

BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION

NASHVILLE, TENNESSEE

July 8, 2022

IN RE:)	
)	
AIR VOICE WIRELESS, LLC D/B/A AIRTALK)	DOCKET NO.
WIRELESS' PETITION FOR DESIGNATION AS AN)	22-00033
ELIGIBLE TELECOMMUNICATIONS CARRIER IN)	
TENNESSEE)	

ORDER DESIGNATING AIR VOICE WIRELESS, LLC D/B/A AIRTALK WIRELESS
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

This matter came before Chairman Kenneth C. Hill, Vice Chairman Herbert H. Hilliard, Commissioner Clay R. Good, Commissioner John Hie, and Commissioner David F. Jones¹ of the Tennessee Public Utility Commission (the “Commission” or “TPUC”), the voting panel assigned to this docket, during a regularly scheduled Commission Conference held on June 20, 2022, for consideration of the *Petition for Designation as an Eligible Telecommunications Carrier* (“*Petition*”) filed by Air Voice Wireless, LLC d/b/a AirTalk Wireless (“AirVoice”) on April 20, 2022.

BACKGROUND AND PETITION

In accordance with Tennessee law, the Commission annually certifies wireline companies as an Eligible Telecommunications Carrier (“ETC”) verifying compliance with federal standards. Orders designating wireline companies as ETCs are submitted to the Federal Communications Commission (“FCC”) so that these Tennessee companies can receive federal funding for certain selected services, including Lifeline service. Prior to a Tennessee legislative change adopted in 2022, the Commission lacked authority to designate non-wireline companies, e.g., wireless or cellular providers, as ETCs.

¹ Commissioner Jones was not present and did not vote in this matter.

In March 2022, Tennessee Public Acts Chapter 789 became effective providing the Commission with the authority to designate cellular providers as ETCs. The newly enacted language provides:

Notwithstanding § 65-4-101(6)(A)(vi), the Commission may upon petition designate a provider or reseller of domestic public cellular radio telephone service as an eligible telecommunications carrier pursuant to 47 C.F.R. § 54.201 for purposes of providing Lifeline service.²

On April 20, 2022, Air Voice filed its *Petition* for the purpose of providing Lifeline service to qualifying Tennessee consumers. In the *Petition*, Air Voice states that it satisfies all the statutory and regulatory requirements for designation as an ETC, including Tennessee Code Annotated Section 65-4-104 as recently amended. Further in support of its position, Air Voice states it is an established wireless carrier, operating in ten (10) other States as an ETC Lifeline provider.³ As support, the Company submitted a Revised Compliance Plan which the FCC approved on December 23, 2021.⁴

Air Voice states that it seeks ETC designation solely to provide Lifeline service to qualifying Tennessee consumers and it will not, and is not eligible to, seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of participating in the Link-Up program or providing service to high-cost areas.⁵ The Company also submitted the Affidavit of Henry Do, Chief Executive Officer, affirming that the matters, facts, and statements, set forth in the *Petition* are true to the best of his knowledge and outlining the qualifications of the Company for ETC designation.⁶

STANDARD FOR COMMISSION APPROVAL

Commission approval is required for designation as an ETC pursuant to the Telecommunications Act of 1996, 47 U.S.C.A § 214(e), which provides, in relevant part:

² Tenn. Code Ann. §65-4-104(c) (West 2022). *See also* 2022 Tenn. Pub. Acts Ch. 789.

³ *Petition*, pp. 5, 7 (April 20, 2022).

⁴ *Id.* at 12 & Exh. 2.

⁵ *Id.* at 5.

⁶ Updated Affidavit of Henry Do, Chief Executive Officer re: Air Voice Wireless, LLC (June 15, 2022).

(e) Provision of universal service

(1) Eligible telecommunications carriers. A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, 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 therefor using media of general distribution.

(2) Designation of eligible telecommunications carriers

A State Commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.⁷

FINDINGS AND CONCLUSIONS

State Commissions have been designated to certify ETCs that meet the requisite federal criteria, so that such designated companies may in turn receive federal support for providing certain services. In this case, Air Voice is seeking federal low-cost funds which are designated to provide Lifeline service to qualified Tennessee consumers.

According to information provided by the Company, Air Voice has been offering the requisite services (Lifeline) as defined in Section 254(c) of the Federal Telecommunications Act for numerous years in other states. The Company also advertises the availability of the services and otherwise meets the eligibility criteria for designation as an ETC. Further, this request to become certified as an ETC certainly meets the public interest as approval of this petition will allow Air Voice access to federal

⁷ 47 U.S.C.A. § 214(e)(1)-(2).

funds to greatly assist in the provisioning of wireless voice service as well as broadband service in areas that otherwise might not receive such essential service.

Upon consideration of the *Petition*, Affidavit, and the entire record in this docket, the voting panel found that Air Voice meets the qualifications necessary to be designated as an ETC. Further, the panel found that it is in the public interest to designate Air Voice as an ETC. Therefore, the voting panel unanimously approved the *Petition*.

IT IS THEREFORE ORDERED THAT:

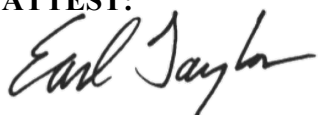
1. The *Petition for Designation as an Eligible Telecommunications Carrier* filed by Air Voice Wireless, LLC d/b/a Air Talk Wireless is approved, designating Air Voice Wireless, LLC d/b/a Air Talk Wireless as an Eligible Telecommunications Carrier in the State of Tennessee.
2. Any person who is aggrieved by the Commission's decision in this matter may file a Petition for Reconsideration with the Commission within fifteen days from the date of this Order.
3. Any person who is aggrieved by the Commission's decision in this matter has the right to judicial review by filing a Petition for Review in the Tennessee Court of Appeals, Middle Section, within sixty days from the date of this Order.

TENNESSEE PUBLIC UTILITY COMMISSION:

**Chairman Kenneth C. Hill,
Vice Chairman Herbert H. Hilliard,
Commissioner Clay R. Good, and
Commissioner John Hie, concurring.**

None dissenting.

ATTEST:



Earl R. Taylor, Executive Director