

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF TIME)	
WARNER CABLE INFORMATION SERVICES)	
(KENTUCKY), LLC FOR DESIGNATION AS AN)	CASE NO.
ELIGIBLE TELECOMMUNICATIONS CARRIER)	2021-00005
TO RECEIVE RURAL DIGITAL OPPORTUNITY)	
FUND AUCTION (AUCTION 904) SUPPORT)	
FOR VOICE AND BROADBAND SERVICES)	

ORDER

On January 6, 2021, Time Warner Cable Information Services (Kentucky), LLC (Time Warner), a Competitive Local Exchange Carrier, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (ETC). Time Warner seeks to receive federal high-cost and low-income Universal Service Fund (USF) support for wireline services.¹ Time Warner is seeking to be designated as an ETC in order to receive support from the Rural Digital Opportunity Fund (RDOF) Phase I. An affiliate of Time Warner, CCO Holdings, LLC (CCO Holdings) won the Federal Communications Commission's (FCC) RDOF Phase I auction (Auction 904) and assigned its winning bids to Time Warner in Kentucky.²

On May 17, 2021, Time Warner filed a supplement to the application. In the supplement, Time Warner explains that certain census blocks in which it requested to be

¹ Application at pages 2–3 and Exhibit A. Time Warner requests ETC designation for high-cost and low-income support in the census blocks listed in its application at Exhibit A. Time Warner did not request to receive support from the Kentucky Universal Support Fund for Lifeline.

² *Id.* at 10.

designated as an ETC are already served by a broadband provider.³ Time Warner has filed a petition with the FCC to seek a waiver of its obligation to serve those blocks.⁴ Time Warner further explains that it is possible that there are other census blocks that should be removed because they are already receiving support.⁵ Time Warner requests that the Commission include in its final Order, language that will allow a mechanism to allow for Time Warner to update the record in this proceeding and the Commission for subsequent modifications by the FCC of Time Warner's RDOF obligations by census block.⁶

The application states that (1) Time Warner meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;⁷ (2) Time Warner requests designation in the certain census blocks located in Kentucky;⁸ (3) in accordance with 47 U.S.C. § 214(e)(2), Time Warner seeks to be designated as an ETC in order to provide high-speed broadband internet access and interconnected Voice over Internet Protocol (VoIP) as well as Lifeline service to qualifying customers in Kentucky;⁹ and (4) designation of Time Warner as an ETC for the designated areas served in Kentucky will serve the public interest.¹⁰

³ Supplement to Application (filed May 17, 2021) at 5–6.

⁴ *Id.*

⁵ *Id.* at 6.

⁶ *Id.* at 8–10.

⁷ Application at 12.

⁸ *Id.* at 2.

⁹ *Id.* at 2.

¹⁰ *Id.* at 2.

Time Warner is a wholly controlled subsidiary of Charter Communications, Inc. (Charter).¹¹ Charter offers broadband connectivity under its brand name, Spectrum, and through its subsidiaries. Charter has a broadband infrastructure of over ten thousand miles in Kentucky and offers broadband, cable, voice, and mobile services to more than 741,000 households in Kentucky as well as many other states in America.¹² Time Warner has the financial and technical capabilities, with the support of its parent company, Charter, to pay for and construct the fiber-optic network throughout the proposed ETC service area for the provision of voice and broadband services.¹³

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. Time Warner commits to pay all applicable federal, state, and local regulatory fees imposed on customers, including 911/E911 fees.¹⁴ Time Warner will provide toll-limitation services to low-income consumers as provided in 47 C.F.R. §§ 54.400-54.423.¹⁵

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

¹¹ Application at 3.

¹² *Id.* at 3–4.

¹³ *Id.* at 5.

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 13.

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.¹⁶ The Commission likewise collects similar information pursuant to that notice. A carrier seeking ETC designation must file a petition providing the following: (1) a certification that the petitioner offers all services designated for support by the Commission pursuant to 47 U.S.C. § 254(c); (2) certification that the petitioner offers the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services;¹⁷ (3) a

¹⁶ *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).

¹⁷ *Lifeline Reform Order*, FCC 12-11 at paragraph 368 (adopting a blanket forbearance of the facilities requirement of 47 U.S.C. § 214(e)(1)(A) for non-facilities based carriers that seek limited ETC designation to participate in the Lifeline program) (Lifeline Reform Order). *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Lifeline and Link Up*, WC Docket No. 03-109; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Advancing Broadband Availability*

description of how the petitioner advertises the availability of the supported services, its universal service offerings, and the charges therefore using media of general distribution;¹⁸ (4) certify that it will comply with the service requirements applicable to the support that it receives;¹⁹ and (5) establish that it will be able to remain functional during emergency situations.²⁰

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.²¹

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.²² In determining the public interest, the Commission historically has considered the benefits of increased

Through Digital Literacy Training, WC Docket No. 12-23; *Report and Order and Further Notice of Proposed Rulemaking*, Adopted: January 31, 2012; Released: February 6, 2012.

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

¹⁹ 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.

²⁰ 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).

²¹ 47 C.F.R. § 54.202(a).

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

consumer choice and the unique advantages and disadvantages of the petitioner's service offering.

As described below, Time Warner 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 Time Warner's compliance with the representations and commitments made by Time Warner 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).²³ Time Warner has demonstrated through the required certifications and related filings that it now offers or will offer the designated services, upon designation as an ETC. Time Warner 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.²⁴ Petitioners for ETC designation must demonstrate that they will satisfy applicable consumer-protection and service-quality standards.²⁵ Time Warner has committed to providing applicable consumer protection and service-quality standards,²⁶ and it will be subject to reporting requirements to the FCC to ensure that it complies with

²³ See 47 U.S.C. § 214(e)(1)(A); § 214(e)(2); Public Notice, 12 FCC Rcd. at 22948, paragraph 2.

²⁴ Specifically, Time Warner 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 12–13.

²⁵ 47 C.F.R. § 54.202(a)(3).

²⁶ Application at 12–13.

the service requirements.²⁷ Thus, the Commission finds that Time Warner's commitments provide sufficient consumer protection and service quality to consumers.

Time Warner has the financial and technical ability to build its network in the census blocks identified in Exhibit A of the application.²⁸ Time Warner has the technical ability to provide voice and broadband services throughout the ETC designated census blocks and to pay for the costs through the financial support of its parent company, Charter.²⁹ Based on the foregoing, the Commission finds that Time Warner 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 offer the supported services using either their own facilities or a combination of their own facilities and the resale of another carrier's services.³⁰ Time Warner, in its provision of wireline and broadband services, will offer services which Time Warner will provision over its own network. Time Warner has shown it is 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.

²⁷ *Id.*

²⁸ *Id.* at Exhibit A.

²⁹ *Id.* at 11.

³⁰ 47 U.S.C. § 214(e)(6) Public Notice, 12 FCC Rcd. 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).

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.³¹ Time Warner has committed to advertising the availability of the supported services using media of general distribution.³² In addition, Time Warner has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.³³ 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.³⁴ Time Warner 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.³⁵ Time Warner will provide service to its customers through its fiber-optic network. This service includes rerouting traffic and managing traffic spikes in emergency situations while also having access to back-up power despite the lack of an

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

³² Application at 14.

³³ *Id.*

³⁴ Lifeline Reform Order, paragraphs 274-77; 47 C.F.R. § 54.405.

³⁵ 47 C.F.R. § 54.202(a)(2).

external power source. The Commission finds that Time Warner has demonstrated its ability to remain functional in emergency situations.³⁶

PUBLIC INTEREST ANALYSIS

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest.³⁷ We find that Time Warner will offer gigabit 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. Time Warner will provide competitive wireline services throughout its service area in Kentucky. Time Warner 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 Time Warner can provide services to customers throughout the service area.³⁸

The Commission recognizes that the designation of Time Warner 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 Time Warner to offer the services designated for support at rates that are “just, reasonable and affordable.”³⁹ Time Warner plans to offer affordable

³⁶ Application at 14–15.

³⁷ See 47 U.S.C. § 214(e)(6) and 47 C.F.R. § 54.202(b).

³⁸ Application at 15.

³⁹ 47 U.S.C. § 254(b)(1).

wireline telecommunications and high-speed broadband services to consumers as well as qualified low-income consumers.⁴⁰

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.”⁴¹ 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.⁴² 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 the requirements of the 1996 Telecommunications Act,⁴³ 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.⁴⁴ The FCC also may assess forfeitures for violations of FCC rules and orders.⁴⁵

⁴⁰ Application at 17–18.

⁴¹ 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.

⁴² 47 U.S.C. §§ 220, 403.

⁴³ 47 U.S.C. Section 151 *et seq.*

⁴⁴ 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, 15174, paragraph 15 (2000); see also 47 U.S.C. § 254(e).

⁴⁵ See 47 U.S.C. § 503(b).

ANNUAL CERTIFICATION AND VERIFICATION

Each year Time Warner 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.⁴⁶

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

1. The designation of Time Warner as an ETC is granted.
2. Time Warner 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. If Time Warner does not receive RDOF support in any such census block or a portion thereof, Time Warner shall file notice in this case of such change to the census block or a portion thereof, and such census block or portion thereof will be removed from Time Warner's ETC-designated service area without further action by the Commission.
4. Time Warner is designated as an ETC for the purpose of receiving low-income support from the state USF in the area as depicted in the application at Exhibit A.
5. During the current certification period, Time Warner shall be eligible to receive federal USF support.
6. Time Warner shall advertise the availability of and charges for these services using media of general distribution.

⁴⁶ Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).

7. Time Warner shall comply with the FCC's annual certification process for Lifeline customers.

8. Time Warner 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.

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

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

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By the Commission



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