LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NO. S-35842

SOUTHWEST ARKANSAS TELECOMMUNICATIONS AND TECHNOLOGY, INC., D/B/A FOUR STATES FIBER, EX PARTE

Docket No. S-35842, In re: Application for Designation as an Eligible Telecommunications Carrier.

(Decided at the April 14, 2021 Business and Executive Session.)

Overview

On January 6, 2021, Southwest Arkansas Telecommunications and Technology, Inc. d/b/a Four States Fiber ("Company") filed a petition ("Petition") seeking designation as an Eligible Telecommunications Carrier ("ETC") pursuant to Section 214(e) of the Communications Act of 1934, as amended ("Act"); 47 C.F.R. Part 54; and the Louisiana Public Service Commission's ("Commission's") General Order No. R-27841 dated May 20, 2004 ("ETC General Order"). The Company's Petition sought ETC designation for the purpose of receiving high-cost federal support from the Federal Communications Commission's ("FCC's") Rural Digital Opportunity Fund ("RDOF") Phase I Auction for provision of eligible voice and broadband services within the census blocks for which the Company was awarded RDOF Phase I support ("Designated Service Areas") as well as low-income (Lifeline) federal support incidental thereto. Notice of the Petition was published in the Commission's Official Bulletin No. 1236 dated January 8, 2021, with an intervention period of fifteen days. No intervention or protest was filed.

The Company was formed to assist with the deployment and operation of a low-latency, fiber-to-the-home network and to provide high-speed broadband Internet access and Voice over Internet Protocol ("VoIP") services to the areas served by the Company's cooperative parent company as well as additional surrounding areas, including portions of Northwest Louisiana, which largely lack access to such services. The Company holds authority to operate as an interconnected VoIP provider in Louisiana. *See* Certificate No. TSP00748.

RDOF is a FCC program designed to close the digital divide in the United States by investing in the construction of rural broadband networks. In Louisiana, the RDOF Phase I auction allocated $342,207,315.20 in support among thirteen bidders to expand broadband to 175,692 unserved homes and businesses and an estimated 332,000 Louisianans over the next ten years. Based on the RDOF Phase I auction results, the FCC allocated $113,667,025.30 to a consortium of which the Company was a member to expand access to broadband Internet service in 53,245 locations in Louisiana. The FCC's Report and Order implementing the RDOF Phase I auction requires that winning bidders be designated as ETCs within 180 days of the release of the public notice announcing winning bidders, or by June 7, 2021.

Commission Jurisdiction and Authority

The Commission exercises jurisdiction over public utilities and common carriers in Louisiana, including Louisiana telecommunications service providers, pursuant to Louisiana Constitution, Article IV, Section 21(B), which states:

> The commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by law.

Pursuant to Section 214(e)(2) of the Act (47 U.S.C. § 214(e)(2)), State commissions are given the authority to designate as ETCs those common carriers that meet the service requirements found in 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101, thereby entitling them to Universal Service Fund ("USF") support in accordance with 47 U.S.C. § 254.

To be eligible for ETC designation, 47 U.S.C. § 214(e)(1) mandates that a common carrier "offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and…advertise the availability of such services and the charges therefor using media of general distribution." 47 U.S.C. § 214(e)(1). Finally, a State commission must find the designation of an ETC consistent with the public interest, convenience, and necessity, particularly in the case of an additional ETC for an area served by a rural telephone company. 47 U.S.C. § 214(e)(2).

FCC regulations regarding ETC obligations supplement these statutory requirements. In particular, 47 C.F.R. § 54.101 requires the following:

1. An ETC must offer voice telephony service as set forth in 47 C.F.R. § 54.101(a)(1).
2. An ETC subject to a high-cost public interest obligation to offer broadband Internet access services must offer broadband services within the areas where it receives high-cost support consistent with obligations particular to certain support programs, including the universal service support program for high-cost areas.
3. An ETC must comply with 47 C.F.R. §§ 54.400-423 relating to USF support for low-income consumers through the Lifeline program.

Thus, under applicable law and regulations, the Commission must conduct a two-fold analysis prior to approving or denying a request for ETC designation. First, the Commission must determine whether the Company complies with 47 U.S.C. § 214(e)(1)-(2) and applicable FCC regulations, i.e., generally whether the Company offers supported universal services consistent with regulatory obligations and whether the Company advertises the availability of and charges for those services through media of general distribution. Second, the Commission must determine whether granting the Company's Petition would be in the public interest. Additionally, the Commission may also consider factors reviewed in the FCC's consideration of requests for ETC designation under 47 U.S.C. § 214(e)(6); nevertheless, as these factors are merely persuasive and not binding upon the Commission's evaluation of petitions for ETC designation, Staff refrained from discussion of the FCC's criteria.

Consistent with the above federal and State authority, the Commission issued the ETC General Order which created a list of thirteen public interest criteria to be applied on a case-specific basis to all petitions for ETC designation in areas served by rural telephone carriers. Some of the public interest factors enumerated in the ETC General Order did not apply in this instance, since the Company did not seek to provide wireless telephony services, i.e., commercial mobile radio services and private mobile radio services, and since some of the underlying FCC and Commission regulations were repealed or waived or were not subsequently adopted. Accordingly, Staff applied the remaining, applicable public interest criteria of the ETC General Order in its review of the specific facts presented by the Company's Petition.

Staff Recommendation

After a thorough review of the Company's Petition, supporting documentation, and responses to Staff's set of formal data requests, Staff filed the Staff Report and Recommendation on the Company's Petition into the record of this proceeding on April 1, 2021. In the Staff Report and Recommendation, Staff found that the Company had demonstrated, consistent with the requirements of the Act, applicable FCC regulations, and the ETC General Order, that the Company would make available to its customers universal service offerings that provide all of the services supported by the federal universal service program and that the Company would appropriately advertise the availability of and charges for those services. Therein, Staff also found that designation of the Company as an ETC in the Designated Services Areas for the limited purpose of receiving RDOF Phase I support and incidental Lifeline support was in the public interest.

Commission Consideration

This matter was considered at the Commission's April 14, 2021 Business and Executive Session. On motion of Vice Chairman Skrmetta, seconded by Commissioner Francis, and unanimously adopted, the Commission voted to accept Staff's Report and Recommendation filed into the record on April 1, 2021.

THEREFORE, IT IS ORDERED:

That the Commission grants the Company's Petition to be designated as an ETC so that the Company may provide supported voice and broadband services in the Designated Service Areas for the limited purpose of obtaining high-cost RDOF Phase I support and low-income Lifeline support incidental thereto, subject to all of the following conditions:

1. To the extent not already provided, the Company will provide Staff with a copy of the proposed media advertisement(s) for its federally supported services intended for general distribution in Louisiana for Staff approval within thirty (30) days of the date of issuance of this Order. Staff will approve or provide recommended changes to the proposed media advertisement(s) within thirty (30) days of receipt of the same.
2. No less than semi-annually, the Company shall file into the record of this proceeding periodic updates on the status of the Company's plan of investment and expenditure of RDOF Phase I funds for review by Staff. The Company shall file its first such update within thirty (30) days of the FCC's approval of the Company's long-form application (FCC Form 683) and authorization for the Company to begin receiving RDOF Phase I support, but in no event later than ninety (90) days from the date of issuance of this

Order. The Company shall file subsequent updates every one hundred eighty (180) days after each immediately previous filing, beginning one hundred eighty (180) days after the date of the initial filing. The Company shall make such filings in this manner for the entire support term. At the expiration of the support term, the reporting requirement of this condition shall cease to be in effect. This condition shall have no precedential effect. The Commission may at any time amend this Order and require the Company to file such updates on a more frequent basis, including on a quarterly basis.

3. The Company will comply with the requirements set forth in 47 C.F.R. § 54.402(d), which mandates that certain information be filed with the Administrator (i.e., the Universal Service Administrative Company) upon a State commission designating an ETC, within sixty (60) days of the issuance of this Order. The Company shall file proof of such compliance into the record of this docket within thirty (30) days of performing such compliance.
4. The Company shall file a new petition with the Commission if the Company seeks to amend its ETC designation to allow it to provide federally supported services through resale only or to provide wireless services or to provide any federally supported services outside the Designated Service Areas.
5. The Company's ETC designation is conditioned upon full and timely compliance with all applicable rules and regulations of State and federal agencies, including, but not limited to, the rules and regulations of the Commission and the FCC. The Commission reserves the right to suspend or revoke the Company's ETC designation in the event of non-compliance and/or untimely compliance with the same.

This Order is effective immediately.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
May 14, 2021

LOUISIANA PUBLIC SERVICE COMMISSION

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