

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: January 12, 2022

Released: January 12, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau or WCB) designates Windstream Communications, LLC (Windstream Communications or petitioner), an affiliate of Rural Digital Opportunity Fund (RDOF) long form applicants Windstream Florida, LLC and Windstream New York, Inc., as an eligible telecommunications carrier (ETC) in certain eligible high-cost areas within Florida and New York.1 Designation in these areas is conditioned upon, limited to, and effective upon these applicants' authorization to receive support under the RDOF program for these areas and upon Windstream Communication's commitment to meeting all ETC-related administrative and legal obligations for the areas in which it is designated.2 Any ETC designation covering RDOF supported areas, however, should not be interpreted as an entitlement to support or an indication that the Bureau will ultimately authorize an applicant for support. If the Bureau decides that Windstream Communications should be authorized to receive support, it will release a public notice announcing funding authorization.

II. BACKGROUND

A. Rural Digital Opportunity Fund Auction (Auction 904)

2. On January 30, 2020, the Commission adopted the framework for the RDOF program, to award support through a reverse descending clock auction.3 At the conclusion of this auction, there were

1 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) (initially, awarding Rural Digital Fund support to Windstream Holdings, Inc., Debtor-in-Possession) (Rural Digital Opportunity Fund Closing Public Notice); Applications Granted for the Transfer of Control of Windstream Holdings, Inc., Debtor-in-Possession, and Subsidiaries, WC Docket No. 20-151 et al., Public Notice, 35 FCC Rcd 10076, 10082 (WCB/IB/WTB/OEA 2020) (permitting transfer of 214 authorization to Windstream Holdings, Inc. to Windstream Services, LLC, pursuant to a reorganization).

2 See Rural Digital Opportunity Fund et al., WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686 (2020) (Rural Digital Opportunity Fund Report and Order).

3 Rural Digital Opportunity Fund Report and Order, 35 FCC Rcd at 689-90, para. 8; see also Rural Digital Opportunity Fund, WC Docket No. 19-126, Order on Reconsideration, 35 FCC Rcd 10820 (2020).

180 winning bidders.⁴ The Commission created a two-phase application process for this auction, requiring interested parties to successfully complete a short-form application (FCC Form 183) as a condition of participating in the auction; this application collected from applicants information and certifications that would enable the Commission to make an initial determination that the applicant had the legal, technical, and financial qualifications necessary to meet program requirements should it become a winning bidder.⁵ In order to become authorized to receive support, winning bidders, or entities assigned support through the division of winning bids, would then have to complete a more comprehensive long form application (FCC Form 683) designed to ensure that support recipients are qualified to receive support and have met all regulatory prerequisites and conditions for receiving Universal Service Fund (USF) support.⁶ Four-hundred seventeen (417) entities submitted long form applications by the January 29, 2021 deadline.⁷ The Commission required that applicants submit as part of this application and no later than June 7, 2021, documentation of ETC designation(s) and a letter certifying that the designations cover all relevant census blocks in a state.⁸

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 on Tribal lands.⁹ Eligible services include voice and broadband Internet access service meeting certain requirements.¹⁰ 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.¹¹ ETCs are generally obligated to offer the Lifeline-supported service throughout their designated service areas.¹²

B. Requirements for FCC ETC Designation

4. Section 254(e) of the Communications Act of 1934, as amended (the Communications Act), provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”¹³ Under section 214(e), an ETC is a “common carrier” that “offer[s] the services that are supported by the Federal universal service support mechanisms under section 254(c),”¹⁴ and under that section, the Commission must “establish

⁴ *Rural Digital Opportunity Fund Closing Public Notice*, 35 FCC Rcd at 13888.

⁵ 47 CFR §§ 1.21001, 54.804; *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, 6088-89, para. 27-28 (2020) (*Rural Digital Opportunity Fund Procedures Public Notice*).

⁶ 47 CFR § 1.21004; *Rural Digital Opportunity Fund Report and Order*, 35 FCC Rcd at 696, para. 22. Winning bidders had the opportunity to assign some or all their winning bids to one or more related entities. *Rural Digital Opportunity Fund Procedures Public Notice*, 35 FCC Rcd at 6164-65, paras. 288-93.

⁷ See Long form Applicants Spreadsheet, Long Form Applicants tab, www.fcc.gov/auction/904/.

⁸ 47 CFR § 54.804(b)(5); *Rural Digital Opportunity Fund Closing Public Notice*, 35 FCC Rcd at 13894, 13900-01.

⁹ 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).

¹⁰ 47 CFR § 54.101; see also 47 CFR § 54.401(a).

¹¹ 47 U.S.C. § 54.201(a)(1) (“Only eligible telecommunications carriers designated under this subpart shall receive universal service support distributed pursuant to subparts D [universal service fund support for high-cost areas] and E [universal service support for low-end consumers] of this part); *id.* § 54.101(d) (providing that any ETC designated in high-cost areas must comply with requirements in the Lifeline support rules).

¹² See 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101(a) (providing that voice service is the supported service); 47 CFR § 54.403(a) (setting forth Lifeline support eligibility requirements).

¹³ 47 U.S.C. § 254(e).

periodically,” the services supported by universal service, “taking into account advances in telecommunications and information technologies and services.”¹⁵ The Commission has defined voice as the only supported service.¹⁶ This definition is “technologically neutral,” allowing “ETCs to provision voice service over many platforms.”¹⁷ The Commission has also stated that a petitioner offering voice service may be treated as a “telecommunications carrier” under Title II of the Communications Act (and so become eligible to receive an ETC designation) if it “voluntarily ‘holds itself out as a telecommunications carrier and complies with appropriate federal and state requirements.’”¹⁸

5. Section 214 of the Communications Act gives primary authority for ETC designations to state commissions.¹⁹ The Commission has authority to designate a carrier as an ETC only when “a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”²⁰ The petitioning carrier must demonstrate that the Commission 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.”²¹ The Bureau has also stated, for the limited purpose of determining whether it has secondary authority to make an ETC determination, that “[i]f 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.”²² The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.²³

6. A petition for ETC designation by the Commission 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 (which service must be offered on a common carriage basis); (2) a certification that the ETC petitioner offers or intends to offer the supported services either using its own facilities or a

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¹⁴ *Id.* at § 214(e); *Id.* § 153(11) (defining “common carrier” or “carrier” in relevant part, as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy”).

¹⁵ *Id.* § 254(c).

¹⁶ 47 CFR § 54.101(a).

¹⁷ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17692, paras. 77-78 (2011) (*USF/ICC Transformation Order*).

¹⁸ *IP-Enabled Services; E9-1-1 requirements for IP-Enabled Service Providers*, WC Docket No. 04-36, WC Docket No. 05-196, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245, 10268, para. 38 n.128 (2005), *aff’d sub nom. Nuvio Corp. v. FCC*, 473 F.3d 302 (D.C. Cir. 2006).

¹⁹ 47 CFR § 214(e)(2) (providing, in relevant part, that a state commission “shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission”); *Id.* § 214(e) (providing that a common carrier designated under section 214(e)(2), (3), or (6) “offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title . . .”).

²⁰ *Id.* § 214(e)(6).

²¹ *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).

²² *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, 6697 (WCB 2018) (*Phase II Auction ETC Guidance Public Notice*).

²³ *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).

combination of its own facilities and resale of another carrier's services;²⁴ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;²⁵ (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;²⁶ 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 1988.²⁷

7. In addition, a petitioner must demonstrate its 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.²⁸

8. We note that, for petitioners seeking ETC designation for the purpose of becoming authorized to receive RDOF support, the Commission has waived the same section 54.202 requirements that it previously waived for CAF Phase II auction support recipients, specifically, the requirement that the petitioner submit a five-year service plan and proof of compliance with consumer protection and service quality standards.²⁹ These waivers are predicated upon the finding that the need for such requirements is obviated by the specific service quality standards applicable to support recipients and specific reporting obligations relating to such standards.³⁰

9. 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.³¹ 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.³² Because, however, ETC designation of long form applicants is conditioned upon, limited to, and effective upon authorization to receive support under the program, designation in these areas is presumed to serve the public interest.³³ To be ultimately authorized, long form applicants must complete a competitive bidding

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

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

²⁶ 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 forborne from imposing such requirements on Rural Digital Opportunity Fund support recipients. *See Rural Digital Opportunity Fund Report and Order*, 35 FCC Rcd at 728, paras. 93-94.

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

²⁸ 47 CFR § 54.202(a).

²⁹ *Rural Digital Opportunity Fund Closing Public Notice*, 35 FCC Rcd at 13901 n.71 (extending to Rural Digital Opportunity Fund long form applicants the same waivers of 54.202 requirements as provided to Auction 903 long form applicants under the same rationales); *Phase II Auction ETC Guidance Public Notice*, 33 FCC Rcd at 6699-6700.

³⁰ *Phase II Auction ETC Guidance Public Notice*, 33 FCC Rcd at 6699-6700; 47 CFR § 54.804; *id.* at § 54.806.

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

³² *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).

³³ *Rural Digital Opportunity Fund Closing Public Notice*, 35 FCC Rcd at 13901 n.71 (extending to Rural Digital Opportunity Fund long form applicants the same presumption that designation will serve the public interest under the same rationales justifying the application of such presumption to Auction 903 support recipients); *Phase II Auction ETC Guidance Public Notice*, 33 FCC Rcd at 6699-6700 (explaining the basis for this presumption).

process that demonstrates their ability to provide service efficiently in unserved high-cost areas and an application process that demonstrate their ability to meet their public interest obligations.³⁴

C. Petition for ETC Designation

10. Windstream Communications seeks an ETC designation to become eligible to receive RDOF support assigned to long form applicants Windstream Florida, LLC (Windstream Florida) and Windstream New York, Inc. (Windstream New York) (collectively, applicants).³⁵ All three entities are directly and 100% owned operating companies of Windstream Services, LLC, the entity to which RDOF funds were awarded.³⁶ The Bureau has released public notices soliciting comments on the Windstream Communications' petition for ETC designations in these states by October 18, 2021 (with a reply period until October 25, 2021).³⁷ No comments have been filed to date.

11. Affiliates of the long-form applicant hold long-standing, state-awarded ETC designations as incumbent Local Exchange Carriers (ILECs) from the relevant state authority that Windstream Communications asserts partially covers RDOF support.³⁸ The remaining areas covered by the assigned bids are served by Windstream Communications and accordingly, Windstream Communications now seeks FCC ETC designation to serve only these areas.³⁹ As a result of this division of existing service areas, Windstream seeks to make two different operating companies responsible for all legal and administrative requirements, including compliance with RDOF public interest obligations, associated with the support assigned to one lead company in the state.⁴⁰

12. As specified in the *RDOF Closing Public Notice*, long form applicants may identify one or more operating companies in a state as the ETC assuming legal and administrative responsibilities but the applicant must, among other things, maintain a letter of credit that covers the entirety of the assigned bid within the state and must receive all RDOF support.⁴¹ Compliance with RDOF public interest obligations is determined at the state level.⁴² Further, the Commission has the authority to draw on a letter of credit held by the relevant long form applicant should either ETC designee in the state fail to meet RDOF ETC-related obligations.⁴³ For these reasons, we interpret the affiliated ETC's eligibility to receive support as extending to affiliated long form applicants that fulfill ETC-related obligations on behalf of its FCC-designated ETCs, at the discretion of the long form applicants.⁴⁴ We specify that the

³⁴ See *Rural Digital Opportunity Fund Procedures Public Notice*, 35 FCC Rcd at 6112, para. 97 (“One of our main objectives is to maximize the impact of finite universal service resources by awarding support to those providers that will make the most efficient use of budgeted funds.”); *Rural Digital Opportunity Fund Report and Order*, 35 FCC Rcd at 694-95, para. 18; *Rural Digital Opportunity Fund Procedures Public Notice*, 35 FCC Rcd at 6166, para. 301.

³⁵ Petition at 1-2.

³⁶ *Id.* at 2.

³⁷ *Wireline Competition Bureau Seeks Comment on Rural Digital Opportunity Fund Petitions for Designation as an Eligible Telecommunications Carrier*, Docket No. 09-197, Public Notice, DA 21-1242 (WCB rel. Oct. 1, 2021).

³⁸ Petition at 1-2.

³⁹ *Id.* at 2.

⁴⁰ *Id.*

⁴¹ *Rural Digital Opportunity Fund Closing Public Notice*, 35 FCC Rcd at 13891, para. 13; *Rural Digital Opportunity Fund Procedures Public Notice*, 35 FCC Rcd at 6165, para. 292.

⁴² *Rural Digital Opportunity Fund Closing Public Notice*, 35 FCC Rcd at 13891, para. 13; *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 712, para. 54.

⁴³ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 735-36, paras. 114-17.

⁴⁴ See *cf.* 47 CFR § 312(b)(4) (applying same interpretation to rate-of-return carriers and price-cap carriers receiving incremental support).

FCC ETC designation in each state covers only those areas, as published by the Commission on its website and assigned to the long form applicant, that are served by Windstream Communications and are not covered by the preexisting state designation held by the affiliated ILEC and for which the long form applicant is authorized to receive RDOF support.⁴⁵

III. DISCUSSION

13. We find that Windstream Communications satisfies the statutory requirements of sections 254 and 214(e) of the Act for designation as an ETC, and the Commission's requirements for ETC designation. We therefore designate Windstream Communications as a high-cost ETC in the specified state(s), conditioned upon and limited to the high-cost areas where the Commission authorizes the Petitioner to receive RDOF support and effective only upon such authorization. In these areas, Windstream Communications must meet Rural Digital Opportunity Fund requirements, Lifeline requirements, and other service obligations attendant to its high-cost designations, as specified in the Act and the Commission's rules.⁴⁶

A. Commission Authority

14. Windstream Communications demonstrates that the Commission has the requisite authority to designate it as an ETC pursuant to section 214(e)(6) of the Act. It has submitted an affirmative statement of the relevant state authority declining to assert jurisdiction over the ETC designation of Windstream Communications in the relevant high-cost areas⁴⁷ and a relevant Florida regulation specifically excluding from state regulatory authority broadband and Voice over Internet Protocol (VoIP) services (the services that Windstream Communications will use to meet its public interest obligations).⁴⁸ As indicated below, the Petitioner also demonstrates that it meets all statutory requirements for ETC designation. Accordingly, we find that the Bureau, acting under the Commission's delegation of authority, may designate the Petitioner as an ETC for purposes of eligibility for RDOF support.

B. Eligibility Requirements

15. *Offering the Service Supported by the Universal Service Support Mechanisms.* We find that the Petitioner establishes through the required certifications and related filings that it qualifies as a telecommunications provider for purposes of receiving universal service support for which it will become eligible pursuant to the requested designation and that it will offer the service supported by the federal universal service support mechanisms.⁴⁹ Specifically, the Petitioner has committed to offering voice service on a common carrier basis and has specified that its voice service meets the requirements of section 54.101(a) of the Commission's rules.⁵⁰ The Petitioner must offer this service as of the first day of the month following the authorization.⁵¹

⁴⁵ See Results, Long Form Applicants Spreadsheet at <https://www.fcc.gov/auction/904/round-results>.

⁴⁶ 47 U.S.C. § 54.202(a)(1)(i); *id.* § 54.101.

⁴⁷ Petition at Exhibit E (Letter from Debra LaBelle, Director, Office of Communications, New York Public Service Commission declining ETC jurisdiction (dated May 28, 2021)); *id.* at Exhibit F (Memorandum, Florida Public Services Commission, declining ETC designation (dated June 3, 2021)).

⁴⁸ Petition at 4 (citing 2011 FL HB 1231, adopted May 5, 2011; Chapter 364.011, F.S.).

⁴⁹ *Id.* at 4-5; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

⁵⁰ Petition at 4-5; 47 U.S.C. § 214(e)(1), (6); 47 CFR § 54.101(a) (eligible voice telephony service must provide voice grade access to the public switched network or its functional equivalent).

⁵¹ See *Rural Digital Opportunity Fund Report and Order*, 35 FCC Rcd at 745, para. 139 (a newly authorized recipient of RDOF support should be prepared to provide voice service throughout its service areas, either through its own facilities or a combination of its own and other ETC's facilities, on the first day of the month after authorization).

16. *Compliance with the Service Requirements Applicable to RDOF Support Recipients.* We find that the Petitioner has established its ability to comply with service requirements applicable to the support that it receives.⁵² This determination takes into account that, prior to being authorized to receive RDOF support, the Petitioner must certify and demonstrate, as part of its short form and long form applications, its technical and financial ability to provide voice and broadband services meeting or exceeding RDOF standards,⁵³ certify its commitment to meeting relevant public interest obligations,⁵⁴ and certify its compliance with all statutory and regulatory requirements for receiving the universal service support or, alternatively, certify its acknowledgement that it must be in compliance with these requirements prior to being authorized to receive support.⁵⁵ Moreover, once authorized, the Petitioner must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.⁵⁶

17. *Compliance with Service Requirements Applicable to Lifeline Services.* The Petitioner 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.⁵⁷ 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.⁵⁸

18. *Offering the Supported Services Using a Carrier's Own Facilities.* The Petitioner certifies that it will offer supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.⁵⁹ Facilities are the ETC's "own" if the ETC has an exclusive right to use the facilities to provide the supported services or when service is provided by any affiliate within the same holding company structure.⁶⁰ An ETC may satisfy its obligation to "offer" supported voice service (or its functional equivalent, including VoIP) through a third-party vendor but cannot simply rely on the availability of over-the-top voice options.⁶¹ Instead, the ETC must remain legally responsible,

⁵² Petition at 7-8; 47 CFR §§54.101(d), 54.202(a)(1)(i).

⁵³ 47 CFR § 54.804(a),(b); *Rural Digital Opportunity Fund Report and Order*, 35 FCC Rcd at 726, para. 88, 90.

⁵⁴ 47 CFR § 54.804(b)(2)(iii); *Rural Digital Opportunity Fund Report and Order*, 35 FCC Rcd at 726, para. 89.

⁵⁵ 47 CFR § 1.21001(b)(6).

⁵⁶ *Id.* § 54.806 (providing that RDOF support recipients are subject to sections 54.313, 54.314, 54.316 of the Commission's rules); *id.* § 54.313 (requiring annual report including certifications as to rates, functionality, and deployment, among other things); *id.* § 54.314 (requiring annual certification stating that all federal high-cost support provided 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); *id.* § 54.316 (requiring build-out milestone reporting).

⁵⁷ CFR §§ 54.400 et seq.

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

⁵⁹ Petition at 8; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

⁶⁰ *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6698; *see also* 47 U.S.C. § 153(2) (defining an affiliate as "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person").

⁶¹ *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699 (citing *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-58, 14-259, Order on Reconsideration, 33 FCC Rcd 1380, 1387-88, para. 20 (2018) (rejecting arguments contending that "because VoIP is provided over broadband networks and over-the-top voice options are available, broadband service providers need only offer broadband as a standalone service," and requiring carriers to "offer VoIP over their broadband network on a standalone basis"); *cf. Connect America Fund*, WC Docket No. 10-90, Report and Order, 28 FCC Rcd 7211, 7224 n.21 (WCB 2013) (explaining that a broadband provider would be considered to be providing voice service if it did so through an affiliated competitive local exchange company or "through a managed voice solution obtained from a third party vendor ... , so long as the broadband provider is the

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through a managed service solution, that ensures that the service meets consumer protection and service quality standards.⁶²

19. *Advertising Supported Services.* The Petitioner commits to advertising the availability of the supported services and related charges using media of general distribution.⁶³ 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.⁶⁴

20. *Ability to Remain Functional in Emergency Situations.* The Petitioner states that it can remain functional in emergency situations.⁶⁵ The 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.⁶⁶

21. *Anti-Drug Abuse Act Certification.* The 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.⁶⁷

C. Public Interest Analysis

22. We conclude that the Petitioner's participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. As noted above, the designation is conditioned upon, limited to, and effective upon the long form applicant's authorization to receive support under the RDOF program, and if it is ultimately authorized, we presume that the designation will serve the public interest. Long-standing Commission precedent has explained that the public interest inquiry is a cost-benefit analysis focusing on a petitioner's efficiencies, the benefits of competition, the public benefits of service, and the fundamental principles of USF, all of which are fully demonstrated through the competitive auction and successful completion of the authorization processes.⁶⁸ To further elaborate, the competitive auction ensures that the most efficient provider (or at least one of the most efficient providers) will serve an area that the Commission has already identified as underserved or unserved using preapproved technologies. The Commission has determined that service to these areas will bring social and economic benefits in terms of access to advanced service meeting specific performance requirements. In addition, the Commission's application process scrutinizes how the applicant for RDOF support will provide service and meet program requirements, subject to close oversight and default penalties; this helps ensure that the applicant will meet its obligation to provide

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entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers").

⁶² *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699.

⁶³ Petition at 8-9; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

⁶⁴ 47 CFR § 54.405.

⁶⁵ Petition at 10.

⁶⁶ *Id.*; 47 CFR § 54.202(a)(2).

⁶⁷ Petition at 9; 47 CFR § 1.2002.

⁶⁸ See *Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371, 6388-89, para. 40 (2005) ("The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas."); *id.* at 6389, para. 41 (where the Commission has jurisdiction, it will conduct a cost-benefit analysis that includes consideration of a variety of factors, including "the benefits of increased consumer choice, and the unique advantages and disadvantages of the competitor's service offering.").

ubiquitous service throughout the study area at rates and on terms that are reasonably comparable to those associated with comparable service offerings in urban areas.

23. Accordingly, based on the information, representations, and certifications in its petition, we find that the Petitioner has met all applicable conditions and prerequisites for ETC designation and that conditionally granting these petitions serves the public interest.

D. Regulatory Oversight

24. Under section 254(e) of the Act, the Petitioner must use universal service support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”⁶⁹ Under section 214(e) of the Act, the Petitioner must provide supported services throughout the service area for which it receives an ETC designation.⁷⁰ When and if the long form applicants are authorized to receive high-cost support, the Petitioner (or the long-form applicant) must file an annual certification for each state in which it receives support 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.⁷¹ The Commission conditions future support awarded through the high-cost program on the filing of such certification.⁷²

25. An ETC (or the long-form applicant) 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.⁷³ In addition, it 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.⁷⁴

26. We find that reliance on the Petitioner’s commitments to meet these and other regulatory requirements in its applications, as well as representations and commitments made in its Petition, 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 the Petitioner can and commits to satisfying its obligation under section 214(e) of the Act to provide supported services throughout its respective designated service areas.

27. 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 received is being used “only for the provision, maintenance, and upgrading of facilities and services” in the areas for which the relevant ETC(s) have been designated.⁷⁵ The ETC (or affiliate long-form applicant acting on its behalf and receiving support) must provide such records and documentation to the Commission and USAC upon request.⁷⁶ If the Petitioner fails to fulfill the requirements of the Act, the Commission’s rules, or the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke

⁶⁹ 47 U.S.C. § 254(e).

⁷⁰ *Id.* § 214(e).

⁷¹ 47 CFR § 54.314(b).

⁷² *Id.*

⁷³ 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).

⁷⁴ 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).

⁷⁵ 47 U.S.C. §§ 220, 403.

⁷⁶ 47 CFR § 54.417.

the Petitioner's ETC designation.⁷⁷ The Commission also may assess forfeitures for violations of Commission rules and orders.⁷⁸

28. As the Bureau has previously explained, a carrier that cannot appropriately use universal service support must relinquish its ETC designation pursuant to section 214(e)(4) of the Act and section 54.205 of the Commission's rules.⁷⁹ For ETCs designated by the Commission, the ETC must file a notice of relinquishment in WC Docket No. 09-197, Telecommunications Carriers Eligible for Universal Service Support, using the Commission's Electronic Comment Filing System (ECFS). The Bureau will release an order approving the relinquishment if the relinquishing ETC demonstrates that the affected area will continue to be served by at least one ETC.⁸⁰ The ETC must then send a copy of its relinquishment notice and a copy of the relinquishment order (within one week of its release) to USAC at hcorders@usac.org. A carrier that intends to discontinue service must first seek authorization to discontinue service under section 63.71 of the Commission's rules.⁸¹ In addition, ETCs seeking to transfer control of their domestic authorizations to operate pursuant to section 214 of the Act or to engage in the sale of assets under section 214 (including any authorization to receive RDOF support) must first receive approval from the Commission in accordance with sections 63.03 and 63.04 of the Commission's rules governing the procedures for domestic transfer of control/asset applications.⁸² Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules.⁸³ Except where the Commission has forborne from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs.

IV. ORDER CLAUSES

29. 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 WINDSTREAM COMMUNICATIONS, LLC IS CONDITIONALLY DESIGNATED AN ELIGIBLE

⁷⁷ *Id.* § 54.806(b) (providing that RDOF support recipients are subject to the compliance measures, recordkeeping requirements and audit requirements set forth in section 54.320(a)-(c) of the Commission's rules); *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).

⁷⁸ *See* 47 U.S.C. § 503(b).

⁷⁹ *Id.* § 214(a); 47 CFR § 54.205. *See, e.g., Connect America Phase II Support Authorized for Six Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 12869, 12874 (RBAFT, OEA, WCB 2020) (summarizing ETC obligations relating to relinquishment); *Connect America Phase II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, 4720-30 (RBAFT, OEA, WCB 2019).

⁸⁰ 47 U.S.C. § 214(e)(4).

⁸¹ 47 CFR § 63.71.

⁸² 47 U.S.C. § 214; 47 CFR §§ 63.03; 63.04; *Connect America Phase II Support Authorized for Six Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 35 FCC Rcd 12869, 12874-75 (RBAFT, OEA, WCB 2020) (summarizing ETC obligations relating to transfers of control); *Connect America Phase II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, 4730 (RBAFT, OEA, WCB 2020). Regardless of whether an applicant for RDOF support recipient has received ETC designation during the resubmission period, transfers of control constitute major modifications requiring waiver. Absent such waiver, the application may be dismissed. 47 CFR § 1.21001(d)(5) (prohibiting major modifications to an application during a resubmission period, including any changes in the ownership of the applicant that constitute an assignment or transfer of control); *Rural Digital Opportunity Fund Procedures Public Notice*, 35 FCC Rcd at 6140-41, para. 182 n.407.

⁸³ 47 CFR § 63.24.

TELECOMMUNICATIONS CARRIER IN ALL CENSUS BLOCKS IN THE SPECIFIED STATES FOR WHICH IT IS ELIGIBLE TO RECEIVE SUPPORT AWARDED THROUGH THE RURAL DIGITAL OPPORTUNITY FUND AUCTION (AUCTION 904) AND WHICH ARE NOT COVERED BY A PREEXISTING ETC DESIGNATION ISSUED BY THE RELEVANT STATE AUTHORITY. These designations are contingent upon Windstream Florida, LLC and Windstream New York, Inc. becoming authorized to receive such support, are limited to those areas where support is authorized, and are effective only upon authorization.

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

31. 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