

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
WINDSTREAM COMMUNICATIONS, LLC FOR)	CASE NO.
ELIGIBLE TELECOMMUNICATIONS CARRIER)	2021-00169
STATUS TO RECEIVE RURAL DIGITAL)	
OPPORTUNITY FUND SUPPORT)	

ORDER

On April 14, 2021, Windstream Communications, LLC (Windstream Communications), a Competitive Local Exchange Carrier, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (ETC). Windstream Communications seeks to receive federal high-cost and low-income Universal Service Fund (USF) support for wireline services.¹ Windstream Communications is a wholly owned direct subsidiary of Windstream Holdings II, LLC (Windstream Holdings) and Windstream Services, LLC (Windstream Services). Windstream Services, LLC won the Federal Communications Commission's (FCC) Rural Digital Opportunity Fund (RDOF) Phase I auction (Auction 904) and assigned its winning bids to Windstream Communications.² Windstream Communications is seeking ETC designation in order to receive support from the federal and state USF.

The application states that (1) Windstream Communications meets all the requirements for designation as an ETC to serve the designated areas in the state of

¹ Application at 1–2 and Exhibit A. Windstream Communications requests ETC designation for high-cost and low-income support in the census blocks listed in application at Exhibit A. Windstream Communications did not request to receive support from the Kentucky Universal Support Fund for Lifeline.

² *Id.* at 4.

Kentucky;³ (2) Windstream Communications requests designation in the certain census blocks located in Kentucky;⁴ (3) in accordance with 47 U.S.C. § 214(e)(2), Windstream Communications seeks to be designated as an ETC in order to provide high-speed broadband internet access and fiber-based voice as well as Lifeline service to qualifying customers in Kentucky;⁵ and (4) designation of Windstream Communications as an ETC for the designated areas served in Kentucky will serve the public interest.⁶

Windstream Communications, in cooperation with its parent companies, Windstream Holdings and Windstream Services, has the financial and technical experience and capabilities to pay for and construct the all-fiber network throughout the proposed ETC service area for the provision of voice and broadband services.⁷

The Commission requires that the Kentucky Universal Service support and the Kentucky Telecommunications Relay Service and Telecommunications Access Program support be collected for each wireline customer. Windstream Communications states that it will pay applicable federal, state, and local regulatory fees including 911/E911 fees imposed on customers.⁸ Windstream Communications will provide toll limitation services to low-income consumers as provided in 47 C.F.R. §§ 54.400-54.423.⁹

³ *Id.* at 6.

⁴ *Id.* at 4.

⁵ *Id.* at 8.

⁶ *Id.* at 4.

⁷ *Id.* at 6.

⁸ *Id.* at 7.

⁹ *Id.*

DISCUSSION

Pursuant to 47 U.S.C. § 254(e), “only an eligible telecommunications carrier designated under 47 U.S.C. § 214(e) shall be eligible to receive specific federal universal service support.” Pursuant to 47 U.S.C. § 214(e)(1)(A) and (B), a common carrier designated as an ETC must offer the services supported by the federal universal service support mechanisms, using either its own facilities or a combination of its own facilities and resale of another carrier's services throughout its designated service area, and it must advertise the availability and charges for those services. Pursuant to 47 U.S.C. § 214(e)(2), state commissions bear the primary responsibility for performing ETC designations. Under the same section, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, consistent with the public interest, convenience, and necessity, as long as the requesting carrier meets the requirements of 47 U.S.C. § 214(e)(1). Also, before designating an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.

REQUIREMENTS FOR ETC DESIGNATION BY THE FCC

In 1997, the FCC issued a Public Notice setting forth the procedures a carrier must use when requesting designation as an ETC from the FCC.¹⁰ The Commission likewise collects similar information pursuant to that notice. A carrier seeking ETC designation must (1) establish that it will provide the supported services in accordance with 47 U.S.C

¹⁰ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communication Act*, Public Notice, 12 FCC Rcd 22947 (1997) (Section 214(e)(6) Public Notice).

§ 214 throughout its designated service area “either using its own facilities or a combination of its own facilities and resale of another carrier's services;”¹¹ (2) establish that it will advertise its universal service offerings and the charges thereof, using media of general distribution;¹² (3) certify that it will comply with the service requirements applicable to the support that it receives;¹³ and (4) establish that it will be able to remain functional during emergency situations.¹⁴

In addition, the FCC's rules require that in order to be designated as an ETC, a petitioner must (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 that it will satisfy applicable consumer-protection and service-quality standards.¹⁵

Prior to designating an ETC pursuant to 47 U.S.C. § 214(e)(2), the Commission must also determine whether such designation is in the public interest.¹⁶ In determining

¹¹ 47 U.S.C. § 214(e)(1)(A); 47 C.F.R. § 54.201(d)(1).

¹² 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

¹³ 47 C.F.R. § 54.202(a)(1)(i). The third and fourth requirements listed were adopted by regulation to apply to the FCC's review of a provider's ETC status, but the Commission generally looks at the same requirements as the FCC in seeking to determine whether a provider meets the requirements for an ETC designation.

¹⁴ 47 C.F.R. § 54.202(a)(2); Notably, the FCC generally requires those seeking an ETC designation to file a five-year plan that describes the specific proposed improvements and upgrades that will be made to offer the supported service and to demonstrate their ability to satisfy applicable customer protection and service quality standards. However, the FCC waived those requirements for recipients of CAF II Auction funds in favor of reporting requirements it believes will permit it to monitor the use of CAF II Auction funds as they are used. See *In the Matter of Connect America Fund*, Report and Order and Further Notice of Proposed Rule Making, WC Docket Nos. 10-90, 31 FCC Rcd. 5949, 6010-3, paragraphs. 172-8 (2016).

¹⁵ 47 C.F.R. § 54.202(a).

¹⁶ 47 U.S.C. § 214(e)(2); 47 C.F.R. § 54.202(b).

the public interest, the Commission historically has considered the benefits of increased consumer choice and the unique advantages and disadvantages of the petitioner's service offering.

As described below, Windstream Communications has provided the Commission with the information required for designation as an ETC in the service area at issue. We find that the public interest supports such designation, subject to Windstream Communications' compliance with the representations and commitments made by Windstream Communications in its application and the FCC's rules.

OFFERING THE SERVICES DESIGNATED FOR SUPPORT

Petitioners for ETC designation must certify that they offer all services designated for support by the Commission pursuant to 47 U.S.C § 254(c).¹⁷ Windstream Communications has demonstrated through the required certifications and related filings that it now offers or will offer upon designation as an ETC. Windstream Communications certifies that it now provides, or will provide throughout its designated service area, the services and functionalities enumerated in 47 C.F.R. § 54.101(a) throughout the designated service area.¹⁸

Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer-protection and service-quality standards.¹⁹ Windstream Communications has

¹⁷ See 47 U.S.C. § 214(e)(1)(A); § 214(e)(2); Public Notice, 12 FCC Rcd at 22948, paragraph 2.

¹⁸ Specifically, Windstream Communications certifies that it will provide voice telephony and broadband services supported by federal universal service support mechanisms, as set forth in 47 C.F.R. § 54.101, which includes (1) voice-grade access to the public switched telephone network; (2) local usage; (3) access to emergency services; and (4) toll limitation services to qualifying low-income users. See Application at 4.

¹⁹ 47 C.F.R. § 54.202(a)(3).

committed to providing applicable consumer protection and service-quality standards,²⁰ and it will be subject to reporting requirements to the FCC to ensure that it complies with the service requirements.²¹ Thus, the Commission finds that Windstream Communications' commitments provide sufficient consumer protection and service quality to consumers.

Windstream Communications has the ability to build its network in the census blocks identified in Exhibit A of the application.²² Windstream Communications has the ability to build its all-fiber network and to provide voice and broadband services throughout its proposed ETC designation area.²³ Based on the foregoing, the Commission finds that Windstream Communications is financially and technically capable of providing RDOF Phase I supported services.

OFFERING THE SUPPORTED SERVICES USING
A CARRIER'S OWN FACILITIES

Petitioners for ETC designation must certify that they will offer the supported services using either their own facilities or a combination of their own facilities and the resale of another carrier's services.²⁴ Windstream Communications, in its provision of wireline and broadband services, will offer services which Windstream Communications will provision over its own network. Thus, Windstream Communications has shown it is

²⁰ Application at 9.

²¹ *Id.*

²² *Id.* at 3–4.

²³ *Id.*

²⁴ 47 U.S.C. § 214(e)(6) Public Notice, 12 FCC Red at 22949; *See also* 47 U.S.C. § 214(e)(1)(A); *Petition of TracFone Wireline, 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 (2005).

able to offer all of the services and functionalities supported by the universal-service program, as detailed in 47 C.F.R. § 54.101(a), throughout its service area.

ADVERTISING SUPPORTED SERVICES

Petitioners for ETC designation must advertise the availability of the supported services and the charges thereof using media of general distribution and provide a description of how they will do so.²⁵ Windstream Communications has committed to advertising the availability of the supported services using media of general distribution.²⁶ In addition, Windstream Communications has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.²⁷ To increase accountability within the program and to target support where it is needed most, the FCC has adopted rules requiring ETCs to explain in their marketing materials that Lifeline service is a government benefit, the individual must be eligible to receive the benefit, and the consumer may receive no more than one benefit at a time from the program.²⁸ Windstream Communications has demonstrated its commitment to comply with these FCC rules regarding the marketing of supported service.

ABILITY TO REMAIN FUNCTIONAL IN EMERGENCY SITUATIONS

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.²⁹ Windstream Communications will provide service to its

²⁵ 47 U.S.C. § 214(e)(1)(B); § 214(e)(6); Public Notice, 12 FCC Rcd at 22949, paragraph 4.

²⁶ Application at 8–9.

²⁷ *Id.*

²⁸ Lifeline Reform Order, paragraphs 274-77; 47 C.F.R. § 54.405.

²⁹ 47 C.F.R. § 54.202(a)(2).

customers through its fiber-optic network. This service includes access to a reasonable amount of back-up power to ensure functionality without an external power source, re-routing of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. The Commission finds that Windstream Communications has demonstrated its ability to remain functional in emergency situations.³⁰

PUBLIC INTEREST ANALYSIS

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest.³¹ We find that Windstream Communications will offer high-speed broadband services as well as supported telephony service that will provide a variety of benefits to customers in these high-cost areas, including increased consumer choice and high-quality service offerings. Moreover, new entrants in the telephony and broadband market should incentivize existing ETCs to offer better service and terms to their subscribers.

Windstream Communications will provide competitive wireline services throughout its service area in Kentucky. Windstream Communications will be a facilities-based wireline service provider and will offer all of the services and functionalities detailed in 47 C.F.R. § 54.101(a), ensuring that Windstream Communications can provide services to customers throughout the service area.³²

³⁰ Application at 10.

³¹ See 47 U.S.C. § 214(e)(6) and 47 C.F.R. § 54.202(b).

³² Application at 11.

The Commission recognizes that the designation of Windstream Communications as an ETC also creates competitive pressure for other wireline and wireless providers that are designated as ETCs within the proposed service areas. In order to remain competitive in markets, all providers will have greater incentive to improve coverage and customer service, increase service offerings, and lower prices. Consistent with federal law, the designation benefits consumers by allowing Windstream Communications to offer the services designated for support at rates that are “just, reasonable, and affordable.”³³ Windstream Communications plans to offer affordable wireline telecommunications and high-speed broadband services to consumers as well as qualified low-income consumers.³⁴

REGULATORY OVERSIGHT

Under 47 U.S.C. § 254(e), petitioners are required to use the specific universal-service support they receive “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”³⁵ Moreover, the Commission or the FCC may institute an inquiry on its own motion to examine the petitioner’s records and documentation to ensure that the universal-service support it receives is being used for the purpose intended.³⁶ The petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service Administration Company (USAC) upon request. We further emphasize that, if the petitioner fails to fulfill

³³ 47 U.S.C. § 254(b)(1).

³⁴ Application at 12.

³⁵ 47 U.S.C. § 254(e) and 47 C.F.R. § 54.313.

³⁶ 47 U.S.C. §§ 220, 403.

the requirements of the 1996 Telecommunications Act,³⁷ the FCC's rules, or the terms of this Order after it begins receiving universal-service support, the Commission may exercise its authority to revoke such petitioner's ETC designation.³⁸ The FCC also may assess forfeitures for violations of FCC rules and orders.³⁹

ANNUAL CERTIFICATION AND VERIFICATION

Each year Windstream Communications will require all Lifeline subscribers to recertify their head of household status, certify that only one Lifeline discount is received at their household, and document their continued program eligibility for Lifeline in accordance with the annual Lifeline Certification and Verification for USAC that is due annually.⁴⁰

The Commission, having reviewed the evidence of record and having been otherwise sufficiently advised, HEREBY ORDERS that:

1. The designation of Windstream Communications as an ETC is granted.
2. Windstream Communications is designated as an ETC for the purpose of receiving federal high-cost and low-income support from the federal USF in the census blocks as stated in the application at Exhibit A.
3. Windstream Communications shall advertise the availability of and charges for these services using media of general distribution.

³⁷ 47 U.S.C. Section 151 *et seq.*

³⁸ See *Federal-State Joint Board on Universal Service; Western Wireline 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 (2000); see also 47 U.S.C. § 254(e).

³⁹ See 47 U.S.C. § 503(b).

⁴⁰ Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).

4. Windstream Communications shall comply with the FCC's annual certification process for Lifeline customers.

5. Windstream Communications is a utility under the definitions contained in KRS 278.010(3), and shall include revenue generated from the sale of intrastate wireline service, including Lifeline revenues, in its reports filed pursuant to KRS 278.140.

6. A copy of this Order shall be served upon the FCC and the USAC.

7. This case is hereby closed and will be removed from the Commission's docket.

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By the Commission



ATTEST:


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