



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
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OFFICE OF CABLE TELEVISION  
AND TELECOMMUNICATIONS

IN THE MATTER OF PETITION OF XCHANGE ) ORDER  
TELECOM, LLC FOR DESIGNATION AS AN )  
ELIGIBLE TELECOMMUNICATIONS CARRIER IN )  
THE STATE OF NEW JERSEY ) DOCKET NO. TO20090615

**Parties of Record:**

**Mordy Gross, Esq.**, Xchange Telecom LLC  
**Stefanie A. Brand, Esq.**, Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On September 24, 2020, Xchange Telecom LLC (“Xchange” or “Company”) filed a petition with the Board of Public Utilities (“Board”) for designation as an Eligible Telecommunications Carrier (“ETC”) to provide Lifeline<sup>1</sup> service to qualifying New Jersey consumers (“Petition”). The Petition did not seek access to funds from the federal Universal Service Fund (“USF”) for participating in the Link-Up Program or support for providing service to high cost areas, which are separate programs.

Xchange is a Competitive Local Exchange Carrier (“CLEC”), having received authority to offer services in New York<sup>2</sup>, New Jersey<sup>3</sup>, and Maryland<sup>4</sup>. Xchange was incorporated in Delaware on March 13, 2002. It was authorized to do business in the State of New York on May 1, 2002 and has more than 7700 Lifeline customers. Xchange converted to a Delaware Limited Liability Company pursuant to § 18-214 of the Delaware Limited Liability Act on September 30, 2014. A Certificate of Authority was filed with the State of New Jersey on October 20, 2014 and a Certificate for the converted LLC was filed on October 20, 2014.

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<sup>1</sup> Lifeline service is a federally funded program that is part of the Universal Service Fund and provides a \$9.25/month subsidy directly to the ETC that serves the qualified low-income consumer. 47 C.F.R. § 54.403(a).

<sup>2</sup> Case No. 02-C-0449, issued June 13, 2002

<sup>3</sup> Docket No. TE02050299, issued February 20, 2003

<sup>4</sup> Docket No. TE-10623, issued January 4, 2012

Xchange offers both wireline and wireless services. With respect to its wireline offering, the Company provides voice service by 1) reselling the Incumbent Local Exchange Carrier (“ILEC”) Verizon’s loops on a tariff basis, where Xchange provides the backbone network to the Public Switched Telephone Network (“PSTN”) (“unbundled loops” or “UNE-L”), 2) via a wholesale agreement with Verizon where Xchange resells Verizon’s copper or fiber services, and 3) via fixed wireless, where Xchange owns the network and links the customer to Xchange’s network via a fixed wireless solution (“Fixed Wireless”). Xchange also provides prepaid wireless telecommunications services to consumers by using the underlying wireless networks of facilities-based providers like T-Mobile USA, Inc. and Verizon Wireless on a wholesale basis to offer nationwide service.

To be eligible to participate in the Lifeline program, consumers must either have an income that is at or below 135% of the Federal Poverty Guidelines or participate in certain federal assistance programs, such as the Supplemental Nutrition Assistance Program (“SNAP”), Medicaid, Federal Public Housing Assistance, Supplemental Security Income, the Veterans and Survivors Pension Benefit, or certain Tribal Programs. 47 C.F.R. § 54.409.

The Board has jurisdiction to designate Wireless ETCs in accordance with Section 214(e)(2) of the federal Communications Act of 1934 (“Act”). The Federal Communications Commission (“FCC”) has exclusive jurisdiction to regulate the rates and conditions of market entry of mobile services. 47 U.S.C. § 332(c)(3)(A). However, states are expressly permitted to regulate the “other terms and conditions” of commercial mobile services and approve ETC Designations. Id.

In its Petition, the Company avers that it meets all the statutory and regulatory requirements (the FCC’s *USF/ICC 456 Transformation Order*,<sup>5</sup> *Lifeline and Link Up Reform Order*<sup>6</sup> and *Lifeline Modernization Order*<sup>7</sup>) for designation as an ETC in the State of New Jersey. Section 214(e)(2) of the Act requires that ETCs meet the following criteria for designation as an ETC:

- 1) Common carrier status;
- 2) Offer all the supported services in its Lifeline service offering;
- 3) Offer Lifeline service throughout its designated ETC service area;
- 4) Advertise the availability of Lifeline service; and
- 5) Meet all of requirements for designation as an ETC for purposes of providing Lifeline services.

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<sup>5</sup> In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing a Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“USF/ICC Transformation Order”).

<sup>6</sup> 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 (rel. Feb. 6, 2012) (“Lifeline and Link Up Reform Order”).

<sup>7</sup> In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund, WC Docket No. 11-42, WC Docket No. 00-197, WC Docket No. 10-90, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (rel. Apr. 27, 2016) (hereinafter, “Third Report and Order” or “Lifeline Modernization Order”).

According to the Company's Petition, the Company satisfies the existing criteria established under federal law,<sup>8</sup> the FCC rules and orders<sup>9</sup>, and applicable New Jersey requirements. Xchange states that:

1. It is a common carrier.<sup>10</sup>
2. Will provide all supported services using its own facilities as required by 47 C.F.R. § 54.101(a).
3. Will advertise the availability of supported services and rates using media of general distribution as required by 47 C.F.R. § 54.201(d)(2).
4. Will provide Lifeline service throughout its designated service area throughout the State of New Jersey, subject to the existence of T-Mobile USA, Inc. and Verizon Wireless's ("Underlying Carriers") facilities and corresponding coverage.
5. Will certify and comply with the service requirements applicable to the support that it receives, pursuant to 47 C.F.R. § 54.202(a)(1)(i).
6. Has the ability to remain functional in emergency situations pursuant to 47 C.F.R. § 54.202(a)(2).
7. Satisfies consumer protection and service quality standards pursuant to 47 C.F.R. § 54.202(a)(3).
8. Has demonstrated that it is financially and technically capable of providing Lifeline-supported services pursuant to 47 C.F.R. § 54.202(a)(4).
9. Will comply with certification and verification requirements in accordance with 47 C.F.R. § 54.410.
10. Will provide the Board a copy of its annual certifications and Lifeline recertifications results pursuant to 47 C.F.R. § 54.416 as well as a copy of its annual report filed pursuant to 47 C.F.R. § 54.422.
11. Will comply with rules and regulations imposed by the Board.

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<sup>8</sup> 47 C.F.R. § 54.202(a)(1)

<sup>9</sup> 47 C.F.R. § 54.201(d). In its USF/ICC Transformation Order, the FCC modified the required supported services in 47 C.F.R. § 54.101 and the additional requirements for designation as an ETC in 47 C.F.R. § 54.202. In the Matter of Connect America Fund, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, released November 18, 2011 ("USF/ICC Transformation Order").

<sup>10</sup> 47 U.S.C. § 332(c)(1)(A)

Xchange is a CLEC and is thus a common carrier. With regards to wireless services, wireless resellers such as Xchange have been deemed to be common carriers and Commercial Mobile Radio Service (“CMRS”) providers.<sup>11</sup> As a common carrier, Xchange will provide all supported services through its Underlying Carriers. Xchange avers it is able to provide all of the supported services required by 47 C.F.R. § 54.101(a) as follows:

1. Voice Grade Access to the PSTN, as set forth in 47 C.F.R. § 54.101(a)(1). Xchange provides voice grade access to the PSTN through the purchase of wholesale CMRS services from its facilities-based Underlying Carriers. For wireline services, Xchange provides voice grade access to the PSTN through either a) the purchase of wholesale services from the ILEC; b) provision of PSTN services via UNE-L loops to its carrier-grade network and switch facilities that are interconnected with the PSTN; and c) fixed wireless services that provide access to the PSTN over point to point and point to multi point wireless connections.
2. Local Usage at no additional charge. Xchange offers rate plans that provide its customers with minutes of use for local service at no additional charge.
3. Access to Emergency Services. Xchange will provide 911 and E911 access free of charge for all of its customers to the extent the local government in its service area has implemented 911 or E911 systems. Xchange also complies with the FCC’s regulations governing the deployment and availability of E911 compatible handsets.
4. Toll Limitation. The FCC determined that toll limitation would no longer be deemed a supported service.<sup>12</sup> Xchange’s offerings allow Lifeline subscribers to control their usage by offering long distance or toll limitations at no charge.

Xchange recognizes that Section 214(e)(1)(A) of the Act states that ETCs shall offer services, at least in part, over their own facilities and that Section 54.201(i) of the FCC’s Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier’s services. However, the FCC has granted forbearance from enforcement of this facilities requirement to carriers seeking Lifeline-only ETC designation.<sup>13</sup>

Section 10(e) of the Act (47 U.S.C. § 160(e)) provides: “[a] State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section.” As such, Xchange contends that the Board is required by Section 10(e) to act in accordance with the FCC’s grant of forbearance, and therefore, may not apply the facilities-based requirement to Xchange.

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<sup>11</sup> Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425 ¶ 37, 1454-55 ¶ 102 (1994)(wireless resellers are included in the statutory “mobile services” category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. § 332(c)(1)(A)(“mobile services” providers are common carriers);

<sup>12</sup> Lifeline and Link up Reform Order at ¶ 367

<sup>13</sup> Lifeline and Link up Reform Order at ¶ 368.

Therefore, Xchange contends that the Board has the authority under Section 214(e)(2) of the Act to grant Xchange's request for designation as an ETC throughout the State of New Jersey.

Upon designation as an ETC, Xchange has committed to provide all services supported by the USF program, as detailed in Section 54.101(a) of the FCC's Rules (47 C.F.R. § 54.101 (a)), and intends to offer customers affordable wireless and wireline plans. Xchange Lifeline customers will be provided with the same features enjoyed by all other Xchange customers. Xchange commits that its Lifeline-supported wireless voice services will meet or exceed the minimum service standards set forth in 47 C.F.R. § 54.408 (currently 1,000 voice minutes). Xchange's Lifeline-supported wireless broadband services will also meet the minimum service standards set forth in 47 C.F.R. § 54.408 for mobile broadband internet access services, including for service speed and data usage allowance, as such standards are updated going forward. Xchange proposes to offer its Lifeline customers the following:

- 1) 1,000 voice minutes,
- 2) unlimited text messages, and
- 3) 3 GB of data per month at no cost.

Customers will also be able to purchase additional minutes or data as needed. In addition to discounted wireless services, Lifeline customers will receive a handset or SIM card, as well as access to Voice Mail, Caller I.D., Call Forwarding, 3-Way Calling, and Call Waiting features at no additional charge. Customers may use their minutes to place domestic long-distance calls at no additional charge and calls to the Company's customer service are free with no deduction of available minutes. Calls to 911 emergency services are always free regardless of service activation or availability of minutes. Wireline Broadband customers will receive 20/3Mbps, without a cap, and the ability to optionally add voice services.

For all service plans the customer can purchase additional voice, data, multimedia messaging service ("MMS"), text minutes for \$0.05 per minute with a minimum purchase of \$5.00. For example, 100 additional minutes will cost \$5.00. The customer will have the ability to purchase 100 minutes (\$5.00); 200 minutes (\$10.00); 300 minutes (\$15.00) and 500 minutes (\$25.00). For unlimited service plans, the customer will not need additional voice or text but will need to purchase additional minutes for data and MMS. MMS is priced at \$0.15 per minute and Data is \$0.05 per MB.

Customers in New Jersey can apply to the National Verifier<sup>14</sup> via mail or online. Xchange will rely on the National Verifier to determine initial and ongoing eligibility of New Jersey Lifeline subscribers as required by the FCC. Xchange will also comply with the FCC's Fifth Report and Order, which set forth reforms to strengthen the Lifeline program's enrollment, recertification, and reimbursement processes, once the rule changes set forth therein become effective.<sup>15</sup> In order to combat waste fraud and abuse, the Company will comply with the requirements of the National Lifeline Eligibility Accountability Database to determine if a customer is currently receiving a Lifeline benefit.

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<sup>14</sup> The National Verifier launched in New Jersey on October 11, 2019. The National Verifier is Lifeline's centralized application system. It determines whether consumers are eligible for Lifeline.

<sup>15</sup> In the Matter of Bridging the Digital Divide for Low-Income Consumers, Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, WC Docket No. 17-287, WC Docket No. 11-42, WC Docket No. 09-197, Fifth Report and Order, Memorandum Opinion and Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 19-111 (rel. Nov. 14, 2019).

In addition, Xchange has developed its own auditing system to process and validate the Company's subsidy data to prevent abuse through the following measures:

- (1) Duplicate Same-Month Lifeline Subsidies (Double Dip): any name/address that is already receiving a Lifeline subsidy from the Company will be automatically prevented from receiving a second Lifeline subsidy in that same month;
- (2) Inactive lines receiving subsidy: system compares all subsidy requests to underlying network status to ensure that subsidies are requested only for active lines; and
- (3) Subsidies for Deceased subscribers: Death Master search to ensure that subsidies are not requested for deceased subscriber.

According to the Company, its ETC request is consistent with the Board's designation of TracFone and Virgin Mobile as ETCs.<sup>16</sup> The Company asserts that designation of Xchange would further competition for wireless and wireline Lifeline services and would offer eligible consumers an additional choice of providers. The Company also states that they meet FCC requirements for designation as an ETC and such designation would serve the public interest.

By letter dated March 18, 2021, the New Jersey Division of Rate Counsel ("Rate Counsel") submitted comments to the Board regarding the Petition. Rate Counsel does not oppose approval if the Board determines that Xchange meets the ETC designation requirements and approval is beneficial to New Jersey consumers. Based upon the representations of Xchange, Rate Counsel believes that the terms of service offered by Xchange should benefit eligible subscribers in New Jersey and that approval would be in the public interest.

## **DISCUSSION**

Xchange has demonstrated that it meets or exceeds all of the current FCC requirements and has pledged to comply with any existing or proposed federal requirements. The Board, however, requires the Company to adhere to the following as conditions of approval:

- 1) To continue to work with the National Verifier and its own auditing system in order to prevent waste, fraud and, abuse of the Lifeline program;
- 2) To comply with all FCC rules and reporting requirements and submit to the Board total federal funds received and the number of customers served in New Jersey. This information must be submitted with a certification made by an officer of the Company attesting to its accuracy;
- 3) To provide any other data or information deemed necessary by Board Staff to evaluate compliance with all federal and state requirements;

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<sup>16</sup> See In the Matter of a Petition by TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier in the State of New Jersey, Docket No. TO09010092 (April 27, 2009); In the Matter of Virgin Mobile USA, LP Petition for Limited Designation as an Eligible Telecommunications Carrier, Docket No. TO10020093 (August 4, 2010).

- 4) The Company did not seek and it is not granted through this Order 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; and
- 5) Xchange 's ETC designation may, at any time, be suspended or revoked by order of the Board.

Xchange, in its Petition and responses to Board Staff's discovery request, has indicated that it intends to comply with the FCC and Board requirements. The Board is satisfied that Xchange's Petition meets and exceeds the relevant criteria established to receive approval as an ETC from this Board. Therefore, the Company's Petition is **HEREBY APPROVED** as conditioned herein. The Board **DIRECTS** that the Director of the Office of Cable Television and Telecommunications, with the assistance of the Office of the Attorney General, if such assistance is deemed necessary, send the appropriate notice of this Order designating Xchange as an ETC to the FCC and Universal Service Administrative Company.

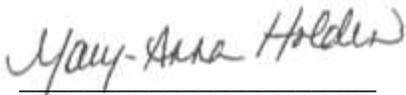
This Order shall be effective on May 24, 2021.

DATED: May 19, 2021

BOARD OF PUBLIC UTILITIES  
BY:



JOSEPH L. FIORDALISO  
PRESIDENT



MARY-ANNA HOLDEN  
COMMISSIONER



DIANNE SOLOMON  
COMMISSIONER

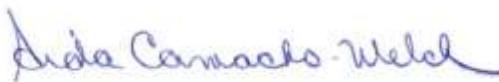


UPENDRA J. CHIVUKULA  
COMMISSIONER



ROBERT M. GORDON  
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH  
SECRETARY

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ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF NEW JERSEY.**

**BPU DOCKET NO. TO20090615**

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