STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-0049-PET

Petition of East Central Vermont Telecommunications District, doing business as ECFiber, for designation as an Eligible Telecommunications Carrier	

Order entered: 05/28/2021

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 East Central Vermont Telecommunications District, doing business as ECFiber ("ECFiber"), 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 ECFiber's petition and designate ECFiber as an ETC in the census blocks where it has been awarded Auction 904 funding, with certain conditions.

II. PROCEDURAL HISTORY

On January 7, 2021, ECFiber filed its ETC petition with the Commission.

On February 24, 2021, I requested comments on the petition.

On March 24, 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").

ECFiber's petition without further hearings or investigation, subject to several proposed conditions ("Department Comments").

Also on March 24, 2021, ECFiber filed a supplement to its petition.

Pursuant to VRCP Rule 78(b)(1), ECFiber had 14 days during which to file a reply to the Department's comments, but no such reply was filed with the Commission.

No other comments were filed.

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 Attachments A-C; the Petition Supplement and Attachment D; the prefiled testimony of Corey R. Chase ("Chase pf."), Department, and Exhibits A-C; and the Department Comments.

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 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 limitation services

[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*.

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 Federal Communications Commission ("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 ECFiber's petition and has analyzed the census blocks in which ECFiber will be required to build voice and broadband service under the RDOF program.

The Department recommends that the Commission grant ECFiber's request for designation as an ETC in the census blocks identified in ECFiber's petition, subject to certain requirements to allow for adequate State oversight of ECFiber'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 ECFiber will use to advertise the availability of required

[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.

services; and (3) filing with the Department and the Commission an annual certification describing ECFiber's marketing efforts during the year.

ECFiber represents that the Department expressed a desire to have ECFiber's ETC designation be based on whole towns, as opposed to census blocks.[13] Although ECFiber "is amenable to expanding its request for ETC designation to include all ECFiber's member municipalities,"[14] it provided additional information in its supplement regarding its financial ability to expand:

> However, ECFiber's RDOF grant also includes census blocks that are located in four towns that are not part of ECFiber's member municipalities. These non-ECFiber towns are Bridgewater, Barre, Northfield, and Roxbury. Because ECFiber lacks funding to build its network in those four towns other than through the RDOF grant, it may not be financially feasible for ECFiber to build its network in these four non-ECFiber towns outside of the RDOF census blocks, particularly to some of the more remote areas of those towns with few potential customers.
>
> Accordingly, with regard to the four towns that are not part of ECFiber, ECFiber can only commit to providing services to households that are located within the awarded RDOF census blocks—ECFiber cannot commit to being able to serve customers outside of the RDOF census blocks in those four towns, even if it is designated as an ETC for those towns. To that end, if ECFiber will not be required to provide services to customers in the four non-ECFiber towns of Bridgewater, Barre, Northfield, and Roxbury who are located outside of the designated RDOF census block, then ECFiber would expand the area for which it is seeking to be designated an ETC from just the RDOF designated census blocks as shown in Attachment A of the Petition, to the whole towns as well, as shown in the second part of Attachment D hereto.
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> In addition, ECFiber seeks to clarify a related point from its Petition. ECFiber is still in the process of building out its network in its member towns. Likewise, as stated above, a condition of the RDOF grant is that ECFiber is required to build out its network within six years of the financial award in order to be capable of serving all of the households inside of the designated census blocks. Accordingly, while ECFiber is seeking to be designated an ETC and is committed to being able to provide service to all who seek it, ECFiber may not complete its network within those census

[13] Supplemental Petition at 2.
[14] *Id*.

> blocks for up to six years. As such, ECFiber respectfully requests that it be given up to six years (to match the conditions of the RDOF grant) to complete the buildout of its network.[15]

V. Findings

A. Company Background

1. ECFiber is a Communications Union District created pursuant to Title 30: Public Services, Chapter 82. Petition at 2.

2. ECFiber holds a certificate of public good that was issued by the Commission on July 19, 2016. Petition at 2.

3. ECFiber provides telecommunications services, including service to the local exchange throughout Vermont. In practice, ECFiber serves only the local exchanges within its 31-town service area. Petition at 2.

4. ECFiber owns certain fiber-to-the-premises telecommunications facilities over which it provides facilities-based and/or resold telecommunications services on a common carrier basis to consumers, businesses, and institutions. Petition at 2.

5. ECFiber has contracted with ValleyNet, Inc., a Vermont non-profit corporation, to manage all the telecommunications operations over ECFiber's network. Petition at 2.

6. ECFiber provides basic exchange service with voice-over IP for residences and businesses; intrastate, domestic, and international long-distance service; and various retail enterprise telecommunications services, including IP-based Centrex services, point-to-point data services, and high-speed broadband services. Petition at 2-3.

B. Services Supported by Universal Service Support Mechanisms

1. Voice Telephony

7. ECFiber will provide Session Initiation Protocol ("SIP") enabled telephony devices and network equipment. Petition at 6.

8. ECFiber will provide SIP software to customers for computers and mobile devices. Petition at 6.

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[15] *Id*. at 2-3.

9. ECFiber will provide, at no additional charge to end users, phone service that includes unlimited local and North American long-distance minutes for $25/month for residential customers (prior to Lifeline discounts) and $35 per month for business customers. Petition at 6.

10. ECFiber will provide access to the emergency services provided by local governments or other public safety organizations, such as 911. All numbers associated with a service address in the portal will send the location address to the public-safety answering point when 911 is dialed. Petition at 6.

11. ECFiber will provide toll limitation services to qualifying low-income consumers. Petition at 6.

2. Rural Development Opportunity Fund

12. ECFiber was recently awarded RDOF Phase I subsidies in Auction 904 and will provide high-speed broadband and voice services in the areas where it was awarded support. Petition at 1.

13. ECFiber has provided a list of the census blocks and accompanying maps showing where it has been awarded Auction 904 support. Petition at Exhibit A; Supplemental Petition at Attachment D.

14. The Department reviewed the list of census blocks where ECFiber has received Auction 904 funding and confirmed that the number of locations identified for service under the terms of ECFiber Auction 904 funding meets or exceeds the number of unserved locations based on state E911 data. Comments at 1; Chase pf. at 3-7.

3. Lifeline

15. ECFiber will participate in and offer Lifeline services to qualifying low-income consumers and will publicize the availability of the Lifeline program in a manner reasonably designed to reach those likely to qualify for such services. Petition at 7.

16. ECFiber 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. Petition at 8.

17. ECFiber provides its services primarily over a fiber-to-the-premises network that it constructed and owns. However, for those areas within the requested service territory where it

has not yet constructed its fiber to the home network, ECFiber provides telephone service through the resale of other carriers' services. Petition at 8.

C. Facilities

18. ECFiber owns certain fiber-to-the-premises telecommunications facilities over which it provides facilities-based and/or resold telecommunications services on a common carrier basis to consumers, businesses, and institutions. ECFiber has contracted with ValleyNet, Inc., a Vermont non-profit corporation, to manage all of the telecommunications operations over ECFiber's network. Petition at 2.

D. Advertising

19. ECFiber 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. Petition at 8 and Attachment B.

E. Additional Requirements for Designation

20. ECFiber certifies that it will comply with all the additional service requirements applicable to the support that it receives. Petition at 9 and Attachment C.

21. ECFiber will remain functional in emergency situations. Petition 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 ECFiber 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."[16] I recommend that the Commission waive the same requirements for applicants seeking ETC designation for the purpose of receiving Auction 904 funding in Vermont. We observe that in certain situations, ECFiber has committed to providing waived services, such as providing a five-year plan that describes its proposed improvements and upgrades to its network throughout the designated ETC service area.

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."[17] In the Guidelines Order, the FCC established an analytical framework that it would use in reviewing whether ETC applications were in the public interest.[18] 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.[19]

The Department also concluded that the provision of voice and broadband services to residences because of ECFiber's receipt of Auction 904 funds serves the public interest.[20]

VI. Discussion & Conclusion

ECFiber is a winning bidder for Auction 904 support for 36 census blocks in Vermont.[21] As a winning bidder, ECFiber 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.[22] ECFiber also will be subject to certain buildout and reporting requirements during the construction of its network in addition to the reporting

[16] *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*").
[17] 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.201(c).
[18] Guidelines Order at ¶¶ 41-61.
[19] Auction 904 Winning Bidders Public Notice at 13901 n. 71; ETC Public Notice at 6700-6701.
[20] Chase pf. at 6.
[21] Petition at 3 and Attachment A.
[22] Rural Digital Opportunity Fund Order at ¶¶ 86-113.

requirements associated with offering the Lifeline services.[23] If ECFiber fails to meet its service milestones, ECFiber will be subject to non-compliance measures under a penalty framework established by the FCC.[24] ECFiber and the Department have agreed that ECFiber will file its FCC milestone reports with the Department and the Commission to allow for State monitoring of ECFiber's obligations as an ETC.[25]

The Commission historically has 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, ECFiber is subject to the FCC's buildout and milestone reporting requirements for a period of up to six 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.[26] Second, ordering paragraph number eight, below, requires ECFiber 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), ECFiber must obtain the Commission's permission to relinquish its ETC designation and stop providing the supported services. Finally, as a recipient of high-cost support, ECFiber will be subject to 47 C.F.R. § 54.313 and will be required to certify annually to the Commission that it is an eligible telecommunications carrier and continues to be eligible to receive federal universal funds.[27]

Based on the findings and discussions above, I recommend that the Commission conclude that ECFiber'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 ECFiber, such as:

- ECFiber shall meet the requirements of the Department outlined above.
- ECFiber shall be committed to providing services to households that are located within ECFiber's awarded RDOF census blocks.

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[23] *Id.* at ¶¶ 45-53; 47 C.F.R. § 54.422.
[24] *Id.* at ¶¶ 58-64.
[25] Chase pf. at 7-8; Department Comments at 2.
[26] Supplemental Petition at 1.
[27] *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.

- ECFiber shall have up to six years to complete the buildout of its network.

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.

John C. Gerhard
Hearing Officer

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 East Central Vermont Telecommunications District, doing business as ECFiber (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 D to the Company's supplemental 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 not objected to by 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. The Company shall file with the Commission and the Department a marketing plan within 60 days that describes the marketing efforts that the Company will use to advertise the availability of required services.
    c. The Company shall file with the Department and the Commission an annual certification describing ECFiber's marketing efforts during the year.
    d. All filings required by this ordering clause shall be filed in the compliance subcase of this case.
4. The Company shall provide telecommunications services to households that are located within ECFiber's awarded RDOF census blocks.
5. The Company shall complete the buildout of its network within six years of the date of this Order.
6. The Company shall file with the Universal Service Administrative Company the information required by 47 C.F.R. § 54.401(d).

7. 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.

8. 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.

9. 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.

10. 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.

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

Dated at Montpelier, Vermont, this 28th day of May, 2021.

Anthony Z. Roisman	)	PUBLIC UTILITY
Margaret Cheney	)	COMMISSION
J. Riley Allen	)	OF VERMONT

OFFICE OF THE CLERK

Filed: May 28, 2021

Attest: Holly R Anderson
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. 21-0049-PET - SERVICE LIST

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