

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: August 30, 2022

Released: August 30, 2022

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau or WCB) designates Connect Everyone LLC (Starry) as an eligible telecommunications carrier (ETC) in certain high-cost areas within Alabama and Virginia. Designation is conditioned upon, limited to, and effective upon Starry's authorization to receive support under the Rural Digital Opportunity Fund program (RDOF or program).1 This 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 the petitioner for support. If the Bureau decides that Starry should be authorized to receive support, it will release a separate public notice announcing funding authorizations.

II. BACKGROUND

A. Rural Digital Opportunity Fund Auction (Auction 904)

2. On January 30, 2020, the Commission adopted the framework for the Rural Digital Opportunity Fund to award support through a reverse descending clock auction.2 At the conclusion of this auction, there were 180 winning bidders.3 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 an applicant become a winning bidder.4 In order to become authorized to receive support, winning bidders,

1 See Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021, WC Docket No. 19-126 et al., Public Notice, 35 FCC Rcd 13888 (RBATF, OEA, WCB 2020) (RDOF Closing Public Notice); Rural Digital Opportunity Fund et al., WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686 (2020) (RDOF Report and Order).

2 RDOF 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).

3 RDOF Closing Public Notice, 35 FCC Rcd at 13888.

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.<sup>5</sup> Four-hundred seventeen (417) entities submitted long-form applications by the January 29, 2021 deadline.<sup>6</sup> 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 each state in which they were applying for support.<sup>7</sup>

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.<sup>8</sup> Eligible services include voice and broadband Internet access service meeting certain requirements.<sup>9</sup> In a given geographic area, a carrier may be designated as an ETC and become eligible to receive funding from both the high-cost and low-income components of USF.<sup>10</sup> ETCs are generally obligated to offer the Lifeline-supported service throughout their designated service areas.<sup>11</sup>

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

4. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”<sup>12</sup> 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),”<sup>13</sup> and under that section, the Commission must “establish periodically” the services supported by universal service, “taking into account advances in telecommunications and information technologies and services.”<sup>14</sup> The Commission

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<sup>4</sup> 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, paras. 27-28 (2020) (*RDOF Procedures Public Notice*).

<sup>5</sup> 47 CFR § 1.21004; *RDOF 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. *RDOF Procedures Public Notice*, 35 FCC Rcd at 6164-65, paras. 288-93.

<sup>6</sup> See Long-Form Applicants Spreadsheet at: <https://www.fcc.gov/auction/904/round-results>.

<sup>7</sup> 47 CFR § 54.804(b)(5); *RDOF Closing Public Notice*, 35 FCC Rcd at 13894, 13900-01.

<sup>8</sup> See *Lifeline and Link Up Reform and Modernization et al.*, WC Docket Nos. 11-42 et al., Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6663, para. 14 (2012).

<sup>9</sup> 47 CFR § 54.101; see also 47 CFR § 54.401(a).

<sup>10</sup> 47 CFR § 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-income 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).

<sup>11</sup> 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).

<sup>12</sup> 47 U.S.C. § 254(e).

<sup>13</sup> *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”).

<sup>14</sup> *Id.* § 254(c).

has defined voice as the only supported service.<sup>15</sup> This definition is “technologically neutral,” allowing “ETCs to provision voice service over many platforms.”<sup>16</sup> 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.”<sup>17</sup>

5. Section 214 of the Act gives primary authority for ETC designations to state commissions.<sup>18</sup> The Commission has authority to designate a carrier as an ETC only in the case of “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”<sup>19</sup> 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.”<sup>20</sup> 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.”<sup>21</sup> The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.<sup>22</sup>

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 petitioner offers or intends to offer the supported services, either using its own facilities or a combination of its own facilities and resale of another carrier’s services;<sup>23</sup> (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;<sup>24</sup> (4) a detailed description of the geographic service area for which the petitioner

<sup>15</sup> 47 CFR § 54.101(a).

<sup>16</sup> *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*).

<sup>17</sup> *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).

<sup>18</sup> 47 U.S.C. § 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) shall “offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title . . .” and “advertise the availability of such services and the charges therefore using media of general distribution.”).

<sup>19</sup> *Id.* § 214(e)(6).

<sup>20</sup> *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000); 47 U.S.C. § 214(e)(6).

<sup>21</sup> *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6697 (WCB 2018) (*CAF Phase II ETC Guidance Public Notice*).

<sup>22</sup> *See Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

<sup>23</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

<sup>24</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

requests to be designated as an ETC;<sup>25</sup> and (5) a certification that neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.<sup>26</sup>

7. In addition, a petitioner for ETC designation 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.<sup>27</sup>

8. We note that for petitioners seeking ETC designation for the purpose of becoming authorized to receive program 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 (collectively, ETC waivers).<sup>28</sup> 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.<sup>29</sup>

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.<sup>30</sup> When making a public interest determination, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.<sup>31</sup> 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.<sup>32</sup> To be ultimately authorized, long-form applicants must complete a competitive bidding process that demonstrates their ability to provide service efficiently in unserved high-cost areas and an application process that demonstrates their ability to meet their public interest obligations.<sup>33</sup>

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<sup>25</sup> An ETC's "service area" is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC's service area and an incumbent rural telephone company's service area, the Commission has separately forbore from imposing such requirements on RDOF support recipients. *See RDOF Report and Order*, 35 FCC Rcd at 728, paras. 93-94.

<sup>26</sup> 21 U.S.C. § 862; 47 CFR § 1.2002(a)-(b).

<sup>27</sup> 47 CFR § 54.202(a).

<sup>28</sup> *RDOF Closing Public Notice*, 35 FCC Rcd at 13901 n.71 (extending to RDOF long-form applicants the same waivers of 54.202 requirements as provided to CAF Phase II long-form applicants under the same rationales); *CAF Phase II ETC Guidance Public Notice*, 33 FCC Rcd at 6699-6700.

<sup>29</sup> *CAF Phase II ETC Guidance Public Notice*, 33 FCC Rcd at 6699-6700; 47 CFR § 54.804; *id.* at § 54.806.

<sup>30</sup> 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

<sup>31</sup> *See, e.g., Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

<sup>32</sup> *RDOF Closing Public Notice*, 35 FCC Rcd at 13901 n.71 (extending to RDOF long-form applicants the same presumption that designation will serve the public interest under the same rationales justifying the application of such presumption to Phase II long-form applicants); *CAF Phase II ETC Guidance Public Notice*, 33 FCC Rcd at 6699-6700 (explaining the basis for this presumption).

<sup>33</sup> *See RDOF 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

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### C. Petition for ETC Designation and Related Filings

10. We specify that Starry's designation will cover all eligible census blocks covered by the RDOF award (as published by the Commission on its website) for the state indicated and for which the petitioner is authorized to receive support, regardless of any discrepancies in the description of such areas in Starry's petition.<sup>34</sup>

11. The Bureau has released a public notice soliciting comments on Starry's petition.<sup>35</sup> The Ensuring Digital Opportunity Fund Integrity Coalition (ERIC) filed a comment challenging the ability of Starry to meet certain RDOF requirements,<sup>36</sup> and Starry replied.<sup>37</sup> Specifically, ERIC challenges Starry's ability to meet program requirements and to demonstrate functionality in emergency situations given certain technological limitations of its proposed use of millimeter wave technology and existing licenses.<sup>38</sup> Starry asserts that ERIC's general challenges to the viability of using millimeter wave technologies and existing licenses are indirect, late challenges to Commission decisions affirming use of these technologies and licenses to meet RDOF requirements.<sup>39</sup>

### III. DISCUSSION

12. After considering all arguments raised in the comments, we find that Starry has satisfied 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.<sup>40</sup> We therefore designate Starry as a high-cost ETC in Alabama and Virginia, conditioned upon and limited to the high-cost areas where the Commission authorizes it to receive RDOF support and effective only upon such authorization. In this area, Starry

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efficient use of budgeted funds."); *RDOF Report and Order*, 35 FCC Rcd at 694-95, para. 18; *RDOF Procedures Public Notice*, 35 FCC Rcd at 6166, para. 301.

<sup>34</sup> See Results, Long-Form Applicants Spreadsheet at <https://www.fcc.gov/auction/904/round-results>.

<sup>35</sup> *Wireline Competition Bureau Seeks Comment on Rural Digital Opportunity Fund Petitions for Designation as an Eligible Telecommunications Carrier*, Docket No. 09-197, Public Notice, 36 FCC Rcd 4840 (WCB 2021).

<sup>36</sup> Ensuring Digital Opportunity Fund Integrity Coalition, Comments on Connect Everyone, LLC ETC Petition, WC Docket No. 09-197 at 7, 9-12 (filed Apr. 7, 2021) (ERIC Comments). ERIC disclosed that it is "a coalition consisting of rural broadband providers, rural Americans, and local government officials" but did not disclose the members of this coalition. See *id.* at 4 n.1.

<sup>37</sup> Connect Everyone, LLC Reply Comments, WC Docket 09-197 (Starry Reply).

<sup>38</sup> Ensuring Digital Opportunity Fund Integrity Coalition, Comments on Connect Everyone, LLC ETC Petition, WC Docket No. 09-197 at 7, 9-12 (filed Apr. 7, 2021) (ERIC Comments). ERIC also argues that the Commission, by granting ETC waivers in some cases and adopting a presumption that ETC designation serves the public interest, undermines access to what should be public records and limits public comments on ETC designation petitions from RDOF awardees. *Id.* at 10 n. 22. ERIC contends, further, that interested parties should be able to access long-form application information that is treated as confidential so that these parties can submit more informed challenges to ETC designation petitions. *Id.* In response, Starry asserts that ERIC's request for confidential long-form applications is "at base, a request for competitors who have failed to serve these areas of the country to have access to the financial and network models of the new entrants in and around their service territories." Starry Reply at 10.

<sup>39</sup> See *id.* at 9 (asserting that ERIC is attempting to relitigate the Commission's decision in the *RDOF Procedures Public Notice* to include millimeter wave frequencies in Appendix B); see also *RDOF Procedures Public Notice*, 35 FCC Rcd at 6188-89, Append. B.

<sup>40</sup> See Connect Everyone LLC (Starry), Petition for ETC Designation, WC Dockets 19-126, 09-197 (Jan. 6, 2021) (Starry Petition).

must meet RDOF requirements, Lifeline requirements, and other service obligations attendant to its high-cost designations, as specified in the Act and the Commission's rules.<sup>41</sup>

**A. Commission Authority**

13. Starry has demonstrated 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 from the relevant state authorities declining to assert jurisdiction.<sup>42</sup> As Starry explains, Section 37-2A-4 of the Alabama Code and Section 56-1.3 of the Code of Virginia specifically exclude from state regulatory authority the services offered by Starry.<sup>43</sup> As indicated below, Starry has demonstrated 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 Starry as an ETC for purposes of eligibility for RDOF support.

**B. Eligibility Requirements**

14. *Offering the Service Supported by the Universal Service Support Mechanisms.* We find that Starry has established 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.<sup>44</sup> Specifically, Starry 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.<sup>45</sup> Starry must offer this service as of the first day of the month following this designation.<sup>46</sup>

15. *Compliance with the Service Requirements Applicable to RDOF Support Recipients.* We find that Starry has established its ability to comply with service requirements applicable to the support that it will receive.<sup>47</sup> This determination considers that, prior to being authorized to receive RDOF support, Starry must certify and demonstrate, as part of its short form and long-form applications, the technical and financial ability to provide voice and broadband services meeting or exceeding RDOF standards,<sup>48</sup> certify its commitment to meeting relevant public interest obligations,<sup>49</sup> and certify its compliance with all statutory and regulatory requirements for receiving the universal service support or, alternatively, certify its acknowledgement that it must comply with these requirements prior to being authorized to receive

<sup>41</sup> 47 CFR § 54.202(a)(1)(i); *id.* § 54.101.

<sup>42</sup> Starry Petition at Append. A (Letter from John A. Garner, Executive Director and Chief Admin Law Judge, Alabama Public Service Commission, to Counsel for Connect Everyone LLC (Dec. 17, 2020)); *id.* at Append. B (Application of Connect Everyone LLC, Order, VA SCC Case No. PUR-2020-002989 at 3) (rel. Jan. 6, 2021)).

<sup>43</sup> Starry Petition at 5 (citing § 37-2A-4(a), *Code of Alabama*, 1975; VA Code Ann. § 56-1.3).

<sup>44</sup> Starry Petition at 6-7; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>45</sup> *Id.*; 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).

<sup>46</sup> See *RDOF Report and Order*, 35 FCC Rcd at 745, para. 139 (a new ETC receiving 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 receiving its ETC designation).

<sup>47</sup> Starry Petition at 7-8; 47 CFR §§ 54.101(d), 54.202(a)(1)(i).

<sup>48</sup> 47 CFR § 54.804(a),(b); *RDOF Report and Order*, 35 FCC Rcd at 726, paras. 88, 90.

<sup>49</sup> 47 CFR § 54.804(b)(2)(iii); *RDOF Report and Order*, 35 FCC Rcd at 726, para. 89.

support.<sup>50</sup> Moreover, once authorized, Starry must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.<sup>51</sup>

16. In reaching these decisions, we reject ERIC's arguments and assertions challenging Starry's ETC petition based on specific technological considerations that fall well outside the scope and purpose of the ETC designation process. Indeed, as the Bureau has already explained in the context of the Connect America Fund (CAF) Phase II auction (Auction 903), the ETC designation process and authorization processes serve different purposes.<sup>52</sup> Specifically, "the ETC designation process establishes a petitioner's general eligibility for receiving USF support and imposes certain statutory and regulatory obligations but does not duplicate the Bureau's multifaceted, objective, and consistent process for evaluating ... long-form applications or future performance."<sup>53</sup> To receive RDOF support, ETC petitioners must, as part of the ETC process, make binding, enforceable commitments to build out a future network but they are not thereby required, as part of the ETC process, to submit evidence supporting such commitments or refute allegations that they cannot meet such commitments.<sup>54</sup>

17. In this regard, there are clear distinctions in the purposes of the ETC process and the application processes. Specifically, the short-form application process forms the basis for the Commission's determinations on whether an applicant has successfully demonstrated its qualifications to place an irrevocable basis.<sup>55</sup> The process serves as a foundation for efficient and earnest auction processes and discourages parties from engaging in anticompetitive practices prior to bid placement, such as entering into agreements to not bid in specific territories.<sup>56</sup> The long-form application process then forms the basis for the Commission's determinations on whether an applicant has sufficiently demonstrated its financial and technological capabilities to meet Auction requirements to be authorized to receive support.<sup>57</sup> Based on these distinctions between these processes and the ETC designation process

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<sup>50</sup> 47 CFR § 1.21001(b)(6).

<sup>51</sup> *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).

<sup>52</sup> *Telecommunication Carriers Eligible for Universal Service Support*, Order, 34 FCC Rcd 8137, 8142, para. 17 (WCB 2019).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* (citing *Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of The South Dakota Public Utilities Commission*, Declaratory Ruling, 15 FCC Rcd 15168, 15169, 16173-74, paras. 2, 14 (2000)).

<sup>55</sup> *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 717-18, paras. 68-69; *RDOF Procedures Public Notice*, 35 FCC Rcd at 6088-89, para. 27-28; *id.* at 6098, para. 64 ("We will use the short-form application to assess the likelihood that an applicant would not default if selected as a winning bidder."); *id.* at 6103, para. 76 (cautioning potential bidders that, after the close of a round, each bid represents an irrevocable offer to meet the terms of the bid if it becomes a winning bid).

<sup>56</sup> *See, e.g., RDOF Procedures Public Notice*, 35 FCC Rcd at 6091-94, paras. 45-48 (prohibiting joint bidding arrangements, requiring disclosures in short-form application, information concerning agreements, arrangements, or understandings between applicants).

<sup>57</sup> *See Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 717-18, paras. 68-69; *RDOF Procedures Public Notice*, 35 FCC Rcd at 6099, para. 64 (once winning bids are identified, "Commission staff will evaluate the information submitted in the long-form application and will rely on an eligible bank's willingness to issue the

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and consistent with the Commission's adopted framework for long-form review, the Bureau cannot allow for competitors to access confidential long-form information, even under protective order.

18. *Compliance with Service Requirements Applicable to Lifeline Services.* Starry has committed to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.<sup>58</sup> We emphasize that all ETCs receiving Lifeline support must report certain information to the Commission, USAC, and the local regulatory authority, pursuant to section 54.422 of the Commission's rules.<sup>59</sup>

19. *Offering the Supported Services Using a Carrier's Own Facilities.* Starry has certified that it will offer supported services using its own facilities or a combination of its own facilities and resale of another carrier's services.<sup>60</sup> 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 holding company structure.<sup>61</sup> 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.<sup>62</sup> Instead, the ETC must remain legally responsible, through a managed service solution, that ensures that the service meets consumer protection and service quality standards.<sup>63</sup>

20. *Advertising Supported Services.* Starry has committed to advertising the availability of the supported services and related charges using media of general distribution.<sup>64</sup> 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.<sup>65</sup>

21. *Ability to Remain Functional in Emergency Situations.* Starry has stated that it can remain functional in emergency situations.<sup>66</sup> Starry has stated that it has sufficient back-up power to ensure

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applicant a letter of credit to determine whether an applicant is reasonably capable of meeting its Rural Digital Opportunity Fund auction obligations in the specific areas where it has winning bids.").

<sup>58</sup> Starry Petition at 7; 47 CFR § 54.400 et seq.

<sup>59</sup> 47 CFR § 54.422; *see also id.* § 54.410.

<sup>60</sup> Starry Petition at 8; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>61</sup> *CAF Phase II 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").

<sup>62</sup> *CAF Phase II 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 entity responsible for dealing with any customer problems, and it provides quality of service guarantees to end user customers").

<sup>63</sup> *CAF Phase II ETC Public Notice*, 33 FCC Rcd at 6699.

<sup>64</sup> Starry Petition at 9; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

<sup>65</sup> 47 CFR § 54.405.

<sup>66</sup> Starry Petition at 10; 47 CFR § 54.202(a)(2).



functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.<sup>67</sup>

22. We find that Starry's commitments here are sufficient for ETC designation purposes. We reject ERIC's assertion that Starry cannot meet these commitments because Starry has indicated that it intends to use millimeter wave technology under the current terms of its license to do so. The Commission did not preclude users of millimeter wave technology from competing for RDOF support,<sup>68</sup> and the Commission evaluates Starry's ability to meet RDOF program requirements using this technology under current licenses as part of the long-form application review.<sup>69</sup> For these reasons, as well as those explained above regarding the distinctions between ETC petition requirements and authorization requirements, we find that Starry has met this obligation for purposes of ETC designation by affirming that it can meet the specific conditions set forth in section 54.202(a)(2) of the Commission's rules.

23. *Anti-Drug Abuse Act Certification.* Starry has submitted a certification that satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.<sup>70</sup>

### C. Public Interest Analysis

24. We conclude that Starry'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 applicants' authorization to receive support under the RDOF program.

25. As explained above, this designation is conditioned upon, limited to, and effective upon Starry's authorization to receive support under the RDOF program, and we presume that the designation will serve the public interest based on successful completion of the program's application processes. 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.<sup>71</sup> 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

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<sup>67</sup> *Id.*; 47 CFR § 54.202(a)(2).

<sup>68</sup> See *Auction 904 Procedures Public Notice*, 35 FCC Rcd at 6106-07, 6188-6199, para. 86, Appendix B Auction 904 Spectrum Chart.

<sup>69</sup> *RDOF Procedures Public Notice*, 35 FCC Rcd at 6175, para. 314 (stating that, as part of its review of the long-form application, the Commission will consider the reasonableness of the applicant's certification that it will retain access to the requisite spectrum over a 10-year period).

<sup>70</sup> Starry Petition at 11; 47 CFR § 1.2002.

<sup>71</sup> 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").

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.

26. 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 ubiquitous service throughout the study area at rates and on terms that are reasonably comparable to those associated with comparable offerings in urban areas. Although short-form applicants were required to submit preliminary information about necessary spectrum resources (when applicable), the Commission also acknowledged that build-out plans may change.<sup>72</sup> By extension, while long-form applicants must make a reasonable certification that they will have continuing access to spectrum necessary to meet RDOF requirements over the 10-year period, there is no requirement that an authorized support recipient continue to use the same spectrum such that we would be forced to find them in default should the Commission change its rules regarding the use of the spectrum or the terms of the associated licenses.

27. Accordingly, based on Starry's information, representations, and certifications in its petition, we find that Starry has met all applicable conditions and prerequisites for ETC designation and that conditionally granting its petition serves the public interest. Starry's participation in universal service programs would be in the public interest and would provide numerous benefits to consumers.

#### **D. Regulatory Oversight**

28. Under section 254(e) of the Act, an ETC must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended."<sup>73</sup> Under section 214(e) of the Act, an ETC must provide supported services throughout the service area for which it receives an ETC designation.<sup>74</sup> When and if the ETC (in this case, the long-form applicant) is authorized to receive high-cost support, it 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.<sup>75</sup> The Commission conditions future support awarded through the high-cost program on the filing of such certification.<sup>76</sup>

29. An ETC (in this case, 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.<sup>77</sup> In addition, it must file annual reports that include, among other things, a

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<sup>72</sup> See *RDOF Procedures Public Notice*, 35 FCC Red at 7189, para. 69 ("We recognize that because a short-form applicant will not know where it might be authorized to receive support and will have a number of years to build out or upgrade its network, the information submitted [in the short-form application] may be based on a preliminary network design, which may be modified once the winning bids are announced and as the network is built out.").

<sup>73</sup> 47 U.S.C. § 254(e).

<sup>74</sup> *Id.* § 214(e).

<sup>75</sup> 47 CFR § 54.314(b).

<sup>76</sup> *Id.*

<sup>77</sup> See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Red 15095, 15105-06, para. 26 (2005).

certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.<sup>78</sup>

30. We find that reliance on Starry's commitments to meet these and other regulatory requirements in its application, 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 Starry can and will commit to satisfying its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

31. 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.<sup>79</sup> The ETC must provide such records and documentation to the Commission and USAC upon request.<sup>80</sup> If Starry 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 its ETC designations.<sup>81</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>82</sup> We note that the Commission has recently announced a new program, the Rural Broadband Accountability Plan (RBAP), that will increase audits, verifications, and transparency for USF high-cost programs, including RDOF.<sup>83</sup> With the establishment of RBAP, RDOF recipients, like other high-cost recipients, will be subject to a high level of accountability as they work to meet applicable performance requirements and benchmarks.

32. 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.<sup>84</sup> 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.<sup>85</sup> The ETC must then send a copy of its relinquishment notice

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<sup>78</sup> 47 CFR § 54.422(b)(3); *see also id.* §§ 54.416, 54.422 (requiring an officer of the company to certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and that it will comply with all federal Lifeline certification procedures).

<sup>79</sup> 47 U.S.C. §§ 220, 403.

<sup>80</sup> 47 CFR § 54.417.

<sup>81</sup> *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).

<sup>82</sup> *See* 47 U.S.C. § 503(b).

<sup>83</sup> Fact Sheet: Rural Broadband Accountability Plan (rel. Jan. 28, 2022).

<sup>84</sup> *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).

<sup>85</sup> 47 U.S.C. § 214(e)(4).

and a copy of the relinquishment order (within one week of its release) to USAC at [hcorders@usac.org](mailto: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.<sup>86</sup> 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.<sup>87</sup> Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules.<sup>88</sup> 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. 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 CONNECT EVERYONE LLC IS CONDITIONALLY DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN ALL CENSUS BLOCKS IN THE STATES OF ALABAMA AND VIRGINIA FOR WHICH IT IS ELIGIBLE TO RECEIVE SUPPORT AWARDED THROUGH THE RURAL DIGITAL OPPORTUNITY FUND PHASE I AUCTION (AUCTION 904). This designation is contingent upon Connect Everyone LLC becoming authorized to receive such support, is limited to the area where support is authorized, and is effective only upon authorization.

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

35. 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

Trent B. Harkrader  
Chief  
Wireline Competition Bureau

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<sup>86</sup> 47 CFR § 63.71.

<sup>87</sup> 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 a long-form applicant 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); *RDOF Procedures Public Notice*, 35 FCC Rcd at 6140-41, para. 182 n.407.

<sup>88</sup> 47 CFR § 63.24.