

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF FRANKLIN)	
ELECTRIC PLANT BOARD FOR A REQUEST)	CASE NO.
FOR ELIGIBLE TELECOMMUNICATIONS)	2021-00011
CARRIER DESIGNATION)	

ORDER

On January 13, 2021, Franklin Electric Plant Board (FEPB) a Competitive Local Exchange Carrier, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (ETC). FEPB seeks ETC designation to receive federal high-cost and low-income Universal Service Fund (USF) support for wireline services.¹ FEPB, through its participation in the Tennessee Cooperative Group Consortium, is a winning bidder in the Federal Communications Commission’s (FCC) Rural Digital Opportunity Fund (RDOF) Phase I auction (Auction 904).²

The application states that (1) all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky are met by FEPB;³ (2) designation is requested in the designated census blocks in Kentucky by FEPB;⁴ (3) FEPB seeks to be designated as an ETC to provide high-speed broadband internet access and Voice over

¹ Application at 1 and Exhibit A. FEPB requests ETC designation for High-cost and Low-Income support in the census blocks listed in Exhibit A to the Application.

² Application at 1.

³ *Id.* at 3–4.

⁴ *Id.* at 1–2

Internet Protocol (VoIP) voice service as well as Lifeline service to qualifying customers in Kentucky, in accordance with 47 U.S.C. § 214(e)(2);⁵ and (4) the public interest will be served by designating FEPB as an ETC for the designated areas served in Kentucky.⁶

FEPB is also operating in Kentucky as an electric utility regulated by the Tennessee Valley Authority serving customers in Franklin, Kentucky.⁷ FEPB is a member of the Tennessee Cooperative Group Consortium which was winner of Auction 903 for locations in Kentucky and Tennessee. Portions of the winning bids for Kentucky were assigned to FEPB.⁸

FEPB has built a fiber network throughout the service area for its own use and to serve residential and business customers within its service territory.⁹ FEPB has also partnered with Warren Rural Electric Cooperative (WRECC) to leverage FEPB's knowledge of network operations and infrastructure with access to the fiber distribution facilities of WRECC to allow WRECC customers in rural Simpson County to have access to high-speed internet service. FEPB has the financial and technical capabilities to pay for and construct the fiber optic network throughout the proposed ETC service area for the provision of voice and broadband services.¹⁰

The Commission requires that the Kentucky Universal Service support and the

⁵ *Id.* at 4.

⁶ *Id.* at 1.

⁷ *Id.* at 2.

⁸ *Id.* at 1.

⁹ *Id.* at 2.

¹⁰ *Id.*

Kentucky Telecommunications Relay Service and Telecommunications Access Program (TRS/TAP) support be collected for each wireline customer. FEPB will be required to charge applicable federal, state and local regulatory fees including 911/E911 fees imposed on customers. FEPB will provide toll-limitation services to low-income consumers as provided in 47 C.F.R. §§ 54.400–54.423.¹¹

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.

¹¹ *Id.* at 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.¹² 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;¹³ (3) a description of how the petitioner advertises the availability of the supported services and the charges therefore using media of general distribution; and (4) if the petitioner is not a rural telephone company, a detailed description of the geographic service area for which it requests designation as an ETC from the Commission.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; (3) demonstrate that it will satisfy applicable consumer-protection and service-quality standards; (4) demonstrate that it is financially and technically capable of providing

¹² *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd. 22947, 22948 (1997) (Section 214(e)(6) Public Notice).

¹³ *Lifeline Reform Order*, FCC 12-11 at ¶ 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 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.

¹⁴ 47 U.S.C § 214(e)(6).

the Lifeline service; and (5) submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers, including details on the number of minutes provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan.¹⁵

Prior to designating an ETC pursuant to 47 U.S.C. § 214(e)(2), the Commission must determine whether such designation is in the public interest.¹⁶ 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, FEPB 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 FEPB's compliance with the representations and commitments made by FEPB 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 FEPB has demonstrated, through the required certifications and related filings, that it now offers or will offer the designated services upon designation as an ETC. FEPB certifies that it now provides, or will provide throughout its designated service area, the services and functionalities

¹⁵ 47 C.F.R. § 54.202(a).

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

¹⁷ See 47 U.S.C. § 214(e)(1)(A); § 214(e)(6) Public Notice, 12 FCC Rcd. at 22948, paragraph 2.

enumerated in 47 C.F.R. § 54.101(a) throughout the designated service area.¹⁸

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.¹⁹ FEPB, in its provision of VOiP and broadband services, will offer services that FEPB will provision over its own network. FEPB 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.

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.²⁰ FEPB has committed to advertise the availability of the supported services using media of general distribution.²¹ In addition, FEPB has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.²² To increase

¹⁸ Specifically, FEPB 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 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) (*TracFone Forbearance Order*).

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

²¹ Application at 4.

²² *Id.*

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, that the individual must be eligible to receive the benefit, and that the consumer may receive no more than one benefit at a time from the program.²³ FEPB has demonstrated its commitment to comply with these FCC rules regarding marketing of Lifeline service.²⁴

DESIGNATED SERVICE AREAS

Petitioners for ETC designation must provide a detailed description of the geographic service area for which they seek designation.²⁵ In its application, FEPB seeks designation as an ETC in the census blocks listed in the application.²⁶

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.²⁷ The Commission finds that FEPB 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.²⁸

ABILITY TO REMAIN FUNCTIONAL IN EMERGENCY SITUATIONS

Petitioners for ETC designation must demonstrate their ability to remain functional

²³ *Lifeline Reform Order* at paragraphs 274–77; 47 C.F.R. § 54.405.

²⁴ Application at 4.

²⁵ Section 214(e)(6), Public Notice, 12 FCC Rcd. at 22949, paragraph 5.

²⁶ Application at 1 and Exhibit A.

²⁷ 47 C.F.R. § 54.202(a)(1)(i).

²⁸ Application at 4.

in emergency situations.²⁹ FEPB will provide service to its customers through its fiber-optic network. Such service includes access to a reasonable amount of back-up power to ensure functionality without an external power source, rerouting of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. The Commission finds that FEPB has demonstrated its ability to remain functional in emergency situations.³⁰

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.³¹ FEPB has committed to providing applicable consumer-protection and service-quality standards, including protection of customer information and certifying compliance with the FCC on an annual basis.³² The Commission finds that FEPB'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 Lifeline-supported services.³³ FEPB states that it has been operating as a network since 2015 with the financial capability and technical

²⁹ 47 C.F.R. § 54.202(a)(2).

³⁰ Application at 5.

³¹ 47 C.F.R. § 54.202(a)(3).

³² Application at 5; *See also* 47 C.F.R. § 54.202(a)(3).

³³ 47 C.F.R. § 54.202(a)(4); *see also Lifeline Reform Order* at paragraph 387.

knowledge to design, construct, and maintaining the network using in-house personnel.³⁴ Based on the foregoing, the Commission finds that FEPB is financially and technically capable of providing Lifeline-supported services.

PUBLIC INTEREST ANALYSIS

Prior to designating an ETC, the Commission must determine whether such designation is in the public interest.³⁵ We find that FEPB 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 service offerings.³⁶ New entrants in the landline broadband and Lifeline service market should incent existing ETCs to offer better service and terms to their subscribers.

FEPB will provide competitive VoIP and broadband services throughout its service area in Kentucky. FEPB 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 FEPB can provide services to customers throughout the service area.³⁷

The Commission recognizes that the designation of FEPB 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

³⁴ Application at 2.

³⁵ See 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

³⁶ Application at 3-4.

³⁷ Application at 4.

consumers by allowing FEPB to offer the services designated for support at rates that are “just, reasonable, and affordable.”³⁸ FEPB plans to offer affordable VoIP telecommunications and high-speed broadband services to consumers as well as qualified low-income consumers.³⁹

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.”⁴⁰ 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.⁴¹

Finally, we note that 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

³⁸ 47 U.S.C. § 254(b)(1).

³⁹ Application at 2.

⁴⁰ 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.

⁴¹ See *TracFone Forbearance Order*, 20 FCC Rcd. at 15105-06, paragraph 26.

⁴² 47 U.S.C. §§ 220, 403.

⁴³ 47 U.S.C. Section 151 *et seq.*

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

ANNUAL CERTIFICATION AND VERIFICATION

Each year FEPB 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 FEPB as an ETC is granted.
2. FEPB 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. FEPB 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.
4. During the current certification period, FEPB shall be eligible to receive federal USF support.
5. FEPB shall advertise the availability of and charges for these services using

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 Rcd. 15168, 15174, paragraph 15 (2000); see also 47 U.S.C. § 254(e).

⁴⁵ See 47 U.S.C. § 503(b).

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

media of general distribution.

6. FEPB shall comply with the FCC's annual certification process for Lifeline customers.

7. FEPB 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.

8. FEPB 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 removed from the Commission's docket.

By the Commission



ATTEST:

A handwritten signature in blue ink that reads "Linda C. Bidwell". The signature is written in a cursive style and is positioned above a horizontal line.

Executive Director

*David Cummins
Leach & Cummins
200 North Main Street
Franklin, KENTUCKY 42134

*Eileen M Bodamer
Bodamer Consulting, LLC
415 Hepplewhite Drive
Johns Creek, GEORGIA 30022

*Wayne Goodrum
Franklin, KENTUCKY 42134