

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Petition for designation as eligible telecommunications carrier (ETC) by Sun-Tel USA, Inc. | DOCKET NO. 100124-TX<br>ORDER NO. PSC-10-0634-PAA-TX<br>ISSUED: October 25, 2010 |
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The following Commissioners participated in the disposition of this matter:

NANCY ARGENZIANO, Chairman  
LISA POLAK EDGAR  
NATHAN A. SKOP  
ART GRAHAM  
RONALD A. BRISÉ

NOTICE OF PROPOSED AGENCY ACTION  
ORDER GRANTING ETC STATUS TO SUN-TEL USA, INC.

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

**I. Case Background**

Sun-Tel USA, Inc. (Sun-Tel) is a Florida corporation organized on March 12, 1999, with its headquarters in Jacksonville, Florida. The company was granted certification to operate as a Competitive Local Exchange Company (CLEC) in Florida on August 30, 1999, by Order No. PSC-99-1679-CO-TX.

On March 12, 2010, Sun-Tel petitioned the Florida Public Service Commission (Commission) for landline eligible telecommunications carrier (ETC) designation in the State of Florida. In its petition, Sun-Tel requested that it be granted ETC status in 86 non-rural centers in the BellSouth/AT&T (AT&T) service territory for purposes of receiving federal universal service support. Sun-Tel states that it is only seeking low-income support, and will not be requesting high-cost support from the federal Universal Service Fund (USF).

Sun-Tel states that it provides local exchange and exchange access service using a combination of resale and unbundled network elements (UNEs) obtained through an Interconnection Agreement with AT&T that allows end-to-end switching delivery of calls. Sun-

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Tel signed an applicant certification attesting that it will follow all Florida Statutes, Florida Administrative Rules, FPSC Orders, Federal Communications Commission (FCC) Rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding Universal Service, ETCs, Link-Up, Lifeline, and toll limitation service. (Attachment A)

Sun-Tel has had two regulatory compliance issues addressed by this Commission. In 2003, the Commission ordered Sun-Tel to pay past due Regulatory Assessment Fees (RAFs), statutory penalties, interest charges, and a \$500 penalty for failure to comply with Section 364.336, Florida Statutes (F.S.), and Rule 25-4.0161, Florida Administrative Code (F.A.C.).<sup>1</sup> Similarly, in 2008, Sun-Tel failed to comply with Section 364.336, Florida Statutes, and Rule 25-4.0161, F.A.C., regarding payment of its RAFs resulting in the assessment of a penalty and cost of collection totaling \$1,000.<sup>2</sup>

As of June 18, 2010, Sun-Tel states that it serves 486 residential customers in Florida. We have authority under Section 364.10(2), F.S., to decide a petition by a CLEC seeking designation as an ETC pursuant to 47 C.F.R. § 54.201.

## **II. Discussion of Issues**

Pursuant to Federal Statute, state commissions have the primary responsibility to designate providers as ETCs.<sup>3</sup> Designation as an ETC is required in order for a provider to be eligible to receive monies from the federal USF. Section 254(e) of the Telecommunications Act of 1996 (Act) provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific federal universal service support.”<sup>4</sup> According to Section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal Universal Service mechanisms throughout its designated service area. Further, 47 C.F.R. 54.405(b) specifies that ETCs must publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

### ETC Certification Requirements

The Code of Federal Regulations addresses a state commission’s responsibilities related to an ETC designation:<sup>5</sup>

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<sup>1</sup> See Docket No. 030622-TX, In re: Cancellation by Florida Public Service Commission of CLEC Certificate No. 7126 issued to Sun-Tel USA, Inc. for violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies., Order No. PSC-03-1129-PAA-TX, issued October 9, 2003, and Order No. PSC-03-1233-CO-TX, issued October 31, 2003.

<sup>2</sup> See Docket No. 080441-TX, In re: Compliance investigation of CLEC Certificate No. 7126, issued to Sun-Tel USA, Inc., for apparent second-time violation of Rule 25-4.0161, F.A.C., Regulatory Assessment Fees; Telecommunications Companies., Order No. PSC-08-0568-PAA-TX, issued September 3, 2008, and Order No. PSC-09-0196-CO-TX, issued March 31, 2009.

<sup>3</sup> 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b).

<sup>4</sup> 47 U.S.C. § 254(e)(2).

<sup>5</sup> 47 C.F.R. § 54.201(c).

Upon request and consistent with the public interest, convenience, and necessity, the state commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the state commission, so long as each additional requesting carrier meets the requirements of paragraph (d) of this section. Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the state commission shall find that the designation is in the public interest.

To qualify as an ETC, a carrier must provide nine services identified in 47 CFR 54.101. The services are:

- 1) Voice grade access to the public switched network: Voice grade access is defined as a functionality that enables a user of telecommunications services to transmit voice communications, including signaling the network that the caller wishes to place a call, and to receive voice communications, including receiving a signal indicating there is an incoming call.
- 2) Local Usage: Local usage indicates the amount of minutes of use of exchange service, provided free of charge to end users.
- 3) Dual-tone multi-frequency signaling or its functional equivalent: Dual-tone multi-frequency ("DTMF") is a method of signaling that facilitates the transportation of signaling through the network, thus shortening call set-up time.
- 4) Single-party service or its functional equivalent: Single-party service is telecommunications service that permits users to have exclusive use of a wireline subscriber loop or access line for each call placed, or in the case of wireless telecommunications carriers which use spectrum shared among users to provide service, a dedicated message path for the length of a user's particular transmission.
- 5) Access to emergency services: Access to emergency services includes access to services, such as 911 and enhanced 911, provided by local governments or other public safety organizations.
- 6) Access to operator services: Access to operator services is defined as access to any automatic or live assistance to a consumer to arrange for billing and/or completion of a telephone call.
- 7) Access to interexchange service: Access to interexchange service is defined as the use of the loop, as well as that portion of the switch that is paid for by the end user, or the functional equivalent of these network elements in the case of a wireless carrier, necessary to access an interexchange carrier's network.

- 8) Access to directory assistance: Access to directory assistance is defined as access to a service that includes, but is not limited to, making available to customers, upon request, information contained in directory listings.
- 9) Toll limitation for qualifying low-income consumers: Toll limitation or blocking restricts all direct-dial toll access.

In addition to providing the above services, 47 CFR 54.405(b) specifies that ETCs must publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.

#### Additional ETC Certification Requirements

In addition to requiring the above services, the FCC, on March 17, 2005, issued a Report and Order that established additional criteria that all ETC applicants must satisfy in order to be granted ETC status by the FCC.<sup>6</sup> In this Order, the FCC determined that an ETC applicant must also demonstrate:

- 1) Commitment and ability to provide the supported services throughout the designated area.
- 2) Ability to remain functional in emergency situations.
- 3) Ability to satisfy consumer protection and service quality standards.
- 4) Provision of local usage comparable to that offered by the incumbent LEC.
- 5) Acknowledgement that the applicant may be required by the FCC to provide equal access if all other ETCs in the designated service area relinquish their designations pursuant to Section 214(e)(4) of the Act.

The FCC encouraged states to also adopt these criteria, and this Commission has done so in Docket No. 010977-TL (State certification of rural telecommunications carriers pursuant to 47 C.F.R. 54.314), by Order No. PSC-05-0824-TL, issued August 15, 2005.

#### Public Interest Determinations

Under Section 214 of the Act, the FCC and state commissions must determine that an ETC designation is consistent with the public interest, convenience and necessity for rural areas. They also must consider whether an ETC designation serves the public interest consistent with Section 254 of the Act. Congress did not establish specific criteria to be applied under the public interest tests in Sections 214 or 254. The public interest benefits of a particular ETC designation

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<sup>6</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46, Adopted: February 25, 2005, Released: March 17, 2005.

must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.<sup>7</sup> We have determined that before designating a carrier as an ETC, we shall make a affirmative determination that such designation is in the public interest, regardless of whether the applicant seeks designation in an area served by a rural or non-rural carrier.<sup>8</sup>

Beyond the principles detailed in the Act, the FCC and state commissions have used additional factors to analyze whether the designation of an ETC is in the public interest. A rigorous ETC designation process ensures that only fully qualified applicants receive designation as ETCs and that all ETC designees are prepared to serve all customers within the designated service area.

Additionally, we find it appropriate that if there is a future change of company ownership, the new owners shall be required to file a petition with us and make a showing of public interest to maintain the company's ETC designation. This will ensure that only carriers that are financially viable, likely to remain in the market, willing and able to provide the supported services throughout the designated service area, and able to provide consumers an evolving level of universal service are designated as ETCs.

#### Additional ETC Requirements

##### Transitional Lifeline

Transitional Lifeline requires that ETCs offer discounted residential basic local telecommunications service at 70 percent of the residential local telecommunications service rate for any Lifeline subscriber who no longer qualifies for Lifeline. A Lifeline subscriber who requests such service receives the discounted price for a period of one year after the date the subscriber ceases to be qualified for Lifeline. To comply with the requirement of Transitional Lifeline, Sun-Tel stated that it will provide a 30 percent monthly discount off its non-discounted Lifeline rate plan for 12 months to customers no longer qualifying for Lifeline.

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<sup>7</sup> In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Order FCC 05-46 (¶40), Adopted: February 25, 2005, Released: March 17, 2005.

<sup>8</sup> See Docket No. 090245-TP, In re: Petition for limited designation as eligible telecommunications carrier (ETC) by Virgin Mobile USA, L.P., Order No. PSC-10-0323-PAA-TP, issued May 19, 2010, p. 8; See Docket No. 090337TX, In re: Petition for designation as eligible telecommunications carrier (ETC) by Easy Telephone, Inc., Order No. PSC-10-0125-PAA-TX, issued March 2, 2010, p. 4; See Docket No. 080169-TX, In re: Application for designation as eligible telecommunications carrier (ETC) by Express Phone Service, Inc., Order No. PSC-08-0836-PAA-TX, issued December 24, 2008, p. 4.

### Lifeline Advertising

In paragraph thirteen of its petition, Sun-Tel states that it will advertise the availability of Lifeline in newspapers, TV, and direct mail as required by Section 214(e)(1)(B) of the Act.<sup>9</sup> Sun-Tel also states that it will provide information about Lifeline availability through community partnerships and work with social service groups that interface with Lifeline-eligible customers. By doing this, Sun-Tel explains that more low-income Florida citizens will be made aware of the opportunities afforded to them under the Lifeline and Link-Up programs and will be able to take advantage of those cost saving opportunities by subscribing to Sun-Tel's service.

### Facilities Requirement

In accordance with 47 C.F.R. 54.201(d)(1), a company must offer the services that are supported by the federal universal support mechanisms either using its own facilities or a combination of its own facilities and resale of another carrier's services. In paragraph six of its petition, Sun-Tel states that it offers all of the supported services enumerated under Section 254(c) of the Act using facilities obtained as UNEs. Section 54.201(f), C.F.R., states that the term "own facilities" includes facilities obtained as unbundled network elements.

Rule 25-4.0665, Florida Administrative Code, requires ETCs offering Link-Up and Lifeline service to submit quarterly reports to this Commission no later than 30 days following the ending of each quarter. The quarterly reports must include the following data:

- 1) The number of Lifeline subscribers, excluding resold Lifeline subscribers, for each month during the quarter.
- 2) The number of subscribers who received Link-Up for each month during the quarter.
- 3) The number of new Lifeline subscribers added each month during the quarter.
- 4) The number of transitional Lifeline subscribers who received discounted service for each month during the quarter.
- 5) The number of residential access lines with Lifeline service that were resold to other carriers each month during the quarter.

Sun-Tel shall also be required to submit the number of UNEs purchased from AT&T for each month during the quarter when it files its quarterly reports. This will allow our staff to confirm that Sun-Tel is following FCC rules which require that an ETC must offer the services that are supported by the federal universal support mechanisms either using its own facilities or a

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<sup>9</sup> See 47 U.S.C. Section 214(e)(1)(B)

combination of its own facilities and resale of another carrier's services.

### Sun-Tel's Petition

Sun-Tel is requesting that it be granted landline ETC status throughout 86 non-rural wire centers of AT&T (Attachment B) for the purpose of receiving federal universal service support. The company maintains that it is only seeking low-income support, and it is not requesting high-cost support from the federal USF. Sun-Tel's purpose in requesting ETC status in Florida is to provide Lifeline and Link-Up services over landline access lines.

Sun-Tel has acknowledged the requirements of the Florida Lifeline program, and it has agreed to adhere to the program which provides qualified customers a total of \$13.50 in Lifeline assistance credits consisting of: \$6.50 in federal subscriber line charges, \$1.75 in federal support for states that have approved the credit, and \$1.75 which is a 50 percent match of federal support for having a state Lifeline program requiring a \$3.50 credit under the Florida eligibility criteria. Sun-Tel indicates that it will provide the \$3.50 credit to qualified clients, advertise the availability of Lifeline, and begin offering these services within 60 days of receiving ETC status.

Sun-Tel states that it can provide local exchange and exchange access services using a combination of resale and UNEs. Federal rules do not require companies to lease UNEs prior to ETC designation. However, Federal rules do require that ETCs provide local exchange and exchange access services using its own facilities or a combination of resale and UNEs prior to requesting reimbursement from the USF.

Sun-Tel has also indicated that its accounts with the FCC and the Universal Service Administrative Company (USAC) are current, and it is not aware of any outstanding complaints or violations with either entity. As part of the petition process, Sun-Tel has agreed to abide by our rules pertaining to the Lifeline and Link-Up programs. Sun-Tel commits to use federal universal service support only for the provision of services for which the support is intended.

We reviewed Sun-Tel's payment history of regulatory assessment fees, consumer complaint incidents and the timely resolution of those complaints, financial statements, and the company's status with the Florida Department of State Division of Corporations, among other sources. Sun-Tel appears to be in good standing with this Commission.

### **III. Decision**

Based on our review, along with Sun-Tel's commitment to abide by both state and federal rules and procedures, we find that Sun-Tel's petition for landline ETC designation is in the public interest and hereby approved. If Sun-Tel should decide in the future to seek High Cost universal service funds, ETC status in rural areas, or ETC designation as a wireless ETC, it shall be required to file a petition and make a showing that it would be in the public interest to grant such a request. Our staff shall continue the necessary oversight to ensure that Sun-Tel, along with all other ETCs in Florida, are upholding these principles and attaining the goals and objectives of both the state and federal universal service programs. Therefore, we find it

appropriate that Sun-Tel be granted ETC landline designation status in the 86 AT&T wire centers listed in Attachment B.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Sun-Tel USA, Inc. be granted landline eligible telecommunications carrier designation status in the 86 non-rural AT&T wire centers listed in Attachment B. It is further

ORDERED that if there is a future change of company ownership, the new owners shall file a petition and make a showing of public interest to maintain the company's ETC designation. It is further

ORDERED that Sun-Tel USA, Inc. shall submit the number of UNEs purchased from AT&T for each month during the quarter when it files its quarterly reports with this Commission. It is further

ORDERED that if no person whose substantial interests are affected files a protest to our Proposed Agency Action within 21 days of the issuance of this Order, this docket shall be closed upon issuance of a Consummating Order. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective upon the issuance of a Consummating Order unless an appropriate petition, in the form provided by Rule 28-106.201, Florida Administrative Code, is received by the Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings" attached hereto.

By ORDER of the Florida Public Service Commission this 25th day of October, 2010.



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ANN COLE  
Commission Clerk

(SEAL)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing that is available under Section 120.57, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

The action proposed herein is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on November 15, 2010.

In the absence of such a petition, this order shall become final and effective upon the issuance of a Consummating Order.

Any objection or protest filed in this/these docket(s) before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

**APPLICANT CERTIFICATION**

State of Florida  
County of Duval

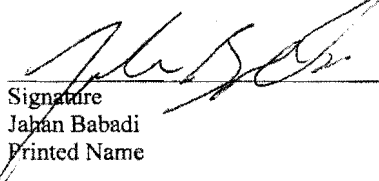
My name is Jahan Babadi, I am employed by Sun-Tel USA, Inc. , located at 5921 University Blvd W. Suite 2, Jacksonville, FL 32216 as its President. I am an officer of the Company and am authorized to provide the following certifications on behalf of the Company. This certification is being given to support the Eligible Telecommunications Carrier petition filed by my Company with the Florida Public Service Commission (PSC).

Company hereby certifies the following:

1. Company will follow all Florida Statutes, Florida Administrative Rules, and Florida PSC Orders relating to Universal Service, Eligible Telecommunications Carriers, and the Florida Link-Up and Lifeline Program.
2. Company will follow all FCC rules, FCC Orders, and regulations contained in the Telecommunications Act of 1996 regarding Universal Service, ETCs, Link-Up and Lifeline, and toll limitation service.
3. Company agrees that the Florida PSC may revoke a carrier's ETC designation for good cause after notice and opportunity for hearing, for violations of any applicable Florida Statutes, Florida Administrative Rules, Florida PSC Orders, failure to fulfill requirements of Sections 214 or 254 of the Telecommunications Act of 1996, or if the PSC determines that it is no longer in the public interest for the company to retain ETC designation.
4. Company understands that if its petition for ETC designation is approved, it will be for limited ETC designation to provide landline-only Link-Up, Lifeline, and toll-limitation service, and the Company will be eligible only to receive low-income support from the Universal Service Fund.
5. Company understands that if its petition for ETC designation is found to be in the public interest and approved by the PSC, it is based upon the information provided to the PSC in its petition. If there is a future change of company ownership, the company understands that the new owners must file a petition with the PSC prior to the change of ownership and make a showing of public interest to maintain the ETC designation.
6. Company understands that it may only receive reimbursement from the Universal Service Administrative company (USAC) for active customer Link-Up and Lifeline access lines which are provided using its own facilities or a combination of its own facilities and access lines obtained as wholesale local platform lines (formerly UNE lines) from another carrier. The Company shall not apply to USAC for reimbursement of any Link-Up and Lifeline access lines obtained from an underlying carrier which already receive a Lifeline and/or Link-Up credit provided by the underlying carrier.

7. Company understands that the PSC shall have access to all books of account, records and property of all eligible telecommunications carriers.
8. Company understands that low income support reimbursed by USAC for toll limitation service is available only for the incremental costs that are associated exclusively with toll limitation service.
9. Company agrees that upon request, it will submit to the PSC a copy of Form 497 forms filed with USAC to:  
Florida Public Service Commission  
Division of Regulatory Analysis, Market Practices Section  
2540 Shumard Oak Drive  
Tallahassee, Florida 32399-0850
10. Company understands that in accordance with the Florida Lifeline program, eligible customers will receive a \$13.50 monthly discount on their phone bills, \$3.50 of which is provided by the ETC, and \$10.00 of which is reimbursable from the Federal Universal Service Fund.

**I am aware that pursuant to Section 837.06, F.S., whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree.**

  
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Signature  
Jahan Babadi  
Printed Name

September, 27, 2010  
Date

Business Address:  
5921 University Blvd. W.  
Suite 2  
Jacksonville, FL 32215

Florida Wire Centers

Florida Wire Centers  
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| BCRTFLBT | BCRTFLSA | JPTRFLMA |
| BCRTFLMA | BLGLFLMA | KYLRFLLS |
| DYBHFLFN | BYBHFLMA | KYLRFLMA |
| FTLDFLS2 | CCBFFLA1 | LKMRFLE  |
| FTLDFLCR | CCBHFLMA |          |
| FTLDFLCY | COCOFLMA |          |
| FTLDFLMR | COCOFLME |          |
| FTLDFLQA | DBRYFLDL |          |
| FTLDFLSF | DBRYFLMA |          |
| FTLDFLSG | DELDFLMA |          |
| FTLDFLSU | DLBHFLKP |          |
| HLWDFLHA | DLBHFLMA |          |
| HLWDFLMA | DRBHFLMA |          |
| JCBHFLSP | DYBHFLMA |          |
| JCVLFLCL | DYBHFLQB |          |
| JCVLFLFC | DYBHFLQS |          |
| JCVLFLJT | DYBHFLPO |          |
| JCVLFLSM | EGLLFLBG |          |
| KYWSFLMA | EGLLFLIH |          |
| MIAMFLAE | FLBHFLMA |          |
| MIAMFLAP | FRBHFLFP |          |
| MIAMFLBA | FTLDFLJA |          |
| MIAMFLBC | FTLDFLPL |          |
| MIAMFLBR | FTLDFLWN |          |
| MIAMFLDB | GLBRFLMC |          |
| MIAMFLFL | GSVLFLMA |          |
| MIAMFLGR | GSVLFLNW |          |
| MIAMFLIC | HBSDFLMA |          |
| MIAMFLKE | HLWDFLPE |          |
| MIAMFLME | HLWDFLWH |          |
| MIAMFLNM | HTISFLMA |          |
| MIAMFLPB | ISLMFLMA |          |
| MIAMFLPL | JCBHFLAB |          |
| MIAMFLWD | JCBHFLMA |          |
| MIAMFLWM | JCVLFLAR |          |
| NDADFLAC | JCVLFLBW |          |
| NDADFLOL | JCVLFLIA |          |
| ORLDFLMA | JCVLFLNO |          |
| PMBHFLNP | JCVLFLRV |          |
| PMBHFLTA | JCVLFLSJ |          |
| WPBHFLAN | JCVLFLWC |          |