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Via Electronic Filing Only

June 1, 2022

Ms. Carmen Diaz, Acting Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Avenue, 9th Floor
P.O. Box 350
Trenton, New Jersey 08625-0350
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Re: Petition of AirVoice Wireless, LLC d/b/a AirTalk Wireless for
Designation as an Eligible Telecommunications Carrier in the State of
New Jersey. **BPU Docket No.: TE22030182**

Dear Acting Board Secretary:

The New Jersey Division of Rate Counsel (“Rate Counsel”) submits its comments for consideration on the above-referenced matter, filed by AirVoice Wireless, LLC d/b/a AirTalk Wireless (“AirVoice” or the “Company”) on March 28, 2022, seeking approval for designation as an Eligible Telecommunications Carrier (“ETC”) in the State of New Jersey by the New Jersey Board of Public Utilities (“Board”) for the limited purpose of offering lifeline service to qualified households pursuant to 47 U.S.C. § 214(e).¹ Kindly acknowledge receipt of Rate Counsel’s electronic filing for Rate Counsel’s records.² As discussed below, Rate Counsel does not object to a Board grant of AirVoice’s request for designation as an ETC in the state of New Jersey.

¹ AirVoice states it 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 therefore, ETC certification requirements for the high-cost program are not applicable to the Company. Petition, *fn.3*, p. 4.

² Pursuant to e-filing procedures approved by the Board under Docket No. Docket No. EO20030254, dated March 19, 2020.

Petitioner

AirVoice, a Michigan limited liability company, headquartered in Houston, TX, is a resale-based Commercial Mobile Radio Service (“CMRS”) telecommunications service provider delivering prepaid wireless telecommunications services to consumers by using the underlying wireless networks of AT&T Mobility LLC and and/or T-Mobile USA, Inc. (collectively, “Underlying Carriers”) on a wholesale basis.³ Additionally, AirVoice states it “obtains from its Underlying Carriers the network infrastructure and wireless transmission facilities to allow the Company to operate as a Mobile Virtual Network Operator (“MVNO”). AirVoice has ETC status in California, Kentucky, Michigan, Mississippi, New York, Ohio, Oklahoma, Pennsylvania, South Carolina and Wisconsin. Additionally, AirVoice also provides non-Lifeline mobile phone services and is an approved provider of broadband services under the FCC’s Affordable Connectivity Program (“ACP”).⁴

AirVoice is a wholly owned subsidiary of VTel Holdings, LLC, (“VTel”) a Texas limited liability company, created to acquire and own one hundred percent equity interest in several wireless service provider companies including AirVoice.⁵ VTel subsidiaries collectively provide wireless Lifeline and non-Lifeline wireless services in over 20 states and services under the ACP throughout 45 states and are owned in their entirety by Henry Hung Do.⁶ The filing notes that

³ Petition, p.6.

⁴ Id.

⁵ Id., pp. 6-7.

⁶ The companies under VTel’s ownership umbrella are, Cintex Wireless, LLC d/b/a SFone Wireless, a Delaware limited liability company; NewPhone Wireless, LLC, a Louisiana limited liability company; HTH Communications, LLC, a Texas limited liability company; SofTel Technologies, LLC, a Texas limited liability company; and Softel Holdings, LLC, a Texas limited liability company which was formed to acquire 100% ownership interest in TAG Mobile, LLC (“TAG Mobile”) a Texas limited liability company. Petition , pp. 6-7 citing to *fns.* 8-9.

under the current ownership neither AirVoice nor its affiliates have been subject to enforcement sanctions related to the Low-Income Fund or ETC revocation proceedings in any state.⁷

Lifeline Service Offerings

AirVoice states it is in compliance with all state and federal regulatory requirements applicable to CMRS common carriers, and meets the prerequisites for designation as an eligible telecommunications carrier (“ETC”) for Lifeline services in New Jersey.⁸ AirVoice will provide affordable prepaid mobile phone service, including calling, text messaging, and broadband access, along with user-friendly handsets, tablet or hotspot devices, and high-quality customer service.⁹ AirVoice service offerings will provide significant cost saving advantages to eligible customers, for voice and broadband service.¹⁰ Additionally, AirVoice asserts its’ Lifeline-supported voice services will meet or exceed the minimum service standards set forth in 47 C.F.R. § 54.408 (currently 1,000 minutes), 47 C.F.R. § 54.408 for mobile broadband internet access services, including for service speed and data usage allowance, as such standards are

⁷ Petition at footnote 10 states “Pursuant to an Order and Consent Decree adopted on December 22, 2017, Cintex settled a Notice of Apparent Liability with the FCC (*See* File No. EB-IHD-13-00010671), which all occurred under prior ownership and management. By Order adopted December 16, 2021 (*See* File No. EB-IHD-20-00031449), NewPhone entered into a Consent Decree with the Enforcement Bureau of the FCC for the purpose of terminating the Bureau’s investigation on whether NewPhone, as an ETC, claimed support from the Lifeline program of the Universal Service Fund (USF or Fund) for duplicate or otherwise ineligible subscribers. On September 23, 2020, the Bureau issued NewPhone a LOI to obtain information about the claims in question. NewPhone filed its response to the LOI on November 23, 2021. Within weeks after USAC notified NewPhone of the apparently improper use of beneficiary data, the Company terminated its relationship with the Marketing Agents involved in the enrollments. USAC worked with NewPhone from early August through October 2020 to address the issues raised by the claims. On October 30, 2020, NewPhone submitted revised claims which USAC agreed addressed the full amount at issue in its investigation. Because USAC determined NewPhone had promptly submitted revised claims in the full amount USAC sought, there was no need to issue a recovery letter. To resolve the matter, NewPhone agreed to implement a compliance plan and make a \$100,000 settlement payment.” *Id.*

⁸ Petition, pp. 10-14, pp. 17-18. See also Exhibits 3, service area; Exhibit 4, managerial bios and Exhibit 5, service offerings.

⁹ *Id.*, p. 19.

⁹ *Id.*, pp. 8-9.

¹⁰ *Id.*, p. 19.

updated going forward and will meet the equipment requirements under 47 C.F.R. § 54.408(f).¹¹ Moreover, AirVoice affirms it will not impose an additional or separate tethering charge for mobile data usage below the minimum standard.¹² AirVoice’s current Lifeline service offering provides qualifying low-income customers free monthly service consisting of “1000 voice minutes, unlimited text messages, and 4.5 gigabytes (GB) of data per month with full access to its Underlying Carriers’ networks at a net cost of \$0.00 after application of Lifeline support.”¹³ Additionally, “Lifeline customers that also elect to receive ACP benefits from AirVoice will receive unlimited talk and text with 15 GB data after application of Lifeline and ACP support” and other service offerings will allow customers to “purchase additional minutes or data as needed” noting that “all plans will include nationwide domestic long-distance at no extra per-minute charge, and AirVoice will not assess any usage for access to its free customer services (611).”¹⁴ Additionally, prepaid Lifeline customers will receive: a free handset or SIM card, and at no additional charge access to voice mail; caller I.D.; call forwarding; 3-way calling, and call waiting features; nationwide long distance calls; calls to the Company’s customer service and 911 emergency calls as part of standard service.¹⁵ AirVoice also provides Broadband Internet access service (“BIAS”) to low-income consumers via resale of its Underlying Carriers’ mobile

¹¹ Id., pp. 19-20.

¹² Petition, p. 20.

¹³ Id., pp. 19-20 and at Exhibit 5.

¹⁴ Id.

¹⁵ Id., pp. 10-12 and p. 20, and at p. 25; noting that access to 911 emergency services calls are always free, regardless of service activation or availability of minutes. Id., p. 3.

services, in accordance with the FCC’s minimum service standards to ensure Lifeline customers receive full support.¹⁶

Petitioner states it “recognizes the importance of safeguarding the USF and has implemented measures and procedures to prevent duplicate Lifeline benefits being awarded to the same household and complies with the requirements of the National Lifeline Accountability Database (“NLAD”) and section 54.404 of the FCC’s rules.”¹⁷ AirVoice notes that prospective New Jersey customers “can apply to the National Verifier through a service provider like AirVoice, or on their own by mail or online.”¹⁸ Additionally, AirVoice states it utilizes the standard Lifeline application/certification forms as required by FCC rules, and complies with the disclosure and information collection requirements under 47 C.F.R. § 54.410.¹⁹

Commitments and Public Interest

Petitioner asserts it is financially and technically capable of providing the services to be rendered to New Jersey customers.²⁰ In particular, AirVoice commits to the provision of quality services and consumer protection throughout the designated service territory and asserts it will adhere to standards under the Cellular Telecommunications and Internet Association’s (“CTIA”) Consumer Code for Wireless Service and commits to satisfactorily resolve complaints filed with the Board's Telecommunications Division and provide a Company point of contact through

¹⁶AirVoice notes “[T]he FCC has stated that BIAS consists of the ability for a user to receive “the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.” 47 C.F.R. § 8.2(a). Petition, pp. 13, 20 and *fn.* 22.

¹⁷ Petition, pp. 21-23.

¹⁸ *Id.* and at p. 6.

¹⁹ *Id.*, p. 20. See also, discussion at pp. 9-11, 14-15 and 20-23.

²⁰ *Id.*, pp. 15-18. In particular AirVoice notes “AirVoice does not and will not rely exclusively on USF disbursements to operate. In addition, AirVoice’s financial and technical capabilities to provide service are demonstrated by its performance over twenty-two (22) years in the wireless telephone industry.” *Id.*, p. 18.

which all Lifeline complaints may be transmitted.²¹ The expansion of competitive choice for New Jersey eligible Lifeline customers will provide additional opportunity to access a myriad of services which include (1) local and long-distance calling; (2) access to the following custom calling features at no charge: (a) Caller ID; (b) Call Waiting; (c) Call Forwarding; (d) 3-Way Calling; (e) Voicemail; and (f) 411 service; (3) text messaging; (4) broadband access; and (5) the option for a consumer to “bring their own device” noting that AirVoice may also offer user-friendly handsets or hotspot devices.²²

Additionally, AirVoice confirms it will comply with certification and verification requirements, with federal reporting requirements and Board rules and regulations.²³ Lastly, Petitioner asserts approval of its application is in the public interest as expansion of competitive choice in the telecommunications market will yield positive benefits for New Jersey customers and “help ensure that quality services are available at “just, reasonable, and affordable rates” as envisioned in the Act.”²⁴

On May 19, AirVoice provided additional information in response to Board Staff’s April 29, data requests. The information provided by AirVoice provides further details on customer service and service quality and confirms services available under Petitioner’s proposed plan.²⁵

Rate Counsel relies on the assertions provided by AirVoice in its petition and follow up information provided to the Board Staff in the determination that the terms of service proposed

²¹ Id. pp. 18.

²² Petition, p. 8.

²³ Id., pp. 20-23.

²⁴ Petition, pp. 24-28, citing to *fn.* 34, p.26.

²⁵ See Petitioner provided responses Board Staff information requests dated May 19, 2022.

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by AirVoice should benefit eligible Lifeline subscribers in New Jersey. Rate Counsel deems AirVoice's service capabilities, proposed services and commitments to provide affordable prepaid mobile phone service and high-quality customer service, meet the regulatory requisites for ETC designation and ETC designation would be in the public interest. Accordingly, Rate Counsel would not oppose Board action designating AirVoice Wireless, LLC d/b/a AirTalk Wireless as an eligible telecommunications carrier in the State of New Jersey.

Thank you for the opportunity to provide comments and for your consideration.

Respectfully submitted,

BRIAN O. LIPMAN, ESQ.,
DIRECTOR
NJ DIVISION OF RATE COUNSEL

MNR/td
c: Service List

By: */s/ Maria T. Novas-Ruiz*
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