

## BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

**IN THE MATTER OF CUSTER TELEPHONE )  
BROADBAND SERVICES LLC'S ) CASE NO. CTB-T-21-01  
APPLICATION FOR EXPANSION OF ITS )  
ELIGIBLE TELECOMMUNICATIONS )  
CARRIER DESIGNATED SERVICE AREA ) ORDER NO. 35039  
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On January 29, 2021, Custer Telephone Broadband Services LLC (“Company”) applied to expand its designated service area as an Eligible Telecommunications Carrier (“ETC”).

On February 19, 2021, the Commission issued a Notice of Application and Modified Procedure, setting comment deadlines. Order No. 34931. Commission Staff filed comments; no other comments were received. The Commission now approves the Company’s Application.

### **BACKGROUND**

Under the federal Telecommunications Act of 1996 (“Federal Act”), a carrier designated as an ETC is eligible to receive federal support from the federal Universal Service Fund (USF).<sup>1</sup> 47 U.S.C. § 214(e). This Commission has the authority, under the Federal Act, to grant ETC designations within Idaho. 47 U.S.C. § 214(e)(2). Authority for the Commission to designate ETC status is also provided in Idaho law—the Idaho Telecommunications Act of 1988 (Idaho Act)—and expounded upon in prior Commission orders. *See Idaho Code §§ 62-610D(1), 62-615(1); Order No. 29841.* Under this authority, this Commission has granted ETC designations to numerous carriers in Idaho, including wireless carriers. *See e.g., Order Nos. 32586, 32645, and 34163.*

To qualify as an ETC, an applicant must satisfy several requirements established in federal and state law. 47 U.S.C. § 214(e); Order No. 29841. The Federal Act requires the applicant

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<sup>1</sup> The FCC established the federal USF with the intent to make adequate, efficient communications available nationwide, at reasonable charges. *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 (“Lifeline and Link Up Reform Order”)* 27 F.C.C.R. 6656, at 6660-62 (Feb. 6, 2012); 47 U.S.C. § 254(b). Lifeline is a program supported by the USF that provides monthly discounts to eligible low-income subscribers to maintain access to communications networks. *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656 at 6662-63. Idaho has an analogous state USF program, established in Idaho Code §§ 62-610 and 62-610A-610F, and a Lifeline program known as the Idaho Telecommunications Service Assistance Program (ITSAP).

to be a “common carrier,” offering services supported under Section 254(c) of the Federal Act “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(11), 214(e)(1)(A), 160(a)(3) (FCC has regulatory flexibility to forbear application where consistent with public interest). The Federal Act also requires the applicant “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B).

Under the Federal Act, state commissions are granted the authority to determine whether ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2). In evaluating this public interest element, this Commission has generally considered two factors. *See* Order Nos. 33002 at 2-3; and 33226 at 3. First, the Commission evaluates whether the carrier contributes to state assistance programs such as ITSAP and the Idaho Telecommunications Relay Services (TRS) program. *Id.*; *Idaho Code* § 61-1301. Second, the Commission considers if the designation is sought for only part of a rural telephone company’s study area, thus leaving some (perhaps less profitable) customers without service. *See* Order Nos. 33002 at 2-3; and 33226 at 3. Such practice, known as “cream skimming,” has been determined by this Commission to be contrary to the public interest. *Id.*

Federal regulations include these additional requirements, which the Commission has adopted by reference, in evaluating applications for ETC designation: (1) compliance with service requirements applicable to support received; (2) submission of a plan for proposed improvements or upgrades to the network (where applicable); (3) demonstrated ability to remain functional in emergencies without an external power source; (4) demonstrated willingness to satisfy consumer protection and service quality standards; (5) financial and technical capability to provide Lifeline service; and (6) notice to affected Tribes where designation is sought for any part of Tribal lands. *See* 47 C.F.R. § 54.202; No. 29841 at 5 and 16.

For applicants seeking Lifeline-only ETCs, the FCC has waived the requirement to submit a network improvement and upgrade plan, noting that such ETCs do not receive funds to improve or extend their networks. *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656, ¶ 386. This Commission—which requires a two-year network improvement plan and progress report (Order No. 29841 at 18) where applicable—has also waived the requirement where a Lifeline-only ETC is requested. Order No. 33002 at 3.

## **THE APPLICATION**

The Company is a wholly owned subsidiary of Custer Telephone Cooperative, Inc., which was a winning bidder in the Rural Digital Opportunity Fund (“RDOF”) Auction 904 to provide broadband service in specific Idaho census blocks. Custer Telephone Cooperative, Inc. assigned its winning bids to the Company on December 22, 2020. The Company asserted it is required under the RDOF Auction’s rules to seek and receive designation as an ETC in all census blocks in which it was awarded RDOF support.

In 2014, the Company sought designation as an ETC for the limited purpose of participating in Lifeline and receiving USF, low-income support in the Salmon, Idaho exchange area. *See Case No. CTB-T-14-01, Order No. 32989.* In Order No. 33002, the Commission designated the Company a Lifeline-only ETC. The Company seeks Commission approval “to expand its low-income/Lifeline-only ETC designation for purposes of receiving high-cost RDOF support in those areas located within its [existing service area] and to expand its [existing service area] to include those areas...for which it has been awarded RDOF support via Auction 904.” Application at 2. Exhibit 1 of the Application describes the service territory for which the Company will receive RDOF support, and Exhibit 2 is a map of the RDOF service territory overlaying the Company’s Lifeline-only ETC service territory approved in Case No. CTB-T-14-01. The Company asserted it meets the federal and state requirements for designation as an ETC and that designating the Company as an ETC is in the public interest.

## **STAFF COMMENTS**

Staff recommended approval of the Company’s Application. Staff’s analysis included a review of the Company’s compliance with the federal Telecommunications Act of 1996 and Federal Communications Commission regulations and orders. Staff also verified whether the Company meets the ETC eligibility and reporting requirements established by the Commission in Order No. 29841. Staff concluded “the Application demonstrates the Company’s commitment to fulfill the obligations of an ETC in Idaho.” Staff Comments at 4.

When analyzing whether a common carrier’s ETC application is in the public interest, Staff usually focuses on two considerations: whether the company will contribute to Idaho telecommunications funds, and whether the company’s application raises “cream-skimming”

concerns.<sup>2</sup> See Case No. VCS-T-18-01. Regarding the first consideration, Staff noted the Company participates and contributes to the appropriate Idaho telecommunications programs and complies with the Commission’s reporting requirements. Regarding the second consideration, Staff noted the “Company requests ETC designation for entire census blocks in areas that are unserved, high-cost areas of Idaho; therefore, no cream-skimming analysis is required.” Staff Comments at 3.

## **COMMISSION FINDINGS AND DECISION**

The Commission has authority to grant ETC designation to a telecommunications carrier under federal and state law. 47 U.S.C. § 214(e); and *Idaho Code §§ 62-610D, 62-615(1)*. The Commission has reviewed and considered the record, including Company’s Application and Staff Comments. We now make the following findings.

### ***A. Common Carrier, Own-Facilities, and Advertising***

We first address requirements listed in § 214(e)(1) of the Federal Act. That provision requires an applicant to be a “common carrier” offering services “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(11), 214(e)(1)(A), 160(a)(3). The Company noted that it uses its own facilities to provide services in its existing service territory, and that it “continues to meet all statutory and regulatory requirements for designation as an ETC.” Application at 2-3. Therefore, we find the Company will utilize its own facilities as a facilities-based provider. On the record before us, we find the Company is also a “common carrier.” See 47 U.S.C. § 153(11).

An applicant seeking ETC designation must also “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B). Based on the record and the Company’s assurances, we find this requirement to also be satisfied. See Application at 2.

### ***B. Public Interest and Related ETC Designation Requirements***

Under the Federal Act, state commissions shall determine whether granting the requested ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2).

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<sup>2</sup> “Cream skimming” occurs when a telecommunications carrier seeks ETC designation for only part of a rural telephone company’s study area, leaving less profitable customers without service.

First, the Company committed to offering broadband throughout the service area in which it will receive RDOF support. Application at 2. The Company will also offer Lifeline services in its service area. *See Id.*; Order No. 33002 (designating the Company a Lifeline-only ETC); 47 C.F.R. § 54.101(d). We find that the Company’s offering of these services in the auction-awarded service areas promotes the public interest because these services will deploy RDOF Auction funds to high-cost areas of Idaho which are unserved or underserved and provide investment in facilities and equipment in these areas. This deployment also furthers this Commission and the FCC’s goals of expanding the reach of digital connectivity to promote economic growth in rural areas.

We also consider whether the Company would contribute to the appropriate Idaho funds. Order Nos. 33002 at 2-3, 33226 at 3. Staff confirmed that the Company participates in the appropriate Idaho programs and complies with the Commission’s annual reporting requirements. Staff Comments at 3. We find that the Company’s commitment to participating in the appropriate Idaho programs advances the public interest.

Next, we consider whether the Company is engaged in “cream skimming,” which we have found to be contrary to the public interest. Order Nos. 33002 at 2-3, 33226 at 3. Because the Company requested ETC designation for entire census blocks in unserved, high-cost areas, no cream-skimming analysis is required.

We therefore find that granting the Company high-cost ETC designation in the applied-for census blocks satisfies the public interest requirements.

### ***C. Remaining Requirements***

Finally, we address the six remaining requirements from federal regulations and Order No. 29841. *See* 47 C.F.R. § 54.202.

(1) Service Requirements for Support Received. We find the Company has sufficiently committed to meeting these requirements. *See* Application at 4.

(2) Plan for Proposed Improvements or Upgrades to the Network. The FCC waived the requirement for a winning bidder to file a five-year plan as part of the ETC designation process, citing its heightened oversight of auction winners. *WCB Reminds Connect Am. Fund Phase II Auction Applicants of the Process for Obtaining A Fed. Designation As an Eligible Telecommunications Carrier*, 33 FCC Rcd. 6696 (2018). Considering the FCC’s heightened

oversight, we waive in this proceeding our requirement that the Company's ETC Application include a two-year network improvement plan. *See* Order No. 29841 at 8.

(3) Ability to Remain Functional in Emergencies. We find the Company has demonstrated sufficient compliance with this requirement. *See* Application at 5; Order No. 33002 at 3.

(4) Willingness to Satisfy Consumer Protection and Service Quality Standards. We are satisfied with the Company's assurances as to this requirement. Application at 5; Order No. 33002 at 3-4.

(5) Financial and Technical Capability. Based on the Company's assurances and its track record as a Lifeline-only ETC, we also find this requirement to be satisfied. Application at 5.

(6) Notice to Affected Tribes. We find the Company is not seeking ETC designation for any part of tribal lands. Therefore, no tribes will be affected if the Company's Application is granted. *See* Application, Exhibit 1; *see* 47 C.F.R. § 54.202; Order No. 29841 at 14.

Based on the above findings, we conclude that the Company has satisfied the federal and state requirements for an ETC designation. We therefore designate the Company a high-cost ETC for the census blocks where the Company will receive RDOF support. *See* Application, Exhibits 1 and 2.

## **ORDER**

IT IS HEREBY ORDERED that the Company's Application for designation as an ETC for the purpose of receiving high-cost support in the service area described in Exhibit 1 of the Company's Application is granted.

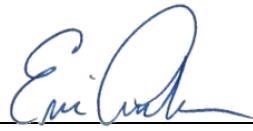
THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code § 61-626.*

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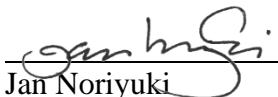
DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 6<sup>th</sup> day  
of May 2021.

  
PAUL KJELLANDER, PRESIDENT

  
KRISTINE RAPER, COMMISSIONER

  
ERIC ANDERSON, COMMISSIONER

ATTEST:

  
Jan Noriyuki  
Commission Secretary

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