

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 13A-1337T

IN THE MATTER OF THE APPLICATION OF SAGE TELECOM COMMUNICATIONS, LLC FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF COLORADO FOR THE PURPOSE OF OFFERING WIRELESS LIFELINE SERVICE.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
MELODY MIRBABA
APPROVING SETTLEMENT AGREEMENT
AND GRANTING APPLICATION**

Mailed Date: June 30, 2014

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I. STATEMENT, FINDINGS OF FACT, AND CONCLUSIONS

1. On December 18, 2013, Sage Telecom Communications LLC (Sage) filed an Application for Designation as an Eligible Telecommunications Carrier in the State of Colorado for the Limited Purpose of Offering Wireless Lifeline Service (Application).

2. In its Application, Sage seeks to be designated as an Eligible Telecommunications Carrier (ETC) within certain local service exchange areas in Colorado pursuant to Sections 214 and 254 of the Telecommunications Act of 1996 and Rule 2187 of the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* 723-2, as well as Federal Communications Commission (FCC) Universal Service, 47 *Code of Federal Regulations* (CFR) § 54.101, *et seq.* Sage intends to provide Lifeline service only to qualifying customers. Sage is a reseller of wireless services offered by Sprint Spectrum (Sprint) and Verizon Wireless LLC (Verizon Wireless).

3. Sage seeks designation as an ETC in the State of Colorado throughout the geographic service area where its underlying carriers, Sprint and Verizon Wireless provide coverage (except in tribal areas), 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 organization, such as 911 and enhanced 911. According to the Application, Sage seeks ETC designation in Colorado for the purpose of receiving federal universal service Lifeline support for wireless services. Sage does not request ETC status for the purpose of receiving federal universal service support for providing service in high cost areas, nor does Sage seek designation as an ETC on a wireline basis. Sage intends to offer the services supported by the federal universal service support mechanisms under 47 U.S.C. § 254(c).

4. The Commission gave public Notice of the Application (Notice) on December 24, 2013.

5. On December 31, 2014, Sage filed an Amendment to its Application indicating that it does not intend to offer Lifeline service in tribal areas pursuant to 47 CFR § 54.403(a)(2).

6. Because the public Notice informed the public of a broader Application, the Administrative Law Judge (ALJ) finds that Sage's Amendment to its Application does not require additional public notice to be issued.

7. On January 17, 2014, the Colorado Office of Consumer Counsel filed a "Notice of Intervention of Right, Entry of Appearance and Request for Hearing."

8. On January 27, 2014, Commission trial Staff filed a Notice of Intervention as of Right, Entry of Appearance, and Notice Pursuant to Rules 1401 and 1007(a) and Request for Hearing.

9. On January 29, 2014, by Minute Order, the Commission referred this matter to an ALJ for disposition.

10. On February 7, 2014, the ALJ issued two Decisions. The first Decision required that Sage either have counsel licensed to practice law in Colorado enter an appearance or that its out-of-state counsel must file a verified motion seeking admission before the Commission *pro hac vice*, pursuant to Rule 1201(a) of the Rules of Practice and Procedure, 4 CCR 723-1 and Colorado Rule of Civil Procedure 221.1. Decision No. R14-0149-I. The second Decision scheduled the matter for a prehearing conference, and vacated the procedural schedule set by the Notice. Decision No. R14-0154-I.

11. On February 10, 2014, Sage's new out-of-state counsel filed a "Notice of Substitution of Counsel and Entry of Appearance" and a "Verified Motion for *Pro Hac Vice* Admission of Lance J.M. Steinhart" (Verified Motion). On February 19, 2014, the Commission received confirmation from the Colorado Supreme Court that Mr. Steinhart was duly registered.

12. On February 20, 2014, Sage filed an “Unopposed Motion, Proposed Procedural Schedule, and Request to Vacate Pre-Hearing Conference” (Unopposed Motion). The Unopposed Motion requested that the February 24, 2014 prehearing conference be vacated, and that the ALJ approve the procedural schedule the parties had agreed upon, as set forth in the Unopposed Motion.

13. By Decision No. R14-0201-I issued February 24, 2014, the ALJ granted the parties’ request to vacate the prehearing conference. And, on February 25, 2014, the ALJ scheduled a hearing and established procedural deadlines as requested in the Unopposed Motion and as later informally amended by the parties. Decision No. R14-0205-I.

14. On February 28, 2014, the ALJ granted Mr. Steinhart’s Verified Motion, permitting his appearance on behalf of Sage, *pro hac vice*. Decision No. R14-0224-I.

15. The parties filed multiple unopposed motions seeking to extend or vacate various deadlines set by Decision No. R14-0205-I. The ALJ granted those unopposed motions. Decision Nos. R14-0289-I, R14-0290-I, and R14-0351-I.

16. On April 21, 2014, Sage filed a “Waiver of Statutory Deadline, Request to Vacate Remaining Procedural Schedule, and Waiver of Response Time” (Waiver). The Waiver specifically waived the 210-day statutory deadline for a Commission decision to issue in this proceeding. *See* § 40-6-109.5(3), C.R.S. The Waiver informed the ALJ that the parties were continuing settlement negotiations and required additional time to resolve their disputes.

17. By Decision No. R14-0426-I issued April 23, 2014, the ALJ acknowledged Sage’s waiver of the 210-day deadline pursuant to § 40-6-109.5(3), C.R.S., and vacated the evidentiary hearing and the remaining procedural schedule.

18. On June 5, 2014, Sage filed a “Joint Motion to Approve Stipulation and Settlement Agreement and for Waiver of Response Time.” That same day, Sage filed a “Stipulation and Settlement Agreement” (Stipulation) with four attachments. The Stipulation is executed by all parties to this proceeding. The Stipulation and attachments are appended to this Decision as Appendix A.

A. Applicable Law.

19. On May 8, 1997, the FCC issued its Universal Service Report and Order, 12 FCC Rcd 8776 (1997) (Universal Service Order) implementing the Communications Act of 1934, as amended by the Telecommunications Act of 1996. The FCC provided further guidance on ETC designation in its ETC Report and Order issued March 17, 2005, Federal-State Joint Board on Universal Service, Report and Order, 20 FCC Rcd 6371, 6384 (2005).

20. The Universal Service Order provides that only ETCs designated by a state Public Utilities Commission (State Commission) shall receive federal universal service support. Under 47 U.S.C. § 214(e), a State Commission shall, upon its own motion or upon request, designate a common carrier that meets the requirements set forth by the FCC as an ETC for a service area designated by the State Commission. The FCC defines a service area as a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms.

21. To be designated as a Federal ETC under the 1996 Act, a carrier must: (1) be a common carrier; (2) demonstrate an intent and ability to provision the supported services set forth in 47 CFR § 54.101(a) throughout its designated service areas; and (3) demonstrate an intent and ability to advertise its universal service offerings and the charges thereof, using media of general distribution, 47 U.S.C. § 214(e); *Universal Service Order*, 12 FCC Rcd at 8791.

22. The FCC's supported services set forth in 47 CFR § 54.101(a), as revised on December 23, 2011, are:

- a. voice grade access to the public switched telephone network or its functional equivalent;
- b. minutes of use for local service without additional charge to the end user;
- c. access to emergency services; and
- d. toll limitation for qualifying low income consumers.

23. On February 6, 2012, the FCC issued a Report and Order and Further Notice of Proposed Rulemaking, in which it issued a blanket forbearance from the facilities-based requirement to all carriers seeking limited ETC designation for the purpose of offering Lifeline service only. Those Lifeline-only ETCs are now subject to the following conditions:

- a. provide Lifeline subscribers with 911/E911 access, regardless of activations status and availability of minutes;
- b. provide E911-compliant handsets and replace non-compliant handsets at no additional charge; and,
- c. file a compliance plan with the FCC for approval that includes the procedures to enroll a subscriber in Lifeline service and for reimbursement for that subscriber, sample marketing materials, materials on initial and ongoing certification, how the carrier will offer service, the geographic areas in which it will offer service, and a detailed description of its Lifeline service plans including the rates, number of minutes, and types of plans available to Lifeline customers.

24. Additionally, the FCC 12-11 Lifeline Order (Lifeline Order) eliminated Link-Up support for all ETCs serving non-Tribal lands. The Lifeline Order further requires that a carrier seeking ETC designation for the purpose of offering Lifeline-only, must demonstrate its technical and financial capacity to provide the supported services.

25. The Commission implements 47 U.S.C. §§ 214(e)(1) to (2) by Rules 2180 through 2191, 4 CCR 723-2. These Rules are consistent with § 214(e), and the FCC's rules.

B. The Stipulation and Settlement Agreement.

26. The Stipulation sets forth the parties' agreement on all the issues that were, or could have been raised in this proceeding. Appendix A.

27. The Stipulation acknowledges that the parties are aware that on May 9, 2014, Colorado Governor Hickenlooper signed House Bill 14-1328, House Bill 14-1329, House Bill 4-1330, and House Bill 14-1331, (collectively, the 2014 telecommunications bills), and that each is now in effect. *Id.* The parties do not believe that the 2014 telecommunications bills impact the Commission's standards for considering and authority to grant the relief requested in this Stipulation.

28. Sage seeks designation as an ETC in the State of Colorado throughout the geographic service area where its underlying carriers, Sprint and Verizon Wireless provide coverage, except in any rural service areas, for the purpose of receiving federal universal service Lifeline support for low-income wireless customers in the designated service areas of Colorado.

29. A list of the exchanges in which Sage will offer Lifeline service throughout each entire exchange, and in which the parties have agreed that Sage should be granted ETC status in Colorado is included as Attachment 1 to Appendix A.¹ The parties agree that Sage will not assess roaming charges to any Lifeline subscribers for use within any of the exchanges listed in Attachment 1 or within Sprint's or Verizon Wireless' coverage areas.

30. Sage does not request ETC status for the purpose of receiving funds from the Colorado High Cost Support Mechanism (CHCSM), or funds from the federal Universal Service Fund (USF), nor does it seek designation as an ETC on a wireline basis.

¹ Appendix A includes all attachments to the Stipulation and Settlement Agreement, but it does not separately number those attachments.

31. Sage will advertise the availability of the supported services in its designated service areas using media of general distribution pursuant to 47 U.S.C. § 214(e)(1)(B) to reach those likely to qualify for such services. Sage intends to use media such as the Internet, direct mail, television and radio spot advertising, as well as print advertising in the form of signs, flyers and brochures at retail locations notifying customers of the availability of Sage Lifeline service.

32. The parties agree, and the ALJ finds that Sage is a beneficial user of the Sprint and Verizon Wireless networks. Much of Sprint's and Verizon Wireless' Colorado networks are located along the I-25, I-70, and I-76 highways in Colorado.

33. The parties stipulate that Sage's Lifeline program furthers the statutory goal that basic service be available and affordable to all citizens of Colorado. In addition, its Lifeline product offering provides an additional choice of another provider offering service for low-income consumers, represents a significant benefit for those consumers, and is in the public interest.

34. In addition to the above mentioned stipulations, the parties further stipulate and agree that Sage has shown good cause that its Lifeline offering as described in Attachment 3 to the Settlement Agreement meets all applicable state and federal requirements; that its ETC designation for Colorado low-income universal service purposes will serve the public interest, convenience, and necessity; that it does not receive high cost USF support in Colorado; and that its television, radio, and print advertising adequately informs potential customers of the availability of Sage's Lifeline service throughout its proposed ETC service area.

i. Federal ETC Designation for the Limited Purpose of Offering Lifeline Service

35. Sage is a commercial mobile radio service provider, and a common carrier as defined by 47 U.S.C. § 153(10) and 47 CFR § 20.9(a)(7).

36. Sage has been granted ETC status to offer Lifeline wireless service in Kansas, Maryland, Missouri, Texas, and Wisconsin. In addition, Sage has been granted ETC status to offer wireline services in Kansas, Oklahoma, Texas, and Wisconsin.

37. Sage provides each of the supported services set forth in 47 CFR § 54.101(a), as amended by the Lifeline Reform Order, and has shown an intent and ability to offer those services once designated an ETC throughout the areas set forth on Attachment 1 to Appendix A. Sage will offer a choice of three prepaid Lifeline Basic Universal Service Plans (LBUS Plans) to eligible Lifeline customers as described in Attachment 3 to Appendix A. The parties agree that any other Lifeline plans discussed in Sage's FCC Compliance Plan or Sage's other filings with the FCC, or as described in Sage's Application in this proceeding on pages 11 and 12 will not be offered in Colorado.

38. Sage will not advertise or offer any LBUS Plans with fewer than 250 free minutes per month in Colorado. Sage will not seek the Tribal lands support amount, as defined by 47 CFR § 54.403(a)(2) for tribal subscribers. Sage's LBUS Plans in Attachment 3 comply with Rule 2187(d)(XII), as Sage offers the Lifeline subscriber at least one plan with unlimited calling.

39. Sage's Lifeline Plans are consistent with other previously-designated ETC Lifeline-only carriers in Colorado. Sage's LBUS Plans are available for enrollment via Sage's website or through Sage's customer service department.

40. It is understood that Sage, as a prepaid provider, will not be required to obtain or retain complete social security numbers of customers. In compliance with the Lifeline Reform Order, Sage will instead obtain and retain the last four digits of the social security number of its customers.

41. Sage's Lifeline plans are not offered on a distance sensitive basis and there is no additional charge for toll minutes of use. Therefore, toll limitation is not a concern because of the prepaid nature of those Lifeline plans. Sage will not seek reimbursement for toll limitation.

42. On December 19, 2012, Sage submitted a Revised Compliance Plan for FCC approval in WC Docket No. 09-197 and WC Docket No. 11-42. The Compliance Plan details the verification, certification, and other anti-fraud measures Sage will take to comply with the state and federal requirements and to ensure that Lifeline support is provided only to consumers who are truly eligible. Sage's Compliance Plan was approved as indicated by public notice issued by the FCC on December 26, 2012.

43. Since it has been found to meet all of the FCC's aforementioned criteria, Sage is entitled to the FCC's blanket forbearance from the "own facilities" requirement. Sage's approved Revised Compliance Plan and the public notice evincing its approval are included in Appendix A, as Attachment 4.

44. The parties agree, and the ALJ finds, that with the incorporation of the agreed-upon terms and conditions in Attachments 2 and 3, designating Sage as an ETC in the study areas and wire centers set forth in Attachment 1 serves the public interest, convenience and necessity, as required by 47 U.S.C. § 214(e)(2) and §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S. The parties agree, and the ALJ finds, that the areas shown in Attachment 1 to Appendix A should be approved as Sage's designated service area and that Sage shall use a Lifeline Certification Form

as set forth in Exhibit A to Sage's approved Compliance Plan (Appendix A, Attachment 4) unless a different form is required by the Commission in the future.

45. The parties have agreed to the LBUS Plans as described in Attachment 3 to Appendix A. This Decision does not prohibit Sage the flexibility to offer new service plans to eligible consumers or to permit eligible consumers to apply their Lifeline discount to bundled service plans or plan containing optional call features. In the event Sage offers new expanded service plans or bundled service plans in the future, these plans will be considered "Lifeline" plans subject to the terms of this Stipulation. Further, Sage shall provide its LBUS Plans and any future Lifeline plans pursuant to the parties' Stipulation and this Decision (including Attachments 1 through 4 to Appendix A). The requirements set forth in the parties' Stipulation, ¶¶ 11(A) to (J) shall apply.

ii. Waiver of Commission Rules.

46. The Stipulation sets forth the parties' agreements that it is appropriate to waive certain Commission Rules. In addition, Sage filed an "Unopposed Motion for Waiver of Certain Commission Rules".

47. Sage seeks a waiver of Rule 2187(d)(III), which requires an applicant for ETC designation to provide a description of the service area in which an applicant seeks designation, including a description by metes and bounds and a map displaying the service area for purposes of this Application only. As grounds, Sage states that Sprint's and Verizon Wireless's physical networks do not precisely correlate with a metes and bounds description as required by Rule 2187(d)(III), but that the list of the exchanges in Colorado where Sage has shown an intent and ability to offer the supported services once designated as an ETC throughout the service area

is set forth in Attachment 1 to the Stipulation (Appendix A). Per the Stipulation, the parties agree this waiver should be granted.

48. Sage does not maintain or produce a White Pages directory. In light of its obligations under 47 U.S.C. § 214(3)(1)(B) and intent to use the above-referenced media, Sage seeks a waiver of Rule 2187(d)(VII), which requires that an applicant for ETC designation place customer guide pages in the White Pages directory within the ETC's service area. The parties agree this waiver should be granted.

49. Further, to the extent necessary, Sage requests a waiver of Rule 2187(d)(XIII), which requires a two-year build out plan, since it is not seeking high-cost universal service support. The parties agree this waiver should be granted. Appendix A.

50. The parties further agree that the Commission should grant Sage a waiver of Rule 2187(f)(II)(A) given that the recent changes to the Lifeline program eliminated the reporting of unfulfilled requests.

51. In addition, because Sage does not seek high cost USF or CHCSM support, the parties further agree that it would be in the public interest and consistent with the Lifeline Reform Order for Sage to be granted a full waiver of Rules 2187(f)(II)(F), (G), (H), and (K) through (N), which would otherwise require the submission of detailed information about network expansion plans paid for by high cost funds in areas where Sage has been designated an ETC, a Colorado-specific trial balance, and a build-out plan showing Sage's intended use of high cost funds. *Id.* As to duration, the parties request that this waiver be in effect until either: (1) Sage provides services solely on its own network; (2) this Commission modifies Rules 2187(f)(II)(F), (G), (H), and (K) through (M); or (3) the FCC modifies its blanket

forbearance of the “own facilities” requirement. *Id.* The parties also agree that the waiver of the Colorado-specific trial balance requirement in Rule 2187(f)(II)(N) should be permanent. *Id.*

52. Sage requests partial waiver of Rule 2187(f)(II)(O) that requires affidavit language concerning receipt of high cost support. Because Sage is not seeking high cost support from the USF or CHCSM support, the parties agree that it would be in the public interest and consistent with the Lifeline Reform Order reporting requirements to not require Sage to attest that it is aware of the purposes of High Cost Support and is in compliance with 47 U.S.C. § 254(e) and will not receive any such support. The parties agree the Commission should grant this partial waiver and that Sage will submit an affidavit attesting that all required information provided in its annual filing is true and correct.

iii. Conclusions.

53. The Colorado Legislature has clearly indicated its intent to create a competitive telecommunications environment among the various service areas and providers. The Stipulation provides sufficient means to promote such a competitive environment among wireless providers and provides competition to qualifying customers consistent with § 40-15-101, C.R.S., and Rule 2187(b), 4 CCR 723-2. The Stipulation ensures that there is substantial compliance with Commission rules, as well as providing sufficient regulatory oversight over issues such as adequate service quality and consumer protection.

54. Based on the representations made in the Application and in the Stipulation, the ALJ finds that Sage meets all necessary criteria to be designated as an ETC as requested.

55. Consequently, the ALJ finds that approving the terms of the Stipulation without modification and designating Sage as an ETC is consistent with the terms of its Application and

the Stipulation, and the results reflected in the Stipulation are just, reasonable, and in the public interest.

56. Additionally, the ALJ finds good cause to grant the waiver of Commission Rules 2187(d)(III), (VII) and (XIII); 2187(f)(II)(A), (F), (G), (H), and (K) through (N) and (O).

57. Pursuant to § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

II. ORDER

A. The Commission Orders That:

1. Consistent with the discussion above, the Joint Motion to Approve Stipulation and Settlement Agreement filed June 5, 2014 is granted.

2. The Stipulation and Settlement Agreement (Stipulation), including Attachments 1 through 4 to the Stipulation, executed by Sage Telecom Communications, LLC (Sage), the Office of Consumer Counsel and the Staff of the Public Utilities Commission (attached to this Decision as Appendix A and incorporated herein by reference), is accepted and approved. The Stipulation is incorporated by reference, and is attached hereto (including all attachments) as Appendix A.

3. Sage's Application for designation as an Eligible Telecommunications Carrier (ETC) is granted upon the following conditions:

- a. Sage shall not seek Federal universal service high cost support or Colorado High Cost support in its service area;
- b. Sage shall provide its ETC Lifeline universal service offerings in Colorado pursuant to the Stipulation including attachments, in compliance with this Recommended Decision; and
- c. Sage shall submit all reports, fees, surcharges, and any other obligation due and owing to the Colorado Public Utilities Commission.

4. Because Sage has filed a copy of the Federal Communications Commission approval of its Compliance Plan with the Commission, Sage may offer Lifeline Service in the proposed areas immediately upon the effective date of this Recommended Decision.

5. Sage's Unopposed Motion for Waiver of Certain Rules is granted.

6. Commission Rules 2187(d)(III) and (VII) of the Rules Regulating Telecommunications Providers, Services, and Products, 4 *Code of Colorado Regulations* (CCR) 723-2 are waived for purposes of this limited designation as an ETC.

7. Commission Rule 2187(d)(XIII), 4 CCR 723-2, is waived for purposes of this limited designation as an ETC, until such time as Sage expands to provide facilities-based Lifeline services in Colorado.

8. Commission Rules 2187(f)(II)(A), (F), (G), (H), (K), (L), (M) and (N), 4 CCR 723-2, are waived for purposes of this limited designation as an ETC.

9. Commission Rule 2187(f)(II)(O), 4 CCR 723-2, is waived to the extent it requires Sage to submit an affidavit attesting that it is aware of the purpose of the support for the federal high-cost support and is complying with the requirement set forth in 47 U.S.C. § 254(e) for the purposes of this limited designation as an ETC. This is a partial waiver of the Rule. Requirements of Rule 2187(f)(II)(O), 4 CCR 723-2, not specifically waived herein remain in effect.

10. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

11. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

12. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

(S E A L)



THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

MELODY MIRBABA

Administrative Law Judge

ATTEST: A TRUE COPY

A handwritten signature in cursive script that reads 'Doug Dean'.

Doug Dean,
Director