

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NO. S-35765

SKYRIDER COMMUNICATIONS, LLC,
EX PARTE

Docket No. S-35765, In re: Revised Petition for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e) of the Communications Act of 1934.

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

Overview

On October 7, 2020, SkyRider Communications, LLC (“Company”) filed a 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 initial 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 Phase I Auction. Notice of the initial petition was published in the Commission’s Official Bulletin No. 1230 dated October 16, 2020, with an intervention period of fifteen days.

On November 12, 2020, the Company filed a revised petition (“Petition”) seeking to be designated as an ETC to receive low-income federal support from the FCC’s Lifeline program and Emergency Broadband Benefit (“EBB”) program for provision of eligible voice and broadband services within a service area encompassing the rural study areas of BellSouth Telecommunications, LLC d/b/a AT&T Louisiana d/b/a AT&T Southeast; CenturyLink Communications, LLC d/b/a CenturyLink Acquisition d/b/a CenturyLink Solutions d/b/a Lumen Technologies Group d/b/a Lumen; and CenturyLink of Louisiana, LLC d/b/a CenturyLink (“Designated Service Areas”). Notice of the revised Petition was published in the Commission’s Official Bulletin No. 1233 dated November 25, 2020, with an intervention period of fifteen days. No intervention or protest was filed during either intervention period.

The Company is a provider of last-mile broadband connectivity and high-speed Internet access service for K-12 schools, governments and municipalities, healthcare systems, businesses, libraries and colleges/universities in Louisiana. The Company holds authority to operate as a Competitive Local Exchange Carrier, Interexchange Carrier, and Competitive Access Provider in Louisiana. See Certificate No. TSP00618.

Lifeline is the FCC’s program to help make communications services more affordable for low-income consumers. As of the date of this Order, the Lifeline program provides up to a \$9.25 monthly discount on wireline, wireless, or broadband Internet service for eligible low-income subscribers and up to \$34.25 per month for those on Tribal lands. Only ETCs may receive Lifeline support and provide Lifeline service to qualifying low-income consumers.

The EBB program is a \$3.2 billion federal initiative to help lower the cost of high-speed Internet for eligible households during the COVID-19 pandemic. The EBB program provides a discount of up to \$50.00 per month towards broadband service for eligible households and up to

\$75.00 per month for households on Tribal lands. Eligible households can also receive a one-time discount of up to \$100.00 to purchase a laptop, desktop computer, or tablet from participating providers if they contribute \$10.00 to \$50.00 toward the purchase price. Congress and the FCC have defined an EBB-eligible broadband provider as either a carrier designated as an ETC or a carrier that seeks approval from the FCC for participation in the EBB program.

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 8, 2021. That same day, Staff filed its Corrected Staff Report and Recommendation on the Company's Petition. In the Corrected 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 Lifeline and EBB 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 Commissioner Campbell, seconded by Commissioner Boissiere, with Vice Chairman Skrmetta temporarily absent, the Commission voted to accept Staff's Corrected Report and Recommendation filed into the record on April 8, 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 low-income Lifeline and EBB support, 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 expenditure of EBB 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 application and authorization for the Company to begin receiving EBB 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.

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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



A handwritten signature in blue ink, appearing to read "Brandon M. Frey".

BRANDON M. FREY
SECRETARY

/S/ CRAIG GREENE

DISTRICT II

CHAIRMAN CRAIG GREENE

/S/ ERIC F. SKRMETTA

DISTRICT I

VICE CHAIRMAN ERIC F. SKRMETTA

/S/ FOSTER L. CAMPBELL

DISTRICT V

COMMISSIONER FOSTER L. CAMPBELL

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COMMISSIONER LAMBERT C. BOISSIERE, III

/S/ MIKE FRANCIS

DISTRICT IV

COMMISSIONER MIKE FRANCIS