

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO**

PROCEEDING NO. 15A-0066T

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IN THE MATTER OF THE APPLICATION OF AMERIMEX COMMUNICATIONS CORP., DOING BUSINESS AS SAFETYNET WIRELESS, FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF COLORADO.

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**RECOMMENDED DECISION OF  
ADMINISTRATIVE LAW JUDGE  
MANA L. JENNINGS-FADER  
GRANTING MOTION, SUBJECT TO CONDITIONS;  
APPROVING AMENDED STIPULATION AND  
SETTLEMENT AGREEMENT, UNDER MODIFIED  
PROCEDURES AND SUBJECT TO CONDITIONS;  
DESIGNATING APPLICANT AS AN ELIGIBLE  
TELECOMMUNICATIONS CARRIER FOR THE LIMITED  
PURPOSE OF OFFERING WIRELESS LIFELINE  
SERVICE, SUBJECT TO CONDITIONS; GRANTING  
WAIVERS AND VARIANCE, SUBJECT TO  
CONDITIONS; AND DENYING AS MOOT  
MOTION FOR WAIVER OF RESPONSE TIME**

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Mailed Date: December 11, 2015

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**I. STATEMENT**

1. On January 30, 2015, AmeriMex Communications Corp., doing business as SafetyNet Wireless (AmeriMex or Applicant), filed a verified Application for Designation as an Eligible Telecommunications Carrier in the State of Colorado (Application). Applicant seeks designation as an Eligible Telecommunications Carrier

solely to provide Lifeline service to qualifying Colorado households; it will not seek access to funds from the federal Universal Service Fund ... for the purpose of participating in the Link-Up program or providing service to high-cost areas.

Application at 1 (footnote omitted). That filing commenced this Proceeding.

2. On February 4, 2015, the Commission issued its Notice of Application Filed (Notice). That Notice established an intervention period and contained a procedural schedule. On March 20, 2015, Decision No. R15-0265-I vacated that procedural schedule.

3. The Colorado Office of Consumer Counsel (OCC) and Trial Staff of the Commission (Staff) timely intervened. On June 8, 2015, OCC withdrew from this Proceeding.

4. Staff is the Intervenor. Applicant and Intervenor, collectively, are the Parties; each individually is a Party. Each Party is represented by legal counsel in this Proceeding.

5. On March 11, 2015, by Minute Order the Commission referred this matter to an Administrative Law Judge (ALJ).

6. On March 11, 2015, by Minute Order, the Commission deemed the Application to be complete within the meaning of § 40-6-109.5, C.R.S. Applicant subsequently waived § 40-6-109.5, C.R.S., in this Proceeding. Decision No. R15-0290-I.<sup>1</sup>

7. On March 27, 2015, AmeriMex filed an Unopposed Motion to Vacate Pre-hearing Conference and Hold Case in Abeyance. By Decision No. R15-0290-I, the ALJ granted that motion and placed this Proceeding in abeyance.

8. On April 15, 2015, Applicant filed a Verified Motion for *Pro Hac Vice* Admission of Kasey C. Chow. On April 16, 2015, by Decision No. R15-0351-I, the ALJ granted that motion and admitted Ms. Chow as counsel for Applicant *pro hac vice*.

9. On May 8, 2015, AmeriMex stated that it was “ready to resume prosecution of this Application.” AmeriMex Response to Decision No. R15-0290-I at ¶ 1. As a consequence, the ALJ activated this Proceeding.

10. On May 20, 2015, by Decision No. R15-0485-I, the ALJ scheduled a September 15 and 16, 2015 evidentiary hearing and established the procedural schedule in this Proceeding.

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<sup>1</sup> That Interim Decision was issued in this Proceeding on March 27, 2015.

11. On June 16, 2015, pursuant to the procedural schedule Applicant filed the verified Direct Testimony of Stephen D. Klein (Klein Testimony).<sup>2</sup> Mr. Klein is Division President of Applicant.

12. On July 15, 2015, by Decision No. R15-0711-I, the ALJ granted Applicant's Unopposed Motion to Modify Procedural Schedule; rescheduled the evidentiary hearing to October 15 and 16, 2015; and modified the procedural schedule established in Decision No. R15-0485-I.

13. On July 29, 2015, Staff filed an Unopposed Motion for a New Date for Filing of a Stipulation and Settlement Agreement, for an Alternative Filing Date if Necessary, for all Remaining Dates in the Procedural Schedule to be Vacated [July 29 Motion], and for Waiver of Response Time [Motion for Waiver].

14. On July 29, 2015, Decision No. R15-0772-I waived response time to the portion of the July 29 Motion that requested that the procedural schedule be vacated; granted the request that the procedural schedule be vacated; and vacated the procedural schedule established in Decision No. R15-0711-I. On August 4, 2015, by Decision No. R15-0801-I, the ALJ granted the remaining requests for relief; vacated the October 2015 hearing dates; and established a filing date for a Stipulation and Settlement Agreement.

15. On August 11, 2015, Staff filed a Motion for Approval of Stipulation and Settlement Agreement, for Written Responses to ALJ Questions Rather than a Hearing if Necessary, and Waiver of Response Time. Appended to that filing was a Stipulation and Settlement Agreement that had four exhibits. Applicant joined the filing.

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<sup>2</sup> Appended to the Klein Testimony are four attachments.

16. On August 17, 2015, by Decision No. R15-0893-I, the ALJ posed questions pertaining to the August 11, 2015 filing and the relief sought in that filing. The ALJ directed the Parties to respond to the questions.

17. On August 31, 2015, the Parties filed (in one document) Joint Responses to Administrative Law Judge's Questions in Decision No. R14-0893-I [Joint Responses], Motion for Approval of Amended Stipulation, Exhibits, and Amended Exhibits [Motion to Approve], and Waiver of Response Time.<sup>3</sup> Appended to that filing are three documents: (a) the Amended Stipulation and Settlement Agreement (Stipulation);<sup>4</sup> (b) Amended Exhibit 2 to the Stipulation; and (c) Amended Exhibit 3 to the Stipulation.<sup>5</sup> The Stipulation includes requests for waiver of specified subsections of Rule 4 *Code of Colorado Regulations* (CCR) 723-2-2187.<sup>6</sup>

18. The ALJ has reviewed the Stipulation, the Joint Responses, the verified Klein Testimony, and the verified Application. The ALJ is satisfied that the Joint Responses clarify the Stipulation and that the Stipulation and the Joint Responses provide the information requested by the ALJ in Decision No. R15-0893-I. The ALJ requires no additional clarification or explanation of the Stipulation, its Exhibits, and the waiver requests. As a result, the ALJ is able to consider the Stipulation and the Application (as modified by the Stipulation) without an evidentiary hearing.

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<sup>3</sup> Due to the passage of time, the ALJ will deny as moot the Waiver of Response Time.

<sup>4</sup> The Stipulation and its Exhibits (including Amended Exhibit 2 and Amended Exhibit 3) are attached to this Decision as Appendix A and are incorporated into this Decision by reference as if fully set out.

<sup>5</sup> The Joint Responses (without its three attachments) are attached to this Decision as Appendix B and are incorporated into this Decision by reference as if fully set out. Because they are part of Appendix A to this Decision, the three documents are not attached to Appendix B.

Unless the context indicates otherwise, reference in this Decision to Exhibit 2 is to Amended Exhibit 2 and reference to Exhibit 3 is to Amended Exhibit 3.

<sup>6</sup> This Rule is found in the Rules Regulating Telecommunications Providers, Services, and Products, Part 2 of 4 *Code of Colorado Regulations* 723.

19. All Parties are signatories to the Stipulation. As a result of the Stipulation, the Application is not contested or opposed.

20. Pursuant to § 40-6-109(5), C.R.S., and Rule 4 CCR 723-1-1403,<sup>7</sup> the uncontested and unopposed Application may be considered under the Commission's modified procedure and without a formal hearing. The ALJ finds that the uncontested and unopposed Application can be, and should be, considered under the Commission's modified procedure and without an evidentiary hearing.

21. In accordance with § 40-6-109, C.R.S., the ALJ now transmits to the Commission the record of the proceeding together with a written recommended decision.

## **II. FINDINGS OF FACT AND DISCUSSION**

22. In the Application, AmeriMex requests that the Commission designate it an Eligible Telecommunications Carrier (ETC), pursuant to § 214(e) of the Federal Telecommunications Act of 1996<sup>8</sup> (the Act) and as defined in 47 *Code of Federal Regulations* (CFR) § 54.5 and in Rule 4 CCR 723-2-2001(hh), for the limited purpose of providing wireless Lifeline service to eligible individuals in Colorado. In the Stipulation, AmeriMex requests that the Commission grant it a waiver of portions of Rule 4 CCR 723-2-2187.

23. The evidentiary record in this Proceeding consists of: (a) the verified Application; (b) the verified Klein Testimony; (c) the Stipulation, including its four Exhibits; and (d) the Joint Responses.

24. The facts are not disputed.

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<sup>7</sup> This Rule is found in the Rules of Practice and Procedure, Part 1 of 4 *Code of Colorado Regulations* 723.

<sup>8</sup> The Act is codified in numerous sections of title 47 of the United States Code (U.S.C.).

25. The record establishes, and the ALJ finds, that the Commission has subject matter jurisdiction in this Proceeding.

26. The record establishes, and the ALJ finds, that the Commission has personal jurisdiction over the Parties.

**A. Parties.**

27. Applicant AmeriMex is a privately-held Georgia corporation. Applicant is a commercial mobile radio service (CMRS) carrier, as defined in 47 CFR § 20.9(a)(7), and a telecommunications carrier, as defined in 47 U.S.C. § 153(10). Applicant is a reseller of wireless services offered by Sprint Spectrum, L. P. (Sprint), T-Mobile USA, Inc. (T-Mobile), and Verizon Wireless (Verizon). These companies will provide Applicant with the wireless network infrastructure and wireless transmission facilities necessary for Applicant to offer Lifeline service in Colorado.

28. Intervenor Staff is Litigation Staff of the Commission as identified in the Rule 4 CCR 723-1-1007(a) notice filed in this Proceeding.

**B. Relevant Federal Law.**

29. Federal law governs designation as an ETC. The Commission is the state regulatory agency that designates ETCs in Colorado.

30. The Commission implements 47 U.S.C. §§ 241(e)(1) and 241(e)(2) by Rules 4 CCR 723-2-2180 through 723-2-2191. The Commission Rules are consistent with 47 U.S.C. § 214(e) and the pertinent Federal Communications Commission (FCC) regulations.

## 1. ETC Designation.

31. Section 214(e) of the Act contains the criteria for designation as an ETC. As pertinent here, § 214(e)(1) of the Act provides that, throughout its service territory, an ETC shall

(A) offer the services that are supported by Federal universal service support mechanisms under [§ 254(c) of the Act], either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and

(B) advertise the availability of such services and the charges [for those services] using media of general distribution.

*See also* 47 CFR § 54.201(d) (same).<sup>9</sup>

32. The Report and Order issued in *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 97-157, 12 FCC Rcd. 8776 (1997) (*Universal Service Order*) (subsequent history omitted), provides (as relevant here) that only an ETC designated by a state Public Utilities Commission (State Commission) is eligible to receive federal universal service support.

33. Pursuant to 47 U.S.C. § 214(e), a State Commission, on its own motion or on request, must designate as an ETC a common carrier that meets the requirements established by the FCC; the ETC provides telecommunications service in a service area designated by the State Commission.<sup>10</sup> To be designated as an ETC, a carrier must: (a) be a common carrier; (b) demonstrate an intent and ability to provide the supported services specified in 47 CFR § 54.101(a) throughout its designated service areas; and (c) demonstrate an intent and ability to

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<sup>9</sup> This FCC regulation governs ETC designations by the states. Rule 4 CCR 723-2-2187(a) incorporates these criteria.

<sup>10</sup> A service area is a geographic area established by a State Commission for the purpose of determining universal service obligations and support mechanisms.



advertise its universal service offerings and the charges for those service offerings using media of general distribution.

34. The 47 CFR § 54.101(a) supported services 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.

35. The FCC has provided guidance to state commissions to assist them in making their ETC designation decisions. *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46, 20 FCC Rcd. 6371 (2005) (*ETC Designation Framework Order*).<sup>11</sup> In that Order, the FCC “encourage[d] state commissions to require all ETC applicants over which they have jurisdiction to meet the same conditions and [encouraged state commissions] to conduct the same public interest analysis outlined in” the *ETC Designation Framework Order*. *ETC Designation Framework Order*, FCC 05-46, at ¶ 58. The FCC also encouraged “states ... [to] apply these requirements in a manner that will best promote the universal service goals found in section 254(b) [of the Act].” *Id.*, FCC 05-46, at ¶ 60. The FCC found that “these guidelines are designed to ensure designation of [ETCs] that are financially viable, [are] likely to remain in the market, [are] willing and able to provide the supported services throughout the designated service area, and [are] able to provide consumers an evolving level of universal service.” *Id.*

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<sup>11</sup> Citations in this Decision to the *ETC Designation Framework Order* are to FCC 05-46 (rel. March 17, 2005). There are no parallel citations to 20 FCC Rcd. 6371 (2005).

36. As relevant in this Proceeding, 47 CFR § 54.202 contains requirements pertaining to an application for ETC designation. As relevant here, that FCC regulation provides that an applicant for designation as an ETC

(a) ... in its application must:

(1)(i) Certify that it will comply with the service requirements applicable to the support that it receives.

(ii) ... a common carrier seeking designation as an eligible telecommunications carrier in order to provide supported services only under subpart E of this part [*i.e.*, Lifeline] does not need to submit ... a five-year plan.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(4) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part [*i.e.*, Lifeline], demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.

(5) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part [*i.e.*, Lifeline], submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

(b) *Public interest standard.* Prior to designating an eligible telecommunications carrier pursuant to [47 U.S.C. § 214(e)(6)], the [FCC] determines that such designation is in the public interest.

\* \* \*

## 2. Lifeline Service.

37. The FCC regulations that govern universal service support for low-income consumers (as pertinent here, Lifeline) are found in 47 CFR §§ 54.400 through 54.422. An ETC providing Lifeline service must comply with the requirements, as applicable, in 47 CFR §§ 54.404 (National Lifeline Accountability Database), 54.405 (carrier obligation to offer Lifeline), 54.407 (reimbursement for offering Lifeline), 54.410 (subscriber eligibility determination and certification), 54.416 (annual certification by ETCs), 54.417 (recordkeeping requirements), 54.420 (audits), and 54.422 (annual reporting).

38. To receive Lifeline support, an eligible ETC must:

(a) Make available Lifeline service, as defined in [47 CFR § 54.401], to qualifying low-income consumers.

(b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

(c) Indicate on all materials describing the service, using easily understood language, that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household. For purposes of this section, the term “materials describing the service” includes all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms.

(d) Disclose the name of the eligible telecommunications carrier on all materials describing the service.

(e)(1) *De-enrollment generally.* If an eligible telecommunications carrier has a reasonable basis to believe that a Lifeline subscriber no longer meets the criteria to be considered a qualifying low-income consumer under [47 CFR § 54.409], the carrier must notify the subscriber of impending termination of his or her Lifeline service. Notification of impending termination must be sent in writing separate from the subscriber’s monthly bill, if one is provided, and must be written in clear, easily understood language. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination, that requires, at a minimum, written notification of impending termination, must comply with the applicable state requirements.

The carrier must allow a subscriber 30-days following the date of the impending termination letter required to demonstrate continued eligibility. A subscriber making such a demonstration must present proof of continued eligibility to the carrier consistent with applicable annual re-certification requirements, as described in [47 CFR § 54.410(f)]. An eligible telecommunications carrier must terminate any subscriber who fails to demonstrate continued eligibility within the 30-day time period. A carrier providing Lifeline service in a state that has dispute resolution procedures applicable to Lifeline termination must comply with the applicable state requirements.

(2) *De-enrollment for duplicative support.* Notwithstanding paragraph (e)(1) of this section, upon notification by the Administrator to any eligible telecommunications carrier that a subscriber is receiving Lifeline service from another eligible telecommunications carrier or that more than one member of a subscriber's household is receiving Lifeline service and therefore that the subscriber should be de-enrolled from participation in that carrier's Lifeline program, the eligible telecommunications carrier must de-enroll the subscriber from participation in that carrier's Lifeline program within five business days. An eligible telecommunications carrier shall not be eligible for Lifeline reimbursement for any de-enrolled subscriber following the date of that subscriber's de-enrollment.

(3) *De-enrollment for non-usage.* Notwithstanding paragraph (e)(1) of this section, if a Lifeline subscriber fails to use, as "usage" is defined in [47 CFR § 54.407(c)(2)], for 60 consecutive days a Lifeline service that does not require the eligible telecommunications carrier to assess and collect a monthly fee from its subscribers, an eligible telecommunications carrier must 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 under this paragraph. If the subscriber uses the Lifeline service within 30 days of the carrier providing such notice, the eligible telecommunications carrier shall not terminate the subscriber's Lifeline service. Eligible telecommunications carriers shall report to the [FCC] annually the number of subscribers de-enrolled for non-usage under this paragraph. This de-enrollment information must be reported by month and must be submitted to the [FCC] at the time an eligible telecommunications carrier submits its annual certification report pursuant to [47 CFR § 54.416].

(4) *De-enrollment for failure to re-certify.* Notwithstanding paragraph (e)(1) of this section, an eligible telecommunications carrier must de-enroll a Lifeline subscriber who does not respond to the carrier's attempts to obtain re-certification of the subscriber's continued eligibility as required by [47 CFR § 54.410(f)]; who fails to provide the annual one-per-household re-certifications as required by [47 CFR § 54.410(f)]; or who relies on a temporary address and fails to respond to the carrier's address re-certification attempts pursuant to [47 CFR § 54.410(g)]. Prior to de-enrolling a subscriber under this paragraph, the eligible telecommunications carrier must notify the

subscriber in writing separate from the subscriber's monthly bill, if one is provided using clear, easily understood language, that failure to respond to the re-certification request within 30 days of the date of the request will trigger de-enrollment. If a subscriber does not respond to the carrier's notice of impending de-enrollment, the carrier must de-enroll the subscriber from Lifeline within five business days after the expiration of the subscriber's time to respond to the re-certification efforts.

Section 54.405 of 47 CFR (italics in original).

39. The FCC amended its then-existing rules and provided guidance in the Report and Order issued *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, 27 FCC Rcd. 6656 (2012) (*Lifeline Reform Order*).<sup>12</sup>

40. Of particular relevance here and as discussed in the *Lifeline Reform Order*, FCC 12-11, at ¶¶ 386-90, the FCC:

a. amended 47 CFR § 54.202 to make it clear that, because a Lifeline-only ETC does not receive federal funds to extend or to improve its network, 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;

b. amended 47 CFR § 54.202 to require a carrier seeking designation as a Lifeline-only ETC to demonstrate that it is financially and technically capable of providing the supported Lifeline service in compliance with all of the low-income program rules.

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<sup>12</sup> Citations in this Decision to the *Lifeline Reform Order* are to FCC 12-11 (rel. Feb. 6, 2012). There are no parallel citations to 27 FCC Rcd. 6656 (2012).

Among the factors relevant to such a showing are: (1) whether the applicant previously offered services to non-Lifeline consumers; (2) how long the applicant has been in business; (3) whether the applicant intends to rely exclusively on [Universal Service Fund] disbursements to operate; (4) whether the applicant receives or will receive revenue from other sources; and (5) whether the applicant has been subject to enforcement action or ETC revocation proceedings in any state;

c. required a federally-designated ETC, as a condition on its receipt of federal support, to provide: (1) information on service outages and the number of complaints received per 1,000 connections; (2) certification of compliance with applicable service quality standards and consumer protection rules; and (3) certification that the carrier has the ability to function in emergency situations; and

d. in 47 CFR § 54.422, established annual reporting requirements that apply to all ETCs receiving Lifeline: (1) the ETC must report the names and identifiers used by the ETC, its holding company, operating companies and affiliates to assist in the Lifeline audit program; and (2) the ETC must provide to the FCC and to Universal Service Administrative Company (USAC) general information (*e.g.*, number of minutes provided, whether there are additional charges to the consumer for service, minutes of use and/or toll calls) about the terms and conditions of the Lifeline plans for voice telephony service offered during the previous year to assist the FCC in monitoring service levels provided to low-income consumers.

41. Additionally, in that Report and Order, the FCC eliminated Link-Up support for all ETCs serving non-Tribal lands.

42. Lastly, in that Report and Order, the FCC established “an interim base of uniform support amount of \$9.25 per month for non-Tribal subscribers[.]” *Lifeline Reform Order*, FCC 12-11, at ¶ 4. That is the current amount of support.

43. As a general rule, a state regulatory commission may impose requirements or conditions on the granting of an ETC designation that go beyond the FCC’s recommendations. *ETC Designation Framework Order*, FCC 05-46, at ¶ 30. The safe harbor of § 253(b) of the Act preserves a state’s ability to impose requirements necessary to preserve and to advance universal service, provided three criteria are met: (a) the requirement must be competitively neutral; (b) the requirement must be consistent with § 254 of the Act; and (c) the requirement must be necessary to preserve and to advance universal service. *In the Matter of Federal-State Joint Board on Universal Service, In the Matter of Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, FCC 00-248, 15 FCC Rcd. 15168 (2000) (*Western Wireless Declaratory Order*);<sup>13</sup> *see also WWC Holding Company, Inc. v. Sopkin*, 488 F.3d 1262 (10th Cir. 2007) (same). A state’s statute, regulation, or legal requirement<sup>14</sup> runs afoul of § 253(b) of the Act if that requirement “may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” Section 253(a) of the Act.

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<sup>13</sup> Citation in this Decision to the *Western Wireless Declaratory Order* is to FCC 00-248 (rel. Aug. 10, 2000). There are no parallel citations to 15 FCC Rcd. 15168 (2000).

<sup>14</sup> The term legal requirement includes a state commission order or condition that is binding on the carrier seeking ETC designation. *Western Wireless Declaratory Order*, FCC 00-248, at ¶ 11.

44. In the *Lifeline Reform Order*, the FCC did not address this general rule governing designation of an ETC. The ALJ finds that, in this Proceeding, it is appropriate to follow the FCC's guidance in the *ETC Designation Framework Order* and in the *Western Wireless Declaratory Order*.

### 3. "Own Facilities" Forbearance.

45. Section 214(e)(1)(A) of the Act requires an ETC to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services."<sup>15</sup> This is referred to as the "own facilities" requirement.

46. In the *Lifeline Reform Order*, the FCC made an "own facilities" conditional forbearance decision. *See generally id.*, FCC 12-11, at ¶¶ 361-83 (discussion of "own facilities" conditional forbearance). The FCC determined that it would

forbear ... from applying the ... ["own facilities" requirement] to ... carriers that are, or [that] seek to become, Lifeline-only ETCs, subject to the following conditions: (1) the carrier must comply with ... 911 requirements [as specified in the *Lifeline Reform Order*] ...; and (2) the carrier must file, and the [Wireline Competition Bureau (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 [the *Lifeline Reform Order*] as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary. The review and approval of all compliance plans is a critical element of [the FCC's *Lifeline Reform Order*]. These conditions will give the states and the [FCC] the ability to evaluate the Lifeline providers' offerings to low-income consumers and adherence with program rules before such companies may receive any Lifeline funds.

*Lifeline Reform Order*, FCC 12-11, at ¶ 368 (footnotes omitted). The FCC described the 911 requirements and the compliance plan to be submitted to the Bureau for approval.

47. With respect to the 911 requirements, the FCC stated:

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<sup>15</sup> In 47 CFR § 54.201(e), the FCC interpreted the term "facilities" to mean "any physical components of the telecommunications network ... used in the transmission or routing of the [supported] services[.]"



Given the importance of public safety, we condition this grant of forbearance on each carrier's compliance with certain obligations as an ETC. Specifically, our forbearance from the ["own facilities" requirement] is conditioned on each carrier: (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; ... .

*Lifeline Reform Order*, FCC 12-11, at ¶ 373 (footnotes omitted).

48. With respect to the compliance plan requirement, the FCC stated:

[I]n addition to the requirements currently imposed on all ETCs that participate in the Lifeline program, including those [adopted in the *Lifeline Reform Order*], we condition this grant of forbearance from the "own facilities" requirement by requiring each carrier to submit to the Bureau for approval a compliance plan that (a) outlines the measures the carrier will take to implement the obligations contained in [the *Lifeline Reform Order*], including but not limited to the procedures the ETC follows in enrolling a subscriber in 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.

*Lifeline Reform Order*, FCC 12-11, at ¶ 379. Notably, the FCC stated: "No designations shall be granted for ... new Lifeline-only ETC applications filed with the states ... after December 29, 2011, ... and such carriers shall not receive reimbursement from the program, until the Bureau approves their compliance plans." *Id.*, FCC 12-11, at ¶ 380.

**C. ETC Designation for the Limited Purpose of Offering Lifeline.**

49. AmeriMex requests that the Commission designate it as an ETC, pursuant to § 214(e) of the Act and as defined in 47 CFR § 54.5 and in Rule 4 CCR 723-2-2001(hh), for the limited purpose of providing wireless Lifeline service to eligible individuals.

50. AmeriMex does not seek designation as an ETC on a wireline basis.

51. AmeriMex does not request ETC status for the purpose of receiving funds from the federal high-cost universal service support mechanisms or from the Colorado High Cost Support Mechanism (CHCSM).

**1. Description of Lifeline Basic Universal Service Offering.**

52. AmeriMex will offer to qualified customers<sup>16</sup> two Lifeline Basic Universal Service (LBUS) Plan options: (a) LBUS Plan #1 (with 250 nationwide minutes);<sup>17</sup> and (b) LBUS Plan #2 (with 1000 nationwide minutes).<sup>18</sup> Exhibit 3 to the Stipulation contains the full description of the LBUS Plan options. Because the two options are the same except for the additional cost for the additional minutes and data usage offered with the LBUS Plan #2 option, the ALJ discusses only the LBUS Plan #1 option in this Decision.<sup>19</sup> The ALJ does not restate here every aspect to the LBUS Plan options.

53. The LBUS Plan<sup>20</sup> provides to each qualified customer 250 free minutes of use and a free 911- and E911-compliant handset and includes at least the services and functionalities that are required by 47 CFR § 54.101(a) and Rule 4 CCR 723-2-2308(a). The LBUS Plan includes, at no charge: voice mail, call waiting, caller ID, call forwarding, three-way calling, customer service calls, calls to 911 emergency services, domestic long-distance calls, and directory assistance. Roaming is provided under the LBUS Plan. The LBUS Plan automatically renews

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<sup>16</sup> In this Proceeding, AmeriMex does seek authority to provide Lifeline service in Tribal lands.

<sup>17</sup> LBUS Plan #1 will cost \$ 9.25 with no net cost to the Lifeline customer. The minutes can be used for voice and texts. Data usage is not available under this LBUS Plan.

<sup>18</sup> The LBUS Plan #2 will cost \$ 30.00 per month with a net cost of \$ 20.75 to the Lifeline customer. The minutes include 1000 voice and unlimited domestic text messaging. Data usage is available under this LBUS Plan.

<sup>19</sup> Unless the context indicates otherwise, reference in this Decision to the LBUS Plan is to the LBUS Plan #1 option.

<sup>20</sup> The unused minutes do not carry over into the next month.

each month so long as the subscribed customer remains eligible and is not deactivated.

An LBUS Plan customer can purchase additional minutes of use at the stated retail price.

54. AmeriMex will continue to provide 911 emergency service to an LBUS Plan customer in the event the customer exhausts the available minutes of use and in the event the LBUS Plan service is disconnected. AmeriMex will meet the additional requirements contained in the *Lifeline Reform Order*, FCC 12-11, at ¶ 373 (quoted above).

55. Through its website and through its customer service number, AmeriMex will provide access to its customer service representatives in the event the customer exhausts available minutes of use and in the event the LBUS Plan service is disconnected.

56. The LBUS Plans are subject to the Operating Procedures set out in Exhibit 2 to the Stipulation. A description of the Colorado LBUS Plans and the Operating Procedures will be on AmeriMex's website before AmeriMex offers Lifeline service in Colorado.

## **2. Terms of the Stipulation.**

57. The Stipulation, including four Exhibits, is attached to this Decision as Appendix A. The Joint Responses, which are attached to this Decision as Appendix B, clarify the Stipulation. The ALJ does not restate here every provision of the Stipulation.<sup>21</sup>

58. The Stipulation contains the Parties' agreement on all issues that were, or could have been raised, in this Proceeding.

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<sup>21</sup> Unless the context indicates otherwise, reference in the remainder of this Decision to the Stipulation is to the Stipulation as clarified by the Joint Responses.

59. Nothing in the Stipulation prohibits AmeriMex from offering new service plans to eligible consumers or from permitting eligible consumers to apply their Lifeline discount to bundled service plans or plans containing optional call features. In the event AmeriMex offers new expanded service plans or bundled service plans in the future, these plans will be considered, and treated as, Lifeline plans subject to the terms of the Stipulation. AmeriMex will provide its LBUS Plans and any future Lifeline plans pursuant to the Amended Stipulation.

60. In accordance with the Stipulation at ¶ 11, the following requirements apply to the LBUS Plans and any future Lifeline plans:

A. If AmeriMex desires to (1) modify its existing LBUS Plans, (2) add ... new Lifeline plans, (3) modify a Lifeline Plan, (4) modify its Colorado Specific Terms and Conditions, or (5) modify its Operating Procedures (attached as ... Exhibit 2)[] (each, a “Modification”), then AmeriMex shall first provide Staff thirty (30) days advance written notice of the proposed Modification. If none of the Parties objects within the thirty (30) day notice period (the “Notice Period”), then AmeriMex’s proposed Modification will go into effect upon the expiration of the Notice Period. However, if Staff objects in writing to the proposed Modification and indicates to AmeriMex during the Notice Period that the Modification may be contrary to the public interest or disadvantageous to subscribers, then AmeriMex shall file an application with the Commission and obtain the Commission’s approval before implementing the proposed Modification. AmeriMex shall also maintain Colorado-specific information on its Terms and Conditions page on its website that will provide interested persons with notice of any proposed modifications to its LBUS Plans or any additional Lifeline plan offered to eligible subscribers.

B. If AmeriMex has failed to comply with paragraph A above and has implemented a Modification to the LBUS Plans or any additional Lifeline plans without following the procedures described above, then upon appropriate pleading, or upon its own motion, the Commission may investigate any unnoticed or unauthorized change to AmeriMex’s LBUS or Lifeline Plan Description, Terms and Conditions, and Operating Procedures. In any such investigation, AmeriMex agrees to respond to requests for information from the Commission Staff. However, nothing in this Stipulation shall be construed as a waiver of any rights AmeriMex may have to object to such requests for information, seek to limit disclosure of privileged information, or seek to declare information as confidential. After notice to AmeriMex and a subsequent investigation, the Commission may find that a change is not consistent with AmeriMex’s ETC status or results in a universal service Lifeline offering that is not eligible for

universal service Lifeline funding. If AmeriMex does not thereafter make such changes as are necessary to bring its Lifeline offering into compliance with such requirements, AmeriMex understand[s] the Commission may revoke AmeriMex's ETC status.

C. The Parties agree that the Commission has authority to enforce compliance with this Stipulation pursuant to its terms and pursuant to [Rule 4 CCR 723-2-2187] and, consistent with this Paragraph, may exercise its audit powers derived from Section 40-15-107, C.R.S., with respect to the LBUS Plans or the AmeriMex ETC status. Consistent with this authority, for changes to any additional Lifeline plans or implementation of new Lifeline plans, other than the LBUS Plans, Staff may investigate and obtain any necessary data through the Commission's audit powers once Staff is notified of changes. This process should work in the same manner that occurs when Staff reviews tariff filings. Staff will work cooperatively with AmeriMex to obtain information in order to assess whether the changes are in the public interest or may otherwise impact AmeriMex's eligibility to receive Lifeline funding. The investigation should be completed within the 30-day period between the notification of proposed change and AmeriMex's implementation of the change if the Parties reach an agreement. If there is disagreement between Staff and AmeriMex, any Party, or any interested person, may file a formal complaint with, or seek a declaratory ruling from[,] the Commission. AmeriMex will have an opportunity to contest a Staff position that a change is not consistent with AmeriMex's ETC status or results in a universal service Lifeline offering that is not eligible for universal service Lifeline funding by filing (1) an application to change its LBUS Plans, (2) a formal complaint, or (3) a request for declaratory ruling and in each case an evidentiary hearing may be held. Finally, with regard to Lifeline plans other than the LBUS Plans, Staff may notify the FCC and Universal Service Administrative Company ("USAC") if it believes the Lifeline offering is not eligible for funding.

D. The Parties acknowledge that because AmeriMex is using the network of its underlying carriers, Sprint, Verizon and T-Mobile Wireless, throughout its designated service area, that no notice to Public Safety Answering Points ("PSAPs") is required.

E. The Parties agree that AmeriMex shall remit and pay the prepaid wireless E911 charge of one and four-tenths percent, as specified in C.R.S § 29-11-102.5, of \$0.05 on its LBUS Plan #1 and LBUS Plan #2 based on an assumed or imputed value of \$12.75 per month in Colorado. In the event the number of free minutes associated with the LBUS Plans changes as discussed above, or with any new Lifeline Plans, the value for purposes of calculating the E911 charge shall be modified proportionately. The Parties further agree that AmeriMex shall remit and pay the prepaid wireless E911 charge of one and four-tenths percent of the price of each retail transaction associated with the purchase of additional minutes or data plans from Lifeline subscribers as required by C.R.S § 29-11-102.5. In the event C.R.S § 29-11-102.5 is amended to change the E911 charge, AmeriMex shall pay the E911 charge in accordance

with Colorado law effective at that time. AmeriMex will also pay the prepaid wireless E911 charge on all prepaid and or/replenishment voice minutes sold independently of the LBUS plans. For prepaid minutes bundled with text messages or other services sold directly through AmeriMex, AmeriMex will pay the prepaid wireless E911 charge on the full amount of the retail transaction. In the event that AmeriMex develops a system to separate out the voice minute charges from non-voice charges at the point of sale, AmeriMex shall notify the Commission at least 30 days in advance of its intent to pay the prepaid wireless E911 charge only on voice minutes when bundled with text messages or other services.

F. The Parties agree that AmeriMex shall remit and pay the Colorado High Cost charge at the rate then in effect, on all intrastate retail voice minute revenues received from subscribers (calculated based on the safe harbor percentage established by the FCC then in effect, currently 62.9 percent intrastate).

G. The Parties agree that AmeriMex provides all its customers with the ability to make and receive interexchange or toll calls through interconnection arrangements made by AmeriMex or its underlying providers.

H. AmeriMex commits to provide service throughout its designated service area as listed in Exhibit 1 of this Stipulation to all customers making a reasonable request for service. AmeriMex certifies that it will provide service on a timely basis and that it will comply with the service requirements applicable to the support that it receives pursuant to 47 CFR § 54.202(a)(1)(i).

I. Before offering Lifeline service in Colorado, AmeriMex will place Colorado-specific information on the Terms and Conditions page of its web site ([www.SafetyNetWireless.com](http://www.SafetyNetWireless.com)) where its Colorado offerings are described, and the Commission's contact information as listed in ... Exhibit 2 to the Stipulation for any unresolved customer questions or complaints.

J. To the extent the Commission subsequently adopts rules of general applicability to Lifeline ETCs that are inconsistent with some or all of these provisions A through I, the provisions in the Commission's Lifeline ETC rules shall control.

61. AmeriMex seeks designation as an ETC in the State of Colorado throughout the geographic service area where its underlying carriers -- Sprint, T-Mobile, and Verizon -- 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.

62. Exhibit 1 to the Stipulation contains a list of the exchanges in which AmeriMex will offer Lifeline service throughout each entire exchange. AmeriMex will not assess roaming charges to any Lifeline subscribers for use within any of the exchanges listed in Exhibit 1 to the Stipulation or within Sprint's, T-Mobile's, or Verizon's coverage areas.

63. AmeriMex will advertise the availability of the supported services in its designated service areas using media of general distribution to reach those likely to qualify for such services. AmeriMex 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 the AmeriMex Lifeline service.

64. AmeriMex will provide service throughout its designated service area to all customers on a timely basis and will comply with the applicable service requirements.

65. AmeriMex will use the National Lifeline Accountability Database for certification of, and verification of, the eligibility of LBUS Plan subscribers. As a prepaid provider, AmeriMex is not required to obtain or retain social security numbers of customers. In compliance with the *Lifeline Reform Order*, AmeriMex will obtain and will retain the last four digits of the social security number of each Lifeline subscriber. Exhibit 3 to the Application is AmeriMex's Colorado Lifeline Application form.

66. Exhibit 2 to the Stipulation contains AmeriMex's operating procedures that apply to the LBUS Plan. Among other things, the operating procedures include: (a) Commission access to AmeriMex's records; (b) AmeriMex's retention of records; (c) AmeriMex's records of, treatment of, and reporting of complaints about service; (d) AmeriMex's records of, treatment of, and reporting of held service applications; (e) service interruptions, reestablishing service, notice to LBUS Plan customers about service interruptions, and recordkeeping and reporting with

respect to service interruptions; (f) AmeriMex's compliance with Rule 4 CCR 723-2-2304(b)(IV) in the event of a qualifying service outage; (g) AmeriMex's compliance with North American Numbering Plan dialing pattern requirements; (h) the reports that AmeriMex must file with the Commission; (i) the process for determination of a potential subscriber's eligibility for, and a subscriber's continued eligibility for, the LBUS Plan and customer notice; (j) AmeriMex's LBUS Plan non-usage policy and customer notice; (k) AmeriMex's agreement to abide by the Cellular Telecommunications and Internet Association Consumer (CTIA) Consumer Code for Wireless Service; and (l) AmeriMex's process for disconnection of an LBUS Plan customer's service.

### **3. AmeriMex and ETC Requirements.**

67. At present, AmeriMex does not provide Lifeline or ETC service in Colorado.

68. AmeriMex is a CMRS provider. Applicant is a telecommunications carrier, as that term is defined in 47 U.S.C. § 153(51) and in 47 CFR § 51.5. AmeriMex is a common carrier as defined in 47 U.S.C. § 153(10) and 47 CFR § 20.9(a)(7). For purposes of 47 CFR § 54.1 *et seq.*, AmeriMex is a common carrier and is subject to regulatory treatment as provided in 47 U.S.C. § 332.

69. AmeriMex does not hold, and pursuant to § 40-15-402(2), C.R.S., is not required to hold, a Certificate of Public Convenience and Necessity to provide cellular telecommunications service in Colorado.

70. AmeriMex will provide each of the supported services specified in 47 CFR § 54.101(a) and has demonstrated its intent and its ability to offer those services following its designation as an ETC in Colorado. AmeriMex will provide the supported services throughout the service area described in Exhibit 1 to the Stipulation.



71. By using the Sprint, T-Mobile, and Verizon wireless networks, AmeriMex is able to provide coverage over the entire service territory described in Exhibit 1 to the Stipulation. AmeriMex has taken steps to assure that it will remain functional in an emergency situation.

72. Using media and means designed to reach persons most likely to qualify for Lifeline service (described above), AmeriMex will publicize and advertise the availability of the LBUS Plan throughout its service area. AmeriMex will comply with applicable FCC regulations with respect to the information that must be included in Lifeline advertising. Exhibit 4 to the Stipulation contains an example of AmeriMex's marketing materials.

73. AmeriMex has offered telecommunications services in the United States since 1998. It offers both Lifeline service and non-Lifeline service in numerous jurisdictions. AmeriMex has the necessary managerial, operational, and technical expertise and qualifications to provide wireless Lifeline service in Colorado.

74. AmeriMex obtains the majority of its revenue from selling wireline, wireless, internet, and data services. AmeriMex receives the majority of its revenue from the sale of non-Lifeline-supported products and services.

75. AmeriMex will not rely exclusively on, and does not seek, federal high-cost Universal Service Fund support to provide its LBUS Plan service and will not rely on, and does not seek, CHCSM support to provide its LBUS Plan service. In addition, AmeriMex will not seek the Tribal lands support amount, as defined in 47 CFR § 54.403(a)(2), for Tribal subscribers.

76. AmeriMex has been granted ETC status to offer Lifeline wireless services in California, Kentucky, Michigan, Pennsylvania, and Wisconsin.

77. AmeriMex has not been the subject of any enforcement action brought by the FCC or by any state regulatory agency.

78. No ETC designation held by AmeriMex has been rescinded, revoked, or terminated by the FCC or by any state regulatory agency.

79. AmeriMex will provide universal service on a timely basis to all eligible persons who make a reasonable request for service. In accordance with 47 CFR § 54.202(a)(1)(i), AmeriMex certifies that it will comply with service requirements applicable to the Lifeline support that it receives.

80. AmeriMex will comply with all FCC-established consumer protection standards and with all applicable Colorado consumer protection rules. *See, e.g.*, Application at 17-18 (discussion of compliance with applicable standards). This includes, among other things, protection of Customer Proprietary Network Information (47 CFR Part 64, Subpart U, as applicable) and, as required by 47 CFR § 54.202(a)(3), compliance with the CTIA Consumer Code for Wireless Service.

81. AmeriMex has demonstrated its managerial, technical, operational, and financial capacity to provide wireless Lifeline-supported service in Colorado.

82. AmeriMex will offer the two LBUS Plans described in Exhibit 3 to the Stipulation. AmeriMex will not advertise or offer in Colorado any Lifeline plans with fewer than 250 free minutes per month. AmeriMex's LBUS Plans comply with Rule 4 CCR 723-2-2187(d)(VII) as AmeriMex offers a Lifeline subscriber at least one plan with at least 900 minutes of use per month.

83. AmeriMex's LBUS Plans are available for enrollment via AmeriMex's website or through AmeriMex's Customer Service Department.

84. The LBUS Plan is not offered on a distance-sensitive basis, there is no additional charge for toll minutes of use, the LBUS Plan contains a limited number of minutes of use, and the LBUS Plan is prepaid. Consequently, the requirement for toll limitation is satisfied; and AmeriMex will not seek reimbursement for toll limitation.

85. AmeriMex will make the required annual filings with the FCC, will provide the required documentation to the FCC, and will make the required reports to the FCC.

86. The *Lifeline Reform Order* requires each applicant seeking ETC designation to submit to the FCC for approval a compliance plan that contains the information discussed in that Report and Order. AmeriMex has fulfilled this requirement. On December 26, 2012, in Order DA 12-2063, the FCC approved the Compliance Plan submitted by AmeriMex. The Compliance Plan details the verification, certification, and other anti-fraud measures that AmeriMex will take to comply with the state and federal requirements and to ensure that Lifeline support is provided only to subscribers who are truly eligible. With the approval of the Compliance Plan, AmeriMex has been found to meet the criteria for, and to be entitled to, the blanket forbearance from the “own facilities” requirement. Application at 12-13 and Exhibit 4; Stipulation at Exhibit 4.

87. Rule 4 CCR 723-2-2187(d)(XII) provides that an application for ETC designation must contain an

affirmative statement that the applicant will offer local usage plans comparable to those offered by the incumbent local exchange carrier (LEC). A local usage plan offered must include:

- (A) Unlimited calling or a plan with not less than 900 minutes of use per month;
- (B) A month-to-month term; and
- (C) A rate comparable to the underlying LEC’s basic residential local exchange rate.

88. The LBUS Plan complies with Rule 4 CCR 723-2-2187(d)(XII). The LBUS Plan is month-to-month and meets the Rule requirements as a result of the availability and cost of: (a) the LBUS #2 Plan option; and (b) the additional minutes of use that may be purchased at any time. Rule 4 CCR 723-2-2187(d)(XII) does not require that an applicant's plan be identical to the underlying LEC's local usage plan; comparability is sufficient. The LBUS Plan meets the comparability standard.

89. Based on the record, AmeriMex meets the criteria to be designated as an ETC for the limited purpose of receiving universal service support for the provision of Lifeline service to low-income, eligible customers in Colorado in accordance with the provisions of the Stipulation and of this Decision.

90. Based on the record, the ALJ finds that AmeriMex has met its burden of proof with respect to the request for designation as a wireless Lifeline-only ETC in Colorado.

91. Based on the record, the ALJ finds that, subject to the conditions discussed below and with incorporation of the Stipulation, designating AmeriMex as an ETC for the limited purpose of providing wireless Lifeline service in the service area identified in Exhibit 1 to the Stipulation serves the public interest, convenience, and necessity, as required by § 214(e)(2) of the Act and discussed in §§ 40-15-101, 40-15-501, and 40-15-502, C.R.S.

92. Based on the record, the ALJ finds that, subject to the conditions stated below, AmeriMex should be designated an ETC for the limited purpose of providing wireless Lifeline service in the service area identified in Exhibit 1 to the Stipulation.

**4. Conditions on Designation of AmeriMex as ETC for the Limited Purpose of Offering Wireless Lifeline Service.**

93. The ALJ finds that each of the following conditions is lawful, is reasonable, and is necessary to assure that designating AmeriMex as an ETC for the limited purpose of providing wireless Lifeline service serves the public interest, convenience, and necessity. Consequently, the ETC designation granted by this Decision will be subject to the following conditions.

94. First, absent authorization from the Commission, AmeriMex cannot serve eligible Lifeline service customers in any wire center, or any portion of any wire center, that is not listed in Exhibit 1 to the Stipulation. AmeriMex will be ordered to file with the Commission an appropriate application in the event AmeriMex wishes to change its designated service area from that identified in the Stipulation at Exhibit 1.

95. Second, AmeriMex must comply with the Stipulation (including Exhibits), as clarified by the Joint Responses, and with this Decision.

**D. Waivers and Variances.**

96. In the Stipulation at 5-7, AmeriMex requests that the Commission grant it a full waiver of Rule 4 CCR 723-2-2187(d)(III); a full waiver of Rule 4 CCR 723-2-2187(d)(VII); a full waiver of Rule 4 CCR 723-2-2187(d)(XIII); a waiver of Rule 4 CCR 723-2-2187(f)(II)(A); a full waiver of Rules 4 CCR 723-2-2187(f)(II)(F), (H), (K), (L), (M), and (N); and a partial waiver of Rule 4 CCR 723-2-2187(f)(II)(O). The ALJ discusses each request.

97. Rule 4 CCR 723-1-1003 governs variances and waivers. Rule 4 CCR 723-1-1003(a) provides, in relevant part, that the

Commission may, for good cause shown, grant waivers or variances from ... Commission rules[.] ... In making its determination[,] the Commission may take into account, but is not limited to, considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

The Commission may subject any waiver or variance granted to such terms and conditions as [the Commission] may deem appropriate.

98. The person seeking a variance or a waiver bears the burden of proof as to the requested variance or waiver. The burden of proof is preponderance of the evidence. Section 24-4-105(7), C.R.S.; § 13-25-127(1), C.R.S.; Rule 4 CCR 723-1-1500. Whether to grant a requested variance or waiver lies in the Commission’s sound discretion.

99. Rule 4 CCR 723-1-1003(c) describes the content of a request for a waiver or a variance. The Stipulation at 5-7 meets the content requirements.

**1. Rule 4 CCR 723-2-2187(d)(III).**

100. Rule 4 CCR 723-2-2187(d) specifies the content of an application for ETC designation.

101. Rule 4 CCR 723-2-2187(d)(III) states:

(d) Contents. The application for designation as an ETC shall include, ... , the following information, either in the application or in appropriately identified attached exhibits:

\* \* \*

(III) A description of the service area for which the applicant seeks designation as an ETC. The application *shall include either* a description of such service area by metes and bounds *or* the underlying carrier’s exchange area map displaying the applicant’s service area.

(Emphasis supplied.)

102. AmeriMex seeks a permanent and full waiver of Rule 4 CCR 723-2-2187(d)(III) for purposes of the Application only.

103. AmeriMex refers to its request as a permanent waiver. The ALJ finds that AmeriMex seeks this *variance* for this Proceeding only: in lieu of the metes and bounds

description or the underlying carrier's exchange area maps, and to permit AmeriMex to use the list of exchanges appended as Exhibit 1 to the Stipulation to describe its service area.

104. The Parties support AmeriMex's request and state as good cause for granting the requested variance: (a) to provide its wireless Lifeline service, AmeriMex will use the Sprint, T-Mobile, and Verizon (underlying carriers) network infrastructures to provide its wireless Lifeline service; (b) the underlying carriers' physical networks do not correlate precisely with the metes and bounds requirements of Rule 4 CCR 723-2-2187(d)(III); and (c) the list of exchanges in Exhibit 1 to the Stipulation provides sufficient information to describe AmeriMex's service area. Stipulation at 7.

105. The ALJ finds that AmeriMex has met its burden of proof with respect to granting a *variance* for purposes of this Proceeding only. In addition, granting the Rule 4 CCR 723-2-2187(d)(III) variance is consistent with similar variances granted to other applicants for designation as ETCs to provide Lifeline service.<sup>22</sup> The ALJ finds that the list of exchanges in Exhibit 1 to the Stipulation satisfies the Rule 4 CCR 723-2-2187(d)(III) filing requirement as to the Application.

106. The ALJ will grant the described and limited variance.

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<sup>22</sup> See, e.g., Decision No. R14-1254, issued October 17, 2014, in Proceeding No. 13A-1374T, *In the Matter of the Application of Tempo Telecom, LLC, for Designation as an Eligible Telecommunications Carrier in the State of Colorado for the Limited Purpose of Offering Wireless Lifeline Service to Qualified Households (Tempo Decision)*; Decision No. R13-0484, issued April 26, 2013 in Proceeding No. 12A-1168T, *In the Matter of the Application of Total Call Mobile, Inc., for Limited Designation as an Eligible Telecommunications Carrier (Total Call Mobile Decision)*; Decision No. R13-0480, issued April 25, 2013 in Proceeding No. 12A-1088T, *In the Matter of the Application of Nexus Communications, Inc., for Designation as an Eligible Telecommunications Carrier for Low-Income Support Only (Nexus Decision)*.

**2. Rule 4 CCR 723-2-2187(d)(VII) (Portion).**

107. Rule 4 CCR 723-2-2187(d) specifies the content of an application for ETC designation.

108. AmeriMex requests a full and permanent waiver of a portion of Rule 4 CCR 723-2-2187(d)(VII).

109. That Rule requires, among other things, that an applicant for ETC designation make an affirmative statement that it will advertise the availability of service and charges using media of general distribution. AmeriMex does not seek a waiver of this portion of the Rule.

110. As pertinent to the waiver request, Rule 4 CCR 723-2-2187(d)(VII) provides, with respect to the affirmative statement that the applicant for ETC designation will advertise the availability of service and charges, the

guidelines that an ETC ... shall place customer guide pages in the “White Pages” directory within the ETC’s service area. Such customer guide pages shall indicate that the ETC offers the supported services identified by federal law within its ETC service area to all who request such service within that area.

AmeriMex seeks a waiver of this portion of the Rule.

111. The Parties support this request and state as good cause for granting the requested waiver: (a) in its designated service territory, AmeriMex will advertise the availability of its LBUS Plan in media of general distribution to reach those likely to qualify for such services;<sup>23</sup> and (b) AmeriMex neither maintains nor produces a White Pages directory.

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<sup>23</sup> AmeriMex 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 to notify customers of the availability of the AmeriMex Lifeline service.



112. The ALJ finds that AmeriMex has met its burden of proof with respect to the requested waiver of Rule 4 CCR 723-2-2187(d)(VII) (quoted above) with respect to the content of the Application and AmeriMex's assurances made in the Application. Under the circumstances of this case, requiring AmeriMex to place customer guide pages in the White Pages of each telecommunications carrier within AmeriMex's service area is unnecessary. AmeriMex will use a variety of specifically-targeted techniques to advertise the availability of its Lifeline service to the eligible population. In addition, requiring AmeriMex to place customer guide pages in the White Pages of each telecommunications carrier within AmeriMex's service area may cause customer confusion because: (a) AmeriMex seeks to provide its LBUS Plan service within a limited area and not throughout the entire service territory of each carrier; and (b) the AmeriMex LBUS Plan service will be available only to a subset of persons (*i.e.*, persons eligible to obtain Lifeline service) within the designated service area.

113. The record contains a clear picture of the methods AmeriMex will use to advertise the availability of its wireless Lifeline service. There is no information, however, with respect to any other service or concerning any other advertising. As a result, the ALJ limits the waiver of Rule 4 CCR 723-2-2187(d)(VII) to the wireless Lifeline service authorized in this Proceeding.

114. The ALJ finds that the following condition is reasonable and appropriate: the waiver automatically will terminate if and when AmeriMex publishes a White Pages directory in its Colorado service area. This condition relates directly to a stated basis for the waiver (*i.e.*, AmeriMex does not maintain or publish a White Pages). It is appropriate for the waiver to terminate automatically when the circumstances that support the waiver either change or no longer exist.

115. The ALJ finds that AmeriMex has met its burden of proof with respect to the requested waiver of a portion of Rule 4 CCR 723-2-2187(d)(VII).

116. The ALJ will grant the requested waiver of Rule 4 CCR 723-2-2187(d)(VII), but the grant is conditioned and limited as set out above.

**3. Rule 4 CCR 723-2-2187(d)(XIII).**

117. Rule 4 CCR 723-2-2187(d) specifies the content of an application for ETC designation.

118. Rule 4 CCR 723-2-2187(d)(XIII) provides, as pertinent here, that an application for ETC designation must include a

two-year build-out plan demonstrating how high-cost universal service support will be used to improve the applicant's coverage, service quality or capacity in every wire center for which it seeks designation and expects to receive universal service support.

119. AmeriMex requests a full waiver of Rule 4 CCR 723-2-2187(d)(XIII).

120. The Parties support this waiver request and state as good cause for granting the requested waiver: (a) AmeriMex seeks to provide local basic universal service (*i.e.*, Lifeline) to eligible individuals and will use the network facilities of the underlying wireless carriers to provide that service; (b) AmeriMex seeks neither federal high-cost universal service support nor CHCSM support in its Colorado service area; and (c) granting the waiver would be consistent with the treatment of FCC-designated Lifeline-only ETCs.

121. The ALJ agrees that waiving Rule 4 CCR 723-2-2187(d)(XIII) as to AmeriMex is consistent with the treatment of FCC-designated Lifeline-only ETCs following the

*Lifeline Reform Order* and is consistent with this Commission's treatment of other applicants for designation as ETCs to provide Lifeline service.<sup>24</sup>

122. In addition, the Rule assumes that an applicant for ETC designation will seek and will expect to receive federal high-cost universal service support. That assumption does not apply to AmeriMex because, in this Proceeding, AmeriMex does not seek, and thus does not expect to receive, high-cost universal service support from either the federal universal service support mechanisms or the CHCSM.

123. Finally, the Rule assumes that the applicant for ETC designation will provide telecommunications service in high-cost areas using its own facilities. That assumption does not apply to AmeriMex because, at present, it neither owns nor plans to build its own network facilities in Colorado.

124. Because each application has the potential to address different services and each application presents different circumstances, the ALJ will limit the permanent waiver of Rule 4 CCR 723-2-2187(d)(XIII) granted in this Proceeding to the Application at issue in this Proceeding.

125. The ALJ finds that AmeriMex has met its burden of proof with respect to the requested waiver of Rule 4 CCR 723-2-2187(d)(XIII).

126. The ALJ will grant the requested waiver of Rule 4 CCR 723-2-2187(d)(XIII), but the grant is conditioned and limited as set out above.

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<sup>24</sup> See, e.g., the *Tempo Decision*, the *Total Call Mobile Decision*, and the *Nexus Decision* (each granting a similar waiver).

**4. Rules 4 CCR 723-2-2187(f)(II)(A), (F), (G), (H), (K), (L), (M), (N), and (O).**

127. Rule 4 CCR 723-2-2187(f) establishes the annual reporting requirements applicable to ETCs.

128. AmeriMex requests: (a) a full waiver of Rule 4 CCR 723-2-2187(f)(II)(A); (b) a full waiver of Rules 4 CCR 723-2-2187(f)(II)(F), (G), (H), (K), (L), (M), and (N); and (c) a partial waiver of Rule 4 CCR 723-2-2187(f)(II)(O). Stipulation at 5-7. Each request is discussed separately.

129. **Rule 4 CCR 723-2-2187(f)(II)(A).** AmeriMex seeks a full and permanent waiver of Rule 4 CCR 723-2-2187(f)(II)(A), which provides that an ETC's annual report must contain the

number of requests for service from potential customers within the ETC's service areas that were unfulfilled during the past year and a written explanation detailing how the ETC attempted to provide service to those potential customers, as set forth in 47 C.F.R. § 54.202(a)(1)(i).

130. The Parties support this waiver request. As good cause for granting the requested waiver, the Parties state: (a) in the *Lifeline Reform Order*, the FCC amended 47 CFR § 54.202(a)(1)(i) to require an ETC to “[c]ertify that it will comply with the service requirements applicable to the support that it receives”; (b) 47 CFR § 54.422 specifies the reporting obligations for an ETC that receives low-income (*e.g.*, Lifeline) support; and (c) 47 CFR § 54.422 does not require such an ETC to report unfulfilled requests for service.

131. Granting AmeriMex the requested waiver of Rule 4 CCR 723-2-2187(f)(II)(A) is consistent with the federal rule change made in the *Lifeline Reform Order*. In addition, the Stipulation at Exhibit 2 at § F requires AmeriMex to maintain records of held service applications and to report to the Commission, under specified conditions, when AmeriMex has

held service applications. The Stipulation contains procedures that allow the Commission and its Staff to monitor AmeriMex with respect to held service applications, should there be any.

132. Because each application has the potential to address different services and presents different circumstances, the waiver of Rule 4 CCR 723-2-2187(f)(II)(A) will be limited to the Lifeline service authorized by this Decision.

133. The ALJ finds that AmeriMex has met its burden of proof with respect to the requested waiver of Rule 4 CCR 723-2-2187(f)(II)(A).

134. The ALJ will grant the requested waiver of Rule 4 CCR 723-2-2187(f)(II)(A), but the grant is conditioned and limited as set out above.

135. **Rule 4 CCR 723-2-2187(f)(II)(F).** AmeriMex seeks a full waiver of Rule 4 CCR 723-2-2187(f)(II)(F), which provides that an ETC's annual report must contain a

[c]ertification that the ETC acknowledges the FCC may require it to provide customers with equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

136. As good cause for granting the requested waiver, the Parties state that the waiver is appropriate because it would be consistent with FCC regulations and Reports and Orders.

137. The FCC has eliminated the requirement that an ETC grant equal access to interexchange carriers. *See* 47 CFR § 54.101(a) (supported services); *see also Lifeline Reform Order* at note 977 (FCC “no longer mandates that ETCs provide those services that were eliminated from the definition of USF-supported services under section 54.101, but encourages carriers to continue to offer them to customers”).

138. Based on the record and in view of the amendment to 47 CFR § 54.101(a), the waiver of Rule 4 CCR 723-2-2187(f)(II)(F) should be granted. It is reasonable to terminate the waiver automatically on the occurrence of the earlier of the following two events:

(a) the FCC reinstates the requirement that an ETC must provide equal access to long distance carriers; or (b) the Commission modifies Rule 4 CCR 723-2-2187(f)(II)(F). Each of these events relates directly to the basis underpinning the waiver. It is appropriate for the waiver to terminate automatically when the circumstances that support the waiver either change or no longer exist.

139. Because each application has the potential to address different services and presents different circumstances, the waiver of Rule 4 CCR 723-2-2187(f)(II)(F) will be limited to the Lifeline service authorized by this Decision.

140. The ALJ finds that AmeriMex has met its burden of proof with respect to the requested waiver of Rule 4 CCR 723-2-2187(f)(II)(F).

141. The ALJ will grant the requested waiver of Rule 4 CCR 723-2-2187(f)(II)(F), but the grant is conditioned and limited as set out above.

142. **Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N).** AmeriMex seeks a full waiver of Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N), which provide:

(f) Annual Reporting Requirements for Eligible Telecommunication Carriers.

\* \* \*

(II) Every ETC shall submit the following information in its report:

\* \* \*

(G) The total amount of all federal high cost support received in the previous calendar year and year-to-date through June 30 for the current calendar year.

(H) For the previous two calendar years, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for local exchange service within the service areas in Colorado where the carrier has been designated an ETC. An explanation regarding any network

improvement targets that have not been fulfilled. This information shall be submitted at the wire center level or at the authorized service area [level]. If service improvements in a particular wire center are not needed, an explanation of why improvement is not needed and how funding will otherwise be used to further the provision of supported services in that area.

\* \* \*

(K) A map of the service areas where the carrier has ETC designation showing the locations of facilities or for wireless providers, maps showing the location of all cellular towers and the coverage area of these towers. Maps shall be submitted in 2007 and at least once every three years thereafter.

(L) Through June 30 of the current calendar year, a detailed schedule/exhibit showing the actual dollar amounts expended by the carrier in the provision, maintenance, upgrading, plant additions and associated infrastructure costs for any local exchange service within the service areas in Colorado where the carrier has been designated an ETC. This shall include the carrier's build-out plans and budgets for projects, upgrades or installations planned but not yet completed during the current calendar year applicable to local exchange service. This information shall be submitted at the wire center level or at the authorized service area [level].

(M) A copy of cost study filing made on July 31<sup>st</sup> to NECA for current year. If an ETC is not required to file cost study to NECA, then a copy of the line count filing made to the FCC and USAC Administrator shall be submitted.

(N) A copy of the company's Colorado-specific trial balance for previous year.

143. The Parties support this waiver request and state as good cause for granting the requested waiver: it is consistent with the *Lifeline Reform Order* and with FCC regulations because, in view of its "own facilities" forbearance, the FCC does not require a Lifeline-only ETC to submit a five-year network improvement plan.

144. The Parties state that, if granted, the waiver of Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), and (M) should terminate automatically on the occurrence of the earliest of the following events: (a) AmeriMex provides services solely on its own network;

(b) the Commission modifies Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), and (M); or  
(c) the FCC modifies its “own facilities” blanket forbearance.

145. The Parties state that the waiver of Rule 4 CCR 723-2-2187(f)(II)(N) (the Colorado-specific trial balance) should be permanent.

146. The ALJ agrees that granting AmeriMex a waiver of Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N) is consistent with the treatment of FCC-designated Lifeline-only ETCs following issuance of the *Lifeline Reform Order* and is consistent with the FCC’s “own facilities” blanket forbearance. Granting the waiver also is consistent with the Commission’s treatment of other similarly-situated ETCs that provide wireless Lifeline-only service in Colorado.<sup>25</sup>

147. In addition, the cited Rules assume that the reporting ETC provides telecommunications service in high-cost areas using its own facilities. That assumption does not apply to AmeriMex because, at present, it does not own network facilities in Colorado. AmeriMex, as a Lifeline-only ETC that provides service using the infrastructure of the underlying carriers, will not receive funds to construct, to improve, or to extend a network. As a result, the ALJ sees little value in requiring AmeriMex to make annual reports concerning infrastructure. Reducing the reporting burden on AmeriMex and lessening the administrative burden on Staff are in the public interest.

148. Further, AmeriMex will provide its Lifeline service in areas directly served by the underlying carriers. Rule 4 CCR 723-2-2187(f)(II)(K) requires an ETC to file maps containing specific information about facilities and coverage. It is unreasonable to expect AmeriMex to file

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<sup>25</sup> See, e.g., the *Tempo Decision*, the *Total Call Mobile Decision*, and the *Nexus Decision* (each granting a similar waiver).



maps showing the location, and coverage area, of all cellular towers owned by the underlying carriers. To the extent that each is an ETC in Colorado, the underlying carriers will file the location maps required by Rule 4 CCR 723-2-2187(f)(II)(K) or other information from which its coverage area can be determined; thus, the Commission will have that information available to it.

149. Moreover, it is reasonable to terminate the waiver automatically if one of the three listed events occurs. Each of the listed events relates directly to at least one basis underpinning the waiver. It is appropriate for the waiver to terminate automatically when the circumstances that support the waiver either change or no longer exist.

150. Finally, Parties have provided no reasonable basis for the permanent waiver of Rule 4 CCR 723-2-2187(f)(II)(N) without a termination condition, which treatment differs from the treatment of the waiver of Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), and (M). Given that Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N) all pertain to infrastructure and infrastructure expansion paid for by federal high-cost support funds, the ALJ finds no basis for a different treatment of the waiver of Rule 4 CCR 723-2-2187(f)(II)(N). The waiver of Rule 4 CCR 723-2-2187(f)(II)(N) will be subject to the same termination conditions as those that apply to the waiver of Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), and (M).

151. Because each application has the potential to address different services and presents different circumstances, the waiver of Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N) will be limited to the Lifeline service authorized by this Decision.

152. The ALJ finds that AmeriMex has met its burden of proof with respect to the requested waiver of Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N).

153. The ALJ will grant the requested waiver of Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N); but the grant is conditioned and limited as set out above.

154. **Rule 4 CCR 723-2-2187(f)(II)(O).** AmeriMex seeks a partial waiver of Rule 4 CCR 723-2-2187(f)(II)(O), which provides that an ETC's annual report must contain an affidavit attesting to the fact that the information reported on the annual report and information submitted under [Rule 4 CCR 723-2-2187(f)] is true and correct. The affidavit must also state that the ETC is aware of the purpose of the ... federal high-cost support and it is complying with the requirement set forth ... in 47 U.S.C. § 254(e). An officer, director, partner, or owner of the company must sign the affidavit.

155. AmeriMex seeks a partial and permanent waiver of this Rule so that its affidavit need not contain the statements concerning federal high-cost support and compliance with § 254(e) of the Act. If the waiver is granted, AmeriMex's affidavit will comply with the remainder of the Rule.

156. In support of this request and as good cause for granting the waiver, the Parties state: (a) AmeriMex is seeking neither federal high-cost support nor CHCSM support; and (b) granting the waiver is consistent with the *Lifeline Reform Order* reporting requirements.

157. The ALJ agrees with the Parties. In addition, requiring an affidavit to contain an attestation about high-cost support when the carrier is not receiving such support serves no discernible purpose. The requested waiver of Rule 4 CCR 723-2-2187(f)(II)(O) should be granted.

158. It is reasonable to terminate the waiver automatically if and when AmeriMex receives federal high-cost support or CHCSM support for service in Colorado. This event relates directly to the principal basis for granting the waiver. It is appropriate for the waiver to terminate automatically when the circumstances that support the waiver either change or no longer exist.

159. Because each application has the potential to address different services and presents different circumstances, the partial waiver of Rule 4 CCR 723-2-2187(f)(II)(O) will be limited to the Lifeline service authorized by this Decision.

160. The ALJ finds that AmeriMex has met its burden of proof with respect to the requested waiver of Rule 4 CCR 723-2-2187(f)(II)(O).

161. The ALJ will grant the requested waiver of Rule 4 CCR 723-2-2187(f)(II)(O), but the grant is conditioned and limited as set out above.

**III. CONCLUSIONS**

162. The Commission has jurisdiction over the subject matter of this Proceeding and over the Parties.

163. Consistent with the discussion above, the Joint Responses clarify the Stipulation.

164. Consistent with the discussion above, the Stipulation, as clarified by the Joint Responses, is a just, equitable, and reasonable resolution of issues that were, or could have been, contested among the Parties in this Proceeding.

165. Approval of the Stipulation, as clarified by the Joint Responses and with the modifications discussed in this Decision, is just; is reasonable; and is in the public interest.

166. Consistent with the discussion above, the Stipulation, as clarified by the Joint Responses and as modified by this Decision and subject to the conditions identified above, should be accepted.

167. Consistent with the discussion above and consistent with the Stipulation, as clarified by the Joint Responses and as modified by this Decision and subject to the conditions identified above, the Motion to Approve should be granted.

168. Consistent with the discussion above and consistent with the Stipulation, as clarified by the Joint Responses and as modified by this Decision and subject to the conditions identified above, the Application should be granted.

169. Consistent with the discussion above and consistent with the Stipulation, as clarified by the Joint Responses and as modified by this Decision and subject to the conditions identified above, AmeriMex should be designated as an ETC for the limited purpose of providing wireless Lifeline service to qualified and eligible individuals in the exchanges listed in Exhibit 1 to the Stipulation.

170. Consistent with the discussion above and for purposes of this Proceeding only, AmeriMex should be granted a variance from Rule 4 CCR 723-2-2187(d)(III) to permit AmeriMex to describe its service area using the list of exchanges in Exhibit 1 to the Stipulation.

171. Consistent with the discussion above and with respect to the Lifeline service authorized by this Decision only, AmeriMex should be granted a waiver of the Rule 4 CCR 723-2-2187(d)(VII) requirement to place customer guide pages in the White Pages directory within AmeriMex's service area. This waiver should terminate automatically if and when AmeriMex publishes a White Pages directory for its Colorado service area.

172. Consistent with the discussion above and as to the Application in this Proceeding only, AmeriMex should be granted a waiver of Rule 4 CCR 723-2-2187(d)(XIII).

173. Consistent with the discussion above and with respect to the Lifeline service authorized by this Decision only, AmeriMex should be granted a waiver of Rule 4 CCR 723-2-2187(f)(II)(A).

174. Consistent with the discussion above and with respect to the Lifeline service authorized by this Decision only, AmeriMex should be granted a waiver of Rule 4 CCR

723-2-2187(f)(II)(F). This waiver should terminate automatically on the occurrence of the earlier of these two events: (a) the FCC reinstates the requirement that an ETC must provide equal access to long distance carriers; or (b) the Commission modifies Rule 4 CCR 723-2-2187(f)(II)(F).

175. Consistent with the discussion above and with respect to the Lifeline service authorized by this Decision only, AmeriMex should be granted a waiver of Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N). This waiver should terminate automatically on the occurrence of the earliest of the following events: (a) AmeriMex provides service on its own network; (b) the Commission modifies Rules 4 CCR 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N); or (c) the FCC modifies its blanket forbearance of the “own facilities” requirement.

176. Consistent with the discussion above and with respect to the Lifeline service authorized by this Decision only, AmeriMex should be granted a partial waiver of Rule 4 CCR 723-2-2187(f)(II)(O). This waiver should terminate automatically if and when AmeriMex receives federal high-cost support or CHCSM support for service in Colorado.

177. AmeriMex must comply with the terms of this Decision and with the terms of the Stipulation, as clarified by the Joint Responses and as modified by this Decision.

178. Pursuant to § 40-6-109(2), C.R.S., the Administrative Law Judge recommends that the Commission enter the following order.

#### **IV. ORDER**

##### **A. The Commission Orders That:**

1. The Amended Stipulation and Settlement Agreement and its four Exhibits are attached to this Decision as Appendix A and are incorporated by reference into this Decision as if fully set out.

2. The Joint Responses to Administrative Law Judge's Questions in Decision No. R14-0585-I (Joint Responses) filed on August 31, 2015 are attached to this Decision as Appendix B and are incorporated by reference into this Decision as if fully set out. The Joint Responses clarify the Amended Stipulation and Settlement Agreement filed on August 31, 2015.

3. Consistent with the discussion above and subject to the conditions set out below, the Motion for Approval of Amended Stipulation, Exhibits, and Amended Exhibits filed on August 31, 2015 is granted.

4. Consistent with the discussion above and subject to the conditions set out below, the Amended Stipulation and Settlement Agreement filed on August 31, 2015, as modified and clarified (Stipulation), is approved.

5. Consistent with the discussion above and subject to the conditions set out below, the verified Application for Designation as an Eligible Telecommunications Carrier in the State of Colorado filed on January 30, 2015 by AmeriMex Communications Corp., doing business as SafetyNet Wireless, as amended by the Stipulation, is granted.

6. Consistent with the discussion above and subject to the conditions set out below, AmeriMex Communications Corp., doing business as SafetyNet Wireless, is designated an Eligible Telecommunications Carrier (ETC) for the limited purpose of providing Lifeline service to qualified low-income individuals in the Colorado service area described in Exhibit 1 to the Stipulation.

7. Consistent with the discussion above, AmeriMex Communications Corp., doing business as SafetyNet Wireless's designation as an ETC in Ordering Paragraph No. 6 is subject to this condition: AmeriMex Communications Corp., doing business as SafetyNet Wireless, shall comply with the terms of the Stipulation and with the terms of this Decision.

8. Consistent with the discussion above, AmeriMex Communications Corp., doing business as SafetyNet Wireless's designation as an ETC in Ordering Paragraph No. 6 is subject to this condition: AmeriMex Communications Corp., doing business as SafetyNet Wireless's ETC service territory consists of the areas listed in Exhibit 1 to the Stipulation. Absent further order of the Commission, AmeriMex Communications Corp., doing business as SafetyNet Wireless, cannot serve eligible Lifeline service customers in any wire center, or in any portion of any wire center, that is not listed in Exhibit 1 to the Stipulation. To change its service area, AmeriMex Communications Corp., doing business as SafetyNet Wireless, must file an appropriate application with the Commission.

9. Consistent with the discussion above and with respect to the Application filed in this Proceeding only, AmeriMex Communications Corp., doing business as SafetyNet Wireless, is granted a variance from Rule 4 *Code of Colorado Regulations* 723-2-2187(d)(III) to permit AmeriMex Communications Corp., doing business as SafetyNet Wireless, to describe its service area using the list of exchanges appended as Exhibit 1 to the Stipulation.

10. Consistent with the discussion above and with respect to the Lifeline service authorization granted by this Decision only, AmeriMex Communications Corp., doing business as SafetyNet Wireless, is granted a partial waiver of the Rule 4 *Code of Colorado Regulations* 723-2-2187(d)(VII) requirement to place customer guide pages in the White Pages directory within AmeriMex Communications Corp., doing business as SafetyNet Wireless's service area. This waiver shall terminate automatically if and when AmeriMex Communications Corp., doing business as SafetyNet Wireless, publishes a White Pages directory for its Colorado service area.

11. Consistent with the discussion above and with respect to the Application filed in this Proceeding only, AmeriMex Communications Corp., doing business as SafetyNet Wireless, is granted a full and permanent waiver of Rule 4 *Code of Colorado Regulations* 723-2-2187(d)(XIII).

12. Consistent with the discussion above and with respect to the Lifeline service authorization granted by this Decision only, AmeriMex Communications Corp., doing business as SafetyNet Wireless, is granted a full and permanent waiver of Rule 4 *Code of Colorado Regulations* 723-2-2187(f)(II)(A).

13. Consistent with the discussion above and with respect to the Lifeline service authorization granted by this Decision only, AmeriMex Communications Corp., doing business as SafetyNet Wireless, is granted a full waiver of Rule 4 *Code of Colorado Regulations* 723-2-2187(f)(II)(F). This waiver shall terminate automatically on the occurrence of the earlier of these two events: (a) the Federal Communications Commission reinstates the requirement that an ETC that provides only service for low-income consumers must provide equal access to long distance carriers; or (b) the Commission modifies Rule 4 *Code of Colorado Regulations* 723-2-2187(f)(II)(F).

14. Consistent with the discussion above and with respect to the Lifeline service authorization granted by this Decision only, AmeriMex Communications Corp., doing business as SafetyNet Wireless, is granted a full waiver of Rules 4 *Code of Colorado Regulations* 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N). This waiver shall terminate automatically on the occurrence of the earliest of the following events: (a) AmeriMex Communications Corp., doing business as SafetyNet Wireless, provides service solely on its own network;



(b) the Commission modifies Rules 4 *Code of Colorado Regulations* 723-2-2187(f)(II)(G), (H), (K), (L), (M), and (N); or (c) the Federal Communications Commission modifies its blanket forbearance of the “own facilities” requirement found in *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, 27 FCC Rcd. 6656 (2012).

15. Consistent with the discussion above and with respect to the Lifeline service authorization granted by this Decision only, AmeriMex Communications Corp., doing business as SafetyNet Wireless, is granted a partial waiver of Rule 4 *Code of Colorado Regulations* 723-2-2187(f)(II)(O). This waiver shall terminate automatically if and when AmeriMex Communications Corp., doing business as SafetyNet Wireless, receives federal high-cost support or Colorado High Cost Support Mechanism support for service offered in Colorado.

16. The Waiver of Response Time filed on August 31, 2015 is denied as moot.

17. 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.

18. 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.

19. 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

MANA L. JENNINGS-FADER

Administrative Law Judge

ATTEST: A TRUE COPY

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

Doug Dean,  
Director