

State of Florida



# Public Service Commission

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

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COMMISSION  
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**DATE:** September 30, 2010

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

**FROM:** Division of Regulatory Analysis (C. Williams, Casey) *CW*  
Office of General Counsel (L. Tan, Teitzman) *PK* *NT* *BT*

**RE:** Docket No. 100124-TX – Petition for Designation as Eligible Telecommunications Carrier (ETC) by Sun-Tel USA, Inc.

**AGENDA:** 10/12/10 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

**CRITICAL DATES:** None

**SPECIAL INSTRUCTIONS:** None

**FILE NAME AND LOCATION:** S:\PSC\RAD\WP\100124-TX.RCM.DOC

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## Case Background

Sun-Tel USA, Inc. (Sun-Tel) is a Florida corporation organized on March 12, 1999, with its headquarters in Jacksonville, Florida. The company was granted certification to operate as a Competitive Local Exchange Company (CLEC) in Florida on August 30, 1999, by Order No. PSC-99-1679-CO-TX.

On March 12, 2010, Sun-Tel petitioned the Florida Public Service Commission (FPSC or Commission) for landline eligible telecommunications carrier (ETC) designation in the State of Florida. In its petition, Sun-Tel requested that it be granted ETC status in 86 non-rural centers in the BellSouth/AT&T (AT&T) service territory for purposes of receiving federal universal

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service support. Sun-Tel states that it is only seeking low-income support, and will not be requesting high-cost support from the federal Universal Service Fund (USF).

Sun-Tel states that it provides local exchange and exchange access service using a combination of resale and unbundled network elements (UNEs) obtained through a Interconnection Agreement with AT&T that allows end-to-end switching delivery of calls. Sun-Tel signed an applicant certification attesting that it will follow all Florida Statutes, Florida Administrative Rules, FPSC Orders, Federal Communications Commission (FCC) Rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding Universal Service, ETCs, Link-Up, Lifeline, and toll limitation service. (Attachment A)

Sun-Tel has had two regulatory compliance issues addressed by the Commission. In 2003, the Commission ordered Sun-Tel to pay past due Regulatory Assessment Fees (RAFs), statutory penalties, interest charges, and a \$500 penalty for failure to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code.<sup>1</sup> Similarly, in 2008, Sun-Tel failed to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, Florida Administrative Code, regarding payment of its RAFs resulting in the assessment of a penalty and cost of collection totaling \$1,000.<sup>2</sup>

As of June 18, 2010, Sun-Tel states that it serves 486 residential customers in Florida. The Commission has authority under Section 364.10(2), Florida Statutes, to decide a petition by a CLEC seeking designation as an ETC pursuant to 47 C.F.R. § 54.201.

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<sup>1</sup> See Docket No. 030622-TX, In re: Cancellation by Florida Public Service Commission of CLEC Certificate No. 7126 issued to Sun-Tel USA, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees: Telecommunications Companies., Order No. PSC-03-1129-PAA-TX, issued October 9, 2003, and Order No. PSC-03-1233-CO-TX, issued October 31, 2003.

<sup>2</sup> See Docket No. 080441-TX, In re: Compliance investigation of CLEC Certificate No. 7126, issued to Sun-Tel USA, Inc., for apparent second-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees: Telecommunications Companies., Order No. PSC-08-0568-PAA-TX, issued September 3, 2008, and Order No. PSC-09-0196-CO-TX, issued March 31, 2009.

### Discussion of Issues

**Issue 1:** Should Sun-Tel be granted landline ETC designation in the State of Florida?

**Recommendation:** Yes. Staff recommends that Sun-Tel be granted landline ETC designation status in the 86 non-rural AT&T wire centers listed in Attachment B. If there is a future change of company ownership, the new owners should be required to file a petition with the FPSC and make a showing of public interest to maintain the company's ETC designation. If Sun-Tel is approved for ETC status, the Commission should also require Sun-Tel to submit the number of UNEs purchased from AT&T for each month during the quarter when it files its quarterly reports. (C. Williams, Casey)

**Staff Analysis:** Pursuant to Federal Statute, state commissions have the primary responsibility to designate providers as ETCs.<sup>3</sup> Designation as an ETC is required in order for a provider to be eligible to receive monies from the federal USF. Section 254(e) of the Telecommunications Act of 1996 (Act) provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal universal service support."<sup>4</sup> According to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal Universal Service mechanisms throughout its designated service area. Further, 47 CFR 54.405(b) specifies that ETCs must publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

#### ETC Certification Requirements

The Code of Federal Regulations addresses a state commission's responsibilities related to an ETC designation:<sup>5</sup>

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 (d) of this section. 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.

To qualify as an ETC, a carrier must provide nine services identified in 47 CFR 54.101. The services are:

- 1) Voice grade access to the public switched network: Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call,

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<sup>3</sup> 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).

<sup>4</sup> 47 U.S.C. § 254(e)(2).

<sup>5</sup> 47 C.F.R. § 54.201(c).

and to receive voice communications, including receiving a signal indicating there is an incoming call.

- 2) Local Usage: Local usage indicates the amount of minutes of use of exchange service, provided free of charge to end users.
- 3) Dual-tone multi-frequency signaling or its functional equivalent: Dual-tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, thus shortening call set-up time.
- 4) Single-party service or its functional equivalent: Single-party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission.
- 5) Access to emergency services: Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations.
- 6) Access to operator services: Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion of a telephone call.
- 7) Access to interexchange service: Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network.
- 8) Access to directory assistance: Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings.
- 9) Toll limitation for qualifying low-income consumers: Toll limitation or blocking restricts all direct-dial toll access.

In addition to providing the above services, 47 CFR 54.405(b) specifies that ETCs must publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

#### Additional ETC Certification Requirements

In addition to requiring the above services, the FCC, on March 17, 2005, issued a Report and Order that established additional criteria that all ETC applicants must satisfy in order to be

granted ETC status by the FCC.<sup>6</sup> In this Order, the FCC determined that an ETC applicant must also demonstrate:

- 1) Commitment and ability to provide the supported services throughout the designated area.
- 2) Ability to remain functional in emergency situations.
- 3) Ability to satisfy consumer protection and service quality standards.
- 4) Provision of local usage comparable to that offered by the incumbent LEC.
- 5) Acknowledgement that the applicant may be required by the FCC to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act.

The FCC encouraged states to also adopt these criteria, and the FPSC has done so in Docket No. 010977-TL (State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314), by Order No. PSC-05-0824-TL, issued August 15, 2005.

#### Public Interest Determinations

Under Section 214 of the Act, the FCC and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity for rural areas. They also must consider whether an ETC designation serves the public interest consistent with Section 254 of the Act. Congress did not establish specific criteria to be applied under the public interest tests in Sections 214 or 254. The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.<sup>7</sup> The FPSC has determined that before designating a carrier as an ETC, it should make an affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.<sup>8</sup>

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<sup>6</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46, Adopted: February 25, 2005, Released: March 17, 2005.

<sup>7</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46 (¶40), Adopted: February 25, 2005, Released: March 17, 2005.

<sup>8</sup> See Docket No. 090245-TP, In re: Petition for limited designation as eligible telecommunications carrier (ETC) by Virgin Mobile USA, L.P., Order No. PSC-10-0323-PAA-TP, issued May 19, 2010, p. 8; See Docket No. 090337TX, In re: Petition for designation as eligible telecommunications carrier (ETC) by Easy Telephone, Inc., Order No. PSC-10-0125-PAA-TX, issued March 2, 2010, p. 4; See Docket No. 080169-TX, In re: Application for designation as eligible telecommunications carrier (ETC) by Express Phone Service, Inc., Order No. PSC-08-0836-PAA-TX, issued December 24, 2008, p. 4.

Beyond the principles detailed in the Act, the FCC and state commissions have used additional factors to analyze whether the designation of an ETC is in the public interest. A rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within the designated service area.

Staff recommends that if there is a future change of company ownership, the new owners should be required to file a petition with the FPSC and make a showing of public interest to maintain the company's ETC designation. This will ensure that only carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service are designated as ETCs.

### Additional ETC Requirements

#### Transitional Lifeline

Transitional Lifeline requires that ETCs offer discounted 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. A Lifeline subscriber who requests such service receives the discounted price for a period of one year after the date the subscriber ceases to be qualified for Lifeline. To comply with the requirement of Transitional Lifeline, Sun-Tel stated that it will provide a 30 percent monthly discount off its non-discounted Lifeline rate plan for 12 months to customers no longer qualifying for Lifeline.

#### Lifeline Advertising

In paragraph thirteen of its petition, Sun-Tel states that it will advertise the availability of Lifeline in newspapers, TV, and direct mail as required by Section 214(e)(1)(B) of the Act.<sup>9</sup> Sun-Tel also states that it will provide information about Lifeline availability through community partnerships and work with social service groups that interface with Lifeline-eligible customers. By doing this, Sun-Tel explains that more low-income Florida citizens will be made aware of the opportunities afforded to them under the Lifeline and Link-Up programs and will be able to take advantage of those cost saving opportunities by subscribing to Sun-Tel's service.

#### Facilities Requirement

In accordance with 47 C.F.R. 54.201(d)(1), a company must 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. In paragraph six of its petition, Sun-Tel states that it offers all of the supported services enumerated under Section 254(c) of the Act using facilities obtained as UNEs. Section 54.201(f), C.F.R., states that the term "own facilities" includes facilities obtained as unbundled network elements.

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<sup>9</sup> See 47 U.S.C. Section 214(e)(1)(B)

Rule 25-4.0665, Florida Administrative Code, requires ETCs offering Link-Up and Lifeline service to submit quarterly reports to the Commission no later than 30 days following the ending of each quarter. The quarterly reports must include the following data:

- 1) The number of Lifeline subscribers, excluding resold Lifeline subscribers, for each month during the quarter.
- 2) The number of subscribers who received Link-Up for each month during the quarter.
- 3) The number of new Lifeline subscribers added each month during the quarter.
- 4) The number of transitional Lifeline subscribers who received discounted service for each month during the quarter.
- 5) The number of residential access lines with Lifeline service that were resold to other carriers each month during the quarter.

Staff recommends that if Sun-Tel is approved for ETC status, the Commission should also require Sun-Tel to submit the number of UNEs purchased from AT&T for each month during the quarter when it files its quarterly reports. This will allow staff to confirm that Sun-Tel is following FCC rules which require that an ETC must 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.

#### Sun-Tel's Petition

Sun-Tel is requesting that it be granted landline ETC status throughout 86 non-rural wire centers of AT&T (Attachment B) for the purpose of receiving federal universal service support. The company maintains that it is only seeking low-income support, and it is not requesting high-cost support from the federal USF. Sun-Tel's purpose in requesting ETC status in Florida is to provide Lifeline and Link-Up services over landline access lines.

Sun-Tel has acknowledged the requirements of the Florida Lifeline program, and it has agreed to adhere to the program which provides qualified customers a total of \$13.50 in Lifeline assistance credits consisting of: \$6.50 in federal subscriber line charges, \$1.75 in federal support for states that have approved the credit, and \$1.75 which is a 50 percent match of federal support for having a state Lifeline program requiring a \$3.50 credit under the Florida eligibility criteria. Sun-Tel indicates that it will provide the \$3.50 credit to qualified clients, advertise the availability of Lifeline, and begin offering these services within 60 days of receiving ETC status.

Sun-Tel states that it can provide local exchange and exchange access services using a combination of resale and UNEs. Federal rules do not require companies to lease UNEs prior to ETC designation. However, Federal rules do require that ETCs provide local exchange and

exchange access services using a combination of resale and UNEs prior to requesting reimbursement from the USF.

Sun-Tel has also indicated that its accounts with the FCC and the Universal Service Administrative Company (USAC) are current, and it is not aware of any outstanding complaints or violations with either entity. As part of the petition process, Sun-Tel has agreed to abide by the Commission's rules pertaining to the Lifeline and Link-Up programs. Sun-Tel commits to use federal universal service support only for the provision of services for which the support is intended.

Staff reviewed Sun-Tel's payment history of regulatory assessment fees, consumer complaint incidents and the timely resolution of those complaints, financial statements, and the company's status with the Florida Department of State Division of Corporations, among other sources. Sun-Tel appears to be in good standing with the Commission.

### Conclusion

Based on staff's review, along with Sun-Tel's commitment to abide by both state and federal rules and procedures, staff believes that Sun-Tel's petition for landline ETC designation is in the public interest and should be approved. If Sun-Tel should decide in the future to seek High Cost universal service funds, ETC status in rural areas, or ETC designation as a wireless ETC, it should be required to file a petition and make a showing that it would be in the public interest to grant such a request. Upon a decision by the Commission, staff will continue the necessary oversight to ensure that Sun-Tel, along with all other ETCs in Florida, are upholding these principles and attaining the goals and objectives of both the state and federal universal service programs. Therefore, staff recommends that Sun-Tel be granted ETC landline designation status in the 86 AT&T wire centers listed in Attachment B.



Docket No. 100124-TX  
Date: September 30, 2010

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

**Recommendation:** Yes. If no person whose substantial interests are affected files a protest to the Commission's Proposed Agency Action within 21 days of the issuance of the Commission Order, this docket should be closed upon issuance of a Consummating Order.  
(L. Tan, Teitzman)

**Staff Analysis:** If no person whose substantial interests are affected files a protest to the Commission's Proposed Agency Action within 21 days of the issuance of the Commission Order, this docket should be closed upon issuance of a Consummating Order.

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**APPLICANT CERTIFICATION**

State of Florida  
County of Duval

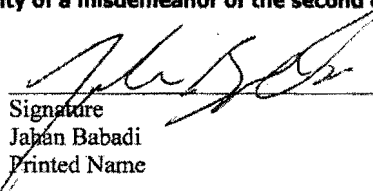
My name is Jahan Babadi, I am employed by Sun-Tel USA, Inc. , located at 5921 University Blvd W. Suite 2, Jacksonville, FL 32216 as its President. I am an officer of the Company and am authorized to provide the following certifications on behalf of the Company. This certification is being given to support the Eligible Telecommunications Carrier petition filed by my Company with the Florida Public Service Commission (PSC).

Company hereby certifies the following:

1. Company will follow all Florida Statutes, Florida Administrative Rules, and Florida PSC Orders relating to Universal Service, Eligible Telecommunications Carriers, and the Florida Link-Up and Lifeline Program.
2. Company will follow all FCC rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding Universal Service, ETCs, Link-Up and Lifeline, and toll limitation service.
3. Company agrees that the Florida PSC may revoke a carrier's ETC designation for good cause after notice and opportunity for hearing, for violations of any applicable Florida Statutes, Florida Administrative Rules, Florida PSC Orders, failure to fulfill requirements of Sections 214 or 254 of the Telecommunications Act of 1996, or if the PSC determines that it is no longer in the public interest for the company to retain ETC designation.
4. Company understands that if its petition for ETC designation is approved, it will be for limited ETC designation to provide landline-only Link-Up, Lifeline, and toll-limitation service, and the Company will be eligible only to receive low-income support from the Universal Service Fund.
5. Company understands that if its petition for ETC designation is found to be in the public interest and approved by the PSC, it is based upon the information provided to the PSC in its petition. If there is a future change of company ownership, the company understands that the new owners must file a petition with the PSC prior to the change of ownership and make a showing of public interest to maintain the ETC designation.
6. Company understands that it may only receive reimbursement from the Universal Service Administrative company (USAC) for active customer Link-Up and Lifeline access lines which are provided using its own facilities or a combination of its own facilities and access lines obtained as wholesale local platform lines (formerly UNE lines) from another carrier. The Company shall not apply to USAC for reimbursement of any Link-Up and Lifeline access lines obtained from an underlying carrier which already receive a Lifeline and/or Link-Up credit provided by the underlying carrier.

7. Company understands that the PSC shall have access to all books of account, records and property of all eligible telecommunications carriers.
8. Company understands that low income support reimbursed by USAC for toll limitation service is available only for the incremental costs that are associated exclusively with toll limitation service.
9. Company agrees that upon request, it will submit to the PSC a copy of Form 497 forms filed with USAC to:  
Florida Public Service Commission  
Division of Regulatory Analysis, Market Practices Section  
2540 Shumard Oak Drive  
Tallahassee, Florida 32399-0850
10. Company understands that in accordance with the Florida Lifeline program, eligible customers will receive a \$13.50 monthly discount on their phone bills, \$3.50 of which is provided by the ETC, and \$10.00 of which is reimbursable from the Federal Universal Service Fund.

**I am aware that pursuant to Section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree.**

  
\_\_\_\_\_  
Signature  
Japan Babadi  
Printed Name

September, 27, 2010  
Date

Business Address:  
5921 University Blvd. W.  
Suite 2  
Jacksonville, FL 32215

Florida Wire Centers

Florida Wire Centers  
 (8 Digit CILLI)

BCRTFLBT	BCRTFLSA	JPTRFLMA
BCRTFLMA	BGLFLMA	KYLRFLLS
DYBHFLFN	BYBHFLMA	KYLRFLMA
FTLDLQ2	CCBHFLAF	LKMRFLHE
FTLDFLCR	CCBHFLMA	
FTLDFLCY	COCOFLMA	
FTLDFLMR	COCOFLME	
FTLDFLQA	DBRYFLDL	
FTLDFLSF	DBRYFLMA	
FTLDFLSG	DELDFLMA	
FTLDFLSU	DLBHFLKP	
HLWDFLHA	DLBHFLMA	
HLWDFLMA	DRBHFLMA	
JCBHFLSP	DYBHFLMA	
JCVLFLCL	DYBHFLQB	
JCVLFLFC	DYBHFLQS	
JCVLFLJT	DYBHFLPQ	
JCVLFLSM	EGLLFLBG	
KYWSFLMA	EGLLFLIH	
MIAMFLAE	FLBHFLMA	
MIAMFLAP	FRBHFLFP	
MIAMFLBA	FTLDFLJA	
MIAMFLBC	FTLDFLPL	
MIAMFLBR	FTLDFLWN	
MIAMFLDB	GLBRFLMC	
MIAMFLFL	GSVFLMA	
MIAMFLGR	GSVFLNW	
MIAMFLIC	HBSDFLMA	
MIAMFLKE	HLWDFLPE	
MIAMFLME	HLWDFLWH	
MIAMFLNM	HTISFLMA	
MIAMFLPB	ISLMFLMA	
MIAMFLPL	JCBHFLAB	
MIAMFLVD	JCBHFLMA	
MIAMFLWM	JCVLFLAR	
NDADFLAC	JCVLFLBW	
NDADFLOL	JCVLFLIA	
ORLDFLMA	JCVLFLNO	
PMBHFLNP	JCVLFLRV	
PMBHFLTA	JCVLFLSJ	
WPBHFLAN	JCVLFLWC	