



PUBLIC NOTICE

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WIRELINER COMPETITION BUREAU SEEKS COMMENT ON E FIBER SAN JUAN, LLC RURAL DIGITAL OPPORTUNITY FUND PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

WC Docket No. 09-197

Comment Date: December 9, 2021

Reply Comment Date: December 24, 2021

The Wireline Competition Bureau seeks comment on the petition of E Fiber San Juan, LLC (Petitioner) for designation as an Eligible Telecommunications Carrier (ETC).¹ Petitioner is an assignee of support awarded through the Rural Digital Opportunity Fund (RDOF) auction (Auction 904) and seeks designation in certain Tribal Lands over which the Utah Public Service Commission has declined to exercise its ETC designation authority.² ETC designation is a prerequisite to receiving universal service support available through the high-cost and Lifeline programs.³ To receive an ETC designation, a petitioner must, in addition to meeting high-cost program requirements and other related obligations as specified below, offer the Lifeline discount on all qualifying services in areas where it receives high-cost support, deploy a network capable of delivering service that meets the Lifeline program's minimum service standards, and commercially offer such service pursuant to its high-cost obligations.⁴

All Commission ETC designations of RDOF support recipients will be conditioned upon successful completion of the RDOF long-form application (FCC Form 683). The Commission required all long-form applicants to upload documentation of ETC designation(s) and a certification letter to their FCC Form 683 by June 7, 2021.⁵ Petitioner has submitted a waiver request seeking extension of this deadline.⁶

¹ *Petition of E Fiber San Juan, LLC, for Eligible Telecommunications Carrier Designation in Certain Tribal Locations in the State of Utah*, WC Docket No. 09-197 (Sept. 29, 2021) at https://ecfsapi.fcc.gov/file/1092956833369/E_Fiber_San_Juan,_LLC.ETC_Designation.pdf.

² See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, Public Notice, 35 FCC Rcd 13888, 13890-91, paras. 9-15 (RBATF, OEA, WCB 2020) (*RDOF Closing Public Notice*); *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 6077, 6164-65, paras. 288-93 (2020).

³ 47 U.S.C. § 254(e).

⁴ 47 CFR Part 54, Subparts D, K, L, M.

⁵ 47 CFR § 54.804(b)(5); *RDOF Closing Public Notice*, 35 FCC Rcd at 13894, 13900-01.

⁶ *Petition of E Fiber Moab, LLC and E Fiber San Juan, LLC for a Waiver of Section 54.804(b)(5)*, AU Docket No. 20-34, WCB Docket No. 19-126 (filed June 2, 2021) at <https://www.fcc.gov/ecfs/filing/10602227425057>.

Requirements for FCC ETC Designation

Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”⁷ Congress gives primary authority for ETC designations to state commissions.⁸ 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.”⁹ The petitioning carrier must demonstrate that the FCC has jurisdiction and 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.”¹⁰ The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.¹¹

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;¹² (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;¹³ (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;¹⁴ 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 1988.¹⁵

In addition, petitioners must demonstrate their ability to meet certain service standards. A petitioner seeking an ETC designation for purposes of becoming eligible to receive RDOF support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; and (3) demonstrate its ability to satisfy applicable consumer protection and service quality standards.¹⁶ In addition, 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.¹⁷

⁷ 47 U.S.C. § 254(e).

⁸ *Id.* § 214(e)(2).

⁹ *Id.* § 214(e)(6).

¹⁰ *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); 47 U.S.C. § 214(e)(6).

¹¹ *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).

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

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

¹⁴ 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 904 support recipients. *See Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686, 728, para. 93-94 (2020).

¹⁵ 21 U.S.C. § 862; 47 CFR § 1.2002(a)–(b).

¹⁶ *See* 47 CFR § 54.202(a).

¹⁷ 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b). The Bureau has extended to Auction 904 support recipients the same waivers of certain requirements in section 54.202 of the Commission’s rules and the same presumption that

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Comment Filing Requirements

Interested parties may file **comments on or before December 9, 2021** and **replies on or before December 24, 2021**. All pleadings must reference **WC Docket No. 09-197**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.¹⁸

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.¹⁹

Additional Copies. Parties should send a copy of their filings to by e-mail to Nissa.Laughner@fcc.gov.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Permit but Disclose Ex Parte Communications. For the purposes of the Commission's *ex parte* rules, each petition submitted pursuant to section 214(e)(6) will be treated as initiating a permit-but-disclose proceeding under the Commission's rules.²⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).²¹ Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation.²² If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the

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designation will serve the public interest as it had previously extended to Auction 903 support recipients. *RDOF Closing Public Notice*, 35 FCC Rcd at 13901 n.71; *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).

¹⁸ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998); 63 Fed. Reg. 24121 (1998).

¹⁹ See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

²⁰ See 47 CFR § 1.1206.

²¹ *Id.* § 1.2016(b)(2)(iii).

²² *Id.* § 1.1206(b)(1).

presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.²³ Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).²⁴ In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf).²⁵ Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

For additional information on this proceeding, please contact Nissa Laughner Nissa.Laughner@fcc.gov of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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²³ *Id.*

²⁴ *Id.* § 1.1206(b)(2).

²⁵ *Id.* § 1.1206(b)(2)(i); *see also id.* § 1.49(f).