

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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| PETITION OF |) | |
| YMAX COMMUNICATIONS CORP. |) | |
| FOR DESIGNATION AS AN ELIGIBLE |) | DOCKET NO. |
| TELECOMMUNICATIONS CARRIER |) | |

**PETITION FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER**

YMax Communications Corp. (“YMAX”, “Applicant” or the “Company”), pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”)¹ and Sections 54.101 through 54.207 of the Rules of the Federal Communications Commission (“FCC”),² and the Rules and Regulations of the South Dakota Public Utilities Commission (the “Commission”),³ hereby applies to the Commission for Designation as an Eligible Telecommunications Carrier (“ETC”) throughout the Qwest Corporation d/b/a Century Link service area (the “Designated Service Area”) for the purpose of receiving federal universal service support. The Company is seeking only low income support, and is not requesting high cost support. As demonstrated below, YMAX satisfies all of the statutory and regulatory requirements for designation as an ETC in the Designated Service Area, including the new requirements outlined in the FCC’s *Lifeline and Link Up Reform Order*.⁴ Furthermore,

¹ 47 U.S.C. § 214(e)(2).

² 47 C.F.R. §§ 54.101-54.207.

³ See South Dakota Codified Laws (SDCL) 49-31-78 and South Dakota Administrative Rules (ARSD) 20:10:32:43.

⁴ *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*”).

designation of YMAX as an ETC in the Designated Service Area will serve the public interest. Accordingly, YMAX respectfully requests that the Commission grant this Petition. Applicant proposes an effective date immediately upon the date the Commission approves the Petition.

The name, address, and telephone number of the Applicant and its designated contact person is as follows:

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I. Background

1. YMAX is a Delaware Corporation.⁵ A copy of the Company's Certificate of Incorporation is on file with the Commission and incorporated herein by reference. The Company was granted a Certificate of Authority to Provide Local Exchange Services in Docket No. TC06-027 on June 21, 2006. The principal office of the Company is located at 5700 Georgia Ave, West Palm Beach, Florida 33405. The telephone number of the Applicant is (561)

⁵ The Company was incorporated in the State of Delaware on May 24, 2005

586-3380. The Company will provide local exchange services in the Designated Service Area using either its own facilities or a combination of its own facilities and resale of another carrier's services.

2. As set forth in Section 214(e)(2) of the Act, the Commission "shall upon its own motion or upon request designate a common carrier that meets the requirements of [Section 214(e)(1)] as an eligible telecommunications carrier for a service area designated by the State commission."⁶ Upon designation as an ETC, the carrier shall be eligible to receive universal support in accordance with Section 254 of the Act.⁷

3. The requirements for designation as an ETC set forth in Section 214(e)(1) are that the carrier must:

- (A) offer the services that are supported by Federal universal support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefore using the media of general distribution.⁸

II. YMAX Satisfies the Requirements for Designation as an ETC to Serve the Designated Service Area

4. YMAX is a common carrier as that term is defined in the Act.⁹ The Company will provide the supported services in the Designated Service Area.

⁶ 47 U.S.C. § 214(e)(2); *see* 47 C.F.R. § 54.201(b) (FCC Rules citing the Act's requirements).

⁷ 47 U.S.C. § 214(e)(1).

⁸ *Id.*

⁹ *See* 47 U.S.C. § 153(10) ("the term 'common carrier' or 'carrier' means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy . . .).

5. YMAX will offer all of the supported services enumerated under Section 254(c) using either its own facilities or a combination of its own facilities and resale of another carrier's services. Accordingly, the Company satisfies the requirement set forth in Section 214(e)(1)(A) and ARSD 20:10:32:43.07 .

6. The services that are supported by Federal universal support mechanisms under section 254(c) are enumerated at 47 C.F.R. § 54.101(a). These services are:

a) Voice grade access to the public switched telephone network (PSTN).

"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. YMAX is able to originate and terminate telephone service for all of its subscribers;

b) Local usage. As part of the voice grade access to the PSTN, an ETC must provide minutes of use for local service at no additional charge to end-users. The Company's service includes unlimited local usage that allows customers to originate and terminate calls within the local calling area without incurring toll charges;

c) Access to emergency services. "Access to emergency services" includes access to 911 and enhanced 911 services to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems. The Company will provide its customers with access to these services;

- d) Toll limitation for qualifying low-income consumers. Toll Blocking allows customers to block the completion of outgoing toll calls. Toll Control allows the customer to limit the dollar amount of toll charges a subscriber can incur during a billing period. YMAX provides qualifying Lifeline customers with access to toll limitation.¹⁰ The Company will seek toll limitation service (“TLS”) reimbursement from the USF;
- e) While no longer required by 47 C.F.R. § 54.101(a), YMAX provides dual tone multi-frequency (“DTMF”) signaling to expedite the transmission of call set up and call detail information throughout the network, single party service for the duration of each telephone call and not multi-party (or “party-line”) services, access to operator services, the ability to make interexchange, or long distance, telephone calls, and access to directory assistance services.

7. YMAX will advertise the availability of the above-referenced services and the charges for those services in the Designated Service Area using media of general distribution and in a manner reasonably designed to reach those likely to qualify for those services, as required by FCC Rules.¹¹ Accordingly, the Company satisfies the requirement set forth in Section 214(e)(1)(B).

¹⁰ On December 30, 1997, the FCC issued an order clarifying its definition of “toll limitation” services as either toll blocking or toll control and requires carriers to offer only one, not necessarily both, of these services to be designated as an ETC.

¹¹ See 47 C.F.R. § 54.201(d)(2).

III. Area for Which ETC Designation Is Requested

8. YMAX requests ETC designation throughout all Qwest Corporation d/b/a Century Link exchanges, as identified in Exhibit 2 attached hereto. YMAX does not seek certification as an ETC in any areas served by rural telephone companies.

IV. YMAX Satisfies the Additional Requirements for Designation as an ETC

9. In accordance with ARSD 20:10:32:43.01, Applicant commits to provide service on a timely basis to requesting customers in its Designated Service Area where the applicant's network already passes the potential customer's premises, and provide service within a reasonable period of time, if the potential customer is within the applicant's service area but outside its existing network coverage, if service can be provided at reasonable cost by:

- i. Modifying or replacing the requesting customer's equipment;
- ii. Deploying a roof-mounted antenna or other equipment;
- iii. Adjusting the nearest cell tower;
- iv. Adjusting network or customer facilities;
- v. Reselling services from another carrier's facilities to provide service; or
- vi. Employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment

10. In accordance with 47 C.F.R. § 54.202(a)(1)(i), Applicant commits to comply with the service requirements applicable to the support that it receives. As a common carrier seeking designation as an ETC for low-income support only, Applicant is not required to submit a network improvement plan.¹² Therefore, since Applicant is seeking only low-income and not high cost support, Applicant respectfully requests a waiver of ARSD 20:10:32:43.02 .

11. An ETC Applicant must demonstrate its ability to remain functional in emergency situations (47 CFR §54.202(a)(2); ARSD 20:10:32:43.03). Since Applicant is providing service

¹² See *Lifeline and Link Up Reform Order* at ¶ 386; see also 47 C.F.R. § 54.202(a)(1)(ii).

to its customers through the use of its own redundant facilities, Applicant will provide to its customers the same ability to remain functional in emergency situations as currently provided by the ILECs to their own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, rerouting of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations.

12. An ETC Applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards (47 C.F.R. § 54.202(a)(3); ARSD 20:10:32:43.04). Applicant will satisfy all such standards. As part of its certification requirements for providing local exchange services, Applicant must abide by the service quality and consumer protection rules. In addition, Applicant commits to reporting information on an annual basis consistent with 47 C.F.R. § 54.422.

13. FCC Rules no longer require an applicant for ETC status to acknowledge that the FCC may require it to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.¹³ Nevertheless, pursuant to ARSD 20:10:32:43.06, the Company acknowledges that it may be required to provide equal access to long distance carriers in the event that no other eligible telecommunications carrier is providing equal access within the service area.

14. An applicant for ETC designation is no longer required to demonstrate that it offers a local usage plan that is "comparable" to the plan offered by the ILEC in the relevant service territory.¹⁴ Nevertheless, in accordance with ARSD 20:10:32:43.05, Applicant will offer a local usage plan comparable to the one offered by the incumbent LEC in the service areas for

¹³ See *id.*

¹⁴ See *Lifeline and Link Up Reform Order* at page 208, revised § 54.202(a).

which it seeks designation. Applicant will offer a local usage plan with unlimited calling within the customer's local calling area for a flat monthly fee with the same calling scope as Century Link.

15. In accordance with 47 C.F.R. § 54.202(a)(4), Applicant demonstrated its financial and technical capabilities in Docket No. TC06-027 referenced above.

16. The Company will provide reduced billing to Lifeline-eligible customers throughout its designated service area. The reduction will include the maximum federal Lifeline subsidy amount.

17. YMAX will certify a customer's initial and annual eligibility for Lifeline in accordance with 47 C.F.R. § 54.410.

V. Granting YMAX's Petition Will Serve the Public Interest

18. Congress requires that the Commission grant competitive ETC applications in non-rural areas.¹⁵ No specific public interest test is mentioned, as is the case for areas served by rural telephone companies.¹⁶ Thus, the Act provides that the Commission "shall" designate YMAX as an ETC upon finding that the company meets the requirements of Section 54.101(a) and Section 54.202(a) of the FCC's Rules (47 C.F.R. § 54.101(a) and 47 C.F.R. § 54.202(a)).

19. Grant of the Company's Application will serve the public interest and the market as a whole by promoting additional deployment of its unique service offering to the unserved and underserved exchanges in the Designated Service Area and will allow the Company to participate in and offer Lifeline to qualifying consumers throughout these same exchanges. As

¹⁵ See 47 U.S.C. 214(e)(2).

¹⁶ See *Id.*

relevant to the Commission's public interest inquiry, the Company's presence will undeniably include a benefit of increased customer choice, as its service is unique, and serves a specific sector of the public who might well not otherwise be able to obtain wire line service from traditional providers.

20. The unique advantages and disadvantages of the Company's service offering are as follows:

The services are offered to customers on a monthly basis. Services are provided without requiring a security deposit or gaining credit worthiness. Customers have the opportunity to choose products based on current needs and change products if necessary on a monthly basis without incurring large costly fees. The Company's offering provides long distance calling which eliminates the billing of additional monthly fees. Services can be discontinued simply by nonpayment of the next month's services without penalty or disconnection fees.

21. A central purpose of the Telecommunications Act of 1996 was to "promote competition and reduce regulation ... [thereby securing] lower prices and higher quality services ... and encourage the rapid deployment of new telecommunications technologies."¹⁷ Designation of YMAX as an ETC would further these goals. Granting ETC status to YMAX would allow the Company to obtain federal universal service support, which it will use to offer innovative telecommunications services at competitive prices to consumers in the Designated Service Area.

22. YMAX will announce and advertise telecommunications services as an ETC where it provides service in its Designated Service Area in South Dakota and will publicize the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify

¹⁷ The Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, 56 (1996).

for those services. Accordingly, more low-income South Dakota residents will be made aware of the opportunities afforded to them under the Lifeline program and will be able to take advantage of those opportunities by subscribing to the Company's service.

23. Since YMAX's service is of particular interest to credit-challenged customers—many of whom are low income—who generally cannot obtain service from the incumbent carrier, the granting of ETC status is clearly in the public interest; access to Lifeline can be critically important to a significant portion of the eligible low income consumers. To Applicant's knowledge, Lifeline services are not being sufficiently advertised and made available to eligible low income consumers in the Designated Service Area. Statistics suggest that there are many eligible customers who are not yet aware of the programs. According to the best data available to Applicant, as of December 31, 2010, fewer than 20% of consumers eligible for Lifeline Services in the State of South Dakota were being provided such services.¹⁸ When additional carriers enter the market with programs designed specifically for such customers, it increases the likelihood that eligible customers will become generally aware of these valuable options for telecommunications service.

¹⁸ See attached Exhibit 3, 2010 Lifeline Participation Rates by State, which was obtained from the Universal Service Administrative Company ("USAC"), an independent not-for-profit corporation designated as the administrator of the federal Universal Service Fund by the FCC.

VI. Relief Requested

For the foregoing reasons, YMAX respectfully requests that the Commission grant its Petition and Designate the Company as an Eligible Telecommunications Carrier for the Designated Service Area.

Respectfully submitted,

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