

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

PlatinumTel Communications, LLC :  
: :  
Application for Designation as an Eligible : 09-0269  
Telecommunications Carrier for Purposes :  
Of Receiving Federal Universal Service :  
Support Pursuant to Section 214(e)(2) of the:  
Telecommunications Act of 1996. :

ORDER

By the Commission:

**I. History of the Reopened Proceeding**

PlatinumTel Communications, LLC (“PlatinumTel”) was certificated as an Eligible Telecommunications Carrier (“ETC”) in an Order dated November 24, 2009 (“November 24 Order”).<sup>1</sup> On September 7, 2011, PlatinumTel filed a Motion to Reopen the Record for the Limited Purpose of the Admission of Attachment 1 and Clarification of the Final Order (“Motion to Reopen”), in order to correct certain statements in the November 24 Order necessary to demonstrate to the Universal Service Access Corporation (“USAC”) and the Federal Communications Commission (“FCC”) that PlatinumTel uses, in part, its own facilities to provide Commercial Mobile Radio Services (“CMRS”) in Illinois. Commission Staff filed a Response to the Motion on September 21, 2011. On October 5, 2011, the Commission granted PlatinumTel’s Motion to Reopen.”<sup>2</sup>

In its Motion to Reopen, PlatinumTel stated that it “uses its own facilities as well as resold services to provide CMRS in Illinois.”<sup>3</sup> PlatinumTel further asserted that the November 24 Order contains several statements that have left it unclear to USAC and the FCC whether PlatinumTel provides wireless services solely using resold services, or whether it uses a combination of resold services and its own facilities. PlatinumTel requested that the Commission modify the November 24 Order to clearly indicate that PlatinumTel is a facilities-based provider of wireless services using a combination of its own facilities and resold services. PlatinumTel also filed a confidential Attachment 1 to its Motion to Reopen that provides a detailed description of what purports to be its Illinois facilities.

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<sup>1</sup> PlatinumTel Communications, LLC, *Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Service support pursuant to Section 214(e)(2) of the Telecommunications Act of 1996*, Order (Nov. 24, 2009).

<sup>2</sup> See *Notice of Commission Action* dated October 6, 2011.

<sup>3</sup> Motion at 1.

PlatinumTel described its facilities in the confidential testimonies of Omar Abhari, the Vice President of Operations of PlatinumTel, and Robert W. Walker, the founder and president of Comsource, Inc., a telecommunications regulatory and technology consulting firm. Those facilities were in service at the time the November 24 Order was issued, and continue to be used today. Mr. Abhari testified that PlatinumTel provided each of the Lifeline supported services “either through PlatinumTel’s own or leased facilities or through a combination of PlatinumTel’s own or leased facilities and resale.”<sup>4</sup> By “Lifeline supported services”, PlatinumTel and Mr. Abhari referred to the nine services that were previously designated for federal universal service support under §54.101(a) (Services Designated for Support) of the federal rules effective at the time of the Interim Order: Voice grade access to the public switched network; Local usage; Dual tone multi-frequency signaling or its functional equivalent; Single-party service or its functional equivalent; Access to emergency services; Access to operator services; Access to interexchange service; Access to directory assistance; and Toll limitation.

Mr. Abhari testified that certain of the supported services were provided with PlatinumTel’s own facilities.<sup>5</sup> The testimonies of Mr. Abhari and Mr. Walker were each entered into evidence at a hearing on October 14, 2011.

On October 19, 2011, PlatinumTel and Staff entered into a stipulation pertaining to that testimony, to the effect that PlatinumTel asserted it provides supported services to its wireless customers over its own facilities, i.e., as a facilities-based wireless carrier within the meaning of §214(e)(1)(A) of the 1996 Telecommunications Act (“1996 Act”). Specifically, Staff and PlatinumTel stipulated:

On October 7, 2011, PlatinumTel provided sworn testimony to the Commission stating that it owns a class 5 switch and other facilities as well as leased facilities including interoffice transport in Illinois in order to provide access to operator services, access to directory assistance and access to interexchange service during the period in which it has provided low income universal service fund supported service. Joint Stipulation at ¶1.

Staff, however, did not stipulate to the accuracy or validity of PlatinumTel’s assertion of providing supported services over its own facilities. Instead, Staff reserved the right to assess the validity and accuracy of the PlatinumTel’s assertion prior to the close of the record and issuance of a final order with a specific finding regarding PlatinumTel’s “facilities” status in the Reopening Proceeding:

In light of time constraints, Staff has not had a full opportunity to review, challenge, or otherwise vet the evidence submitted by PlatinumTel, and has not, as of the date of this Stipulation, submitted testimony or evidence. Staff specifically reserves the right to cross examine the witnesses of PlatinumTel, submit its own testimony and

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<sup>4</sup> Testimony of Omar Abhari (Public) at lines 443-47.

<sup>5</sup> See Testimony of Omar Abhari (Confidential & Proprietary) at lines 451-540.

exhibits, identify issues other than those identified by PlatinumTel prior to the record in this proceeding being closed and an order entered with specific finding on the issue of whether PlatinumTel has been and continues to provide Eligible Telecommunications Carrier designated services “either using its own facilities or a combination of its own facilities and the resale of another carrier’s services.” Joint Stipulation at ¶4.

On October 25, 2011, the Commission entered an Interim Order finding that the evidence provided by PlatinumTel was sufficient for the Commission to make the following *interim* finding:

[A]s of the Commission’s order dated November 24, 2009 and continuing to the present, PlatinumTel has been designated by the Commission as an Eligible Telecommunications Carrier “either using its own facilities or a combination of its own facilities and resale of another carrier’s services” pursuant to §214(e)(1) of the federal Act and §54.201(d) of the FCC’s rules subject to any subsequent findings this Commission might make based upon a more fully developed record. A permanent finding on that issue can be made after Commission Staff has reviewed PlatinumTel’s evidence, conducted discovery and, if it chooses to do so, entered its own testimony into the record. *Interim Order* at 2.

## II. FCC Activity During the Pendency of this Proceeding

Since the entry of the Interim Order, the FCC issued several orders that changed the requirements for the services provided by ETCs. In an order released November 18, 2011<sup>6</sup> and modified December 23, 2011,<sup>7</sup> the FCC revised the supported services requirement for ETC services designated for support. In those Orders, the FCC replaced the list of nine supported services with a new definition of Voice Telephony services. On February 6, 2012, the FCC released a related Order containing updated policies and rules concerning, in part, the FCC’s “own facilities” requirement of 47 USC 214(e)(1)(A).<sup>8</sup> There, the FCC issued a blanket forbearance “from the facilities requirement in section 214(e) for all carriers that are, or seek to become, Lifeline-only

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<sup>6</sup> *In the Matter of Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Inter-carrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund*, WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (“*USF/ICC Transformation Order*”).

<sup>7</sup> *USF/ICC Transformation Order, Order on Reconsideration, FCC 11-189*.

<sup>8</sup> *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*, Report and Order and Further Notice of Proposed Rulemaking (February 6, 2012) (“*Lifeline and Link Up Reform and Modernization Order*”).

ETCs.”<sup>9</sup> Additionally, the FCC recognized that certain carriers that complied with the “own facilities” requirement for the former supported services standards may no longer comply with the new Voice Telephony services standard. Thus, the FCC stated:

To avoid the disruption to the millions of low-income subscribers served by existing Lifeline-only ETCs that met the facilities requirement based solely on operator services / directory assistance facilities and were designated prior to December 29, 2011, those ETCs may continue to receive reimbursement pending approval of their compliance plans in the states in which they currently service Lifeline subscribers, provided they submit their compliance plans to the Bureau by July 1, 2012.<sup>10</sup>

### III. PlatinumTel Position

PlatinumTel presented testimony that it was providing supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services” pursuant to §214(e)(1) of the 1996 Act and §54.201(d) of the FCC’s rules, as defined under the FCC rules in effect at the time of issuance of the Interim Order, but that are no longer in effect.

With respect to PlatinumTel’s facilities under amended §54.101 of the FCC’s rules, PlatinumTel submitted the required compliance plan prior to July 1, 2012, and the FCC approved its final revised Compliance Plan on December 26, 2012. By virtue of the FCC’s approval of PlatinumTel’s Compliance Plan, PlatinumTel has complied with FCC forbearance from the “own facilities” requirement, and it is therefore unnecessary for the Commission to make any further determination relative to the facilities-based issue after that date.

After the date the FCC amended §54.101, PlatinumTel was allowed to continue to receive universal service reimbursement pending approval of its Compliance Plan. *Lifeline and Link Up Reform and Modernization Order at ¶380.*

### IV. Staff Position

In the Joint Stipulation, Staff stipulated, for the purposes of the Interim Order, to the fact that PlatinumTel claimed to provide supported services, as defined under FCC rules effective at the time of the Joint Stipulation, over its own facilities. Joint Stipulation at 1. Staff reserved the right to assess the validity and accuracy of PlatinumTel’s claim prior to the close of the record and issuance of a final order with a specific finding regarding PlatinumTel’s “facilities” status in the Reopening Proceeding. Joint Stipulation at 4. The Interim Order afforded Staff the opportunity to assess the accuracy and validity of PlatinumTel’s claim of providing supported service, as defined under the then-effective FCC rules, over its own facilities:

<sup>9</sup> *Lifeline and Link Up Reform and Modernization Order at ¶381.*

<sup>10</sup> *Lifeline and Link Up Reform and Modernization Order at ¶380 (internal footnotes omitted).*

A permanent finding on that issue can be made after Commission Staff has reviewed PlatinumTel's evidence, conducted discovery and if it chooses to do so, entered its own testimony into the record. Interim Order at 3.

Shortly after the Commission entered the Interim Order, the FCC issued the USF/ICC Transformation Order (November 18, 2011), in which the FCC amended §54.101 and revised the definition of supported service. In view of this new development, Staff is prepared to accept, without further investigation of PlatinumTel's claim, that it was a facilities-based wireless carrier and provided supported services over its own facilities, as defined under the FCC rules that were effective at the time of issuance of the Interim Order, but are no longer in effect.

Staff believes that a permanent, versus interim, determination of PlatinumTel's "facilities" status should be made under the current, not the superseded, FCC rules. PlatinumTel has availed itself of the blanket facilities forbearance provided in the FCC Lifeline Reform Order. Staff notes that, since PlatinumTel has availed itself of the FCC's blanket facilities forbearance, PlatinumTel may operate as a wireless Lifeline-only ETC in Illinois on a non-facilities basis through resale of another carrier's service.

## **V. Commission Analysis and Conclusions**

PlatinumTel presented testimony that it was providing supported services, as defined under the FCC rules that were effective at the time of issuance of the Interim Order, but which are no longer in effect, using its own facilities. It is Staff's view that, in light of the intervening actions of the FCC, there is no reason to prolong this proceeding, as PlatinumTel has availed itself of the FCC's blanket facilities forbearance as described above.

## **VI. Findings and Ordering Paragraphs:**

The Commission, having considered the record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) PlatinumTel Communications, LLC is an Illinois corporation engaged in the provision of local exchange telecommunications service and interexchange telecommunications service pursuant to Sections 13-403, 13-404 and 13-405 of the Public Utilities Act;
- (2) This Commission has subject matter jurisdiction and jurisdiction over the parties;
- (3) On November 24, 2009 PlatinumTel was designated by the Commission as an Eligible Telecommunications Carrier;

- (4) PlatinumTel has submitted testimony to the effect that it was providing supported service using its own facilities at the time of this Commission's Interim Order;
- (5) As of the Commission's November 24, 2009 Order and continuing up to the effective date of FCC amended §54.101 of its Rules, PlatinumTel was an Eligible Telecommunications Carrier "either using its own facilities or a combination of its own facilities and resale of another carrier's services", pursuant to §214(e)(1) of the 1996 Act and §54.201(d) of the FCC's Rules. After the date the FCC amended §54.101, PlatinumTel was allowed to continue to receive universal service reimbursement pending the approval of its Compliance Plan. The FCC approved PlatinumTel's Compliance Plan on December 26, 2012;
- (6) PlatinumTel's status as an ETC should be determined under the current FCC rules as reflected in the FCC's USF/ICC Transformation Order, not under the FCC rules that were effective at the time of issuance of the Interim Order, but are no longer in effect;
- (7) PlatinumTel has availed itself of the blanket facilities forbearance provided in the Lifeline Reform Order, and thus may operate as a Lifeline-only ETC in Illinois;
- (8) PlatinumTel shall be bound in Illinois by the terms of its Compliance Plan, regardless of whether it asserts that it provides facilities based or non-facilities-based service in Illinois.

IT IS THEREFORE ORDERED that PlatinumTel has provided supported services pursuant to the Commission's Order dated November 24, 2009, "either using its own facilities or a combination of its own facilities and resale of another carrier's services" pursuant to §214(e)(1) of the 1996 Act and §54.201(d) of the FCC's rules effective at the time of the Interim Order.

By Order of the Commission this 10th day of July, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman