

**TO:** COMMISSIONERS AND ADVISORS  
**FROM:** DARREN KEARNEY AND KRISTEN EDWARDS  
**SUBJECT:** TC13-022: APPLICATION OF TELRITE CORPORATION D/B/A LIFE WIRELESS FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER  
**DATE:** AUGUST 28, 2013

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## STAFF MEMORANDUM

### 1.0 Filing Overview

On February 25, 2013, Telrite corporation d/b/a Life Wireless (Telrite) filed an application with the Commission seeking Eligible Telecommunications Carrier (ETC) designation for the purpose of receiving federal low-income universal service support for prepaid wireless services, specifically Lifeline. Telrite seeks ETC designation in non-rural, Qwest (also referred to as CenturyLink) wire centers that it is able to serve.

On March 12, 2013, South Dakota Telecommunications (SDTA) filed a petition with the Commission to intervene. SDTA sought intervention because some of the associations' members operated within exchanges that Telrite initially sought ETC status in. The Commission granted SDTA intervention on March 26, 2013. Telrite amended its application to exclude the exchanges of concern and SDTA filed a letter on July 2, 2013, identifying that SDTA would not object should the Commission grant Telrite ETC designation in the revised list of Qwest exchanges.

On March 25, 2013, Telrite filed a certificate of service to comply with ARSD 20:10:32:46.

On April 18, April 23, June 25, July 5, August 7, and August 20 of the year 2013, Telrite filed responses to Staff data requests.

### 2.0 Purpose of Memo

Telecommunications carriers that seek to recover Universal Service Fund (USF) dollars for low-income programs in South Dakota must be designated as an ETC by the Commission. Federal and State statutes and rules are in place to guide Commissions on whether or not a telecommunications carrier can, or should, be designated as an ETC. The purpose of this memo is to organize all relevant statutes, rules, and information in a manner that Staff believes will help the Commission in the decision-making process, as well as make some clarifications to the docket record.

Prior to granting Telrite ETC status, the Commission must determine that it is in the public interest to do so. Staff makes no formal recommendation on the public interest determination and respectfully defers that matter to the Commission for this docket. However, Staff does attempt to either provide support for the arguments included in Telrite's application or point out the flaws in Telrite's argument based on Staff's analysis and interpretation of the record. Finally, should the Commission determine that it is in the public interest and grants Telrite ETC designation in non-rural Qwest exchanges, Staff recommends that certain conditions be included in the final order. These conditions are intended to ensure Telrite will comply with all applicable rules, provide quality telephone service for its lifeline customers, and avert issues that were experienced in another state.

### **3.0 Discussion**

State and Federal rules identify specific requirements companies need to meet in order to be designated as an ETC by the Commission. Those requirements, along with Telrite's responses identifying how they meet the requirements, are discussed within this section. In addition, this section should demonstrate that Telrite has submitted a complete application and enough information is available for the Commission to consider the matter.

In the following sections, Staff first clarifies the exchanges in which Telrite seeks ETC designation in. Next, Staff discusses the Commission's authority to consider the matter as laid out in Federal statute. A discussion on other federal requirements is discussed thereafter. Finally, Staff provides analysis on South Dakota administrative rules, mainly focusing on the public interest standard.

#### **3.1 Service Area that Telrite Seeks ETC Designation In**

In accordance with ARSD 20:10:32:43(4), Telrite submitted a list of exchanges and a map<sup>1</sup> identifying the service area for which they seek ETC designation in. Further, Telrite states it "[...] seeks designation as an ETC in non-rural, South Dakota, excluding tribal lands."<sup>2</sup> However, the list of exchanges included a number of "rate centers" located within local exchange areas served by rural carriers and "rate centers" located within tribal lands.

The inclusion of rural carrier exchanges led to South Dakota Telecommunications Association (SDTA) intervening in the docket. SDTA stated that Telrite's petition was not clear as to the specific geography of where they sought ETC designation. In response to Staff discovery, Telrite submitted a revised list of exchanges<sup>3</sup> that included only Qwest Corporation d/b/a CenturyLink exchanges. As a result of revising the list of exchanges, SDTA filed a letter<sup>4</sup> identifying that the revised list of exchanges adequately addressed their concerns and they would not object should the Commission grant Telrite ETC designation only in the Qwest exchanges.

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<sup>1</sup> Telrite's Application, Exhibit A, as filed on February 25, 2013.

<sup>2</sup> Telrite's Application, ¶35, as Filed on February 25, 2013.

<sup>3</sup> Telrite's Supplement to Application, Exhibit A, as filed on July 5, 2013.

<sup>4</sup> SDTA's Letter regarding Telrite's Amended Application, as filed on July 2, 2013.

Even though the revised exchanges addressed SDTA's concerns, Staff still questioned whether or not Telrite would offer Lifeline services within tribal lands. This is due to the fact that a few of the exchanges listed in the revised Exhibit A are located within Indian Reservations and, as such, Staff thought that Telrite should offer Tribal Lifeline accordingly. However, this contradicted Telrite's statement in paragraph 35 of the petition. Through a response to Staff's third round of discovery, filed on August 8, 2013, Telrite clarified that they would offer Lifeline in both tribal and non-tribal areas.

Working through the service area questions, Telrite has now clarified that it seeks ETC designation in Qwest exchanges as listed in the revised Exhibit A (filed on July 5, 2013) and that Tribal Lifeline will be offered in the appropriate wire centers. Staff notes that the Morristown exchange was not included in the revised Exhibit A and recommends that the exchange gets added to the list. Accordingly, this is the service area that the Commission would be granting Telrite ETC designation in should the petition be approved.

### 3.2 Commission's Authority to Designate Telrite as an ETC

The authority for designating common carriers as Eligible Telecommunications Carriers is given to State Commissions in USC §214(e)(2), which states:

"A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. 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 (1) [...]"

Paragraph 1 of USC §214(e) reads:

"A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation received –

- (A) Offer the services that are supported by Federal universal service support mechanisms under section 254 (c) of this title, 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 therefor using media of general distribution."

The first logical test is to verify that Telrite meets the requirements set forth in USC §214(e) in order to even be eligible for ETC designation. The statute requires the Commission to ensure the common carrier seeking ETC designation does in fact meet the following criteria: 1) the

company actually offers the *proper supported services*, 2) the company offers the services using its *own facilities* or a combination of its *own facilities* and resale of another carriers services, and 3) the company will *properly advertise* the availability of the supported services. An analysis on these three criteria follows.

### *3.2.1 Will Telrite Offer the Proper Supported Services?*

In paragraph 17 of Telrite's application, Telrite attests that "[u]pon designation as an ETC in South Dakota, and consistent with state and federal policies favoring universal service, Telrite will offer voice telephony services as described in the amended Section 54.101 of the FCC Rules." The paragraphs below provide analysis on Telrite's ability to offer voice telephony service per the FCC's amended rule found at 47 CFR §54.101, which states:

"Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part."

Telrite's Lifeline plans are pre-paid services that offer low-income consumers either 125 minutes or 250 minutes of telephone network talk time per month at no charge, with the option to purchase additional minutes if desired. As such, it is clear that Telrite's services provide voice grade access to the telephone network.

Telrite's plans do not "distinguish between 'local' calling and extended calling areas"<sup>5</sup> and, therefore, the company provides local service minutes of use at no additional charge.

With regards to 911 and E911 access, the company attests it "will provide access to emergency services provided by local government or public safety officials, including 911 and enhanced 911 ('E911') where available [...]"<sup>6</sup> Telrite provides further support of this statement in a response to Staff's data request 1.5, which provides a certification from the underlying carrier that Telrite's customers will have access to 911 and E911 services.<sup>7</sup>

Finally, Telrite will not provide toll limitation services; however, the company states "[...] since the Company is a prepaid service provider, customers cannot be disconnected for failure to pay toll charges, nor are there additional charges for exceeding their minutes."<sup>8</sup> The FCC has taken the position that toll limitation services are only required for "[...] service plans for which the

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<sup>5</sup> Response to Staff Data Request #2-5, as Filed on June 25, 2013.

<sup>6</sup> *Ibid.* 2, ¶18.

<sup>7</sup> Telrite's Additional Response to Staff's Data Request 1.5, as Filed on April 23, 2013.

<sup>8</sup> *Ibid.* 2, ¶19.

ETC charges a fee for toll calls [...].”<sup>9</sup> Telrite’s pre-paid Lifeline offering appears to meet the FCC’s exception on requiring toll limitation services.

Overall, Staff believes that Telrite has adequately demonstrated that it will offer the proper supported services.

### 3.2.2 Does Telrite Meet the Own Facilities Requirement?

Common carriers seeking ETC designation for Lifeline only programs no longer need to meet the own facilities requirement. In the Lifeline Reform Order, the FCC eliminated this requirement through blanket forbearance as follows:

“We forbear, on our own motion, from applying the Act’s facilities requirement of section 214(e)(1)(a) to all telecommunications carriers that seek limited ETC designation to participate in the Lifeline program subject to certain conditions [...].”<sup>10</sup>

Since Telrite is seeking ETC designation for Lifeline program only, the forbearance of the own facilities requirement applies to them. However, Telrite must now meet the conditions referenced above for facilities requesting use of the blanket forbearance. These conditions are listed in Table 1 below, along with Telrite’s support for how the company meets those conditions.

<b>Table 1. Conditions for Blanket Forbearance</b>	
<b>Condition</b>	<b>Support</b>
1) Comply with certain 911 requirements as follows:  a) Provide subscribers access to 911 and E911 services, regardless of activation status or minutes available; and  b) Provide subscribers with E911-compliant handsets and replace noncompliant handsets at no charge.	Telrite states it will comply with these conditions in its compliance plan filed with the FCC. Telrite attests in the plan “[t]he company will provide its Lifeline customers with access to 911 and E911 services immediately upon activation of service” and “[...] such 911 and E911 access will be available from Telrite handsets, even if the account associated with the handset has no minutes remaining.” <sup>11</sup> Telrite also identifies it will comply with these conditions in paragraph 18 of the application.
2) A compliance plan must be approved by the FCC.	Telrite provided a copy of its FCC compliance plan in Exhibit D. Also included in the exhibit is the FCC’s public notice <sup>12</sup> approving the plan.

<sup>9</sup> *In the Matter of Lifeline and Link Up Reform and Modernization et al.*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 11-42 *et al.*, FCC12-11 (released Feb 6 2012) (“Lifeline Reform Order”), at ¶ 230.

<sup>10</sup> *Ibid.*, ¶68.

<sup>11</sup> Telrite’s Application, Exhibit D – Compliance Plan, as filed on February 25, 2013, at pg. 3.

<sup>12</sup> *FCC Public Notice DA 12-314*, WC Docket Nos. 09-197 and 11-42, Released February 29, 2012.

Given the facts that Telrite addressed the FCC's conditions for forbearance in the compliance plan filed with the FCC, and, that the FCC approved the compliance plan, Staff believes that Telrite has adequately met the requirements for forbearance and is exempted from the own facilities requirement.

### *3.2.3 Will Telrite Properly Advertise the Availability of Supported Services?*

This requirement is straightforward and requires ETCs to advertise their Lifeline offerings using media of general distribution. Telrite states: "[it] is fully prepared to and will comply with federal requirements that it advertise the availability of its services throughout its Service Area using media of general distribution."<sup>13</sup> Telrite also provided a sample of their planned advertising, which can be found in Exhibit E of the application.

Given Telrite's attestation that they can, and will, meet the advertising requirement and that the sample advertising appears to meet this requirement, Staff believes that Telrite has adequately demonstrated that the company will properly advertise the availability of Lifeline services if designated as an ETC.

### *3.3 Additional FCC Requirement*

In the Lifeline Reform Order, the FCC identified that some of the existing high-cost requirements were unnecessary for ETCs that offer low-income supported services only. However, the FCC also identified there was a need for new rules applicable to these lifeline-only ETCs. This section discusses the new rule found in 47 CFR §54.201(h) that requires companies seeking ETC designation for Lifeline only programs to demonstrate it is financially and technically capable of providing the supported services.

### *Is Telrite Financially and Technically Capable of Providing Lifeline Service?*

In response to Staff's discovery requests 1-3, 2-1 and 3-1, Telrite submitted its balance sheets, income statements and cash flow statements for the 2011 and 2012 fiscal years. Staff believes that upon review of the financial statements, the Commission will find that Telrite adequately demonstrates it has the financial capability to provide Lifeline service in compliance with the applicable rules.

With regard to the technical capability to provide Lifeline service, Telrite demonstrates it meets this requirement in two ways. First, Telrite submitted a list of the company officers, Exhibit C of the application, that shows the management team has the experience and technical expertise necessary to provide Lifeline service. Second, Telrite makes a number of statements throughout the application that demonstrates they are technically capable of providing Lifeline service. One example of such a statement is: "Telrite has developed and implemented a diverse network that delivers all of the services required by the federal Lifeline guidelines, and employs AT&T to

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<sup>13</sup> *Ibid.* 2, ¶26.

ensure ubiquitous coverage.”<sup>14</sup> Based on the management team’s experience and the fact that Telrite will use AT&T as its underlying carrier, Staff believes Telrite has adequately demonstrated that it is technically capable of providing Lifeline Service.

### 3.4 South Dakota Administrative Rules Review and Public Interest Standard

In order to be designated as an ETC in South Dakota, Telrite must meet a number of State rules that are found in ARSD 20:10:32:43.01 to 20:10:32:43.07. Exhibit A, attached to this Staff memo, includes an abbreviated review of the rules and Telrite’s support for how they comply with, or can comply with, the rules. The analysis in this section only focuses on the public interest standard set forth in ARSD 20:10:32:43.07, which Staff believes is the most significant rule the Commission needs to consider while determining if Telrite should be granted ETC designation. The applicable portion of the rule reads:

“Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. The commission shall consider the benefits of increased consumer choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the applicant’s service offering, commitments made regarding the quality of the telephone service provided by the applicant, and the applicant’s ability to provide the supported services throughout the designated service area within a reasonable time frame. In addition the commission shall consider whether the designation of the applicant will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier.”

Telrite argues that a public interest finding is not required if a company seeks ETC designation in areas served by non-rural ILECs. They support their argument by stating, “[t]he FCC has previously held that designating a competitor as an ETC in areas served by non-rural ILECs is *per se* in the public interest.”<sup>15</sup> However, Staff would point out that Telrite’s support is outdated and the FCC has issued more current orders and rules that contradict this. For example, the FCC has more recently stated “We find that, under the statute, an applicant should be designated as an ETC only where such designation serves the public interest, regardless of whether the area where the designation is sought is served by a rural or non-rural carrier.”<sup>16</sup> Further, the FCC has even implemented rules through the Lifeline Reform Order that requires the public interest determination be made.<sup>17</sup>

Staff finds that the Commission is required to make a public interest determination. To facilitate the Commission with making such determination, Staff provides the following analysis on the specific criteria set forth in ARSD 20:10:32:43.07 that the Commission must consider.

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<sup>14</sup> *Ibid.*, ¶23.

<sup>15</sup> Telrite’s Application, ¶34, as Filed on February 25, 2013, which references *Federal-State Joint Board on Universal Service et. al.*, Memorandum Opinion and Order, CC Docket No. 96-45, 16 FCC RCD 39, 45; -U 14 (Rel. Dec. 26, 2000).

<sup>16</sup> *In the Matter of Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 05-46, paragraph 3, (2005)

<sup>17</sup> See 47 CFR §54.202(b)

### 3.4.1 Benefits of Increased Consumer Choice

Designating Telrite as an ETC will undoubtedly increase consumer choice for Lifeline services as it gives consumers another carrier option to purchase services from. However, the Commission must consider the *benefits* that result from increased consumer choice.

In the application, Telrite makes two points on how their Lifeline services will result in increased consumer benefits. First, Telrite asserts “[t]he availability of a wireless competitor benefits consumers who routinely drive long distances to attend work or school or to accomplish everyday tasks such as shopping or attending community and social events.”<sup>18</sup> Telrite further states that their services “[...] will provide these consumers with a convenient and affordable alternative [...]”<sup>19</sup> Second, Telrite asserts that “[d]esignation of Telrite as an ETC also creates competitive pressure for other wireline and wireless providers [...]” and “[...] all carriers will have greater incentives to improve networks, increase service offerings and lower prices.”<sup>20</sup>

Staff acknowledges that designating Telrite as an ETC may provide the consumer benefits as claimed by Telrite. Further, Staff believes that consumers should have the opportunity to choose from a number of carriers in order to be able to switch carriers should they be unhappy with their current provider. When determining the benefits of increased consumer choice, Staff recommends the Commission take into consideration the number of carriers already offering Lifeline in South Dakota and whether designating Telrite as an ETC will actually increase the amount of consumer choice that already exists.

Telrite seeks ETC designation in non-rural Qwest wire centers using AT&T as its underlying carrier. Besides the wireline carriers (the ILEC and CLECs) that offer Lifeline, there are only a couple wireless carriers currently offering Lifeline in South Dakota as shown in Table 2 below.

<b>Table 2. Current Wireless Carriers Offering Low-Income Support in Non-Rural Qwest Exchanges</b>		
<b>Company</b>	<b>Underlying Carrier</b>	<b>Exchanges</b>
Budget Prepay	Sprint/Verizon	All Non-rural Qwest Wire Centers
Long-Lines Wireless	Own Network	N. Sioux City, Madison, Whitewood, Sioux Falls, Rapid City, Sturgis, Elk Point, Harrisburg/Tea, Colman, Hill City, Deadwood, Lead, Vermillion, Volga, Madison, Spearfish, Yankton, Belle Fourche, Canton, Flandreau, and Arlington.
James Valley Wireless	Own Network	Aberdeen

Budget Prepay is the only wireless carrier currently designated as an ETC in all non-rural Qwest wire centers for Lifeline only purposes. As noted in the table, Budget Prepay’s underlying carrier is Sprint/Verizon. Staff points out that designating Telrite as an ETC in non-rural Qwest

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<sup>18</sup> *Ibid.*, ¶38.

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*, ¶40.

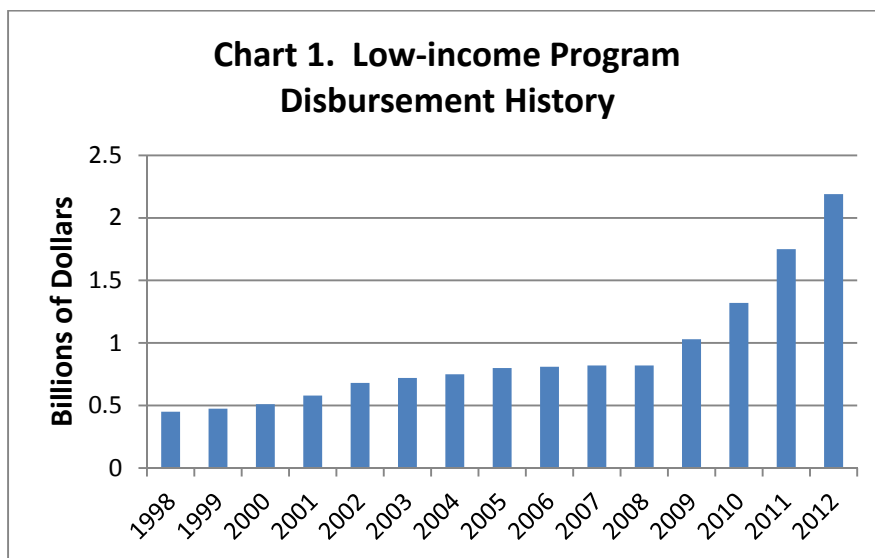


wire centers would result in additional consumer choice, especially with the underlying carrier networks available to choose from, since Telrite identifies its underlying carrier is AT&T. This would give consumers an opportunity to switch networks should they find their current network not meeting expectations.

### 3.4.2 Impact of Multiple Designations on the USF

As the Commission is aware, designating wireless carriers as Lifeline-only ETCs has impacted the universal service fund and is currently being debated at both the Federal and State levels. There are numerous reports in the news regarding waste, fraud, and abuse in the Lifeline program. The FCC indirectly acknowledged that the program was being abused by implementing the Lifeline Reform Order. For example, the FCC stated “[...] the reforms adopted in this Report and Order (Order) substantially strengthen protections against waste, fraud, and abuse [...].”<sup>21</sup>

The substantial growth of the low-income program over the past few years is shown in Chart 1. Whether the growth resulted from waste, fraud and abuse; an increase in low-income consumer penetration; or a combination of the two is currently being debated. Staff does not provide an opinion on the cause of the substantial growth in this memo; however, Staff believes it is clear that designating wireless carriers as Lifeline only ETCs has impacted the USF.



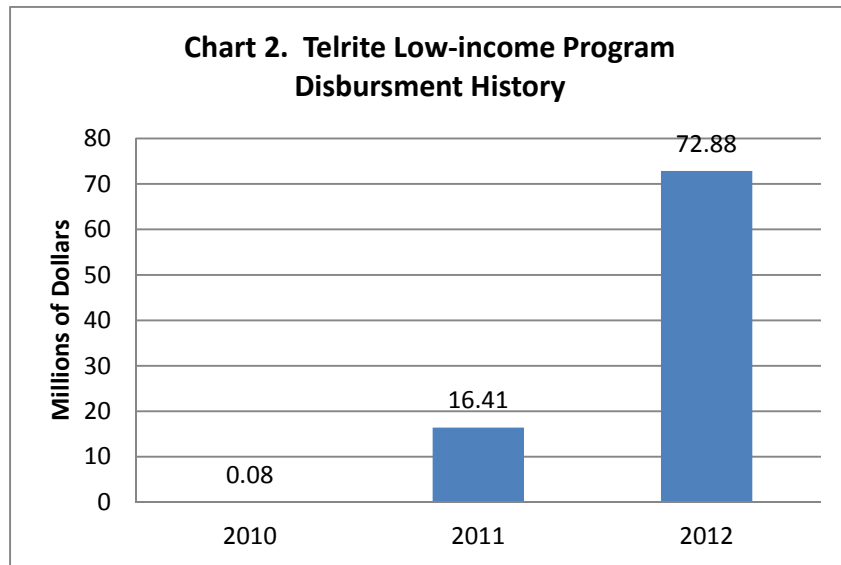
\*Data is estimated using charts from USAC Annual Reports

Telrite attempts to address this issue in its application by making the statement, “[t]he FCC also recognized that the total effect of additional low-income-only ETC designations would have a minimal impact on the fund [...].”<sup>22</sup> Staff points out to the Commission that Telrite’s support for

<sup>21</sup> *Ibid.* 9, ¶1.

<sup>22</sup> *Ibid.* 2, ¶54.

this statement was from a 2005 FCC Order<sup>23</sup> before actual USF disbursement data has shown otherwise. Staff believes that Commission should not give much weight to this argument. Further, Chart 2 below provides a 3-year USF disbursement history for Telrite. It shows that the company's USF receipts have drastically increased over the past three years, increasing almost 4.5 times from 2011 to 2012. Therefore, an argument can be made that the company has impacted the USF as result of being designated as an ETC in other states.



\*Data is from USAC Lifeline Funding Disbursement Search Tool, as found on [www.usac.org](http://www.usac.org)

It should be noted that the increase in the size of the low-income program (chart 1) and the increase in the amount of Telrite USF receipts (chart 2) could reflect an increase in better penetration of the low-income consumer market. The growth in Telrite's USF receipts, for example, could be attributed to the company receiving ETC designation in a larger number of states. This could have resulted in the company being able to market its Lifeline offering to more low-income consumers and increase the amount of subscribers, thus receiving more dollars from the USF.

Finally, Staff would also note that Telrite attested in its application that it will comply with certain requirements implemented by the FCC in the Lifeline Reform Order in order to help eliminate waste, fraud, and abuse.<sup>24</sup> The Commission could take this into consideration while determining if Telrite's ETC designation will impact the USF, for it appears that the company is making an effort to work with the FCC to help control waste, fraud, and abuse.

### *3.4.3 Unique Advantages and Disadvantages of Telrite's Lifeline Offering*

<sup>23</sup> *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Red 15095 (2005) ("TracFone Forbearance Order") at ¶17.

<sup>24</sup> *Ibid.* 2, ¶¶ 25, 63, and 65.

Examining the advantages and disadvantages of Telrite’s Lifeline offering dives deeper into the discussion on the benefits of increased consumer choice included in section 3.4.1. Should there be no unique advantages to Telrite’s Lifeline plan as compared to a competitor’s plan currently available, then one could question whether or not there would be any consumer benefit gained by designating Telrite as an ETC. In order to help the Commission recognize any advantages and disadvantages of Telrite’s Lifeline plans, Staff compared Telrite’s proposed Lifeline plans to Budget Prepay’s currently offered Lifeline plans. The comparison is provided in Table 3.

<b>Table 3. Lifeline Plan Offering Comparison</b>		
<b>Feature</b>	<b>Telrite</b>	<b>Budget Prepay</b>
Underlying Carrier	AT&T	Sprint/Verizon
150 Min Plan Cost	Free	-
150 Min Plan Texts	3 SMS / 1 voice min	-
150 Plan Voice Rollover	Yes	-
250 Min Plan Cost	Free	Free
250 Min Plan Texts	3 SMS / 1 voice min	-
250 Min Plan Voice Rollover	No	No
350 Min Plan Cost	-	\$5.00
350 Min Plan Texts	-	1000 texts
500 Min Plan Cost	-	\$10.00
500 Min Plan Texts	-	1500 texts
1000 Min Plan Cost	-	\$20.00
1000 Min Plan Texts	-	4000 texts
2000 Min Plan Cost	-	\$30.00
2000 Min Plan Texts	-	6000 texts

As demonstrated, Telrite’s lifeline offerings are different than Budget Prepay’s existing offerings and could have some unique advantages such as the 150 minute plan that includes texting. Staff believes that the differences between Lifeline plans and underlying carrier networks provide some unique advantages and disadvantages for both Telrite and Budget Prepay.

#### *3.4.4 Commitments Made Regarding Quality of Telephone Service*

Telrite makes no specific commitments regarding the quality of telephone service within the application. The company broadly states, “Telrite is able to offer service of the same quality and reliability as the underlying vendors.”<sup>25</sup> Since Telrite is a reseller of an underlying carrier’s

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<sup>25</sup> *Ibid.* 2, ¶31.

wireless network, Staff acknowledges that quality of telephone service will be heavily dependent upon the underlying carrier. Staff points out that Telrite attempts to ensure their customers receive the same quality of service as the underlying carrier's customers through agreements and provides support for this by stating "Telrite's underlying carrier agreements allow its service to be as reliable as any other wireless service that must deal with atmospheric and other conditions that sometimes result in dropped calls."<sup>26</sup> Staff believes that Telrite is able to offer telephone network service at a quality comparable to AT&T, the underlying carrier.

In addition to the quality of network services, the Commission should also consider the quality of Telrite's physical product (i.e. handsets) and ancillary services (e.g. customer service, top-up minutes, etc...). Telrite makes no commitment regarding the quality of the handsets or customer service in its application. Since no commitments were made, Staff conducted a search on consumer complaints in other states in order to determine if the quality of Telrite's handsets or customer service is lacking. No repetitive consumer complaints were found when conducting an internet search. However, Staff did come across concerning comments that were submitted by a third party organization during Telrite's 2012 annual ETC recertification in Minnesota.<sup>27</sup> That organization, Open Access Connections, raised a number of concerns about the quality of service provided by Telrite.<sup>28</sup> These concerns stemmed from complaints Open Access heard regarding Telrite while conducting business with their low-income clients. Descriptions of the concerns, along with Telrite's responses to the concerns, were as follows:

- (A) Handsets: 1) customer reports of static that resulted in consumers being unable to complete calls, 2) customer reports that the handset buttons/screen were too small to be functional, and 3) customers indicated they were unhappy with the quality of telephone.
  - Telrite provided a response in the docket record, stating: "Telrite does not carry any handset that does not meet Minnesota's requirements and will continue to research how these offerings can improve [...]."<sup>29</sup>
- (B) Repair/replacement policies not clear: customers indicated Telrite's phone, battery, and charger replacement (or repair) policies are not clear or consistent.
  - Telrite responded by stating their phone replacement policies. Phones will be replaced free of charge as soon as the customer mails in the phone and Telrite deems the phone was defective and not damaged by the company. If customers damage the phone, they will be charged a replacement fee. Also, after 30 days customers will be charged a \$5.00 flat fee for dead batteries, chargers, and damaged SIMs. Before then, replacements are free of charge.
- (C) Instruction Manuals: customers have indicated handset instruction manuals are not provided with their phones and they are unable to setup voice mail, check their balance, and/or set the correct time on their phone.

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<sup>26</sup> *Ibid.*

<sup>27</sup> See MN PUC docket number 11-132.

<sup>28</sup> *In the Matter of the Petitions of Telrite Corporation for Designation as an Eligible Telecommunications Carrier in the Minnesota*, Comments of Open Access Connections, Docket No. P-6862/M-11-132, filed October 9, 2012.

<sup>29</sup> *In the Matter of the Petition of Telrite Corporation D/B/A Life Wireless for Designation as an Eligible Telecommunications Carrier in the State of Minnesota on a Wireless Basis (Low Income Only)*, Reply Comments of Telrite Corporation d/b/a Life Wireless in Support of Extension of Telrite's ETC Designation, Docket No. P6862/M-11-132, pg. 2, filed October 19, 2012.

- Telrite responded by stating that “[t]he manuals are available at <http://www.lifewireless.com/manuals.php>”<sup>30</sup> and that customers can request a hard copy of the manuals through Customer Service.

(D) Advertising: Customers have stated Telrite’s advertising methods are confusing.

- In response, Telrite explained its advertising methods and stated, “[w]hile on rare occasions an event may be cancelled, Telrite’s representatives work hard to post information prior to events and is standard practice to return to a site multiple times for the sole purpose of ensuring residents in an under-served area is assured Lifeline service.”<sup>31</sup>

(E) Customer Service: reports of long hold times while waiting to speak with a customer service representative (as long as 45 minute hold times) and those minutes are deducted from the customer’s monthly account balance.

- Telrite responded by identifying that the company began contracting with an alternate Customer Service site in June of 2012 and increased its customer service representative employee levels. As a result of the changes, Telrite states that “hold times are dramatically down and at peak less than three (3) minutes.”<sup>32</sup>
- Telrite identified that customers must dial 611 from their phones in order to not be charged minutes for customer service calls. They further state that should a customer dial the toll-free number, “the IVR immediately instructs them to hang up and dial 611 to avoid any loss of airtime.”<sup>33</sup>

Staff believes that Telrite has constructively worked with Open Access and addressed their concerns in Minnesota. Since Telrite has worked to correct these issues, Staff thinks there is a minimal chance for them spill over into South Dakota. However, the Commission could consider designating Telrite as an ETC subject to conditions in order to ensure South Dakota low-income consumers receive quality telephone service from Telrite. Staff provides the following conditions for the Commission’s consideration:

- 1) Telrite shall provide functional, quality handsets to customers that meet all FCC, State, industry, and 911/E911 requirements. The handsets must be static free. Should a customer notify Telrite of issues with their handset, the company shall consider the handset defective, unless the company has reason to believe the handset was damaged at fault of the customer, and replace the handset according to Telrite’s phone replacement policy.
- 2) Telrite shall provide a written copy of the company’s repair and replacement policies for handsets, batteries, chargers, and any other physical components at the time the phone is given to the customer.

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<sup>30</sup> *Ibid.*, pg. 2.

<sup>31</sup> *Ibid.*, pg. 3

<sup>32</sup> *Ibid.*, pg. 4

<sup>33</sup> *Ibid.*

- 3) Telrite shall advertise using media of general distribution in manner that is easy for customers to understand.
- 4) Telrite shall ensure that customers can reach the company's customer service representatives in a timely manner and the customers are not be subject to long hold times. If a customer uses Telrite's toll-free customer service number from their Lifeline phone for contacting a customer service representative, the call minutes are not to be deducted from their account balance.

#### *3.4.5 Telrite's Ability to Provide Supported Service throughout the Designated Service Area*

This criterion is relatively straight forward and, as such, not much discussion is included herein. Staff believes that Telrite has provided enough evidence in the record to demonstrate that they do have the ability to provide supported services throughout the designated service area using the underlying carrier, AT&T. However, it should be noted that there is little to no cellular coverage available for the McIntosh and Timber Lake exchanges.<sup>34</sup> In response to Staff discovery 3-2, Telrite states, "Telrite wishes to offer lifeline service in both tribal and non-tribal areas in the exchanges it can serve identified in Exhibit A."<sup>35</sup> If AT&T does not serve the McIntosh and Timber Lake exchanges, then Telrite's response suggests that they are not planning on serving these exchanges and do not seek ETC designation in them. Finally, it should be noted that Telrite excluded the Morristown exchange from its revised list of exchanges.

Staff recommends the Commission include the McIntosh, Timber Lake, and Morristown exchanges in Telrite's designated service area, for if AT&T builds out that area in the future Telrite will be able to offer Lifeline in those exchanges.

#### *3.4.6 Detrimental Effects on the Provisioning of Universal Service by the ILEC*

The Commission is required to consider whether designating Telrite as an ETC will have detrimental effects on the provisioning of universal service by the ILEC. Staff believes that designating Telrite as an ETC will not have a detrimental effect on the ILEC. This belief is based on the fact that Qwest Corporation did not intervene in this docket and, as such, the ILEC itself is acknowledging that the designating Telrite as an ETC will not have an impact on them.

### **4.0 Conclusion and Staff Recommendation**

As stated earlier, the purpose of this memo was to: 1) clearly define the service area that Telrite seeks ETC designation and 2) organize the numerous rules, facts and information in a manner that helps the Commission during its decision-making process. Further, Staff attempted to either support Telrite's arguments or point out the fallacies of Telrite's arguments based on Staff's analysis of the record.

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<sup>34</sup> AT&T Coverage map can be found here: <http://www.att.com/maps/wireless-coverage.html>

<sup>35</sup> Telrite's Response to Staff Data Request 3, filed on August 7, 2013.

Telrite seeks ETC designation in non-rural, Qwest wire centers. Prior to Telrite receiving ETC designation, the Commission must first determine it is in the public interest. Staff respectfully defers to the Commission on the public interest matter for this docket. As such, Staff does not provide a recommendation for, or against, the Commission granting Telrite ETC designation. Should the Commission determine that it is in the public interest to designate Telrite as an ETC, Staff recommends the Commission then approve Telrite's ETC application subject to the following conditions:

- 1) Telrite's service area is all non-rural Qwest exchanges listed in the revised Exhibit A filed on July 5, 2013, including the McIntosh and Timber Lake exchanges and the Morristown exchange must also be added to the list.
- 2) Telrite shall comply with the annual certification requirements found in ARSD 20:10:32:54.
- 3) Telrite shall file an annual report on Lifeline outreach efforts in accordance with ARSD 20:10:32:55.
- 4) Telrite shall comply with all applicable requirements in 47 CFR §54.400 to §54.422, inclusive.
- 5) Telrite shall provide functional, quality handsets to customers that meet all FCC, State, industry, and 911/E911 requirements. The handsets must be static free. Should a customer notify Telrite of issues with their handset, the company shall consider the handset defective, unless the company has reason to believe the handset was damaged at fault of the customer, and replace the handset according to Telrite's phone replacement policy.
- 6) Telrite shall provide, or make available, a written copy of the company's repair and replacement policies for handsets, batteries, chargers, and any other physical components at the time the phone is given to the customer.
- 7) Telrite shall advertise using media of general distribution in manner that is easy for customers to understand.
- 8) Telrite shall ensure that customers can reach the company's customer service representatives in a timely manner and the customers are not to be subject to long hold times. If a customer uses Telrite's toll-free customer service number from their Lifeline phone for contacting a customer service representative, the call minutes are not to be deducted from their account balance.

Finally, Staff recommends that the Commission waive the requirements of ARSD 20:10:32:43.02 (submission of 2-year plan) for Telrite if granted ETC designation. The FCC has determined that Lifeline-only ETCs do not need to submit service improvement plans and the waiver of ARSD 20:10:32:43.02 would align with the FCC's determination.