

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF ELECTRIC PLANT)	
BOARD OF THE CITY OF HOPKINSVILLE D/B/A)	CASE NO.
HOPKINSVILLE ELECTRIC SYSTEM FOR A)	2021-00342
REQUEST FOR ELIGIBLE TELECOMMUNICATIONS)	
CARRIER DESIGNATION)	

ORDER

On August 31, 2021, Electric Plant Board of the City of Hopkinsville, d/b/a Hopkinsville Electric System (Hopkinsville Electric), filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (ETC). There were no requests to intervene, or comments filed in this case. Hopkinsville Electric's application is now before the Commission for a decision on the merits.

BACKGROUND

Hopkinsville Electric seeks an ETC designation to receive federal high-cost and low-income Universal Service Fund (USF) support for wireline services.¹ Hopkinsville Electric argued that it meets the requirements for ETC designation in 47 U.S.C. § 214(e)(2) in the areas for which it seeks such designations.

Hopkinsville Electric operates a public power system in Kentucky regulated by the Tennessee Valley Authority with which it provides electric service to 13,000 customers in Kentucky.² Hopkinsville Electric has also deployed its own high-quality, fiber-based

¹ See Application at 1 and Exhibit A. Hopkinsville Electric requests ETC designation for High-cost and Low-Income support in the counties listed in Exhibit A to the Application.

² *Id.* at 2.

network under the brand “EnergyNet,” which it uses to provide business and residential internet service in the Hopkinsville area. Hopkinsville Electric has extended its fiber optic internet service to the business districts of Cadiz, Elkton, Guthrie, and Oak Grove. Hopkinsville Electric currently has 4,500 broadband customers on its network and provides download speeds from 50 Mbps to 1 Gbps.³ Hopkinsville Electric has partnered with a Voice over Internet (VoIP) provider to provide voice services to residential and business subscribers on its broadband network.⁴

Hopkinsville Electric indicated that its fiber optic network will support telephone service using Session Initiation Protocol-based VoIP technology and will support all phone features, including 911 services.⁵ Hopkinsville Electric stated that its supported voice service will meet the following requirements:

- (a) Voice-Grade Access to the Public Switched Network – Hopkinsville Electric will provide voice-grade access, or its functional equivalent, to the public switched network. Hopkinsville Electric will have the capability to originate and terminate local and long-distance telephone service for all of its subscribers.
- (b) Local Usage – Hopkinsville Electric offers unlimited local calling to all of its subscribers.
- (c) Access to Emergency Service – Hopkinsville Electric will offer access to emergency service throughout its service area by dialing 911.
- (d) Toll Limitation Services to Qualifying Low-income Consumers – Once designated as an ETC, Hopkinsville Electric will participate in the Lifeline program for low-income subscribers as required and will offer toll blocking to meet the FCC’s requirement.

³ *Id.*

⁴ *Id.* at 3.

⁵ *Id.* at 5.

Hopkinsville Electric stated that its broadband service will have the capability to transmit data to and receive data by wire or radio from all or substantially all internet endpoints.⁶ It asserted that its broadband speeds will meet or exceed Federal Communications Commission (FCC) required speed and usage allowances for fixed broadband offerings,⁷ and that it will otherwise satisfy FCC consumer protection and service quality standards.⁸

Hopkinsville Electric asserted that neither its voice nor broadband services have been subject to any complaints with the state of Kentucky or the FCC.⁹ It stated that it will have sufficient facilities and capacity to provide supported services throughout its service area in Kentucky.¹⁰ Hopkinsville Electric certified that its fiber optic network will have the ability to remain functional in emergency situations, will have a reasonable amount of back-up power to ensure functionality without an external power source, will be able to reroute traffic around damaged facilities, and will be capable of managing traffic spikes resulting from emergency situations.¹¹

Hopkinsville Electric has registered with the Commission for the telephone service it provides.¹² It also acknowledged that the Commission “determined that petitions for ETC designation that that seek low income support from Lifeline programs should satisfy

⁶ *Id.* at 4–5.

⁷ *Id.*

⁸ *Id.* at 6.

⁹ *Id.* at 3.

¹⁰ *Id.*

¹¹ *Id.* at 5.

¹² *Id.* at 4.

the minimum standards established under the Commission's rules, comply with any and all applicable Commission orders, and abide by the reporting obligations set forth in KRS 278.130-150.¹³

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.

¹³ *Id.* at 3-4.

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.¹⁴ 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 § 254 throughout its designated service area “either using its own facilities or a combination of its own facilities and resale of another carrier's services;”¹⁵ (2) establish that it will advertise its universal service offerings and the charges thereof, using media of general distribution;¹⁶ (3) certify that it will comply with the service requirements applicable to the support that it receives;¹⁷ and (4) establish that it will be able to remain functional during emergency situations.¹⁸

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

¹⁴ *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).

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

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

¹⁷ 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 providers 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.

¹⁸ 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 Red. 5949, 6010-3, paragraphs. 172-8 (2016).

situations; and (3) demonstrate that it will satisfy applicable consumer-protection and service-quality standards.¹⁹

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.²⁰ In determining 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, Hopkinsville Electric has provided the Commission with the information required for designation as an ETC in the service areas at issue. The Commission finds that the public interest supports such designation, subject to Hopkinsville Electric's compliance with the representations and commitments made by Hopkinsville Electric 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).²¹ Hopkinsville Electric has demonstrated through the required certifications and related filings that it now offers or will offer the supported services upon designation as an ETC. Hopkinsville Electric certified that it now provides, or will provide throughout its designated service area, the

¹⁹ 47 C.F.R. § 54.202(a).

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

²¹ See 47 U.S.C. § 214(e)(1)(A); § 214(e)(2); Public Notice, 12 FCC Rcd at 22948, paragraph 2.

services and functionalities enumerated in 47 C.F.R. § 54.101 (a) throughout the designated service area.²²

OFFERING THE SUPPORTED SERVICES USING A CARRIER'S OWN FACILITIES

Generally, 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.²³ Hopkinsville Electric indicated that it would provide supported services, at least in part, through its fiber-optic network. Thus, Hopkinsville Electric has shown it plans to offer the services and functionalities using its own facilities, in the areas for which it will offer supported service.

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.²⁴ Hopkinsville Electric has committed to advertising the availability of the supported services using social media, print, and radio advertising.²⁵ In addition, Hopkinsville Electric has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.²⁶

²² Specifically, Hopkinsville Electric 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.

²³ 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(f)*, CC Docket No. 96-45, Order, 20 FCC Red 15095 (2005) (*TracFone Forbearance Order*).

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

²⁵ Application at 5.

²⁶ *Id.*

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.²⁷ Hopkinsville Electric has demonstrated its commitment to comply with these FCC rules regarding the marketing of supported service.

DESIGNATED SERVICE AREAS

Petitioners for ETC designation must provide a detailed description of the geographic service area for which they seek designation.²⁸ In its application, Hopkinsville Electric seeks designation as an ETC in the census blocks in the counties listed in the application.²⁹ Thus, Hopkinsville Electric has complied with this requirement.

COMPLIANCE WITH APPLICABLE SERVICE REQUIREMENTS

Petitioners for ETC designation must certify that they will comply with all service requirements applicable to the support they receive.³⁰ The Commission finds that Hopkinsville Electric has demonstrated its commitment to comply with the FCC's Lifeline rules, and specifically to comply with the rules regarding consumer enrollment and certification of eligibility.³¹ Further, Hopkins Electric also asserted that it would comply

²⁷ Lifeline Reform Order at paragraphs 274–77; 47 C.F.R. § 54.405.

²⁸ Section 214(e)(6), Public Notice, 12 FCC Rcd. at 22949, paragraph 5.

²⁹ Application at 1 and Attachment A.

³⁰ 47 C.F.R. § 54.202(a)(1)(i).

³¹ Application at 5.

with the service requirements applicable to any other support it might later receive based on its ETC designation.³²

ABILITY TO REMAIN FUNCTIONAL IN EMERGENCY SITUATIONS

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.³³ Hopkinsville Electric will provide service to its customers through its fiber-optic network. It indicated that such 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 Hopkinsville Electric has demonstrated its ability to remain functional in emergency situations.³⁴

SATISFACTION OF APPLICABLE CONSUMER PROTECTION AND SERVICE-QUALITY STANDARDS

Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer-protection and service-quality standards.³⁵ Hopkinsville Electric has committed to providing applicable consumer protection and service-quality standards,³⁶ and it will be subject to reporting requirements to the FCC to ensure that it complies with

³² *Id.* at 5, Exhibit B.

³³ 47 C.F.R. § 54.202(a)(2)

³⁴ Application at 5.

³⁵ 47 C.F.R. § 54.202(a)(3).

³⁶ Application at 6.

the service requirements.³⁷ Thus, the Commission finds that Hopkinsville Electric's commitments provide sufficient consumer protection and service quality to consumers.

FINANCIAL AND TECHNICAL CAPABILITY

Petitioners for ETC designation must demonstrate that they are financially and technically capable of providing supported services.³⁸ Hopkinsville Electric stated that it has been operating its broadband network since 1999 with the financial capability and technical knowledge to design, construct, and maintain the network.³⁹ Hopkinsville Electric also indicated that it received no complaints to the FCC or the Commission regarding the operation of its fiber optic network. Finally, Hopkinsville Electric has demonstrated its ability to operate complex facilities through the operation of its larger electric service in the Hopkinsville area. Based on the foregoing, the Commission finds that Hopkinsville Electric is financially and technically capable of providing supported services.

PUBLIC INTEREST ANALYSIS

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest.⁴⁰ The Commission finds that Hopkinsville Electric will offer VoIP and broadband services as well as Lifeline that will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice and high-quality

³⁷ *Id.*

³⁸ *Id.* at 2–3.

³⁹ *Id.*

⁴⁰ See 47 U.S.C. § 214(e)(6) and 47 C.F.R. § 54.202(b).

service offerings.⁴¹ Moreover, new entrants in the telephony and broadband market should incentivize existing ETCs to offer better service and terms to their subscribers.

Hopkinsville Electric will provide competitive VoIP and broadband services throughout its service area in Kentucky. Hopkinsville Electric will be a facilities based VoIP and broadband service provider, and will offer all of the services and functionalities detailed in 47 C.F.R. § 54.101(a), ensuring that Hopkinsville Electric can provide services to customers throughout the service area.⁴²

The Commission recognizes that the designation of Hopkinsville Electric 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 Hopkinsville Electric to offer the services designated for support at rates that are “just, reasonable, and affordable.”⁴³ Hopkinsville Electric plans to offer affordable VoIP telecommunications and high-speed broadband services to consumers as well as qualified low-income consumers.⁴⁴

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

⁴¹ Application at 5-6.

⁴² *Id.* at 5.

⁴³ 47 U.S.C. § 254(b)(1).

⁴⁴ Application at 2–3.

facilities and services for which the support is intended.”⁴⁵ An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.⁴⁶

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.⁴⁷ The petitioner is required to provide such records and documentation to the Commission, the FCC, or Universal Service Administration Company (USAC) upon request. The Commission further emphasizes that, if the petitioner fails to fulfill the requirements of the 1996 Telecommunications Act,⁴⁸ 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.⁴⁹ The FCC also may assess forfeitures for violations of FCC rules and orders.⁵⁰

ANNUAL CERTIFICATION AND VERIFICATION

Each year Hopkinsville Electric will require all Lifeline subscribers to recertify their head of household status, certify that only one Lifeline discount is received at their

⁴⁵ 47 U.S.C. § 254(e). We note that because petitioners are not eligible to receive federal universal service high-cost support, they are not required to file reports and certifications pursuant to 47 C.F.R. § 54.313.

⁴⁶ See *TracFone Forbearance Order*, 20 FCC Rcd. at 15105-06, paragraph 26.

⁴⁷ 47 U.S.C. §§ 220, 403.

⁴⁸ 47 U.S.C. Section 151 *et. seq.*

⁴⁹ 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 Red 15168, 151 74, 1] 15 (2000); See also 47 U.S.C. § 254(e).

⁵⁰ See 47 U.S.C. § 503(b).

household, and document their continued program eligibility for Lifeline in accordance with the annual Lifeline Certification and Verification for USAC that is due annually.⁵¹

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

1. Hopkinsville Electric petition for designation as an ETC is granted.
2. Hopkinsville Electric is designated as an ETC for the purpose of receiving Federal High-Cost and Low-Income support from the Federal USF in the areas identified in Exhibit A of its Application.
3. Hopkinsville Electric is designated as an ETC for the purpose of receiving Low-Income support from the state USF in the areas identified in Exhibit A of its application.
4. During the current certification period, Hopkinsville Electric shall be eligible to receive federal USF support.
5. Hopkinsville Electric shall advertise the availability of and charges for these services using media of general distribution.
6. Hopkinsville Electric shall comply with the FCC's annual certification process for Lifeline customers.
7. Hopkinsville Electric shall comply with the Commission's requirements to submit the Kentucky Universal Service support and the Kentucky Telecommunications Relay Service and Telecommunications Access Program support collected for each wireline customer.

⁵¹ Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).

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

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

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

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By the Commission

ENTERED
JAN 14 2022 rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00342

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