

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF CENTURYLINK)
COMMUNICATIONS, LLC’S APPLICATION) CASE NO. QCC-T-21-01
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER)
) ORDER NO. 35046
)

On March 12, 2021, CenturyLink Communications, LLC (“Company”) applied-for designation as an Eligible Telecommunications Carrier (“ETC”) in Idaho.

On April 6, 2021, the Commission issued a Notice of Application and Modified Procedure, setting comment deadlines. Order No. 34987. 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).¹ 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 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

¹ 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).

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 the following 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’s ultimate parent company, Lumen Technologies, Inc., was a winning bidder in the Rural Digital Opportunity Fund (“RDOF”) auction to provide voice and broadband

services in select Idaho census blocks. The Company asserted that Lumen Technologies, Inc. assigned Qwest Corporation (the Company's parent) the RDOF support for winning bids in Idaho. While the Commission already has designated Qwest Corporation's affiliates as ETCs for most of the awarded census blocks, 161 census blocks ("Incremental CBs") fall outside the affiliates' authorized service areas. The Company is a Commission-certified telephone corporation in the Incremental CBs but is not designated as ETC in these areas. The Company therefore seeks ETC designation in the Incremental CBs. *See* Application, Exhibit B (listing the Incremental CBs).

The Company asserted it meets all federal and state requirements for designation as an ETC and argued that designating the Company as an ETC is in the public interest. The Company asked that the Commission grant it ETC status by June 1, 2021.

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. *See* Case No. VCS-T-18-01. Regarding the first consideration, Staff noted the Company confirmed in its Application that it will comply with the reporting and contribution requirements outlined in Order No. 29841. 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 considered the record in this case, including Company's Application and Staff Comments. We now make these 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 stated it will satisfy this requirement by offering the supported services “using its own facilities or a combination of [the Company’s] own facilities and resale of another carrier’s or affiliate’s facilities and services.” Application at 4. 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 4-5.

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).

First, the Company committed to offering voice and broadband services throughout the service area in which it will receive RDOF support. Application at 5-6. The Company also committed to offering Lifeline services in its service area. *Id.*; *See* 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. In pursuit of deployment, the Company has committed to satisfying all applicable state and federal requirements related to consumer protection and service quality standards. Application at 6.

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 will participate in the appropriate Idaho programs and comply 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 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. Application at 5-6.

(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. Application at 6-7.

(4) Willingness to Satisfy Consumer Protection and Service Quality Standards. We are satisfied with the Company's assurances as to this requirement. *Id.* at 6.

(5) Financial and Technical Capability. Based on the Company's assurances and description of its financial and technical qualifications, as well as how it interacts and partners with its parent company, we also find this requirement to be satisfied. *Id.* at 1-4.

(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, Exhibits A and B; *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 an ETC for the Incremental CBs listed in Exhibit B of the Company's Application.

ORDER

IT IS HEREBY ORDERED that the Company's Application for designation as an ETC in the Incremental CBs listed in Exhibit B 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.

DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this 18th day of May 2021.



PAUL KJELLANDER, PRESIDENT

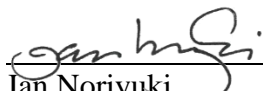


KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Jan Noriyuki
Commission Secretary

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