

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION  
OF MERCURY WIRELESS INDIANA, LLC  
FOR DESIGNATION AS A HIGH-COST  
RURAL COMPETITIVE ELIGIBLE  
TELECOMMUNICATIONS CARRIER.

CASE NO. 18-1491-TP-UNC

## FINDING AND ORDER

Entered in the Journal on December 12, 2018

### I. SUMMARY

{¶ 1} The Commission designates Mercury Wireless Indiana, LLC as a high-cost rural competitive eligible telecommunications carrier.

### II. APPLICABLE LAW

{¶ 2} Pursuant to 47 U.S.C. 214(e)(2), a state commission shall upon request designate a common carrier that meets the requirements of an eligible telecommunications carrier (ETC) for a service area designated by the state commission.

{¶ 3} In accordance with 47 C.F.R. 54.101, to receive federal high-cost support, an ETC must offer voice telephony service and broadband service consistent with the rule.

{¶ 4} Consistent with 47 C.F.R. 54.201, an ETC is eligible to receive universal service support in accordance with 47 U.S.C. 254 provided it offers the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services and advertises the availability of such services and charges using media of general distribution.

### III. PROCEDURAL BACKGROUND

{¶ 5} In *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), the Federal Communications Commission (FCC) comprehensively reformed the universal service high-cost program in order to focus support on networks capable of providing voice and

broadband services. As part of this process, the FCC created the Connect America Fund for the purpose of making voice and broadband-capable infrastructure available in high-cost areas where it is lacking. See *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order (rel. Dec. 18, 2014).

{¶ 6} The FCC utilized the Connect America Fund to provide support in price cap areas via a forward-looking model of the cost of constructing modern multi-purpose networks. Specifically, the FCC offered support to incumbent price cap carriers serving certain high-cost areas in exchange for a commitment to offer voice and broadband services meeting certain requirements in those areas. In the areas of the states where the incumbent price cap carrier declined model-based support, the FCC decided to award support through a competitive bidding process. See *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Notice (rel. Feb. 1, 2018).

{¶ 7} Pursuant to *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Notice (rel. Feb. 1, 2018), the FCC established the parameters of the Connect America Fund Phase II (CAF Phase II) multi-round, reverse auction providing up to \$198 million in annual support for voice and broadband service in unserved, high-cost areas over a ten-year period.

{¶ 8} The CAF Phase II is part of the FCC's reform and modernization of its universal service support programs. CAF Phase II provides ongoing support to deploy and maintain fixed-location broadband and voice services in high-cost areas at rates comparable to those offered in urban areas. Companies that accept CAF Phase II support must comply with FCC performance requirements pertaining to broadband speed, latency, data usage, pricing, and buildout.

{¶ 9} The FCC conducted Auction 903 from July 24, 2018 to August 21, 2018, to allocate CAF Phase II support for service providers that commit to offer voice and broadband services to fixed locations in unserved, high-cost areas. Pursuant to the

auction, 103 bidders were selected to provide fixed-location broadband and voice services in unserved communities within 45 states for relatively lower levels of support. The FCC announced the winning bids on August 28, 2018. Winning bidders were required to submit to the FCC a post-auction, long-form application portion of FCC Form 683 covering the winning bids. The requisite information includes a letter of credit commitment and a detailed technology and system design description.

{¶ 10} By February 25, 2019, the long-form applicant must obtain a high-cost ETC designation from the relevant state commission.

{¶ 11} Support is to be provided for a 10-year period of time. Providers are required to build out to 40 percent of the assigned homes and businesses within three years of becoming authorized to receive CAF II funding. Buildout must increase by 20 percent each subsequent year and complete buildout is required by the end of the sixth year.

#### IV. APPLICATION

{¶ 12} On September 28, 2018, as amended on October 9, 2018, October 30, 2018, November 13, 2018, November 26, 2018, and November 28, 2018, Mercury Wireless Indiana, LLC (Mercury Wireless or Applicant) filed an application for designation as an ETC in order to receive CAF Phase II support for the purpose of deploying its high-speed broadband and voice services in rural Ohio.

{¶ 13} Mercury Wireless is an Indiana limited liability company that is registered to do business in the state of Ohio. It is a direct, wholly-owned subsidiary of Mercury Wireless, Inc., which has focused on underserved rural areas and has provided high-speed, high-quality wireless Internet and voice over Internet protocol (VoIP) services to community anchor institutions in Kansas for 11 years, including to multiple public schools through the FCC's E-rate program. Mercury Wireless submits that these services are critical to schools and libraries, provides consumer access to telehealth and medical

facilities, and promotes economic growth in the rural communities by providing Internet and voice connections.

{¶ 14} Mercury Wireless represents that pursuant to the FCC Order of August 28, 2018, its parent, Mercury Wireless, Inc., was designated as a provisional winning bidder to receive CAF Phase II Support to provide services to certain census blocks in Ohio, Indiana, Michigan, Missouri, and Kansas. The designation included an award of \$830.70 to provide CAF II supported services in the eight designated census blocks in Darke County, Ohio. On September 14, 2018, Mercury Wireless, Inc., assigned its winning bid for census blocks in Ohio to Mercury Wireless.

{¶ 15} Mercury Wireless intends to rollout new facilities and expand its provision of high-speed, high-quality Internet and voice services to new customers and anchor institutions in underserved, rural communities within Ohio through an interconnected VoIP network using facilities that it owns or leases and through spectrum licensed from the FCC. Specifically, Mercury Wireless will provide supported services using its network infrastructure consisting of last mile connections, network equipment, and network components.

{¶ 16} Mercury Wireless plans to offer standalone broadband, standalone VoIP, and bundled broadband and VoIP. Broadband access service will be offered at a speed of 25 megabytes per second (Mbps) download and 3 Mbps upload with a latency less or equal to 100 milliseconds.

{¶ 17} Mercury Wireless certifies that its standalone VoIP and broadband services will be offered in its designated service area at rates that are at or below the reasonable comparability benchmark as established by the FCC's Wireline Competition Bureau on an annual basis.

{¶ 18} Mercury Wireless submits that its designation as a competitive ETC is in the public interest because such designation will promote increased competitive choice,

thereby furthering innovation and spurring other carriers to improve their existing networks. As a result, Mercury Wireless opines that the requested competitive ETC designation will lead to greater access to high-speed broadband and voice services, as well as improved service quality for residents of underserved communities in rural Ohio.

{¶ 19} Mercury Wireless contends that its provision of interconnected VoIP throughout its service area is sufficient to provide voice-grade access to the public switched telephone network pursuant to 47 C.F.R. 54.101(a). Therefore, Mercury Wireless states that, pursuant to 47 C.F.R. 54.101(a)(1) and (b), it will provide voice telephony services, including (a) voice-grade access to the public switched telephone network or its functional equivalent; (b) minutes of use for local service provided at no additional charges to end users; (c) access to emergency services; and (d) toll limitation services to qualifying low-income consumers in accordance with 47 C.F.R. 54.500, et seq.

{¶ 20} Mercury Wireless recognizes that as part of the required voice-grade access to the public switched network, it must provide minutes of local service at no additional charge to end users. While recognizing that the FCC has not specified a minimum amount of local usage that an ETC must offer, Mercury Wireless commits to complying with any and all minimum local usage requirements adopted by the FCC or the Commission and will include such local usage in its rate plans.

{¶ 21} With respect to requisite provision of access to emergency services, Mercury Wireless represents that it will satisfy this requirement by providing 9-1-1 and E9-1-1 for all of its customers to the extent that the local governments in its service areas have implemented 9-1-1 and E9-1-1.

{¶ 22} In regard to toll limitation services for qualifying low-income customers, Mercury Wireless states that it will participate in the provision of Lifeline service and toll blocking service, but will not seek reimbursement for toll limitation services.

{¶ 23} Pursuant to 47 C.F.R. 54.101(a)(2), Mercury Wireless will provide broadband services with the capability to transmit data and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to enable the operation of the communications service, but excluding the dial-up service.

{¶ 24} Mercury Wireless will offer voice and broadband Lifeline services in accordance with the FCC's rules. The Applicant plans to offer a Lifeline discount of \$9.95, which can be applied to VoIP, broadband, or bundled VoIP and broadband services.

{¶ 25} Pursuant to 47 U.S.C. 214(e)(2) and 47 C.F.R. 54.201(d), Mercury Wireless will advertise the availability of each of its supported services and the availability of Lifeline benefits throughout its ETC service area by media of general distribution, including post cards, direct mailings, radio and television commercials, social media, and the Internet. Mercury Wireless will advertise the availability of its services and charges through media of general distribution in a manner reasonably designed to reach potential Lifeline consumers and make them aware of such offerings as required by 47 C.F.R. 54.405(b).

{¶ 26} According to Mercury Wireless, it will have sufficient back-up battery power to remain functional without an external power source in emergency situations, will be able to reroute traffic around damaged facilities, and will be able to manage traffic spikes resulting from emergency situations via the increase of bandwidth.

{¶ 27} Mercury Wireless will satisfy applicable consumer protection and service quality standards and, to the extent applicable, commits to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.

## V. DISCUSSION

{¶ 28} The Commission finds that Mercury Wireless, through its application, has demonstrated that it has met the standards established by the FCC and has provided sufficient evidence for the Commission to grant conditional high-cost, competitive ETC status to Mercury Wireless for the purpose of receiving CAF Phase II support. This

authorization is conditional in the sense that any high-cost ETC seeking CAF Phase II support must first receive final FCC approval following the submission of all the requisite documentation. Mercury Wireless is directed to make a supplemental filing in this docket upon receipt of its final FCC approval, and attest as to whether Mercury Wireless will be operating as a high-cost, competitive ETC subject to this conditional authorization granted herein. Additionally, Mercury Wireless must provide annual updates in this docket as to the status of its deployment of its CAF Phase II supported services in the designated service area.

{¶ 29} As stated above, Mercury Wireless will participate in the provision of Lifeline service. This service will be offered utilizing the Applicant's VoIP platform. In accordance with 47 C.F.R. 54.101(c) and 47 C.F.R. 54.101(d), as designated as an ETC, Mercury Wireless will participate in the Federal Lifeline Program as both a voice and broadband Internet access service (BIAS) provider. Therefore, the Applicant will provide Lifeline BIAS in accordance with the obligations of CAF Phase II auction support recipients.

{¶ 30} The Commission notes that for ETCs offering voice service that is not Lifeline-only, the FCC has interpreted such carriers' ETC designations as being broad enough to make them eligible for Lifeline broadband support. *See In re Lifeline and Link Up Reform and Modernization, et al.*, WC Docket Nos. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (rel. Apr. 27, 2016).

{¶ 31} Mercury Wireless must provide the requisite contribution to Ohio's Telephone Relay Service for all of its VoIP subscribers. It must also pay its annual Commission assessment. The Commission reserves the right to perform an audit of Mercury Wireless' contribution into Ohio's Telephone Relay Service Fund. The Commission further directs Mercury Wireless to make available to the Commission Staff,

upon request, information concerning the Applicant's contributions into Ohio's Telephone Relay Service Fund.

## VI. MOTION FOR A WAIVER

{¶ 32} On October 30, 2018, as amended on November 28, 2018, Mercury Wireless filed a motion seeking a partial waiver of Ohio Adm.Code 4901:1-6-09 and the requirement set forth in the current telecommunications filing form establishing that an ETC designation application contain a five-year improvement plan detailing proposed improvements or upgrades to the applicant's network throughout its proposed designated area. Mercury Wireless notes that although this requirement is also set forth in 47 C.F.R. 54.202(a)(1)(ii), the FCC, pursuant to its own motion on July 12, 2018, waived the requirement to submit a five-year plan for all winning bidders in the CAF Phase II auction. According to Mercury Wireless, the FCC determined that the five-year plan was unnecessary because, for CAF recipients, it adopted more specific measures to track deployment, including annual reporting of service to geocoded locations and certification of compliance with benchmark milestones. *See WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197, 10-90, Public Notice (DA 18-714) (Jul. 10, 2018). Similar to the reasons set forth by the FCC, Mercury Wireless opines that its motion for a waiver should be granted.

{¶ 33} Upon a review of the arguments set forth in Mercury Wireless' motion for a limited waiver, the Commission finds that the request is reasonable and should be granted. Specifically, the Commission relies on the fact that the FCC has already required Mercury Wireless to submit annual reports that include specific measures for tracking deployment of the supported services.

## VII. MOTION FOR A PROTECTIVE ORDER

{¶ 34} On November 9, 2018, Mercury Wireless filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), specific to the description of its



technology and system design for the network that will provide the proposed high-cost CAF Phase II supported services. Mercury Wireless asserts that the confidential business information constitutes a trade secret under Ohio law and that nondisclosure of the information is consistent with the purpose of Title 49 of the Revised Code. In support of its motion, Mercury Wireless asserts that the specific information is not publicly disclosed and is limited internally to senior management, counsel, and employees on a need to know basis. Additionally, Mercury Wireless represents that the confidential information would be economically valuable to competitors because it would provide significant insight into its planned network deployment and business operations and allow competitors to benefit from the extensive resources that the Applicant has expended in developing its network and technology plans. Mercury Wireless submits that competitors could use the confidential information to adjust and target their business strategies.

{¶ 35} Ohio law defines a trade secret as “information that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).

{¶ 36} The Commission has reviewed the information filed under seal, as well as the assertions set forth in the Applicant’s memorandum in support of a protective order. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court in *State ex rel. The Plain Dealer v. Ohio Dept. of Insur.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997), the Commission finds that the motion should be granted and the technology and system design information be kept under seal.

{¶ 37} Ohio Adm.Code 4901-1-24(F) provides that, “[u]nless otherwise ordered, any order prohibiting public disclosure pursuant to this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding.” The information protected by this Finding and Order shall remain under seal for a period ending 24 months from the date of this Finding and Order, December 12, 2020.

{¶ 38} Ohio Adm.Code 4906-1-24(F) also requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Docketing Division may release the information without prior notice to the Applicant.

### VIII. ORDER

{¶ 39} It is, therefore,

{¶ 40} ORDERED, That Mercury Wireless is conditionally designated as a high-cost, competitive ETC for the purpose of CAF Phase II funding in the applicable Darke County census blocks, subject to Mercury Wireless obtaining final FCC approval at the conclusion of the auction process. It is, further,

{¶ 41} ORDERED, That, consistent with paragraph 28, Mercury Wireless provide an update of its FCC auction status and its willingness to operate in the state of Ohio in accordance with the conditions set forth in this Finding and Order. It is, further,

{¶ 42} ORDERED, That Mercury Wireless provide annual updates as to the status of its deployment of CAF Phase II supported services in accordance with paragraph 28. It is, further,

{¶ 43} ORDERED, That Mercury Wireless comply with the provisions of this Finding and Order. It is, further,

{¶ 44} ORDERED, That the motion for a limited waiver is granted consistent with paragraph 33. It is, further,

{¶ 45} ORDERED, That the motion for a protective order be granted consistent with paragraph 36. It is, further,

{¶ 46} ORDERED, That the Docketing Division maintain the proprietary information under seal for a period of 24 months from the date of this Finding and Order. It is, further,

{¶ 47} ORDERED, That nothing contained in this Finding and Order shall be deemed binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 48} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



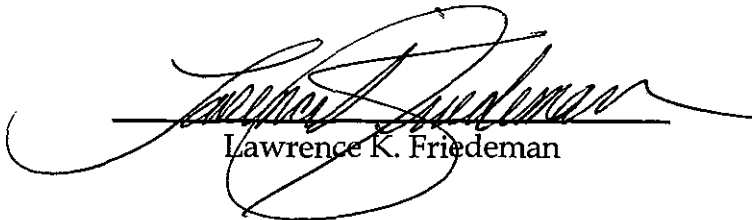
Asim Z. Haque, Chairman



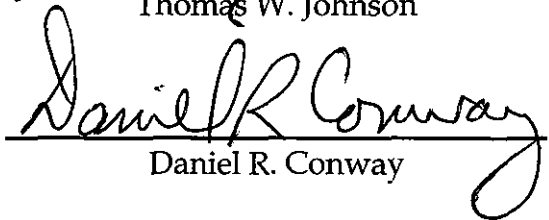
M. Beth Trombold



Thomas W. Johnson



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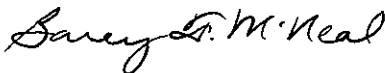


Daniel R. Conway

JSA/mef

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Barcy F. McNeal  
Secretary