STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 21-0045-PET

Petition of Pear Networks LLC, doing business as Kingdom Fiber, for designation as an Eligible Telecommunications Carrier in 27 northern Vermont census block groups	

Order entered: 08/23/2021

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 Pear Networks LLC, doing business as Kingdom Fiber ("Kingdom Fiber" or "Petitioner"), 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 Kingdom Fiber's petition and designate Kingdom Fiber as an ETC in the census blocks where it has been awarded Auction 904 funding, with certain conditions.

II. PROCEDURAL HISTORY

On January 6, 2021, Kingdom Fiber filed its ETC petition with the Commission.

On February 24, 2021, I requested comments on the petition, and I asked the Petitioner to file an affidavit with the Commission by no later than March 10, 2021.

---

[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").

On March 24, 2021, the Vermont Department of Public Service ("Department") filed comments on the petition, prefiled testimony recommending that the Commission approve with conditions Kingdom Fiber's petition without further hearings or investigation, and Exhibits 1, B, and C.

On June 3, 2021, Kingdom Fiber filed its affidavit.

On August 13, 2021, I requested that the Petitioner file no later than August 20, 2021, a response indicating whether it agrees to the conditions proposed by the Department.

On August 20, 2021, the Petitioner filed a response indicating that it agrees to the Department's conditions.

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: Kingdom Fiber's Petition and Affidavit; the Department's Comments; the Prefiled Direct Testimony of Corey R. Chase (Department); and Exhibits 1, B, and C.

III. REQUIREMENTS FOR DESIGNATION AS AN ETC

Section 254(e) of the Telecommunications Act of 1934, as amended (the "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 Act to designate ETCs in Vermont. The 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] Before designating a telecommunications carrier as an ETC, the Commission also must find that the 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 Kingdom Fiber's petition and has analyzed the census blocks in which Kingdom Fiber will be required to build voice and broadband service under the RDOF program.

The Department recommends that the Commission grant Kingdom Fiber's request for designation as an ETC in the census blocks identified in Kingdom Fiber's petition, subject to certain requirements to allow for adequate State oversight of Kingdom Fiber's ETC obligations, including:

[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.

1. That the Commission require Kingdom Fiber to file with the Commission and the Department any and all deployment milestone reports filed with the FCC during the RDOF support term, which shall include the number of locations served with stand-alone voice in the applicable RDOF Census Block.

2. To the extent Kingdom Fiber does not indicate in its petition or certifications the various marketing and outreach efforts used in advertising the required Lifeline services, the Commission requires Kingdom Fiber to file no less than 60 days prior to the time it begins to provide service in the RDOF Census Blocks a marketing plan that describes the marketing and outreach efforts Kingdom Fiber will use in advertising the availability of the required services and explain how it will be effective in reaching eligible consumers. While some of the following information is highlighted in Kingdom Fiber's petition, the Department recommends that, consistent with other ETC designations, the marketing plan specifically describe:

    a. Whether information about the required services is clearly displayed on the Kingdom Fiber website, as applicable;
    b. Kingdom Fiber's use of multiple outreach methods;
    c. The frequency of its outreach efforts;
    d. Whether Kingdom Fiber will provide outreach materials to relevant community institutions;
    e. Whether it will advertise in multiple languages, if appropriate;
    f. The use of clear and plain language when describing the required services; and
    g. Possible cooperation with other ETCs for the joint production, placement and use of outreach materials.

3. That the Commission require Kingdom Fiber to file a marketing plan with the Commission and the Department by June 30 of the year following initiation of service in the RDOF Census Blocks and each year thereafter for the duration of the RDOF program.[13]

The Petitioner has agreed to these conditions. I recommend that the Commission grant Kingdom Fiber's request, subject to the following conditions:

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

[13] Department Comments at 2-4.

V. Findings

A. Background of the Petitioner

1. Kingdom Fiber is a common carrier under Section 214(e)(1) of the Act. Petition at 1.

2. Kingdom Fiber holds a certificate of public good that was issued by the Commission on March 30, 2021. Petition at 1.

3. Kingdom Fiber provides telecommunications services, including facilities-based broadband Internet access and Voice-over-Internet-Protocol ("VoIP") services. Petition at 2.

4. All of Kingdom Fiber's 124 customers are broadband customers. Petition at 2.

B. Services Supported by Universal Service Support Mechanisms

1. Voice Telephony

5. Kingdom Fiber will provide its customers with voice grade access to the public switched telephone network through its interconnected Crystal Voice VoIP service. Petition at 2.

6. Kingdom Fiber will provide customers with unlimited voice service minutes in the continental U.S. and Canada. Petition at 2.

7. Voice plans are discounted $40 per month when bundled with broadband data plans. Petition at 2.

8. Kingdom Fiber's VoIP service offering will provide consumers with access to 911 and enhanced 911 services to the extent local governments have implemented such services. Kingdom Fiber will rely primarily on its contractual arrangement with voip.ms, a telecommunications company, to provide such emergency services to consumers. Petition at 4.

9. The VoIP service domestic offerings provided by voip.ms will not distinguish between toll and non-toll calls. Accordingly, Kingdom Fiber is not required to provide toll limitation services and currently has no plans to offer this service. Petition at 4.

2. Rural Development Opportunity Fund

10. Kingdom Fiber was recently awarded RDOF Phase I subsidies in Auction 904 and will provide high-speed broadband and voice services in the areas where Petitioner was awarded support. Petition at 1.

11. Kingdom Fiber has provided a list of the census blocks and accompanying maps showing where it has been awarded Auction 904 support. Petition at 5.

12. The Department has reviewed the census blocks where Kingdom Fiber has received Auction 904 funding and verified that they are accurate. Prefiled Direct Testimony of Corey R. Chase (Department) at 4-5.

3. Lifeline

13. Kingdom Fiber 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 3-4.

14. Kingdom Fiber will offer Lifeline voice and broadband service to qualifying low-income consumers pursuant to the FCC's Lifeline rules. Petition at 3.

15. Kingdom Fiber will advertise the availability of, and charges for, its supported service offerings using media of general distribution, and it will undertake outreach initiatives to increase consumer awareness consistent with all applicable requirements. Petition at 4.

C. Facilities

16. Kingdom Fiber owns certain fiber network telecommunications facilities and leases other facilities over which it provides facilities-based services on a common carrier basis to consumers. Kingdom Fiber has contracted with voip.ms to offer interconnected VoIP service over its network. Petition at 2.

D. Advertising

17. Kingdom Fiber will advertise the availability of, and charges for, its supported service offerings using media of general distribution and will undertake outreach initiatives to increase consumer awareness consistent with all applicable requirements. Petition at 4.

E. Additional Requirements for Designation

18. Kingdom Fiber certifies that it will comply with all the additional service requirements applicable to the support that it receives. Petition at 6.

19. Kingdom Fiber certifies that its fiber optic network will have the ability to remain functional in emergency situations and fulfill the applicable requirements, including the use of modified network routing and traffic management, off-grid backup power, and contractual arrangements with voip.ms that impose certain obligations on voip.ms to keep Kingdom Fiber's supported service offering functional during emergency situations. Petition at 6.

Discussion

As an entity seeking ETC designation for the purpose of receiving funds under the RDOF program, Kingdom Fiber is required by 47 C.F.R. § 54.202 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,

---

[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*").

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 provision of voice and broadband services to residences because of Kingdom Fiber's receipt of Auction 904 funds serves the public interest.[18]

VI. DISCUSSION & CONCLUSION

Kingdom Fiber is a winning bidder for Auction 904 support for 27 census blocks in Vermont.[19] As a winning bidder, Kingdom Fiber 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] Kingdom Fiber 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 Lifeline services.[21] If Kingdom Fiber fails to meet its service milestones, Kingdom Fiber will be subject to non-compliance measures under a penalty framework established by the FCC.[22] We require Kingdom Fiber to file its FCC milestone reports with the Department and the Commission to allow for State monitoring of Kingdom Fiber's obligations as an ETC.[23]

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

[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.
[18] Chase pf. at 6.
[19] Petition at 5.
[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] Chase pf. at 7-8; Department Comments at 2.

above, Kingdom Fiber 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.[24]

Second, Kingdom Fiber must 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), Kingdom Fiber 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, Kingdom Fiber 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.[25]

Based on the findings and discussions above, I recommend that the Commission conclude that Kingdom Fiber'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 Kingdom Fiber.

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

[24] *Rural Digital Opportunity Fund Order* at ¶¶ 45-52; 47 C.F.R. § 54.802(c).

[25] *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 Pear Networks LLC, doing business as Kingdom Fiber ("Kingdom Fiber"), 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 Kingdom Fiber's petition.

3. The Commission designates Kingdom Fiber as an ETC subject to conditions, including the following conditions proposed by the Vermont Department of Public Service ("Department"):

    a. Kingdom Fiber shall file with the Commission and the Department all deployment milestone reports filed with the FCC during the RDOF support term, which shall include the number of locations served with stand-alone voice in the applicable RDOF Census Block.

    b. To the extent Kingdom Fiber does not indicate in its petition or certifications the various marketing and outreach efforts used in advertising the required Lifeline services, Kingdom Fiber shall file no less than 60 days prior to the time it begins to provide service in the RDOF Census Blocks a marketing plan that describes the marketing and outreach efforts Kingdom Fiber will use in advertising the availability of the required services and explain how it will be effective in reaching eligible consumers. The marketing plan shall specifically describe:

        i. Whether information about the required services is clearly displayed on the Kingdom Fiber website, as applicable;

        ii. Kingdom Fiber's use of multiple outreach methods;

        iii. The frequency of its outreach efforts;

        iv. Whether Kingdom Fiber will provide outreach materials to relevant community institutions;

        v. Whether it will advertise in multiple languages if appropriate;

vi. The use of clear and plain language when describing the required services; and

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

c. Kingdom Fiber shall file the marketing plan with the Commission and the Department by June 30 of the year following initiation of service in the RDOF Census Blocks and each year thereafter for the duration of the RDOF program.

4. Kingdom Fiber 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 Kingdom Fiber 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 the alteration of the requirements for ETCs by the FCC.

6. Non-Compliance. The Department or the Commission may at any time provide to Kingdom Fiber a written Notice of Possible Non-Compliance relating to one or more of the ETC Requirements. In that event, Kingdom Fiber 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 Kingdom Fiber's designation as an ETC or order such other remedies as the Commission deems appropriate if any of the following occurs:

a. Kingdom Fiber fails to file a Claim of Continued Compliance; or

b. The Commission determines, after opportunity for hearing, that Kingdom Fiber 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. Kingdom Fiber 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 Kingdom Fiber decides to seek funds from the Vermont Universal Service Fund, it shall apply to the Commission for additional authorization.

8. Kingdom Fiber 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 23rd day of August, 2021.

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

OFFICE OF THE CLERK

Filed: August 23, 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. 21-0045-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

Michael Birnbaum (for Pear Networks LLC)
Pear Networks LLC
311 Woodcock Rd
Plainfield, VT 05667
mb@kfiber.net