



PUBLIC NOTICE

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AUTHORIZATION OF YELLOWHAMMER NETWORKS, LLC TO RECEIVE RURAL DIGITAL OPPORTUNITY FUND SUPPORT TRANSFERRED FROM BROADLIFE COMMUNICATIONS, INC.

WC Docket No. 10-90

On June 1, 2023, the Wireline Competition Bureau (Bureau) approved a transfer of a domestic section 214 authorization from BroadLife Communications, Inc. (BroadLife) to Yellowhammer Networks, LLC (Yellowhammer) (together, Parties),¹ pursuant to section 214 of the Communications Act of 1934, as amended (Act) and sections 63.03-04 of the Commission's rules.¹ As a result of this approval, Parties received consent for the transfer of certain assets from BroadLife to Yellowhammer, including Rural Digital Opportunity (RDOF) support, subject to, and conditioned upon, Yellowhammer's authorization to receive this support.² Consistent with this approval, the Bureau authorizes Yellowhammer to receive this support, as described in more detail below.

As per the terms of the approved transaction and as of its consummation, BroadLife has transferred to Yellowhammer all of the RDOF support it was authorized to receive (net of state and federal income taxes owed on RDOF support received by BroadLife in 2022) together with associated obligations and requirements, subject to Yellowhammer's authorization to receive this support.³ Specifically, BroadLife has conditionally transferred \$26,461,542 in RDOF support over ten years (net taxes payable by BroadLife) to provide service to 7,483 locations in 953 census blocks in Alabama

¹ See *Domestic Section 214 Application Granted for the Acquisition of Certain Assets of BroadLife Communications, Inc. by Yellowhammer Networks, LLC*, WC Docket 23-23, Public Notice, DA 23-473 at 1, 5 (WCB rel. June 1, 2023) (*214 Transfer Public Notice*); see also 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). Applicants filed a supplement to their application on February 15, 2023. Letter from Stephen Coran, Counsel to Yellowhammer Networks, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-23 (filed Feb. 15, 2023), <https://www.fcc.gov/ecfs/document/1021570497286/1>.

² See 47 U.S.C. § 214; 47 CFR §§ 63.03-04. 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." *Rural Digital Opportunity Fund Support Authorized for 1,345 Winning Bids*, AU Docket No. 20-34 et al., Public Notice, DA 22-402, at 8-9 (WCB/OEA/RBATF Apr. 15, 2022) (*RDOF Public Notice*). "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.*

³ See *214 Transfer Public Notice* at 2; Letter from Stephen E. Coran, Counsel to Yellowhammer Networks, LLC, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 23-23 (filed Sept. 15, 2023) (notice of consummation of the transaction).

(Assigned Census Blocks).⁴ BroadLife has initiated the process to obtain approval to relinquish its Eligible Telecommunications Carrier (ETC) designation for the Assigned Census Blocks.⁵

As a condition of this authorization, Yellowhammer assumes sole responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions that could impact Yellowhammer's ability to meet its obligations in the future, including technical, marketplace and on-the-ground conditions. Indeed, any carrier seeking authorization to receive high-cost support pursuant to a section 214 transfer must conduct the proper due diligence prior to consummation of the transaction,⁶ and, in doing so, must assume all risks and consequences of noncompliance with requirements, including support reductions, default recovery of support and potential forfeiture penalties.⁷ In addition, Yellowhammer must meet all of the administrative, performance, and deployment obligations and deadlines associated with the receipt of support and acquisition of the RDOF service area,⁸ including the requirement to deploy voice and broadband service meeting minimum standards to the requisite number of locations by specific service milestones and the obligation to ultimately serve all locations identified by the Commission within eligible areas subject to limited adjustment.⁹ Consistent with the requirements of RDOF, Yellowhammer

⁴ See Application at 3, Exh. 1 (List of Assigned Census Blocks); *RDOF Public Notice* at Attach. A (Authorized Long-Form Applicants and Winning Bids). We specify that the Assigned Blocks cover all eligible census blocks covered by the BroadLife RDOF award for SAC 259060 (as published by the Commission on its website). See Results, Authorized Auction 904 Long-Form Applicants Spreadsheet, <https://www.fcc.gov/auction/904>.

⁵ See Petition of BroadLife Communications, Inc. for Relinquishment of Eligible Telecommunications Carrier Designation, WC Docket No. 09-197 (filed Sept. 15, 2023).

⁶ See *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd 686, 717-18, para. 68 (2020) (*RDOF Report and Order*) (stressing that it is RDOF bidders' "sole responsibility" to complete due diligence by conducting adequate research and analysis before participating in the RDOF auction); *id.* at 725, para. 84 (requiring RDOF short-form applicants to certify that they are solely responsible for compliance with all RDOF requirements).

⁷ See *RDOF Report and 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"). See 47 CFR §§ 54.320(c)-(d), 54.804(c)(4), 54.806(c).

⁸ 47 CFR §§ 54.802-806; see generally *RDOF Report and Order*, 35 FCC Rcd 686. The Bureau has provided a summary of the various obligations of authorized RDOF support recipients in prior authorization public notices, including in the public notice authorizing BroadLife to receive the relevant RDOF support. As stated in these public notices, the list is not intended to be comprehensive and all authorized parties are responsible for conducting the due diligence required to comply with universal service fund requirements and the Commission's rules. See, e.g., *RDOF Public Notice* at 1. We note that in addition to the requirements and rules specified in the public notices, RDOF support recipients must test and certify compliance with the relevant performance requirements in accordance with the uniform framework that has been adopted for measuring and reporting on high-cost performance requirements. See *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, 6083, para. 15 (2020); *Connect America Fund*, WC Docket No. 10-90, Order, 33 FCC Rcd 6509, 6530-33, paras. 56-67 (WCB 2018); *Connect America Fund*, WC Docket No. 10-90, Order on Reconsideration, 34 FCC Rcd 10109, 10110, para. 4 (2019) (expanding performance measure testing requirements); see generally *Connect America Fund*, WC Docket No. 10-90, Order, WC Docket No. 10-90, Order, 35 FCC Rcd 14658 (WCB 2020) (clarifying certain requirements).

⁹ Specifically, RDOF support recipients must deploy service to an increasing percentage of the CAM-estimated number of locations as of December 31st of each year beginning with a 40% milestone as of the third year of receiving support (2025), 60% as of the fourth year (2026), 80% as of the fifth year (2027), and 100% as of the sixth year (2028). 47 CFR § 54.802(c); *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 709-12, paras. 45-55. The Commission will then adjust the initial defined deployment obligation assigned to each RDOF support recipient

(continued....)

must provide voice service throughout the Assigned Blocks, either through its own facilities or a combination of its own and other ETC's facilities, on the first day of the month following this authorization.¹⁰

We find that Yellowhammer has sufficiently demonstrated its managerial, financial and technological capabilities to meet its RDOF obligations in the Assigned Census Blocks. In this regard, we find relevant the findings and related record in the associated 214 proceeding.¹¹ In the *214 Transfer Order*, the Bureau found relevant to its determination that granting the 214 transfer did not harm the public interest, Yellowhammer's commitment and demonstration, on the record, that it had the necessary managerial and operational expertise to meet buildout and performance obligations associated with the Assigned Census Blocks as well as the requisite financial expertise and resources.¹² In addition, the Bureau found that granting the transfer would create public interest benefits by avoiding BroadLife's default on its RDOF obligations and the resultant potential limitation of service in the supported areas.¹³ For these reasons, we find that the designation of Yellowhammer to receive the transferred support and to meet related public interest and deployment obligations is appropriate.

We also find that Yellowhammer has met all prerequisites to authorization. The Commission has designated Yellowhammer as an ETC for the purpose of receiving RDOF support for the Assigned Census Blocks.¹⁴ In addition, Yellowhammer has obtained an irrevocable letter of credit securing the requisite amount of support for the acquired area and is supported by a new Bankruptcy Opinion Letter.¹⁵

In sum, based on all of the above information and considerations and subject to the above limitations, we authorize Yellowhammer to receive the support associated with the Assigned Census Blocks. We direct USAC to disburse to Yellowhammer the RDOF support from the Universal Service Fund previously associated with SAC 259060 and not previously disbursed to BroadLife. Such support will be paid in monthly installments to the account on file for 498 ID 143053834. Yellowhammer has been assigned SAC 259063 for the Assigned Census Blocks.

For further information, please contact Nissa Laughner, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-7400.

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based on its determination of the number of locations within the supported area. In addition, the support recipient must serve, upon reasonable request, newly qualifying locations until the end of the eighth year of support (2030). See *Rural Digital Opportunity Fund Order*, 35 FCC Rcd at 710-11, paras. 49-50; 47 CFR § 54.802(c).

¹⁰ See *RDOF Report and Order*, 35 FCC Rcd at 745, para. 139.

¹¹ See *214 Transfer Public Notice* at 3-4.

¹² See *id.*

¹³ See *id.* at 4.

¹⁴ See *Telecommunications Eligible for Universal Service Support Connect America Fund*, Docket No. 10-90, Order, DA 23-505 (WCB rel. June 13, 2023).

¹⁵ 47 CFR § 54.804(c).