

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 23A-0619T

IN THE MATTER OF THE APPLICATION OF IM TELECOM, LLC D/B/A INFINITI MOBILE FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF COLORADO.

COMMISSION DECISION GRANTING APPLICATION,
IN PART, AND GRANTING REQUEST FOR WAIVERS

Mailed Date: February 5, 2024

Adopted Date: January 31, 2024

I. BY THE COMMISSION

A. Summary

1. This Decision addresses the Application for Designation as an Eligible Telecommunications Carrier (ETC) filed by IM Telecom, LLC d/b/a Infiniti Mobile (INFINITI) on December 21, 2023 (the Application). Through its Application, INFINITI seeks to be designated as an ETC to provide Wireless Lifeline Service throughout Colorado. We grant the Application consistent with the discussion below.

B. IM Telecom, LLC d/b/a Infiniti Mobile's Application for ETC Designation

2. On December 21, 2023, INFINITI filed an Application for Designation as an ETC in the State of Colorado for the limited purpose of offering wireless Lifeline-only service.

3. In its Application, INFINITI seeks to be designated as an ETC for Lifeline-only purposes, throughout Colorado pursuant to Sections 214 and 254 of the Telecommunications Act of 1996 and Rule 2187 of the Rules Regulating Telecommunications Providers and Providers of

Telecommunications Services, 4 *Code of Colorado Regulations* (CCR) 723-2, as well as Federal Communications Commission (FCC) Universal Service, 47 *Code of Federal Regulations* (CFR) § 54.101, *et seq.*

4. INFINITI states that it is currently designated as a wireless ETC and provides Lifeline-only services in the following jurisdictions: California, Georgia, Kentucky, Maryland, Nevada, New York, Oklahoma, Pennsylvania, South Carolina, Vermont, and Wisconsin.

5. INFINITI is also authorized by the FCC and Universal Service Administrative Company (USAC) to participate in the Affordable Connectivity Program (ACP) throughout the United States, including the State of Colorado.

6. INFINITI represents that it is not eligible to seek access to funds from the Federal Universal Service Fund for the purpose of participating in the Link-Up program or providing service in high-cost areas.

7. INFINITI seeks designation as an ETC throughout Colorado, where the underlying carriers are AT&T Mobility LLC, T-Mobile USA, Inc., and Verizon Wireless providing coverage pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 and Rule 2187 4 CCR 723-2. As well as FCC Universal Service, 47 CFR §§ 54.101 through 54.207, including voice grade access to the public, Switched Telephone Network, and access to emergency services provided by local government or public safety organizations, such as 911 and enhanced 911.

8. INFINITI is a provider of commercial mobile radio services (CMRS) and provides prepaid wireless telecommunications services to consumers by using the underlying carrier's wireless networks.

9. The Commission gave public Notice of the Application on December 27, 2023.

1. Federal Requirements for ETC Designation

10. The Federal Telecommunications Act of 1996 changed the federal approach to ensuring that the nation's population has access to landline telephone service, known as "universal service." 47 U.S.C. § 214(e); *WWC Holding Co. v. Sopkin*, 488 F.3d 1262, 1267 (10th Cir. 2007). To develop the infrastructure necessary to provide universal service, Congress created a federal fund to which telecommunications carriers contribute (47 U.S.C. § 254(d)). *WWC Holding Co.*, at 1267. Carriers who are designated as an ETC may receive funding from this source as a public subsidy, (known as federal universal service support). The FCC distributes universal service support to eligible carriers designated as ETCs; it has also established requirements to receive ETC designation. *See generally*, 47 CFR § 54.101 *et seq.* In 2011, the FCC expanded the definition of "universal service" to include broadband service, thereby redirecting federal support to "networks capable of providing voice and broadband services." *In re Connect Am. Fund*, 31 FCC Rcd 5949, 5952, 2016 FCC LEXIS 1807, **7 (F.C.C. May 26, 2016); *see also*, 47 CFR 54.400(n). To receive universal support funds, regulated telecommunications carriers must receive an ETC designation from the Public Utilities Commission in the state in which the provider seeks to provide universal service. 47 U.S.C. § 214(e)(2).

11. In deciding whether to designate a carrier as an ETC, the Commission must find that the provider meets the federal requirements for such a designation in accordance with 47 U.S.C. § 214(e)(2). To be designated as an ETC, a provider must: (a) deliver the supported services throughout its designated service areas "either using its own facilities or a combination of its own facilities and resale of another carrier's services" per 47 U.S.C. § 214(e)(1)(A) and 47 CFR § 54.201(d)(1); (b) advertise its universal service offerings and the charges thereof,

using media of general distribution per 47 U.S.C. § 214(e)(1)(B) and 47 CFR § 54.201(d)(2); (c) certify that it will comply with the service requirements applicable to the support that it receives, per 47 CFR § 54.202(a)(1)(i); (d) submit a five-year build-out plan describing proposed improvements or upgrades to its network except for carriers seeking Lifeline-only ETC designation, per 47 CFR § 54.202(a)(1)(ii); and (e) demonstrate that it will comply with applicable consumer protection and service quality standards per 47 CFR § 54.202(a)(3).

12. In addition, a provider must also establish that it can remain functional during emergency situations, by demonstrating that it: (a) has a reasonable amount of backup power to ensure functionality without an external power source; (b) is able to reroute traffic around damaged facilities; and (c) is capable of managing traffic spikes resulting from emergency situations, per 47 CFR § 54.202(a)(2).

13. Common carriers seeking ETC designation for Lifeline-only universal service support must also: (a) demonstrate they are financially and technically capable of providing Lifeline service; (b) submit information describing the terms and conditions of telephony service plans, including minutes provided, additional charges if any for toll calls, and plan rates; and (c) submit information describing the terms and conditions of broadband internet access service plans, including speeds offered, data usage allotments, any additional charges and plan rates. 47 CFR § 54.202(a)(4) to (6).

14. Carriers must also establish that their broadband internet access services are capable of transmitting and receiving data, excluding dial-up service. 47 CFR § 54.101(a)(2).

15. Finally, in determining whether to designate a carrier as an ETC, the relevant Public Utilities Commission must find that the designation is in the public interest. 47 U.S.C. § 214(e)(2). The FCC encourages state commissions to conduct a public interest analysis that

includes the examination of (a) the benefits of increased consumer choice; (b) the impact of the designation on the universal service fund; and (c) the unique advantages and disadvantages of the competitor's service offering, provided guidance on factors to consider in determining whether granting an ETC designation is in the public interest. *In the Matter of Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 6371, 6379 (2005).

2. Colorado Requirements for ETC Designation.

16. Rule 2187 of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services sets out requirements for ETC designation; many of those mirror the federal requirements. 4 CCR 723-2. Specifically, ETC applicants must:

- (a) describe the ETC service area by metes and bounds or by providing the carrier's exchange area map;
- (b) establish that it meets the requirements of 47 C.F.R. §§ 54.201(d) and 54.202;
- (c) affirm that it is a common carrier, will advertise the services and associated charges, make Lifeline services available in all locations where it has been awarded support to qualifying low-income customers, and that it is in compliance with applicable Commission rules;
- (d) establish that it will remain functional in emergency situations;
- (e) satisfy consumer protection and service quality standards; and
- (f) provide a two-year build-out plan demonstrating how high-cost universal service support will be used to improve coverage, service quality, or capacity.

Rule 2187(d)(II) to (XI), 4 CCR 723-2.

17. ETC applicants must also provide the information required by Rule 2002(b), 4 CCR 723-2. Rule 2187(d)(I), 4 CCR 723-2.

18. Carriers who are granted an ETC designation must offer the supported services within one year of the Commission's decision approving the application for ETC designation. Rule 2187(e), 4 CCR 723-2.

C. Findings, Analysis, and Conclusions

19. INFINITI's application asks the Commission for authority to provide Lifeline services in Colorado in both tribal and non-tribal service areas. The Commission does not exercise jurisdiction over ETC designations for service on tribal lands. *See* Decision No. C21-0245 issued on April 22, 2021, in Proceeding No. 21A-0029T. Accordingly, we decline to grant INFINITI's request for ETC designation to provide Lifeline services on tribal lands. We grant the remainder of INFINITI's Application.

20. Having reviewed the Application, we are satisfied that the Application meets the referenced federal requirements, and the Commission's requirements, and we conclude that designating INFINITI a Lifeline-only ETC in Colorado is in the public interest. We highlight a few of the reasons put forth in the Application, below.

21. INFINITI is a common carrier as defined by 47 U.S.C. § 153(10) and 47 CFR § 20.9(a)(7) and has been granted ETC designation status to offer Lifeline service to California, Georgia, Kentucky, Maryland, Nevada, New York, Oklahoma, Pennsylvania, South Carolina, Vermont, and Wisconsin. INFINITI provides each of the supported services set forth in 47 CFR § 54.101(a), as amended by the Lifeline Reform Order, and has shown intent and ability to offer those services, once designated an ETC throughout Colorado. INFINITI indicates that it will abide by all applicable consumer protection and service quality standards, and importantly, that it has taken steps to ensure the resiliency of the services offered.

22. INFINITI represents that: (1) the Lifeline program would advance the public interest because it would enable the Company to commence much-needed Lifeline services to a wide array of low-income Colorado residents as soon as possible, and (2) it is an authorized participant under the FCC's ACP.

23. We agree with the reasons that INFINITI provides and conclude that granting INFINITI Lifeline-only ETC designation is in the public interest.

D. Waiver of Commission Rules.

24. In its Application, INFINITI is seeking waiver of Rule 2187 Section (d)(II), which requires an applicant for ETC designation to provide a description of the service area in which an applicant seeks designation either with a description by metes and bounds or by the underlying carriers' exchange area maps. Instead, INFINITI has described its service area by reference to the Underlying Carriers' wireless coverage maps. Given the services provided and the technology that INFINITI will employ, we agree that the wireless coverage maps provide a more accurate description of the service territory. Therefore, we grant the requested variance.

25. INFINITI also seeks a waiver of the provisions in Rule 2187(g)(III) and (VI), which provide annual reporting requirements from an ETC receiving high-cost support. INFINITI points out that it is not eligible to seek access to funds from the federal Universal Service Fund, and therefore we find good cause to grant this waiver, as well.

E. Additional Statements

26. The Commission wishes to highlight certain requirements contained in our rules that pertain to companies designated as ETCs. In this case:

- INFINITI shall provide its ETC Lifeline universal service offerings throughout Colorado.
- INFINITI is not authorized to provide Lifeline service on federally recognized tribal reservations in the State of Colorado.
- INFINITI shall submit all reports, fees, surcharges, and any other obligation due and owing to the Colorado Public Utilities Commission or its assignee.
- INFINITI must comply with state and federal ETC reporting and certification obligations and must provide copies of these federal reports to the Commission.

- INFINITI must offer the Lifeline service authorized by this Decision within one year of the effective date of this Decision.
- INFINITI must notify the Commission 20 days prior to its initial offering and offering any new services or making any changes in its service plans through an informational filing with the Director of the Commission; the filing must detail the rates and speeds, as well as the terms and conditions, associated with the initial plans and any new plans.
- INFINITI must offer a variety of packages for its services with varying service terms and the early termination of a service agreement must result in an early termination fee that is less than the sum of the monthly fees for the remaining months of the term.
- INFINITI must not subject its Lifeline customers who subscribe to standalone voice services to a minimum service term.

II. **ORDER**

A. **The Commission Orders That:**

1. INFINITI's Application for designation as a Lifeline-only Eligible Telecommunications Carrier (ETC) is granted.
2. Commission Rule 2187(d)(II), 4 *Code of Colorado Regulations* (CCR) 723-2, is waived for purposes of this Lifeline-only limited designation as an ETC.
3. Commission Rule 2187(g)(III) (to the extent that these reports are not applicable or required for the Federal Communications Commission (FCC)) and (VI), 4 CCR 723-2, is waived for purposes of this Lifeline-only limited designation as an ETC.
4. The 20-day period provided for in § 40-6-114, C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the effective date of this Decision.

5. This Decision is effective on its mailed date.

**A. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
January 31, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners