

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: May 6, 2019

Released: May 6, 2019

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) designates four petitioners, Bloosurf, LLC (Bloosurf), Hankins Information Technology (Hankins), Northern Arapaho Tribal Industries, Inc. d/b/a Wind River Internet (Wind River), and Tombigbee Communications, Inc. (Tombigbee), as eligible telecommunications carriers (ETCs) in eligible high-cost areas within the specified states. Designation is 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. One of these petitioners, Wind River, also requests designation as an ETC outside of areas eligible for Auction 903 funding authorization (as indicated in the Attachment). For such areas, we limit the designation of Wind River as an ETC only to eligibility for 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

1 See Attachment.

2 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).

3 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

4 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).

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.⁵ In order to become authorized to receive support, 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.⁶ 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.⁷

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.⁸ Eligible services include voice and broadband Internet access service (BIAS) meeting certain requirements.⁹ 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.¹⁰ 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.¹¹ All ETCs are obligated to offer Lifeline-supported services throughout their designated service areas.¹²

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.”¹³ Congress gives primary authority for ETC designations to state commissions.¹⁴ 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.”¹⁵ The petitioning carrier must demonstrate that the FCC has jurisdiction and may do so by submitting an “affirmative statement from the state commission or

⁵ See *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8257.

⁶ 47 CFR § 1.21004; *Phase II Auction Order*, 31 FCC Rcd at 6000, para. 144.

⁷ 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.

⁸ 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).

⁹ *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*).

¹⁰ 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).

¹¹ *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).

¹² 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.

¹³ 47 U.S.C. § 254(e).

a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction."¹⁶ 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.¹⁷ The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.¹⁸

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;¹⁹ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;²⁰ (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;²¹ 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 1988.²²

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.²³ 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.²⁴

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¹⁴ *Id.* § 214(e)(2).

¹⁵ *Id.* § 214(e)(6).

¹⁶ 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).

¹⁷ *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).

¹⁸ 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).

¹⁹ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

²⁰ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

²¹ 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).

²² 21 U.S.C. § 862; 47 CFR § 1.2002(a)-(b).

²³ See 47 CFR § 54.202(a).

²⁴ *Id.* § 54.202(a)(4)-(6).

7. For petitioners seeking ETC designations for the purpose of becoming authorized to receive Auction 903 support, the Bureau waived the requirements that the petitioners submit a five-year service plan and proof of compliance with consumer protection and service quality standards, finding that the need for such requirements is obviated by specific service quality standards applicable to Auction 903 support recipients and specific reporting obligations relating to such standards.²⁵ 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.²⁶ 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.²⁷ 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.²⁸ 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 an ETC designation to become eligible to receive Auction 903 support.²⁹ 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.³⁰ Wind River has also included in its service area descriptions areas adjacent to its CAF-eligible census blocks.³¹ In these adjacent areas, Wind River is 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.³² No comments addressing the merits of the subject petitions or the associated ETC designation were filed.³³

²⁵ *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 2018) (*Auction 903 ETC Public Notice*).

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

²⁷ 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).

²⁸ *Auction 903 ETC Public Notice*, 33 FCC Rcd at 6700-6701.

²⁹ 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).

³⁰ See *Connect America Fund Phase II: Assignments - Assigned Census Blocks*, https://auctiondata.fcc.gov/public/projects/auction903/reports/all_assigned_census_blocks.

³¹ See *Wind River Petition* at Ex. A.

³² *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, 33 FCC Rcd 9764 (WCB 2018); *Wireline Competition Bureau Seeks Comment on Two Petitions for Designation as an Eligible Telecommunications Carrier for the Purpose of Becoming Eligible to Receive*

(continued...)

III. DISCUSSION

11. We find that each of these petitioners satisfies 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 the 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.³⁴ In all other areas included in Wind River's petition and not eligible for high-cost support, we designate Wind River as a Lifeline-only ETC. In these areas, Wind River 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 its ETC petition.

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. Tombigbee has submitted an affirmative statement from the Alabama Public Service Commission (APSC) declining to assert jurisdiction to designate Tombigbee.³⁵ Hankins and Bloosurf cite the relevant state regulations specifically excluding from state regulatory authority, the broadband and voice services offered by the carriers.³⁶ On these bases, we find that these petitioners have demonstrated FCC authority to decide these petitions.

13. We further find that the FCC has jurisdiction to designate Wind River as an ETC. Both the Eastern Shoshone Tribe (Shoshone) and the Northern Arapaho Tribe (Arapaho) each have an undivided, shared interest in the Wind River Indian Reservation (Reservation), located in Wyoming, and inherent Tribal sovereignty over Tribal commercial activities within the Reservation.³⁷ As a Tribally-owned and operated entity operating on Tribal Lands, Wind River is governed by the laws, regulations, and authority of the Arapaho Tribe.³⁸ We thus find that Wind River is not subject to Wyoming's

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Connect America Fund Phase II Auction Support, Docket No. 09-197, Public Notice, DA 19-122 (WCB rel. Feb. 26, 2019).

³³ CenturyLink filed a reply comment in which it makes several assertions and requests relating to its continuing obligations to serve and deploy within areas where its own service territory will overlap with that of Wind River but does not comment on the merits of Wind River's petition or the ETC designation. *See* CenturyLink, Inc. Reply Comment, WC Docket No. 09-197 (filed Oct. 24, 2018). Accordingly, we do not address this comment here.

³⁴ 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.

³⁵ Tombigbee Petition at Ex. B.

³⁶ Bloosurf Petition at 3 (citing Del. Code Ann., tit. 26, Public Utilities Code § 202(i)(1), Md. Code, Public Utilities Art., § 8-602(b)); Hankins Petition at 3 (citing Cal. Public Utilities Code § 710); *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.").

³⁷ *See generally* Treaty of Ft. Bridger, 15 Stat. 673 (1869) (treaty between the United States and the Shoshone and Bannock Tribes, establishing the Wind River Reservation); *Shoshone Tribe v. United States*, 299 U.S. 476 (1937) (concluding that the Arapaho Tribe obtained an equal, undivided right in the Wind River Reservation as of the time they were placed there under military escort and awarding compensation to the Shoshone Tribe for a Taking); *see also, e.g., Indian Financing Act of 1974*, 25 U.S.C. § 1451 (1974); *Indian Self-Determination and Education Assistance Act of 1975*, 25 U.S.C. § 450 (1975); *Indian Civil Rights Act of 1968*, 25 U.S.C. § 1301 (1968); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 334 (1983); *Twelfth Report and Order*, 15 FCC Rcd 12208.

³⁸ Wind River Petition at 3.

regulatory authority to designate ETCs. Wind River explains that it received its charter and its Certificate of Public Convenience and Necessity to operate as a telecommunications carrier and to provide telecommunications and broadband services on the Reservation from the Northern Arapaho Business Council, the duly elected governing body of the Arapaho Tribe.³⁹ We further note that copies of Wind River's ETC petition were served on the Wyoming Public Services Commission, the Eastern Shoshone Business Council, and the Northern Arapaho Business Council, and none of these entities has challenged the FCC's authority to designate Wind River in this proceeding.⁴⁰ Accordingly, we find that the Bureau, acting under the Commission's delegation of authority, may designate Wind River 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 establishes through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.⁴¹

15. *Compliance with the Service Requirements Applicable to 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.⁴² 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,⁴³ certify their commitment to meeting relevant public interest obligations,⁴⁴ and certify their compliance with all statutory and regulatory requirements for receiving the universal service support.⁴⁵ 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 are being met.⁴⁶

16. *Compliance with Service Requirements Applicable to Lifeline Services.* Each petitioner commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the

³⁹ *Id.* at Ex. B.

⁴⁰ *Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas*, WC Docket No. 09-197, Memorandum Opinion and Order, 25 FCC Rcd 12388, 12393, para. 14 (WCB 2010) ("Neither state commission contested the authority of the Commission to consider Standing Rock's ETC designation petition"); *see also Telecommunications Carriers Eligible for Universal Service Support; Standing Rock Telecommunications, Inc. Petition for Designation as an Eligible Telecommunications Carrier; Petition of Standing Rock Telecommunications, Inc. to Redefine Rural Service Areas; Petition for Reconsideration of Standing Rock Telecommunications, Inc.'s Designation as an Eligible Telecommunications Carrier on the Standing Rock Sioux Reservation*, WC Docket No. 09-197, Memorandum Opinion and Order on Reconsideration, 26 FCC Rcd 9160, 9163, para. 10 n.27 (2011) ("No party argues that either the North Dakota Commission or the South Dakota Public Utilities Commission has jurisdiction to designate Standing Rock, a Tribally owned, Tribally operated carrier that seeks to serve its own reservation as an ETC").

⁴¹ Bloosurf Petition at 4-5; Hankins Petition at 4-5; Tombigbee Petition at 4; Wind River Petition at 10-11; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

⁴² Bloosurf Petition at 6; Hankins Petition at 5; Tombigbee Petition at 8; Wind River Petition at 13; 47 CFR §§ 54.101(d), 54.202(a)(1)(i).

⁴³ 47 CFR §§ 54.310(e)(1); 54.315(b)(2)(ii), (b)(2)(iv).

⁴⁴ *Id.* § 54.315(b)(2)(iii).

⁴⁵ *Id.* § 54.315(b)(2)(v).

⁴⁶ *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).

Commission's rules, in all high-cost areas where it is authorized to receive support.⁴⁷ For areas that are not eligible for Auction 903 support, Wind River specifically commits to meeting Lifeline consumer enforcement and certification standards and describes how it intends to meet such standards.⁴⁸ 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.⁴⁹

17. *Offering the Supported Services Using a Carrier's Own Facilities.* Each petitioner certifies that it is a facilities-based provider of broadband and voice services.⁵⁰

18. *Advertising Supported Services.* Each petitioner commits to advertising the availability of the supported services and related charges using media of general distribution.⁵¹ We emphasize that, as part of this commitment, an ETC must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.⁵²

19. *Ability to Remain Functional in Emergency Situations.* Each petitioner states that it can remain functional in emergency situations. Each petitioner states 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.⁵³

20. *Anti-Drug Abuse Act Certification.* Each petitioner submits 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.⁵⁴

21. *Consumer Protection and Service Quality Standards in Lifeline-Only Eligible Areas.* Wind River commits to abiding by all applicable state and federal consumer protection and service quality standards, including specific obligations under the Act and its implementing rules, in Lifeline-only eligible areas.⁵⁵

22. *Technical and Financial Ability to Offer Lifeline Services in Lifeline-Only Eligible Area.* Wind River demonstrates the technical and financial ability to offer Lifeline-supported voice and broadband Internet access services in Lifeline-only eligible areas.⁵⁶ This determination is informed by the

⁴⁷ Bloosurf Petition at 5; Hankins Petition at 5; Tombigbee Petition at 5-6; Wind River Petition at 5.

⁴⁸ Supplement to Northern Arapaho Tribal Industries, Inc. d/b/a/ Wind River Internet's Petition for Designation as an Eligible Telecommunications Carrier (filed Feb. 27, 2019) (Wind River Supplement), <https://www.fcc.gov/ecfs/filing/10227227236871>; 47 CFR § 54.410 (setting forth the Commission's rules on subscriber eligibility determination and certification).

⁴⁹ 47 CFR § 54.422; *see also id.* § 54.410.

⁵⁰ Bloosurf Petition at 6-7; Hankins Petition at 6; Tombigbee Petition at 7; Wind River Petition at 11-12; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

⁵¹ Bloosurf Petition at 8; Hankins Petition at 7; Tombigbee Petition at 8; Wind River Petition at 12-13; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

⁵² 47 CFR § 54.405; *see* Wind River Supplement at 7.

⁵³ Bloosurf Petition at 6; Hankins Petition at 6; Tombigbee Petition at 9; Wind River Petition at 13-14; 47 CFR § 54.202(a)(2); *see also* Bloosurf Petition at 7-8 (explaining that Bloosurf shall comply with the requirements necessary to ensure continuity of 911 communications).

⁵⁴ Bloosurf Petition at 8; Hankins Petition at 7; Tombigbee Petition at 9; Wind River Petition at 15; 47 CFR § 1.2002.

⁵⁵ Wind River Supplement at 7-8; 47 CFR § 54.202(a)(3).

⁵⁶ Wind River Supplement at 4; 47 CFR § 54.202(a)(4).

technical and financial information filed by Wind River in its Auction 903 application for the high-cost eligible areas generally contiguous with the Lifeline-only eligible area.⁵⁷

23. *Terms and Conditions of Service Plans in Lifeline-only Eligible Area.* Wind River sufficiently describes the terms and conditions of service plans that it will make available to the public in Lifeline-only eligible areas.⁵⁸

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 services in high-cost areas efficiently and at a price and quality comparable to the service offerings in more competitive areas. 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 areas eligible for Auction 903 support.

25. We further find that granting Wind River's petition to serve additional areas within the Reservation not eligible for Auction 903 support ensures that Lifeline services are available in all areas where Wind River provides service.⁵⁹ Wind River has offered advanced services to underserved Tribal areas within the Reservation at competitive prices since 2011, investing in significant new telecommunications middle and last mile fiber deployment in such areas.⁶⁰ Wind River commits to offering Lifeline-supported services throughout its designated areas and to preventing waste, fraud, and abuse through customer education, certification, and verification procedures.⁶¹ Given these commitments and associated representations, granting the ETC designations will help ensure increased consumer choice, affordability, and improved quality of service.

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."⁶² Under section 214(e) of the Act, each of the petitioners must provide supported services throughout its service area.⁶³ 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

⁵⁷ 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.

⁵⁸ Wind River Supplement at 5-6; 47 CFR § 54.202(a)(5), (6).

⁵⁹ Wind River Supplement at 8-9.

⁶⁰ *Id.*

⁶¹ *Id.* at 7-8.

⁶² 47 U.S.C. § 254(e).

⁶³ *Id.* § 214(e).

facilities and services for which the support is intended.⁶⁴ The Commission conditions future support awarded through the high-cost program on the filing of such certification.⁶⁵

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.⁶⁶ In addition, 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.⁶⁷

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.⁶⁸ Petitioners must provide such records and documentation to the Commission and USAC upon request.⁶⁹ 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.⁷⁰ The Commission also may assess forfeitures for violations of Commission rules and orders.⁷¹

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, 2019 (Auction 903 ETC deadline).⁷² The Bureau finds, on its own motion, good cause to waive this deadline for the petitioners that are the subject of this Order.⁷³ The Commission has found that waiver of this

⁶⁴ 47 CFR § 54.314(b).

⁶⁵ *Id.*

⁶⁶ *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).

⁶⁷ 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 will comply with all federal Lifeline certification procedures).

⁶⁸ 47 U.S.C. §§ 220, 403.

⁶⁹ 47 CFR § 54.417.

⁷⁰ *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).

⁷¹ *See* 47 U.S.C. § 503(b).

⁷² 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.

⁷³ 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).

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.⁷⁴ 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 Closing Public Notice*.⁷⁵ Two of the petitioners, Hankins and Wind River, filed their petitions with the FCC within this 30-day time frame, thus demonstrating due diligence in meeting their filing deadline. A third petitioner, Bloosurf, filed its petition approximately two months before the Auction 903 ETC deadline. These petitions did not raise unique factual or legal concerns nor were they challenged. Because the delay in issuing this Order is unrelated to the filing date of these petitions, waiver of the deadline is appropriate.

32. The third petitioner, Tombigbee, filed its petition with the FCC on February 22, 2019, and a separate petition for waiver of the Auction 903 ETC deadline on February 25, 2019.⁷⁶ In its waiver petition, Tombigbee explains that it had contacted the APSC within 30 days of the *Auction 903 Closing Public Notice* and that the APSC had stated that it could designate Tombigbee as an ETC for Auction 903 purposes.⁷⁷ Tombigbee further explains that in January, 2019, APSC informed Tombigbee that it would not exercise jurisdiction over broadband and VoIP services but that Tombigbee “would still need to submit its application to the APSC” to obtain the requisite denial of jurisdiction.⁷⁸ Tombigbee submitted this application on February 19th, and the APSC issued a letter declining jurisdiction on February 20th.⁷⁹ Tombigbee then prepared and submitted its FCC petition two days later, on February 22nd. Based on these circumstances, we find that Tombigbee acted diligently in attempting to obtain its ETC designation prior to the Auction 903 ETC deadline and, accordingly, waive the Auction 903 ETC deadline. The late-filing of this ETC application did not delay the Commission’s long-form application review process or the provision of voice and broadband services to consumers living in the areas where the petitioner was awarded support.⁸⁰

⁷⁴ 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 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).

⁷⁵ See *Auction 903 Closing Public Notice*, 33 FCC Rcd at 8268-69, para. 35.

⁷⁶ Petition for Limited Waiver and Extension of ETC Designation Deadline, WC Docket No. 09-197 (filed Feb. 25, 2019).

⁷⁷ *Id.* at 2.

⁷⁸ *Id.* at 2-3.

⁷⁹ *Id.*; Tombigbee Petition at Ex. B.

⁸⁰ Cf. *Connect America Fund et al.*, Memorandum Opinion and Order, 30 FCC Rcd 8967, 8968, para. 4 (2015) (finding that for the rural broadband experiments “[s]trict enforcement by the Bureau of the filing requirements adopted by the Commission was appropriate given the purpose of the rural broadband experiments and [the Commission’s] commitment not to allow the rural broadband experiments to delay the offer of model-based support to price cap carriers”); *Connect America Fund et al.*, Order, 30 FCC Rcd 772, 774, para. 5 (WCB 2015) (“Denying the [rural broadband experiment] waiver requests and proceeding to identify next-in-line bidders fulfills the Commission’s objective for the rural broadband experiments to inform key decisions that the Commission would be making regarding the design of the competitive bidding process that will occur in Phase II of the Connect America Fund, while not delaying implementation of Phase II”).

IV. ORDERING CLAUSES

33. 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.

34. 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 NORTHERN ARAPAHO TRIBAL INDUSTRIES, INC. D/B/A WIND RIVER INTERNET IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIERS ELIGIBLE ONLY FOR LIFELINE SUPPORT for those portions of the designated service area for which it is not eligible to receive high-cost support, to the extent described in this Order.

35. 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.

36. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the relevant state commissions, the Northern Arapaho Business Council, the Eastern Shoshone Business Council, and to the Universal Service Administrative Company.

37. 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	Date Petition Filed	State(s)	Number of Census Blocks ⁸¹	Number of Supported Locations
<u>Bloosurf, LLC</u> ⁸²	1/2/2019	Delaware	225	1,321
<u>Bloosurf, LLC</u>	1/2/2019	Maryland	1,048	3,770
<u>Hankins Information Technology</u>	9/27/18	California	106	1,083
<u>Northern Arapaho Tribal Industries, Inc. d/b/a Wind River Internet</u>	9/26/18	Wyoming	138*	849
<u>Tombigbee Communications, LLC</u>	2/22/19	Alabama	100	279

⁸¹ 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. Cells marked with "*" seek designation in additional areas outside the CAF eligible census blocks as a Lifeline-only ETC.

⁸² Bloosurf filed a single petition for designation in CAF-eligible areas in the two states. We also note that Bloosurf filed two petitions on the same day but indicated in the Commission's Electronic Comment Filing System (ECFS) that it intended version ID 10102081816708 as a replacement for version ID 10102504601416.