STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service Commission held in the City of New York on November 17, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard
David J. Valesky
John B. Maggiore

CASE 22-C-0431 - Petition of DISH Wireless L.L.C. dba Gen Mobile for Designation as an Eligible Telecommunications Carrier.

ORDER APPROVING DESIGNATION
AS ELIGIBLE TELECOMMUNICATIONS CARRIER

(Issued and Effective November 28, 2022)

BY THE COMMISSION:

## INTRODUCTION

By petition dated July 22, 2022, pursuant to Section 214 of the Communications Act of 1934, as amended (47 U.S.C. §214) and Section 5 of the New York Public Service Law (PSL), as amended, DISH Wireless L.L.C. dba Gen Mobile (DISH Wireless or the Company) seeks Commission designation as an eligible telecommunications carrier (ETC) in order to receive federal universal service support for offering wireless Lifeline service.[1]

[1] PSL §5 was amended effective December 6, 2019, to allow the Commission to designate CMRS providers as ETCs for Lifeline purposes (PSL §5(6)(c)).

By this Order, the Commission finds that DISH Wireless, a provider of commercial mobile radio service (CMRS) meets the requisite Federal Communications Commission's (FCC) criteria for Lifeline-only ETC designation and that such designation is in the public interest.

## BACKGROUND

### Lifeline Service and the Targeted Accessibility Fund

Consistent with promoting and ensuring that all residents have access to affordable basic telephone service, the FCC's Lifeline Program offers federally discounted service to qualifying low-income consumers. Section 214(e)(2) of the Federal Communications Act of 1934 as amended provides state public utility commissions with the primary responsibility for the designation of ETCs who would thereupon be eligible to receive federal universal service funding. In New York, PSL §5(6)(a) suspended Commission regulation over cellular service. However, with the enactment of the amended PSL §5(6)(c) on December 6, 2019, Commission jurisdiction to designate commercial mobile radio or cellular telephone service providers as an ETC for purposes of providing lifeline services was authorized.

In New York, the Targeted Accessibility Fund (TAF) provides a supplemental discount to Lifeline customers.[2] TAF is

[2] The TAF was established by the Commission in June 1998 through Opinion 98-10 to fund specific programs such as Lifeline, Enhanced 911 (E911) and Telecommunications Relay Service (TRS) for the deaf and hard-of-hearing. See, Case 94-C-0095, Proceeding on Motion of the Commission to Examine Issues Related to the Continuing Provision of Universal Service and to Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market, Opinion and Order Establishing Access Charges and Instituting a Targeted Accessibility Fund (issued June 2, 1998).

currently funded through assessments on all certified wireline telecommunications carriers operating in New York State. Although wireless carriers were previously exempted from TAF participation, on November 29, 2017, Section 92-h was added to the PSL to allow eligible wireless providers the option to participate in TAF for the sole purpose of receiving TAF support for Lifeline service. Specifically, PSL section 92-h states, in part: "[i]f such a [wireless] provider elects to participate in the fund, the provider shall assume all rights and obligations associated with such participation under the Commission's orders, on the same basis as other participants."[3]

Petitioner

DISH Wireless, a Colorado company, provides prepaid wireless telecommunications services to consumers by using the underlying wireless networks of AT&T and T-Mobile (the Underlying Carriers) to offer wireless service to low-income New Yorkers. DISH Wireless offers plans that include "talk, text, and data at various speeds," and is a participating provider in the FCC's Affordable Connectivity Program. DISH Wireless states that it is designated at an ETC in Colorado; has applications for designation as an ETC pending in Alabama, Connecticut,

[3] In response to the enactment of §92-h, ten wireless companies have filed petitions with the Commission requesting to participate in TAF. Four of those ten companies (Buffalo-Lake Erie Wireless Systems Co., LLC, Assurance Wireless USA, L.P., TracFone Wireless, Inc. and Telrite Corporation) have withdrawn their petitions. By letter to all parties from ALJ Sayre on June 2, 2021, and Department Staff's withdrawal from settlement negotiations, any further settlement discussions have been placed in the hands of the remaining participating companies. See, Case 20-C-0314, Petitions of Wireless Carriers Pursuant to Public Service Law 92-h to Participate in the New York State Targeted Accessibility Fund and for Establishment of Distribution.

Delaware, Florida, Maine, New Hampshire, North Carolina, Tennessee, Virginia, and the District of Columbia; the Company is also authorized in California to provide "California LifeLine," a state discount program for low-income consumers.

## LEGAL AUTHORITY

47 U.S.C. section 214 requires state commissions to designate common carriers[4] as ETCs for the purpose of determining universal service obligations and eligibility to receive federal universal service funding. Section 214 also requires state commissions to define the service area of the carriers and, when appropriate, to grant waivers of certain requirements. In cases in which an ETC applicant petitions for designation in a rural service area already served by an ETC, the state commission is required to find that such designation is in the public interest.

Pursuant to PSL §5(6)(c) (effective December 6, 2019), the Commission now has jurisdiction to designate "any commercial mobile radio or cellular telephone service provider[]" as an ETC

[4] Under 47 U.S.C. section 153(11), the term "common carrier" or "carrier" refers "any person engaged as a common carrier for hire, in interstate or foreign communication by wire [wireline] or radio [wireless] or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier." Under 47 U.S.C. section 153(33), the term "mobile service" includes "a radio communication service carrier on between mobile stations or receivers."

for purposes of providing lifeline services.[5] Amended subsection 5(6)(c) states, in its entirety:

> Notwithstanding paragraph a of this subdivision, the commission may designate any commercial mobile radio or cellular telephone service providers as an eligible telecommunications carrier for purposes of providing lifeline service, in addition to any commercial mobile radio or cellular telephone service providers designated as such pursuant to 47 U.S.C. Section 214(e) and 47 U.S.C. Section 214(e)(2), without requiring any such provider to obtain a certificate of public convenience and necessity pursuant to section ninety-nine of this chapter. The commission is authorized to promulgate all rules and regulations necessary to implement the provisions of this paragraph.

## THE PETITION

As a CMRS provider, DISH Wireless requests ETC designation for the sole purpose of receiving federal universal service support to provide Lifeline services to qualified low-income customers in New York. DISH Wireless's petition is solely for designation as an ETC to provide Lifeline services. At this time, DISH Wireless does not through its petition seek a distribution pursuant to New York's TAF.

DISH Wireless requests ETC designation throughout all of New York State in order to allow the Company to provide Lifeline service wherever its Underlying Carriers have facilities and wireless coverage. DISH Wireless states that it satisfies each of the federal statutory and regulatory requirements for ETC designation.

[5] Prior to the enactment of PSL §5(6)(c), wireless companies were required to petition the FCC prior to being designated as an ETC in New York. The Commission previously did not entertain wireless ETC designation requests without prior FCC action.

Noting that Section 214(e)(1)(A) of the Act (47 U.S.C. §214(e)(1)(A)) requires ETCs to provide services using their own facilities, at least in part, DISH Wireless states it will utilize both its own facilities as well as the facilities of the Underlying Carrier to provide service. The Company further states that it is able to provide all of the supported services that are required to be provided by ETCs pursuant to 47 C.F.R. §54.101(a):

a) Voice grade access to the public switched telephone network;

b) Local usage at no additional charge;

c) Access to emergency services, including access to 911 or E911;

d) Lifeline and free toll limitation services for qualifying low-income customers; and,

e) Voice telephony service.

DISH Wireless commits that it will meet or exceed the minimum service standards set forth by the FCC for both its Lifeline-supported voice services and its Lifeline-supported mobile broadband internet access services.[6] The Company also represents that it is financially and technically capable of providing the supported Lifeline service. It asserts that it will satisfy the ETC requirements adopted by this Commission and the FCC, including:

a) Provide Service Throughout Designated Service Area – DISH Wireless certifies that it will provide service in New York by using resold service which it obtains from the Underlying Carriers. DISH Wireless states the Underlying Carriers' networks are operational and largely built out. As such, the Company states it will be able to commence offering its Lifeline service to all locations served by the Underlying

[6] See 47 C.F.R. Section 54.408.

Carriers very soon after receiving approval. DISH Wireless will advertise the availability and charges for such services in media of general distribution as required by 47 U.S.C. §214(e)(1)(B).

b) Ability to Remain Functional in an Emergency – DISH Wireless states that it will use the Underlying Carriers' networks and facilities and states that each of those carriers has the ability to ensure the functionality of its service without an external power source and that the Underlying Carriers are able to re-route traffic when facilities are damaged and are capable of managing traffic spikes resulting from emergency situations. In response to Department Staff Information Requests, the Company states that its Underlying Carriers have repeatedly certified to the FCC that their networks function in emergency situations and that the Underlying Carriers provide the same functionality to DISH Wireless and its customers that they provide to themselves and their own customers.

c) Satisfaction of Applicable Consumer Protection and Service Quality Standards – DISH Wireless states that it will, as a wireless service provider, comply with all applicable requirements as set forth by the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.

d) Lifeline Certification and Verification - Consistent with 47 C.F.R §54.409, the Company states that it will certify that a consumer's household meets applicable income requirements. DISH Wireless also asserts it will notify consumers that the service must be personally activated by the subscriber, and that the subscriber must use their service every thirty days. The Company states that it will obtain this certification annually and shall ensure that only eligible consumers are participating in Lifeline through the National Lifeline Eligibility Verifier.

## DISCUSSION AND CONCLUSION

DISH Wireless seeks Commission designation as an ETC solely to receive federal universal service support for providing wireless Lifeline service in New York. The Commission finds that DISH Wireless will provide the requisite voice and mobile broadband internet access services and that the Company satisfies all FCC and Commission criteria for Lifeline-only ETC designation. Accordingly, granting Lifeline-only ETC designation to DISH Wireless will serve the public interest.

As an ETC, DISH Wireless will provide another option for discounted basic service to meet the needs of New York's Lifeline-eligible consumers. In addition, as DISH Wireless offers mobile broadband services, many Lifeline-eligible customers will have the opportunity to receive more advanced telecommunications services.

By this Order, the Commission's designation of DISH Wireless as an ETC is limited to the provision of Lifeline services. This Order in no way gives DISH Wireless the authority or designation to participate in the New York State's TAF. The participation of wireless providers in TAF is currently pending before the Commission, as noted above.

The Commission finds that designation of DISH Wireless as an ETC is in the public interest, and therefore approves the Company's petition requesting designation as a Lifeline-only ETC for purposes of participating in federal universal service low-income support programs.

The Commission orders:

1. The petition of DISH Wireless L.L.C. dba Gen Mobile, for designation as an eligible telecommunications carrier for the purpose of receiving federal universal service support for low-income programs, is approved consistent with the discussion in the body of this Order.

2. The case is closed.

By the Commission,

(SIGNED) MICHELLE L. PHILLIPS
Secretary