STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-0041-PET

Petition of Charter Fiberlink VT-CCO, LLC for designation as an Eligible Telecommunications Carrier to receive Rural Digital Opportunity Fund Auction (Auction 904) support for voice and broadband services	

Order entered: 04/21/2021

ORDER GRANTING ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION

In this Order, the Vermont Public Utility Commission ("Commission") adopts the following proposal for decision.

PROPOSAL FOR DECISION

I. INTRODUCTION

This case involves a petition filed with the Commission by Charter Fiberlink VT-CCO, LLC ("Charter Fiberlink"), seeking designation as an eligible telecommunications carrier ("ETC") in Vermont for the purpose of receiving federal funding as a successful bidder in the Rural Digital Opportunity Fund ("RDOF") Phase I Auction ("Auction 904"). Auction 904 will provide up to $16 billion to connect high-speed broadband networks to census blocks that only have access to broadband at speeds of 25/3 Mbps or less.[1]

In today's Order, I recommend that the Commission grant Charter Fiberlink's petition and designate Charter Fiberlink as an ETC in the census blocks where it has been awarded Auction 904 funding.

II. PROCEDURAL HISTORY

On January 6, 2021, Charter Fiberlink filed its ETC petition with the Commission.

On January 12, 2021, I requested comments on the petition.

On February 2, 2021, the Vermont Department of Public Service ("Department") filed comments on the petition and prefiled testimony recommending that the Commission approve

[1] *Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, FCC 20-5, ¶¶ 2, 8-9 (Feb. 7, 2020) ("Rural Digital Opportunity Fund Order").

Charter Fiberlink's petition without further hearings or investigation, subject to several proposed conditions.

On February 16, 2021, I requested a response from Charter Fiberlink on the Department's comments and proposed conditions.

On March 12, 2021, Charter Fiberlink filed a response to the Department's comments.

No party has requested an evidentiary hearing or objected to any documents filed in this proceeding. Accordingly, the following documents are admitted as if they were presented at a hearing: the petition and exhibits A-B; prefiled testimony of Michael Chowaniec, Charter Fiberlink ("Chowaniec") and exhibit CF-MC-1; Department 2/2/2021 Comments; and prefiled testimony of Corey Chase, Department ("Chase") and exhibits A-C.

III. Requirements for Designation as an ETC

Section 254(e) of the Telecommunications Act of 1934, as amended (the "Telecommunications Act"), provides that "only an eligible telecommunications carrier designated under section 214(e) of this title shall be eligible to receive specific Federal universal service support."[2] Accordingly, before a "telecommunications carrier"[3] may receive federal universal service support, it must first be designated as an ETC.[4] The Commission has the authority under the Telecommunications Act to designate ETCs in Vermont. The Telecommunications Act and its implementing regulations prescribe standards for ETC designations.[5]

A carrier seeking designation as an ETC must show that it offers "voice telephony service," which includes four supported services: (1) voice-grade access to the public switched telephone network ("PSTN") or its functional equivalent, (2) minutes of use for local service provided at no additional charge to end users, (3) access to emergency services, and (4) toll

[2] 47 U.S.C. § 254(e).

[3] "Telecommunications carrier" is defined by 47 C.F.R. § 54.5.

[4] 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(a)(1); *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, Public Notice, AU Docket No. 20-34 et al., 35 FCC Rcd 13888 (Dec. 7, 2020) ("Auction 904 Winning Bidders Public Notice"), at 13900-13901.

[5] The standards are found generally in 47 C.F.R. § 54.101, *et seq*.

limitation services to qualifying low-income consumers.[6] The ETC also must advertise the availability of and charges for these services using media of general distribution.[7]

ETCs must provide their services, at least in part, using their own facilities and may not offer services exclusively through the resale of another carrier's services.[8] Prior to designating a telecommunications carrier as an ETC, the Commission also must find that such designation is in the public interest.[9] In a 2005 order, the FCC encouraged states to follow the same analytical framework followed by the FCC when reviewing ETC applications to ensure that designations were in fact in the public interest.[10] The FCC also encouraged state commissions to require ETC applicants to provide additional information with their ETC petitions, including a five-year plan for the use of high-cost universal support, a demonstration of the applicant's ability to remain functional in emergency situations, and a demonstration that the applicant will satisfy consumer protection and service quality standards.[11] The FCC also strengthened the annual reporting requirements applicable to ETCs.[12]

IV. Positions of the Parties

The Department states in its comments that it has reviewed Charter Fiberlink's petition and has analyzed the census blocks in which Charter Fiberlink will be required to build voice and broadband service under the RDOF program. The Department recommends that the Commission grant Charter Fiberlink's request for designation as an ETC in the census blocks identified in Charter Fiberlink's petition, subject to certain requirements to allow for adequate State oversight of Charter Fiberlink's ETC obligations, including: (1) filing with the Commission and the Department all deployment milestone reports filed with the FCC; (2) filing with the Commission and the Department a marketing plan within 60 days that describes the marketing efforts that Charter Fiberlink will use to advertise the availability of required services; and (3)

---

[6] 47 C.F.R. §§ 54.101(a) and (b).

[7] 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d)(2).

[8] 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(i).

[9] 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c).

[10] *See In the Matter of Federal-State Joint Commission on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46 (rel. Mar. 17, 2005) at ¶ 41-61 ("Guidelines Order").

[11] Guidelines Order at ¶ 2, 4; 47 C.F.R. § 202(a).

[12] The annual reporting requirements are codified at 47 C.F.R. § 54.313, and are applicable to recipients of high-cost fund support. Annual reporting requirements for carriers receiving only Lifeline support are codified at 47 C.F.R. § 54.422.

filing with the Department and the Commission an annual certification describing Charter Fiberlink's marketing efforts during the year.

Charter Fiberlink responds that it does not object to the Department's proposed conditions with certain clarifications. Charter Fiberlink asks that the first requirement be modified to permit Charter Fiberlink and the Department to coordinate on developing a mutually agreeable format for filing the milestone reports. On the second requirement, Charter Fiberlink recommends that the marketing plan be filed "no less than 60 days prior to the time it begins to provide service in the RDOF Census Blocks" to be closer in time to the actual deployment and initiation of service. Charter Fiberlink requests that the third requirement also be delayed until after it begins providing service.

Charter Fiberlink states that it has shared its proposed modifications with the Department, and the Department does not object to the changes. I recommend that the Commission adopt the Department's proposed requirements, with the modifications requested by Charter Fiberlink.

V. Findings

A. Company Background

1. Charter Fiberlink is a Delaware limited liability company with a place of business at 12405 Powerscourt Drive, St. Louis, Missouri. Petition at 3.

2. Charter Fiberlink is a majority owned and wholly controlled subsidiary of Charter Communications, Inc. ("Charter"), which is headquartered at 400 Atlantic Street, Stamford, Connecticut. Petition at 3.

3. Charter is a national provider of voice communications and broadband Internet access services. Chowaniec pf. at 3-6.

4. Charter Fiberlink is authorized to provide telecommunications services in Vermont under Certificate of Public Good No. 764-CR. Petition at 3.

5. CCO Holdings, LLC ("CCO Holdings"), an affiliate of Charter Fiberlink, was selected as a winning bidder in 15 census blocks in Vermont in Auction 904 and assigned its winning bids to Charter Fiberlink. Charter Fiberlink is expected to provide voice and broadband service to approximately 85 unserved locations in Orange and Washington counties in Vermont. Chowaniec pf. at 1-2; exh. CF-MC-1; Chase pf. at 6.

6. Charter Fiberlink will operate as a common carrier in the census blocks where it will receive Auction 904 support. Chowaniec pf. at 6.

B. <u>Services Supported by Universal Service Support Mechanisms</u>

1. <u>Voice Telephony</u>

7. Charter Fiberlink will provide voice-grade access to the PSTN using Voice Over Internet Protocol technology. Chowaniec pf. at 3, 6-7.

8. Charter Fiberlink will provide minutes of use for local and long-distance service at no additional charge beyond the monthly plan rate. Chowaniec pf. at 3, 7.

9. Charter Fiberlink will provide E911 access to all of its customers. Chowaniec pf. at 3, 7.

10. Charter's E911 features automatically provide emergency service operators with a caller's phone number and location if available from local government or public safety organizations. Chowaniec pf. at 3.

11. Charter Fiberlink will provide toll limitation services to qualifying low-income consumers in the RDOF census blocks. Chowaniec pf. at 7.

12. Charter Fiberlink's voice service offering includes unlimited long distance calling within the United States. Chowaniec pf. at 3.

2. <u>Rural Development Opportunity Fund</u>

13. Charter Fiberlink will offer broadband Internet access services within the census blocks where it will receive Auction 904 support consistent with applicable high-cost universal support rules. Chowaniec pf. at 7-8.

14. Charter Fiberlink will offer standalone voice service and will offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas. Chowaniec pf. at 8.

15. Charter Fiberlink has provided a list of the census blocks and accompanying maps showing where it has been awarded Auction 904 support. Exhibit A to Petition.

16. The Department reviewed the list of census blocks where Charter Fiberlink has received Auction 904 funding and confirmed that the number of locations identified for service

under the terms of Charter Fiberlink's Auction 904 funding meets or exceeds the number of unserved locations based on state E911 data. Chase pf. at 5-6.

3. Lifeline

17. Charter Fiberlink will provide Lifeline voice and broadband Internet services in accordance with the FCC's rules in all census blocks where Charter Fiberlink will receive Auction 904 support. Chowaniec pf. at 8, 9.

18. Charter Fiberlink will offer Lifeline-eligible customers a voice-service plan at the discounted Lifeline voice-service rate throughout the census blocks where it will receive Auction 904 support.[13] Chowaniec pf. at 8.

C. Facilities

19. Charter Fiberlink will offer supported services using its own facilities through subsidiaries controlled and majority-owned by Charter or a combination of its own facilities and resale of another carrier's service within the census blocks where it will receive Auction 904 support. Chowaniec pf. at 6-7, 9.

D. Advertising

20. Charter Fiberlink will advertise the availability and rates for its universal service offerings using media of general distribution throughout the census blocks where it will receive Auction 904 support. Chowaniec pf. at 9.

E. Additional Requirements for Designation

21. Charter Fiberlink will comply with the service requirements applicable to the support that it receives, including the requirements of Auction 904. Chowaniec pf. at 9-10.

22. Charter Fiberlink will remain functional in emergency situations. Charter Fiberlink's parent corporation, Charter, provides voice and broadband Internet services nationally and has contingency plans for emergency situations, including activation, staffing, escalation, and communication procedures. Charter's switching facilities all are equipped with power generators with sufficient capacity to provide power for several days. Charter Fiberlink

---

[13] The FCC requires carriers to certify that they will pass the full amount of lifeline support through to qualifying consumers and specifies how the Lifeline discount should be applied. *See* 47 C.F.R. § 54.403.

will apply the same practices and procedures to its network in the census blocks where it has received Auction 904 support. Chowaniec pf. at 10.

Discussion

As an entity seeking ETC designation for the purpose of receiving funds under the RDOF program, 47 C.F.R. § 54.202 requires Charter Fiberlink to certify that it will comply with the service requirements applicable to the support that it receives and demonstrate that it is able to remain functional in emergency situations.

For successful Auction 904 bidders seeking ETC designations, the FCC has waived two of the requirements in Section 54.202, including the requirements that petitioners submit a five-year plan and that petitioners demonstrate that they will satisfy applicable consumer protection and service quality standards. The FCC explained that it waived these requirements because it had "adopted more specific measures to track deployment, including annual reporting of service to geocoded locations and certification of compliance with benchmark milestones" and because the "obligations were no longer essential to the Commission's ability to monitor ETC use of support for its intended purpose."[14] I recommend that the Commission waive the same requirements for applicants seeking ETC designation for the purpose of receiving Auction 904 funding in Vermont.

F. Public Interest

Prior to designating a competitive telecommunications carrier as an ETC, the Commission must determine that the designation is "consistent with the public interest, convenience, and necessity."[15] In the Guidelines Order, the FCC established an analytical framework that it would use in reviewing whether ETC applications were in the public interest.[16] For the purpose of the RDOF auction, however, the FCC presumes that the designation of an Auction 904 winner as an ETC will serve the public interest and does not require additional evidence in petitions for ETC designations.[17] The Department also concluded that the additional

---

[14] *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier, Public Notice*, WC Docket No. 09-197 et al., 33 FCC Rcd 6696, 6699 (July 10, 2018) ("*ETC Public Notice*").

[15] 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c).

[16] Guidelines Order at ¶¶ 41-61.

[17] Auction 904 Winning Bidders Public Notice at 13901 n. 71; ETC Public Notice at 6700-6701.

provision of voice and broadband services to residences as a result of Charter Fiberlink's receipt of Auction 904 funds serves the public interest.[18]

VI. Discussion & Conclusion

Charter Fiberlink is a winning bidder for Auction 904 support for 15 census blocks in Vermont.[19] As a winning bidder, Charter Fiberlink is required to demonstrate its qualifications through the FCC's long-form application process, which includes certifying that it is financially and technically capable of providing the service for which it has been awarded support and providing a description of the technology that it will use to provide the required voice and broadband service certified by a professional engineer.[20] Charter Fiberlink also will be subject to certain buildout and reporting requirements during the construction of its network in addition to the reporting requirements associated with offering the Lifeline services.[21] If Charter Fiberlink fails to meet its service milestones, Charter Fiberlink will be subject to non-compliance measures under a penalty framework established by the FCC.[22] Charter Fiberlink and the Department have agreed that Charter Fiberlink will develop a format for providing its milestone reports to the Department and the Commission to allow for State monitoring of Charter Fiberlink's obligations as an ETC.

The Commission has historically designated ETCs in service areas in Vermont for limited periods, requiring renewal of an ETC's designation every couple of years. I have not recommended here a limited duration for ETC status for several reasons. First, as discussed above, Charter Fiberlink is subject to the FCC's buildout and milestone reporting requirements for a period of up to eight years and must retain its ETC designation and provide the supported services throughout this time to continue to qualify for the support that it has been awarded.[23] Second, ordering paragraph number eight below requires Charter Fiberlink to notify the Commission within 30 days if it is no longer providing the services described in any of its submissions to the Commission. Third, under 47 U.S.C. § 214(e)(4), Charter Fiberlink must

---

[18] Chase pf. at 6.
[19] Chowaniec pf. at 11; exh. A to Petition.
[20] Rural Digital Opportunity Fund Order at ¶¶ 86-113.
[21] *Id.* at ¶¶ 45-53; 47 C.F.R. § 54.422.
[22] *Id.* at ¶¶ 58-64.
[23] Rural Digital Opportunity Fund Order at ¶¶ 45-52; 47 C.F.R. § 54.802(c).

obtain the Commission's permission to relinquish its ETC designation and stop providing the supported services. Finally, as a recipient of high-cost support, Charter Fiberlink will be subject to 47 C.F.R. § 54.313 and will be required to annually certify to the Commission that it is an eligible telecommunications carrier and continues to be eligible to receive federal universal funds.[24]

Based on the findings and discussions above, I recommend that the Commission conclude that Charter Fiberlink's petition satisfies the requirements for designation as an ETC in the census blocks where it will receive Auction 904 funding, subject to the conditions agreed to by the Department and Charter Fiberlink.

This Proposal for Decision has not been circulated to the parties pursuant to 3 V.S.A. § 811 because it is not adverse to any party.

Micah Howe
Hearing Officer

[24] *See, e.g.*, *2020 Universal Service Program Certification for Eligible Telecommunications Carriers pursuant to 47 C.F.R. §§ 54.313-54.314 Investigation*, Case No. 20-2497-INV.

ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission of the State of Vermont ("Commission") that:

1. The findings of fact and conclusions of the Hearing Officer are adopted.
2. The Commission designates Charter Fiberlink VT-CCO, LLC (the "Company") an Eligible Telecommunications Carrier ("ETC") under 47 U.S.C. § 214(e), with a service area corresponding to the census blocks for which it receives support from the Rural Development Opportunity Fund ("RDOF"), as listed in Exhibit A to the Company's petition in this case ("RDOF Census Blocks").
3. The Commission designates the Company as an ETC subject to the following conditions proposed by the Vermont Department of Public Service ("Department") and the Company:
   a. In a format to be agreed on by the Company and the Department, the Company shall file with the Commission and the Department any and all deployment milestone reports filed with the Federal Communications Commission ("FCC") during the period that it is receiving RDOF support, including the number of locations served with stand-alone voice in the applicable RDOF Census Blocks.
   b. No less than 60 days prior to the time that the Company begins providing service in the RDOF Census Blocks, the Company shall file a marketing plan that describes the marketing and outreach efforts that the Company will use in advertising the availability of the required services, and explain how those efforts will be effective in reaching eligible consumers. Specifically, the marketing plan shall describe:
      i. whether information about the required services is clearly displayed on the Company's website;
      ii. the Company's use of multiple outreach methods;
      iii. the frequency of the Company's outreach efforts;
      iv. whether the Company will provide outreach materials to relevant community institutions;
      v. whether the Company will advertise in multiple languages, if appropriate;

vi. the Company's use of clear and plain language when describing the required services; and

vii. possible cooperation between the Company and other ETCs for the joint production, placement, and use of outreach materials.

c. The Company shall file with the Commission and the Department by June 30 of the year following the Company's initiation of service in the RDOF Census Blocks, and each year thereafter, an annual certification describing its outreach efforts for the preceding year.

d. All filings required by this ordering clause shall be filed in the compliance subcase of this case.

4. The Company shall file with the Universal Service Administrative Company the information required by 47 C.F.R. § 54.401(d).

5. The Commission retains continuing jurisdiction to review, modify, or revoke its designation of the Company as an ETC or to alter or amend the service area in all manners allowed to it under state and federal law. This jurisdiction may be exercised on petition or at the discretion of the Commission, in circumstances including but not limited to the alteration of the requirements for ETCs by the FCC.

6. Non-Compliance. The Department or the Commission may at any time provide to the Company a written Notice of Possible Non-Compliance relating to one or more of the ETC Requirements. In that event, the Company shall within 30 days certify in writing to the Commission, and deliver a copy to the Department, that it continues to satisfy each of the ETC Requirements identified in the Notice of Possible Non-Compliance ("Claim of Continued Compliance"). The Commission may revoke the Company's designation as an ETC or order such other remedies as the Commission deems appropriate if either of the following occurs:

a. The Company fails to file a Claim of Continued Compliance; or

b. The Commission determines, after opportunity for hearing, that the Company has not demonstrated that it continues to satisfy each of the ETC requirements identified in the Notice of Possible Non-Compliance.

c. During the pendency of any proceedings under this paragraph, the current designation order shall remain in effect.

7. Additional Filings and Obligations. The Company shall:
    a. Comply with all applicable federal and state laws and regulations governing the administration of the Lifeline program, including the filing of all annual reports required by Part 54 of the FCC's rules.
    b. Abide by Commission Rules 7.607, 7.608, 7.610, 7.618, and 7.619, to the extent those rules are applicable to it.
    c. Participate in Vermont quarterly Lifeline Committee meetings.
    d. Refrain from seeking any support from Vermont's Universal Service Fund. In the event the Company decides to seek funds from the Vermont Universal Service Fund, it shall apply to the Commission for additional authorization.

8. The Company shall provide notice to the Commission and the Department within 30 days if information it previously submitted with respect to its provision of the supported services or its advertising for those services is no longer correct.

9. The preceding conditions may be modified by subsequently adopted and generally applicable administrative rules.

Dated at Montpelier, Vermont, this 21st day of April, 2021.

Anthony Z. Roisman	)	PUBLIC UTILITY
	)	
Margaret Cheney	)	COMMISSION
	)	
Sarah Hofmann	)	OF VERMONT

OFFICE OF THE CLERK

Filed: April 21, 2021

Attest:______________________________
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 21-0041-PET - SERVICE LIST

Parties:

Sarah L. J. Aceves (for Vermont Department of Public Service)
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
sarah.aceves@vermont.gov

Nancy Malmquist, Esq. (for Charter Fiberlink-VT, CCO, LLC)
Downs Rachlin & Martin PLLC
67 Etna Road, Suite 300
Lebanon, NH 03766-1461
nmalmquist@drm.com