

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: June 13, 2023

Released: June 13, 2023

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) designates Yellowhammer Networks, LLC (Yellowhammer) as an eligible telecommunications carrier (ETC) for purposes of receiving Rural Digital Opportunity Fund (RDOF) support, conditioned upon, and limited by, its authorization to receive this support, and effective only upon such authorization.

II. BACKGROUND

A. Section 214 Transfer of Assets to Yellowhammer

2. The Bureau takes this action in conjunction with the Bureau's approval of an application filed by BroadLife Communications, Inc. (BroadLife) and Yellowhammer, pursuant to section 214 of the Act, and sections 63.03-04 of the Commission's rules, requesting consent for the transfer of certain assets from BroadLife to Yellowhammer, including RDOF support.

1 See Yellowhammer Networks, LLC, Petition for Eligible Telecommunications Carrier Designation, WC Docket No. 09-197 (filed Jan. 13, 2023), https://www.fcc.gov/ecfs/document/101131998121584/1 (ETC Petition).

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

3 See Domestic Section 214 Application Granted for the Acquisition of Certain Assests of BroadLife Communications, Inc. by Yellowhammer Networks, LLC, WC Docket 23-23, Public Notice, DA 23-473 at 4 (WCB rel. June 1, 2023) (214 Transfer Public Notice); Application of BroadLife Communications, Inc. and Yellowhammer Networks, LLC for Consent to Assignment of Domestic Section 214 Authorization, WC Docket No. 23-23 (filed Jan. 13, 2023), https://www.fcc.gov/ecfs/document/1011389787924/1 (Application), as supplemented, Letter from Stephen Coran, Counsel to Yellowhammer Networks, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-23 (filed Feb. 15, 2023).

4 Application at 3, Exh. 1 (List of Assigned Census Blocks); Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids, AU Docket No. 20-34 et al., Public Notice, DA 22-402, Attach. A (Authorized Long-Form

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transaction, Yellowhammer will receive all RDOF support associated with this award (net of the RDOF support equal to the amount of state and federal income tax owed on the RDOF support received by BroadLife in 2022), subject to and limited by its future authorization.<sup>5</sup> In its Application, BroadLife states that it will take steps to relinquish its ETC designation after consummation of the transaction.<sup>6</sup>

### B. Lifeline Requirements

3. The Lifeline program provides support to reimburse providers for offering supported services at discounted prices to qualifying low-income households, with more support available for households on Tribal lands.<sup>7</sup> Eligible services include voice and broadband Internet access service meeting certain requirements.<sup>8</sup> In a given geographic area, a carrier may be designated as an ETC and become eligible to receive funding from both the high-cost and low-income components of the Universal Service Fund (USF).<sup>9</sup> All ETCs must offer Lifeline-supported services throughout their designated service areas.<sup>10</sup>

### C. Requirements for FCC ETC Designation

4. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support.”<sup>11</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>12</sup> as established by the Commission.<sup>13</sup> A petitioner offering voice service, regardless of the technology used to provision that

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Applicants and Winning Bids) (WCB/OEA/RBATF Apr. 15, 2022) (*RDOF Public Notice*). 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 “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.” *RDOF Public Notice* at 8-9. “Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission’s rules. Except where the Commission has forbore from the application of section 214, this requirement applies to all transfers of control or asset acquisitions involving ETCs.” *Id.*

<sup>5</sup> See Application at 8-9.

<sup>6</sup> See *id.* at 9.

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

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

<sup>9</sup> *Id.* at 3974, 4074-75, paras. 35, 311-12 (requiring all high-cost support recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

<sup>10</sup> See 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101(a) (as amended by the *Lifeline Modernization Order*); see also *Lifeline Modernization Order*, 31 FCC Rcd at 3972, 4071-72, paras. 30-32, 297, 299-301.

<sup>11</sup> 47 U.S.C. § 254(e).

<sup>12</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>13</sup> 47 U.S.C. § 254(c). Section 254(c) requires that the Commission “establish periodically,” the services supported by universal service, “taking into account advances in telecommunications and information technologies and services.” *Id.* The Commission has defined voice as the only supported service. 47 CFR § 54.101(a). This definition is “technologically neutral,” allowing “ETCs to provision voice service over many platforms.” *Connect*

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service, may be treated as a “telecommunications carrier” under Title II of the 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>14</sup>

5. Section 214 of the Act gives primary authority for ETC designations to state commissions.<sup>15</sup> 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.”<sup>16</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>17</sup> However, “[i]f a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff [will] consider such a statute relevant” in determining Commission jurisdiction.<sup>18</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>19</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>20</sup> (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;<sup>21</sup> and (5) a certification that neither the petitioner, nor any party to

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*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).

<sup>14</sup> *IP-Enabled Services; E9-1-1 requirements for IP-Enabled Service Providers*, WC Docket Nos. 04-36 and 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>15</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)(1) (providing that “a common carrier designated under section 214(e)(2), (3), or (6) . . . shall, throughout the service area for which the designation is received—(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title”).

<sup>16</sup> *Id.* § 214(e)(6).

<sup>17</sup> *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, 12255, para. 93 (2000); *see* 47 U.S.C. § 214(e)(6).

<sup>18</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) (*Phase II Auction ETC Guidance Public Notice*). The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests. *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>19</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

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

<sup>21</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 Order*, 35 FCC Rcd at 728, paras. 93-94.

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the petitioner's application for any new, modified, and/or renewed instrument of authorization from the Commission, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.<sup>22</sup>

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.<sup>23</sup>

8. Prior to designating a carrier as an ETC pursuant to section 214(e)(6) of the Act, the Commission must also determine whether such designation is in the public interest.<sup>24</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 petitioner's service offering.<sup>25</sup>

#### **D. Petition for ETC Designation**

9. We specify that Yellowhammer's ETC designation will cover all eligible census blocks covered by the BroadLife RDOF award (as published by the Commission on its website) and assigned to Yellowhammer, subject to and limited by its authorization to receive support (designated service area).<sup>26</sup> On March 10, 2023, the Bureau released a Public Notice seeking comment on the Application and the Petition.<sup>27</sup> The Bureau did not receive comments or petitions in opposition to the Petition.

### **III. DISCUSSION**

10. After considering all arguments raised in the comments, we find that Yellowhammer 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. We therefore designate Yellowhammer as an ETC in the designated service area. In this area, Yellowhammer must meet RDOF requirements, Lifeline

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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>22</sup> 21 U.S.C. § 862; 47 CFR § 1.2002(a)–(b).

<sup>23</sup> 47 CFR § 54.202(a). We note that, for petitioners seeking ETC designation for the purpose of becoming authorized to receive RDOF support, the Commission has waived certain section 54.202 requirements, including the requirement that the petitioner submit a five-year service plan and proof of compliance with consumer protection and service quality standards. *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form Due January 29, 2021*, AU Docket No. 20-34 et al., Public Notice, 35 FCC Rcd 13888, 13901 n.71 (RBATF, OEA, WCB 2020) (extending to RDOF long form applicants the same waivers of section 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 6699-700; 47 CFR §§ 54.804, 54.806. Because Yellowhammer is subject to RDOF reporting obligations and other requirements pursuant to this designation conditioned upon its authorization for RDOF support, we extend this same waiver to Yellowhammer.

<sup>24</sup> 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

<sup>25</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>26</sup> See Results, Long-Form Applicants Spreadsheet at <https://www.fcc.gov/auction/904/round-results>.

<sup>27</sup> See *Domestic Section 214 Application Filed for the Transfer of Control of Certain Assets of BroadLife Communications, Inc. to Yellowhammer Networks, LLC; Petition Filed for the Designation of Yellowhammer Networks, LLC as an Eligible Telecommunications Carrier*, WC Docket Nos. 23-23 and 09-197, Public Notice, DA 23-305, at 3-5 (WCB 2023).

requirements, and other service obligations attendant to its high-cost designation, as specified in the Act and the Commission's rules.<sup>28</sup>

**A. Satisfaction of ETC Requirements**

11. *Commission Authority.* Yellowhammer 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 from the Alabama Public Service Commission declining to assert jurisdiction over this ETC designation in the designated service area because state regulation specifically excludes from state jurisdiction the regulation of broadband and Voice over Internet Protocol (VoIP) services (the services that Yellowhammer will use to meet its public interest obligations).<sup>29</sup> Accordingly, we find that the Bureau, acting under the Commission's delegation of authority, may designate Yellowhammer as an ETC upon a finding that Yellowhammer meets all eligibility requirements for ETC designation.

12. *Offering the Service Supported by the Universal Service Support Mechanisms.* Yellowhammer 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 may become eligible pursuant to the requested designation and that it will offer the service supported by the federal universal service support mechanisms.<sup>30</sup> Specifically, Yellowhammer 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>31</sup> Yellowhammer must offer this service as of the first day of the month following the authorization.<sup>32</sup>

13. *Compliance with the Service Requirements Applicable to RDOF Support Recipients.* Yellowhammer establishes its ability to comply with service requirements applicable to the support that it receives.<sup>33</sup> This determination takes into account the findings in this Public Notice that Yellowhammer has demonstrated the technical and financial ability to provide voice and broadband services meeting or exceeding RDOF standards, its commitment to meeting relevant public interest obligations, and its commitment to complying with all statutory and regulatory requirements for receiving universal service support.<sup>34</sup> As a condition of authorization, Yellowhammer 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>35</sup>

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<sup>28</sup> 47 CFR § 54.202(a)(1)(i); *id.* § 54.101.

<sup>29</sup> ETC Petition at 5; *id.* at 35, Exh. 5, Copy of Letter from Alabama Public Service Commission (Letter from John A. Gardner, Exec. Dir., Alabama Public Serv. Comm'n, to Penalba de las Heras, Yellowhammer Networks, LLC (Jan. 3, 2023) (declining to exercise jurisdiction over Yellowhammer's ETC designation)); *see also* Ala. Code § 37-2A-4 (stating that "the [Alabama Public Service Commission] shall not have any jurisdiction, right, power, authority, or duty to regulate, supervise, control, oversee, or monitor, directly or indirectly, the rates, charges, classifications, provision, or any aspect of broadband service, broadband enabled services, VoIP services, or information services").

<sup>30</sup> ETC Petition at 6-9; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>31</sup> ETC Petition at 6-9; 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 telephone network or its functional equivalent).

<sup>32</sup> *See Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 745, para. 139 (2020) (*RDOF Order*) (stating that 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).

<sup>33</sup> ETC Petition at 6-7; 47 CFR §§ 54.101(d), 54.202(a)(1)(i).

<sup>34</sup> 47 CFR § 1.21001(b)(6).

<sup>35</sup> *Id.* § 54.806 (providing that RDOF support recipients are subject to sections 54.313, 54.314, and 54.316 of the Commission's rules); *id.* § 54.313 (requiring annual report including certifications as to rates, functionality, and

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14. *Compliance with Service Requirements Applicable to Lifeline Services.* Yellowhammer commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.<sup>36</sup> We emphasize that all ETCs receiving Lifeline support must report certain information to the Commission, the Universal Service Administrative Company (USAC), and the local regulatory authority, pursuant to section 54.422 of the Commission's rules.<sup>37</sup>

15. *Offering the Supported Services Using a Carrier's Own Facilities.* Yellowhammer 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.<sup>38</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 same holding company structure.<sup>39</sup> An ETC may satisfy its obligation to "offer" supported voice service (or its functional equivalent, including interconnected VoIP) through a third-party vendor but cannot simply rely on the availability of over-the-top voice options.<sup>40</sup> Instead, the ETC must remain legally responsible, through a managed service solution, for ensuring that the service meets consumer protection and service quality standards.<sup>41</sup>

16. *Advertising Supported Services.* Yellowhammer commits to advertising the availability of the supported services and related charges using media of general distribution.<sup>42</sup> We emphasize that, as part of this commitment, Yellowhammer must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.<sup>43</sup>

17. *Ability to Remain Functional in Emergency Situations.* Yellowhammer states that it can remain functional in emergency situations.<sup>44</sup> Yellowhammer states that it has sufficient back-up power to

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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>36</sup> ETC Petition at 8; 47 CFR § 54.400 *et seq.*

<sup>37</sup> 47 CFR § 54.422; *see also id.* § 54.410.

<sup>38</sup> ETC Petition at 9; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>39</sup> *See Phase II Auction ETC Guidance 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>40</sup> *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699 (citing *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, 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>41</sup> *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699.

<sup>42</sup> ETC Petition at 9-10; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

<sup>43</sup> 47 CFR § 54.405.

<sup>44</sup> ETC Petition at 8-9.

ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.<sup>45</sup>

18. *Anti-Drug Abuse Act Certification.* Yellowhammer 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.<sup>46</sup>

### **B. Public Interest Analysis**

19. Based on the information, representations, and certifications in the Petition and consistent with the Bureau's findings in the *214 Transfer Public Notice*, we find that Yellowhammer has demonstrated that its designation as an ETC serves the public interest and would provide numerous benefits to consumers.<sup>47</sup> Long-standing Commission precedent has explained that the public interest inquiry in the ETC context is a cost-benefit analysis focusing on the petitioner's efficiencies, the benefits of competition, the public benefits of service, and the fundamental principles of USF, all of which we find were sufficiently addressed in the Application.<sup>48</sup> The Bureau has determined that service to the designated service area will bring social and economic benefits in terms of access to advanced services meeting specific performance requirements.<sup>49</sup> In addition, Yellowhammer will provide service and meet program requirements, subject to close oversight<sup>50</sup> and default consequences and forfeiture penalties;<sup>51</sup> this helps ensure that Yellowhammer 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 service offerings in urban areas.

20. In conclusion, and based on the information, representations, and certifications in its ETC Petition, we find that Yellowhammer has met all applicable conditions and prerequisites for ETC designation and that designation serves the public interest. Accordingly, we designate Yellowhammer as an ETC for purposes of becoming eligible to receive RDOF support associated with the designated service area.

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<sup>45</sup> *Id.*; 47 CFR § 54.202(a)(2).

<sup>46</sup> ETC Petition at 10-11; 47 CFR § 1.2002.

<sup>47</sup> ETC Petition at 10.

<sup>48</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.").

<sup>49</sup> See *214 Transfer Public Notice* at 3-4.

<sup>50</sup> See *RDOF Order*, 35 FCC Rcd at 702-04, paras. 31-36 (setting public interest obligations for RDOF support recipients); *id.* at 709-712, paras. 45-55 (adopting service milestone requirements); *id.* at 712-713, paras. 56-57 (adopting reporting requirements); 47 §§ CFR 54.802, 805-806.

<sup>51</sup> See *RDOF Order*, 35 FCC Rcd at 713-716, paras. 58-64 (adopting non-compliance measures); *id.* at 715-716, para. 63 (stating that in addition to default consequences, RDOF support recipients are subject to sanctions "including but not limited to the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designations, and suspension or debarment"); 47 CFR §§ 54.320(c), 54.803(c).

### C. Regulatory Oversight

21. 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>52</sup> Under section 214(e) of the Act, an ETC must provide supported services throughout the designated service area for which it receives an ETC designation.<sup>53</sup> When and if the ETC 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>54</sup> The Commission conditions future support awarded through the high-cost program on the filing of such certification.<sup>55</sup>

22. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its qualifying voice or broadband services by the amount of the support for the eligible consumer.<sup>56</sup> 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.<sup>57</sup>

23. We find that reliance on Yellowhammer’s commitments to meet these and other regulatory requirements in its Application, as well as representations and commitments made in its ETC 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 Yellowhammer and will commit to satisfying its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

24. 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>58</sup> The ETC must provide such records and documentation to the Commission and USAC upon request.<sup>59</sup> If Yellowhammer 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 designation.<sup>60</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>61</sup> We note that the Commission has recently announced a new program, the Rural Broadband Accountability Plan (RBAP), that will increase audits, verifications,

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<sup>52</sup> 47 U.S.C. § 254(e).

<sup>53</sup> *Id.* § 214(e).

<sup>54</sup> 47 CFR § 54.314(b).

<sup>55</sup> *Id.*

<sup>56</sup> *See Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

<sup>57</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>58</sup> 47 U.S.C. §§ 220, 403.

<sup>59</sup> 47 CFR § 54.417.

<sup>60</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>61</sup> *See* 47 U.S.C. § 503(b).



and transparency for USF high-cost programs, including RDOF.<sup>62</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.

25. 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>63</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>64</sup> 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](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>65</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>66</sup> Transfers of control and assignments of international section 214 authorizations are separately subject to section 63.24 of the Commission's rules.<sup>67</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

26. 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, Yellowhammer Networks LLC IS DESIGNATED an Eligible Telecommunications Carrier in its designated service area.

27. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the Universal Service Administrative Company and to the Alabama Public Service Commission.

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<sup>62</sup> Fact Sheet: Rural Broadband Accountability Plan (rel. Jan. 28, 2022).

<sup>63</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>64</sup> 47 U.S.C. § 214(e)(4).

<sup>65</sup> 47 CFR § 63.71.

<sup>66</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>67</sup> 47 CFR § 63.24.

28. 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