OF COLUMBIA**

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December 14, 2012

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## SUMMARY

FLATEL Wireless, Inc. dba ZING PCS (“ZING PCS”) is seeking limited designation as an Eligible Telecommunications Carrier (“ETC”) in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, and the District of Columbia (collectively the “Non-Jurisdictional States”) pursuant to Section 214(e)(6) of the Communications Act, solely for purposes of offering services supported by the Universal Service Fund’s (“USF”) Lifeline program. ZING PCS operates as a Mobile Virtual Network Operator (“MVNO”) that purchases wireless service on a wholesale basis from Sprint. Each Non-Jurisdictional State has provided an affirmative statement that it does not exercise jurisdiction over wireless providers for purposes of ETC designation. Accordingly, pursuant to Section 214(e)(6), the Commission has the authority to designate ZING PCS as an ETC in the Non-Jurisdictional States.

ZING PCS meets all of the requirements under Section 214(e)(1) for the limited ETC designation requested herein except for providing service, at least in part, using its own facilities. However, the Commission granted forbearance from enforcement of this facilities requirement to carriers seeking Lifeline-only ETC designation in its Lifeline and Link-Up Reform Order released February 6, 2012.<sup>1</sup> Through its contracts with underlying carriers, ZING PCS has the ability to offer all of the services and functionalities supported by the USF and set forth in Section 54.101(a) of the Commission’s rules. ZING PCS therefore respectfully requests that the Commission promptly approve the instant request for limited ETC designation to enable the

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<sup>1</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*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (“*Lifeline and Link Up Reform Order*”).

Company to rapidly provide Lifeline services to qualifying customers in the Non-Jurisdictional States.

Designating ZING PCS as an ETC in the Non-Jurisdictional States will promote the public interest by providing qualifying low-income customers in the Non-Jurisdictional States with lower prices and high-quality wireless services. Many low-income customers in the Non-Jurisdictional States have yet to reap the well-documented benefits of wireless service because of financial constraints, poor credit history, or intermittent employment. ZING PCS' prepaid service offerings are ideally suited to provide these customers with reliable and cost-effective wireless services. As an ETC, ZING PCS will be able to provide discounted and affordable services to these consumers who are among the intended beneficiaries of USF support. ZING PCS' designation will specifically serve the public interest because of the aggressive pricing plans that ZING PCS will provide (see Attachment A).

ETC designation for Lifeline service is consistent with precedent and will serve the public interest, and should be granted without delay.

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NEW YORK, TENNESSEE, TEXAS, THE COMMONWEALTH OF VIRGINIA, AND  
THE DISTRICT OF COLUMBIA**

**I. INTRODUCTION**

FLATEL Wireless, Inc. dba ZING PCS (“ZING PCS” or “the Company”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (“Act”), and Section 54.201 of the rules of the Federal Communications Commission (“FCC” or “Commission”), hereby requests limited designation as an eligible telecommunications carrier (“ETC”) in the States of Alabama, Connecticut, Delaware, Florida, New Hampshire, North Carolina, New York, Tennessee, Texas, the Commonwealth of Virginia, and the District of Columbia (collectively the “Non-Jurisdictional States”). ZING PCS seeks ETC designation in the Non-Jurisdictional States only for purposes of participation in the Universal Service Fund’s (“USF”) Lifeline program and does *not* seek to participate in the Link-Up or the High-Cost support programs.

Since the Alabama Public Service Commission, the Connecticut Department of Public Utility Control, the Delaware Public Service Commission, the District of Columbia Public Service Commission, the Florida Public Service Commission, the New Hampshire Public Utilities Commission, the North Carolina Utilities Commission, the New York Public Service Commission, the Tennessee Regulatory Authority, the Texas Public Utility Commission, and the Virginia State Corporation Commission (collectively, the “State Commissions”) lack jurisdiction to designate ZING PCS as an ETC, the Commission, under Section 214(e)(6) of the Act, has the authority to consider and grant this request.<sup>2</sup> As more fully described below, ZING PCS satisfies the requirements for designation as an ETC in the Non-Jurisdictional States, including the new requirements outlined in the FCC’s *USF/ICC Transformation Order*<sup>3</sup> and *Lifeline and Link Up Reform Order*,<sup>4</sup> and will offer all of the services and functionalities supported by the universal service program throughout its designated service areas in the Non-Jurisdictional States. Grant of ZING PCS’ request, therefore, will promote the public interest by providing customers in the Non-Jurisdictional States with lower prices and higher quality wireless services through innovative distribution channels.

## **II. BACKGROUND**

### **A. Company Overview**

ZING PCS is a Florida corporation ZING PCS will provide prepaid wireless telecommunications services to consumers by using the Sprint Spectrum L.P. (“Sprint”) network

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<sup>2</sup> See 47 U.S.C. § 214(e)(6).

<sup>3</sup> *In the Matter of 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*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

<sup>4</sup> See supra note 1.

on a wholesale basis. Sprint is a nationwide carrier that provides wholesale capacity on its wireless network to wireless resellers like ZING PCS. Pursuant to an existing agreement, ZING PCS will obtain from Sprint the network infrastructure, including wireless transmission facilities, to allow ZING PCS to operate as a MVNO, similar to TracFone and Virgin Mobile, both of whom have been granted ETC status by the Commission.<sup>5</sup> ZING PCS will purchase services from Sprint on a wholesale basis for mobile calling and text messaging, package those services into ZING PCS' own service plans and pricing, and bundle those service with ZING PCS' handset selection, mobile applications, marketing materials, web interface, and customer service to produce finished wireless service offerings to sell to end-user customers.

Affordable and easy to use prepaid wireless services are attractive to low-income and lower-volume consumers, providing them with access to emergency services and a reliable means of communication that can be used both at home and while traveling to remain in touch with friends and family and for contacting prospective employers. By providing affordable wireless plans and quality customer service to consumers who are otherwise unable to afford them, or were previously ignored by traditional carriers, ZING PCS will expand the availability of wireless services to many more low-income consumers, which is one of the principal objectives of Congress' universal service program as codified in Section 254 of the Act, 47 U.S.C. § 254.

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<sup>5</sup> *Federal-State Joint Board on Universal Service, TracFone Wireless, Inc., Petitions for Designation in the States of Alabama, Connecticut, Delaware, Florida, North Carolina, New Hampshire, New York, North Carolina, Pennsylvania, Tennessee, Virginia, and Washington D.C.*, CC Docket No. 96-45, Order, 23 FCC Rcd 6206 (2008) (“*TracFone ETC Order*”); *Petition of Virgin Mobile USA, L.P. 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, 24 FCC Rcd 3381 (2009) (“*Virgin Mobile Order*”). The Commission had previously granted TracFone forbearance from the facilities requirement for ETC designation, permitting TracFone to offer the supported services via resale only. *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*”). The *Virgin Mobile Order* contained both the forbearance analysis and ETC designation.

ZING PCS will offer consumers simple and affordable prepaid calling plans, a variety of prepaid service plans, easy-to-use handsets and high-quality customer service. Given its pricing and marketing strategy and the demographics of other, similar MVNOs' customers, ZING PCS anticipates that many of its customers will be from low-income backgrounds and will not previously have enjoyed access to wireless service because of economic constraints, poor credit history, or sporadic employment. ZING PCS does not conduct credit checks or require customers to enter into long-term service contracts as a prerequisite to obtaining wireless service. ZING PCS allows customers to choose a prepaid plan in which they are charged only for the minutes they use.

## **B. Lifeline Program**

Universal service has been a fundamental component of U.S. telecommunications policy since adoption of the Act over 70 years ago. Section 254 of the Act codified that commitment in 1996, and embodies the Commission's historical commitment to the concept of universal service, including for low-income consumers. Section 254(b) sets forth the principles upon which the Commission shall base its policies for the promotion and advancement of universal service. These principles require the Commission to ensure that all consumers, including low-income consumers, have access to telecommunications services at affordable and reasonably comparable rates.<sup>6</sup> As part of those universal service support programs, Lifeline support helps defray the monthly costs of telecommunications services for low-income consumers by providing them with discounts off the monthly cost of telephone service, with additional discounts available for individuals living on tribal lands.<sup>7</sup>

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<sup>6</sup> See 47 U.S.C. § 254. Section 254(b)(3) of the Act requires the Commission to determine whether “consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas...have access to telecommunications [services] ...” 47 U.S.C. § 254(b)(3) (emphasis added).

<sup>7</sup> 47 C.F.R. §§ 54.400 and 54.401.

While generally praising the Low-Income program's success, the Commission has noted that "there is more that we can do to make telephone service affordable for more low-income households," and has specifically targeted telephone subscription among low income consumers as one area for improvement.<sup>8</sup> To increase awareness of the program, the Commission has expanded the qualifying criteria and adopted broader outreach guidelines, requiring carriers to better advertise the availability of Lifeline services. Through these actions, the Commission has sought to increase Lifeline participation because "When consumers are able to only intermittently remain on the network, they are not fully connected to society and the economy...The Commission has found that the low-income program 'provide[s] the best source of assistance for individuals to obtain and retain universal service, and, therefore, help maintain and improve telephone subscribership' and fulfill our obligations under Section 254 of the Act."<sup>9</sup>

### **C. Proposed Lifeline Offering**

ZING PCS intends to be a leader in the prepaid marketplace by offering consumers exceptional value and competitive amounts of voice usage at all price points. As shown in Attachment A, ZING PCS will offer its Lifeline service in the states where it is designated as an ETC and throughout the coverage area of its underlying carrier, currently Sprint.<sup>10</sup> As summarized in Attachment A, the Company's initial Lifeline offering will provide customers with its Lifeline Plan of 250 minutes. Under this plan, eligible Lifeline customer will receive a free phone and enjoy 250 free anytime minutes. These minutes do not rollover and text messaging is at the rate of one

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<sup>8</sup> See *Lifeline and Link Up Reform Order* at ¶¶ 27-30; See also *Lifeline and Link-Up*, WC Docket No. 03-109, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 8302, 8305 ¶ 1 (2004) ("Lifeline Order").

<sup>9</sup> See *Lifeline and Link-Up Reform Order* at ¶ 16.

<sup>10</sup> The Company reserves the right to alter the proposed Lifeline rate plans on a state-by-state basis, particularly as required by state public utility commissions (PUC). The Company commits to pass through the entire Lifeline subsidy amount directly to the consumer.

minute (1 incoming or outgoing text = 1 minute of voice).

Customers have the capability of purchasing additional minutes in increments of 50 minutes, with each additional minute costing \$0.20 per minute.<sup>11</sup> Additional airtime can be purchased by calling or emailing Customer Service, at no decrement in minutes. In addition to free voice services, ZING PCS' Lifeline Plan will include the following custom calling features: Caller ID, Call Waiting, and Voicemail. Customers are not bound by a local calling area requirement; the Company's Lifeline Plan comes with domestic long distance at no extra per minute charge and exceptional nationwide digital coverage on the Nationwide Sprint Network. Calls to 911 emergency services are always free, regardless of service activation or availability of minutes. Calls to Customer Service are also free. ZING PCS does not impose burdensome credit checks or long-term service contracts on its customers. Full terms and conditions of the Company's Lifeline program can be found at [www.zingpcs.com](http://www.zingpcs.com).

### **III. THE COMMISSION HAS AUTHORITY TO PERFORM THE ETC DESIGNATION**

Pursuant to Section 214(e)(6), the Commission may designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission.”<sup>12</sup> The Commission has established that a carrier must demonstrate that it “is not subject to the jurisdiction of a state commission” before it may consider an application for ETC designation.<sup>13</sup> The Commission also has stated that any carrier seeking

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<sup>11</sup> 50 minutes = \$10.00

<sup>12</sup> See 47 U.S.C. § 214(e)(6).

<sup>13</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Red 22947, 22948 (1997).

ETC designation from it must provide the Commission with an “affirmative statement” from the state PUC that it lacks jurisdiction to perform the ETC designation.”<sup>14</sup>

None of the states for which ZING PCS requests ETC designation from the FCC has the jurisdiction to designate the Company as an ETC:

a) The Alabama Public Service Commission has concluded that it “has no jurisdiction to take action” on ETC petitions, and that “wireless providers seeking ETC status should pursue their ETC designation request with the FCC.” A copy of the Alabama Public Service Commission’s order is attached as Attachment B.

b) The Connecticut Department of Public Utility Control has provided letters clarifying that it lacks jurisdiction to entertain a wireless carrier’s ETC petition. A sample letter is attached as Attachment C.

c) The Delaware Public Service Commission has provided letters clarifying that it lacks jurisdiction to entertain a wireless carrier’s ETC petition. A sample letter is attached as Attachment D.

d) The District of Columbia Public Service Commission has provided a letter clarifying that it lacks jurisdiction to entertain a wireless carrier’s ETC petition. The letter is attached as Attachment E.

e) The Florida Public Service Commission has provided letters clarifying that it lacks jurisdiction to entertain a wireless carrier’s ETC petition. A sample letter is attached as Attachment F.

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<sup>14</sup> See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12264 ¶ 113 (2000).

f) The New Hampshire Public Utilities Commission has provided a letter clarifying that it lacks jurisdiction to entertain a wireless carrier's ETC petition. The letter is attached as Attachment G.

g) The New York Public Service Commission has provided letters clarifying that it lacks jurisdiction to entertain a wireless carrier's ETC petition. A sample letter is attached as Attachment H.

h) The North Carolina Utilities Commission has concluded that "the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC." A copy of the North Carolina Utilities Commission's Order is attached as Attachment I.

i) The Tennessee Regulatory Authority has concluded that its statutory "lack of jurisdiction over CMRS providers" precludes it from processing ETC petitions. A copy of the Tennessee Regulatory Authority's order is attached as Attachment J.

j) The Texas Public Utility Commission adopted an amendment to "exclude commercial mobile radio service (CMRS) resellers from eligibility for designation by the commission as an eligible telecommunications carrier (ETC)." And instead, "a CMRS reseller will be able to seek designation as an ETC by the Federal Communications Commission (FCC)." A copy of the Texas Public Utility Commission's Order is attached as Attachment K.

k) The Virginia Corporation Commission has concluded that "§ 214(e)6) of the Act is applicable" to wireless ETC petitions "because [the Virginia Commission] has not asserted jurisdiction over CMRS carriers," and that wireless ETC applicants "should apply to the Federal Communications Commission." A copy of the Virginia Commission's Order is attached as Attachment L.

Accordingly, for each of the Non-Jurisdiction States, ZING PCS is “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>15</sup> As such, the Commission is authorized to designate ZING PCS as an Eligible Telecommunications Carrier.

#### **IV. ZING PCS REQUESTS ETC DESIGNATION IN ITS SERVICE AREAS IN THE NON-JURISDICTIONAL STATES FOR PARTICIPATION IN THE LIFELINE PROGRAM**

##### **A. ZING PCS Requests ETC Designation in its Existing Service Area**

Consistent with prior orders granting other MVNOs ETC status,<sup>16</sup> ZING PCS requests ETC designation for its entire service area in Alabama, Connecticut, Delaware, District of Columbia, Florida, New Hampshire, North Carolina, New York, Tennessee, Texas, and Virginia (i.e., the area served by the facilities-based carriers from whom it obtains wholesale service), but excluding any Tribal Areas.<sup>17</sup> ZING PCS understands that its service area overlaps with several rural carriers’ service areas but maintains that the public interest factors described below justify its designation in these service areas, especially since it only seeks ETC designation for purposes of participation in the Lifeline program.

##### **B. ZING PCS’ Limited ETC Designation Request Only Seeks Authority to Participate in the Lifeline Program**

Consistent with the scope of forbearance granted by the Commission, ZING PCS requests ETC designation in the Non-Jurisdictional States for the sole purpose of participating in the Lifeline program. ZING PCS does not seek eligibility to receive support from the Link-Up program or High Cost support program. As demonstrated herein, the instant request to

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<sup>15</sup> 47 U.S.C. § 214(e)(6).

<sup>16</sup> See *TracFone ETC Order* and *Virgin Mobile Order*, *supra* note 5.

<sup>17</sup> See Attachment M for chart reflecting the service areas of the non-rural and rural telephone companies that ZING PCS’ authorized service area covers in the Non-Jurisdictional States.

participate in the Lifeline program is consistent with the Commission's requirements for ETC designation, and would promote the goals of universal service by offering the many benefits of supported services to low-income customers in the Non-Jurisdictional States. As discussed above, ZING PCS' Lifeline offerings will include many features specifically designed for qualifying low-income customers, who currently lack appealing and affordable options for wireless services, many of whom are therefore unable to subscribe to wireless services.

**C. The Limited Designation Request is Consistent with Recent Precedent**

ZING PCS' request for designation to participate in the Lifeline program is consistent with the Commission's recent decisions conditionally designating TracFone Wireless and Virgin Mobile as ETCs in several states.<sup>18</sup> In its decisions, the Commission determined that the requests of TracFone and Virgin Mobile satisfied all of the eligibility requirements and that designation would serve the public interest.<sup>19</sup> The Commission specifically noted in the *TracFone* and *Virgin Mobile Orders* that designation of prepaid wireless providers as ETCs will provide a variety of benefits to low-income consumers, including increased consumer choice, high-quality service offerings and mobile access to emergency services on wireless devices.<sup>20</sup>

ZING PCS requests that the Commission expeditiously process its pending ETC applications so that it can quickly join TracFone and Virgin Mobile in providing qualifying low-income customers with affordable USF-supported Lifeline wireless services. Designation of prepaid wireless providers such as TracFone, Virgin Mobile and ZING PCS as ETCs is a significant step towards ensuring that all customers, particularly low-income customers, share in

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<sup>18</sup> See *supra* note 5.

<sup>19</sup> See *TracFone ETC Order*, 23 FCC Rcd at 6212-13 ¶ 15; *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶ 38.

<sup>20</sup> See *Id.*

the many benefits associated with access to affordable wireless telecommunications services. During an economic downturn, many existing wireless customers have to forego wireless services because they can no longer afford them. Designation of ETC status to prepaid wireless carriers like TracFone, Virgin Mobile and ZING PCS helps to close the widening gap for wireless services and provide low-income customers with the significant advantages associated with access to wireless services. The Commission has found that voice service has “become crucial to full participation in our society and economy, which are increasingly dependent upon the rapid exchange of information.”<sup>21</sup> As noted in a study sponsored by the Massachusetts Institute of Technology’s Legatum Center for Development and Entrepreneurship and New Millennium Research Council, low-income customers receive significant economic and social benefits from wireless services, including enhanced productivity, increased economic opportunity, and broader access to emergency and safety services.<sup>22</sup>

#### **V. ZING PCS SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC**

Section 214(e)(1) of the Act and Section 54.201(d) of the Commission’s rules provide that applicants for ETC designation must be common carriers that will offer all of the services supported by universal service, either using their own facilities or a combination of their own facilities and the resale of another carrier’s services, except where the Commission has forborne from the “own facilities” requirement. Applicants also must commit to advertise the availability

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<sup>21</sup> See *Lifeline and Link Up Reform Order* at ¶ 12.

<sup>22</sup> Nicholas P. Sullivan, New Millennium Research, *Cell Phones Provide Significant Economic Gains for Low-Income American Households: A Review of Literature and Data from Two New Surveys*, (April 2008), available at [http://newmillenniumresearch.org/archive/Sullivan\\_Report\\_032608.pdf](http://newmillenniumresearch.org/archive/Sullivan_Report_032608.pdf).

and rates of such services.<sup>23</sup> As detailed below, ZING PCS satisfies each of the above-listed requirements.

**A. ZING PCS is a Common Carrier**

CMRS resellers like ZING PCS are common carriers.<sup>24</sup>

**B. ZING PCS Will Provide the Supported Services Consistent With the Commission’s Grant of Forbearance from Section 214’s Facilities Requirements**

Although Section 214 requires ETCs to provide services using their facilities, at least in part, the Commission has forbore from that requirement with respect to carriers such as ZING PCS. In the *Lifeline and Link Up Reform Order*, the Commission granted forbearance from the “own-facilities” requirement contained in Section 214(e)(1)(A) for carriers that are, or seek to become, Lifeline-only ETCs, subject to the following conditions:<sup>25</sup>

(1) the carrier must comply with certain 911 requirements [(a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order]; and

(2) the carrier must file, and the Bureau must approve, a compliance plan providing specific information regarding the carrier’s service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.”

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<sup>23</sup> See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(2).

<sup>24</sup> *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425 ¶ 37, 1454-55 ¶ 102 (1994) (wireless resellers are included in the statutory “mobile services” category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. § 332(c)(1)(A) (“mobile services” providers are common carriers); see also *PCIA Petition for Forbearance for Broadband PCS*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16911 ¶ 111 (1998) (“We concluded [in the *Second Report and Order*] that CMRS also includes the following common carrier services: cellular service, ... all mobile telephone services and resellers of such services.”) (emphasis added).

<sup>25</sup> See *Lifeline and Link Up Reform Order* at ¶¶ 368, 373 and 379.

ZING PCS will avail itself of the FCC's grant of blanket forbearance.<sup>26</sup> In accordance with the *Lifeline and Link Up Reform Order*, ZING PCS filed its Compliance Plan with the FCC on October 4, 2012, amended on November 14, 2012. A copy of its Compliance Plan, as amended, is attached to this Petition as Attachment N. ZING PCS commits to providing Lifeline service in the Non-Jurisdictional States in accordance with the Compliance Plan.<sup>27</sup>

### **C. ZING PCS Offers All of the Required Services and Functionalities**

Through its wholesale arrangements with Sprint, ZING PCS is able to provide all of the services and functionalities supported by the universal service program under Section 54.101 of the Commission's rules in the Non-Jurisdictional States. ZING PCS will make these services and functionalities available to qualifying consumers with service addresses in Alabama, Connecticut, Delaware, District of Columbia, Florida, New Hampshire, North Carolina, New York, Tennessee, Texas, and Virginia.

#### **1. Voice Grade Access to the Public Switched Telephone Network**

ZING PCS provides voice grade access to the public switched telephone network ("PSTN") through the purchase of wholesale CMRS services from Sprint.

#### **2. Local Usage**

As part of the voice grade access to the PSTN, an ETC must provide minutes of use for local service at no additional charge to end-users. The FCC has not specified a minimum

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<sup>26</sup> Although the Company qualifies for and seeks to avail itself of the Commission's grant of forbearance from the facilities requirement of section 214(e)(1)(A), the Company reserves the right to demonstrate to a state public utilities commission that it provides service using its own facilities in a state, particularly for purposes of state universal service funding under state program rules and requirements. The Company will follow the requirements of the Commission's Lifeline rules and its Compliance Plan in all states in which it provides Lifeline service and receives reimbursements from the federal Low-Income fund.

<sup>27</sup> To the extent that future changes in federal regulations render the commitments made in the Compliance Plan invalid, the Company reserves the right to modify its operations in accordance with federal regulations in effect at that time.

amount of local usage that an ETC must offer.<sup>28</sup> ZING PCS offers a variety of rate plans that include minutes of use for, among other things, local service.

### **3. Access to Emergency Services**

ZING PCS provides nationwide access to 911 and E911 emergency services for all of its customers to the extent the local government in its service area has implemented 911 or E911 systems. In accordance with its forbearance, ZING PCS will provide access to 911 and E911 services regardless of activation status and availability of minutes, and will provide only E911-compliant handsets to its Lifeline customers.

### **4. Toll Limitation for Qualifying Low-Income Consumers**

In its *Lifeline and Link Up Reform Order*, the FCC stated that toll limitation would no longer be deemed a supported service.<sup>29</sup> “ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.”<sup>30</sup> Nonetheless, ZING PCS’ offerings inherently allow Lifeline subscribers to control their usage, as its wireless service is offered on a prepaid, or pay-as-you-go, basis. ZING PCS’ service, moreover, is not offered on a distance-sensitive basis and local and domestic long distance minutes are treated the same. ZING PCS will not seek reimbursement for toll limitation service.

### **D. Advertising of Supported Services**

ZING PCS will broadly advertise the availability and rates for the services described above using media of general distribution as required by Section 54.201(d)(2) of the

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<sup>28</sup> See e.g., *In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision 15 FCC Rcd 7331 (2002).

<sup>29</sup> See *Lifeline and Link Up Reform Order* at ¶ 367.

<sup>30</sup> See *Lifeline and Link Up Reform Order* at ¶ 49.

Commission's regulations,<sup>31</sup> and in accordance with the requirements set forth in the *Lifeline and Link Up Reform Order*.<sup>32</sup> The Company will advertise its services in a manner reasonably designed to reach those likely to qualify for Lifeline services, using media of general distribution that may include advertisements via newspapers, radio and the internet. These advertising campaigns will be specifically targeted to reach low-income customers, promoting the availability of cost-effective wireless services to this neglected consumer segment.

In addition, ZING PCS will utilize its network of retail partners to help promote the availability of its Lifeline plans, especially those retail outlets that are frequented by low-income consumers. ZING PCS will provide retail vendors with signage to be displayed where ZING PCS products are sold, and with printed materials describing ZING PCS' Lifeline program. Given the relationship that exists between ZING PCS, low-income consumers, and retail outlets that are often visited by low-income consumers, ZING PCS expects to be able to inform consumers of the availability of Lifeline service in a manner that will result in significantly higher participation in the Lifeline program by qualified consumers than has been the case in the past.

ZING PCS will supplement these methods of communication to specifically advertise and promote the availability of its Lifeline offerings to qualifying customers throughout the Non-Jurisdictional States. ZING PCS intends to distribute brochures at various state and local social service agencies, and intends to partner with nonprofit assistance organizations in order to inform customers of the availability of its Lifeline services.

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<sup>31</sup> See 47 C.F.R. § 54.201.

<sup>32</sup> See *Lifeline and Link Up Reform Order* at Section VII.F.

**E. Service Commitment Throughout the Proposed Designated Service Area**

ZING PCS will provide service in the Non-Jurisdictional States by reselling service which it obtains from its underlying facilities-based provider. The underlying provider's network is operational and largely built out. Thus, ZING PCS will be able to commence offering its Lifeline service to all locations served by its underlying carrier very soon after receiving approval from the Commission. ZING PCS commits to comply with the service requirements applicable to the support that it receives.<sup>33</sup>

**F. Five-Year Network Improvement Plan**

As set forth in the *Lifeline and Link Up Reform Order*, a common carrier seeking designation as a Lifeline-only ETC is not required to submit a five-year network improvement plan as part of its application for designation as an ETC.<sup>34</sup>

**G. Ability to Remain Functional in Emergency Situations**

In accordance with 47 C.F.R. §54.202(a)(2), ZING PCS has the ability to remain functional in emergency situations. As described herein, ZING PCS purchases wireless network services on a wholesale basis from Sprint, a large, national carrier that is itself subject to various regulatory requirements to remain functional in emergencies. Through Sprint, ZING PCS provides to its customers the same ability to remain functional in emergency situations as currently provided by Sprint to its own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, the ability to reroute traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. Furthermore, the Company is subject to its own 911 requirements in 47

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<sup>33</sup> See *Lifeline and Link Up Reform Order* at page 208, revised § 54.202(a)(1)(i).

<sup>34</sup> See *Lifeline and Link Up Reform Order* at ¶ 386.

C.F.R. 20.18(m), and has committed to specific 911 and E911-related requirements – including with respect to E911 handsets – in its Compliance Plan.

#### **H. Commitment to Consumer Protection and Service Quality**

Under FCC guidelines, an ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.<sup>35</sup> The Company commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards. ZING PCS commits to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer Code for Wireless Service.

#### **I. ZING PCS is Financially and Technically Capable**

ZING PCS is financially and technically capable of providing Lifeline-supported services.<sup>36</sup> ZING PCS has been in business for 1 year and currently provides service to non-Lifeline (retail) wireless customers. ZING PCS is financially able to provide Lifeline-supported services; the Company does not – and does not intend to – rely exclusively on universal service support to operate. The Company has already begun retail wireless service in Florida. The Company's retail store front in Florida generates walk-in customer revenue from those customers who purchase cell phones, cell phone accessories, along with ZING PCS retail wireless service. The Company will use its own and incorporate its affiliate's successful business models to sustain and grow its business, utilizing its affiliate's financial capability if needed. ZING PCS has not been subject to enforcement action or ETC revocation proceedings in any state. Furthermore, the senior management of ZING PCS has great depth in the telecommunications industry with over 40 years of combined experience and offers extensive telecommunications business technical and managerial

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<sup>35</sup> See 47 C.F.R. § 54.202(a)(3).

<sup>36</sup> See *Lifeline and Link Up Reform Order* at ¶ 387.

expertise to the Company.<sup>37</sup> ZING PCS will be providing resold wireless service, and therefore will also rely upon the managerial and technical expertise of its underlying carrier.

## **VI. ZING PCS WILL COMPLY WITH THE REQUIREMENTS SET FORTH IN THE LIFELINE AND LINK-UP REFORM ORDER**

### **A. Consumer Eligibility and Enrollment**

ZING PCS will certify and verify consumer eligibility for Lifeline in accordance with its Compliance Plan, which outlines how the Company will comply with the requirements set forth in the *Lifeline and Link Up Reform Order*. In instances where a state agency or third-party administrator is responsible for the initial determination and annual recertification of consumer eligibility, ZING PCS will rely on the state identification or database.<sup>38</sup> In instances where ZING PCS is responsible for the initial determination and annual recertification of consumer eligibility, the Company will follow the procedures set forth below.

#### **1. One-Per-Household**

ZING PCS understands that Lifeline is limited to a single subscription per household, and that the Commission has defined household as “any individual or group of individuals who are living together at the same address as one economic unit.”<sup>39</sup> Upon receiving an application for Lifeline support, ZING PCS will check the National Lifeline Accountability Database (“NLAD”), once in place, to determine whether an individual at the applicant’s residential address is currently receiving Lifeline-supported service. ZING PCS will also search its own internal database of active customers, real-time, pre-sale, to ensure that it does not already provide Lifeline-supported service to someone at that residential address. If ZING PCS determines that

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<sup>37</sup> See Attachment N, Exhibit D for key management resumes.

<sup>38</sup> See *Lifeline and Link Up Reform Order* at ¶ 98.

<sup>39</sup> See *Lifeline and Link Up Reform Order* at ¶ 74.

an individual at the applicant's address is currently receiving Lifeline-supported service, ZING PCS will take an additional step to ensure that the applicant and the current subscriber are part of different households. To enable applicants to make this demonstration, ZING PCS will require applicants to complete and submit to the Company USAC's one-per-household template, which will contain the following: (1) an explanation of the Commission's one-per-household rule; (2) a check box that an applicant can mark to indicate that he or she lives at an address occupied by multiple households; (3) a space for the applicant to certify that he or she shares an address with other adults who do not contribute income to the applicant's household and share in the household's expenses or benefit from the applicant's income; and (4) the penalty for a consumer's failure to make the required one-per-household certification (i.e., de-enrollment).<sup>40</sup> ZING PCS will deny the Lifeline application of any individual residing at the same address as a current Lifeline subscriber who is part of the same household, and will advise the applicant of the basis for the denial.

On its certification forms, a draft sample of which is attached,<sup>41</sup> ZING PCS will obtain a consumer's permanent residential address (which cannot be a P.O. Box or General Delivery address), unless they only have a temporary address, and a billing address for the service, if different (which may include a P.O. Box or General Delivery address).<sup>42</sup> ZING PCS will inquire on its certification forms whether or not the applicant's address is a temporary one.<sup>43</sup> If and when the 90-day verification rules become effective, ZING PCS will notify the consumer that if they have a temporary address, the Company will contact the consumer every 90 days, by phone

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<sup>40</sup> See *Lifeline and Link Up Reform Order* at ¶ 78.

<sup>41</sup> See Attachment N, Exhibit A. The draft form remains subject to change, but substantially reflects the content of the Company's application.

<sup>42</sup> See *Lifeline and Link Up Reform Order* at ¶ 85.

<sup>43</sup> See *Lifeline and Link Up Reform Order* at ¶ 89.

or text, to verify that he or she continues to rely on that address, and that if the consumer fails to respond within 30 days of ZING PCS' attempt to verify the temporary address, he or she will be de-enrolled from the Lifeline program.<sup>44</sup> Also on its certification forms, ZING PCS will explain that if the subscriber moves, they must provide their new address to the Company within 30 days of moving.<sup>45</sup> If the subscriber has moved, ZING PCS will update the NLAD, once in place, with the information within 10 business days of receipt of the information.<sup>46</sup>

As detailed below, ZING PCS' certification form will clearly explain the one-per-household requirement and all consumers must certify that they receive Lifeline support for a single subscription per household.

## **2. Initial and Annual Certification**

Consumers will be signed up in person or directed, via company literature, collateral or advertising, to a toll-free telephone number and to the Company website, which will provide information regarding the Company's Lifeline service plans, including a detailed description of the program and state-specific eligibility criteria. ZING PCS' application form will identify that it is a "Lifeline" application. ZING PCS will provide Lifeline-specific training to all personnel, whether employees, agents or representatives, that interact with actual or prospective consumers with respect to obtaining, changing or terminating Lifeline services.

ZING PCS' initial and annual certification forms will conform to the list of requirements provided in the *Lifeline and Link Up Reform Order*, Appendix C and C.F.R. § 54.410(d), as

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<sup>44</sup> See *id.* As of the date of filing of this Petition, this requirement has not been approved pursuant to the Paperwork Reduction Act.

<sup>45</sup> See *Lifeline and Link Up Reform Order* at ¶ 85.

<sup>46</sup> See *id.*

amended.<sup>47</sup> The Company's Lifeline certification forms, a draft sample of which is provided in Attachment N as Exhibit A, will require each prospective subscriber to provide the following information:

- (i) The subscriber's full name;
- (ii) The subscriber's full residential address;
- (iii) Whether the subscriber's residential address is permanent or temporary;
- (iv) The subscriber's billing address, if different from the subscriber's residential address;
- (v) The subscriber's date of birth;
- (vi) The last four digits of the subscriber's social security number, or the subscriber's Tribal identification number, if the subscriber is a member of a Tribal nation and does not have a social security number;
- (vii) If the subscriber is seeking to qualify for Lifeline under the program-based criteria, as set forth in § 54.409, the name of the qualifying assistance program from which the subscriber, his or her dependents, or his or her household receives benefits; and
- (viii) If the subscriber is seeking to qualify for Lifeline under the income-based criterion, as set forth in § 54.409, the number of individuals in his or her household.

The certification forms will also explain in clear, easily understandable language that:

- (i) Lifeline is a federal benefit;
- (ii) Lifeline service is available for only one line per household;
- (iii) a household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses;
- (iv) households are not permitted to receive benefits from multiple providers;
- (v) that violation of the one-per-household requirement would constitute a violation of the Commission's rules and would result in the consumer's de-enrollment from the program, and potentially, prosecution by the United States government; and
- (vi) a Lifeline subscriber may not transfer his or her service to any other individual, including another eligible low-income consumer.

ZING PCS will require all consumers, at sign up and annually thereafter, to certify under penalty of perjury that:

- (i) The subscriber meets the income-based or program-based eligibility criteria for receiving Lifeline, provided in § 54.409;
- (ii) The subscriber will notify the carrier within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline including, as relevant, if the subscriber no longer meets the income-based or program-based criteria for receiving Lifeline

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<sup>47</sup> See *Lifeline and Link Up Reform Order* at pp. 227-29.

support, the subscriber is receiving more than one Lifeline benefit, or another member of the subscriber's household is receiving a Lifeline benefit.

(iii) If the subscriber is seeking to qualify for Lifeline as an eligible resident of Tribal lands, he or she lives on Tribal lands, as defined in 54.400(e);

(iv) If the subscriber moves to a new address, he or she will provide that new address to the eligible telecommunications carrier within 30 days;

(v) If the subscriber provided a temporary residential address, he or she will be required to verify his or her temporary residential address every 90 days;

(vi) The subscriber's household will receive only one Lifeline service and, to the best of his or her knowledge, the subscriber's household is not already receiving a Lifeline service;

(vii) The information contained in the subscriber's certification form is true and correct to the best of his or her knowledge,

(viii) The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law; and

(ix) The subscriber acknowledges that the subscriber may be required to re-certify his or her continued eligibility for Lifeline at any time, and the subscriber's failure to re-certify as to his or her continued eligibility will result in de-enrollment and the termination of the subscriber's Lifeline benefits pursuant to § 54.405(e)(4).

Applicants will also be required to initial a number of disclosure statements intended to ensure that the applicant understands applicable eligibility requirements. Consumers who do not complete the application process in person must return the signed application and support documentation to the Company by mail, fax, email or other electronic transmission. The Company will accept electronic signatures, including Interactive Voice Response (IVR) recordings, that meet the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001-7006.<sup>48</sup>

Enrollment in person. The Company will enroll Lifeline applicants in person at community events. These events include healthcare fairs, workforce fairs, and events held at local churches and outreach agencies. When a prospective customer applies at an event, Company employees, agents or representatives ("personnel") will ask to see a government issued ID and will validate the address via a USPS/Melissa Database. The Company will check the National Lifeline Accountability

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<sup>48</sup> See *Lifeline and Link Up Reform Order* at ¶ 168.

Database, once it is available; until that time, the Company will input the name/address combination into CGM, LLC's aggregate duplicate database (see section III.D below) to confirm that the applicant is not already receiving a Lifeline subsidy from ZING PCS or any other CGM client that has agreed to share their data. If the customer indicates on the application form that their address is a multi-household residence, personnel will require the applicant to complete USAC's one-per-household template as well. In cases where an eligibility database exists, personnel will query the database to determine eligibility. In states where eligibility databases are not available, the applicant is required to provide proof of participation in one of the Lifeline eligible programs or proof that their annual household income is at or below 135% of the federal poverty guidelines. ZING PCS's Lifeline application contains an "Office Use Only" section, which must be completely filled out and signed by Company personnel in order to record a description about the specific documentation reviewed as part of the eligibility verification process, including type of documentation (i.e. Food Stamps) and a unique identifier (last 3 digits of document ID). Eligibility documents are returned to the customer after review. Finally, ZING PCS personnel will verbally review all certifications and disclosures with the applicant before they sign the application form, making sure the applicant verbally acknowledges each required certification before moving on to the next. Upon successful completion of the certification process, the customer is allowed to receive their free phone in person. In instances where eligibility databases cannot be accessed in real-time, ZING PCS will mail the phone to eligible customers once verification of eligibility is complete. The customer's account is then activated by calling Customer Service and confirming account information as well as the last 4 digits of the customer's social security number.

ZING PCS may also enroll customers at retail locations via agent network, in which case the protocol for signing up customers closely resembles the process at an event. Company personnel are able to access necessary databases (USPS/Melissa, duplicates database, eligibility databases) to

verify eligibility, and, when required, can personally review eligibility based on proof of income or program participation. Company personnel are able to verbally review the required disclosures with applicants and obtain the completed application form in person. Phones are delivered upon successful completion of the certification process, as detailed above, and the customer's account is activated upon the customer's personal initiation or actual use of the phone.

Enrollment by phone. With respect to those enrolling via the phone, Company personnel are able to verbally explain the Lifeline program and its eligibility requirements, including required information and disclosures, as well as collect and input electronically the application form information and obtain the applicant's signature via IVR. Company personnel will obtain applicant's verbal confirmation of each required certification. If the applicant indicates on the application form that their address is a multi-household residence, personnel will require the applicant to complete USAC's one-per-household template as well. If no eligibility database is available, personnel will advise the applicant that they are required to provide proof of identity verification of benefits before their Lifeline service can be activated; applicants will be made aware of how to submit the required documentation to the Company as well as what documentation qualifies as proof of benefits. The Company will qualify the applicant by accessing necessary databases (USPS/Melissa, duplicates database, eligibility databases). If no eligibility database is available, the application will be placed in a "hold" status until the Company receives copies of the applicant's proof documentation and government-issued ID, at which point Company personnel will review the documentation and complete the "Office Use Only" section of the application form, which must be completely filled out and signed by personnel in order to record a description about the specific documentation reviewed as part of the eligibility verification process, including type of documentation (i.e. Food Stamps) and a unique identifier (last 3 digits of document ID). ZING PCS will destroy copies of proof documentation and deliver phones to

eligible customers by mail. The customer's account is activated upon the customer's personal initiation or actual use of the phone.

Enrollment online. When enrolling via the Internet, prospective customers will be able to fill out an application form online and sign electronically. This will be the primary method of enrollment; however, the Company expects to do more in-person community events when operationally capable. ZING PCS will highlight the certifications that are required, for example, by requiring consumers to acknowledge each certification before moving on to the next field.<sup>49</sup> If the customer indicates that their address is a multi-household residence, online interface will require the applicant to complete USAC's one-per-household template as well. If no eligibility database is available, the online interface will advise the applicant that they are required to provide proof of identity verification of benefits before their Lifeline service can be activated; applicants will be made aware of how to submit the required documentation to the Company as well as what documentation qualifies as proof of benefits. The Company will qualify the applicant by accessing necessary databases (USPS/Melissa, duplicates database, eligibility databases). If no eligibility database is available, the application will be placed in a "hold" status until the Company receives copies of the applicant's proof documentation and government-issued ID, at which point Company personnel will review the documentation and complete the "Office Use Only" section of the application form, which must be completely filled out and signed by personnel in order to record a description about the specific documentation reviewed as part of the eligibility verification process, including type of documentation (i.e. Food Stamps) and a unique identifier (last 3 digits of document ID). ZING PCS will destroy copies of proof documentation and deliver phones to eligible customers by mail. The customer's account is activated upon the customer's

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<sup>49</sup> See Order at ¶ 123.

personal initiation or actual use of the phone.

ZING PCS will determine eligibility utilizing the income and program criteria currently utilized by federal default states (47 C.F.R. § 54.409(a),(b)), as well as any additional state-specific criteria. Prior to enrolling a new subscriber, ZING PCS will check the eligibility of low-income consumers first by accessing state or federal social services electronic eligibility databases, where available.<sup>50</sup> If a database is used to establish eligibility, ZING PCS will not require documentation of the consumer's participation in a qualifying federal program; instead, ZING PCS or its representative will note in its records a description of what specific data was relied upon to confirm the consumer's initial eligibility for Lifeline.<sup>51</sup> However, in states where there is no state administrator, the state commission or other state agency is not making eligibility determinations, and there is no automated means for ZING PCS to check electronic databases for eligibility, ZING PCS will review documentation to determine eligibility for new subscribers until such time as a qualifying eligibility database is available.<sup>52</sup> ZING PCS will require acceptable documentation both for income eligibility and for program eligibility. The Company will not retain copies of the documentation but rather will establish policies and procedures to review such documentation and keep accurate records detailing how the consumer demonstrated his or her eligibility.<sup>53</sup> ZING PCS understands that it may permit agents or representatives to review documentation of consumer program eligibility for Lifeline, and in such cases ZING PCS remains liable for ensuring the agent or representative's compliance with the Lifeline program

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<sup>50</sup> See *Lifeline and Link Up Reform Order* at ¶ 97.

<sup>51</sup> See *Lifeline and Link Up Reform Order* at ¶ 98.

<sup>52</sup> See *Lifeline and Link Up Reform Order* at ¶ 99.

<sup>53</sup> See *Lifeline and Link Up Reform Order* at ¶ 101.

rules.<sup>54</sup>

ZING PCS will provide employees, agents, and representatives with training designed to give them an understanding of Lifeline program requirements and permit them to review customer documentation and determine whether it is sufficient to establish a customer's eligibility to participate in the Lifeline program under the Commission's rules. No Company employee, agent, or representative may accept a Lifeline application unless he or she has first completed this training program and demonstrated an understanding of the underlying material. Among other things, the Lifeline program training will discuss the Company's Lifeline application form (see Attachment N, Exhibit A) on a section-by-section basis. The training will explain what sections of the form must be completed by the customer and will review the form disclosures in detail, to facilitate the ability of personnel to explain each item contained therein and answer any customer questions.

### **3. Annual Re-Certification**

ZING PCS understands that it must re-certify the eligibility of its entire Lifeline subscriber base annually and report the results to USAC, and the Company may elect to perform this re-certification on a rolling basis throughout the year.<sup>55</sup> ZING PCS will re-certify the continued eligibility of all of its subscribers by contacting them—either in person, in writing, by phone, by text message, by email, or otherwise through the Internet—to confirm their continued eligibility.<sup>56</sup> The re-certification notice will explain the actions the customer must take to retain Lifeline benefits, when Lifeline benefits may be terminated, and how to contact the Company. ZING PCS will obtain a signed certification from the subscriber that meets the certification requirements of 47 C.F.R. § 54.410(d), as amended, as detailed in section VI.A.2 above. The

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<sup>54</sup> See *Lifeline and Link Up Reform Order* at ¶ 110.

<sup>55</sup> See *Lifeline and Link Up Order* at ¶ 130

<sup>56</sup> See *id.*

Company will provide written notice of impending service termination to subscribers who do not respond to the annual re-certification within 30 days. ZING PCS understands that such certifications may be obtained through a written format, an IVR system, or a text message, and will use one or more of such options for its certifications.<sup>57</sup>

Alternatively, where a database containing consumer eligibility data is available, ZING PCS (or state agency or third-party, where applicable) will instead query the database by the end of 2012 and maintain a record of what specific data was used to re-certify eligibility and the date of re-certification. If a subscriber's address cannot be verified through the state data, ZING PCS will contact the subscriber every year during the annual certification process to obtain a valid address.<sup>58</sup> After 2012, ZING PCS will continue to annually certify the continued eligibility of its entire subscriber base, either by accessing a qualifying database, or by electing to have USAC administer the self-certification process on the Company's behalf.<sup>59</sup>

ZING PCS will certify its compliance with Commission rules on an annual Lifeline eligible telecommunications carrier certification form and when submitting FCC Forms 497 to USAC for reimbursement. As part of ZING PCS' submission of re-certification data pursuant to 47 C.F.R. § 54.416, an officer of the Company will certify annually to USAC:

(1) that the Company has procedures in place to review consumers' documentation of income-and program-based eligibility. In instances where the Company confirms consumer eligibility by relying on official program eligibility data, such as a state or federal database, an officer of the Company will attest to what data the Company uses to confirm consumer eligibility in each state, and

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<sup>57</sup> See *Lifeline and Link Up Reform Order* at ¶ 132.

<sup>58</sup> See *Lifeline and Link Up Reform Order* at ¶ 131.

<sup>59</sup> See *Lifeline and Link Up Reform Order* at ¶ 133.

(2) that the Company is in compliance with all federal Lifeline certification procedures.<sup>60</sup>

**B. Other Reforms to Eliminate Waste, Fraud and Abuse**

ZING PCS shares the Commission's concern about abuse of the Lifeline program and is thus committed to the safeguards stated herein and in its Compliance Plan, with the belief that the procedures it will implement will prevent Company customers from engaging in such abuse of the program, inadvertently or intentionally.

ZING PCS has implemented enrollment procedures designed to prevent subsidies for duplicate, ineligible, or inactive subscribers. The Company contracts with a third party Lifeline service bureau, currently CGM, LLC of Roswell, Georgia, to edit all subsidy request data. CGM will process and validate the Company's subsidy data to prevent: (1) Duplicate Same-Month Lifeline Subsidies (Double Dip): any name/address that is already receiving a lifeline subsidy from the Company will be automatically prevented from receiving a second lifeline subsidy in that same month; and (2) Inactive lines receiving subsidy: CGM's systems compare all subsidy requests to underlying network status to ensure that subsidies are requested only for active lines. Through the processes described herein, ZING PCS ensures that it does not over-request from support funds.

As detailed in section IV.A.2, ZING PCS first validates each applicant's identity via a government issued ID card, passport, etc. Additionally, as mentioned above, ZING PCS requires the applicant to provide their date of birth (DOB) and last four digits of their social security number (SSN). Requiring DOB and SSN ensures that neither the applicant nor the Company representative can forge certification forms based on false names and addresses. Once the applicant's identity is

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<sup>60</sup> See *Lifeline and Link Up Reform Order* at ¶ 126-27.

confirmed, ZING PCS verifies that the applicant is eligible to receive the Lifeline subsidy. To do this, ZING PCS checks any available eligibility database. If one is not available, the applicant is required to provide proof of eligibility. This prevents ineligible applicants from receiving the subsidy.

ZING PCS validates the applicant's address via a USPS/Melissa Database to ensure the address is correct. The Company will check the NLAD, once it is available; until that time, the Company will dip the name/address combination into CGM's aggregate duplicate database to confirm that the applicant is not already receiving a Lifeline subsidy from ZING PCS or any other CGM client that has agreed to share their data. This prompts the representative to detail the one-per-household rule with the applicant.

#### **1. National Lifeline Accountability Database**

ZING PCS will participate in the NLAD, once it is established. As required by the *Lifeline and Link Up Reform Order*, ZING PCS will provide to the NLAD subscriber name, address, phone number, the last four digits of Social Security number, date of birth, Lifeline service initiation and de-enrollment date (when applicable), and amount of federal Lifeline support being sought for that subscriber.<sup>61</sup> ZING PCS will provide the information listed above for existing subscribers within 60 days of Commission notice that the NLAD is capable of accepting subscriber information.<sup>62</sup>

Furthermore, on its certification form, ZING PCS will obtain acknowledgement and consent from each of its subscribers that is written in clear, easily understandable language that the subscriber's name, telephone number, and address will be divulged to USAC (the administrator of the program) and/or its agents for the purpose of verifying that the subscriber does not receive more

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<sup>61</sup> See *Lifeline and Link Up Reform Order* at ¶ 189.

<sup>62</sup> See *Lifeline and Link Up Reform Order* at ¶ 190.

than one Lifeline benefit.<sup>63</sup>

Within 30 days following Commission notice that the NLAD is capable of accepting queries, ZING PCS will query the NLAD to check to see if a prospective subscriber is already receiving service from another ETC at a residential address prior to seeking reimbursement from the Fund.<sup>64</sup>

## **2. Subscriber Usage**

ZING PCS will not seek reimbursement from the USF for new subscribers until they have personally activated the service, either by initiation and/or actual use of the service by the subscriber. Furthermore, ZING PCS will not seek reimbursement from the USF for inactive subscribers who have not used the service for a consecutive 60-day period.<sup>65</sup> ZING PCS will notify its subscribers at service initiation, via the certification form and via script that is reviewed with every customer, about the non-transferability of the phone service, its usage requirements, and the de-enrollment and deactivation that will result following non-usage in any 60-day period of time.<sup>66</sup> An account will be considered active if during any 60-day period the authorized subscriber does at least one of the following: makes a monthly payment; purchases minutes from the Company to add to an existing pre-paid Lifeline account; completes an outbound call; answers an incoming call from anyone other than the Company, its representative, or agent; or affirmatively responds to a direct contact from the Company confirming that he or she wants to continue.<sup>67</sup> ZING PCS utilizes tracking software to notify the customer if the customer has not used their service for more than 30 or 60 consecutive days. Furthermore, a third party contractor

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<sup>63</sup> See *Lifeline and Link Up Reform Order* Appendix C.

<sup>64</sup> See *Lifeline and Link Up Reform Order* at ¶ 203.

<sup>65</sup> See *Lifeline and Link Up Reform Order* at ¶ 257.

<sup>66</sup> See *id.*

<sup>67</sup> See *Lifeline and Link Up Reform Order* at ¶ 261.

validates the Company's subsidy data to prevent a subsidy request for customers that are inactive under the Company's non-usage policy.<sup>68</sup> After notification, if the customer fails to use the phone, it is automatically de-enrolled pursuant to the procedures outlined in section VI.C below. ZING PCS will continue to comply with applicable public safety, including transmitting 911 calls to the appropriate PSAP even if the Company is no longer providing Lifeline service to a consumer.<sup>69</sup>

### **3. Marketing & Outreach**

ZING PCS will implement the measures outlined herein to help ensure that only eligible consumers enroll in the program and that those consumers are fully informed of the limitations of the program, so as to prevent duplicative or otherwise ineligible service as well as other forms of waste, fraud, and abuse. ZING PCS will explain in clear, easily understood language substantially the following disclosures in all marketing materials related to the supported service:<sup>70</sup> (1) the offering is a Lifeline-supported service; (2) only eligible consumers may enroll in the program; (3) the program is limited to one benefit per household, consisting of either wireline or wireless service; and (4) Lifeline is a government benefit program. ZING PCS' website and printed collateral will also explain the documentation necessary for enrollment, and the details of ZING PCS' plans. Such collateral and website information, as well as its application, will make clear that consumers who willfully make false statements in order to

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<sup>68</sup> CGM, LLC is currently the Company's third party contractor.

<sup>69</sup> See *Lifeline and Link Up Reform Order* at ¶ 262. 911 transmission will actually be performed by the Company's underlying facilities-based CMRS provider.

<sup>70</sup> See Attachment N, Exhibit B for a sample advertisement. The Company understands the term "marketing materials" includes materials in all media, including but not limited to print, audio, video, Internet (including email, web, and social networking media), and outdoor signage, that describe the Lifeline-supported service offering, including application and certification forms. See *Lifeline and Link Up Reform Order* at ¶ 275.

obtain the benefit can be punished by fine or imprisonment or can be barred from the program.<sup>71</sup> For broadcast advertisements and outdoor signs, and any other situation in which inclusion of documentation information and warnings against willful false statements are not practicable, ZING PCS will include the URL link for its website where disclosures will be listed. Additionally, ZING PCS will disclose the company name under which it does business.<sup>72</sup>

#### **4. Audits**

The *Lifeline and Link Up Reform Order* requires ETCs that draw \$5 million or more in the aggregate on an annual basis from the low-income program, as determined on a holding company basis taking into account all operating companies and affiliates, to hire an independent licensed certified public accounting firm to conduct a biennial audit according to government accounting standards to assess the ETC's overall compliance with the program's requirements.<sup>73</sup> ZING PCS will comply with this requirement if and when it is approved, including applicable rules regarding the dissemination of audit findings to the Commission, USAC, and relevant state and Tribal governments within 30 days upon issuance.<sup>74</sup>

#### **C. De-Enrollment**

If at any time a ZING PCS Lifeline customer wishes to de-enroll from the Company's Lifeline program, Company customer service representatives will handle such elective de-enrollment requests. ZING PCS Lifeline customers simply call the Company, via 611 or the toll-free customer service number, and they can speak to a live operator to de-enroll from ZING PCS' Lifeline program. ZING PCS will de-enroll consumers from the Company's Lifeline program in

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<sup>71</sup> See *Lifeline and Link Up Reform Order* at ¶ 275.

<sup>72</sup> See *id.*

<sup>73</sup> See *Lifeline and Link Up Reform Order* at ¶ 291.

<sup>74</sup> See *Lifeline and Link Up Reform Order* at ¶ 294. As of the date of filing of this Petition, the audit requirement has not been approved pursuant to the Paperwork Reduction Act.

the following instances, according to C.F.R. § 54.405(e):

Ineligibility. Any subscriber who indicates that he or she is receiving more than one Lifeline-supported service per household, or neglects to make the required one-per-household certification on his or her certification form, will be de-enrolled from Lifeline pursuant to the process for resolving duplicative Lifeline subscriptions described in section 54.405(e)(2).<sup>75</sup>

If a customer does not respond to the Company's annual verification survey within 30 days, or if ZING PCS has reasonable basis to believe that the subscriber no longer meets the Lifeline-qualifying criteria (including instances where a subscriber informs the Company or the state that he or she is ineligible for Lifeline), ZING PCS will provide a written notice of impending service termination to the subscriber and then give the subscriber 30 days after the date of the letter to demonstrate that his or her Lifeline service should not be terminated.<sup>76</sup> Similarly, ZING PCS will de-enroll a subscriber if they fail to respond to the Company's attempt to verify a temporary address within 30 days.<sup>77</sup>

Duplicative Support. Subject to USAC's Duplicate Resolution Process and anticipated Duplicate Scrubbing Process,<sup>78</sup> ZING PCS will de-enroll a subscriber within 5 business days if the Company is informed by USAC that the subscriber is receiving Lifeline service from another ETC or that more than one member of a subscriber's household is receiving Lifeline service.

Non-Usage. ZING PCS will de-enroll any subscriber that has not used the Company's Lifeline service for 60 consecutive days, as discussed in section VI.B.2 above. ZING PCS will provide the subscriber 30 days' notice, using clear, easily understood language, that the

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<sup>75</sup> See *Lifeline and Link Up Reform Order* at ¶ 122.

<sup>76</sup> See *id.* In states that have dispute resolution procedures applicable to Lifeline termination, the Company will comply with the state requirements.

<sup>77</sup> See *Lifeline and Link Up Reform Order* at ¶ 89.

<sup>78</sup> See *Lifeline and Link Up Reform Order* at ¶ 214-16.

subscriber's failure to use the Lifeline service within the 30-day notice period will result in service termination for non-usage; such notice may be initiated after 30-days of non-usage. ZING PCS will update the national database, once in place, within one business day of de-enrolling a subscriber for non-use and will submit a non-usage de-enrollment report annually to USAC.<sup>79</sup>

#### **D. Additional Rule Amendments**

##### **1. Terms and Conditions of Service**

ZING PCS' Lifeline terms and conditions of service are provided in Attachment N as Exhibit C. These terms and conditions are subject to change as needed, and the most current version may be found at [www.zingpcs.com](http://www.zingpcs.com). The terms and conditions of ZING PCS' retail plans, as generally available to the public, can also be found at [www.zingpcs.com](http://www.zingpcs.com).

##### **2. Reporting Requirements**

ZING PCS will report all information required by section 54.422, including as it may heretofore be amended. This includes the names of the Company's holding company, operating companies and affiliates, and any branding ("doing-business-as company" or brand designation), and provide to the Commission and USAC general information regarding the terms and conditions of the Lifeline plans for voice telephony service offered specifically for low income consumers through the program offered during the previous year, including the number of minutes provided, and whether there are additional charges to the consumer for service, including minutes of use and/or toll calls.<sup>80</sup>

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<sup>79</sup> See *Lifeline and Link Up Reform Order* at ¶ 257.

<sup>80</sup> See *Lifeline and Link Up Reform Order* at ¶ 296, 390. Section 153 of the Act defines "affiliate" as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person."

### 3. Reimbursement from USAC

In seeking reimbursement for Lifeline, ZING PCS will comply with the requirements of C.F.R. § 54.407, as revised by the *Lifeline and Link Up Reform Order*.<sup>81</sup> ZING PCS will certify when seeking reimbursement that the Company has obtained a valid certification form for each consumer for whom the Company seeks Lifeline reimbursement,<sup>82</sup> and the Company will seek reimbursement for actual lines served, not projected lines.<sup>83</sup>

### VII. DESIGNATION OF ZING PCS AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996, is “to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.<sup>84</sup> Designation of ZING PCS as an ETC in the Non-Jurisdictional States will promote the public interest by providing low-income consumers in the Non-Jurisdictional States with more affordable and higher quality wireless services. Many low-income consumers have yet to reap the full benefits of the wireless marketplace. Whether because of financial constraints, poor credit or intermittent employment, these consumers often lack access to the benefits that wireless services bring to other consumers.<sup>85</sup> Designating ZING PCS as an ETC in the Non-Jurisdictional States will enable it to

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<sup>81</sup> *See id* page 221.

<sup>82</sup> *See id* at ¶ 128.

<sup>83</sup> *See id* at ¶ 302.

<sup>84</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

<sup>85</sup> *See supra* note 22.

expand the availability of affordable telecommunications services to qualifying consumers, leading to lower prices and increased choice.<sup>86</sup>

The instant request for limited ETC designation must be examined in light of the Act's goal of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—particularly low-income consumers—receive affordable and comparable telecommunications services. Given this context, designating ZING PCS as an ETC would significantly benefit low-income consumers eligible for Lifeline services in the Non-Jurisdictional States—the intended beneficiaries of universal service. The Company's participation in the Lifeline program also undoubtedly would increase opportunities for the company to serve these customers with appealing and affordable service offerings.

#### **A. Advantages of ZING PCS' Service Offering**

The public interest benefits of the Company's wireless service include larger local calling areas (as compared to traditional wireline carriers), the convenience and security afforded by mobile telephone service, the opportunity for customers to control cost by receiving a preset amount of monthly airtime at no charge, the ability to purchase additional usage at flexible and affordable amounts in the event that included usage has been exhausted, 911 service and, where available, E911 service in accordance with current FCC requirements. ZING PCS' Lifeline customers will receive the same high-quality wireless services and exceptional customer service provided to all Company customers. ZING PCS' Lifeline rate plans will not only allow feature-

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<sup>86</sup> See *TracFone ETC Order*, 23 FCC Rcd at 6212 ¶ 15; *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶ 38; *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730, 20760 ¶ 52 (1996).

rich mobile connectivity for qualifying subscribers at no cost to the subscriber, but also will bring a variety of rate plans into the reach of Lifeline customers that are comparable in minutes and features to those available to post-paid wireless subscribers – but at low Lifeline rates and without the burden of credit checks, contracts, or activation fees.

Most importantly, ZING PCS’ Lifeline service will provide low-income residents with the convenience and security offered by wireless services—even if their financial position deteriorates. ETC designation in the Non-Jurisdictional States would enable ZING PCS to offer appealing and affordable service offerings to low-income customers to ensure that they are able to afford wireless services on a consistent and uninterrupted basis. Without question, prepaid wireless services have become essential for low-income customers, providing them with value for their money, access to emergency services on wireless devices, and a reliable means of contact for prospective employers, social service agencies or dependents. Providing ZING PCS with the authority necessary to offer discounted Lifeline services to those most in danger of losing wireless service altogether undoubtedly promotes the public interest.

In sum, ETC designation in the Non-Jurisdictional States would enable ZING PCS to provide all of the public benefits cited by the Commission in its analysis in the *TracFone* and *Virgin Mobile Orders*. Namely, ZING PCS would provide “increased consumer choice, high-quality service offerings, and mobility,”<sup>87</sup> as well as the safety and security of effective 911 and E911 services.<sup>88</sup>

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<sup>87</sup> See *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶ 38; *TracFone ETC Order*, 23 FCC Rcd at 6212 ¶ 15.

<sup>88</sup> See *Virgin Mobile Order*, 24 FCC Rcd at 3391 ¶ 23.

## **B. The Benefits of Competitive Choice**

The benefits to consumers of being able to choose from among a variety of telecommunications service providers have been acknowledged by the FCC for more than three decades.<sup>89</sup> Designation of ZING PCS as an ETC will promote competition and innovation, and spur other carriers to target low-income consumers with service offerings tailored to their needs and to improve their existing networks to remain competitive, resulting in improved services to consumers. Designation of ZING PCS as an ETC will help assure that quality services are available at “just, reasonable, and affordable rates” as envisioned in the Act.<sup>90</sup> Designation of ZING PCS as an ETC would offer Lifeline-eligible consumers an additional choice of providers for accessing telecommunications services, representing a significant step towards ensuring that all low-income consumers share in the many benefits associated with access to wireless services.

## **C. Impact on the Universal Service Fund**

ZING PCS will only increase the amount of USF Lifeline funding in situations where it obtains Lifeline customers not enrolled in another ETC’s Lifeline program. By implementing the safeguards set forth in the *Lifeline and Link Up Reform Order*, ZING PCS will minimize the likelihood that its customers are not eligible or are receiving duplicative support either individually or within their household. Significantly, the Company’s designation as an ETC will not increase the number of persons eligible for Lifeline support. ZING PCS’ ability to increase the Lifeline participation rate of qualified low-income individuals will further the goal of Congress to provide all individuals with affordable access to telecommunications service, and thus any incremental increases in Lifeline expenditures are far outweighed by the significant

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<sup>89</sup> See, e.g., *Specialized Common Carrier Services*, 29 FCC Rcd 870 (1971).

<sup>90</sup> See 47 U.S.C. § 254(b)(1).

public interest benefits of expanding the availability of affordable wireless services to low-income consumers. According to the FCC, “the additional choice and service options of another wireless reseller offering a service for low-income consumers represents a significant benefit for consumers and is in the public interest,” and “A new entrant should incent existing wireless reseller ETCs to offer better service and terms to their customers, which provides additional evidence that forbearance in the context of the Lifeline program outweighs the potential costs.”<sup>91</sup>

### **VIII. ANTI-DRUG ABUSE CERTIFICATION**

ZING PCS certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

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<sup>91</sup> See *Petition of i-wireless, LLC for Forbearance from 47 U.S.C § 214(e)(1)(A)*, Order, FCC 10-117 (rel. June 25, 2010) at ¶ 19.

## IX. CONCLUSION

As discussed above, designation of ZING PCS as an ETC in the Non-Jurisdictional States accords with the requirements of Section 214(e)(6) of the Act and is in the public interest.

For all of the foregoing reasons, ZING PCS respectfully requests that the Commission designate ZING PCS as an ETC in the Non-Jurisdictional States.

Respectfully submitted,

/s/ LANCE STEINHART

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Alpharetta, Georgia 30005  
(770) 232-9200 (Phone)  
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*Attorneys for FLATEL Wireless, Inc.*

December 14, 2012

## Attachment A

### Proposed Lifeline Rates

#### **Lifeline Plan**

250 Anytime Minutes

Net cost to Lifeline customer - \$0 (free)

- No rollover
- 1 incoming or outgoing text per 1 minute of voice (1 text = 1 minute)
- Free handset
- Free calls to 911 emergency services
- Free calls to Customer Service
- Free domestic long distance
- Caller ID, Call Waiting, and Voicemail included

#### **Additional Minutes**

50 Anytime Additional Minutes

\$10.00

**Attachment B**

**Affirmative Statement of the Alabama Public Service Commission**

# Alabama Public Service Commission

## Orders

**PINE BELT CELLULAR, INC. and PINE BELT PCS, INC.,**

**Joint Petitioners**

**PETITION: For ETC status and/or clarification regarding the jurisdiction of the Commission to grant ETC status to wireless carriers.**

**DOCKET U-4400**

### ORDER

#### **BY THE COMMISSION:**

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214 (e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12<sup>th</sup> day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

Jim Sullivan, President

Jan Cook, Commissioner

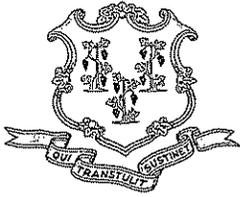
George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary

**Attachment C**

**Affirmative Statement of the Connecticut Department of Public Utility Control**



STATE OF CONNECTICUT  
DEPARTMENT OF PUBLIC UTILITY CONTROL

August 10, 2010  
In reply, please refer to:  
UR:PAP

Lance J.M. Steinhart, Esquire  
1720 Windward Concourse  
Suite 115  
Atlanta, Georgia 30005

Re: Request for Letter Clarifying Jurisdiction Over Wireless CETC Petitions

Dear Mr. Steinhart:

The Department of Public Utility Control (Department) acknowledges receipt of your July 23, 2010 letter filed on behalf of i-wireless, LLC (i-wireless) seeking clarification as to whether the Department asserts jurisdiction to designate competitive eligible telecommunications carriers (CETC) in Connecticut. According to your letter, i-wireless seeks designation as a CETC in Connecticut and believes that the Department does not assert jurisdiction to designate CETCs in the state and that carriers must apply to the Federal Communications Commission for certification.

The Department has reviewed your request and notes that it has approved requests for CETC status from wireline-based carriers. However, in the instant case, i-wireless is a mobile virtual network operator. The Department does not regulate or license mobile carrier services' rates and charges and therefore, it is not subject to the Department's jurisdiction for the purposes of designating CETC status.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

*K. Santopietro* (law)

Kimberley J. Santopietro  
Executive Secretary

**Attachment D**

**Affirmative Statement of the Delaware Public Service Commission**



**STATE OF DELAWARE  
PUBLIC SERVICE COMMISSION**

861 SILVER LAKE BOULEVARD  
CANNON BUILDING, SUITE 100  
DOVER, DELAWARE 19904

TELEPHONE: (302) 736-7500  
FAX: (302) 739-4849

August 18, 2010

**VIA E-MAIL**

Lance J.M. Steinhart, P.C.  
1720 Windward Concourse  
Suite 115  
Alpharetta, Georgia 30005

Dear Mr. Steinhart:

I received your letter on behalf of i-wireless, LLC requesting clarification on Delaware's competitive eligible telecommunication carrier process. This is to confirm that Delaware is a "default" State and, therefore, it is the FCC, not Delaware, that determines eligibility to receive the federally-subsidized price reductions. I am attaching the October 11, 2005 order in PSC Docket No. 05-016T that discusses this issue in a Verizon Delaware, Inc. docket.

I will attach these documents to an e-mail so that you will receive them expeditiously. If you would also like a hard copies of the documents by mail let me know by e-mail and I will forward them to you.

Sincerely

Janis L. Dillard  
Acting Executive Director

DOCKET COPY  
DO NOT REMOVE FROM OFFICE

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF )  
VERIZON DELAWARE INC., TO MODIFY THE )  
LIFELINE SERVICE BY ADDING AN INCOME ) PSC DOCKET NO. 05-016T  
QUALIFIER TO THE ELIGIBILITY CRITERIA )  
(FILED JUNE 17, 2005) )

ORDER NO. 6736

This 11<sup>th</sup> day of October, 2005, the Commission determines and Orders the following:

1. In the jargon of the federal Lifeline/Link-Up program, Delaware is a "federal default State." Delaware has never, by either state law or state regulation, ordained, nor funded, a stand-alone program to provide discounts on basic telephone services charges for low-income subscribers. Consequently, it was not until 1997, when the Federal Communications Commission ("FCC") revamped the federal Lifeline/Link-Up program, that Delaware subscribers first became eligible for participation in the federal Lifeline program.<sup>1</sup> And given that in a "federal default State" only federally-raised monies are used to reimburse eligible carriers for the Lifeline and Link-Up discounts, it is the FCC, and not the state commission, that gets to call the tune about who should be eligible to receive these federally-subsidized price reductions.

2. Since 1997, Verizon Delaware Inc. ("VZ-DE") has been designated as an "eligible telecommunications carrier" and has offered

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<sup>1</sup>See PSC Order No. 4684 (Dec. 16, 1997) (summarizing Delaware history and electing to allow "Tier 2" federal support to eligible Delaware subscribers).

federal Lifeline discounts on the federal list of supported services.<sup>2</sup> And even though in "default" States, Lifeline is almost an exclusively federal program, VZ-DE has, since 1997, filed at the State level, tariff provisions setting forth its Lifeline offerings.<sup>3</sup>

3. In 2004, the FCC changed some of the "eligibility" rules describing which subscribers may participate in the federal Lifeline/Link-Up program.<sup>4</sup> In particular, the 2004 amendments added additional programs to the list of "eligible" programs where participation confers federal default Lifeline/Link-Up eligibility.<sup>5</sup> The 2004 amendments also introduced an additional eligibility criteria premised on the subscriber's household income.<sup>6</sup> Eligible telecommunications carriers, such as VZ-DE, were given one year to implement this new, additional income-based eligibility criteria.<sup>7</sup>

4. To implement these changes prescribed by the FCC, VZ-DE initially filed revisions to the Lifeline and Link-Up portions of its

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<sup>2</sup>See PSC Order No. 4680 (Dec. 17, 1997) ("ETC" designation for VZ-DE). See also PSC Dckt. No. 97-023T (initial Lifeline tariff filing by VZ-DE).

<sup>3</sup>From December 2000 through December 2003, VZ-DE offered, under its state tariff, an "expanded" Lifeline program for Delaware. The discounts under such program exceeded the Tiers 1 & 2 levels normally available in a default State. VZ-DE offered this expanded program to fulfill a condition imposed by the FCC in approving the Bell Atlantic-GTE merger. See PSC Order No. 6317 (Dec. 9, 2003) (explaining content and cause of this expanded Lifeline offering). Whether Delaware remained a "default State" during this period when VZ-DE subsidized the deeper discounts is an issue that need now be explored or resolved. This "expanded" program ended in December 2003.

<sup>4</sup>In the Matter of Lifeline and Link-Up, Report and Order and Further NPRM, 19 FCC Rcd. 8302 (FCC 2004) ("Lifeline Order").

<sup>5</sup>47 C.F.R. §§ 54.409(b) (Lifeline eligibility criteria in "default" State); 54.415(b) (Link-Up eligibility criteria in "default" State).

<sup>6</sup>47 C.F.R. §§ 54.409(b), 54.410 (Lifeline); 54.415(b), 54.416 (Link-Up).

<sup>7</sup>47 C.F.R. §§ 54.410(a)(ii), 54.416.

State tariff. These changes incorporated into the State tariff provisions the expanded list of "eligibility-conferring" programs.<sup>8</sup> At the same time, the Commission Staff began discussions with VZ-DE to determine whether, under the applicable federal default rules, it was appropriate for VZ-DE to continue to include in its State tariff Lifeline provisions language that conditioned Lifeline eligibility on the subscriber foregoing the ability to purchase many optional or vertical services.<sup>9</sup> Eventually, VZ-DE revised its State tariff Lifeline provisions to delete the questioned restrictions.<sup>10</sup> Then in June 2005, VZ-DE filed another Tariff revision to reflect its implementation of the household-income criteria for eligibility for Lifeline and Link-Up discounts.<sup>11</sup> Finally, on September 9, 2005, VZ-DE submitted another set of revised tariff sheets reflecting further textual revisions, as originally suggested by Staff. In part, these final changes sought to make the State tariff's description of how VZ-DE would administer its Lifeline/Link-Up program to more closely parallel the governing federal default rules.<sup>12</sup>

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<sup>8</sup>See PSC Dckt. No. 04-017T (filed July 26, 2004; eff. July 27, 2004).

<sup>9</sup>That restriction - limiting Lifeline subscribers to a small group of designated vertical services - had been a continual part of VZ-DE's state-tariffed Lifeline offerings since 1997. In its Lifeline Order, the FCC expressed its belief that "any restriction on the purchase of vertical services may discourage qualified consumers from enrolling and may serve as a barrier to participation in the [Lifeline] program. Lifeline Order at ¶ 53.

<sup>10</sup>See PSC Dckt. No. 05-008T (filed April 8, 2005; eff. April 16, 2005).

<sup>11</sup>See PSC Dckt. No. 05-016T (filed June 17, 2005; eff. June 22, 2005).

<sup>12</sup>See PSC Dckt. No. 05-016T, amended tariff sheets filed on September 9, 2005 but with effective date of June 22, 2005).

5. The Commission enters this Order not so much to "approve" the various Lifeline filings made by VZ-DE but to recount the course of the filings made since the FCC changed its federal Lifeline/Link-Up program in 2004. Indeed, given that Delaware is a "default" State, VZ-DE's Lifeline/Link-Up offerings are governed more by the federal default rules than by any "approved" State tariff provision. Any State tariff provision that might conflict with a federal default rule would necessarily have to yield. However, the Commission will accept the Lifeline and Link-Up tariff filings lodged by VZ-DE. The Commission believes that VZ-DE's last submission (in September 2005) sets forth a Lifeline and Link-Up offering that is consistent with the federal default rules. However, the filing and acceptance of the State tariff provisions should not be seen as foreclosing any later challenge that VZ-DE's program falls short of the federal directives.

Now, therefore, IT IS ORDERED:

1. That, as explained in the body of this Order, the Commission accepts the tariff filings made by Verizon Delaware Inc., to implement its responsibilities to provide federal Lifeline and Link-Up in this "federal default" jurisdiction. In particular, the Commission now accepts the tariff revision filing made September 9, 2005 pertaining to the following leaves in P.S.C.-Del.-No. 1:

Section 20D, Fourteenth Revised Sheet 1 (Link-Up);

Section 20D, Fifth Revised Sheet 2 (Link-Up); and

Section 20E, Eighth Revised Sheet 2 (Lifeline).

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

*Annetta McRae*  
Chair

\_\_\_\_\_  
Vice Chair

*John Corway*  
Commissioner

*John R. [unclear]*  
Commissioner

*[unclear]*  
Commissioner

ATTEST:

*Norma J. Sherwood*  
Acting Secretary

**Attachment E**

**Affirmative Statement of the District of Columbia Public Service Commission**



**Public Service Commission of the District of Columbia**  
**1333 H Street, N.W., 2nd Floor, West Tower**  
**Washington, D.C. 20005**  
**(202) 626-5100**  
**www.dcpssc.org**

February 29, 2012

**Via First Class & Electronic Mail**

Lance J.M. Steinhart  
Lance J.M. Steinhart, P.C., Attorney at Law  
1725 Windward Concourse, Suite 150  
Alpharetta, GA 30005

Dear Mr. Steinhart:

Thank you for your February 23, 2012 letter requesting information on whether the Public Service Commission of the District of Columbia ("Commission") designates wireless telecommunications carriers as eligible telecommunications carriers ("ETC") for the purposes of receiving federal universal service funding. Please be advised that, pursuant to section 34-2006(b) of the District of Columbia Code, the Commission does not have jurisdiction over wireless carriers. Thus, the Commission has no authority to designate wireless telecommunications carriers as ETCs.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact Lara Walt at 202-626-9191 or [lwalt@psc.dc.gov](mailto:lwalt@psc.dc.gov).

Sincerely,

A handwritten signature in black ink that reads "Richard A. Beverly".

Richard A. Beverly  
General Counsel

Enclosure



D.C. Council Home

Home Search Help ©



## Welcome to the online source for the District of Columbia Official Code

### DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

District of Columbia Official Code 2001 Edition Currentness

Division V. Local Business Affairs

Title 34. Public Utilities.

Subtitle V. Telecommunications.        Chapter 20. Telecommunications Competition.            ➔ **§ 34-2006. Exemptions.**

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

(1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;

(2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;

(3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or

(4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

#### CREDIT(S)

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

#### HISTORICAL AND STATUTORY NOTES

##### Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

D.C. Law 17-165 added subsec. (c).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

References in Text

The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

DC CODE § 34-2006

Current through January 11, 2012

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END OF DOCUMENT

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**Attachment F**

**Affirmative Statement of the Florida Public Service Commission**

COMMISSIONERS:  
ART GRAHAM, CHAIRMAN  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
EDUARDO E. BALBIS  
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL  
S. CURTIS KISER  
(850) 413-6199

## Public Service Commission

June 2, 2011

Mr. Lance J.M. Steinhart, P.C.  
Attorney At Law  
1720 Windward Concourse  
Suite 115  
Alpharetta, GA 30005

**Re: Docket No. 110101-TP – i-wireless, LLC's ETC designation**

Dear Mr. Steinhart:

We received your May 20, 2011 letter requesting a statement that the Florida Public Service Commission's jurisdiction to grant ETC designation to i-wireless, LLC changed with Governor Scott's approval of HB 1231, the telecom reform bill. In your letter, you mentioned that i-wireless, LLC is a commercial mobile radio service provider.

This letter acknowledges that Governor Scott's approval of HB 1231, the telecom reform bill, revises Chapter 364, Florida Statutes, thereby changing the Commission's jurisdiction regarding telecommunications companies. I direct your attention to Chapter 364, Florida Statutes, including the revisions by HB 1231 for the proposition that the Federal Communications Commission, rather than this Commission is the appropriate agency to consider i-wireless, LLC's bid for ETC status.

Sincerely,

A handwritten signature in black ink that reads "S. Curtis Kiser".

S. Curtis Kiser  
General Counsel

cc: Beth W. Salak, Director, Division of Regulatory Analysis  
Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis  
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel  
Ann Cole, Commission Clerk, Office of Commission Clerk

**Attachment G**

**Affirmative Statement of the New Hampshire Public Utilities Commission**

THE STATE OF NEW HAMPSHIRE

CHAIRMAN  
Thomas B. Getz

COMMISSIONERS  
Clifton C. Below  
Amy L. Ignatius

EXECUTIVE DIRECTOR  
AND SECRETARY  
Debra A. Howland



**PUBLIC UTILITIES COMMISSION**  
21 S. Fruit Street, Suite 10  
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH  
1-800-735-2964

Website:  
[www.puc.nh.gov](http://www.puc.nh.gov)

March 28, 2011

**RE: ETC Certification in New Hampshire**

The federal Universal Service Fund (USF) was created by the Federal Communications Commission (FCC) to promote the availability of quality services at just and reasonable rates to all consumers including low-income customers and those in high cost areas and to increase nationwide access to advanced services in schools, libraries and rural health care facilities. To qualify for universal service funding a carrier must first be certified as an Eligible Telecommunications Carrier (ETC) by the state public utilities commission or, if the state does not assert this authority, by the FCC. *See* 47 U.S.C. §214 (e).

The New Hampshire Public Utilities Commission maintains authority to determine whether landline telecommunications carriers qualify as ETCs. Pursuant to New Hampshire RSA 362:6, the Commission has no jurisdiction over mobile radio communications services. Consequently, the state declines jurisdiction over the certification of wireless carriers as ETCs, leaving that responsibility to the FCC.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Anne Ross".

F. Anne Ross

General Counsel

New Hampshire Public Utilities Commission

**Attachment H**

**Affirmative Statement of the New York Public Service Commission**

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350  
www.dps.state.ny.us

PUBLIC SERVICE COMMISSION

GARRY A. BROWN  
*Chairman*  
PATRICIA L. ACAMPORA  
MAUREEN F. HARRIS  
ROBERT E. CURRY JR.  
JAMES L. LAROCCA  
*Commissioners*



PETER McGOWAN  
*General Counsel*

JACLYN A. BRILLING  
*Secretary*

July 28, 2010

**VIA EMAIL AND US MAIL**

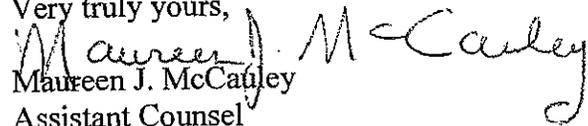
Lance J.M. Steinhart, Esq.  
1720 Windward Concourse  
Suite 115  
Alpharetta, Georgia 30005

Re: Request for Letter Clarifying Jurisdiction Over Wireless CETC Petitions

Dear Mr. Steinhart:

As you requested, enclosed is a letter providing an affirmative statement, required by the FCC, that the New York State Public Service Commission does not assert jurisdiction over CMRS providers seeking Eligible Telecommunications Carrier designation.

Very truly yours,

  
Maureen J. McCauley  
Assistant Counsel

Enc.

cc: Hon. Jaclyn A. Brillling, Secretary

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350  
www.dps.state.ny.us

PUBLIC SERVICE COMMISSION

GARRY A. BROWN  
*Chairman*  
PATRICIA L. ACAMPORA  
MAUREEN F. HARRIS  
ROBERT E. CURRY JR.  
JAMES L. LARocca  
*Commissioners*



PETER McGOWAN  
*General Counsel*  
JACLYN A. BRILLING  
*Secretary*

July 28, 2010

TO WHOM IT MAY CONCERN:

Re: i-wireless CMRS Jurisdiction

We have received a letter from i-wireless, LLC (i-wireless), requesting a statement that the New York State Public Service Commission does not exercise jurisdiction over CMRS providers for the purpose of making determinations regarding Eligible Telecommunications Carrier designations under section 214 (e)(6) of 47 U.S.C. In response to this request, please be advised that section 5 (6)(a) of the New York State Public Service Law provides that:

Application of the provisions of this chapter to cellular telephone services is suspended unless the commission, no sooner than one year after the effective date of this subdivision, makes a determination, after notice and hearing, that suspension of the application of provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination as of this date that regulation should be reinstated under section 5 (6)(a) of the Public Service Law. Consequently, based on the representation by i-wireless that it is a mobile virtual network operator reselling wireless services, i-wireless would not be subject to New York State Public Service Commission jurisdiction for the purpose of making an Eligible Telecommunications Carrier designation.

Very truly yours,

*Maureen J. McCauley*  
Maureen J. McCauley  
Assistant Counsel

**Attachment I**

**Affirmative Statement of the North Carolina Public Utilities Commission**

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Designation of Carriers Eligible for Universal    )  
Carrier Support    )    ORDER GRANTING PETITION

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility." See, G.S. 62-3(23)j. Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

**CONCLUSIONS**

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 62-3(23)j, enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(e)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Accord., Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in cursive script that reads "Patricia Swenson".

Patricia Swenson, Deputy Clerk

pb082503.01

**Attachment J**

**Affirmative Statement of the Tennessee Regulatory Authority**

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR  
SYSTEMS, INC. TO BE DESIGNATED AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER

)  
)  
)  
)  
)

DOCKET NO.  
02-01245

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ORDER

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This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* ("Application") filed on November 21, 2002.

**Background**

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

**The January 27, 2003 Authority Conference**

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked

jurisdiction over Advantage for ETC designation purposes.<sup>1</sup>

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, “[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission.”

The Authority’s lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission’s jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission (“FCC”) to perform the ETC designation.<sup>2</sup>

---

<sup>1</sup> This finding is not inconsistent with the Authority’s decision in *In re: Universal Service Generic Contested Case*, Docket 97-00888, *Interim Order on Phase I of Universal Service*, pp. 53-57 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00888 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission’s rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

<sup>2</sup> 47 U.S.C. §214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

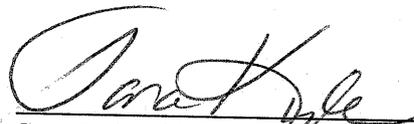
In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of “state-federal comity,” the FCC requires that carriers seeking ETC designation “first consult with the state commission to give the state commission an opportunity to interpret state law.”<sup>3</sup> Most carriers that are not subject to a state regulatory commission’s jurisdiction seeking ETC designation must provide the FCC “with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation.”<sup>4</sup>

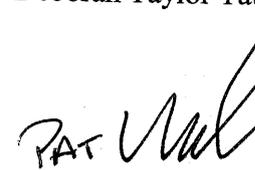
The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

**IT IS THEREFORE ORDERED THAT:**

The *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier* is dismissed for lack of subject matter jurisdiction.

  
Sara Kyle, Chairman

  
Deborah Taylor Tate, Director

  
Pat Miller, Director

<sup>3</sup> *In the Matter of Federal-State Joint Bd. on Universal Service, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, ¶ 113 (June 30, 2000).

<sup>4</sup> *See id.* (The “affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.”)

**Attachment K**

**Affirmative Statement of the Texas Public Utility Commission**

**PROJECT NO. 40561**

2012 NOV 21 AM 11:37  
PUBLIC UTILITY COMMISSION  
OF TEXAS  
FILED CLERK

**RULEMAKING TO AMEND §**  
**SUBSTANTIVE RULE 26.418 RELATING §**  
**TO DESIGNATION OF COMMON §**  
**CARRIERS AS ELIGIBLE §**  
**TELECOMMUNICATIONS CARRIERS §**  
**TO RECEIVE FEDERAL UNIVERSAL §**  
**SERVICE FUNDS §**

**PUBLIC UTILITY COMMISSION**  
**OF TEXAS**

**ORDER ADOPTING AMENDMENT TO §26.418**  
**AS APPROVED AT THE NOVEMBER 16, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, with no changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6874). The amendment will exclude commercial mobile radio service (CMRS) resellers from eligibility for designation by the commission as an eligible telecommunications carrier (ETC). Instead, a CMRS reseller will be able to seek designation as an ETC by the Federal Communications Commission (FCC). Project Number 40561 is assigned to this proceeding.

The commission did not receive any comments on the proposed amendment.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §51.001, which provides that it is the policy of this state to promote diversity of telecommunications providers and interconnectivity; encourage a fully competitive

telecommunications marketplace; and maintain a wide availability of high quality interoperable, standards-based telecommunications services at affordable rates.

Cross Reference to Statutes: PURA §§14.002 and 51.001.

**§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.**

- (a) **Purpose.** This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.
- (b) **Applicability.** This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller.
- (c) **Service areas.** The commission may designate ETC service areas according to the following criteria.
- (1) **Non-rural service area.** To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to

Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

- (2) **Rural service area.** In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.
- (d) **Criteria for determination of ETCs.** A common carrier shall be designated as eligible to receive federal universal service support if it:
- (1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and
  - (2) advertises the availability of and charges for such services using media of general distribution.
- (e) **Criteria for determination of receipt of federal universal service support.** In order to receive federal universal service support, a common carrier must:
- (1) meet the requirements of subsection (d) of this section;
  - (2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

- (3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(f) **Designation of more than one ETC.**

- (1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsection (c)(1) of this section and subsection (d) of this section.
- (2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsection (c)(2) of this section and subsection (d) of this section if the commission finds that the designation is in the public interest.

(g) **Proceedings to designate ETCs.**

- (1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.
- (2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC shall file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.
- (3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to

amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(h) **Application requirements and commission processing of applications.**

(1) **Requirements for notice and contents of application.**

(A) Notice of application. Notice shall be published in the *Texas Register*. The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application for each common carrier seeking ETC designation. A common carrier that seeks to be designated as an ETC shall file with the commission an application complying with the requirements of this

section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

- (i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;
- (ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;
- (iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;
- (iv) show the service area in which the applicant seeks designation as an ETC;
- (v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

- (vi) contain a copy of the text of the notice;
  - (vii) contain the proposed effective date of the designation; and
  - (viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.
- (C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:
- (i) comply with the requirements of subparagraph (B) of this paragraph;
  - (ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
  - (iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (2) **Commission processing of application.**
- (A) **Administrative review.** An application considered under this section may be reviewed administratively unless the presiding officer, for good cause,

determines at any point during the review that the application should be docketed.

- (i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.
- (ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.

- (iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.
  - (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.
- (B) Approval or denial of application.
- (i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
    - (I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);
    - (II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;
    - (III) the applicant advertises the availability of, and charges for, such services using media of general distribution;
    - (IV) notice was provided as required by this section;

- (V) the applicant satisfies the requirements contained in subsection (c) of this section; and
  - (VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.
- (ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
- (I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;
  - (II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
  - (III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.
- (D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected

persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

- (E) **Waiver.** In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

- (i) **Designation of ETC for unserved areas.** If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

- (j) **Relinquishment of ETC designation.** A common carrier may seek to relinquish its ETC designation.
- (1) **Area served by more than one ETC.** The commission shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:
- (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;
  - (B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and
  - (C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.
- (2) **Area where the common carrier is the sole ETC.** In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:
- (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;  
and
  - (B) commission designation of a new ETC for the service area or areas.

- (k) **Rural and non-rural carriers' requirements for annual certification to receive FUSF support.** A common carrier serving a rural or non-rural study area shall comply with the following requirements for annual certification for the receipt of FUSF support.
- (1) **Annual certification.** Common carriers must provide the commission with an affidavit annually, on or before September 1st of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1st each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1st each year.
  - (2) **Failure to file.** Common carriers failing to file an affidavit by September 1st may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.
  - (3) **Supplemental certification.** For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications shall apply.
  - (4) **Recommendation for Revocation of FUSF support certification.** The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements pursuant to 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF

support certification and make an appropriate recommendation as a result of any such review.

- (1) **Disaggregation of rural carriers' FUSF support.** Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.
  - (1) **Election by May 15, 2002.** On or before May 15, 2002, all rural incumbent local exchange carriers (ILECs) may notify the commission of one of the following elections regarding FUSF support. This election will remain in place for four years from the effective date of certification, pursuant to 47 C.F.R. §54.315, unless the commission, on its own motion, or upon the motion of the rural ILEC or an interested party, requires a change to the elected disaggregation plan:
    - (A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;
    - (B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;
    - (C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or
    - (D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315,

(June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.

- (2) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier will not be permitted to disaggregate its FUSF support unless it is ordered to do so by the commission pursuant to the terms of paragraph (5) of this subsection.
- (3) **Requirements for rural ILECs' disaggregation plans.** Pursuant to the federal requirements in 47 C.F.R. §54.315(e) a rural ILEC's disaggregation plan, whether submitted pursuant to paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:
  - (A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;
  - (B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support shall remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;
  - (C) the ratio of per line FUSF support shall be publicly available;
  - (D) the per line FUSF support amount for each disaggregated zone or wire center shall be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts shall then be applied using the changed FUSF support amount and updated access line counts applicable at that point;

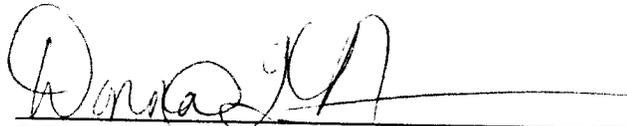
- (E) each support category complies with subparagraphs (A) and (B) of this paragraph;
  - (F) monthly payments of FUSF support shall be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and
  - (G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.
- (4) **Additional requirements for self-certification of a disaggregation plan.** Pursuant to 47 C.F.R. §54.315(d)(2), a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:
- (A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;
  - (B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;
  - (C) a clearly specified per-line level of FUSF support for each category pursuant to 47 C.F.R. §54.315(d)(2)(iii);
  - (D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that is generally consistent with how the level of

- support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and
- (E) maps identifying the boundaries of the disaggregated zones within the study area.
- (5) **Disaggregation upon commission order.** The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:
- (A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;
- (B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or
- (C) changes in ownership or changes in state or federal regulation warrant the commission's action.
- (6) **Effective dates of disaggregation plans.** The effective date of a rural ILEC's disaggregation plan shall be as specified in 47 C.F.R. §54.315.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.418 relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, is hereby adopted with no changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the 16<sup>th</sup> day of November 2012.

**PUBLIC UTILITY COMMISSION OF TEXAS**

  
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**DONNA L. NELSON, CHAIRMAN**

  
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**KENNETH W. ANDERSON, JR., COMMISSIONER**

  
\_\_\_\_\_  
**ROLANDO PABLOS, COMMISSIONER**

**Attachment L**

**Affirmative Statement of the Virginia Corporation Commission**

## STATE CORPORATION COMMISSION DOCUMENT CONTROL

AT RICHMOND, APRIL 9, 2004

IN RE:

2004 APR -9 A 11:46

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO. PUC-2001-00263

For designation as an eligible  
telecommunications provider under  
47 U.S.C. § 214(e) (2)

ORDER INVITING COMMENTS AND/OR REQUESTS FOR HEARING

On December 21, 2001, Virginia Cellular LLC ("Virginia Cellular") filed an application with the State Corporation Commission ("Commission") for designation as an eligible telecommunications carrier ("ETC"). This was the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.<sup>1</sup> Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002. Our Order of April 9, 2002, found that § 214(e)(6) of the Act is applicable to Virginia Cellular's application because this Commission has not asserted jurisdiction over CMRS carriers and that Virginia Cellular should apply to the Federal Communications Commission ("FCC") for ETC designation.

Virginia Cellular filed its Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia with the FCC on April 26, 2002. On January 22, 2004, the FCC released its order designating Virginia Cellular as an ETC in specific portions of its licensed

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<sup>1</sup> Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

service area in the Commonwealth of Virginia subject to certain conditions ("FCC's January 22, 2004, Order").<sup>2</sup>

The FCC's January 22, 2004, Order further stated that Virginia Cellular's request to redefine the service areas of Shenandoah Telephone Company ("Shentel") and MGW Telephone Company ("MGW") in Virginia pursuant to § 214(3)(5) of the Telecommunications Act of 1996 ("Act") was granted subject to the agreement of this Commission. On March 2, 2004, the FCC filed its January 22, 2004, Order as a petition in this case.<sup>3</sup>

Section 214(e)(5) of the Act states:

SERVICE AREA DEFINED. - The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In this instance, the FCC has determined that the service areas of Shentel and MGW, which are both rural telephone companies under the Act, should be redefined as requested by Virginia Cellular.<sup>4</sup> The FCC further recognizes that the "Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to determine the redefinition proposal and examine whether it should be approved."<sup>5</sup>

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<sup>2</sup> CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*.

<sup>3</sup> See paragraph 45 of the FCC's January 22, 2004, Order. The FCC, in accordance with § 54.207(d) of its rules, requests that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the FCC's rules. A copy of the petition can be obtained from the Commission's website at: <http://www.state.va.us/scc/caseinfo.htm>.

<sup>4</sup> The FCC denied Virginia Cellular's request to redefine the study area of NTELOS. See paragraph 50 of the FCC's January 22, 2004, Order.

<sup>5</sup> The FCC's January 24, 2004, Order at paragraph 2. (citations omitted)

The Commission finds that interested parties should be afforded the opportunity to comment and/or request a hearing regarding the FCC's petition to redefine the service areas of Shentel and MGW. We note that the FCC believes that its proposed redefinition of these service areas should not harm either Shentel or MGW.<sup>6</sup> However, we request any interested party to specifically address in its comments whether our agreeing to the FCC's proposal to redefine the service areas of Shentel and MGW would harm these companies.

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that interested parties should be allowed to comment or request a hearing regarding the FCC's proposed redefinition of Shentel's and MGW's service areas.

Accordingly, IT IS ORDERED THAT:

(1) Any interested party desiring to comment regarding the redefinition of Shentel's and MGW's service areas may do so by directing such comments in writing on or before May 7, 2004, to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested parties desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(2) On or before May 7, 2004, any interested party wishing to request a hearing regarding the redefinition of Shentel's and MGW's service areas shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2001-00263 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter.

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<sup>6</sup> See paragraphs 43 and 44 of the FCC's January 22, 2004, Order.

(3) On or before June 1, 2004, interested parties may file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the comments and requests for hearing filed with the Commission. A copy of the response shall be delivered to any person who filed comments or requests for hearing.

(4) This matter is continued generally.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: each local exchange telephone company licensed to do business in Virginia, as shown on Attachment A hereto; David A. LaFuria, Esquire, Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19th Street, N.W., Suite 1200, Washington, D.C. 20036; Thomas Buckley, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554; Virginia Telecommunications Industry Association, c/o Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; L. Ronald Smith, President and General Manager, Shenandoah Telephone Company, P.O. Box 105, Williamsville, Virginia 24487; Lori Warren, Director of Regulatory Affairs, MGW Telephone Company, P.O. Box 459, Edinburg, Virginia 22824-0459; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, and Economics and Finance.

**Attachment M**

**Coverage Area**

State	SAC	Study Area Name	Rural (R) or Non-Rural (N)
AL	250282	BLOUNTSVILLE TEL CO	R
AL	250283	BRINDLEE MOUNTAIN	R
AL	250284	BUTLER TEL CO	R
AL	250285	CASTLEBERRY TEL CO	R
AL	250286	NATIONAL OF ALABAMA	R
AL	250290	FARMERS TELECOM COOP	R
AL	250295	GRACEBA TOTAL COMM	R
AL	250298	GULF TEL CO - AL	R
AL	250299	HAYNEVILLE TEL CO	R
AL	250300	HOPPER TELECOMM. CO.	R
AL	250301	FRONTIER-LAMAR CNTY	R
AL	250302	WINDSTREAM AL	R
AL	250304	MILLRY TEL CO	R
AL	250305	MON-CRE TEL COOP	R
AL	250306	FRONTIER COMM.-AL	R
AL	250307	MOUNDVILLE TEL CO	R
AL	250308	NEW HOPE TEL COOP	R
AL	250311	OAKMAN TEL CO (TDS)	R
AL	250312	OTELCO TELEPHONE LLC	R
AL	250314	PEOPLES TEL CO	R
AL	250315	PINE BELT TEL CO	R
AL	250316	RAGLAND TEL CO	R
AL	250317	ROANOKE TEL CO	R
AL	250318	FRONTIER COMM-SOUTH	R
AL	250322	UNION SPRINGS TEL CO	R
AL	255181	SO CENTRAL BELL-AL	N
AL	259788	CENTURYTEL-AL-SOUTH	N
AL	259789	CENTURYTEL-AL-NORTH	N
CT	132454	THE WOODBURY TEL CO	R
CT	135200	SOUTHERN NEW ENGLAND	N
DC	575020	VERIZON WA, DC INC.	N
DE	565010	VERIZON DELAWARE INC	N
FL	210291	GTC, INC.	R
FL	210318	FRONTIER COMM-SOUTH	R
FL	210328	VERIZON FLORIDA	N
FL	210329	GTC, INC.	R
FL	210330	SMART CITY TEL LLC	R
FL	210331	ITS TELECOMM. SYS.	R
FL	210335	NORTHEAST FLORIDA	R
FL	210336	WINDSTREAM FL	R
FL	210338	QUINCY TEL CO-FL DIV	R
FL	210339	GTC, INC.	R
FL	210341	EMBARQ FLORIDA INC. FKA SPRINT	R
FL	215191	SOUTHERN BELL-FL	N

State	SAC	Study Area Name	Rural (R) or Non-Rural (N)
NC	230468	ATLANTIC MEMBERSHIP	R
NC	230469	BARNARDSVILLE TEL CO	R
NC	230470	CAROLINA TEL & TEL	R
NC	230471	CENDEL OF NC	R
NC	230473	CITIZENS TEL CO	R
NC	230474	CONCORD TEL CO	R
NC	230476	WINDSTREAM NC	R
NC	230478	ELLERBE TEL CO	R
NC	230479	FRONTIER COMMUNICATIONS OF THE CAROLINAS, INC.	N
NC	230483	LEXCOM TELEPHONE CO.	R
NC	230485	MEBTEL, INC.	R
NC	230491	N.ST. DBA N. ST.COMM	R
NC	230494	PINEVILLE TEL CO	R
NC	230495	RANDOLPH TEL CO	R
NC	230496	RANDOLPH MEMBERSHIP	R
NC	230497	PIEDMONT MEMBERSHIP	R
NC	230498	SALUDA MOUNTAIN TEL	R
NC	230500	SERVICE TEL CO	R
NC	230501	SKYLINE MEMBERSHIP	R
NC	230502	STAR MEMBERSHIP CORP	R
NC	230503	SURRY MEMBERSHIP	R
NC	230505	TRI COUNTY TEL MEMBR	R
NC	230509	FRONTIER COMMUNICATIONS OF THE CAROLINAS, INC.	N
NC	230510	WILKES MEMBERSHIP	R
NC	230511	YADKIN VALLEY TEL	R
NC	230864	VERIZON SOUTH INC. DBA NORTH CAROLINA	N
NC	235193	SOUTHERN BELL-NC	N
NH	120038	BRETTON WOODS TEL CO	R
NH	120039	GRANITE STATE TEL	R
NH	120042	DIXVILLE TEL CO	R
NH	120043	DUNBARTON TEL CO	R
NH	120045	KEARSARGE TEL CO	R
NH	120047	MERRIMACK COUNTY TEL	R
NH	120049	UNION TEL CO	R
NH	120050	WILTON TEL CO - NH	R
NH	123321	MCTA, INC.	R
NH	125113	NORTHERN NEW ENGLAND TELEPHONE OPERATIONS LLC	N
NY	150071	ARMSTRONG TEL CO-NY	R
NY	150072	FRONTIER-AUSABLE VAL	R
NY	150073	BERKSHIRE TEL CORP	R
NY	150076	CASSADAGA TEL CORP	R
NY	150077	CHAMPLAIN TEL CO	R
NY	150078	CHAUTAUQUA & ERIE	R
NY	150079	CHAZY & WESTPORT	R

State	SAC	Study Area Name	Rural (R) or Non-Rural (N)
NY	150081	CITIZENS HAMMOND NY	R
NY	150084	TACONIC TEL CORP	R
NY	150085	CROWN POINT TEL CORP	R
NY	150088	DELHI TEL CO	R
NY	150089	DEPOSIT TEL CO	R
NY	150091	DUNKIRK & FREDONIA	R
NY	150092	EDWARDS TEL CO	R
NY	150093	EMPIRE TEL CORP	R
NY	150095	FISHERS ISLAND TEL	R
NY	150097	GERMANTOWN TEL CO	R
NY	150099	HANCOCK TEL CO	R
NY	150100	FRONTIER COMM OF NY	R
NY	150104	MARGARETVILLE TEL CO	R
NY	150105	MIDDLEBURGH TEL CO	R
NY	150106	WINDSTREAM NY-FULTON	R
NY	150107	NEWPORT TEL CO	R
NY	150108	NICHOLVILLE TEL CO	R
NY	150109	WINDSTREAM-JAMESTOWN	R
NY	150110	OGDEN TEL DBA FRNTER	R
NY	150111	ONEIDA COUNTY RURAL	R
NY	150112	ONTARIO TEL CO, INC.	R
NY	150113	WINDSTREAM RED JACKT	R
NY	150114	ORISKANY FALLS TEL	R
NY	150116	PATTERSONVILLE TEL	R
NY	150118	PORT BYRON TEL CO	R
NY	150121	FRONTIER-ROCHESTER	N
NY	150121	FRONTIER-ROCHESTER	R
NY	150122	FRONTIER-SENECA GORH	R
NY	150125	STATE TEL CO	R
NY	150128	FRONTIER-SYLVAN LAKE	R
NY	150129	TOWNSHIP TEL CO	R
NY	150131	TRUMANSBURG TEL CO.	R
NY	150133	VERNON TEL CO	R
NY	150135	WARWICK VALLEY-NY	R
NY	154532	CITIZENS-FRONTIER-NY	R
NY	154533	CITIZENS-FRONTIER-NY	R
NY	154534	CITIZENS-FRONTIER-NY	R
NY	155130	VERIZON NEW YORK	N
TN	290280	ARDMORE TEL CO	R
TN	290552	CENTURYTEL-ADAMSVILL	R
TN	290553	BEN LOMAND RURAL	R
TN	290554	BLEDSOE TEL COOP	R
TN	290557	CENTURY-CLAIBORNE	R
TN	290559	CONCORD TEL EXCHANGE	R

State	SAC	Study Area Name	Rural (R) or Non- Rural (N)
TN	290561	CROCKETT TEL CO	R
TN	290562	DEKALB TEL COOP	R
TN	290565	HIGHLAND TEL COOP-TN	R
TN	290566	HUMPHREY'S COUNTY	R
TN	290567	UNITED INTER-MT-TN	R
TN	290570	LORETTO TEL CO	R
TN	290571	MILLINGTON TEL CO	R
TN	290573	NORTH CENTRAL COOP	R
TN	290574	CENTURYTEL-OOLTEWAH	R
TN	290575	TENNESSEE TEL CO	R
TN	290576	PEOPLES TEL CO	R
TN	290578	TELLICO TEL CO	R
TN	290579	TWIN LAKES TEL COOP	R
TN	290580	CTZENS-FRNTR-VOL ST	R
TN	290581	UTC OF TN	R
TN	290583	WEST TENNESSEE TEL	R
TN	290584	YORKVILLE TEL COOP	R
TN	290598	WEST KENTUCKY RURAL TELEPHONE	R
TN	294336	CITIZENS-FRONTIER-TN	R
TN	295185	SO. CENTRAL BELL -TN	N
VA	190217	AMELIA TEL CORP	R
VA	190219	BUGGS ISLAND COOP	R
VA	190220	BURKE'S GARDEN TEL	R
VA	190225	CITIZENS TEL COOP	R
VA	190226	NTELOS, INC.	R
VA	190233	VERIZON S-VA(CONTEL)	N
VA	190237	HIGHLAND TEL COOP	R
VA	190238	MGW TEL. CO. INC.	R
VA	190239	NEW HOPE TEL COOP	R
VA	190243	PEMBROKE TEL COOP	R
VA	190244	PEOPLES MUTUAL TEL	R
VA	190248	SCOTT COUNTY COOP	R
VA	190249	ROANOKE & BOTETOURT	R
VA	190250	SHENANDOAH TEL CO	R
VA	190253	VIRGINIA TEL CO	R
VA	190254	CENTEL OF VIRGINIA	R
VA	190479	VERIZON SOUTH-VA	R
VA	190567	UNITED INTER-MT-VA	R
VA	193029	NEW CASTLE TEL. CO.	R
VA	195040	VERIZON VIRGINIA INC	N
VA	197251	SHENANDOAH TELEPHONE COMPANY - NR	R

**Attachment N**

**FLATEL Wireless, Inc.'s Compliance Plan**

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November 14, 2012

**VIA ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street  
Washington, D.C. 20554

Re: FLATEL Wireless, Inc. dba ZING PCS  
Amended Compliance Plan  
WC Docket No. 09-197 & WC Docket No. 11-42

Dear Ms. Dortch:

Pursuant to the Federal Communications Commission Order *In the Matter of Lifeline and Link Up Reform and Modernization* released February 6, 2012, attached please find FLATEL Wireless, Inc. dba ZING PCS' Amended Compliance Plan, which replaces in its entirety the Company's original Compliance Plan filed on October 4, 2012.

If you have any questions or if I may provide you with additional information, please do not hesitate to contact me. Thank you for your assistance.

Respectfully submitted,

/s/ KASEY CHOW

Kasey Chow  
Associate at Lance J.M. Steinhart, P.C.  
Attorneys for FLATEL Wireless, Inc. dba ZING PCS

Attachments  
cc: Adriana Solar

---

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of the	)	
	)	
Telecommunications Carriers Eligible for Universal Service Support	)	WC Docket No. 09-197
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
FLATEL Wireless, Inc. dba ZING PCS Compliance Plan	)	

**FLATEL WIRELESS, INC.'S AMENDED COMPLIANCE PLAN**

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November 14, 2012

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**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of the	)	
	)	
Telecommunications Carriers Eligible for	)	WC Docket No. 09-197
Universal Service Support	)	
	)	WC Docket No. 11-42
Lifeline and Link Up Reform and Modernization	)	
	)	
FLATEL Wireless, Inc. dba Zing PCS	)	
Compliance Plan	)	

**FLATEL WIRELESS, INC.’S AMENDED COMPLIANCE PLAN**

**I. INTRODUCTION**

FLATEL Wireless, Inc. dba ZING PCS (“ZING PCS” or the “Company”) is a prepaid wireless telecommunications carrier seeking designation as an Eligible Telecommunications Carrier (“ETC”) solely for the purpose of participating in the Lifeline program. Although Section 214(e)(1)(A) of the Act requires an ETC to offer USF-supported services to some extent over its own facilities, the Federal Communications Commission (“FCC” or “Commission”) has forborne from that requirement for carriers that are, or seek to become, Lifeline-only ETCs.<sup>1</sup> ZING PCS will avail itself of the FCC’s conditional grant of forbearance and, by its attorney, hereby files its Amended Compliance Plan outlining the measures it will take to implement the conditions of

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<sup>1</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*, WC Docket No. 11-42, WC Docket No. 03-109, CC Docket No. 96-45, WC Docket No. 12-23, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 (rel. Feb. 6, 2012) (“Order”).

forbearance outlined in the *Order*.<sup>2</sup> This Amended Compliance Plan replaces in its entirety the Company's original Compliance Plan filed on October 4, 2012. Given the severe economic environment that is forcing many low-income customers to forego wireless service, ZING PCS respectfully requests expeditious approval of this plan so that the Company, upon designation as an ETC, may quickly deploy much-needed Lifeline services to qualified low-income customers.

## II. BACKGROUND

ZING PCS is a new company, incorporated in the state of Florida on July 7, 2011. Its principal office is located at 2300 Palm Beach Lakes Blvd., Suite 100, West Palm Beach, FL 33409. The Company recently launched its retail wireless services and currently has retail wireless customers in Florida. The Company has approximately 60 customers. The Company is not designated as an ETC in any state.

In the *Order*, the Commission granted forbearance from the "own-facilities" requirement contained in Section 214(e)(1)(A) for carriers that are, or seek to become, Lifeline-only ETCs, subject to the following conditions:<sup>3</sup>

(1) the carrier must comply with certain 911 requirements [(a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order]; and

(2) the carrier must file, and the Bureau must approve, a compliance plan that: (a) outlines the measures the carrier will take to implement the obligations contained in this Order, including but not limited to the procedures the ETC follows in enrolling a subscriber in

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<sup>2</sup> Although the Company qualifies for and seeks to avail itself of the Commission's grant of forbearance from the facilities requirement of section 214(e)(1)(A), the Company reserves the right to demonstrate to a state public utilities commission that it provides service using its own facilities in a state, particularly for purposes of state universal service funding under state program rules and requirements. The Company will follow the requirements of the Commission's Lifeline rules and this Compliance Plan in all states in which it provides Lifeline service and receives reimbursements from the federal Low-Income fund.

<sup>3</sup> See *Order* at ¶¶ 368, 373 and 379.

Lifeline and submitting for reimbursement for that subscriber from the Fund, materials related to initial and ongoing certifications and sample marketing materials, as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary; and (b) provides a detailed description of how the carrier offers service, the geographic areas in which it offers service, and a description of the carrier's various Lifeline service plan offerings, including subscriber rates, number of minutes included and types of plans available.

### **III. ZING PCS WILL COMPLY WITH THE REQUIREMENTS SET FORTH IN THE ORDER**

ZING PCS will comply with all conditions set forth in the *Order*, the provision of this Compliance Plan, and all laws and regulations governing its provision of Lifeline-supported prepaid wireless service to customers throughout the United States.<sup>4</sup>

#### **A. Access to 911 and E911 Services**

In the *Order*, the Commission requires ZING PCS to provide its Lifeline customers with access to 911 and E911 services, regardless of activation status and availability of minutes.<sup>5</sup> The Commission and consumers are hereby assured that all ZING PCS customers will have available access to emergency calling services at the time that Lifeline service is initiated, and that such 911 and E911 access will be available from ZING PCS handsets even if the account associated with the handset has no minutes remaining.

#### **B. E911-Compliant Handsets**

The Commission also conditioned its grant of forbearance determination on ZING PCS providing only E911-compliant handsets to its Lifeline customers.<sup>6</sup> ZING PCS will ensure that all handsets used in connection with the Company's Lifeline service offering are E911-compliant. In the event that an existing ZING PCS customer does not have an E911-compliant handset, the

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<sup>4</sup> To the extent that future changes in federal regulations render the commitments herein invalid, the Company reserves the right to modify its operations in accordance with federal regulations in effect at that time.

<sup>5</sup> See *Order* at ¶ 373.

<sup>6</sup> See *id.*

Company will replace it with a 911/E911-compliant handset at no charge to the customer. Any new customer that qualifies for and enrolls in the Lifeline program is assured of receiving a 911/E911-compliant handset as well.

### **C. Consumer Eligibility and Enrollment**

ZING PCS will certify and verify consumer eligibility for Lifeline in accordance with the requirements set forth in the *Order*. In instances where a state agency or third-party administrator is responsible for the initial determination and annual recertification of consumer eligibility, ZING PCS will rely on the state identification or database.<sup>7</sup> In instances where ZING PCS is responsible for the initial determination and annual recertification of consumer eligibility, the Company will follow the procedures set forth below.

#### **1. One-Per-Household**

ZING PCS understands that Lifeline is limited to a single subscription per household, and that the Commission has defined household as “any individual or group of individuals who are living together at the same address as one economic unit.”<sup>8</sup> Upon receiving an application for Lifeline support, ZING PCS will check the National Lifeline Accountability Database (“NLAD”), once in place, to determine whether an individual at the applicant’s residential address is currently receiving Lifeline-supported service. ZING PCS will also search its own internal database of active customers, real-time, pre-sale, to ensure that it does not already provide Lifeline-supported service to someone at that residential address. If ZING PCS determines that an individual at the applicant’s address is currently receiving Lifeline-supported service, ZING PCS will take an additional step to ensure that the applicant and the current subscriber are part of

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<sup>7</sup> See *Order* at ¶ 98.

<sup>8</sup> See *Order* at ¶ 74.

different households. To enable applicants to make this demonstration, ZING PCS will require applicants to complete and submit to the Company USAC's one-per-household template, which will contain the following: (1) an explanation of the Commission's one-per-household rule; (2) a check box that an applicant can mark to indicate that he or she lives at an address occupied by multiple households; (3) a space for the applicant to certify that he or she shares an address with other adults who do not contribute income to the applicant's household and share in the household's expenses or benefit from the applicant's income; and (4) the penalty for a consumer's failure to make the required one-per-household certification (i.e., de-enrollment).<sup>9</sup> ZING PCS will deny the Lifeline application of any individual residing at the same address as a current Lifeline subscriber who is part of the same household, and will advise the applicant of the basis for the denial.

On its certification forms, a draft sample of which is attached,<sup>10</sup> ZING PCS will obtain a consumer's permanent residential address (which cannot be a P.O. Box or General Delivery address), unless they only have a temporary address, and a billing address for the service, if different (which may include a P.O. Box or General Delivery address).<sup>11</sup> ZING PCS will inquire on its certification forms whether or not the applicant's address is a temporary one.<sup>12</sup> If and when the 90-day verification rules become effective, ZING PCS will notify the consumer that if they have a temporary address, the Company will contact the consumer every 90 days, by phone or text, to verify that he or she continues to rely on that address, and that if the consumer fails to

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<sup>9</sup> See *Order* at ¶ 78.

<sup>10</sup> See Exhibit A. The draft form remains subject to change, but substantially reflects the content of the Company's application.

<sup>11</sup> See *Order* at ¶ 85.

<sup>12</sup> See *Order* at ¶ 89.

respond within 30 days of ZING PCS's attempt to verify the temporary address, he or she will be de-enrolled from the Lifeline program.<sup>13</sup> Also on its certification forms, ZING PCS will explain that if the subscriber moves, they must provide their new address to the Company within 30 days of moving.<sup>14</sup> If the subscriber has moved, ZING PCS will update the NLAD, once in place, with the information within 10 business days of receipt of the information.<sup>15</sup>

As detailed below, ZING PCS's certification form will clearly explain the one-per-household requirement and all consumers must certify that they receive Lifeline support for a single subscription per household.

## **2. Initial and Annual Certification**

Consumers will be signed up in person or directed, via company literature, collateral or advertising, to a toll-free telephone number and to the Company website, which will provide information regarding the Company's Lifeline service plans, including a detailed description of the program and state-specific eligibility criteria. ZING PCS's application form will identify that it is a "Lifeline" application. ZING PCS will provide Lifeline-specific training to all personnel, whether employees, agents or representatives, that interact with actual or prospective consumers with respect to obtaining, changing or terminating Lifeline services.

ZING PCS's initial and annual certification forms will conform to the list of requirements provided in the *Order*, Appendix C and with C.F.R. § 54.410(d), as amended. ZING PCS's Lifeline certification forms, a draft sample of which is attached as Exhibit A, will require each prospective subscriber to provide the following information:

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<sup>13</sup> *See id.* As of the date of filing of this Compliance Plan, this requirement has not been approved pursuant to the Paperwork Reduction Act.

<sup>14</sup> *See Order* at ¶ 85.

<sup>15</sup> *See id.*

- (i) The subscriber's full name;
- (ii) The subscriber's full residential address;
- (iii) Whether the subscriber's residential address is permanent or temporary;
- (iv) The subscriber's billing address, if different from the subscriber's residential address;
- (v) The subscriber's date of birth;
- (vi) The last four digits of the subscriber's social security number, or the subscriber's Tribal identification number, if the subscriber is a member of a Tribal nation and does not have a social security number;
- (vii) If the subscriber is seeking to qualify for Lifeline under the program-based criteria, as set forth in § 54.409, the name of the qualifying assistance program from which the subscriber, his or her dependents, or his or her household receives benefits; and
- (viii) If the subscriber is seeking to qualify for Lifeline under the income-based criterion, as set forth in § 54.409, the number of individuals in his or her household.

The certification forms will also explain in clear, easily understandable language that:

- (i) Lifeline is a federal benefit;
- (ii) Lifeline service is available for only one line per household;
- (iii) a household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses;
- (iv) households are not permitted to receive benefits from multiple providers;
- (v) that violation of the one-per-household requirement would constitute a violation of the Commission's rules and would result in the consumer's de-enrollment from the program, and potentially, prosecution by the United States government; and
- (vi) a Lifeline subscriber may not transfer his or her service to any other individual, including another eligible low-income consumer.

ZING PCS will require all consumers, at sign up and annually thereafter, to certify under penalty of perjury that:

- (i) The subscriber meets the income-based or program-based eligibility criteria for receiving Lifeline, provided in § 54.409;
- (ii) The subscriber will notify the carrier within 30 days if for any reason he or she no longer satisfies the criteria for receiving Lifeline including, as relevant, if the subscriber no longer meets the income-based or program-based criteria for receiving Lifeline support, the subscriber is receiving more than one Lifeline benefit, or another member of the subscriber's household is receiving a Lifeline benefit.
- (iii) If the subscriber is seeking to qualify for Lifeline as an eligible resident of Tribal lands, he or she lives on Tribal lands, as defined in 54.400(e);
- (iv) If the subscriber moves to a new address, he or she will provide that new address to the eligible telecommunications carrier within 30 days;
- (v) If the subscriber provided a temporary residential address, he or she will be required to verify his or her temporary residential address every 90 days;
- (vi) The subscriber's household will receive only one Lifeline service and, to the best of

his or her knowledge, the subscriber's household is not already receiving a Lifeline service;

(vii) The information contained in the subscriber's certification form is true and correct to the best of his or her knowledge,

(viii) The subscriber acknowledges that providing false or fraudulent information to receive Lifeline benefits is punishable by law; and

(ix) The subscriber acknowledges that the subscriber may be required to re-certify his or her continued eligibility for Lifeline at any time, and the subscriber's failure to re-certify as to his or her continued eligibility will result in de-enrollment and the termination of the subscriber's Lifeline benefits pursuant to § 54.405(e)(4).

Applicants will also be required to initial a number of disclosure statements intended to ensure that the applicant understands applicable eligibility requirements. Consumers who do not complete the application process in person must return the signed application and support documentation to the Company by mail, fax, email or other electronic transmission. The Company will accept electronic signatures, including Interactive Voice Response (IVR) recordings, that meet the requirements of the Electronic Signatures in Global and National Commerce Act, 15 USC 7001-7006.<sup>16</sup>

Enrollment in person. The Company will enroll Lifeline applicants in person at community events. These events include healthcare fairs, workforce fairs, and events held at local churches and outreach agencies. When a prospective customer applies at an event, Company employees, agents or representatives ("personnel") will ask to see a government issued ID and will validate the address via a USPS/Melissa Database. The Company will check the National Lifeline Accountability Database, once it is available; until that time, the Company will input the name/address combination into CGM, LLC's aggregate duplicate database (see section III.D below) to confirm that the applicant is not already receiving a Lifeline subsidy from ZING PCS or any other CGM client that has agreed to share their data. If the customer indicates on the application form that their address is a multi-household residence, personnel will require the applicant to complete USAC's one-per-

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<sup>16</sup> See Order at ¶ 168.

household template as well. In cases where an eligibility database exists, personnel will query the database to determine eligibility. In states where eligibility databases are not available, the applicant is required to provide proof of participation in one of the Lifeline eligible programs or proof that their annual household income is at or below 135% of the federal poverty guidelines. ZING PCS's Lifeline application contains an "Office Use Only" section, which must be completely filled out and signed by Company personnel in order to record a description about the specific documentation reviewed as part of the eligibility verification process, including type of documentation (i.e. Food Stamps) and a unique identifier (last 3 digits of document ID). Eligibility documents are returned to the customer after review. Finally, ZING PCS personnel will verbally review all certifications and disclosures with the applicant before they sign the application form, making sure the applicant verbally acknowledges each required certification before moving on to the next. Upon successful completion of the certification process, the customer is allowed to receive their free phone in person. In instances where eligibility databases cannot be accessed in real-time, ZING PCS will mail the phone to eligible customers once verification of eligibility is complete. The customer's account is then activated by calling Customer Service and confirming account information as well as the last 4 digits of the customer's social security number.

ZING PCS may also enroll customers at retail locations via agent network, in which case the protocol for signing up customers closely resembles the process at an event. Company personnel are able to access necessary databases (USPS/Melissa, duplicates database, eligibility databases) to verify eligibility, and, when required, can personally review eligibility based on proof of income or program participation. Company personnel are able to verbally review the required disclosures with applicants and obtain the completed application form in person. Phones are delivered upon successful completion of the certification process, as detailed above, and the customer's account is

activated upon the customer's personal initiation or actual use of the phone.

Enrollment by phone. With respect to those enrolling via the phone, Company personnel are able to verbally explain the Lifeline program and its eligibility requirements, including required information and disclosures, as well as collect and input electronically the application form information and obtain the applicant's signature via IVR. Company personnel will obtain applicant's verbal confirmation of each required certification. If the applicant indicates on the application form that their address is a multi-household residence, personnel will require the applicant to complete USAC's one-per-household template as well. If no eligibility database is available, personnel will advise the applicant that they are required to provide proof of identity verification of benefits before their Lifeline service can be activated; applicants will be made aware of how to submit the required documentation to the Company as well as what documentation qualifies as proof of benefits. The Company will qualify the applicant by accessing necessary databases (USPS/Melissa, duplicates database, eligibility databases). If no eligibility database is available, the application will be placed in a "hold" status until the Company receives copies of the applicant's proof documentation and government-issued ID, at which point Company personnel will review the documentation and complete the "Office Use Only" section of the application form, which must be completely filled out and signed by personnel in order to record a description about the specific documentation reviewed as part of the eligibility verification process, including type of documentation (i.e. Food Stamps) and a unique identifier (last 3 digits of document ID). ZING PCS will destroy copies of proof documentation and deliver phones to eligible customers by mail. The customer's account is activated upon the customer's personal initiation or actual use of the phone.

Enrollment online. When enrolling via the Internet, prospective customers will be able to

fill out an application form online and sign electronically. This will be the primary method of enrollment; however, the Company expects to do more in-person community events when operationally capable. ZING PCS will highlight the certifications that are required, for example, by requiring consumers to acknowledge each certification before moving on to the next field.<sup>17</sup> If the customer indicates that their address is a multi-household residence, online interface will require the applicant to complete USAC's one-per-household template as well. If no eligibility database is available, the online interface will advise the applicant that they are required to provide proof of identity verification of benefits before their Lifeline service can be activated; applicants will be made aware of how to submit the required documentation to the Company as well as what documentation qualifies as proof of benefits. The Company will qualify the applicant by accessing necessary databases (USPS/Melissa, duplicates database, eligibility databases). If no eligibility database is available, the application will be placed in a "hold" status until the Company receives copies of the applicant's proof documentation and government-issued ID, at which point Company personnel will review the documentation and complete the "Office Use Only" section of the application form, which must be completely filled out and signed by personnel in order to record a description about the specific documentation reviewed as part of the eligibility verification process, including type of documentation (i.e. Food Stamps) and a unique identifier (last 3 digits of document ID). ZING PCS will destroy copies of proof documentation and deliver phones to eligible customers by mail. The customer's account is activated upon the customer's personal initiation or actual use of the phone.

ZING PCS will determine eligibility utilizing the income and program criteria currently utilized by federal default states (47 C.F.R. § 54.409(a),(b)), as well as any additional state-specific

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<sup>17</sup> See *Order* at ¶ 123.

criteria. Prior to enrolling a new subscriber, ZING PCS will check the eligibility of low-income consumers first by accessing state or federal social services electronic eligibility databases, where available.<sup>18</sup> If a database is used to establish eligibility, ZING PCS will not require documentation of the consumer's participation in a qualifying federal program; instead, ZING PCS or its representative will note in its records what specific data was relied upon to confirm the consumer's initial eligibility for Lifeline.<sup>19</sup> However, in states where there is no state administrator, the state commission or other state agency is not making eligibility determinations, and there is no automated means for ZING PCS to check electronic databases for eligibility, ZING PCS will review documentation to determine eligibility for new subscribers until such time as a qualifying eligibility database is available.<sup>20</sup> ZING PCS will require acceptable documentation both for income eligibility and for program eligibility. The Company will not retain copies of the documentation but rather will establish policies and procedures to review such documentation and keep accurate records detailing how the consumer demonstrated his or her eligibility.<sup>21</sup> ZING PCS understands that it may permit agents or representatives to review documentation of consumer program eligibility for Lifeline, and in such cases ZING PCS remains liable for ensuring the agent or representative's compliance with the Lifeline program rules.<sup>22</sup>

ZING PCS provides employees, agents, and representatives with training designed to give them an understanding of Lifeline program requirements and permit them to review customer

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<sup>18</sup> See Order at ¶ 97.

<sup>19</sup> See Order at ¶ 98.

<sup>20</sup> See Order at ¶ 99.

<sup>21</sup> See Order at ¶ 101.

<sup>22</sup> See Order at ¶ 110.

documentation and determine whether it is sufficient to establish a customer's eligibility to participate in the Lifeline program under the Commission's rules. No Company employee, agent, or representative may accept a Lifeline application unless he or she has first completed this training program and demonstrated an understanding of the underlying material. Among other things, the Lifeline program training discusses the Company's Lifeline application form (see Exhibit A) on a section-by-section basis. The training explains what sections of the form must be completed by the customer and reviews the form disclosures in detail, to facilitate the ability of employees, agents, or representatives to explain each item contained therein and answer any customer questions.

### **3. Annual Re-Certification**

ZING PCS understands that it must re-certify the eligibility of its entire Lifeline subscriber base annually and report the results to USAC, and the Company may elect to perform this re-certification on a rolling basis throughout the year.<sup>23</sup> ZING PCS will re-certify the continued eligibility of all of its subscribers by contacting them—either in person, in writing, by phone, by text message, by email, or otherwise through the Internet—to confirm their continued eligibility.<sup>24</sup> The re-certification notice will explain the actions the customer must take to retain Lifeline benefits, when Lifeline benefits may be terminated, and how to contact the Company. ZING PCS will obtain a signed certification from the subscriber that meets the certification requirements of 47 C.F.R. § 54.410(d), as amended, as detailed in section C.2 above. The Company will provide written notice of impending service termination to subscribers who do not respond to the annual re-certification within 30 days. ZING PCS understands that such certifications may be obtained through a written format, an IVR system, or a text message, and

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<sup>23</sup> See *Order* at ¶ 130.

<sup>24</sup> See *id.*

will use one or more of such options for its certifications.<sup>25</sup>

Alternatively, where a database containing consumer eligibility data is available, ZING PCS (or state agency or third-party, where applicable) will instead query the database by the end of 2012 and maintain a record of what specific data was used to re-certify eligibility and the date of re-certification. If a subscriber's address cannot be verified through the state data, ZING PCS will contact the subscriber every year during the annual certification process to obtain a valid address.<sup>26</sup> After 2012, ZING PCS will continue to annually certify the continued eligibility of its entire subscriber base, either by accessing a qualifying database, or by electing to have USAC administer the self-certification process on the Company's behalf.<sup>27</sup>

ZING PCS will certify its compliance with Commission rules on an annual Lifeline eligible telecommunications carrier certification form and when submitting FCC Forms 497 to USAC for reimbursement. As part of ZING PCS's submission of re-certification data pursuant to 47 C.F.R. § 54.416, an officer of the Company will certify annually to USAC:

(1) that the Company has procedures in place to review consumers' documentation of income-and program-based eligibility. In instances where the Company confirms consumer eligibility by relying on official program eligibility data, such as a state or federal database, an officer of the Company will attest to what data the Company uses to confirm consumer eligibility in each state, and

(2) that the Company is in compliance with all federal Lifeline certification procedures.<sup>28</sup>

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<sup>25</sup> See Order at ¶ 132.

<sup>26</sup> See Order at ¶ 131.

<sup>27</sup> See Order at ¶ 133.

<sup>28</sup> See Order at ¶ 126-27.

#### **D. Other Reforms to Eliminate Waste, Fraud and Abuse**

ZING PCS shares the Commission's concern about abuse of the Lifeline program and is thus committed to the safeguards stated herein, with the belief that the procedures it will implement will prevent Company customers from engaging in such abuse of the program, inadvertently or intentionally.

ZING PCS has implemented enrollment procedures designed to prevent subsidies for duplicate, ineligible, or inactive subscribers. The Company contracts with a third party Lifeline service bureau, currently CGM, LLC of Roswell, Georgia, to edit all subsidy request data. CGM will process and validate the Company's subsidy data to prevent: (1) Duplicate Same-Month Lifeline Subsidies (Double Dip): any name/address that is already receiving a lifeline subsidy from the Company will be automatically prevented from receiving a second lifeline subsidy in that same month; and (2) Inactive lines receiving subsidy: CGM's systems compare all subsidy requests to underlying network status to ensure that subsidies are requested only for active lines. Through the processes described herein, ZING PCS ensures that it does not over-request from support funds.

As detailed in section III.C.2, ZING PCS first validates each applicant's identity via a government issued ID card, passport, etc. Additionally, as mentioned above, ZING PCS requires the applicant to provide their date of birth (DOB) and last four digits of their social security number (SSN). Requiring DOB and SSN ensures that neither the applicant nor the Company representative can forge certification forms based on false names and addresses. Once the applicant's identity is confirmed, ZING PCS verifies that the applicant is eligible to receive the Lifeline subsidy. To do this, ZING PCS checks any available eligibility database. If one is not available, the applicant is required to provide proof of eligibility. This prevents ineligible applicants from receiving the

subsidy.

ZING PCS validates the applicant's address via a USPS/Melissa Database to ensure the address is correct. The Company will check the NLAD, once it is available; until that time, the Company will dip the name/address combination into CGM's aggregate duplicate database to confirm that the applicant is not already receiving a Lifeline subsidy from ZING PCS or any other CGM client that has agreed to share their data. This is done through an API connection between the Company's provisioning platform and CGM. This prompts the representative to detail the one-per-household rule with the applicant.

#### **1. National Lifeline Accountability Database**

ZING PCS will participate in the National Lifeline Accountability Database, once it is established. As required by the *Order*, ZING PCS will provide to the NLAD subscriber name, address, phone number, the last four digits of Social Security number, date of birth, Lifeline service initiation and de-enrollment date (when applicable), and amount of federal Lifeline support being sought for that subscriber.<sup>29</sup> ZING PCS will provide the information listed above for existing subscribers within 60 days of Commission notice that the NLAD is capable of accepting subscriber information.<sup>30</sup>

Furthermore, on its certification form, ZING PCS will obtain acknowledgement and consent from each of its subscribers that is written in clear, easily understandable language that the subscriber's name, telephone number, and address will be divulged to USAC (the administrator of the program) and/or its agents for the purpose of verifying that the subscriber does not receive more

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<sup>29</sup> See *Order* at ¶ 189.

<sup>30</sup> See *Order* at ¶ 190.

than one Lifeline benefit.<sup>31</sup>

Within 30 days following Commission notice that the NLAD is capable of accepting queries, ZING PCS will query the NLAD to check to see if a prospective subscriber is already receiving service from another ETC at a residential address prior to seeking reimbursement from the Fund.<sup>32</sup>

## **2. Subscriber Usage**

ZING PCS will not seek reimbursement from the USF for new subscribers until they have personally activated the service, either by initiation and/or actual use of the service by the subscriber. Furthermore, ZING PCS will not seek reimbursement from the USF for inactive subscribers who have not used the service for a consecutive 60-day period.<sup>33</sup> ZING PCS will notify its subscribers at service initiation, via the certification form and via script that is reviewed with every customer, about the non-transferability of the phone service, its usage requirements, and the de-enrollment and deactivation that will result following non-usage in any 60-day period of time.<sup>34</sup> An account will be considered active if during any 60-day period the authorized subscriber does at least one of the following: makes a monthly payment; purchases minutes from the Company to add to an existing pre-paid Lifeline account; completes an outbound call; answers an incoming call from anyone other than the Company, its representative, or agent; or affirmatively responds to a direct contact from the Company confirming that he or she wants to continue.<sup>35</sup> ZING PCS utilizes tracking software to notify the customer if the customer has not

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<sup>31</sup> See Order, Appendix C.

<sup>32</sup> See Order at ¶ 203.

<sup>33</sup> See Order at ¶ 257.

<sup>34</sup> See *id.*

<sup>35</sup> See Order at ¶ 261.

used their service for more than 30 or 60 consecutive days. Furthermore, a third party contractor validates the Company's subsidy data to prevent a subsidy request for customers that are inactive under the Company's non-usage policy.<sup>36</sup> After notification, if the customer fails to use the phone, it is automatically de-enrolled pursuant to the procedures outlined in section E below. ZING PCS will continue to comply with applicable public safety, including transmitting 911 calls to the appropriate PSAP even if the Company is no longer providing Lifeline service to a consumer.<sup>37</sup>

### **3. Marketing & Outreach**

ZING PCS will implement the measures outlined herein to help ensure that only eligible consumers enroll in the program and that those consumers are fully informed of the limitations of the program, so as to prevent duplicative or otherwise ineligible service as well as other forms of waste, fraud, and abuse. ZING PCS will explain in clear, easily understood language the following disclosures in all marketing materials related to the supported service:<sup>38</sup> (1) the offering is a Lifeline-supported service; (2) only eligible consumers may enroll in the program; (3) the program is limited to one benefit per household, consisting of either wireline or wireless service; and (4) Lifeline is a government benefit program. ZING PCS's website and printed collateral will explain the documentation necessary for enrollment, and the details of ZING PCS's plans. Such collateral and website information, as well as its application, will make clear that consumers who willfully make false statements in order to obtain the benefit can be

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<sup>36</sup> CGM, LLC is currently the Company's third party contractor.

<sup>37</sup> See *Order* at ¶ 262. 911 transmission will actually be performed by the Company's underlying facilities-based CMRS provider.

<sup>38</sup> See Exhibit B for a sample advertisement. The Company understands the term "marketing materials" includes materials in all media, including but not limited to print, audio, video, Internet (including email, web, and social networking media), and outdoor signage, that describe the Lifeline-supported service offering, including application and certification forms. See *Order* at ¶ 275.

punished by fine or imprisonment or can be barred from the program.<sup>39</sup> For broadcast advertisements and outdoor signs, and any other situation in which inclusion of documentation information and warnings against willful false statements are not practicable, ZING PCS will include the URL link for its website where disclosures will be listed. Additionally, ZING PCS will disclose the company name under which it does business.<sup>40</sup>

#### **4. Audits**

The *Order* requires ETCs that draw \$5 million or more in the aggregate on an annual basis from the low-income program, as determined on a holding company basis taking into account all operating companies and affiliates, to hire an independent licensed certified public accounting firm to conduct a biennial audit according to government accounting standards to assess the ETC's overall compliance with the program's requirements.<sup>41</sup> ZING PCS will comply with this requirement if and when it is approved, including applicable rules regarding the dissemination of audit findings to the Commission, USAC, and relevant state and Tribal governments within 30 days upon issuance.<sup>42</sup>

#### **E. De-Enrollment**

If at any time a ZING PCS Lifeline customer wishes to de-enroll from the Company's Lifeline program, Company customer service representatives will handle such elective de-enrollment requests. ZING PCS Lifeline customers simply call the Company, via 611 or the toll-free customer service number, and they can speak to a live operator to de-enroll from ZING

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<sup>39</sup> See *Order* at ¶ 275.

<sup>40</sup> See *id.*

<sup>41</sup> See *Order* at ¶ 291.

<sup>42</sup> See *Order* at ¶ 294. As of the date of filing of this Compliance Plan, the audit requirement has not been approved pursuant to the Paperwork Reduction Act.

PCS's Lifeline program. ZING PCS will de-enroll consumers from the Company's Lifeline program in the following instances, according to C.F.R. § 54.405(e):

Ineligibility. Any subscriber who indicates that he or she is receiving more than one Lifeline-supported service per household, or neglects to make the required one-per-household certification on his or her certification form, will be de-enrolled from Lifeline pursuant to the process for resolving duplicative Lifeline subscriptions described in section 54.405(e)(2).<sup>43</sup>

If a customer does not respond to the Company's annual verification survey within 30 days, or if ZING PCS has reasonable basis to believe that the subscriber no longer meets the Lifeline-qualifying criteria (including instances where a subscriber informs the Company or the state that he or she is ineligible for Lifeline), ZING PCS will provide a written notice of impending service termination to the subscriber and then give the subscriber 30 days after the date of the letter to demonstrate that his or her Lifeline service should not be terminated.<sup>44</sup> Similarly, ZING PCS will de-enroll a subscriber if they fail to respond to the Company's attempt to verify a temporary address within 30 days.<sup>45</sup>

Duplicative Support. Subject to USAC's Duplicate Resolution Process and anticipated Duplicate Scrubbing Process,<sup>46</sup> ZING PCS will de-enroll a subscriber within 5 business days if the Company is informed by USAC that the subscriber is receiving Lifeline service from another ETC or that more than one member of a subscriber's household is receiving Lifeline service.

Non-Usage. ZING PCS will de-enroll any subscriber that has not used the Company's

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<sup>43</sup> See Order at ¶ 122.

<sup>44</sup> See *id.* In states that have dispute resolution procedures applicable to Lifeline termination, the Company will comply with the state requirements.

<sup>45</sup> See Order at ¶ 89.

<sup>46</sup> See Order at ¶ 214-16.

Lifeline service for 60 consecutive days, as discussed in section IV.B above. ZING PCS will provide the subscriber 30 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 30-day notice period will result in service termination for non-usage; such notice may be initiated after 30-days of non-usage. ZING PCS will update the national database, once in place, within one business day of de-enrolling a subscriber for non-use and will submit a non-usage de-enrollment report annually to USAC.<sup>47</sup>

## **F. Additional Rule Amendments**

### **1. Terms and Conditions of Service**

ZING PCS has attached as Exhibit C its terms and conditions of service for both retail and Lifeline wireless service. The Company's Lifeline offering is summarized in section IV.C below. The Company's terms and conditions are subject to change as needed, and the most current version may be found at [www.zingpcs.com](http://www.zingpcs.com).

### **2. Reporting Requirements**

ZING PCS will report all information required by section 54.422, including as it may heretofore be amended. This includes the names of the Company's holding company, operating companies and affiliates, and any branding ("doing-business-as company" or brand designation), and provide to the Commission and USAC general information regarding the terms and conditions of the Lifeline plans for voice telephony service offered specifically for low income consumers through the program offered during the previous year, including the number of minutes provided, and whether there are additional charges to the consumer for service,

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<sup>47</sup> See Order at ¶ 257.

including minutes of use and/or toll calls.<sup>48</sup>

### **3. Reimbursement from USAC**

In seeking reimbursement for Lifeline, ZING PCS will comply with the requirements of C.F.R § 54.407, as revised by the *Order*.<sup>49</sup> ZING PCS will certify when seeking reimbursement that the Company has obtained a valid certification form for each consumer for whom the Company seeks Lifeline reimbursement,<sup>50</sup> and the Company will seek reimbursement for actual lines served, not projected lines.<sup>51</sup>

### **4. Section 54.202 Certifications**

ZING PCS certifies the following in accordance with newly amended C.F.R. § 54.202: (1) ZING PCS will comply with the service requirements applicable to the support that it receives; (2) ZING PCS is able to remain functional in emergency situations; (3) ZING PCS will satisfy applicable consumer protection and service quality standards.

## **IV. COMPANY INFORMATION**

ZING PCS is a Florida corporation incorporated on July 7, 2011 with its principal office located at 2300 Palm Beach Lakes Blvd, Suite 100, West Palm Beach, FL 33409. ZING PCS will provide prepaid wireless telecommunications services to consumers by using the network of its underlying carrier(s), currently Sprint Spectrum L.P. (“Sprint”). Sprint is a nationwide carrier that provides wholesale capacity on its wireless network to resellers like ZING PCS. ZING PCS will obtain from Sprint the network infrastructure and transmission facilities to allow ZING PCS to

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<sup>48</sup> See *Order* at ¶ 296, 390. Section 153 of the Communications Act defines “affiliate” as “a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person.”

<sup>49</sup> See *Order* page 221.

<sup>50</sup> See *Order* at ¶ 128.

<sup>51</sup> See *Order* at ¶ 302.

operate as a Mobile Virtual Network Operator (“MVNO”). The Company has a direct MVNO contract with Sprint and purchases minutes directly from Sprint. The Company also contracts with BeQuick for account management, billing and provisioning purposes.

ZING PCS currently provides retail wireless service in Florida. The Company has approximately 40 customers. At this time, ZING PCS intends to seek wireless ETC designations in the federal default jurisdictions: the states of Alabama, Connecticut, Delaware, Florida, New Hampshire, New York, North Carolina, Tennessee, and Virginia, and the District of Columbia.<sup>52</sup>

**A. Names and Identifiers**

The Company’s legal name is FLATEL Wireless, Inc. dba ZING PCS. The Company identifies itself as FLATEL Wireless or ZING PCS. The Company will use its dba on its marketing and advertising materials.

ZING PCS’ affiliate Flatel, Inc. (“Flatel”) was incorporated in October 1997. Flatel is certified and provides retail wireline service in Florida, Kentucky, North Carolina, Oregon, South Carolina, and Washington. Flatel has wireline ETC designation and provides Lifeline wireline service in Florida. Flatel provides monthly home phone services and continues to activate new landline accounts in its current operating states. Flatel has approximately 800 total customers, consisting of 100 retail customers and 700 Lifeline customers.

**B. Financial and Technical Capability**

ZING PCS is financially and technically capable of providing Lifeline-supported services.<sup>53</sup> The Company will not rely exclusively on USF disbursements to operate. ZING PCS will offer its wireless service to both Lifeline and non-Lifeline customers as sources of revenue. The Company

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<sup>52</sup> The Company reserves the right to modify its intended list of jurisdictions in which it will seek wireless ETC designations.

<sup>53</sup> See Order at ¶ 387.

has already begun retail wireless service in Florida. The Company's retail store front in Florida generates walk-in customer revenue from those customers who purchase cell phones, cell phone accessories, along with ZING PCS retail wireless service. The Company will use its own and incorporate its affiliate's successful business models to sustain and grow its business, utilizing its affiliate's financial capability if needed. ZING PCS has not been subject to enforcement action or ETC revocation proceedings in any state. Furthermore, the senior management of ZING PCS has great depth in the telecommunications industry with over 40 years of combined experience and offers extensive telecommunications business technical and managerial expertise to the Company.<sup>54</sup> ZING PCS will be providing resold wireless service, and therefore will also rely upon the managerial and technical expertise of its underlying carrier.

### **C. Lifeline Offering**

ZING PCS will offer its Lifeline service in the states where it is designated as an ETC and throughout the coverage area of its underlying carrier, currently Sprint.<sup>55</sup> As summarized in Exhibit E attached hereto, the Company's initial Lifeline offering will provide customers with its Lifeline Plan of 250 minutes.<sup>56</sup> Under this plan, eligible Lifeline customer will receive a free phone and enjoy 250 free anytime minutes. These minutes do not rollover and text messaging is at the rate of one minute (1 incoming or outgoing text = 1 minute of voice).

Customers have the capability of purchasing additional minutes in increments of 50 minutes,

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<sup>54</sup> See Exhibit D for key management resumes.

<sup>55</sup> The Company reserves the right to alter the proposed Lifeline rate plans on a state-by-state basis, particularly as required by state public utility commissions (PUC). The Company commits to pass through the entire Lifeline subsidy amount directly to the consumer.

<sup>56</sup> The Company may alter its Lifeline offering as necessary on a state-by-state basis, particularly as required by state public utility commissions.

with each additional minute costing \$0.20 per minute.<sup>57</sup> Additional airtime can be purchased by calling or emailing Customer Service, at no decrement in minutes. In addition to free voice services, ZING PCS' Lifeline Plan will include the following custom calling features: Caller ID, Call Waiting, and Voicemail. Customers are not bound by a local calling area requirement; the Company's Lifeline Plan comes with domestic long distance at no extra per minute charge and exceptional nationwide digital coverage on the Nationwide Sprint Network. Calls to 911 emergency services are always free, regardless of service activation or availability of minutes. Calls to Customer Service are also free. ZING PCS does not impose burdensome credit checks or long-term service contracts on its customers. Full terms and conditions of the Company's Lifeline program are attached as Exhibit C and can also be found at [www.zingpcs.com](http://www.zingpcs.com).

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<sup>57</sup> 50 minutes = \$10.00

V. **CONCLUSION**

ZING PCS submits that its Compliance Plan, as amended, fully satisfies the conditions of forbearance set forth in the Commission's *Order*. Implementation of the procedures described herein will promote public safety and should ensure that Lifeline customers have access to 911 and E911 services while safeguarding against misuse of the Company's Lifeline services. Accordingly, ZING PCS respectfully requests that the Commission expeditiously approve its Amended Compliance Plan so that the Company may begin providing the benefits of much-needed Lifeline service to qualifying low-income consumers as quickly as possible.

Respectfully submitted,

**FLATEL Wireless, Inc. dba ZING PCS**

/s/ Lance J.M. Steinhart

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*Its Counsel*

Dated November 14, 2012

**Exhibit A**

Sample Lifeline Certification Form

# Application for FREE Cell Phone Service

**FREE  
CELL PHONE SERVICE**  
Lifeline Assistance Program

**SERVICIO DE TELEFONO CELULAR  
GRATIS**  
Asistencias Telefonica Y la línea vital

**Cell Phone Sèvis  
GRATIS**  
Lifeline Assistance



Call Toll Free 1-85-LIFELINE or 1-888-777-6561  
[www.ZingPCS.com](http://www.ZingPCS.com)  
Fax 1-877-593-9723 or email [Lifeline@zingpcs.com](mailto:Lifeline@zingpcs.com)



## Lifeline Service Application and Certification

Return With Proof

A complete and signed Lifeline Service Application and Certification ("Certification") is required to enroll you in Zing PCS Wireless Services' (the "Company") Lifeline service program in your state. Service requests will not be processed until this Form has been received and verified by Zing PCS.

**One Lifeline service per household disclosures:** Lifeline is a government assistance program and willfully making false statements to obtain a Lifeline benefit can result in fines, imprisonment, de-enrollment or being barred from the program. Lifeline benefits are limited to a single line of service per household. A household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses. A household may not receive multiple Lifeline discounts. You may apply your Lifeline discount to either one landline or one wireless number, but you cannot have the discount on both and you cannot receive Lifeline benefits from multiple providers. Note that not all Lifeline services are currently marketed under the name Lifeline. Lifeline is a non-transferable benefit and you may not transfer your benefit to any other person, including another eligible low-income consumer. Violation of the one-per-household limitation constitutes a violation of the Federal Communications Commission's rules and will result in your de-enrollment from the program, and potentially prosecution by the United States Government.

By checking this box, I hereby certify that I have read and understood the disclosures listed above and that, to the best of my knowledge, my household is not already receiving a Lifeline service benefit.

## Customer Application Information:

First Name \_\_\_\_\_

Last Name \_\_\_\_\_

Date of Birth (MM/DD/YY) \_\_\_\_\_

Residential Address w/ street name & Apt Number (PO Box cannot be accepted) \_\_\_\_\_

City / State / Zip Code \_\_\_\_\_

Billing Address (if different from Residential Address) (P.O. Box is sufficient) \_\_\_\_\_

City / State / Zip Code \_\_\_\_\_

Residential Address is Permanent     Residential Address is Temporary    (Must Choose One)

Social Security Number or Tribal Number \_\_\_\_\_

Home Telephone / Contact Number \_\_\_\_\_

Email Address \_\_\_\_\_

## ELIGIBILITY REQUIREMENTS:

Number of persons in Household \_\_\_\_\_

Do you or any member of your household currently receive Lifeline assistance at the above address?     No     Yes

I hereby certify that I currently participate in at least one the following public assistance programs (Check One):

- |   |   |
|---|---|
| <input type="checkbox"/> Supplemental Nutrition Assistance Program (SNAP)   | <input type="checkbox"/> Income at or below 135% of Federal Poverty Guideline     |
| <input type="checkbox"/> Federal Public Housing Assistance Section 8 (FPHA) | <input type="checkbox"/> Bureau of Indian Affairs (BIA) General Assistance        |
| <input type="checkbox"/> Medicaid (not Medicare)                            | <input type="checkbox"/> Tribally Administered TANF (TATNF)                       |
| <input type="checkbox"/> Supplemental Security Income (SSI)                 | <input type="checkbox"/> Food Distribution Program on Indian Reservations (FDPIR) |
| <input type="checkbox"/> Temporary Assistance for Needy Families (TANF)     | <input type="checkbox"/> Head Start (income-eligible only) (Tribal)               |
| <input type="checkbox"/> Low Income Home Energy Assistance Program (LIHEAP) | <input type="checkbox"/> National School Lunch Program's free lunch programs      |

If the beneficiary of the above program is different from the applicant, please state the name of person receiving the benefit:

I hereby certify that the recipient of the above government program lives in my household and does not receive Lifeline benefits from any other carrier.

## Tribal eligibility: (For Tribal Residents Only)

I hereby certify that I reside on Federally-recognized Tribal lands.

## Multiple households sharing an address: (If applicable)

I hereby certify that I reside at an address occupied by multiple households, including adults who do not contribute income to my household and/or share in my household's expenses, and I will complete a separate additional form.

**Authorizations:**

I hereby authorize the Zing PCS to access any records required to verify my statements on this form and to confirm my eligibility for the Lifeline program. I also authorize Zing PCS to release any records required for the administration of the Lifeline program (e.g., name, telephone number and address), including to the Universal Service Administrative Company, to be used in a Lifeline eligibility database and to ensure the proper administration of the Lifeline Program. Failure to consent will result in denial of service.

**I hereby certify, under penalty of perjury, that:**

- I meet the income-based or program-based eligibility criteria for receiving Lifeline service and have provided documentation of eligibility if required
- I will notify Zing PCS within 30 days if for any reason I no longer satisfy the criteria for receiving Lifeline including, as relevant, if I no longer meet the income-based or program-based eligibility criteria, I begin receiving more than one Lifeline benefit, or another member of my household is receiving a Lifeline benefit. I understand that I may be subject to penalties if I fail to follow this requirement
- I am not listed as a dependent on another person's tax return (unless over the age of 60)
- The address listed below is my primary residence, not a second home or business
- If I move to a new address, I will provide that new address to Zing PCS within 30 days
- If I provided a temporary residential address to the Zing PCS, I will verify my temporary residential address every 90 days
- I acknowledge that providing false or fraudulent information to receive Lifeline benefits is punishable by law
- I acknowledge that I may be required to re-certify my continued eligibility for Lifeline at any time, and my failure to re-certify as to my continued eligibility within 30 days will result in de-enrollment and the termination of my Lifeline benefits
- The information contained in this certification form is true and correct to the best of my knowledge

Applicants Signature \_\_\_\_\_

Date \_\_\_\_\_

**For Agent Use Only (check the appropriate boxes for the proof of eligibility viewed; do not copy or retain documentation):**

**Documents Acceptable Proof for Income-Eligibility:**

- The prior year's state, federal, or Tribal tax return,
- Current income statement from an employer or paycheck stub,
- A Social Security statement of benefits,
- A Veterans Administration statement of benefits,
- A retirement/pension statement of benefits,
- An Unemployment/Workmen's Compensation statement of benefits,
- Federal or Tribal notice letter of participation in General Assistance, or
- A divorce decree, child support award, or other official document containing income information for at least three months' time.

Applicant Account Number \_\_\_\_\_

Rep/Agent Signature \_\_\_\_\_

Expiration Date of Proof Documents: \_\_\_\_\_

**Documents Acceptable Proof for Program-Eligibility**

(choose 1 from each list A and B below):

**List A - Choose 1**

- Supplemental Nutrition Assistance Program (SNAP)
- Medicaid
- Section 8 Federal Public Housing Assistance (FPHA)
- Supplemental Security Income (SSI)
- Temporary Assistance for Needy Families (TANF)
- Low Income Home Energy Assistance Program (LIHEAP)
- National School Lunch Program's free lunch program
- Bureau of Indian Affairs General Assistance (BIA)
- Food Distribution Program on Indian Reservations (FDPIR)
- Tribally Administered TANF (TATNF)
- Head Start (meet income qualifying standards) (Tribal)

**List B - Choose 1:**

- Program participation card/document Last 4 Digits \_\_\_\_\_
- Prior year's statement of benefits Last 4 Digits \_\_\_\_\_
- Notice letter of participation Last 4 Digits \_\_\_\_\_
- Other official document evidencing participation: \_\_\_\_\_

Type: \_\_\_\_\_ Last 4 Digits \_\_\_\_\_

**Exhibit B**

Sample Advertisements

# **FREE** **Government Assisted** **Phone Service**



**LIFELINE**

**ASSISTANCE PROGRAM**

Zing PCS Wireless LIFELINE ASSISTANCE PROGRAMS help make  
telephone service affordable to those in need of assistance  
YOU MUST SIGN UP TO BENEFIT



Eligibility Requires ONE of the following benefits

\*Food Stamps / SNAP \*Medicaid \*Kids Eat Free School Lunch \*NSLP

\*LIHEAP \*Public Housing Assistance / Section 8 \*TCA/TANF \*SSI

\*Your household income is at or below 135% of the federal poverty guidelines



**Sign up TODAY!**

Please contact us at [Lifeline@ZingPCS.com](mailto:Lifeline@ZingPCS.com) or  
1-85-LIFELINE (1-855-433-5463) to schedule a  
Lifeline presentation at your facility

Only eligible consumers may enroll in the program

The program is limited to one benefit per household, consisting of either wireline or wireless service

Lifeline is a government benefit program

Consumers who willfully make false statements in order to obtain the benefit can be punished by fine or imprisonment or  
can be barred from the program

## **Exhibit C**

### Terms and Conditions

# **FLATEL Wireless, Inc. dba ZING PCS TERMS AND CONDITIONS OF SERVICE**

## **Basic Definitions**

In this document: (1) “we,” “us,” “our,” and “ZING PCS” mean FLATEL Wireless, Inc; (2) “you,” “your,” “customer,” and “user” mean an account holder or user with us; (3) “Device” means any phone, aircard, mobile broadband device, any other device, accessory, or other product that we provide you, we sell to you, or is active on your account with us; and (4) “Service” means our offers, rate or service plans, options, wireless services, billing services, applications, programs, products, or Devices on your account with us. “Service(s)” also includes any other product or service that we offer or provide to you that references these General Terms and Conditions of Service (“Ts&Cs”).

## **The Service Agreement**

These Ts&Cs are part of your service agreement with us (the “Agreement”) and constitute a contract under which we provide you Services under terms and conditions that you accept. THIS CONTRACT CONTAINS A MANDATORY ARBITRATION PROVISION THAT DISALLOWS CLASS ACTIONS, A CLASS ACTION WAIVER PROVISION, AND A JURY WAIVER PROVISION. In addition to these Ts&Cs, there are several parts of the Agreement, which includes but is not limited to the following: (i) the subscriber agreement or transaction materials that you sign or accept; (ii) the plan(s) that you chose as set forth in our written services and transaction materials that we provide or refer you to during the sales transaction (if your service plan is not specifically set forth in any printed materials, the requirements and terms set forth in the current written services and transaction materials apply, excluding the plan charges and number of minutes included in your service plan); (iii) any confirmation materials that we may provide to you; and (iv) the terms set forth in the coverage map brochures. It is important that you carefully read all of the terms of the Agreement.

## **Additional Terms**

Additional terms will apply when you use certain applications, programs, Devices, and services, and these terms will be provided to you prior to your use of the items. Depending on who provides the items, the terms may come from ZING PCS or a third party. You are subject to any terms provided by the third party, and the terms are directly between you and that third party. ZING PCS is not responsible for these third-party items and associated terms.

## **Our Policies**

Services are subject to our business policies, practices, and procedures (“Policies”). You agree to adhere to all of our Policies when you use our Services. Our Policies are subject to change at any time with or without notice.

## **When You Accept The Agreement**

You must have the legal capacity to accept the Agreement. You accept the Agreement when you do any of the following: (a) accept the Agreement through any printed, oral, or electronic statement, for example, on the Web by electronically marking that you have reviewed and accepted; (b) attempt to or in any way use the Services; (c) pay for the Services; or (d) open any

package or start any program that says you are accepting the Agreement when doing so. If you don't want to accept the Agreement, don't do any of these things.

### **Service Activation**

To activate the Service, you must both activate your account and establish an appropriate account balance to pay for pay-per-use charges and applicable subscription charges (defined in the "Types of Charges" section) based on the service plan you select. To establish an account balance, pay a subscription charge, or make any other appropriate payments, follow the instructions provided with the equipment; at [www.zingpcs.com](http://www.zingpcs.com); or through ZING PCS Customer Care.

### **Our Right To Change The Agreement & Your Related Rights**

We may change any part of the Agreement at any time, including, but not limited to, rates, charges, how we calculate charges, discounts, coverage, technologies used to provide services, or your terms of Service. We will provide you notice of material changes—and we may provide you notice of non-material changes—in a manner consistent with this Agreement (see "Providing Notice To Each Other Under The Agreement" section). If you continue to access or use our Services or increase your account balance on or after the effective date of a change, you accept the change. Do not access or use our Services after the effective date of a change if you decide to reject the change and terminate Service. You will not be entitled to any credit for the unused portion of your account balance if you decide to terminate Service in response to a change to the Agreement.

### **Our Right To Suspend Or Terminate Services**

ZING PCS is not required to provide you with any notification before suspending, restricting, or terminating your Service. If you promptly pay amounts that are overdue or cure any other breach of this Agreement, ZING PCS, in its sole discretion, may reconnect your Service after you have paid any reconnection fees we have imposed. In addition, you may terminate Service at any time by notifying us in writing at the address listed below in the "Notices" section. We may terminate or suspend your Service at any time and for any reason without liability. If you breach any portion of this Agreement (including failing to pay your Service Charges in full on time), we may suspend, terminate or restrict your Service. We can, without notice, restrict, suspend or end your Service or any agreement with you at any time for any reason, including, but not limited to:

- (a) failure to have or maintain an appropriate account balance for applicable charges;
- (b) using/suspicion of using Services in any manner restricted by or inconsistent with the Agreement and Policies;
- (c) breaching, failing to follow, or abusing the Agreement or Policies;
- (d) modifying a Device from its manufacturer specifications (for example, rooting the device); or
- (e) if we believe the action protects our interests, any customer's interests, or our networks. (f)

use your Service for any purpose or in any way not permitted under this Agreement or for any illegal purpose, including use that violates trade and economic sanctions and prohibitions promulgated by any U.S. governmental agency or engaging in conduct that adversely affects our customers, employees, business, or any other person(s), or that interferes with our operations, network, reputation, or ability to provide quality service; (g) "spamming" or engaging in other abusive or unsolicited communications; (h) steal from or lie to us; (i) interfere with our operations; (j) provide false, inaccurate, dated or unverifiable identification or credit information; (k) use your Service or wireless device in a manner that is excessive, unusually burdensome, or

unprofitable to us exceeding the industry average, (l) use your service other than predominantly on our networks; (m) use your web and data Service Plan other than predominantly for HTML/WAP browsing and multimedia streaming services provided by ZING PCS, its affiliates, authorized suppliers and licensees; or (n) assist or facilitate anyone else in any of the above activities. You agree that you won't install, deploy, or use any regeneration equipment or similar mechanism (for example, a repeater) to originate, amplify, enhance, retransmit or regenerate a transmitted RF signal; or (o) threaten, harass, abuse, offend or use vulgar and/or inappropriate language toward our representatives or any person whom they call using our Service; (p) use your Service in a way that negatively affects our network or other customers. We can also temporarily limit your Service for any operational or governmental reason; or if we have reason to believe that you are using our Service for any fraudulent, obscene, illegal, harassing, commercial or abusive purpose, such as for the transmission of or access to pornography or other services or materials that are obscene, cater to a prurient interest in sex, are patently offensive or are without redeeming social value, or if we believe the action protects our interests, any customer's interests or our network.

### **Your Right To Change Services & When Changes Are Effective**

The account holder can typically change Services upon request. In some instances, changes may be conditioned on payment of certain charges. The effective date of any changes will depend on our Policies, the old Services, and the requested Services. We will not credit or refund any subscription or other charges as a result of a change in Services. We may—but are not obligated to—provide you the opportunity to authorize someone else to make changes to your Services. You are responsible for any changes to your Services made by a person you authorize, and those changes will be treated as modifications to this Agreement.

### **Restrictions On Using Services**

You can't use our Services: (a) in a way that could cause damage or adversely affect any of our other customers or our reputation, networks, property, or Services; or (b) in any way prohibited by the terms of our Services, the Agreement, or our Policies. You cannot in any manner resell the Services to another party. For additional restrictions on the use of our Services, see our Acceptable Use Policy and Visitors Agreement, which are available on our website, and the detailed plan or other information on Services that we provide or refer you to during the sales transaction.

### **Your Device, Number, & Email Address; Caller ID**

We don't manufacture any Device that we might sell to you or that is associated with our Services, and we aren't responsible for any defects, acts, or omissions of the manufacturer. The only warranties on your Device are the limited warranties given to you by the manufacturer directly or that we pass through. Device performance may vary based on device specifications (for example, a device's software, memory, and storage), and device performance may impact access to all of our Services. This Device is sold exclusively for use with our Service and in other coverage areas that we may make available to you. As programmed, it will not accept wireless service from another carrier. Except for any legal right you may have to port/transfer your phone number to another carrier, you have no—and cannot gain any (for example, through publication, use, etc.)—proprietary, ownership, or other rights to any phone number,

identification number, email address, or other identifier that we assign to you, your Device, or your account. We'll notify you if we decide to change or reassign them.

### **Porting/Transferring Phone Numbers**

We don't guarantee that number transfers to or from us will be successful. If you authorize another carrier to transfer a number away from us, then that is considered a request by you to us to terminate all of the Services associated with that number.

### **Coverage; Where Your Device Will Work; Service Speeds**

Our coverage maps are available at our authorized retail locations or [www.zingpcs.com](http://www.zingpcs.com). The specific network coverage you get will depend on the radio transmissions your Device can pick up and Services you've chosen. Our coverage maps provide high level estimates of our coverage areas when using Services outdoors under optimal conditions. Coverage isn't available everywhere. Coverage and Service speeds are not guaranteed. Coverage is subject to change without notice. Service speeds may depend on the Service purchased. Actual speeds will vary. Estimating wireless coverage, signal strength, and Service speed is not an exact science. There are gaps in coverage within our estimated coverage areas that—along with other factors both within and beyond our control (for example, network problems, network or Internet congestion, software, signal strength, your Device, structures, buildings, weather, geography, topography, server speeds of the websites you access, actions of third parties, etc.)—may result in dropped and blocked connections, slower Service speeds, or otherwise impact the quality of Service. Services that rely on location information, such as E911 and GPS navigation, depend on your Device's ability to acquire satellite signals (typically not available indoors) and network coverage. While your Device is receiving a software update, you may be unable to use your Device in any manner until the software update is complete.

### **Roaming**

The term "roaming" typically refers to coverage on another carrier's network that we may make available to you based on our agreements with other carriers. These agreements may change from time to time, and roaming coverage is subject to change without notice. Your ability to receive roaming coverage depends on the radio transmissions your Device can pick up and the availability of roaming coverage. We make no guarantee that roaming coverage will be available. Roaming coverage may exist both within and outside our network coverage areas. Your Device will generally indicate when you're roaming. Depending on your Services, separate charges or limits on the amount of minutes used while roaming may apply. Certain Services may not be available or work the same when roaming (for example, data Services, voicemail, call waiting, etc.).

### **About Data Services & Content**

Our data Services and your Device may allow you to access the Internet, text, pictures, video, games, graphics, music, email, applications, sound, and other materials ("Data Content") or send Data Content elsewhere. Some Data Content is available from us or our vendors, while other Data Content can be accessed from others (for example, third party websites, games, ringers, applications, etc.). We make absolutely no guarantees about the Data Content that you access on your Device. Data Content may be: (1) unsuitable for children/minors; (2) unreliable or inaccurate; or (3) offensive, indecent, or objectionable. ZING PCS does not guarantee delivery of

messages and reserves the right to change this offer as needed without notification. You're solely responsible for evaluating the Data Content accessed by you or anyone through your Services. We strongly recommend that you monitor data usage by children/minors. Data Content from third parties may also harm your Device or its software. We are not responsible for any Data Content. We are not responsible for any damage caused by any Data Content that you access through your Services, that you load on your Device, or that you request that our representatives access or load on your Device. To protect our networks and Services or for other reasons, we may place restrictions on accessing certain Data Content (such as certain websites, applications, etc.); impose separate charges; limit throughput or the amount of data that you can transfer; or otherwise limit or terminate Services. If we provide you storage for Data Content that you have purchased, then we may delete the Data Content without notice or place restrictions/limits on the use of storage areas. Data Content stored on a Device, transmitted over our networks, or stored by ZING PCS may be deleted, modified, or damaged. You may not be able to make or receive voice calls while using data Services. Data Content provided by our vendors or third parties is subject to cancellation or termination at any time without notice to you, and you may not receive a refund for any unused portion of the Data Content.

### **Specific Terms & Restrictions On Using Data Services**

In addition to the rules for using all of our other Services, unless we identify the Service or Device that you have selected as specifically intended for that purpose (for example, wireless routers, Data Link, etc.), you can't use our data Services: (1) with server devices or host computer applications, or other systems that drive continuous, heavy traffic or data sessions; (2) as a substitute or backup for private lines or frame relay connections; or (3) for any other unintended use as we determine in our sole discretion. We reserve the right to limit, suspend, or constrain any heavy, continuous data usage that adversely impacts our networks' performance or hinders access to our networks. If your Services include Web or data access, you also can't use your Device as a modem for computers or other equipment, unless we identify the Service or Device you have selected as specifically intended for that purpose (for example, with "phone as modem" plans, mobile broadband card plans, wireless router plans, etc.).

### **Software License**

If ZING PCS provides you software as part of the Service and there are not software license terms provided with the software (by ZING PCS or by a third party), then ZING PCS grants you a limited, revocable, non-exclusive, non-transferable license to use the software to access the Services for your own individual use. You will not sell, resell, transfer, copy, translate, publish, create derivative works of, make any commercial use of, modify, reverse engineer, decompile, or disassemble the software. ZING PCS may revoke this license at any time.

### **Activation & Miscellaneous Charges**

Based on our Policies, we may charge activation, prepayment, reactivation, program, or other fees to establish or maintain Services. Certain transactions may also be subject to a charge (for example, convenience payment, changing phone numbers, handset upgrades, etc.). You will be provided notice of these types of fees before we complete the requested transaction.

## **Usage Charges**

The types of charges that you incur will vary depending on the Service used and your service plan. You are responsible for the Services on your account and associated charges, including charges made by a person you permit to have direct or indirect access to your device even if you did not authorize its use. Charges may include, but are not limited to, prepayment for service charges; charges for additional services; and taxes, surcharges, and fees associated with your Services. For the actual usage charges applicable to your Service, see the detailed plan or other information we provide or refer you to during the sales transaction or on our website. Depending on your Services, charges for additional services may include operator and directory assistance, voicemail, call forwarding, data calls, texts, and Web access. If you (the account holder) allow end users to access or use your Device, you authorize end users to access, download, and use Services. You will generally be charged for use of Services before or at the time of use in accordance with your service plan. In certain instances, we may charge at some point after you use the Service. Charges are generally deducted from your account balance (for example, pay-per-use charges, subscription charges, etc.), though in some instances you may be able to pay for certain Services through a credit card, debit card, or other payment method. If you have incurred charges or fees that were not charged prior to your account balance reaching a zero balance, we may deduct these outstanding, unpaid charges and fees from any subsequent amounts you add to your account balance.

## **Types of Charges**

We typically assess the following types of charges: (1) “pay-per-use charges,” which are charges assessed each time a Service is used; (2) “subscription charges,” which are charges that allow you access to a Service or provide you a certain amount of use of a Service for a defined period of time. Subscription charges for Services end at 11:59 p.m., in the time zone in which your phone number is based, on the last day of your subscription period. Also, depending on your Service, certain types of subscription charges may be assessed automatically upon activation and automatically assessed for subsequent subscription periods; and (3) “download charges,” which are charges assessed when you download or access content, which we collect on behalf of ourselves or third-party content providers.

## **How We Calculate Your Charges**

**Regular Voice Calls:** We round up partial minutes of use to the next full minute. Time starts when you press “Talk” or your Device connects to the network and stops when you press “End” or the network connection otherwise breaks. You’re charged for all calls that connect, even to answering machines, voicemail, or voice transcription services. You won’t be charged for unanswered calls or if you get a busy signal. For incoming calls answered, you’re charged from the time shortly before the Device starts ringing until you press “End” or the network connection otherwise breaks. You’re charged for the entire call based on the rate that applies to the time period in which the call starts. However, the types of charges actually deducted from your account balance will vary depending on your Service.

**Data Usage:** Depending on your Service, you may be charged for data usage. Unless we specifically tell you otherwise, data usage is measured in bytes, kilobytes, megabytes, and gigabytes—not in minutes/time. 1024 bytes equals 1 kilobyte (“KB”), 1024 KB equals 1 megabyte, and 1024 megabytes equals 1 gigabyte. Bytes are rounded up to KB, so you will be

charged at least 1 KB for each data usage session (“data session”). Rounding occurs at the end of each data session and sometimes during a data session. Depending on your data Services, usage may be charged against an allowance or on a fixed price per KB, and you may be subject to limitations on the amount of data usage. If you are charged on a fixed price per KB, any fractional cents will be rounded up to the next cent. You are charged for all data directed to your Device’s Internet address, including data sessions you did not initiate and for incomplete transfers. As long as your Device is connected to our data networks, you may incur data charges. Examples of data for which you will be charged includes the size of a requested file or Data Content (game, ringer, etc.); Web page graphics (logos, pictures, banners, advertisement, etc.); additional data used in accessing, transporting, and routing the file on our network; data from partial or interrupted downloads; re-sent data; and data associated with unsuccessful attempts to reach websites or use applications. These data charges are in addition to any charges for the Data Content itself (game, ringer, etc.). Data used and charged to you will vary widely, even between identical actions or data sessions. Estimates of data usage—for example, the size of downloadable files—are not reliable predictors of actual usage.

### **Taxes & Government Fees**

Depending on your Services, we may deduct from your account balance all federal, state, and local taxes, fees, and other assessments that we’re required by law to collect and remit to the government on the Services that we provide to you. These charges may change from time to time without advance notice. If you’re claiming any tax exemption, you must provide us with a valid exemption certificate. Tax exemptions generally won’t be applied retroactively.

### **Surcharges**

Depending on your Services, you agree to pay all surcharges (“Surcharges”) that we may deduct from your account balance, which may include, but are not limited to: Federal Universal Service; various regulatory charges; ZING PCS administrative charges; gross receipts charges and certain other taxes imposed upon ZING PCS; or charges for the costs that we incur and pass along to you. Surcharges are not taxes, and we are not required to assess them by law. They are charges we choose to collect from you, are part of our rates, and are kept by us in whole or in part. The number and type of Surcharges will be provided and may vary depending upon the location of the transaction or the primary account address of the payment method or Device and can change over time. We determine the rate for these charges, and these amounts are subject to change as are the components used to calculate these amounts. We will provide you notice of any changes to Surcharges in a manner consistent with this Agreement (see “Providing Notice To Each Other Under The Agreement” section). However, since some Surcharges are based on amounts set by the government or based on government formulas, it will not always be possible to provide advance notice of new Surcharges or changes in the amount of existing Surcharges. Information on Surcharges is provided during the sales transaction and is available on our website.

### **Disputing Charges**

Any dispute to a charge that we assess you must be made in writing within 60 days of the date we deduct the charge from your account balance. You accept all charges not properly disputed within the above time period.

### **About Account Balances**

To ensure continued access to the Service, you must maintain a positive account balance at all times or pay any applicable subscription charges (depending on your service plan). Account balances are not transferable, redeemable for cash, or refundable; that is, once you make payment on your account, you are provided a credit on your account that can only be used to pay for our Services during the effective period, which varies depending on your service plan. Positive account balances are forfeited if they are not used within the effective period specified in your service plan (if you properly replenish your account balance during the effective period, the effective period restarts). If you do not use your account balance during the effective period, your account balance will expire and you will not be entitled to a refund or service credit. Your Service will be interrupted if you fail to maintain a positive account balance or timely pay applicable subscription charges for each effective period. When this service interruption occurs, you will be given a period of time (which varies depending on your service plan) to make any appropriate payments on your account. If you do not make such payments within this time period, your account will be cancelled. If your account is cancelled, you will lose any phone number, identification number, or email address associated with your account. Reactivation fees will apply if you choose to restart Service after cancellation. There may be limits over which your account balance may not exceed. See the detailed plan or other information we provide or refer you to during the sales transaction (also available at [www.zingpcs.com](http://www.zingpcs.com)) for the effective period and cancellation period that applies to your Service.

### **Establishing or Replenishing Account Balances**

Information on how you can establish and maintain an account balance will be provided at activation and is also available at [www.zingpcs.com](http://www.zingpcs.com) or through ZING PCS Customer Care. The replenishment methods available to you will depend on the terms of your Services. A fee may apply to certain replenishment methods. Some service plans may provide for automatic account balance replenishment through, for example, automatic billing to a credit card or debit card or automatic debit from an eligible account with a financial institution. Payment through these methods may be subject to limitations, including, but not limited to, the number of times an account may be debited or charged in a particular time period; the amount that may be debited or charged from an account; or other limitations imposed by us or the financial institution that holds the account.

### **Protecting Our Networks & Services**

We can take any action to: (1) protect our networks, our rights and interests, or the rights of others; or (2) optimize or improve the overall use of our networks and Services. Some of these actions may interrupt or prevent legitimate communications and usage—for example, message filtering/blocking software to prevent spam or viruses; limiting throughput; limiting access to certain websites, applications or other Data Content; prohibitions on unintended uses (for example, use as a dedicated line or use as a monitoring service), etc. For additional information on what we do to protect our customers, networks, Services and equipment, see our Acceptable Use Policy and Visitors Agreement at our website.

### **Your Privacy**

Our Privacy Policy is available at [www.zingpcs.com/privacy](http://www.zingpcs.com/privacy). This policy may change from time to time, so review it with regularity and care.

**Call Monitoring:** To ensure the quality of our Services and for other lawful purposes, we may monitor or record calls between us (for example, your conversations with our customer service or sales departments).

**Authentication and Contact:** You (the account holder) may password protect your account information by establishing a personal identification number (“PIN”). You may also set a backup security question and answer in the event you forget your PIN. You agree to protect your PIN, passwords, and other account access credentials like your backup security question from loss or disclosure. You further agree that ZING PCS may, in our sole discretion, treat any person who presents your credentials that we deem sufficient for account access as you or an authorized user on the account for disclosure of information or changes in Service. You agree that we may contact you for Service-related reasons through the contact information that you provide, through the Services or Devices to which you subscribe, or through other available means, including text message, email, fax, recorded message, mobile, residential or business phone, or mail.

**CPNI:** As we provide telecommunications products and Services to you (the account holder), we develop information about the quantity, technical configuration, type, location, and destination of telecommunications products and Services you use, as well as some other information found on your bill (“CPNI”). Under federal law, you have the right, and we have a duty, to protect the confidentiality of your CPNI. For example, we implement safeguards that are designed to protect your CPNI, including authentication procedures when you contact us. For some accounts with a dedicated ZING PCS representative, we may rely on contacting your pre-established point of contact as the standard authentication measure.

**Third-Party Applications:** If you use a third-party application, the application may access, collect, use, or disclose your personal information or require ZING PCS to disclose your information—including location information (when applicable)—to the application provider or some other third party. If you access, use, or authorize third-party applications through the Services, you agree and authorize ZING PCS to provide information related to your use of the Services or the application(s). You understand that your use of third-party applications is subject to the third party’s terms and conditions and policies, including its privacy policy.

**Information on Devices:** Your Device may contain sensitive or personal information (for example, pictures, videos, passwords, or stored credit card numbers). ZING PCS is not responsible for any information on your Device, including sensitive or personal information. If possible, you should remove or otherwise safeguard any sensitive or personal information when your Device is out of your possession or control, for example, when you relinquish, exchange, return, or recycle your Device. By submitting your Device to us, you agree that our employees, contractors, or vendors may access all of the information on your Device.

### **Location-Enabled Services**

Our networks generally know the location of your Device when it is outdoors and/or turned on. By using various technologies to locate your Device, we can provide enhanced emergency 911 services and optional location-enabled services provided by us or a third party. Network coverage or environmental factors (such as structures, buildings, weather, geography, landscape,

and topography) can significantly impact the ability to access your Device's location information and use of location-enabled services.

You agree that any authorized user may access, use, or authorize ZING PCS or third-party location-enabled applications through the Services. You understand that your use of such location-enabled applications is subject to the application's terms and conditions and policies, including its privacy policy. If you activate location-enabled services for devices used by other authorized users, you agree to inform the authorized user(s) of the terms of use for location-enabled applications and that the Device may be located. For additional information on location-enabled services, see our Privacy Policy at our website.

### **911 Or Other Emergency Calls**

Public safety officials advise that when making 911 or other emergency calls, you should always be prepared to provide your location information. Unlike traditional wireline phones, depending on a number of factors (for example, whether your Device is GPS-enabled, where you are, whether local emergency service providers have upgraded their equipment, etc.), 911 operators may not know your phone number, your location, or the location of your Device. In certain circumstances, an emergency call may be routed to a state patrol dispatcher or alternative location set by local emergency service providers. Enhanced 911 service ("E911")—where enabled by local emergency authorities—uses GPS technology to provide location information. Even when available, however, E911 does not always provide accurate location information. If your Device is indoors or for some other reason cannot acquire a satellite signal, you may not be located. Some Devices have a safety feature that prevents use of the keypad after dialing 911—you should follow voice prompts when interacting with emergency service providers employing interactive voice response systems to screen calls.

### **If Your Device Is Lost or Stolen**

Call us immediately if your Device is lost or stolen because you may be responsible for usage charges before you notify us of the alleged loss or theft. You agree to cooperate if we choose to investigate the matter (provide facts, sworn statements, etc.). We may not credit or refund any account balance if you choose to terminate Services as a result of loss or theft of your Device.

### **Disclaimer of Warranties**

UNLESS EXPRESSLY PROVIDED IN WRITING OTHERWISE, We make NO representations or warranties, express or implied, including (to the extent allowed by law) any implied warranty of merchantability, non-infringement, or fitness for a particular purpose concerning your Services (including your Device). We don't promise uninterrupted or error-free Services and don't authorize anyone to make warranties on our behalf.

### **You Agree That We Are Not Responsible For Certain Problems**

You agree that neither we nor our subsidiaries, affiliates, parent companies, vendors, suppliers, or licensors are responsible for any damages resulting from: (a) anything done or not done by someone else; (b) providing or failing to provide Services, including, but not limited to, deficiencies or problems with a Device or network coverage (for example, dropped, blocked, interrupted Services, etc.); (c) traffic or other accidents, or any health-related claims relating to our Services; (d) Data Content or information accessed while using our Services; (e) an interruption or failure in accessing or attempting to access emergency services from a Device,

including through 911, Enhanced 911 or otherwise; (f) interrupted, failed, or inaccurate location information services; (g) information or communication that is blocked by a spam filter; (h) damage to your Device or any computer or equipment connected to your Device, or damage to or loss of any information stored on your Device, computer, equipment, or ZING PCS storage space from your use of the Services or from viruses, worms, or downloads of malicious content, materials, data, text, images, video, or audio; or (i) things beyond our control, including acts of God (for example, weather-related phenomena, fire, earthquake, hurricane, etc.), riot, strike, war, terrorism, or government orders or acts. You should implement appropriate safeguards to secure your Device, computer, or equipment and to backup your information stored on each.

**You Agree Our Liability Is Limited - No Consequential Damages**

To the extent allowed by law, our liability for monetary damages for any claims THAT you may have against us is limited to no more than the proportionate amount of the Service charges attributable to the affected period. Under no circumstances are we liable for any incidental, consequential, punitive, MULTIPLE, or special damages of any nature whatsoever arising out of or related to providing or failing to provide Services in connection with a device, including, but not limited to, lost profits, loss of business, or cost of replacement products and services.

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**DISPUTE RESOLUTION**

**We Each Agree To First Contact Each Other With Any Disputes**

We each agree to first contact each other with any Disputes (defined below) and provide a written description of the problem, relevant documents and supporting information, and the proposed resolution. We agree to contact each other as described in the “Providing Notice To Each Other Under The Agreement” section.

**Instead Of Suing In Court, We Each Agree To Arbitrate Disputes**

We each agree to arbitrate all Disputes between us, on an individual basis, not on a class-wide or consolidated basis. This agreement to arbitrate is intended to be broadly interpreted. In arbitration, there’s no judge or jury. However, just as a court would, the arbitrator must honor the terms and limitations in the Agreement and can award damages and relief, including any attorneys’ fees authorized by law. The arbitrator’s decision and award is final and binding, with some exceptions under the Federal Arbitration Act (“FAA”), and judgment on the award may be entered in any court with jurisdiction. We each also agree as follows:

(1) “Disputes” are any claims or controversies against each other related in any way to or arising out of in any way our Services or the Agreement, including, but not limited to, coverage, Devices, billing services and practices, policies, contract practices (including enforceability), service claims, privacy, or advertising, even if it arises after Services have terminated. Disputes include claims that you bring against our employees, agents, affiliates, or other representatives or that we bring against you. It also includes but is not limited to claims related in any way to arising out of in any way any aspect of the relationship between us, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory.

(2) If either of us wants to initiate a claim to arbitrate a Dispute, we each agree to send written notice to the other providing a description of the dispute, a description of previous efforts to resolve the dispute, relevant documents and supporting information, and the proposed resolution. Notice to you will be sent as described in the “Providing Notice To Each Other Under The Agreement” section and notice to us will be sent to: General Counsel; Arbitration Office; 12502 Sunrise Valley Drive, Mailstop VARESA0202-2C682; Reston, Virginia 20191. We each agree to make attempts to resolve the dispute prior to filing a claim for arbitration. If we each cannot resolve the dispute within forty-five (45) days of receipt of the notice to arbitrate, then we each may submit the dispute to formal arbitration.

(3) The FAA applies to this Agreement and arbitration provision. We each agree that the FAA’s provisions—not state law—govern all questions of whether a dispute is subject to arbitration.

(4) Unless we each agree otherwise, the Arbitration will be conducted by a single neutral arbitrator and will take place in the county of the last billing address of the Service.

(5) The arbitration will be governed and conducted by (a) a neutral third party arbitrator selected by each of us and based upon rules mutually agreed to by each of us or (b) JAMS. The JAMS rules, including rules about the selection of an arbitrator, filing, administration, discovery, and arbitrator fees, will be conducted under JAMS Comprehensive Arbitration Rules & Procedures. The JAMS rules are available on its website at [www.jamsadr.com](http://www.jamsadr.com). To the extent that this “Dispute Resolution” section conflicts with JAMS’s minimum standards for procedural fairness, the JAMS’s rules or minimum standards for arbitration procedures in that regard will apply. However, nothing in this paragraph will require or allow us or you to arbitrate on a class-wide or consolidated basis.

(6) WE EACH AGREE THAT WE WILL ONLY PURSUE ARBITRATION ON AN INDIVIDUAL BASIS AND WILL NOT PURSUE ARBITRATION ON A CLASS-WIDE OR CONSOLIDATED BASIS. We each agree not to pursue arbitration on a classwide basis. We each agree that any arbitration will be solely between you and ZING PCS (not brought on behalf of or together with another individual’s claim). If for any reason any court or arbitrator holds that this restriction is unconscionable or unenforceable, then our agreement to arbitrate doesn’t apply and the dispute must be brought in court.

(7) We each are responsible for our respective costs relating to counsel, experts, and witnesses, as well as any other costs relating to the arbitration. However, we will pay for the arbitration administrative or filing fees, including the arbitrator fees. Otherwise the JAMS Comprehensive Arbitration Rules & Procedures and the JAMS Policy on Consumer Arbitrations Pursuant to Pre-Dispute Clauses, Minimum Standards of Procedural Fairness regarding costs and payment apply.

**Exceptions To Our Agreement To Arbitrate Disputes**

Either of us may bring qualifying claims in small claims court. In addition, this arbitration provision does not prevent you from bringing your dispute to the attention of any federal, state, or local government agency that can, if the law allows, seek relief against us on your behalf.

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**No Class Actions**

To the extent allowed by law, we each waive any right to pursue disputes on a classwide basis; that is, to either join a claim with the claim of any other person or entity or assert a claim in a representative capacity on behalf of anyone else in any lawsuit, arbitration, or other proceeding.

**No Trial By Jury**

To the extent allowed by law, we each waive any right to trial by jury in any lawsuit, arbitration, or other proceeding.

**Indemnification**

You agree to indemnify, defend, and hold ZING PCS and our subsidiaries, affiliates, parent companies harmless from any claims arising out of or relating to your actions, including, but not limited to, your use of the Service and any information you submit, post, transmit, or make available via the Service; failing to provide appropriate notices regarding location-enabled services (see “Location-Enabled Services” section); failure to safeguard your passwords, backup question to your shared secret question, or other account information; or violating this Agreement or any policy referenced in this Agreement, any applicable law or regulation, or the rights of any third party.

**Providing Notice To Each Other Under The Agreement**

Except as the Agreement specifically provides otherwise, you must deliver written notice to us by mail to 2300 Palm Beach Lakes Blvd. Executive Center Suite 100, West Palm Beach, FL 33409 or email to TechSupport@ZINGPCS.com. We will provide you notice by correspondence to your last known address in our records, to any fax number or email address you’ve provided us, by calling you on your Device or any other phone number you’ve provided us, by voice message on your Device or any other phone number you’ve provided us, or by text message on your Device.

**Other Important Terms**

Subject to federal law or unless the Agreement specifically provides otherwise, this Agreement is governed solely by the laws of the state encompassing the area code assigned to your Device, without regard to the conflicts of law rules of that state. If either of us waives or doesn’t enforce a requirement under this Agreement in an instance, we don’t waive our right to later enforce that requirement. Except as the Agreement specifically provides otherwise, if any part of the Agreement is held invalid or unenforceable, the rest of this Agreement remains in full force and effect. This Agreement isn’t for the benefit of any third party except our corporate parents, affiliates, subsidiaries, agents, and predecessors and successors in interest. You can’t assign the Agreement or any of your rights or duties under it. We can assign the Agreement without notice. You cannot in any manner resell Devices or Services to another party. You cannot export any Device. The Agreement and the documents it incorporates make up the entire agreement between us and replaces all prior written or spoken agreements—you can’t rely on any contradictory documents or statements by sales or service representatives. The rights, obligations, and commitments in the Agreement that—by their nature—would logically continue beyond the termination of Services (for example, those relating to billing, payment, 911, dispute resolution, no class action, no jury trial) survive termination of Services.

## **ZING PCS LIFELINE PROGRAM**

### **Agreement to Terms & Conditions.**

These Lifeline Program Terms & Conditions and the ZING PCS Standard Terms & Conditions, which are incorporated herein by reference, apply to the ZING PCS Lifeline Program. With regard to the ZING PCS Lifeline Program, if these Terms & Conditions conflict with the Standard Terms & Conditions, these Terms & Conditions shall control. In interpreting these Terms & Conditions, ZING PCS Lifeline plans shall be treated as prepaid Services. By using your ZING PCS Lifeline Program plan or phone, you accept these Terms & Conditions.

### **Customer Eligibility.**

To be eligible for the ZING PCS Lifeline Program, you must meet the applicable eligibility standards in effect at the time of application (i.e. based upon your household income or your enrollment in a qualifying social welfare program), and the ZING PCS Lifeline Program account must be in your name. You are responsible for notifying ZING PCS if you no longer meet the applicable eligibility standards for the ZING PCS Lifeline Program within five (5) days of becoming aware of such ineligibility. In the event ZING PCS determines that you are no longer eligible for the ZING PCS Lifeline Program, ZING PCS will notify you that your service will be discontinued thirty (30) days after you are provided notice unless you contact ZING PCS within that timeframe to notify ZING PCS that it is in error. You will then have thirty (30) additional days to submit evidence that you still meet the applicable ZING PCS Lifeline Program requirements. If you advise ZING PCS that you no longer qualify for the ZING PCS Lifeline Program, ZING PCS will deactivate your ZING PCS Lifeline Program service.

### **Acceptance of Customer Enrollment.**

Your submission of an Enrollment Form does not constitute automatic enrollment in the ZING PCS Lifeline Program. ZING PCS has the right, in its sole discretion, to reject any Enrollment Form and/or to review your eligibility status at any time. If you are no longer eligible for the ZING PCS Lifeline Program, ZING PCS may terminate your account and/or change your rate plan to the most favorable rate plan for which you are eligible without prior notice to you. If you misrepresent your eligibility for the ZING PCS Lifeline Program, you agree to pay us the additional amount you would have been charged under the most favorable rate plan for which you are eligible. Further, you acknowledge and agree that ZING PCS Lifeline Program enrollment and acceptance may be limited by ZING PCS's inventory of ZING PCS Phones.

### **Plan Options.**

The ZING PCS Lifeline Program plans available in your state can be found at [www.zingpcs.com](http://www.zingpcs.com). You understand and agree that ZING PCS may change the ZING PCS Lifeline Program plans (including any rates and fees) at anytime by updating plan information on its website. If you change your choice of plans, your changes will not be effective until the subsequent month.

### **Program Availability.**

The ZING PCS Lifeline Program is only available in areas where ZING PCS has been authorized by the applicable state and/or federal agency. To enroll in the ZING PCS Lifeline Program, your principal residence address must be within an authorized area.

**Government Subsidized.**

The ZING PCS Lifeline Program is supported by subsidies from state and federal governments including the Federal Universal Service Fund program. You acknowledge and agree that ZING PCS may immediately modify or terminate the ZING PCS Lifeline Program in the event that there are any changes to the applicable governmental programs and subsidies.

**Enrollment Form.**

To receive a phone and service under the ZING PCS Lifeline Program, you must complete the applicable Enrollment Form and self-certify your eligibility in writing under penalty of perjury. If you seek to qualify for the ZING PCS Lifeline Program under the income eligibility standards, you are required to provide written documentation of your household income. You may also be required, from time to time, to provide ZING PCS written documentation of your household income and/or participation in a qualifying federal or state program. You acknowledge and agree that ZING PCS shall retain all such customer certifications and documentation in order to furnish proof of customer eligibility as may be required by applicable law. Further, by completing an Enrollment Form, you consent to the release of your customer information (including financial information) to governing state and federal agencies. This consent survives any termination of your ZING PCS Lifeline Program enrollment.

**Mobile Phone for the ZING PCS Lifeline Program.**

If ZING PCS accepts your enrollment, you will receive a free ZING PCS Phone that is selected by ZING PCS. Contact ZING PCS customer service to purchase an upgraded phone. If you lose or damage your ZING PCS Phone, contact ZING PCS customer service for replacement phone options and pricing. ZING PCS phones are provided “as is” and without warranty.

**Maximum of One Lifeline Account per Household.**

You may only receive one Lifeline supported telephone line, be it wireline or wireless, per household. If you or any member of your household receives a Lifeline supported telephone line from any other telephone company at the time of your enrollment, you are obligated to notify your current service provider that you are now on the ZING PCS Lifeline Program. Failure to comply with this requirement is a material breach of these Terms & Conditions and may result in your immediate de-enrollment from the ZING PCS Lifeline Program.

**Annual Verification Requirement.**

To remain eligible for the ZING PCS Lifeline Program, you must complete an annual written verification within sixty (60) days of every anniversary of your initial enrollment in the ZING PCS Lifeline Program or you will be de-enrolled.

**Change of Address.**

If you move, you agree to notify ZING PCS within 30 days.

**Non-transferable.**

Your ZING PCS Phone and service are non-transferable. You agree not to give away, resell, or offer to resell them.

**Blocked Services.**

ZING PCS reserves the right to block calls and services that are not subsidized by the applicable government programs and/or that are not prepaid for by you. Unauthorized manipulation, modification, adjustment, or repair made to your phone to allow the making of blocked calls shall constitute a violation of these Terms & Conditions.

**Rollover.**

Unless required by applicable law, unused minutes will not be rolled over to subsequent months. Contact ZING PCS customer service for details.

**Termination for Non-Usage.**

In the event that you do not use your ZING PCS Phone for sixty (60) days, ZING PCS will de-enroll you from the ZING PCS Lifeline Program.

**Termination for Breach.**

In the event that you breach these Terms & Conditions, ZING PCS reserves the right to immediately de-enroll you from the ZING PCS Lifeline Program.

**Discontinuation of the ZING PCS Lifeline Program.**

ZING PCS reserves the right to discontinue its Lifeline Program at anytime upon prior notice to you.

**Returns.**

You may cancel your ZING PCS Lifeline Program enrollment by returning your phone and calling customer service to de-enroll within fifteen (15) days of receiving your ZING PCS Phone. Upon de-enrolling, you will not receive any refund.

## **Exhibit D**

Key Management Resumes

**Adriana Solar**  
**9601 Worswick Ct.**  
**Wellington, FL. 33414**  
**(561) 7212277**

**Experience**

Significant and recognized success over a span of more than (19) years, engaged in the acquisition and development of successful small business operations in a major metropolitan center. Direct responsibility for gross annual sales exceeding \$4.4MM, recruitment, training and supervision of a staff of technical and administrative personnel numbering more than (15) persons and catering to the rising service needs of more than (10K) customers simultaneously. Strategic planning and structuring of internal operations, devoted to customer service and prompt resolution of problems. Oversight of all fiscal, productivity and operational issues. Collaborating with the SALES/MARKETING department to ensure a smooth mesh of promised v. delivered services.

Actual roles and responsibilities including but not limited to:

- Small Business President/CFO
- Operations Manager Trainer
- Customer Service Manager/Liaison
- Purchasing Agent/Buyer Pager Tech.
- Bookkeeper/Comptroller
- Liaison w/regulatory agency officials,  
Lawyers, Accountants and Insurance Agents

**Employment:**

July 2011 to Present Flatel Wireless, Inc. dba ZING PCS  
October 1997 to Present – Flatel, Inc. – President/ CFO,  
FLATEL, Inc. 2300 Palm Beach Lakes Blvd #100, West Palm Beach, FL 33409

December 1993 to June 2001 - PRESIDENT/OWNER & OPERATOR  
Palm Beach Paging Inc., 2128 Okeechobee Blvd., West Palm Beach, FL 33409

June 1990 to December 1993 - MANAGER  
Programming Department, Telebeeper Inc.,  
1705 W. 45th Street, West Palm Beach, FL. 33407

**Education:**

Bachelor of Art Degree, PSYCHOLOGY, Palm Beach  
Atlantic University, West Palm Beach, FL. 1993

Associate of Arts Degree, LIBERAL ARTS, Palm  
Beach Community College, Lake Worth, FL. 1987

**Abby Matari.**  
**2300 Palm Beach Lakes Blvd Suite 100**  
**West Palm Beach, FL 33409**  
**5616882525 x 102**

**Experience**

Mr. Abby Matari / CEO and Marketing Director for Flatel, Inc. and Flatel Wireless, Inc. dba ZING PCS. Flatel is a CLEC (Competitive Local Exchange Company) reselling Bell South, Sprint, Alltel, and FTC local exchange service on a prepaid basis to its end users (customers) within the Interconnection Agreement and boundaries on a nationwide scale.

Mr. Abby Matari heads all Interconnection Agreements between Flatel, Inc. and the LEC (Local Exchange Carrier) within its markets and territories. He is also responsible for the company advertising and marketing strategies.

Actual roles and responsibilities including but not limited to:

- CEO
- Purchasing Agent/Buyer
- Liaison w/regulatory agency officials,  
Lawyers, Accountants and Insurance Agents

**Employment:**

July 2011 to Present Flatel Wireless, Inc. dba ZING PCS

October 1997 to Present – Flatel, Inc – Owner/ CEO,

FLATEL, Inc 2300 Palm Beach Lakes Blvd #100, West Palm Beach, Fl 33409

December 1993 to June 2001 - PRESIDENT/OWNER & OPERATOR  
MODA, 256 W. Ave. A, Belle Glade, FL

## **Exhibit E**

### Proposed Lifeline Rate Plan

#### **Lifeline Plan**

250 Anytime Minutes

Net cost to Lifeline customer - \$0 (free)

- No rollover
- 1 incoming or outgoing text per 1 minute of voice (1 text = 1 minute)
- Free handset
- Free calls to 911 emergency services
- Free calls to Customer Service
- Free domestic long distance
- Caller ID, Call Waiting, and Voicemail included

#### **Additional Minutes**

50 Anytime Additional Minutes

\$10.00