

State of Florida



## Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** June 6, 2024

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Office of Industry Development and Market Analysis (Deas, Day, Fogleman,<sup>CH</sup> Mallow)  
Office of the General Counsel (Farooqi, Harper)<sup>AEH</sup>

**RE:** Docket No. 20240070-TP – Application for designation as an eligible telecommunications carrier in the State of Florida for the limited purpose of offering lifeline service to qualified households, by DISH Wireless L.L.C. d/b/a Gen Mobile.

*Proposed Agency Action at 6/6/24*

**AGENDA:** 06/18/24 – Regular Agenda – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Clark

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

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### Case Background

On April 19, 2024, DISH Wireless L.L.C. d/b/a Gen Mobile (DISH or Company) filed a petition with the Florida Public Service Commission (FPSC or Commission) seeking designation as an eligible telecommunications carrier (ETC) for the sole purpose of providing Lifeline service to qualifying consumers throughout Florida. DISH is a provider of commercial mobile radio service (CMRS) and offers prepaid wireless telecommunications services to consumers using its own facilities, along with resale agreements with T-Mobile USA, Inc. (T-Mobile) and AT&T Mobility (AT&T). DISH is currently designated as an ETC providing Lifeline service in 29 other states.

As a CMRS provider, DISH is regulated as a common carrier pursuant to 47 U.S.C. § 153(11).<sup>1</sup> DISH is a Colorado Limited Liability Company (LLC) authorized to do business as a foreign LLC in the state of Florida. DISH asserts in Florida it will be operating under its authorized fictitious name “Gen Mobile.” DISH is a wholly owned subsidiary of DISH Network Corporations.

DISH asserts that it meets all applicable federal requirement for designation as a Lifeline only ETC in Florida pursuant to 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201. DISH acknowledges and asserts that, if approved, it will comply with Sections 364.10 and 364.105, Florida Statutes (F.S.) and Rule 25-4.0665, Florida Administrative Code (F.A.C.), which govern Lifeline service and provide for a transitional discount for customers who no longer qualify for Lifeline. In addition to the federal rules and statutes discussed above, the Commission has jurisdiction in this matter pursuant to Section 364.10, F.S.

Section 214(e)(2) of the Telecommunications Act of 1996 (the Act) provides state public utility commissions with “primary responsibility” for the designation of ETCs. The Commission initially exercised this authority to designate both wireline and wireless carriers as ETCs. In 2011, the Florida Legislature removed the FPSC authority to designate wireless ETC providers.<sup>2</sup> However, the Florida Legislature amended Section 364.10, F.S., in 2024 to specifically grant the Commission jurisdiction to address wireless ETC petitions for Lifeline purposes only.<sup>3</sup>

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<sup>1</sup> 47 U.S.C. § 153(11) (defining a common carrier as “any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio . . . .”; 47 U.S.C. § 332(c)(1)(A) (treating commercial mobile service providers as common carriers).

<sup>2</sup> House Bill 1231 (2011), effective July 1, 2011.

<sup>3</sup> Senate Bill 478 (2024), effective April 15, 2024.

## Discussion of Issues

**Issue 1:** Should DISH be granted an ETC designation to provide Lifeline service throughout the State of Florida?

**Recommendation:** Yes. DISH should be granted an ETC designation to provide Lifeline service throughout the State of Florida. Staff also recommends that if there is a future change of Company ownership, the new owners should be required to file a petition with the Commission to demonstrate that it is in the public interest to maintain the Company's ETC designation. (Deas, Day, Mallow, Fogleman)

**Staff Analysis:** ETC designation is necessary for telecommunications companies to participate in the federal lifeline program.<sup>4</sup> Section 364.10, F.S. allows the Commission to approve wireless Lifeline ETC petitions by requesting carriers. Specifically, paragraphs 364.10(1)(a) and (3)(a) F.S., provide the Commission with the authority to designate a CMS provider as an ETC for the limited purpose of providing Lifeline service.

Federal rules outline the requirements for ETC designation.<sup>5</sup> To obtain ETC designation to provide Lifeline services, federal rules require that carriers:

- 1) Be a common carrier;
- 2) Offer the services that are supported by the federal universal support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services;
- 3) Advertise the availability of its Lifeline service through a media of general distribution;
- 4) Provide voice grade access to the public switch network or its functional equivalent;
- 5) Offer minutes of use for local service at no additional charge to end users;
- 6) Provide access to the emergency services available by local government or other public safety organizations; and
- 7) Provide Broadband Internet Access Service;<sup>6</sup>
- 8) Demonstrate financial and technical capability to provide Lifeline service. and

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<sup>4</sup> 47 C.F.R. § 254(e)

<sup>5</sup> 47 U.S.C. § 214(e)(1), 47 C.F.R. § 54.101, 47 C.F.R. § 54.201, and 47 C.F.R. § 54.401; While 47 C.F.R. § 54.101(a) also includes requirements addressing toll limitation services to qualifying low-income consumers, the FCC in its 2012 Lifeline and Link Up Reform Order (FCC 12-11) stated that: "ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls."

<sup>6</sup> Broadband Internet Access Service (BIAS) is defined as a mass-market retail service that provides the capability to transmit and receive data, but excluding dial-up service.

- 9) Not charge Lifeline customers a monthly number-portability charge.

In addition, Florida law requires do the following for ETC designation:

- 1) Must offer discounted transitional basic telecommunications service;<sup>7</sup> and
- 2) Must participate in the Lifeline Promotion Process.<sup>8</sup>

DISH plans to offer all of the supported services listed under Section 254(c) of the Act through a combination of its own facilities and resale agreements with T-Mobile and AT&T. Because DISH meets the facilities requirement, it is not required to obtain an approved FCC compliance plan in accordance with the 2012 Lifeline Reform Order. However, DISH has agreed to comply with the additional requirements for those granted ETC status by the FCC, which include the following:<sup>9</sup>

- 1) Provide the supported services throughout the carriers' designated areas;
- 2) Remain functional in emergency situations;
- 3) Comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service;
- 4) Demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with federal rules; and
- 5) Describe the terms and conditions of the broadband Internet access service plans offered to Lifeline subscribers.

Because DISH will offer the supported services and is compliant with the FCC requirements pursuant to 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201, as well as the Florida specific requirements, DISH is eligible for designation as a Lifeline only ETC in Florida.

### **Financial, Managerial, and Technical Capabilities**

As noted in its petition, DISH has offered service since 2020 and has not filed for any form of bankruptcy relief. The Company has operated as an ETC in 37 states and has not been subject to any ETC revocation proceedings. While DISH has only been a CMRS provider for four years, its parent company, DISH Network Corporation has over 20 years of technical and managerial experience. DISH asserts that it does not rely exclusively on Lifeline reimbursements for its operating revenues and it has access to additional capital resources from its parent and affiliate companies. DISH has not been involved in any FCC or USAC enforcement actions related to the

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<sup>7</sup> Section 364.105, F.S states that each ETC shall offer a residential basic local telecommunications service at 70 percent of the residential local telecommunications service rate for any Lifeline subscriber who no longer qualifies for Lifeline for a period of 1 year after the date the subscriber ceases to qualify for Lifeline .

<sup>8</sup> Rule 25-4.0665(3), F.A.C. The Lifeline Promotion Process is an electronic system developed in collaboration with the Florida Department of Children and Families, ETCs and the FPSC. This system helps assist ETCs and the FPSC in providing information on how to apply for Lifeline assistance to eligible customers.

<sup>9</sup> 47 C.F.R. § 54.202(a)

Lifeline program. However, USAC issued DISH a Notice of Determination of Amounts Owed and intent to recoup regarding the Emergency Broadband Program. DISH is currently disputing these allegations in a pending case before the FCC.<sup>10</sup> After reviewing this Notice, staff determined that there is nothing significant in the findings that should prevent DISH from being granted ETC designation in Florida.

### **Public Interest Determinations**

State commissions are required to find that ETC designation is in the public interest.<sup>11</sup> DISH asserts granting its ETC designation will bring Lifeline eligible consumers more choice in providers. In Florida, consumers are currently limited to three wireless Lifeline providers. These three companies represent 98 percent of the Lifeline market in Florida.<sup>12</sup> However, the FPSC's estimated Lifeline participation rate for the last two years has hovered around 18 percent.<sup>13</sup> The increase in carriers servicing this market may increase participation through additional marketing and would serve the public interest.

### **Conclusion**

Staff has reviewed DISH's petition for ETC designation in Florida. DISH meets all the requirements for designation as an ETC. Additionally, the Company has demonstrated sufficient financial, managerial, and technical capabilities. Therefore, staff recommends DISH should be granted an ETC designation throughout the State of Florida as identified in Attachment A of this recommendation. Staff further recommends that if there is a future change of Company ownership, the new owners should be required to file a petition with the Commission to demonstrate that it is in the public interest to maintain the Company's ETC designation.

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<sup>10</sup> Request for Review by DISH Wireless L.L.C. of the Decision of the Universal Service Administrator, WC Docket No. 20-445, December 11, 2023, available at <https://www.fcc.gov/ecfs/search/searchfilings/filing/12>.

<sup>11</sup> 47 U.S.C. § 214(e)(2).

<sup>12</sup> 2023 Florida Lifeline Assistance Report, December 2023, Appendix C, p 24.

<sup>13</sup> Ibid, p 13.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket should be closed upon the issuance of a consummating order. (Farooqi)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

**EXHIBIT 3: FLORIDA COVERAGE AREA**

00041	32062	32127	32195
00042	32063	32128	32202
00043	32064	32129	32203
00045	32065	32130	32204
00053	32066	32131	32205
00087	32068	32132	32206
00097	32071	32134	32207
00098	32073	32136	32208
32003	32080	32137	32209
32008	32081	32139	32210
32009	32082	32140	32211
32011	32083	32141	32212
32013	32084	32145	32214
32024	32086	32148	32216
32025	32087	32159	32217
32033	32091	32162	32218
32034	32092	32163	32219
32038	32094	32164	32220
32040	32095	32168	32221
32043	32096	32169	32222
32044	32097	32174	32223
32046	32102	32176	32224
32052	32110	32177	32225
32053	32112	32179	32226
32054	32113	32180	32227
32055	32114	32181	32228
32058	32117	32187	32233
32059	32118	32189	32234
32060	32119	32190	32244
32061	32124	32193	32246

32250	32333	32425	32503
32254	32334	32426	32504
32256	32336	32427	32505
32257	32337	32428	32506
32258	32340	32430	32507
32259	32343	32431	32508
32266	32344	32433	32509
32277	32346	32435	32511
32301	32347	32437	32512
32303	32348	32438	32514
32304	32350	32439	32526
32305	32351	32440	32530
32306	32352	32442	32531
32307	32355	32443	32533
32308	32356	32444	32534
32309	32358	32445	32535
32310	32359	32446	32536
32311	32360	32448	32539
32312	32399	32449	32541
32313	32401	32455	32542
32317	32403	32456	32544
32320	32404	32459	32547
32321	32405	32460	32548
32322	32407	32461	32550
32323	32408	32462	32561
32324	32409	32463	32563
32327	32413	32464	32564
32328	32420	32465	32565
32330	32421	32466	32566
32331	32423	32501	32567
32332	32424	32502	32568



32569	32648	32736	32808
32570	32653	32738	32809
32571	32656	32744	32810
32577	32664	32746	32811
32578	32666	32750	32812
32579	32667	32751	32814
32580	32668	32754	32815
32583	32669	32757	32816
32601	32680	32759	32817
32603	32683	32763	32818
32605	32686	32764	32819
32606	32693	32765	32820
32607	32694	32766	32821
32608	32696	32767	32822
32609	32701	32771	32824
32610	32702	32773	32825
32611	32703	32776	32826
32612	32707	32778	32827
32615	32708	32779	32828
32617	32709	32780	32829
32618	32712	32784	32830
32619	32713	32789	32831
32621	32714	32792	32832
32622	32720	32796	32833
32625	32723	32798	32835
32626	32724	32801	32836
32628	32725	32803	32837
32631	32726	32804	32839
32640	32730	32805	32901
32641	32732	32806	32903
32643	32735	32807	32904

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32907	33010	33051	33137
32908	33012	33054	33138
32909	33013	33055	33139
32920	33014	33056	33140
32922	33015	33060	33141
32925	33016	33062	33142
32926	33018	33063	33143
32927	33019	33064	33144
32931	33020	33065	33145
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32940	33024	33069	33150
32948	33025	33070	33154
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32950	33027	33073	33156
32951	33028	33076	33157
32952	33029	33109	33158
32953	33030	33122	33160
32955	33031	33125	33161
32958	33032	33126	33162
32960	33033	33127	33165
32962	33034	33128	33166
32963	33035	33129	33167
32966	33036	33130	33168
32967	33037	33131	33169
32968	33039	33132	33170
32976	33040	33133	33172
33001	33042	33134	33173
33004	33043	33135	33174

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33176	33317	33416	33472
33177	33319	33417	33473
33178	33321	33418	33476
33179	33322	33426	33477
33180	33323	33428	33478
33181	33324	33430	33480
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33183	33326	33432	33484
33184	33327	33433	33486
33185	33328	33434	33487
33186	33330	33435	33493
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33189	33332	33437	33498
33190	33334	33438	33510
33193	33351	33440	33511
33194	33388	33441	33513
33196	33394	33442	33514
33199	33401	33444	33521
33301	33403	33445	33523
33304	33404	33446	33525
33305	33405	33449	33527
33306	33406	33455	33534
33308	33407	33458	33538
33309	33408	33460	33540
33310	33409	33461	33541
33311	33410	33462	33542
33312	33411	33463	33543
33313	33412	33467	33544
33314	33413	33469	33545
33315	33414	33470	33547

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33549	33611	33712	33809
33556	33612	33713	33810
33558	33613	33714	33811
33559	33614	33715	33812
33563	33615	33716	33813
33565	33616	33744	33815
33566	33617	33755	33823
33567	33618	33756	33825
33569	33619	33759	33827
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33573	33622	33762	33835
33574	33624	33763	33837
33576	33625	33764	33838
33578	33626	33765	33839
33579	33629	33767	33840
33584	33634	33770	33841
33585	33635	33771	33843
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33594	33647	33773	33846
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33609	33710	33803	33856

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33867	33924	33991	34210
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33872	33931	34103	34215
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33875	33936	34105	34217
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33877	33946	34109	34221
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33881	33948	34112	34223
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33890	33952	34114	34228
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33916	33976	34202	34243

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34286	34476	34677	34760
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34292	34482	34685	34772
34293	34484	34688	34773
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34429	34498	34691	34787
34431	34601	34695	34788
34432	34602	34698	34797
34433	34604	34705	34945
34434	34606	34711	34946
34436	34607	34714	34947
34442	34608	34715	34949
34445	34609	34731	34950
34446	34610	34734	34951
34448	34613	34736	34952
34449	34614	34737	34953
34450	34637	34739	34956
34452	34638	34741	34957
34453	34639	34743	34972
34461	34652	34744	34974
34465	34653	34746	34981

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