

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

Petition of IM Telecom, LLC d/b/a Infiniti Mobile)
for Designation as an Eligible Telecommunications)
Carrier in the State of South Dakota and Waiver of)
Certain Rules)

Docket No. _____

**PETITION OF IM TELECOM, LLC D/B/A INFINITI MOBILE
FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE STATE OF SOUTH DAKOTA AND WAIVER OF CERTAIN RULES**

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I. INTRODUCTION

IM Telecom, LLC d/b/a Infiniti Mobile (“Infiniti Mobile” or the “Company”), by its undersigned counsel, and 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 petitions for Designation as an Eligible Telecommunications Carrier (“ETC”) in the State of South Dakota. Pursuant to ARSD 20:10:32:56, Infiniti Mobile also hereby petitions for waiver of ARSD 20:10:32:43.02 and ARSD 20:10:32:54(1-2), as discussed in section IV.M.1 below. Infiniti Mobile seeks ETC designation solely to provide Lifeline service to qualifying South Dakota households; the Company will not seek access to funds from the federal Universal Service Fund (“USF”) for the purpose of providing service to high-cost areas.⁴ As demonstrated herein, and as certified in

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 Given that the Company only seeks Lifeline support from the low-income program and does not seek any high-cost support, ETC certification requirements for the high-cost program are not applicable to the Company.

Exhibit 1, Infiniti Mobile meets all the statutory and regulatory requirements for designation as an ETC in the State of South Dakota, including the requirements outlined in the FCC's *Lifeline and Link Up Reform Order*.⁵ Rapid grant of Infiniti Mobile's request, moreover, would advance the public interest because such designation would enable the Company to commence much needed Lifeline services to low-income South Dakota residents as soon as possible. Accordingly, the Company respectfully requests that the Commission expeditiously approve this petition for ETC designation.

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

Trevan Morrow, COO
IM Telecom, LLC d/b/a Infiniti Mobile
1855 East 15th Street
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All correspondence, communications, pleadings, notices, orders, and decisions relating to this Petition should be addressed to:

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⁵ *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*").

II. UNIVERSAL SERVICE OFFERING

A. Company Overview

Infiniti Mobile is a Oklahoma Limited Liability Company.⁶ The Company's principal office is located at 1855 East 15th Street, Tulsa, Oklahoma 74104. Infiniti Mobile is a reseller of commercial mobile radio service ("CMRS") throughout the United States. Infiniti Mobile provides prepaid wireless telecommunications services to consumers by using the Sprint Spectrum, L.P. ("Sprint") network on a wholesale basis to offer nationwide service. Infiniti Mobile obtains from Sprint the network infrastructure and wireless transmission facilities to allow the Company to operate as a Mobile Virtual Network Operator ("MVNO"). Infiniti Mobile has been designated as an ETC in the State of Oklahoma, and currently has an ETC petition pending with the FCC, for the states of Alabama, Connecticut, Delaware, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee, Texas, as well as the Commonwealth of Virginia and the District of Columbia; no such petitions have been denied.

Infiniti Mobile's prepaid wireless services are affordable, easy-to-use, and attractive to low-income and lower-volume consumers, providing such consumers with access to emergency services and a reliable means of communication that can be used both at home and while traveling to remain in touch with friends and family as well as for contacting prospective employers. Infiniti Mobile offers consumers simple and affordable prepaid calling plans, a variety of prepaid service plans, easy-to-use handsets, and high-quality customer service. Given the Company's pricing and marketing strategy and the demographics of other, similar MVNOs' customers, Infiniti Mobile anticipates that many of its customers will be from low-income backgrounds and will not have previously enjoyed access to wireless service because of economic constraints, poor

⁶ Infiniti Mobile was organized in the State of Oklahoma on February 9, 2012.

credit history, or sporadic employment. Infiniti Mobile does not conduct credit checks or require customers to enter into long-term service contracts as a prerequisite to obtaining wireless service.

By providing affordable wireless plans and quality customer service to consumers who are otherwise unable to afford them, or who were previously ignored by traditional carriers, Infiniti Mobile will expand the availability of wireless services to many more consumers, which is the principal reason that Congress established the universal service program.

B. Proposed Lifeline Plans

Infiniti Mobile has the ability to provide all services and functionalities supported by the universal service program, as detailed in Section 54.101(a) of the FCC's Rules (47 C.F.R. § 54.101(a)) throughout South Dakota. Infiniti Mobile intends to be a leader in the prepaid marketplace by offering to consumers exceptional value and competitive amounts of voice usage at all price points.

The Company's Lifeline service offering will provide customers with the same features and functionalities enjoyed by all other Infiniti Mobile prepaid customers, with one notable exception: prepaid Lifeline services will not require payment of an out-of-pocket fee by subscribers, but instead, Infiniti Mobile will receive support from the Lifeline program as compensation for providing those services.

Attached hereto as Exhibit 2 is a summary table of the Company's proposed Lifeline service offering.⁷ In addition to wholly supported voice services, prepaid Lifeline customers will also receive a free handset, as well as voice mail, caller-I.D., and call-waiting services at no additional charge. Customers may use their minutes to place domestic, long-distance calls at no additional charge. Calls to 911 emergency services are always free, regardless of service

⁷ The Company's Lifeline terms and conditions can be found on the Company's website, <http://infinitimobile.com>.

activation or availability of minutes. As Exhibit 2 demonstrates, the Company's Lifeline offering will allow feature-rich mobile connectivity for qualifying subscribers at no cost and without the burden of credit checks or service contracts. Infiniti Mobile's prepaid offering will be an attractive alternative for consumers who need the mobility, security, and convenience of a wireless phone, but who are nonetheless concerned about usage charges or long-term contracts.

C. Plan Enrollment

Customers interested in obtaining information on the Lifeline program will be directed to a toll-free telephone number and to the Company's website, <http://infinitimobile.com>, which will contain information regarding the Company's Lifeline service plan, including a detailed description of the program and state-specific eligibility criteria. Customers may then request that a Lifeline enrollment form be mailed to them, or they can download a form from the Internet or retrieve a form in person at authorized existing retail locations. The certification form, a sample of which, currently used in the State of Oklahoma, is attached hereto as Exhibit 3, will explain in clear, easily understandable language that:

- (i) Lifeline is a federal benefit;
- (ii) Lifeline service is available for only one line per household;
- (iii) a household is defined, for purposes of the Lifeline program, as any individual or group of individuals who live together at the same address and share income and expenses;
- (iv) households are not permitted to receive benefits from multiple providers;
- (v) that violation of the one-per-household requirement would constitute a violation of the FCC's rules and would result in the consumer's de-enrollment from the program, and potentially, prosecution by the United States government;
- and
- (vi) a Lifeline subscriber may not transfer his or her service to any other individual, including another eligible low-income consumer.

The Company's certification form will also require all consumers, at sign up and annually thereafter, to provide the information and certifications, under penalty of perjury, required by

revised 47 C.F.R. § 54.410(d).⁸ For more detailed enrollment information, *see* Exhibit 4. Infiniti Mobile will annually re-certify the continued eligibility of all of its subscribers.

D. Prevention of Waste, Fraud and Abuse

Infiniti Mobile recognizes the importance of safeguarding the USF. Therefore, the Company has implemented the following 60-day non-usage policy in an effort to avoid waste, fraud, and abuse of the program. Infiniti Mobile will not seek reimbursement from the USF for inactive subscribers who have not used the service for a consecutive 60-day period.⁹ Infiniti Mobile will notify its subscribers at service initiation about the non-transferability of the phone service, its usage requirements, and the de-enrollment and deactivation that will result following non-usage in any 60-day period of time.¹⁰ An account will be considered active if, during any 60-day period, the authorized subscriber does at least one of the following: makes a monthly payment; purchases minutes from the Company to add to an existing pre-paid Lifeline account; completes an outbound call; answers an incoming call from anyone other than the Company, its representative, or agent; or affirmatively responds to a direct contact from the Company confirming that he or she wants to continue.¹¹ Infiniti Mobile will provide the subscriber 30 days' notice, using clear, easily understood language, that the subscriber's failure to use the Lifeline service within the 30-day notice period will result in service termination for non-usage; such notice may be given after 30 days of non-usage. Customers that have been deactivated may participate in the Company's Lifeline service in the future by reapplying and re-establishing eligibility for Lifeline services.

⁸ *See Lifeline and Link Up Reform Order* page 227–29.

⁹ *See Lifeline and Link Up Reform Order* at ¶ 257.

¹⁰ *See id.*

¹¹ *See id.* at ¶ 261.

To further protect the integrity of the USF, Infiniti Mobile has contracted with CGM, LLC, of Roswell, Georgia, a lifeline service bureau, to edit all subsidy request data. CGM, LLC, will process and validate the Company's subsidy data to prevent: (1) Duplicate Same-Month Lifeline Subsidies (Double Dip): any name/address that is already receiving a lifeline subsidy from the Company will be automatically prevented from receiving a second lifeline subsidy in that same month; and (2) inactive lines receiving subsidy: CGM's systems compare all subsidy requests to underlying network status to ensure that subsidies are requested only for active lines. Through the processes described above, Infiniti Mobile ensures that it does not over-request from support funds.

III. THE COMMISSION HAS JURISDICTION TO DESIGNATE WIRELESS ETCs

Section 214(e)(2) of the Act provides state public utility commissions with the "primary responsibility" for the designation of ETCs.¹² Although Section 332(c)(3)(A) of the Act prohibits states from regulating the entry of or the rates charged by any provider of commercial mobile service or any private mobile service, this prohibition does not allow states to deny wireless carriers ETC status.¹³ Therefore, the Commission has the authority to designate Infiniti Mobile as an ETC. Pursuant to this authority, the Commission has historically participated in determining whether to grant ETC status to an applying carrier, including any requesting wireless carrier. Under the Act, a state public utility commission with jurisdictional authority over ETC designations must designate a common carrier as an ETC if the carrier satisfies the requirements of Section 214(e)(1). Infiniti Mobile recognizes that Section 214(e)(1)(A) of the Act provides that ETCs shall offer services, at least in part, over their

¹² 47 U.S.C. § 214(e)(2).

¹³ See *Federal-State Joint Board on Universal Service, First Report and Order*, 12 FCC Rcd 8776, 8858-59, ¶ 145 (1997) ("USF Order").

own facilities and that Section 54.201(i) of the FCC’s Rules (47 C.F.R. § 54.201(i)) prohibits state commissions from designating as an ETC a telecommunications carrier that offers services exclusively through the resale of another carrier’s services. However, the FCC granted forbearance from enforcement of this facilities requirement to carriers seeking Lifeline-only ETC designation.¹⁴ Section 10(e) of the Act (47 U.S.C. § 160(e)) provides: “[a] State commission may not continue to apply or enforce any provision of this chapter that the [Federal Communications] Commission has determined to forbear from applying under subsection (a) of this section.” As such, the Commission is required by Section 10(e) to act in accordance with the FCC’s grant of forbearance, and therefore may not apply the facilities-based requirement to Infiniti Mobile. Therefore, the Commission has the authority under Section 214(e)(2) of the Act to grant Infiniti Mobile’s request for designation as an ETC throughout the State of South Dakota.

IV. INFINITI MOBILE SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.” Section 214(e)(2) of the Act authorizes state commissions, such as the Commission, to designate ETC status for federal universal service purposes and authorizes the Commission to designate wireless ETCs.¹⁵ Section 214(e)(1) of the Act and Section 54.201(d) of the FCC’s rules provide that applicants for ETC designation must be common carriers that will offer all of the services supported by universal service, either using their own facilities or a combination of their own facilities and the resale of another carrier’s services, except where the FCC has forborne from the “own facilities” requirement. Applicants also must commit to advertise the

¹⁴ See *Lifeline and Link Up Reform Order* at ¶ 368.

¹⁵ *USF Order*, at 8858–59, ¶ 145.

availability and rates of such services.¹⁶ As detailed below, Infiniti Mobile satisfies each of the above-listed requirements.

A. Infiniti Mobile Will Provide Service Consistent with the FCC’s Grant of Forbearance from Section 214’s Facilities Requirements

Although Section 214 requires ETCs to provide services using their facilities, at least in part, the FCC has forbore from that requirement with respect to carriers such as Infiniti Mobile. In the *Lifeline and Link Up Reform Order*, the FCC granted forbearance from the “own-facilities” requirement contained in Section 214(e)(1)(A) for carriers that are, or seek to become, Lifeline-only ETCs, subject to the following conditions:¹⁷

(1) the carrier must comply with certain 911 requirements [(a) providing its Lifeline subscribers with 911 and E911 access, regardless of activation status and availability of minutes; (b) providing its Lifeline subscribers with E911-compliant handsets and replacing, at no additional charge to the subscriber, noncompliant handsets of Lifeline-eligible subscribers who obtain Lifeline-supported services; and (c) complying with conditions (a) and (b) starting on the effective date of this Order]; and

(2) the carrier must file, and the Bureau must approve, a compliance plan providing specific information regarding the carrier’s service offerings and outlining the measures the carrier will take to implement the obligations contained in this Order as well as further safeguards against waste, fraud and abuse the Bureau may deem necessary.

Infiniti Mobile will avail itself of the FCC’s grant of blanket forbearance. In accordance with the *Lifeline and Link Up Reform Order*, Infiniti Mobile filed its Compliance Plan with the FCC, which was approved on December 26, 2012. A copy of the Company’s FCC-Approved Compliance Plan is attached hereto as Exhibit 4. Infiniti Mobile commits to providing Lifeline service in South Dakota in accordance with said Compliance Plan.

¹⁶ See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d)(2).

¹⁷ See *Lifeline and Link Up Reform Order* at ¶¶ 368, 373, and 379.

B. Infiniti Mobile Is a Common Carrier

CMRS resellers like Infiniti Mobile are treated as common carriers.¹⁸

C. Infiniti Mobile Will Provide All Required Services and Functionalities

Through its wholesale arrangement with Sprint, Infiniti Mobile is able to provide all of the services and functionalities required by Section 54.101(a) and Section 54.202(a) of the FCC's Rules (47 C.F.R. §§ 54.101(a) and 54.202(a)) including the following:

1. Voice Grade Access to the Public Switched Telephone Network

Infiniti Mobile provides voice grade access to the public switched telephone network ("PSTN") through the purchase of wholesale CMRS services from Sprint.

2. Minutes of Use for Local Service

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 FCC has not specified a minimum amount of local usage that an ETC must offer.¹⁹ Infiniti Mobile offers a variety of rate plans that provide its customers with minutes of use for local service at no additional charge.

3. Access to Emergency Services

Infiniti Mobile provides 911 and E911 access for all of its customers to the extent local governments in the Company's service area have implemented 911 or E911 systems. Infiniti Mobile also complies with the FCC's regulations governing the deployment and availability of E911 compatible handsets.

¹⁸ *Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services*, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd 1411, 1425 ¶ 37, 1454-55 ¶ 102 (1994) (wireless resellers are included in the statutory "mobile services" category, and providers of cellular service are common carriers and CMRS providers); 47 U.S.C. § 332(c)(1)(A) ("mobile services" providers are common carriers); *see also PCIA Petition for Forbearance for Broadband PCS*, WT Docket No. 98-100, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16911 ¶ 111 (1998) ("We concluded [in the *Second Report and Order*] that CMRS also includes the following common carrier services: cellular service, . . . all mobile telephone services *and resellers of such services*." (emphasis added)).

¹⁹ *See e.g., In the Matter of Federal-State Joint Board on Universal Service*, Recommended Decision, 15 FCC Rcd 7331 (2002).

4. Toll Limitation for Qualified Low-Income Customers

In its *Lifeline and Link Up Reform Order*, the FCC provided that toll limitation would no longer be deemed a supported service.²⁰ “ETCs are not required to offer toll limitation service to low-income consumers if the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls.”²¹ Nonetheless, Infiniti Mobile’s offerings inherently allow Lifeline subscribers to control their usage, as its wireless service is offered on a prepaid, or pay-as-you-go, basis. Infiniti Mobile’s service, moreover, is not offered on a distance-sensitive basis, and local and domestic, long-distance minutes are treated the same. Infiniti Mobile will not seek reimbursement for toll limitation service.

5. Other Services

While no longer required by 47 C.F.R. § 54.101(a), Infiniti Mobile 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 by dialing “411” from the provided wireless handsets.

D. Infiniti Mobile Will Advertise the Availability of Supported Services

Infiniti Mobile will advertise the availability and rates for the services described above using media of general distribution as required by 47 C.F.R § 54.201(d)(2). Infiniti Mobile’s advertising will comply with the requirements set forth in the *Lifeline and Link Up Reform Order*, as outlined in the Company’s Compliance Plan, and ARSD 20:10:32:55.²² The Company

²⁰ See *Lifeline and Link Up Reform Order* at ¶ 367.

²¹ See *id.* at ¶ 49.

²² See Exhibit 4; see also *Lifeline and Link Up Reform Order* at Section VII.F.

will advertise its services in a manner reasonably designed to reach those likely to qualify for Lifeline service, using mediums for outreach including, but not limited to, television marketing, direct mailings, and face-to-face events. The Company will engage in advertising campaigns specifically targeted to reach those likely to qualify for Lifeline services, promoting the availability of cost-effective wireless services to this neglected consumer segment. Infiniti Mobile may also promote the availability of its Lifeline offering by engaging in consumer outreach at various state and local social service agencies, and the Company may partner with nonprofit assistance organizations in order to inform customers of the availability of its Lifeline service.

In addition, Infiniti Mobile will utilize its network of retail partners to help promote the availability of its Lifeline plans, especially those retail outlets frequented by low-income consumers. Infiniti Mobile will provide retail vendors with signage to be displayed wherever Company products are sold, and the Company will also provide such vendors with printed materials describing the Company's Lifeline program.²³ Statistics suggest that there are many eligible customers who are not yet aware of the programs. According to the best data available to the Company, as of December 31, 2011, only between 10 to 20% of consumers eligible for Lifeline Services in the State of South Dakota were being provided such services.²⁴ Infiniti Mobile believes that its advertising and outreach efforts detailed above will result in increased participation in the Lifeline program.

²³ See attached Exhibit 5 for a sample advertisement, currently utilized in the State of Oklahoma. The Company will modify the attached advertisements upon approval to include state-specific language and information regarding the Company's rate plans and offerings in South Dakota.

²⁴ See attached Exhibit 6, 2011 Lifeline Participation Rates by State, which was obtained from USAC, an independent not-for-profit corporation designated as the administrator of the federal Universal Service Fund by the FCC. USAC administers USF programs for high-cost companies serving rural areas, low-income consumers, rural health care providers, and schools and libraries.

E. Infiniti Mobile Requests Designation Throughout Its Service Area in South Dakota

Infiniti Mobile is not a rural telephone company as defined in Section 153(37) of the Act (47 U.S.C. § 153(37)). Accordingly, Infiniti Mobile is required to describe the geographic area(s) within which it requests designation as an ETC. Infiniti Mobile requests designation as an ETC for its entire service area in South Dakota, as demonstrated by the map attached hereto as Exhibit 7 pursuant to ARSD 20:10:32:43(3).²⁵ Infiniti Mobile understands that its service area overlaps with rural carriers in South Dakota, but maintains that the public interest factors described below justify its designation in these carriers' service areas, especially because the Company seeks ETC designation solely to utilize USF funding to provide Lifeline service to qualified low-income households. The Company does not seek, and will not accept, high-cost support.

F. Service Commitment Throughout the Proposed Designated Service Area

Infiniti Mobile will provide service in South Dakota by reselling service, which the Company obtains from its underlying facilities-based provider. The provider's network is operational and largely built out. Thus, Infiniti Mobile will be able to commence offering its Lifeline service to all locations served by its underlying carrier very soon after receiving approval from the Commission. Infiniti Mobile commits to comply with the service requirements applicable to the support that the Company receives.²⁶

In accordance with ARSD 20:10:32:43.01(1), Infiniti Mobile commits to provide service on a timely basis to requesting customers in its Designated Service Area where the applicant's

²⁵ A list of wire centers in which the Company requests ETC designation is also attached hereto as Exhibit 7. Because the Company seeks ETC designation solely for participation in the low-income USF programs and will not seek high-cost support, a creamskimming analysis is not applicable.

²⁶ See *Lifeline and Link Up Reform Order* at page 208, revised § 54.202(a)(1)(i).

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.

G. Ability to Remain Functional in Emergency Situations

In accordance with 47 C.F.R. § 54.202(a)(2) and ARSD 20:10:32:43.03, Infiniti Mobile, through its underlying carrier, has the ability to remain functional in emergency situations. Through its agreement with Sprint, Infiniti Mobile provides to its customers the same ability to remain functional in emergency situations as currently provided by Sprint to its own customers, including access to a reasonable amount of back-up power to ensure functionality without an external power source, the ability to reroute traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations.

H. Commitment to Consumer Protection and Service Quality

Under FCC and Commission guidelines, an ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.²⁷ As a reseller, Infiniti Mobile's service is of the same quality and reliability as that of its underlying carrier. The Company commits to satisfying all such applicable state and federal requirements related to consumer protection and service quality standards. Specifically, Infiniti Mobile commits to comply with the Cellular Telecommunications and Internet Association's (CTIA) Consumer

²⁷ See 47 C.F.R. § 54.202(a)(3); *see also* ARSD 20:10:32:43.04.

Code for Wireless Service.

I. Local Usage Requirement

An applicant for ETC designation is no longer required by FCC rules to demonstrate that it offers a local usage plan that is “comparable” to the plan offered by the ILEC in the relevant service territory.²⁸ Nevertheless, in accordance with ARSD 20:10:32:43.05, Infiniti Mobile customers will have the option to apply the Lifeline discount to the Company’s retail rate plans and will have the option for unlimited local calling, similar to ILEC Lifeline offerings. Infiniti Mobile offers a variety of rate plans that provide its customers with local usage capabilities in the form of monthly plans, unlimited plans, or pay-per-use plans—but without the burden of contracts, activation fees or roaming charges.

Not only will Infiniti Mobile’s offering be comparable to the underlying ILEC plans, but it also will exceed them in several respects. Infiniti Mobile will offer customers a certain amount of service free of charge. In contrast to the ILEC plans, which contain relatively small local calling areas, Infiniti Mobile customers can use these free minutes to place calls statewide (and even nationwide) because Infiniti Mobile does not constrict customers’ use by imposing a local calling area requirement. Infiniti Mobile will also provide Lifeline customers with E911 capabilities and access to voice mail, caller-I.D., and call-waiting features at no cost. The very nature of the wireless phone—mobility—has a tremendous benefit to many consumers, a benefit to which a monetary value cannot be easily assigned.

J. Equal Access Requirement

The FCC’s Rules no longer require an applicant for ETC status to provide a certification that it acknowledges that the FCC may require it to provide equal access to long distance carriers

²⁸ See *Lifeline and Link Up Reform Order* at page 208, revised, § 54.202(a).

in the event that no other ETC is providing equal access within the service area.²⁹ Nevertheless, in accordance with ARSD 20:10:32:43.06, the Company acknowledges that the Company may be required to provide equal access to long distance carriers in the event that no other ETC is providing equal access within the service area.

K. Infiniti Mobile is Financially and Technically Capable

Infiniti Mobile is financially and technically capable of providing Lifeline-supported services.³⁰ Infiniti Mobile has been in business since 2012 and currently provides service to both Lifeline and non-Lifeline customers. Infiniti Mobile already successfully provides wireless services in Oklahoma. Infiniti Mobile has not been subject to enforcement action or ETC revocation proceedings in any state. Infiniti Mobile is financially able to provide Lifeline-supported services; the Company does not, and does not intend to, offer exclusively Lifeline-supported services—and the Company is therefore not exclusively dependent on USAC for its revenue. The result of Infiniti Mobile’s efforts is that the Company is profitable, liquid, and fully capable of honoring all service obligations to customers as well as regulatory obligations to state and federal regulators. Furthermore, the senior management of Infiniti Mobile has great depth in the telecommunications industry and offers extensive telecommunications business technical and managerial expertise to the Company.³¹ Infiniti Mobile will be providing resold wireless service, and therefore the Company will also rely upon the managerial and technical expertise of its underlying carrier, Sprint.

²⁹ See *Lifeline and Link Up Reform Order* at page 208, revised, § 54.202(a).

³⁰ See *id.* at ¶ 387.

³¹ See Exhibit 8 for key management bios.

L. Infiniti Mobile Will Comply with Certification and Verification Requirements

Section 54.410 of the FCC's Rules requires ETCs to certify and verify a Lifeline customer's initial and continued eligibility. Infiniti Mobile will certify and verify consumer eligibility in accordance with the FCC's requirements, with applicable Commission rules, and in accordance with its FCC-Approved Compliance Plan, which outlines how the Company will comply with the requirements set forth in the *Lifeline and Link Up Reform Order*.

M. Infiniti Mobile Will Comply With All Regulations Imposed By The Commission

By this Petition, Infiniti Mobile hereby asserts its willingness and ability to comply with all the rules and regulations that the Commission may lawfully impose upon the Company's provision of service contemplated by this Petition, with the exception of the requirements for which waivers are requested below. Infiniti Mobile certifies that all federal USF funding received will be used for Lifeline support and will be flowed through to the direct benefit of eligible low-income consumers. Upon Commission request, Infiniti Mobile is prepared to answer questions and present additional testimony or other evidence about its services within the state.

1. Waiver Requests

Infiniti Mobile requests a waiver of ARSD 20:10:32:43.02, which requires that ETCs submit a two-year service quality improvement plan ("Plan"), as well as ARSD 20:10:32:54(1–2), which would require a new Plan and a progress report on the previously filed Plan. As set forth in the *Lifeline and Link Up Reform Order*, a common carrier seeking designation as a Lifeline-only ETC is not required to submit a network improvement plan as part of its application for designation as an ETC.³² This guideline has no application where an applicant's

³² See *Lifeline and Link Up Reform Order* at ¶ 386.

requested ETC serving territory would qualify it to receive no “high cost” USF support, but only “low income” USF support. Because Infiniti Mobile seeks ETC designation solely for purposes of reimbursement for provision of subsidized Lifeline services to eligible customers, submission of a service quality improvement plan is not required.

V. DESIGNATION OF INFINITI MOBILE AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996, is “to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.³³ Designation of Infiniti Mobile as an ETC in South Dakota will further the public interest by providing South Dakota consumers, especially low-income consumers, with low prices and high-quality services. Many low-income customers in South Dakota have yet to reap the full benefits of the intensely competitive wireless market. Whether because of financial constraints, poor credit history, or intermittent employment, these consumers often lack the countless choices available to most consumers.

The instant request for ETC designation must be examined in light of the Act’s goal of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—particularly low-income consumers—receive affordable and comparable telecommunications services. Given this context and the Company’s attractive and affordable service offering, designating Infiniti Mobile as an ETC would significantly benefit low-income consumers eligible for Lifeline services in the State of South Dakota—the intended beneficiaries of universal service.

³³ *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56.

A. Advantages of Infiniti Mobile's Service Offering

The public interest benefits of the Company's wireless service include larger local calling areas (as compared to traditional wireline carriers); the convenience and security afforded by mobile telephone service; the opportunity for customers to control cost, by receiving a preset amount of monthly airtime at no charge; the ability to purchase additional usage at flexible and affordable amounts, in the event that included usage has been exhausted; 911 service; and, where available, E911 service in accordance with current FCC requirements. Infiniti Mobile's Lifeline customers will receive the same high-quality wireless services and exceptional customer service provided to all Company customers. Infiniti Mobile's Lifeline rate plans will allow feature-rich mobile connectivity for qualifying subscribers at no cost to the subscriber, and without the burden of credit checks, contracts, activation fees, or roaming charges.

Infiniti Mobile's Lifeline program will provide low-income South Dakota residents with the convenience and security offered by wireless services—even if their financial positions deteriorate. Modern economic circumstances indicate that low-income individuals, now more than ever, can greatly benefit from the advantages offered by the Company's Lifeline service, thus allowing those adversely impacted by the failing economy or job loss to have access to wholly supported wireless service to assist in emergency situations, facilitate job search efforts, and to maintain contact with family members.

Moreover, for all consumers in today's market, including qualified Lifeline consumers, it is also a commonly accepted fact that consumers view the portability and convenience of wireless service not as a luxury, but as a necessity. Mobile service allows children to reach their parents, wherever they may be; allows a person seeking employment the ability to be contacted by potential employers; and provides end users with the ability to contact emergency service

providers, regardless of location. Providing Infiniti Mobile with the authority necessary to offer discounted Lifeline service to those most in danger of losing wireless service altogether undoubtedly promotes the public interest.

Moreover, grant of Infiniti Mobile's Petition will serve the public interest by directly increasing the number of ETCs in South Dakota. By granting ETC status to Infiniti Mobile, the Commission will enable the Company to increase the number of South Dakota residents receiving Lifeline support, thereby increasing the amount of USF money flowing into South Dakota. In sum, ETC designation in the State of South Dakota would enable Infiniti Mobile to provide all of the public benefits cited by the FCC in its analysis in the *Virgin Mobile Order*. Namely, Infiniti Mobile would provide "increased consumer choice, high-quality service offerings, and mobility,"³⁴ as well as the safety and security of effective 911 and E911 services.³⁵

B. The Benefits of Competitive Choice

The FCC has acknowledged the benefits to consumers of being able to choose from among a variety of telecommunications service providers for more than three decades.³⁶ First, designation of Infiniti Mobile as an ETC will promote competition and innovation, spurring other carriers to target low-income consumers with service offerings tailored to their needs and to improve their existing networks to remain competitive, ultimately resulting in improved services to consumers. Second, designation of Infiniti Mobile as an ETC will help ensure that quality services are available at "just, reasonable, and affordable rates" as envisioned in the Act.³⁷ Third, introducing Infiniti Mobile into the market as an additional wireless ETC provider will afford low-income South Dakota residents a wider choice of providers and

³⁴ See *Virgin Mobile Order*, 24 FCC Rcd at 3395 ¶ 38.

³⁵ See *id.* at 3391 ¶ 23.

³⁶ See, e.g., *Specialized Common Carrier Services*, 29 FCC Rcd 870 (1971).

³⁷ See 47 U.S.C. § 254(b)(1).

available services, while simultaneously enhancing the competitive marketplace as ETCs compete for a finite number of Lifeline-eligible customers. Finally, increasing the competitive marketplace of providers has the potential to effectively increase the penetration rate and reduce the number of individuals not connected to the PSTN.

C. Impact on the Universal Service Fund

With Lifeline, ETCs only receive support for customers they obtain. The amount of support available to an eligible subscriber is exactly the same whether the support is given through a company such as Infiniti Mobile or through the Incumbent LEC operating in the same service area. Infiniti Mobile will only increase the amount of USF Lifeline funding in situations where the Company obtains Lifeline customers not enrolled in another ETC's Lifeline program. By implementing the safeguards set forth in the *Lifeline and Link-Up Reform Order*, Infiniti Mobile will minimize the likelihood that its customers are not eligible or are receiving duplicative support either individually or within their household.

Significantly, the Company's designation as an ETC will not increase the number of persons eligible for Lifeline support. Infiniti Mobile's ability to increase the Lifeline participation rate of qualified low-income individuals will further the goal of Congress to provide all individuals with affordable access to telecommunications service, and thus any incremental increases in Lifeline expenditures are far outweighed by the significant public interest benefits of expanding the availability of affordable wireless services to low-income consumers. According to the FCC, "the additional choice and service options of another wireless reseller offering a service for low-income consumers represents a significant benefit for consumers and is in the public interest," and "[a] new entrant should incent existing wireless reseller ETCs to offer better service and terms to their customers, which provides additional

evidence that forbearance in the context of the Lifeline program outweighs the potential costs.”³⁸

VI. ANTI-DRUG ABUSE CERTIFICATION

Infiniti Mobile certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.

VII. CONCLUSION

Based on the foregoing, designation of Infiniti Mobile as an ETC in the State of South Dakota accords with the requirements of Section 214(e)(2) of the Act and is in the public interest.

WHEREFORE, Infiniti Mobile respectfully requests that the Commission promptly designate Infiniti Mobile as an ETC in the State of South Dakota solely for purposes of participating in the Lifeline program, and grant the waivers requested herein.

Respectfully submitted,

/s/ Lance J.M. Steinhart

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³⁸ See *Petition of i-wireless, LLC for Forbearance from 47 U.S.C § 214(e)(1)(A)*, Order, FCC 10-117 (rel. June 25, 2010) at ¶ 19.