

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
Petition of Buffalo-Lake Erie Wireless Systems Co., L.L.C. dba Blue Wireless for Designation as a Low- Income Eligible Telecommunications Carrier)	

To: The Commission

**CONDITIONAL PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER IN NEW
YORK TO PARTICIPATE IN MOBILITY FUND PHASE II**

Brian Gelfand
President
Buffalo-Lake Erie Wireless Systems Co., L.L.C.
dba Blue Wireless
4915 Auburn Avenue, Suite 200
Bethesda, MD 20814

May 21, 2014

TABLE OF CONTENTS

I. INTRODUCTION & SUMMARY.....3

II. THE COMMISSION HAS AUTHORITY TO GRANT THE ETC DESIGNATION4

III. BLUE WIRELESS MEETS THE STATUTORY AND REGULATORY PREREQUISITES TO BE DESIGNATED AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER5

 A. Blue Wireless Is a Common Carrier6

 B. Blue Wireless Offers the Services Supported by the Federal Universal Service Support Mechanisms.....6

 C. Blue Wireless Provides Service Using Its Own Facilities7

 D. Blue Wireless Will Provide Service Throughout Its Proposed Service Areas7

 E. Blue Wireless Will Advertise the Availability of Services Using Media of General Distribution.....8

 F. Blue Wireless Meets the Additional Requirements for Designation as an ETC8

 G. Conditional Designation of Blue Wireless as an ETC Is in the Public Interest.....10

IV. BLUE WIRELESS MEETS THE CRITERIA FOR PARTICIPATION IN THE MOBILITY FUND11

 A. Blue Wireless Has Access to Spectrum Capable of 3G or Better Service in the Area Where It Proposes to Provide Service.....11

 B. Blue Wireless Has Financial and Technical Capability to Provide Service11

 C. Blue Wireless Commits to Meeting the Other Public Interest Obligations as Set Forth by the Commission for Mobility Fund Phase II Participants12

V. ANTI-DRUG ABUSE CERTIFICATION.....12

VI. CONCLUSION.....12

Exhibit A: Evidence State Lacks Jurisdiction to Perform ETC Designation

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208
)	
Petition of Buffalo-Lake Erie Wireless Systems Co., L.L.C. dba Blue Wireless for Designation as a Low-Income Eligible Telecommunications Carrier)	

To: The Commission

**CONDITIONAL PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER IN NEW
YORK TO PARTICIPATE IN MOBILITY FUND PHASE II**

Pursuant to Section 214(e)(6) of the Communications Act, as amended,¹ and the relevant provisions of the Commission’s rules and Commission orders,² Buffalo-Lake Erie Wireless Systems Co., L.L.C., doing business as Blue Wireless (“Blue Wireless”) requests that the Commission conditionally designate it as an eligible telecommunications carrier (“ETC”) for the limited purpose of receiving Mobility Fund Phase II support in New York (the “State”) in any portions of the state that are within Blue Wireless’s licensed service area where it is selected to receive Mobility Fund Phase II support pursuant to the selection process for such support

¹ 47 U.S.C. § 214(e)(6).

² See, e.g., 47 C.F.R. § 54.101(a), § 54.202.

(“Proposed Service Areas”).³ Blue Wireless seeks ETC status to establish its eligibility to participate in Mobility Fund Phase II.⁴

I. INTRODUCTION & SUMMARY

Blue Wireless is a facilities-based, regional provider of competitively priced wireless voice, messaging, and data services. The company holds a number of Commercial Mobile Radio Service (“CMRS”) licenses issued by the Commission and has deployed an advanced mobile wireless telecommunications network capable of serving consumers’ basic and advanced communications needs, and provides highly competitively priced plans, top-quality service, and excellent customer care. Blue Wireless’s network currently provides voice service as well as 2G and 3G mobile data services, and the company is in the process of deploying 4G service. Blue Wireless also offers its customers nationwide coverage through numerous roaming arrangements. Blue Wireless is headquartered in Buffalo, New York – within its service area – and provides products and services that are responsive to the needs of local customers.

The requested conditional ETC designation will promote the public interest by permitting Blue Wireless to participate in Mobility Fund Phase II, such that Blue Wireless can compete with other carriers in the selection process to provide service to eligible areas where 3G or better broadband service is currently unavailable.

Blue Wireless is already an established, facilities-based competitor in New York with substantial financial and technical capability, as well as access to high-quality spectrum through its cellular, broadband Personal Communications Service (“PCS”), Advanced Wireless Service (“AWS”), and 700 MHz licenses. As such, Blue Wireless will be a strong participant in the

³ The procedure for allocating Mobility Fund Phase II support will be determined in a future Commission Order. *See, e.g., Further Inquiry Into Issues Related to Mobility Fund Phase II*, WC Docket No. 10-90, WT Docket No. 10-208, Public Notice, 27 FCC Rcd 14798 (2012).

⁴ *See* 47 C.F.R. § 54.1003(a).

Mobility Fund Phase II selection process. Blue Wireless can build on its current service in New York to provide quality 3G or better mobile voice and broadband service in eligible areas in the State.

As discussed below, Blue Wireless meets all statutory and regulatory prerequisites for ETC designation to receive high-cost support. Blue Wireless also meets the requirements that the Commission has established thus far for participation in the Mobility Fund, satisfies the public interest obligations the Commission has imposed in previous rounds of Mobility Fund support and proposed for Mobility Fund Phase II. The public interest would be served by granting this petition, enabling Blue Wireless to advance universal service in the State if Blue Wireless is selected to receive support in Mobility Fund Phase II.⁵

II. THE COMMISSION HAS AUTHORITY TO GRANT THE ETC DESIGNATION

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support.”⁶ The Act reserves the authority to designate entities as ETCs to state public utility commissions (“PUCs”). Pursuant to Section 214(e)(6), however, 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.”⁷ The Commission has established that a carrier must demonstrate that it “is ‘not subject to the jurisdiction of a state commission’” before

⁵ In connection with participation in the Mobility Fund Phase II, Blue Wireless of course will be required to certify to its compliance with any specific requirements that are adopted for Mobility Fund Phase II. *See infra* Section IV.C.

⁶ 47 U.S.C. § 254(e).

⁷ *See id.* § 214(e)(6).

it may consider an application for ETC designation.⁸ The Commission also has stated that any carrier seeking 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.⁹ New York has made it clear that it lacks authority to perform ETC designations for wireless carriers such as Blue Wireless. This documentation is attached as Exhibit A.

Accordingly, for purposes of a conditional ETC designation to participate in Mobility Fund Phase II, Blue Wireless requests that the Commission exercise its authority under Section 214(e)(6) and determine that Blue Wireless is “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”¹⁰

III. BLUE WIRELESS MEETS THE STATUTORY AND REGULATORY PREREQUISITES TO BE DESIGNATED AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

As demonstrated herein, Blue Wireless meets the requirements for designation as an ETC as established under the statute¹¹ and FCC rules.¹² In particular, Blue Wireless certifies that it:

1. is a common carrier;¹³
2. offers the services supported by federal universal service support mechanisms;¹⁴
3. will use its own facilities to provide the supported services;¹⁵

⁸ 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 Rcd 22947, 22948 (1997).

⁹ *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including 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).

¹⁰ 47 U.S.C. § 214(e)(6).

¹¹ *Id.* § 214(e)(1).

¹² 47 C.F.R. § 54.201(d).

¹³ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

¹⁴ 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. §§ 54.201(d)(1).

4. will advertise the availability of the supported services using media of general distribution;¹⁶
5. will meet the additional application requirements established by the FCC by:
 - a) certifying that it will comply with the service requirements applicable to the support that it receives;¹⁷
 - b) demonstrating it is able to remain functional in emergency situations; and¹⁸
 - c) demonstrating it will satisfy consumer protection and service quality standards;¹⁹

Furthermore, Blue Wireless's designation as an ETC to participate in Mobility Fund Phase II will serve the public interest.

Blue Wireless's compliance with each of the applicable requirements to obtain designation as an ETC is further discussed below.

A. Blue Wireless Is a Common Carrier

Blue Wireless is regulated as a common carrier in connection with its provision of CMRS.²⁰ As such, Blue Wireless certifies that it is a common carrier under 47 U.S.C. §§ 214(e)(1) and 214(e)(6) for purposes of ETC designation.²¹

B. Blue Wireless Offers the Services Supported by the Federal Universal Service Support Mechanisms

As described below, Blue Wireless certifies that it provides voice telephony service supported by federal universal service support mechanisms, including the following capabilities:

¹⁵ 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).

¹⁶ 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

¹⁷ 47 C.F.R. § 54.202 (a)(1)(i).

¹⁸ *Id.* § 54.202(a)(2).

¹⁹ *Id.* § 54.202(a)(3).

²⁰ 47 C.F.R. § 20.9.

²¹ 47 U.S.C. § 214(e)(1), (e)(6).

1. Voice Grade Access To The Public Switched Telephone Network²² – Blue Wireless meets this requirement through its provision of mobile voice communications service and interconnection to the public switched telephone network.
2. Local Usage – an amount of minutes of use provided free of charge to end users.²³ Blue Wireless meets this requirement by providing an amount of local usage free of charge in each universal service rate plan. Blue Wireless’s usage allocations at all price points are highly competitive.
3. Access To Emergency Services – access to emergency services includes access to both 911 and E911 services, to the extent the local government has implemented such services.²⁴ Blue Wireless meets this requirement by providing 911 service and meeting all requests for E911 service from local public service answering points to the extent local governments in Blue Wireless’s service area have implemented 911 or enhanced 911 systems.

C. Blue Wireless Provides Service Using Its Own Facilities

Blue Wireless is a facilities-based wireless telecommunications carrier with its own switching, cell sites, and associated telecommunications facilities throughout its Proposed Service Areas and, therefore, meets the applicable facilities-based requirements for ETCs.²⁵ The Company uses radio licenses issued by the Commission to provide CMRS and will use its own network facilities to provide the supported services to eligible consumers in its requested ETC Service Area.

D. Blue Wireless Will Provide Service Throughout Its Proposed Service Areas

If selected to receive Mobility Fund Phase II support, Blue Wireless commits to provide the supported services throughout the area for which it is selected to receive support. For purposes of this petition, Blue Wireless seeks conditional ETC designation throughout its

²² 47 C.F.R. § 54.101(a).

²³ *Id.*

²⁴ *Id.*

²⁵ 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).

licensed service area in New York, with the understanding that the conditional designation will ripen into actual ETC status in any such areas where Blue Wireless is selected to receive Mobility Fund Phase II support.

E. Blue Wireless Will Advertise the Availability of Services Using Media of General Distribution

Blue Wireless will advertise the availability of, and charges for, its voice and broadband service offerings using media of general distribution.²⁶ Blue Wireless currently offers and advertises its wireless telecommunications services, including those offerings that include all of the supported services, using radio, television, billboards, transit, print, Internet, and targeted mailings, among other media. In addition, Blue Wireless maintains various retail stores throughout the Proposed Service Area. Blue Wireless will use the appropriate media outlets to advertise its universal service offerings in a manner consistent with applicable requirements.

F. Blue Wireless Meets the Additional Requirements for Designation as an ETC

1. Certify Compliance With Applicable Requirements

Blue Wireless certifies that it will comply with all applicable requirements related to the support it receives, consistent with 47 C.F.R. § 54.202(a)(1)(i).

2. Blue Wireless's Five-Year Plan for Proposed Improvements and Upgrades as a Result of Receipts of Mobile Fund monies

Because the Commission has not yet announced the areas that will be eligible for Mobility Fund Phase II support, it is not yet possible for Blue Wireless to prepare a concrete service improvement plan. However, consistent with prior rounds of Mobility Fund support, the Commission will require carriers selected to receive Phase II support to meet specific build-out obligations; to provide a build-out plan towards meeting those obligations; and to provide reports

²⁶ See 47 C.F.R. § 54.201(d)(2).

on their progress under their plans and consistent with their requirements. If selected to receive Mobility Fund Phase II support, Blue Wireless will comply with all applicable service improvement requirements.

3. Ability to Function in Emergency Situations

Blue Wireless has the “ability to remain functional in emergency situations” as required.²⁷ Blue Wireless has back-up power (either battery- or generator-supplied) sufficient to ensure functionality in the designated service area without an external power source for a reasonable period of time, is able to re-route traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations. Blue Wireless technicians and engineers are trained to deploy in response to service outages and emergency situations.

4. Consumer Protection and Service Quality Standards

Blue Wireless will satisfy applicable consumer protection and service quality standards in accordance with 47 C.F.R. § 54.202(a)(3). Blue Wireless agrees to abide by the CTIA-The Wireless Association® Consumer Code for Wireless Service (“Consumer Code”), including any revisions to the Code.

Blue Wireless also provides its customers with other service quality and consumer protection benefits. Blue Wireless is a local company currently serving the needs of individuals and businesses in the Western New York and Northern Pennsylvania regions. Unlike national providers, Blue Wireless’s managers and employees are located in the region and are finely attuned to market needs in that area. As a result, Blue Wireless has a record of excellence in customer satisfaction. Conditionally designating Blue Wireless as an ETC will allow the company to expand its low-cost offerings to previously unserved areas, while allowing those

²⁷ 47 C.F.R. § 54.202(a)(2).

customers to retain the benefits of receiving service from a local company that is focused on their needs and satisfaction.

In addition, Blue Wireless maintains policies for consumer privacy protections, as detailed in Blue Wireless's Privacy Policy available at the Company's website (www.blueunlimited.com).

G. Conditional Designation of Blue Wireless as an ETC Is in the Public Interest

Blue Wireless's designation as an ETC will serve the public interest because an additional competitor for Mobility Fund Phase II is likely to result in greater coverage at lower subsidy levels. For example, if Phase II support is awarded in an auction similar to the Phase I auction, an additional qualified bidder will encourage more aggressive bidding. Additionally, if Blue Wireless is awarded Phase II support, it will bring high quality 3G or better service to the Proposed Service Areas, which has important public safety and public health benefits. Consistent with the Commission's previous findings, fund impact and cream-skimming are not relevant to conditional ETC designations for purposes of participation in the Mobility Fund.²⁸

Currently, Blue Wireless serves the mobile communications needs of consumers in New York and, through its participation in Mobility Fund Phase II, Blue Wireless plans to expand its business to unserved areas of the State, providing affordable service offerings that meets the basic and advanced communication needs of customers in those areas.

The designation will allow Blue Wireless, already a facilities-based provider in the area, to expand its facilities to unserved area in the State. If Blue Wireless is selected for Phase II support, it will bring high quality 3G or better service to the Proposed Service Areas, which has

²⁸ *Petitions for Designation as an Eligible Telecommunications Carrier for Purposes of Participation in Mobility Fund Phase I, Petition of SI Wireless, LLC for Designation as an Eligible Telecommunications Carrier in Tennessee*, WC Docket No. 09-197, WT Docket No. 10-208, AU Docket No. 12-25, Order, 27 FCC Rcd 7218, 7225 ¶ 21 (2012).

important public safety and public health benefits, beyond the simple fact that more customers will have access to wireless service for a multitude of purposes.

IV. BLUE WIRELESS MEETS THE CRITERIA FOR PARTICIPATION IN THE MOBILITY FUND

Although the Commission has not yet adopted precise criteria for participation in the Mobility Fund Phase II, Blue Wireless meets the general requirements that have been imposed for prior rounds of Mobility Fund support.

A. Blue Wireless Has Access to Spectrum Capable of 3G or Better Service in the Area Where It Proposes to Provide Service

As noted above, Blue Wireless is an established facilities-based provider in New York with ample spectrum resources already under license in the State. Blue Wireless holds a number of cellular, broadband PCS, AWS, and 700 MHz licenses through which it offers or will offer wireless services. Blue Wireless already provides its customers in New York with advanced data services. Blue Wireless has already deployed 3G service on this spectrum, and is in the process of deploying 4G service. Its spectrum resources are thus sufficient to support such deployments in unserved portions of its licensed area.

B. Blue Wireless Has Financial and Technical Capability to Provide Service

Given that Blue Wireless already provides both voice and data services in the State, and has done so for ten years, Blue Wireless is well positioned and has the financial and technical capability to provide mobile broadband services in conformance with the Commission's requirements in the timeframe allotted. Blue Wireless commits to provide whatever showing of financial and technical capability required under the Mobility Fund Phase II rules when adopted.

C. Blue Wireless Commits to Meeting the Other Public Interest Obligations as Set Forth by the Commission for Mobility Fund Phase II Participants

When the Commission adopts public interest requirements for Mobility Fund Phase II, Blue Wireless will be required, to the extent that it participates in that process, to certify or demonstrate its compliance with these requirements. Blue Wireless commits to do so.

V. ANTI-DRUG ABUSE CERTIFICATION

Blue Wireless 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.

VI. CONCLUSION

As discussed above, designation of Blue Wireless as a Lifeline ETC in the State accords with the requirements of Section 214(e)(6) of the Act and is in the public interest. For all of the foregoing reasons, Blue Wireless respectfully requests that the Commission designate it as an ETC in the State and in the specified areas of the State.

Respectfully submitted,

BUFFALO-LAKE ERIE WIRELESS
SYSTEMS CO., L.L.C. D/B/A BLUE
WIRELESS

By: /s/ Brian Gelfand
Brian Gelfand
President

4915 Auburn Avenue, Suite 200
Bethesda, MD 20814

May 21, 2014

EXHIBIT A

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

October 28, 2010

TO WHOM IT MAY CONCERN:

Re: Boomerang Wireless CMRS Jurisdiction

We have received a letter from Boomerang Wireless, LLC d/b/a Ready Mobile (Boomerang 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 Boomerang Wireless that it provides wireless service in New York over its own facilities and Sprint's network, the company 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