

**BEFORE THE
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

Application of Torch Wireless)	
For Designation as an Eligible)	
Telecommunications Carrier for Purposes)	Docket No. U-
of Lifeline Only in the State of South Dakota)	

**APPLICATION OF TORCH WIRELESS FOR DESIGNATION AS AN ELIGIBLE
TELECOMMUNICATIONS CARRIER FOR PURPOSES OF
LIFELINE ONLY IN THE STATE OF SOUTH DAKOTA**

Torch Wireless (“Torch” or “Company”) respectfully submits this Application for Designation as an Eligible Telecommunications Carrier for purposes of federal Lifeline only support in the state of South Dakota (“Application”) pursuant to 47 USC § 214(e)(2), 47 CFR Part 54 of the rules of the Federal Communications Commission (“FCC”), and S.D. Admin. R. § 20:10:32:42. Torch Wireless is a Commercial Mobile Radio Service (“CMRS”) provider that uses the last mile facilities of other wireless providers to make available to consumers the best coverage and services to meet their needs. Torch requests the South Dakota Public Utilities Commission (“SDPUC”) designate it as an ETC for the limited purpose of providing Lifeline service in the non-rural telephone company wire centers and the rural telephone company study areas identified in Attachment A (“ETC Service Area”). As discussed herein, Torch seeks ETC designation solely for the purpose of obtaining federal Lifeline universal service support to serve eligible low-income customers.

As discussed in more detail herein, Torch meets the statutory and regulatory requirements for designation as an ETC to provide Lifeline-supported services throughout its ETC Service Area. Currently, many rural consumers do not have access to wireless Lifeline service, which has become a necessity, especially for low-income consumers who rely on wireless service for their

basic communications needs. Granting ETC status to Torch will significantly benefit the public interest and low-income consumers by making available wireless Lifeline services for low-income consumers.

Torch demonstrates herein that it meets the requirements for designation as an ETC under the rules of the SDPUC and the FCC. In support of this Application, and pursuant to S.D. Admin. R. § 20:10:32:43, Torch provides the following information:

Name, address and telephone number of the applicant and its designated contact person:

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Proposed effective date of designation of eligible telecommunications carrier status: May 1, 2022 or sooner.

Identification of the service area, including a detailed map, for which designation is sought: The non-rural telephone company wire centers and the rural telephone company study areas identified in Attachment A comprise Torch Wireless' proposed ETC Service Area. Torch Wireless incorporates, by reference, the map of South Dakota incumbent local exchange carriers found at <https://puc.sd.gov/commission/telecom/serviceterritory.pdf> with the telephone company service areas identified in Attachment A comprising Torch's ETC Service Area.

A statement supporting the petition which specifies why the requested designation satisfies the requirements for eligible telecommunications designation and receiving federal universal service support under 47 C.F.R § 54.201 (January 1, 2006): Torch Wireless demonstrates herein that it

meets all applicable requirements for designation as an ETC for the limited purpose of providing Lifeline service to eligible low-income consumers.

A statement specifying why the applicant's proposed designation is in the public interest: As demonstrated herein, the designation of Torch Wireless as an ETC for the limited purpose of providing Lifeline service to eligible low-income consumers is in the public interest because it will make available affordable wireless Lifeline service. Wireless Lifeline service is critically important for low-income consumers, who use wireless service as a "lifeline" for voice and Internet connectivity.

OVERVIEW OF TORCH WIRELESS AND ITS LIFELINE SERVICE

1. Torch Wireless is a Wyoming limited liability company with principal offices in Jacksonville, Florida. The Company will register with the South Dakota Secretary of State as a foreign limited liability company prior to offering service in South Dakota. Torch Wireless has been designated as an ETC in the states of Idaho and Wisconsin.

2. Torch offers low-income consumers prepaid wireless service without hidden costs, without varying monthly charges, and no contractual commitments. Consumers are able to customize their mobile phone service to suit their needs depending upon their voice, text and data needs. Torch has been providing Lifeline service with a focus on rural and Tribal areas since September of 2016 and has never been subject to any complaints, fines or enforcement action, and is in compliance with all applicable Lifeline requirements, including enrollment and eligibility requirements implemented by the Universal Service Administration Company ("USAC").

TORCH WIRELESS SATISFIES THE REQUIREMENTS FOR ETC DESIGNATION

3. Torch Wireless meets the requirements for designation as an ETC under the rules of the SDPUC (S.D. Admin. R. § 20:10:32:43) and the FCC (47 USC §214(e)(2); 47 CFR Part 54).

4. 47 USC § 214(e)(2) provides for the designation of carriers as ETCs for purposes of receiving universal service support, provided the requesting carrier (i) offers services supported by federal universal service support mechanisms and (ii) advertises the availability of such services.¹ The SDPUC and the FCC have also adopted requirements for the designation of carriers as ETCs.² As demonstrated below, Torch satisfies all applicable requirements for designation as an ETC for purposes of Lifeline only support and the public interest would be greatly served by making available Torch's wireless Lifeline service for low-income consumers.

Torch Wireless is a Common Carrier

5. Torch Wireless operates as a common carrier as defined in 47 USC § 153(10). As a CMRS provider, Torch is regulated as a common carrier, subject to all applicable requirements governing common carrier CMRS operations.³

¹ See 47 CFR § 54.201(d); see also S.D. Admin. R. § 20:10:32:42.

² See S.D. Admin. R. § 20:10:32:43; 47 CFR Part 54.

³ 47 USC § 332(c)(1)(A); 47 CFR § 20.9.

Torch Wireless will Provide the Supported Services for Designation as an ETC

6. Voice telephony services and broadband Internet access services are the supported services under the federal universal service system.⁴

7. Torch provides each of the services included in the definition of voice telephony services, including:⁵

- Voice grade access to the public switched network;
- Local usage;
- Access to emergency services; and
- Toll limitation for qualifying low-income consumers.

8. Torch will provide voice grade access to the public switched network, enabling Torch Wireless's customers to make and receive calls on the public switched telephone network.

9. Torch will also meet the requirements for local usage by offering a local usage plan comparable to the one offered by the incumbent local exchange carriers.⁶

10. Consumers will have access to emergency services, including access to 911 and E911 service where available. All wireless handsets will be 911/E911 compliant. Moreover, Torch will replace, free of charge, any E911 noncompliant handset owned by consumers looking to obtain Lifeline service from the Company. 911 emergency calls will not incur any usage charge and Lifeline customers will be able to make 911 calls regardless of service activation status or availability of minutes.

11. Torch does not differentiate between domestic long-distance usage and local usage, so toll limitation service ("TLS") is not necessary to protect against customers from incurring

⁴ 47 CFR § 54.101(a).

⁵ 47 CFR § 54.101(a)(1).

⁶ See S.D. Admin. R. § 20:10:32:43.05.

unanticipated toll charges. To the extent toll charges are imposed in the future, Torch will implement TLS.

12. Torch Wireless will also provide Lifeline customers with broadband Internet access service, which the FCC has defined as “the capability to transmit data to and receive data by wire or radio 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 service.”⁷

13. Torch Wireless will make available to all eligible Lifeline customers, both Tribal and non-Tribal, different options for Lifeline service with varying voice minutes, text messages, and mobile broadband. All of Torch’s Lifeline rate plans will meet the FCC’s minimum standards for voice and data services.⁸ Torch will not charge an activation fee for Lifeline subscribers and there will be no added charge for domestic toll calls, calls to 911, or calls to customer service, which customers can reach by dialing 611 from their handset or a toll-free number from any phone.

14. Torch’s Lifeline service offerings will significantly benefit low-income consumers, who currently may not have access to any comparable Lifeline rate plans.

Torch Wireless is a Wireless Provider Qualified to Participate in the Lifeline Program

15. To participate in the Lifeline program, a common carrier must use its own facilities or a combination of its own facilities and resale of another carrier’s facilities to provide the supported services.⁹ Consistent with the entry of wireless resellers in the Lifeline market, the

⁷ 47 CFR § 54.101(a)(2).

⁸ 47 CFR § 54.408.

⁹ 47 USC § 214(d)(1); 47 CFR § 54.201(d)(1).

FCC has granted wireless resellers with blanket forbearance from the facilities requirement for purposes of federal Lifeline support.¹⁰

16. Torch also owns and maintains some facilities used to provide Lifeline service.

17. Torch Wireless commits to serving all eligible Lifeline consumers throughout its ETC Service Area. Torch will provide Lifeline services to end user customers in the state of South Dakota by using the facilities of other wireless carriers serving geographic areas within Torch Wireless' ETC Service Area.¹¹ By using the facilities of other carriers, Torch is able to provide consumers in different geographic locations with the best coverage and service availability.

ETC Service Area

18. Torch Wireless' ETC Service Area includes some of the most rural and remote areas in of state, including Tribal Lands. Attachment A includes a list of the non-rural telephone company wire centers and the rural telephone company study areas comprising the Company's ETC Service Area.¹²

¹⁰ The FCC granted ETC's forbearance from the facilities requirement on January 31, 2012. ("Upon the effective date of this Order, we grant forbearance from the facilities requirement of section 214(e)(1)(A) of the Act and section 54.201(d)(1), (i) of the Commission's rules, subject to the conditions contained in this Order, to all carriers seeking to provide Lifeline-only service on a non-facilities basis"). See *In the Matter of Lifeline and Link Up Reform and Modernization, et al.*, Report and Order and Further Notice of Proposed Rulemaking, FCC 12-11 at footnote 982, February 6, 2012.

¹¹ S.D. Admin. R. § 20:10:32:43.01. Torch uses the antenna towers and radio equipment of facilities-based wireless carriers to serve end user customers. As a wireless reseller, the two-year service improvement plan requirement of S.D. Admin. R. § 20:10:32:43.02 does not apply.

¹² Torch's ETC Service Area is consistent with the applicable study areas of the underlying rural telephone companies and wire centers of the non-rural telephone company. See S.D. Admin. R. § 20:10:32:45.

Torch Wireless will Comply with Advertising Requirements

19. Torch Wireless will advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers in accordance with all applicable requirements.¹³ The Company will use media of general distribution and, in addition to providing information on its website,¹⁴ will use media sources that include, but are not limited to, point of sale materials, customer direct mail, customer brochures, print media, and community events.

20. Torch will comply with the applicable advertising and reporting requirements of S.D. Admin. R. § 20:10:32:55 and will expand its advertising efforts, as necessary, to ensure that Lifeline-eligible customers are aware of its service offerings.

21. Torch Wireless' marketing materials will state, among other things, in easily understood language, that: (i) the service is a Lifeline service; (ii) Lifeline is a government assistance program; (iii) the service may not be transferred to someone else; (iv) consumers must meet certain eligibility requirements before enrolling in the Lifeline program; (v) the Lifeline program permits only one Lifeline discount per household; (vi) documentation is necessary for enrollment; and (vii) Torch Wireless is the provider of the services.¹⁵

22. Torch Wireless's Lifeline customer application and certification form will state that Lifeline is a federal benefit and that consumers who willfully make a false statement in order to obtain the Lifeline benefit can be punished by fine or imprisonment or can be barred from the program. As required by the FCC and USAC, Torch uses the standard Lifeline Program Application Form for enrolling eligible consumers into the Lifeline program.¹⁶

¹³ 47 CFR §§ 54.201(d)(2) and 54.405(b).

¹⁴ See www.torchwireless.com

¹⁵ 47 CFR § 54.405.

¹⁶ See https://www.usac.org/_res/documents/li/pdf/nv/LI_Application_UniversalForm.pdf.

Torch Wireless Complies with the Additional Requirements Under 47 CFR §54.202

23. The FCC adopted additional ETC designation requirements for carriers not subject to state commission jurisdiction,¹⁷ some of which the SDPUC specifically adopted in its rules. Regardless of applicability, Torch Wireless commits to meeting all these requirements.

24. 47 CFR § 54.202(a)(1) requires an applicant to “certify that it will comply with the service requirements applicable to the support that it receives.” Specific to Lifeline service, 47 CFR § 54.410 requires ETCs to comply with certification of eligibility and verification of continued eligibility requirements for Lifeline participation, which Torch Wireless will comply with. Torch will also comply with all applicable Lifeline requirements, including, but not limited to, not collecting service deposits, not charging a number-portability fee, and meeting all applicable reporting requirements.¹⁸

25. S.D. Admin. R. § 20:10:32:43.03 and 47 CFR §54.202(a)(2) requires an applicant to demonstrate that it has the ability to remain functional in emergency situations. Torch Wireless’ Lifeline services will remain functional in emergency situations. The Company’s network is redundant with back-office facilities and back-up electrical power is provided by generators at its locations. Torch can manage traffic spikes that may occur during emergency situations and can reroute traffic in the event of damaged facilities. The Company has sufficient back-up power to ensure functionality if its external power supply is unavailable.

26. S.D. Admin. R. § 20:10:32:43.04 and 47 CFR § 54.202(a)(3) requires a provider to demonstrate that it will satisfy applicable consumer protection and service quality standards. A

¹⁷ 47 CFR § 54.202.

¹⁸ See 47 CFR §§ 54.401 and 54.422.

wireless carrier's commitment to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service ("CTIA Consumer Code") satisfies this requirement. Torch will comply with the CTIA Consumer Code and any applicable South Dakota consumer protection requirements to ensure the Company offers its subscribers the highest level of protection and quality service. The Company will make every effort to resolve complaints expeditiously and will designate a specific contact person to resolve complaints or other compliance issues. Torch Wireless' customers will be able to call customer service by dialing 611 from their handset and no minutes will be used or decremented for the call. Customers also will be able to call, toll-free, (833) 298-1118 from any phone to reach customer service.

27. 47 CFR § 54.202(a)(4) requires an applicant for Lifeline only support to demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with applicable requirements. Among the factors to be considered are: (i) a carrier's prior offering of service to non-Lifeline subscribers, (ii) the length of time the carrier has been in business, (iii) whether the carrier relies exclusively on Lifeline reimbursement to operate, and (iv) whether the carrier receives revenues from other sources.

28. Torch Wireless is a privately held corporation that has been in business since January 2016. Torch does not have any holding companies, operating companies, or affiliates. Torch's key management personnel have decades of combined telecommunications experience, including experience providing local and long distance services to residents of rural and urban areas and to low income individuals and families. Torch Wireless's management has extensive experience supporting the provisioning, marketing, fulfillment, and customer service needs of its customer base. Jorge Perea has been in the telecommunications industry for over 20 years and has a proven track record of successfully managing telecommunications companies and is committed

to keeping Torch Wireless an enterprise that will serve the public interest. The members of Torch Wireless' management can fulfill the requirements necessary to manage the implementation and ongoing support of this ETC designation.

29. Torch Wireless has demonstrated, over time, its ability to not only provide Lifeline service, but to do so in compliance with all applicable requirements. The Company has never been subject to a fine, penalty or enforcement action at the federal or state level related to its provision of Lifeline service.

30. Torch Wireless does not rely exclusively on Lifeline reimbursement to operate, as it receives revenues from other sources which are completely independent from the revenue it receives in the form of Lifeline support. The Company's revenue streams include income from the sale of telecommunications services to other telecommunications companies and residential customers. Because Torch Wireless generates its revenue from a diverse product portfolio and is both financially stable, profitable, and does not rely exclusively on Lifeline support for its operating revenues, it is financially capable of providing Lifeline service in compliance with all applicable requirements. If necessary, Torch will separately file, under seal, its confidential financial information related to this application.

31. 47 CFR § 54.202(a)(5) and 54.202(a)(6) requires a provider to submit information describing the terms and conditions of voice telephony service and broadband Internet access service plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, speeds offered, data usage allotments, additional charges for particular uses, if any, and rates for each such plan. Torch Wireless' Lifeline rates plans are found on its web page at <https://torchwireless.com> and are continuously updated to provide consumers with the best value for their Lifeline service.

The Public Interest will be Served by Granting ETC Designation to Torch Wireless

32. The public interest will be served by designating Torch an ETC for the limited purpose of providing Lifeline service to low-income consumers in South Dakota. Consumers will benefit from Torch Wireless' high-quality service, competitive pricing and a dedicated focus on low-income consumers who are eligible for Lifeline supported services. Torch offers low-income consumers a competitive option of no contract/no credit check/no deposit service. Consumers will choose Torch for its high-quality service, value pricing, and overall attention to customer satisfaction. Regulators have long recognized the benefits to consumers of being able to choose from a variety of telecommunications providers services.¹⁹ The availability of affordable telecommunications services for low income consumers is critical for public health, safety, and other services. Significantly, unlike national carriers, Torch Wireless' focus is on serving rural consumers, including eligible subscribers of Lifeline service. With a long record of serving the needs of rural consumers, including those residing on Tribal lands, Torch has established itself as a high-quality, consumer-focused, service provider for rural consumers. Unlike many urban and rural areas of the country, there are many rural areas of South Dakota that do not have access to Lifeline service from a wireless provider, even though wireless service is no longer a luxury, but an everyday necessity of life. By designating Torch an ETC, the SDPUC be making available affordable wireless service for rural residents, including those residing on Tribal lands.

¹⁹ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38 (FCC rel. Apr. 27, 2016) (“[W]e expect that increasing provider participation will increase competition among providers in the Lifeline program and incentivize providers to offer better quality services.”).

33. Recently, the United States Court of Appeals for the District of Columbia overturned an FCC order limiting Tribal Lifeline support to facilities-based carriers, finding that wireless resellers serve a critical role in providing Lifeline service to Tribal low-income consumers, which Torch Wireless intends to serve through this ETC application.²⁰ By designating Torch Wireless as an ETC in South Dakota, including all of the Tribal areas within the state, the SDPUC will be furthering the public interest by making available affordable wireless Lifeline service for many low-income consumers.

34. Torch Wireless commits to working with the Commission and interested parties to address any areas of concern and implement a Lifeline plan that meets the evolving needs of low-income consumers.

CONCLUSION

Torch Wireless respectfully requests that the SDPUC designate Torch an ETC for the limited purpose of providing Lifeline service in the state of South Dakota.

Respectfully submitted,



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²⁰ *National Lifeline Association, et al., vs. Federal Communications Commission and the United States of America*, Case No. 18-1026, United States Court of Appeals for the District of Columbia, February 1, 2019. Two South Dakota entities were parties to this case. The Crow Creek Sioux Tribe was one of the Petitioners, who appealed the FCC Order that was overturned by the Court, and the Oceti Sakowin Tribal Utility Authority intervened in the case on support of the Petitioners.