

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NO. S-35843

CONEXON CONNECT, LLC,
EX PARTE

Docket No. S-35843, In re: Application for Designation as an Eligible Telecommunications Carrier.

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

Overview

On January 7, 2021, Conexon Connect, LLC (“Conexon” or “Company”) filed an application with the Louisiana Public Service Commission (“LPSC” or “Commission”) seeking designation as an Eligible Telecommunications Carrier (“ETC”) pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”) (47 U.S.C. § 214(e)(2)); 47 C.F.R. Part 54; and the Commission’s General Order No. R-27841 dated May 20, 2004 (“ETC General Order”). Conexon sought designation only in the eligible census blocks for which its parent company, Conexon, LLC, was awarded funding from the Federal Communications Commission’s (“FCC’s”) Rural Digital Opportunity Fund (“RDOF”) Phase I Auction. Notice of the application was published in the Commission’s Official Bulletin No. 1236 dated January 8, 2021. No intervention or protest was received.

In connection with the application for ETC designation, Conexon also indicated that it would provide telecommunications services in Louisiana. Thus, the Company filed an Application for Certificate of Authority to Operate as an Interconnected Voice over Internet Protocol Provider Statewide. After review by Staff, Conexon’s application for authority to provide Voice over Internet Protocol (“VoIP”) service was granted in Docket No. S-35846 and Certificate Number TSP00749 issued, effective February 22, 2021.

Conexon’s application with the Commission resulted from the RDOF Phase I Auction, which required winning bidders of the auction to obtain designation as an ETC from the appropriate regulatory agency for the service areas encompassing the census blocks for which the Company was awarded Phase I support no later than June 7, 2021.

Jurisdiction and Applicable Law

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

The commission shall regulate all common carrier and public utilities and have other such 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.

As set forth in Section 214(e)(2) of the Act, State commissions are vested with 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) requires that a common carrier:

“[O]ffer 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

“[A]dvertise the availability of such services and the charges therefor using media of general distribution.”¹

Finally, a State commission must find the designation of an ETC to be consistent with the public interest, convenience, and necessity—especially in the case of an additional ETC seeking designation in an area served by a rural telephone company. FCC regulations regarding ETC obligations further 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 its 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 application would be in the public interest. In addition, the Commission may also consider factors reviewed by the FCC in its consideration of requests for ETC designation under 47 U.S.C. § 215(e)(6); nevertheless, as these factors are merely persuasive guidelines and not binding upon the Commission’s evaluation of petitions for ETC designation, Staff refrained from discussion of the FCC’s non-binding criteria.

Consistent with the foregoing federal and State authority, and additional federal pronouncements, the Commission issued the ETC General Order which established a

¹ 47 U.S.C. § 214(e)(1).

comprehensive set of public interest criteria to be applied on a case-specific basis to all requests for ETC designation in areas served by rural telephone carriers. Some of the public interest factors set forth in the ETC General Order do not apply in this instance, since the Company does not seek to provide wireless telephony services (i.e., commercial mobile radio services and private mobile radio services). Further, since some of the underlying FCC and Commission regulations have been repealed or waived or were not subsequently adopted, other public interest factors set forth in the ETC General Order also do not apply to this case. 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 application.

Staff Recommendation

After a thorough review of the Company's application, Staff filed its *Staff Report and Recommendation* on March 30, 2021. Therein, Staff detailed that the Company meets all of the requirements to be designated an ETC. Staff further found that such a designation would serve the public interest, should the request for ETC designation be granted, as the provision of such support from the FCC would enable Conexon to provide voice and broadband services to underserved and unserved rural areas in Louisiana. Nevertheless, Staff recommended that any ETC designation granted by the Commission be for the limited purpose of obtaining high-cost RDOF Phase I support and low-income Lifeline support incidental thereto, subject to a number of conditions to ensure compliance with all applicable Commission regulations. Staff also reviewed the Company's responses addressing each of the applicable public interest factors set out in the ETC General Order, which are summarized below:

- Conexon explained that bringing its low-latency, fiber-to-the-home facilities-based network to provide high-speed broadband Internet access and interconnected VoIP services to those who lack access to such services will serve the public interest. The Company stated that doing so will serve to further the Commission's goal of increasing customer choice and the available selection of services and technologies.
- With regard to the Lifeline USF, Conexon noted that Lifeline subsidies are portable—i.e., they move with the customer to the carrier of the customer's choice. Accordingly, there is no increase in such subsidies when a subscriber switches providers. The Company also expects that any increase in funding from new subscribers would be insignificant and outweighed by the benefit of increasing eligible participation in the Lifeline program.
- Conexon committed to providing the Commission with semi-annual updates on its plans for utilization of universal service funding received as a result of the Commission's designation of Conexon as an ETC, including, as applicable, updates as to the progress of deployment.
- Conexon agreed to work diligently to provide service within ten (10) days of each request to any consumer eligible for supported service and located within its designated service area. In instances where a request is made from a customer within the designated service area, but outside the existing network, Conexon stated that it will attempt provide timely service. However, in instances wherein Conexon determines that it cannot reasonably provide service, it will report the unfulfilled request within thirty (30) days of making such a determination.

- Conexon stated that it intends to maintain compliance with all federal and state 911 and E-911 service requirements.
- Conexon stated that it will abide by all other relevant Commission regulations and orders.

Staff ultimately recommended that Conexon's request be granted within the eligible census blocks for the sole purpose of obtaining high-cost RDOF Phase I support and low-income Lifeline support incidental thereto, subject to certain conditions. Additionally, in the interest of efficiency, Staff recommended that the Commission should require semi-annual progress reports, instead of the quarterly reporting requirements set out in the ETC Order. On April 6, 2021, Conexon filed correspondence into the records accepting Staff's Report and Recommendation and the conditions set out therein.

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 Campbell, with Commissioner Francis temporarily absent, the Commission voted to accept Staff's Report and Recommendation filed into the record on March 30, 2021, recommending designation of Conexon as an Eligible Telecommunications Carrier within the eligible censusblock related to Conexon's winning bid in the Rural Digital Opportunity Fund Phase I Auction, subject to conditions.

IT IS, THEREFORE, ORDERED THAT:

Conexon Connect, LLC be designated as an Eligible Telecommunications Carrier for the purpose of obtaining high-cost support related to Conexon's winning bid in the Rural Digital Opportunity Fund's Phase I auction, and low-income Lifeline support incidental thereto, subject to the following conditions:

1. Upon Commission designation as an ETC, the Company will provide Staff with a copy of the advertisement(s) for its federally supported services intended for distribution in Louisiana for Staff approval. Staff will approve or provide recommended changes to the proposed advertisement(s) within thirty 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 days of the FCC's approval of the Company's long-form application and authorization for the Company to begin receiving RDOF Phase I support, but in no event later than ninety days from the date of issuance of this Order. The Company shall file subsequent updates every 180 days after the immediately previous filing, beginning 180 days after the date of the initial filing. The Company shall make such filings in this manner for the entire period for deployment of support. At the expiration of the period for deployment of support, 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 requires that certain information be filed with the Administrator (i.e., the Universal Service Administrative Company) upon a State commission designating an ETC, within sixty days of the issuance of this Order. The Company shall file proof of such compliance into the record of this docket within thirty 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 its 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**



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**

/S/ LAMBERT C. BOISSIERE, III

**DISTRICT III
COMMISSIONER LAMBERT C. BOISSIERE, III**

/S/ MIKE FRANCIS

**DISTRICT IV
COMMISSIONER MIKE FRANCIS**