

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

ORDER

Adopted: August 15, 2024

Released: August 15, 2024

By the Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) expands EMPOWER Broadband, Inc. (EMPOWER)'s Eligible Telecommunications Carrier (ETC) designation in Virginia to become eligible to receive Connect America Fund Phase II Auction (Phase II Auction) support associated with certain census block groups in Virginia (Assigned CBGs), a subpart of an original Phase II Auction support award authorized to RiverStreet Communications of Virginia, Inc. (RiverStreet).1 This expanded ETC designation is conditioned upon, limited by, and effective only upon, EMPOWER's authorization to receive this support. In conjunction with this designation, the Bureau also grants EMPOWER a conditional authorization to receive the support associated with the Assigned CBGs. Further, the Bureau expands EMPOWER's ETC designation to include additional areas in south central Virginia where it is not eligible to receive high cost support so that EMPOWER may become eligible to receive only Lifeline support for these areas.2 In expanding EMPOWER's Virginia ETC designation, the Bureau finds that EMPOWER meets the eligibility criteria to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Federal Communications Commission (Commission) rules.3

II. BACKGROUND

A. Section 214 Authorization

2. The Bureau takes this action in conjunction with the Bureau's approval of an application filed by EMPOWER and RiverStreet, pursuant to section 214 of the Act, and sections 63.03-63.04 of the

1 See EMPOWER Broadband, Inc. Petition for Designation as an Expanded Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, WC Docket No. 09-197 at 3, 13, Exh. A1, List of Census Blocks in which Petitioner Seeks an Expanded Designation as a High-Cost and Low-Income (Lifeline) Eligible Telecommunications Carrier (filed May 14, 2024) (ETC Petition); Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 5966, Attach. A at 118 (AU/WCB 2019) (authorizing RiverStreet to receive \$32,140,887.10 in Phase II Auction support to serve 13,518 locations in eligible areas in Virginia). We define this service area based on the published list of CAF-eligible census blocks associated with the assigned CBGs, thus superseding any possible discrepancies in the ETC petition's description of such area. See Connect America Fund Phase II: Assignments - Assigned Census Blocks, https://auctiondata.fcc.gov/public/projects/auction903/reports/all_assigned_census_blocks.

2 See ETC Petition at 19-120, Exh. A2 (List of Census Blocks in which Petitioner Seeks Designation Solely as a Low-Income (Lifeline) Eligible Telecommunications Carrier).

3 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

Commission's rules,⁴ requesting consent to assign to EMPOWER RiverStreet's Phase II Auction support for certain Assigned CBGs in addition to all rights, obligations, and conditions associated with the receipt of the support.⁵ Pursuant to the terms of the approved transaction and conditioned upon EMPOWER's future authorization, EMPOWER will receive an approximate additional \$8,173,841.30 for the Assigned CBGs in exchange for its commitment to serve an additional 3,757 locations,⁶ bringing its total Phase II Auction support in Virginia to \$10,801,099.47 and its total number of supported locations to 4,595.⁷

B. ETC Designation Requirements

3. 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."⁸ Accordingly, an ETC designation is a prerequisite to receiving universal service support available through the high cost and low income components (Lifeline)⁹ of the Universal Service Fund. In a given geographic area, a carrier may be designated as an ETC to become eligible to receive support from both of these components or, for areas ineligible for high cost support, may be designated as an ETC to become eligible to receive support from only the Lifeline program (Lifeline-only ETC designation).¹⁰ All ETCs must offer the Lifeline discount on all qualifying services, deploy a network capable of delivering service that meets the Lifeline program's minimum service standards, and commercially offer such service pursuant to its high cost obligations.¹¹

4. Congress gives primary authority for ETC designations to state commissions.¹² The Commission has authority only when "a common carrier [is] providing telephone exchange service and

⁴ See *Grant of Domestic 214 Application for the Acquisition of Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by EMPOWER Broadband, Inc. and Limited Relief for EMPOWER from Certain Phase II Auction Compliance and Letter of Credit Rules*, WC Docket No. 24-145, Public Notice, DA 24-741 (WCB 2024) (*Assignment and Waiver Public Notice*).

⁵ Domestic Section 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by Empower Broadband, Inc., WC Docket No. 24-145, Exh. A (filed May 14, 2024).

⁶ *Assignment and Waiver Public Notice* at 3. These amounts are associated with the assigned CBGs, and include the support that has been withheld from RiverStreet but that will be immediately transferred to EMPOWER pursuant to the grant of EMPOWER's waiver request. See *id.* at 8.

⁷ *Connect America Fund II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, Attach. A at 10 (AU/WCB 2019) (authorizing EMPOWER to receive \$1,868,320.00 in Phase II Auction support in Virginia to serve 838 locations).

⁸ 47 U.S.C. § 214(e).

⁹ *Id.* § 254(e). 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. 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). Eligible services include voice and broadband Internet access service meeting certain requirements. *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, 30-32 (2016) (*Lifeline Modernization Order*).

¹⁰ See 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.101(a) (as amended by the *Lifeline Modernization Order*); *Lifeline Modernization Order*, 31 FCC Rcd 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).

¹¹ 47 CFR part 54, subparts D, K, L, M.

¹² 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 [certain requirements] as an eligible telecommunications carrier for a service area designated by the State commission").

exchange access that is not subject to the jurisdiction of a State commission.”¹³ The petitioner for ETC designation 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.”¹⁴ The Commission has delegated its authority to the Bureau to consider appropriate ETC designation requests.¹⁵

5. In its petition for Commission ETC designation, a petitioner must: (1) certify that it offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) certify that it 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;¹⁶ (3) describe how it advertises or will advertise the availability of the supported services and the charges therefor using media of general distribution;¹⁷ (4) describe the geographic service area within which the petitioner requests to be designated as an ETC;¹⁸ and (5) certify that neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.¹⁹ A petitioner must also: (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.²⁰ To receive a Lifeline-only ETC designation, a petitioner must specifically commit to meeting Lifeline consumer enforcement and certification standards and describe how it intends to meet such standards.⁵⁴

6. Prior to designating a carrier as an ETC, the Commission must determine whether such designation is in the public interest.²¹ 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.²² The Commission has explained that, based on long-standing precedent, the ETC public interest inquiry is a cost-benefit analysis focusing on the petitioner’s

¹³ *Id.* § 214(e)(6).

¹⁴ *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).

¹⁵ *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).

¹⁶ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

¹⁷ 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

¹⁸ 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 that of an incumbent rural telephone company, the Commission has separately forbore from imposing this requirement on Phase II Auction support recipients. *See Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6006-6009, paras. 159-168 (2016) (*Phase II Auction Order*).

¹⁹ 21 U.S.C. § 862; 47 CFR § 1.2002(a)–(b).

²⁰ *See* 47 CFR § 54.202(a).

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

²² *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).

efficiencies, the benefits of competition, the public benefits of service, and the fundamental principles of USF).²³

C. EMPOWER Petition for ETC designation

7. On May 14, 2024, EMPOWER filed its petition to expand its ETC designation in Virginia where it is eligible to receive high cost support to include the Assigned CBGs and to expand those areas where it is only eligible to receive Lifeline support.²⁴ On June 12, 2024, the Bureau released a Public Notice seeking comment on this petition.²⁵ The Bureau did not receive comments or petitions in opposition to the ETC Petition. In connection with this petition, EMPOWER reaffirms each of its commitments and certifications of compliance made in prior ETC petitions that were granted by the Bureau – which includes areas in Virginia for which it eligible to receive Phase II Auction, Rural Digital Opportunity Fund, and Lifeline-only support – and incorporates them by reference into its current ETC petition.²⁶

III. DISCUSSION

8. After considering EMPOWER’s incorporation by reference of its certifications and commitments made in its earlier ETC petitions that the Bureau had granted, and all arguments raised by EMPOWER in its ETC Petition, we find that EMPOWER has satisfied all requirements for ETC designation, and accordingly, we expand EMPOWER’s designated service area in Virginia to include the Assigned CBGs, and the Lifeline-only area described in its ETC Petition. We specify that EMPOWER’s expanded ETC designation will cover the Assigned CBGs subject to and limited by its authorization to receive the support associated with the Assigned CBGs (expanded service area).

A. Satisfaction of ETC Requirements

9. EMPOWER has demonstrated that neither the Virginia State Corporation Commission (VSCC) nor the Virginia legislature has taken action inconsistent with the Commission’s prior exercises of jurisdiction to designate EMPOWER as an ETC in Virginia for purposes of becoming eligible to receive both high cost and Lifeline support and for purposes of becoming eligible to receive only Lifeline support.²⁷ Accordingly, the Bureau reaffirms such jurisdiction and exercises its delegated authority to expand EMPOWER’s ETC designations consistent with its determinations and findings below.

²³ *Federal-State Joint Board on Universal Service*, CC Docket No. 95-45, Report and Order, 20 FCC Rcd 6371, 6388-89, paras. 40-41 (2005).

²⁴ See generally ETC petition. See *Telecommunications Carriers Eligible for Universal Service Support, et al.*, WC Docket Nos. 09-197, 10-90, Order, 34 FCC Rcd 1966 (WCB 2019) (designating EMPOWER as an ETC in areas where it would become authorized to receive Phase II Auction support and additional areas for the purpose of becoming eligible to receive only lifeline support) (*Phase II Auction ETC Designation Order*); *Telecommunications Carriers Eligible for Universal Service Support, et al.*, WC Docket Nos. 09-197, 10-90, Order, 36 FCC Rcd 9384 (WCB 2021) (designating EMPOWER as an ETC in areas where it would become authorized to receive Rural Digital Opportunity Fund (RDOF) support).

²⁵ See *Wireline Competition Bureau Seeks Comment on EMPOWER Broadband, Inc.’s Petition for Expansion of its Eligible Telecommunications Carrier Designation*, WC Docket 09-197, DA 24-561 (WCB rel. June 12, 2024) (*Notice and Comment Public Notice*).

²⁶ ETC Petition at 10. See *Petition for Eligible Telecommunications Carrier Status*, WC Docket No. 09-197 (filed Sept. 27, 2019, as supplemented, Feb. 22, 2019) (Initial Phase II Auction ETC Petition) (relating to Phase II Auction and Lifeline only eligible areas); *Petition for Eligible Telecommunications Carrier Status*, WC Docket No. 09-197 (filed Jan. 8, 2021, as supplemented, Feb. 9, 2021) (relating to RDOF areas).

²⁷ See ETC Petition at 4 (quoting a 2018 VSCC order stating that the VSCC “is of the opinion that the [VSCC] has not asserted jurisdiction over service providers such as EMPOWER, 47 U.S.C. § 214(e)(6) is applicable to the Company’s request for ETC designation, and EMPOWER should make its request to the FCC to be designated as an ETC”); *Application of EMPOWER Broadband, Inc., for Designation as an Eligible Telecommunications Carrier*, Order, Case No. PUR-2018-00155, at 2 (Sept. 25, 2018).

10. We find that EMPOWER has satisfied requirements for ETC designation and the related Commission rules for the expanded service areas. EMPOWER has established that it will offer the service supported by the universal service support mechanism,²⁸ will offer supported services using a combination of its own facilities and resale of another carrier's services,²⁹ commits to advertising the availability of the supported services and related charges using media of general distribution, including the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers,³⁰ and certifies that is not subject to a denial of support under the terms of the Anti-Drug Abuse Act of 1988.³¹

11. We also find that EMPOWER has established its commitment to meeting required service standards. EMPOWER has demonstrated its capabilities to remain functional in emergency situations.³² It also has demonstrated and certified its ability to comply with Phase II Auction support public interest requirements in the Assigned CBGs.³³ In evaluating such ability, the Bureau considers its prior determination that EMPOWER's earlier certifications and commitments adequately demonstrated its ability to meet Phase II Auction requirements³⁴ and EMPOWER's record of meeting Phase II Auction

²⁸ See ETC Petition at 5 (stating that EMPOWER satisfies its ETC designation requirements "in its capacity as a facilities based, common carrier provider"); Initial Phase II Auction ETC Petition at 5 (certifying that EMPOWER is a "common carrier" under section 214(e)(1),(6) of the Act); ETC Petition at 7-8 (committing to a voice service offering satisfying the requirements of section 54.101(a) of the Commission's rules); Initial Phase II Auction ETC Petition at 5 (certifying that it will offer service meeting the requirements of section 54.101 of the Commission's rules). 47 U.S.C. § 214(e)(1), (6) (establishing that an ETC must offer telecommunications service on a common basis and must offer the supported service (as determined by the Commission)); 47 CFR § 54.101(a) (eligible voice telephony service must provide voice grade access to the public switched telephone network or its functional equivalent).

²⁹ ETC Petition at 3 (EMPOWER states that it uses its own facilities, as well as those of Mecklenburg Electric Cooperative, to provide these broadband and interconnected VoIP services); 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1). EMPOWER is a wholly-owned subsidiary of Mecklenburg Electric Cooperative, a Virginia corporation and rural electric cooperative that is owned by its members. *Assignment and Waiver Public Notice* at 3. 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. See *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, 6698 (WCB 2018) (*Phase II Auction ETC Guidance Public Notice*); 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").

³⁰ See ETC Petition at 6-7; Initial Phase II Auction ETC Petition at 6; 47 U.S.C. § 214(e)(1)(B); 47 CFR §§ 54.201(d)(2), 54.405.

³¹ ETC Petition at 10; 47 CFR § 1.2002.

³² See ETC Petition at 5; Initial Phase II Auction ETC Petition at 7; 47 CFR § 54.202(a)(2) (requiring ETCs to commit to having sufficient back-up power to ensure functionality in the designated service area without an external power source, the capability of re-routing traffic around damaged facilities, and the capability to manage traffic spikes resulting from emergency situations).

³³ See ETC Petition at 7-8; 47 CFR §§ 54.101(d), 54.202(a)(1)(i). For Phase II Auction support recipients, the Bureau waived certain requirements in section 54.202 of the Commission's rules and adopted a presumption that designation will serve the public interest. *Phase II Auction ETC Guidance Public Notice*, 33 FCC Rcd at 6699-6701. The Bureau has found that EMPOWER is in the same position as any other CAF Phase II support recipient with respect this ETC designation and is entitled to the same waivers and presumption. See *Notice and Comment Public Notice* at 3 n.18.

³⁴ See *Phase II Auction ETC Designation Order*, 34 FCC Rcd at 1971, para. 16 (finding that EMPOWER, among other petitioners, established its ability to comply with Phase II support requirements, taking into account certifications and demonstrations in the short- and long-form applications, including information supporting the technical and financial ability meet these requirements, a certification of commitment to meeting relevant public

(continued....)

requirements in other areas in Virginia.³⁵ The Bureau also gives consideration to EMPOWER's description of its technical, financial, and managerial capability to provide voice and broadband services meeting or exceeding Phase II Auction standards in the Assigned CBGs in the Assignment and Waiver Application.³⁶

12. We further find that EMPOWER has established its commitment to complying with service requirements applicable to Lifeline support. EMPOWER 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.³⁷ For those areas where EMPOWER is seeking a Lifeline-only ETC designation, EMPOWER has specifically committed to meeting Lifeline consumer enforcement and certification standards and describes how it intends to meet such standards.³⁸ EMPOWER has demonstrated the technical and financial ability to offer Lifeline-supported voice and broadband Internet access services in Lifeline-only eligible areas,³⁹ and its commitment to abide by all applicable state and federal consumer protection and service quality standards, including specific obligations under the Act and its implementing rules, in Lifeline-only eligible areas.⁴⁰ We conclude that EMPOWER has sufficiently described the terms and conditions of the service plans that it will make available to the public in Lifeline-only eligible areas.⁴¹

13. In making these findings, we emphasize that EMPOWER must remain legally responsible for, and managerially capable of, ensuring that the service meets consumer protection and service quality standards.⁴² In addition, as a condition of authorization, EMPOWER must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.⁴³ Further, all ETCs receiving Lifeline support must report certain information to the Commission, the Universal Service Administrative Company (USAC), and the local

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interest obligations, and certification of compliance with all statutory and regulatory requirements for receipt of universal service support); 47 CFR §§ 54.310(e)(1), 54.315(b)(2).

³⁵ See ETC Petition at 6 (stating that EMPOWER "has been successful in deploying broadband networks in Virginia that it has utilized to provide to its customers the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including any capabilities that are incidental to, and enable the operation of, communications services").

³⁶ See Domestic Section 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by EMPOWER Broadband, Inc., WC Docket No. 24-145 at 9 (filed May 14, 2024) (Assignment and Waiver Application) (stating that there are no anticipated changes to the fiber-to-the-home technology that is being used by EMPOWER to satisfy its Phase II Auction obligations in Virginia and no anticipated changes to operations or other circumstances that might compromise its ability to meet its service obligations).

³⁷ See ETC Petition at 7; 47 CFR § 54.400 et seq.

³⁸ See ETC Petition at 8-9; 47 CFR § 54.410 (setting forth the Commission's rules on subscriber eligibility determination and certification).

³⁹ See ETC Petition at 6; 47 CFR § 54.202(a)(4).

⁴⁰ See ETC Petition at 8-9; 47 CFR §§ 54.202(a)(3); 54.422(b)(3) (requiring federally designated Lifeline-only ETCs to certify they comply with applicable consumer protection rules).

⁴¹ 47 CFR § 54.202(a)(5), (6).

⁴² See *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6699.

⁴³ 47 CFR § 54.313 (requiring an annual report that includes certifications as to rates, functionality, and deployment, among other things); *id.* § 54.314 (requiring an 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).

regulatory authority, pursuant to section 54.422 of the Commission's rules.⁴⁴

B. Public Interest Analysis

14. Based on the information, representations, and certifications in the ETC Petition and consistent with the Bureau's findings in the *Assignment and Waiver Public Notice* and its prior ETC designations of EMPOWER, we find that EMPOWER has demonstrated that the expansion of its ETC service areas serves the public interest and would provide numerous benefits to consumers.⁴⁵ By making EMPOWER eligible to receive Phase II Auction support for the Assigned CBGs, EMPOWER will bring to these areas social and economic benefits by accelerating access to advanced services meeting specific performance requirements.⁴⁶ Because it will be subject to close oversight,⁴⁷ default consequences, and potentially, forfeiture and other penalties for the failure to meet Phase II Auction support requirements,⁴⁸ EMPOWER has increased incentives to provide ubiquitous service throughout its designated service area at rates and on terms that are reasonably comparable to those associated with comparable service offerings in urban areas. Pursuant to EMPOWER's commitment to offer Lifeline-supported services and to meeting or exceeding Lifeline requirements, granting the expansion in both high cost eligible and Lifeline eligible areas will help ensure increased consumer choice, affordability, and improved quality of service in the expanded area.

15. In conclusion, and based on the information, representations, and certifications in its 214 Assignment and Waiver Application and ETC Petition, we find that EMPOWER has met all applicable conditions and prerequisites for ETC designation and that designation serves the public interest. Accordingly, we designate EMPOWER as an ETC for purposes of becoming eligible to receive Phase II Auction support associated with the designated service area.

C. Regulatory Oversight

16. 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."⁴⁹ 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.⁵⁰ 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.⁵¹ The Commission conditions future support awarded through the high cost program on the filing of such certification.⁵²

⁴⁴ 47 CFR § 54.422; *see also id.* § 54.410.

⁴⁵ *See* ETC Petition at 11; *Assignment and Waiver Public Notice* at 3-5.

⁴⁶ *See Assignment and Waiver Public Notice* at 11.

⁴⁷ 47 CFR § 54.313 (requiring an annual report); *id.* § 54.310(c) (requiring build-out milestone reporting); *Phase II Auction Order*, 31 FCC Rcd at 5964, para. 40.

⁴⁸ *See* 47 CFR §§ 54.315(c)(4)(i); 54.320(c).

⁴⁹ 47 U.S.C. § 254(e).

⁵⁰ *Id.* § 214(e).

⁵¹ 47 CFR § 54.314(b).

⁵² *Id.*

17. 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.⁵³ 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.⁵⁴

18. We find that reliance on EMPOWER's commitments to meet these and other regulatory requirements 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 EMPOWER and will commit to satisfying its obligation under section 214(e) of the Act to provide supported services throughout its designated service area.

19. 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.⁵⁵ The ETC must provide such records and documentation to the Commission and USAC upon request.⁵⁶ If EMPOWER 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.⁵⁷ The Commission also may assess forfeitures for violations of Commission rules and orders.⁵⁸ We note that the Commission has announced that, as part of the Rural Broadband Accountability Plan (RBAP), it will increase audits, verifications, and transparency for USF high cost programs, including the Phase II Auction.⁵⁹ With the establishment of RBAP, Phase II Auction support 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.

IV. CONDITIONAL AUTHORIZATION OF CAF PHASE II SUPPORT

20. As stated above, we have found that EMPOWER has sufficiently demonstrated its managerial, financial, and technological capabilities to meet its CAF Phase II Auction obligations to serve the Assigned CBGs, and accordingly, we conditionally authorize EMPOWER to receive the support associated with these CBGs conditioned upon satisfaction of the following prerequisites within three months from the release date of this Order: 1) submission and approval of an irrevocable letter of credit (LOC) securing the requisite amount of support for the Assigned Blocks; 2) submission and approval of a new supporting Bankruptcy Opinion Letter; and 3) submission of a notice of consummation of the transaction in the Commission's Electronic Comment Filing System (ECFS) under WC Docket Nos. 24-145 and WC Docket No. 10-90. Applicants should also email a copy of this notice directly to Gregory Kwan at gregory.kwan@fcc.gov and to Nissa Laughner at nissa.laughner@fcc.gov. EMPOWER should submit the LOC and the supporting Bankruptcy Opinion Letter directly to USAC for review and approval.

⁵³ 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).

⁵⁴ 47 CFR § 54.422(b)(3); see *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).

⁵⁵ 47 U.S.C. §§ 220, 403.

⁵⁶ 47 CFR § 54.417.

⁵⁷ See *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).

⁵⁸ See 47 U.S.C. § 503(b).

⁵⁹ Fact Sheet: Rural Broadband Accountability Plan (rel. Jan. 28, 2022).

21. If and when all of these prerequisites are satisfied, the authorization of EMPOWER to receive the support associated with the Assigned CBGs will become effective.⁶⁰ At that time, USAC will transfer all future support payments (and any withheld payments) to EMPOWER as of the next month following the authorization or as soon as reasonably practical thereafter. The Bureau will announce the date that this authorization became effective in a monthly release. Pending the effective date of EMPOWER's authorization, RiverStreet must maintain the irrevocable letter of credit securing the support for the Assigned CBGs and will retain sole responsibility for complying with the universal service fund requirements for these CBGs. All support and assets associated with the Assigned CBGs must be transferred from RiverStreet to EMPOWER, including any disbursements for the Assigned CBGs received by RiverStreet pending the effective date of EMPOWER's authorization.

22. We remind EMPOWER that once it satisfies all conditions of authorization, it assumes sole responsibility for complying with universal service fund requirements and Commission rules, regardless of any preexisting or reasonably foreseeable conditions that could impact its ability to meet its obligations in the future, including technical, marketplace, and on-the-ground conditions.⁶¹ Indeed, any carrier seeking authorization to receive high cost support pursuant to a section 214 authorization must conduct the proper due diligence prior to consummation of the transaction and, in doing so, must assume all risks and consequences of noncompliance with program requirements, including default recovery of support and potential forfeiture penalties.⁶² In addition and consistent with decisions in the *Assignment and Waiver Public Notice*, EMPOWER must meet all administrative, performance, and deployment obligations and deadlines, including the requirement to deploy voice and broadband service meeting minimum standards to the requisite number of locations by specific service milestones.⁶³

V. ORDERING CLAUSES

23. 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, that EMPOWER Broadband, Inc. is designated as an Eligible Telecommunications Carrier in an expanded service area that includes certain census block groups eligible for Phase II Auction support to be acquired by EMPOWER Broadband, Inc., conditioned upon, limited by, and effective upon EMPOWER's authorization to receive the associated support. This ETC Designation is granted in conjunction with the conditional authorization of EMPOWER Broadband, Inc. to receive this support, to the extent described in this Order.

⁶⁰ If EMPOWER and RiverStreet fail to consummate the transaction within this time frame, they must file notice of the failure within 10 calendar days of the end of such time frame in the Commission's Electronic Comment Filing System (ECFS) under WC Docket Nos. 24-145 and 10-90. If EMPOWER does not meet one or more of the conditions before the three month period specified above expires, the Bureau will reassess EMPOWER's qualifications for authorization.

⁶¹ See, e.g., *Authorization of Atlink Services, LLC to Receive Connect America Fund (CAF) Phase II Auction Support Transferred from Cherokee Telephone Company Pursuant to a Commission Approved Transaction*, WC Docket No. 10-90, Public Notice, 37 FCC Rcd 6158, 6159 (WCB 2022).

⁶² See *Connect America Fund et al., WC Docket No. 10-90 et al., Order on Reconsideration*, 33 FCC Rcd 1380, 1390, para. 25 (2018) ("emphasiz[ing] that applicants are required to conduct the necessary due diligence prior to submitting their short-form applications, including identifying locations they will serve within the eligible areas, so that they can certify that they will be able to meet the relevant public interest obligations when they submit their applications.").

⁶³ See *Assignment and Waiver Public Notice* at 5 (denying EMPOWER's request to extend deployment milestone deadlines); 47 CFR § 54.310(c) (providing that Phase II Auction support recipients must report deployment to 40% of their required locations by December 31, 2022, 60% of such locations by December 31, 2023, 80% of such locations by December 31, 2024, and 100% of the locations by December 31, 2025).

24. IT IS FURTHER ORDERED that, 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, that EMPOWER Broadband, Inc.'s Lifeline-only ETC designation is expanded to those areas for which EMPOWER seeks such designation, to the extent described in this Order.

25. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the Virginia State Corporation Commission and to the Universal Service Administrative Company.

34. 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 Harkrader
Chief
Wireline Competition Bureau