

State of Florida



Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

DATE: August 21, 2008

TO: Office of Commission Clerk (Cole)

FROM: Division of Regulatory Compliance (Williams, Casey)
Office of the General Counsel (Brooks)

RE: Docket No. 080107-TX – Application for designation as an eligible telecommunications carrier by Affordable Phone Services, Inc. d/b/a High Tech Communications.

AGENDA: 09/04/08 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

COMMISSIONERS ASSIGNED: All Commissioners

PREHEARING OFFICER: McMurrian

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\RCP\WP\080107.RCM.DOC

Case Background

On February 20, 2008, Affordable Phone Services, Inc. d/b/a High Tech Communications (High Tech) petitioned the Florida Public Service Commission (FPSC or Commission) for designation as an eligible telecommunications carrier (ETC) in the State of Florida. In its original application, High Tech requested that it be granted ETC status throughout the BellSouth/AT&T (AT&T), Embarq and Verizon territories for purposes of receiving federal universal service support. In a letter dated July 10, 2008, High Tech informed the FPSC that it would like to exclude its request for certification as an ETC in the Embarq service territory. The company states that it is only seeking low-income support, and that it is not requesting high-cost support from the federal Universal Service Fund (USF).

In its application, High Tech states that it provides local exchange and exchange access service using a combination of resale and unbundled network elements, or unbundled network equivalents obtained through Interconnection Agreements (UNEs) that allow end-to-end switching delivery of calls.

Staff drafted an affidavit for ETC applicants to sign attesting that the ETC applicant will follow all Florida Statutes, Florida Administrative Rules, Florida PSC Orders, Federal Communication 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. High Tech signed and returned the affidavit.

High Tech is a Florida for-profit corporation organized under the laws of the State of Florida on May 1, 1993. The company was granted Certification to Operate as a Competitive Local Exchange Company (CLEC) in Florida on July 18, 2000, through Order Number PSC-00-1293-CO-TX. The principal office of the company is located at 2855 SE 58th Avenue, Ocala, Florida 34471.

As of May 8, 2008, High Tech states that it serves 1,851 Florida residential customers. 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.

Discussion of Issues

Issue 1: Should High Tech be granted ETC designation in the State of Florida?

Recommendation: No. Staff recommends that High Tech not be granted ETC designation in the State of Florida. (Williams, Casey)

Staff Analysis: Pursuant to Federal Statute, state commissions have the primary responsibility to designate providers as ETCs.¹ 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.”² 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 a designated service area.

ETC Certification Requirements

The Code of Federal Regulations addresses a state commission’s responsibilities related to an ETC designation.³

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, 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;

¹ 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).

² 47 U.S.C. § 254(e)(2).

³ 47 C.F.R. § 54.201(c).

- (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; and
- (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, ETCs must advertise the availability of such services and the associated charges using media of general distribution.

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.⁴ In this Order, the FCC determined that an ETC applicant must also demonstrate:

- 1) a commitment and ability to provide the supported services throughout the designated area;
- 2) the ability to remain functional in emergency situations;

⁴ 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.

- 3) ability to satisfy consumer protection and service quality standards;
- 4) provision of local usage comparable to that offered by the incumbent LEC; and
- 5) an 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 Section 214 or Section 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.⁵ Staff believes that before designating a carrier as an ETC, the FPSC 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.

High Tech's Petition

High Tech is requesting that it be granted ETC status throughout the non-rural AT&T and Verizon territories for the purpose of receiving federal universal service support. The company maintains that it will only be seeking low-income support, and it is not requesting high-cost support from the federal USF. High Tech's primary purpose in requesting ETC status in Florida is to provide Lifeline and Link-Up services.

High Tech 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% match of federal support for having a state Lifeline program requiring a \$3.50 credit under the Florida eligibility criteria. High Tech 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.

⁵ 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.

High Tech states that it provides local exchange and exchange access service using a combination of resale and unbundled network elements, or unbundled network equivalents obtained through Interconnection Agreements. High Tech 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, High Tech has agreed to abide by the Commission's rules, such as the procedures for approving, denying, and terminating recipients, timelines for submitting reports, and expectations pertaining to the Lifeline and Link-Up programs. High Tech commits to use federal universal service support only for the provision of services for which the support is intended.

Staff reviewed High Tech's cooperation with the data gathering effort involved in the Commission's Competition Report, payment history of regulatory assessment fees, consumer complaint incidents and the timely resolution of those complaints, compiled financial statements, and the company's status with the Florida Department of State Division of Corporations, among other sources. High Tech has no outstanding regulatory assessment fees, penalties, or interest associated with its Florida CLEC certificate.

However, staff found no evidence that High Tech provides local exchange and exchange access services using a combination of resale and unbundled network elements, as asserted in its ETC application. Staff's data request No. 3 asked High Tech to provide evidence of any resale or Interconnection Agreements it currently has in Florida with other telecommunications carriers. In response, High Tech provided confirmation that it has resale-only agreements with Embarq and AT&T. Staff also reviewed FPSC records to determine if any petitions were filed by High Tech for approval of an Interconnection Agreement with AT&T and Verizon and found none.

Conclusion

47 C.F.R. §54.201(d) provides that carriers designated as ETCs shall, throughout the designated service area: (1) offer the services that are supported by federal universal support mechanisms either using their own facilities or a combination of their own facilities and the resale of another carrier's services, and (2) advertise the availability of such services and the related charges therefore using media of general distribution. 47 C.F.R. §54.201(f) states that the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements (UNE).

High Tech cannot fulfill the facilities requirement necessary to offer the nine services required of an ETC. High Tech does not own any facilities. It also cannot provide the nine services using a combination of its own facilities and the resale of another carrier's services, since it does not have any executed Interconnection Agreements in place to purchase UNEs. High Tech cannot receive Federal low-income universal service support from the USAC if it is not designated as an ETC.

Denying ETC status to High Tech will not prevent the company from providing Link-Up and Lifeline services to its customers. High Tech can purchase Link-Up and Lifeline services through its resale agreement(s) with its underlying carrier(s). Therefore, staff recommends that High Tech be denied ETC designation in the state of Florida.

Docket No. 080107-TX

Date: August 21, 2008

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. (Brooks)

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.