

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Telecommunications Carriers Eligible for
Universal Service Support
Connect America Fund
WC Docket No. 09-197
WC Docket No. 10-90

ORDER

Adopted: March 28, 2019

Released: March 28, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) designates eight petitioners (identified in the Attachment to this Order) as eligible telecommunications carriers (ETCs) in eligible high-cost areas within the specified states, conditioned upon and limited to petitioners' authorization to receive Connect America support awarded through the Connect America Fund Phase II auction (Auction 903) and effective only upon such authorization. In addition, for those three petitioners that also request designation as ETCs outside of areas eligible for Auction 903 funding authorization (as indicated in the Attachment), we designate the petitioners as ETCs only for the purpose of becoming eligible to receive Lifeline support. In making these designations, the Bureau finds that each of these petitioners meets the eligibility requirements to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Commission rules. The Bureau also waives, on its own motion, the requirement that these petitioners submit proof of their ETC designation on or before February 25, 2019. The Bureau will release separate public notices regarding Auction 903 funding authorizations.

II. BACKGROUND

A. Connect America Fund Phase II Auction 903 Support

2. Auction 903 is one part of a multi-step process to comprehensively reform and modernize the high-cost component of the Universal Service Fund (USF). At the conclusion of this auction, 103 bidders won \$1.49 billion in support over 10 years to provide fixed broadband and voice services to over 700,000 locations in high-cost areas in 45 states. In order to become authorized to receive support,

1 See Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257 (2018) (Auction 903 Closing Public Notice); see also Connect America Fund et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (Phase II Auction Order).

2 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

3 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, 17725, para. 156 (2011), aff'd sub nom., In re: FCC 11-161, 753 F.3d 1015 (10th Cir. 2014).

4 See Auction 903 Closing Public Notice, 33 FCC Rcd at 8257.

winning bidders must complete a post-auction application (long-form application) designed to ensure that winning bidders are technically and financially qualified to offer supported services and have met all regulatory prerequisites and conditions for receiving USF support.<sup>5</sup> As part of this application, Auction 903 winning bidders must certify that their ETC designation covers all relevant census blocks and submit supporting documentation, including an ETC designation order.<sup>6</sup>

### **B. Federal Universal Service Lifeline Support**

3. The Lifeline – or low-income – program provides support to reimburse providers for offering supported services at discounted prices to qualifying low-income households, with more support directed at such households in Tribal lands.<sup>7</sup> Eligible services include voice and broadband Internet access service (BIAS) meeting certain requirements.<sup>8</sup> In a given geographic area, a carrier may be designated as an ETC and become eligible to receive funding from both the high-cost and low-income components of the USF, or it may be designated as a Lifeline-only ETC that is only eligible to receive USF support from the Lifeline program.<sup>9</sup> Where, as here, a carrier seeks designation to serve areas for which Auction 903 funding is unavailable, the Bureau will treat the petition as a Lifeline-only petition.<sup>10</sup> All ETCs are obligated to offer Lifeline-supported services throughout their designated service areas.<sup>11</sup>

### **C. Requirements for FCC ETC Designation**

4. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”<sup>12</sup> Congress gives primary authority for ETC designations to state commissions.<sup>13</sup> The FCC has authority only when “a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>14</sup> The petitioning carrier must demonstrate that the FCC has jurisdiction. It may do so by submitting an “affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission’s jurisdiction.”<sup>15</sup>

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<sup>5</sup> 47 CFR § 1.21004; *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 144.

<sup>6</sup> 47 CFR § 54.315(b)(5) (requiring winning bidders to submit within 180 days of the announcement of winning bids, a certification of ETC designation in all relevant areas and supporting documentation for that certification); *Connect America Fund Phase II Auction Scheduled for July 24, 2018; Notice and Filing Requirements and Other Procedures for Auction 903*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 1428, 1519, para. 310 (2018) (*Auction 903 Procedures Public Notice*); see also *Phase II Auction Order*, 31 FCC Rcd at 5999, 6002-05, paras. 141, 149-56.

<sup>7</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6663, para. 14 (2012).

<sup>8</sup> *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3972, paras. 30-32 (2016) (*Lifeline Modernization Order*).

<sup>9</sup> 47 CFR § 54.201(a)(1); *id.* § 54.101(d); *Lifeline Modernization Order*, 31 FCC Rcd at 3974, 4074-75, paras. 35, 311-12 (requiring all high-cost recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

<sup>10</sup> *Wireline Competition Bureau Seeks Comment on Petitions for Designation as an Eligible Telecommunications Carrier for the Purpose of Becoming Eligible to Receive Connect America Fund Phase II Support*, WC Docket No. 09-197, Public Notice, 33 FCC Rcd 9764, 9767 (2018).

<sup>11</sup> See 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101(a) (as amended by the *Lifeline Modernization Order*); see also *Lifeline Modernization Order*, 31 FCC Rcd at 3972, 4071-72, paras. 30-32, 297, 299-301.

<sup>12</sup> 47 U.S.C. § 254(e).

<sup>13</sup> *Id.* § 214(e)(2).

<sup>14</sup> *Id.* § 214(e)(6).

Alternatively, to the extent that the petition covers Tribal Lands, and the petitioner has not taken any action at the state-level to initiate ETC proceedings, the petitioner may make an affirmative showing of FCC jurisdiction under relevant law.<sup>16</sup> The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.<sup>17</sup>

5. A petition for ETC designation by the FCC must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) a certification that the petitioner offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services;<sup>18</sup> (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;<sup>19</sup> (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;<sup>20</sup> and (5) a certification that neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.<sup>21</sup>

6. In addition, petitioners must demonstrate their ability to meet certain service standards. A petitioner seeking an ETC designation must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) submit a five-year service plan (applicable only to high cost areas); (3) demonstrate its ability to remain functional in emergency situations; and (4) demonstrate its ability to satisfy applicable consumer protection and service quality standards.<sup>22</sup> An ETC seeking designation in areas eligible for Lifeline-only support (Lifeline-only designation) must also: (1) demonstrate its financial and technical capability to provide Lifeline-supported services in accordance with applicable Commission rules; and, (2) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers.<sup>23</sup>

7. For petitioners seeking ETC designations for the purpose of becoming authorized to receive Auction 903 support, the Bureau waived two of these requirements—i.e., that the petitioners submit a five-year service plan and proof of compliance with consumer protection and service quality

(Continued from previous page)

<sup>15</sup> See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000) (*2000 Tribal Order*); 47 U.S.C. § 214(e)(6).

<sup>16</sup> *Phase II Auction Order*, 31 FCC Rcd at 6004, para. 154 (quoting *2000 Tribal Order*, 15 FCC Rcd at 12214, para. 7); *2000 Tribal Order*, 15 FCC Rcd at 12268-69 para. 126; see also *id.* at 12218-19, paras. 17-18 (defining Tribal lands to include “reservation” and “near reservation,” as those terms are defined under BIA’s regulations); 25 CFR § 20.1(r), (v).

<sup>17</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

<sup>18</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

<sup>19</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

<sup>20</sup> An ETC’s “service area” is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC’s service area and an incumbent rural telephone company’s service area, the Commission has separately forbore from imposing such requirements on Auction 903 support recipients and Lifeline-only ETCs. See *Phase II Auction Order*, 31 FCC Rcd at 6006-6009, paras. 159-168; *Telecommunications Carriers Eligible for Support*, WC Docket Nos. 09-197 and 11-42, Memorandum Opinion and Order, 28 FCC Rcd 4859 (2013).

<sup>21</sup> 21 U.S.C. § 862; 47 CFR § 1.2002(a)-(b).

<sup>22</sup> See 47 CFR § 54.202(a).

<sup>23</sup> *Id.* § 54.202(a)(4)-(6).

standards—finding that the need for such requirements is obviated by specific service quality standards applicable to Auction 903 winning bid areas and specific reporting obligations relating to such standards.<sup>24</sup> Accordingly, the petitioners subject to this Order only need demonstrate their ability to meet applicable consumer protection and service quality standards for Lifeline-supported services in Lifeline-only eligible areas.

8. Prior to designating a carrier as an ETC pursuant to section 214(e)(6) of the Act, the Commission must determine whether such designation is in the public interest.<sup>25</sup> When making a public interest determination, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.<sup>26</sup> In the *Auction 903 ETC Public Notice*, the Bureau found that recipients of Phase II Auction support demonstrated their ability to offer service efficiently through the competitive bidding process and their ability to meet public interest obligations through their short- and long-form applications and thus, need not submit additional support in their petitions.<sup>27</sup> Accordingly, only those petitioners that seek designation in Lifeline-only eligible areas need demonstrate that their Lifeline-only ETC designations serve the public interest.

#### **D. Petitions for ETC Designation**

9. All petitioners that are the subject of this Order seek ETC designation to become eligible to receive Auction 903 support.<sup>28</sup> We specify on behalf of petitioners that all such designations will cover all CAF-eligible census blocks covered by the award (as published by the Commission on its website), regardless of any discrepancies in the description of such areas in individual petitions.<sup>29</sup> Three petitioners have also included in their service area descriptions areas adjacent to their CAF-eligible census blocks.<sup>30</sup> In such areas, the petitioners are only eligible to receive Lifeline support and can only receive a Lifeline-only designation to serve these areas.

10. The Bureau has released public notices soliciting comments on each of the petitions that are the subject of this Order.<sup>31</sup> No comments were filed.

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<sup>24</sup> *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 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699-6700 (WCB 2019) (*Auction 903 ETC Public Notice*).

<sup>25</sup> 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

<sup>26</sup> See, e.g., *Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

<sup>27</sup> *Auction 903 ETC Public Notice*, 33 FCC Rcd at 6700-6701.

<sup>28</sup> In the Attachment to this Order, the Bureau has summarized these awards, including the specific deployment obligations over the support term, the number of CAF-eligible census blocks included in the award, and the amount of the CAF awarded support (on an annual basis).

<sup>29</sup> See *Connect America Fund Phase II: Assignments - Assigned Census Blocks*, [https://auctiondata.fcc.gov/public/projects/auction903/reports/all\\_assigned\\_census\\_blocks](https://auctiondata.fcc.gov/public/projects/auction903/reports/all_assigned_census_blocks).

<sup>30</sup> EMPOWER Petition at 2-3, Ex. A2; Gibson Petition at 3, Ex. A2; PGEC Petition at 3, Ex. A2.

<sup>31</sup> *Wireline Competition Bureau Seeks Comment on Petitions for Designation as an Eligible Telecommunications Carrier for the Purpose of Becoming Eligible to Receive Connect America Fund Phase II Support*, Docket No. 09-197, Public Notice, DA 18-1019 (WCB rel. Oct. 3, 2018); *Wireline Competition Bureau Seeks Comment on Two Petitions for Designation as an Eligible Telecommunications Carrier for the Purpose of Becoming Eligible to Receive Connect America Fund Phase II Auction Support*, Docket No. 09-197, Public Notice, DA 19-22 (WCB rel. Jan. 29, 2019).

### III. DISCUSSION

11. We find that each of these petitioners satisfy the Commission's requirements for ETC designation. We therefore designate the petitioners as high-cost ETCs in the specified states, conditioned upon and limited to high-cost areas where they are authorized to receive Auction 903 support and effective only upon such authorization. In these areas, petitioners must meet Auction 903 requirements, Lifeline requirements, and other service obligations attendant to their high-cost designations, as specified in the Act and the Commission's rules.<sup>32</sup> In all other areas included in the petitions and not eligible for high-cost support, we designate the petitioners as Lifeline-only ETCs. In these areas, petitioners must offer Lifeline-supported services to low-income consumers consistent with the requirements of the Act and the Commission's rules and in accordance with all representations and commitments made in their ETC petitions.

#### A. Commission Authority

12. Each petitioner demonstrates that the Commission has the requisite authority to designate it as an ETC pursuant to section 214(e)(6) of the Act. Six petitioners have submitted affirmative statements from the relevant state commission declining to assert jurisdiction to designate the petitioner.<sup>33</sup> Seven of the petitioners (including all six petitioners submitting affirmative statements) also emphasize that the relevant state has codified rules specifically excluding from state regulatory authority, the broadband and voice services offered by the petitioners.<sup>34</sup> On these bases, we find that these petitioners have made a sufficient legal demonstration of FCC authority to decide these petitions.

13. We further find that the FCC has jurisdiction to designate NTUA Wireless as an ETC.<sup>35</sup> In 2014, the FCC exercised its authority to designate NTUA Wireless as an ETC for the entirety of the Navajo Nation (located in Arizona, New Mexico, and Utah) for purposes of becoming eligible to receive Tribal Mobility Fund Phase I support (where authorized) and Lifeline support.<sup>36</sup> In that order, the Bureau found that as a Tribally-owned carrier subject to the laws and jurisdiction of the Tribal authority of the Navajo Nation, NTUA Wireless was not subject to the relevant state's regulatory authority to designate ETCs.<sup>37</sup> NTUA Wireless now seeks to modify its ETC designation to make it eligible to receive Auction 903 support in relevant census blocks, all of which are located within the boundaries of the Navajo Nation. We note that no state commission has challenged the FCC's authority to so designate NTUA

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<sup>32</sup> 47 CFR § 54.202(a)(1)(i); *id.* § 54.101(d); *Lifeline Modernization Order*, 31 FCC Rcd at 3974, 4074-75, paras. 35, 311-12.

<sup>33</sup> BARConnects Petition at 3, Ex. B; EMPOWER Petition at 3, Ex. B; Gibson Petition at 4, Ex. B; HLConnect Petition at 3, Ex. B; ML Connect Petition at 3, Ex. B; PGEC Petition at 3, Ex. B.

<sup>34</sup> BARConnects Petition at 3; CVSI Petition at 3; EMPOWER Petition at 3; Gibson Petition at 3; HLConnect Petition at 3; ML Connect Petition at 3; PGEC Petition at 3-4; Tenn. Code Ann. § 65-5-203; VA Code Ann. § 56-1.3; *see also Auction 903 ETC Public Notice*, 33 FCC Rcd at 6697 ("If a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction.").

<sup>35</sup> NTUA Wireless was created through a partnership between the Navajo Tribal Utility Authority (NTUA) and Commnet Wireless LLC and is majority owned by NTUA, "a governmental non-profit enterprise established and Tribally-owned by the Navajo Nation." *NTUA ETC Designation Order*, 29 FCC Rcd at 1674-75, paras. 16.

<sup>36</sup> NTUA Wireless Petition at 3: *Petitions for Designation as an Eligible Telecommunications Carrier For Purposes of Participation in Tribal Mobility Fund Phase I, second Amendment to Petition of NTUA Wireless, LLC for Designation as an Eligible Telecommunications Carrier for Lifeline Service and for Conditional ETC Status to Participate in Tribal Mobility Fund Phase I (Auction 902) on the Navajo Nation*, WC Docket No. 09-197, WT Docket No. 10-208, 29 FCC Rcd 1669 (2014) (*NTUA Wireless ETC Designation Order*).

<sup>37</sup> NTUA Wireless Petition at 3; *NTUA Wireless ETC Designation Order*, 29 FCC Rcd at 1675, para. 16.

Wireless, in this proceeding or in prior proceedings.<sup>38</sup> Accordingly, we find that the FCC may designate NTUA Wireless as an ETC for purposes of eligibility for Auction 903 support.

## B. Eligibility Requirements

14. *Offering the Services Supported by the Universal Service Support Mechanisms.* We find that each of the petitioners establish through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.<sup>39</sup>

15. *Compliance with the Service Requirements Applicable Auction 903 Support.* We find that each of the petitioners establishes its ability to comply with service requirements applicable to the support that it receives.<sup>40</sup> This determination takes into account that, prior to being authorized to receive Auction 903 support, the petitioners must certify and demonstrate, as part of their short- and long-form applications, the technical and financial ability to provide voice and broadband services meeting or exceeding CAF Phase II standards,<sup>41</sup> certify their commitment to meeting relevant public interest obligations,<sup>42</sup> and certify their compliance with all statutory and regulatory requirements for receiving the universal service support.<sup>43</sup> Moreover, once authorized, the petitioners must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements will be met.<sup>44</sup>

16. *Compliance with Service Requirements Applicable to Lifeline Services.* Each of the petitioners commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.<sup>45</sup> For areas where the petitioners seek Lifeline-only designation, the petitioners specifically commit to meeting Lifeline consumer enforcement and certification standards and describe how they intend to meet such standards.<sup>46</sup> We emphasize that all ETCs receiving Lifeline support must report certain information to the Commission, USAC and the local regulatory authority, pursuant to section 54.422 of the Commission's rules.<sup>47</sup>

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<sup>38</sup> *NTUA Wireless ETC Designation Order*, 29 FCC Rcd at 1675, para. 16.

<sup>39</sup> BARConnects Petition at 4-5; CVSI Petition at 4-5; EMPOWER Petition at 4-5; Gibson Petition at 4-5; HLConnect at 4-5; ML Connect Petition at 3-5; NTUA Wireless Petition at 4-5; PGEC Petition at 4-5; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>40</sup> BARConnects Petition at 7; CVSI Petition at 6-7; EMPOWER Petition at 6-7; Gibson Petition at 7; HLConnect Petition at 6-7; ML Connect Petition at 6; NTUA Wireless Petition at 6; PGEC Petition at 6-7; 47 CFR §§ 54.101(d), 54.202(a)(1)(i).

<sup>41</sup> 47 CFR §§ 54.310(e)(1); 54.315(b)(2)(ii), (b)(2)(iv).

<sup>42</sup> *Id.* § 54.315(b)(2)(iii).

<sup>43</sup> *Id.* § 54.315(b)(2)(v).

<sup>44</sup> *Id.* § 54.313 (requiring annual report); *id.* § 54.310(c) (requiring build-out milestone reporting); *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40 (describing reporting obligations of Auction 903 support recipients).

<sup>45</sup> BARConnects Petition at 5; CVSI Petition at 5; EMPOWER Petition at 5; Gibson Petition at 3, 5; HLConnect Petition at 3, 5; ML Connect Petition at 2-3, 4; NTUA Wireless Petition at 5; PGEC Petition at 5.

<sup>46</sup> Supplement to Petition for Eligible Telecommunications Carrier Status at 3-5 (Feb. 22, 2019) (EMPOWER Supplement), <https://www.fcc.gov/ecfs/filing/10222813102052>; Supplement to Petition for Eligible Telecommunications Carrier Status at 3-5 (Mar. 11, 2019) (Gibson Supplement), <https://www.fcc.gov/ecfs/filing/10307378915498>; Supplement to Petition for Eligible Telecommunications Carrier Status at 3-5 (Feb. 22, 2019) (PGEC Supplement), <https://www.fcc.gov/ecfs/filing/1022292127609>; 47 CFR § 54.410 (setting forth the Commission's rules on subscriber eligibility determination and certification).

<sup>47</sup> 47 CFR § 54.422; *see also id.* § 54.410.

17. *Offering the Supported Services Using a Carrier's Own Facilities.* Each of the petitioners certifies that it is a facilities-based provider of broadband and voice services.<sup>48</sup>

18. *Advertising Supported Services.* Each of the petitioners commits to advertising the availability of the supported services and related charges using media of general distribution.<sup>49</sup> We emphasize that, as part of this commitment, ETCs must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.<sup>50</sup>

19. *Ability to Remain Functional in Emergency Situations.* Each of the petitioners has stated that it can remain functional in emergency situations. Each petitioner has stated that it has sufficient back-up power to ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.<sup>51</sup>

20. *Anti-Drug Abuse Act Certification.* Each of the petitioners has submitted a certification that satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.<sup>52</sup>

21. *Consumer Protection and Service Quality Standards in Lifeline-Only Eligible Areas.* Petitioners seeking a limited ETC designation for areas not eligible to receive high-cost support have committed to abiding by all applicable state and federal consumer protection and service quality standards, including specific obligations under the Act and its implementing rules.<sup>53</sup>

22. *Technical and Financial Ability to Offer Lifeline Services in Lifeline-Only Eligible Areas.* Petitioners seeking designation in areas where they are not eligible to receive high-cost support demonstrate the technical and financial ability to offer Lifeline-supported voice and broadband Internet access services in such areas.<sup>54</sup> This determination is informed by the technical and financial information filed by these petitioners in their Auction 903 applications for high-cost eligible areas contiguous with the Lifeline-only eligible areas.<sup>55</sup>

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<sup>48</sup> BARConnects Petition at 5; CVSI Petition at 6; EMPOWER Petition at 5; Gibson Petition at 5-6; HLConnect Petition at 5; ML Connect Petition at 5; NTUA Wireless Petition at 5; PGEC Petition at 5; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>49</sup> BARConnects Petition at 6; CVSI Petition at 6; EMPOWER Petition at 6; Gibson Petition at 5-6; HLConnect Petition at 5-6; ML Connect Petition at 5; NTUA Wireless Petition at 6; PGEC Petition at 6; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

<sup>50</sup> 47 CFR § 54.405.

<sup>51</sup> BarConnects Petition at 7; CVSI Petition at 5-6; EMPOWER Petition at 7; Gibson Petition at 7; HLConnect Petition at 7; ML Connect Petition at 6-7; NTUA Wireless Petition at 7-8; PGEC Petition at 7; 47 CFR § 54.202(a)(2).

<sup>52</sup> BarConnects Petition at 7; CVSI Petition at 7; EMPOWER Petition at 7; Gibson Petition at 8; HLConnect Petition at 7-8; ML Connect Petition at 7, Ex. C; NTUA Wireless Petition at 9; PGEC Petition at 7; 47 CFR § 1.2002.

<sup>53</sup> EMPOWER Supplement at 2-5; Gibson Supplement at 3-5; PGEC Supplement at 3-5; 47 CFR § 54.202(a)(3).

<sup>54</sup> EMPOWER Petition at 6; EMPOWER Supplement at 5; Gibson Petition at 6-7; Gibson Supplement at 5-6; PGEC Petition at 6-7; PGEC Supplement at 5-6; 47 CFR § 54.202(a)(4).

<sup>55</sup> 47 CFR § 54.315(a) (requiring applicants seeking to participate in Auction 903 to submit certifications and supporting information regarding their technical and financial ability to provide service); *id.* § 54.315(b)(2) (requiring further certifications and information in the long-form application regarding the winning bidders' technical and financial ability to provide service); *id.* § 54.310(e)(1) (providing that an applicant in the competitive bidding process must certify that it is financially and technically qualified to provide the services supported by Auction 903 in order to receive such support); *see Auction 903 Procedures Public Notice*, 33 FCC Rcd 1428.

23. *Terms and Conditions of Service Plans in Lifeline-only Eligible Areas.* Each of the petitioner seeking limited ETC designation in Lifeline-only eligible areas has sufficiently described the terms and conditions of service plans that it will make available to the public in such areas.<sup>56</sup>

### C. Public Interest Analysis

24. We conclude that the petitioners' participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. As noted above, ETC designations in areas where a petitioner is authorized to receive Auction 930 support serve the public interest. Through participation in Auction 903 bidding and application processes, the petitioners demonstrate that they can offer voice and broadband service in high-cost areas efficiently and at a price and quality comparable to the service offerings in more competitive areas.

25. Moreover, granting these petitions will serve the interests of low-income consumers by ensuring the availability of new, facilities-based Lifeline services at competitive prices in all areas where the petitioner provides service, not just in areas where they are eligible to receive Auction 903 support. Each of the petitioners have committed to offering competitive Lifeline-supported services. Petitioners seeking designation in Lifeline-only eligible areas have also demonstrated a commitment to preventing waste, fraud, and abuse by detailing specific customer education, certification, and verification procedures designed to ensure that Lifeline support is being used appropriately.<sup>57</sup> Given these commitments and associated representations, granting the ETC designations will help ensure increased consumer choice, affordability, and improved quality of service, particularly as many of these areas are currently unserved or underserved.

26. Accordingly, based on the information, representations, and certifications in their petitions, we find that the petitioners have met all applicable conditions and prerequisites for ETC designation and that conditionally granting these petitions serves the public interest.

### D. Regulatory Oversight

27. Under section 254(e) of the Act, each of these petitioners must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>58</sup> Under section 214(e) of the Act, each of the petitioners must provide supported services throughout its service area.<sup>59</sup> When authorized to receive high-cost support, petitioners must file an annual certification that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>60</sup> The Commission conditions future support awarded through the high-cost program on the filing of such certification.<sup>61</sup>

28. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.<sup>62</sup> In addition,

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<sup>56</sup> EMPOWER Supplement at 6, 9-10; Gibson Supplement at 6, 9-10; PGEC Supplement at 6, 10-11; 47 CFR § 54.202(a)(5),(6).

<sup>57</sup> EMPOWER Supplement at 7-11; Gibson Supplement at 7-11; PGEC Supplement at 7-11.

<sup>58</sup> 47 U.S.C. § 254(e).

<sup>59</sup> *Id.* § 214(e).

<sup>60</sup> 47 CFR § 54.314(b).

<sup>61</sup> *Id.*

<sup>62</sup> See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

the ETC must file annual reports that include, among other things, a certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.<sup>63</sup>

29. We find that reliance on petitioners' commitments to meet these and other regulatory requirements, as well as representations and commitments made in their petitions, is reasonable and consistent with the public interest and the Act. We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that petitioners satisfy their obligation under section 214(e) of the Act to provide supported services throughout their respective designated service areas.

30. The Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support the ETC receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas in which it is designated as an ETC.<sup>64</sup> Petitioners must provide such records and documentation to the Commission and USAC upon request.<sup>65</sup> If a petitioner fails to fulfill the requirements of the Act, the Commission's rules, and the terms of this order after it begins receiving universal service support, the Commission has authority to revoke the petitioner's ETC designation.<sup>66</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>67</sup>

#### **E. Waiver of Deadline for Submitting Proof of ETC Designation**

31. Auction 903 winning bidders were required to certify that they are ETCs in all bid areas and to submit appropriate documentation supporting such certification on or before February 25, 2018.<sup>68</sup> The Bureau finds, on its motion, good cause to waive this deadline for the petitioners that are the subject of this Order.<sup>69</sup> The Commission has found that waiver of this deadline is appropriate when an ETC designation proceeding is not yet complete by the deadline despite the good faith efforts of the long-form applicant.<sup>70</sup> The Commission has explained that it would presume such good faith efforts when the petitioner submitted its petition to the relevant authority within 30 days of the release of the *Auction 903*

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<sup>63</sup> 47 CFR § 54.422(b)(3); *see also id.* §§ 54.416, 54.422 (requiring an officer of the company to certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and that it is in compliance with all federal Lifeline certification procedures).

<sup>64</sup> 47 U.S.C. §§ 220, 403.

<sup>65</sup> 47 CFR § 54.417.

<sup>66</sup> *Id.* § 54.320(c); *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

<sup>67</sup> *See* 47 U.S.C. § 503(b).

<sup>68</sup> 47 CFR § 54.315(b)(5) (requiring winning bidders to submit within 180 days of the announcement of winning bids, a certification of ETC designation in all relevant areas and supporting documentation for that certification); *Auction 903 Procedures Public Notice*, 33 FCC Rcd at 1519, para. 310; *see also Phase II Auction Order*, 31 FCC Rcd at 5999, 6002-05, paras. 141, 149-56.

<sup>69</sup> The Commission has delegated to the Bureau the authority to grant waivers of the filing deadline. *See Phase II Auction Order*, 31 FCC Rcd at 603, n.315; *see also* 47 C.F.R. §§ 0.91(p) (functions of the Wireline Competition Bureau), 0.291 (delegation of authority to the Wireline Competition Bureau).

<sup>70</sup> *See Auction 903 Closing Public Notice*, 33 FCC Rcd at 8268, para. 35 (citing *Phase II Auction Order*, 31 FCC Rcd at 6002-03, paras. 152-53). The Commission may waive its policies or rules upon a showing of good cause and may take into account, on an individual basis, considerations of hardship, equity, or more effective implementation of overall policy. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *see also NE Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Waiver of the Commission's policies or rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation will serve the public

(continued....)

*Closing Public Notice.*<sup>71</sup> All but two of the petitioners that are the subject of this Order filed their petitions with the FCC within this 30-day time frame. The remaining two petitioners submitted complete petitions approximately one month before the filing deadline. The petitions did not raise unique factual or legal concerns nor were they challenged. The Bureau could have acted upon these petitions in due course on or before the February 25, 2019 deadline. Because the delay in issuing this Order is unrelated to the filing date of these petitions, waiver of the deadline is appropriate.

#### IV. ORDERING CLAUSES

32. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that EACH OF THE PETITIONERS SPECIFIED IN THE ATTACHMENT TO THIS ORDER ARE CONDITIONALLY DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN ALL CENSUS BLOCKS IN THE SPECIFIED STATES FOR WHICH THEY ARE ELIGIBLE TO RECEIVE SUPPORT AWARDED THROUGH THE CONNECT AMERICA PHASE II AUCTION. These designations are contingent upon the petitioners becoming authorized to receive such support, is limited to those areas where support is authorized and is effective only upon authorization.

33. IT IS FURTHER ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that EMPOWER BROADBAND, INC., GIBSON CONNECT, LLC, and PGEC ENTERPRISES, LLC ARE DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIERS ELIGIBLE ONLY FOR LIFELINE SUPPORT for those portions of the designated service area for which the petitioners are not eligible to receive high-cost support, to the extent described in this Order.

34. IT IS FURTHER ORDERED that pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, and pursuant to the authority delegated under sections 0.91, and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the deadline specified in section 54.315(b)(5) of the Commission's rules, 47 CFR § 54.315(b)(5), IS WAIVED to the extent described above.

35. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the relevant state commissions and to the Universal Service Administrative Company.

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interest. See *Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008). Deadlines can only be waived under "unusual or compelling circumstances." *Id.* at 126 (citation omitted).

<sup>71</sup> See *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8268-69, para. 35.

36. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

## ATTACHMENT

Winning Bidder	Petitioner (if Assignee) <sup>1</sup>	Date Petition Filed	State(s)	Number of Census Blocks <sup>2</sup>	Number of Supported Locations
Rural Electric Cooperative Consortium	<a href="#">BARC Connects, LLC</a> (BARC)	9/28/18	VA	276	1,734
Rural Electric Cooperative Consortium	<a href="#">Central Virginia Services, Inc.</a> (CVSI)	9/24/18	VA	1,529	10,827
Rural Electric Cooperative Consortium	<a href="#">EMPOWER Broadband, Inc.</a> (EMPOWER)	9/28/18	VA	166*	838
Rural Electric Cooperative Consortium	<a href="#">Gibson Connect, LLC</a> (Gibson)	9/27/18	TN	69*	336
<a href="#">HolstonConnect, LLC</a> (HLConnect)	NA	1/10/2019	TN	30	517
<a href="#">Meriwether Lewis Connect LLC</a> (ML Connect)	NA	1/10/2019	TN	70	290
Commnet Wireless, LLC	<a href="#">NTUA Wireless, LLC</a> (NTUA Wireless)	9/21/18	AZ, NM, UT	3,046	7,041
Rural Electric Cooperative Consortium	<a href="#">PGEC Enterprises, LLC</a> (PGEC)	9/27/18	VA	1,046*	5,287

<sup>1</sup> Pursuant to the divide winning bid process established in the *Auction 903 Closing Public Notice*, winning bidders assigned certain winning bids to related entities. *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8259-8260, paras. 9-13.

<sup>2</sup> Consistent with the requirements specified for completion of the long-form application and as described above in this Order, we define the designate service area for the bid area based on the published list of CAF-eligible census blocks associated with the individual petitioner's winning bids, thus superseding any discrepancies in the petitions' descriptions of such areas. See Connect America Fund Phase II: Assignments - Assigned Census Blocks, [https://auctiondata.fcc.gov/public/projects/auction903/reports/all\\_assigned\\_census\\_blocks](https://auctiondata.fcc.gov/public/projects/auction903/reports/all_assigned_census_blocks). Cells marked with "\*" seek designation outside the CAF eligible census blocks as a Lifeline-only ETC.