

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| ELECTRONIC APPLICATION OF |) | |
| CUMBERLAND CONNECT, LLC FOR |) | CASE NO. |
| DESIGNATION AS AN ELIGIBLE |) | 2021-00041 |
| TELECOMMUNICATIONS CARRIER |) | |

ORDER

On January 29, 2021, Cumberland Connect, LLC (Cumberland Connect), a Competitive Local Exchange Carrier, filed an application under 47 U.S.C. § 214(e)(2) seeking designation as an Eligible Telecommunications Carrier (ETC). Cumberland Connect seeks to receive federal and state low-income Universal Service Fund (USF) support for wireline services.¹ Cumberland Connect seeks ETC designation only for the purpose of participation in the Lifeline program. Cumberland Connect does not seek high-cost support.

The application states that (1) Cumberland Connect meets all the requirements for designation as an ETC to serve the designated areas in the state of Kentucky;² (2) Cumberland Connect requests designation in the certain census blocks located in Kentucky;³ (3) in accordance with 47 U.S.C. § 214(e)(2), Cumberland Connect seeks to be designated as an ETC solely to provide Lifeline service to qualifying customers in

¹ Application at 2 and Exhibit A. Cumberland Connect requests ETC designation in certain portions of Trigg, Todd Logan, Simpson, and Allen counties in Kentucky. The census blocks are denoted in its application at Exhibit A.

² Application at 3–5.

³ *Id.* at 2 and Exhibit A.

Kentucky;⁴ and (4) designation of Cumberland Connect as an ETC for the designated areas served in Kentucky will serve the public interest.⁵

Cumberland Connect is wholly owned subsidiary of Cumberland Electric Membership Corporation (CEMC). CEMC is headquartered in Clarksville, Tennessee and provides electric service to 103,456 members in Tennessee and 28 in Kentucky.⁶ Cumberland Connect is deploying a fiber-to-the-home network for the purpose of providing high-speed broadband internet service and Voice over Internet Protocol (VOIP) to CEMC members.

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. Cumberland Connect states that it will pay applicable federal, state, and local regulatory fees, including 911/E911 fees imposed on customers.⁷

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

⁴ *Id.* at 1.

⁵ *Id.* at 5.

⁶ *Id.* at 2.

⁷ Staff's First Request for Information, Items 5, 6, and 7.

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 FEDERAL
COMMUNICATIONS COMMISSION (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.⁸ 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

⁸ *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).

or a combination of its own facilities and resale of another carrier's services;⁹ (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.¹⁰

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 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.¹¹

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.¹² In determining the public interest, the Commission historically has considered the benefits of increased

⁹ *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.

¹⁰ 47 U.S.C. § 214(e)(2).

¹¹ 47 C.F.R. § 54.202(a).

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

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

The federal universal service Lifeline program is designed to reduce the monthly cost of telecommunications service for qualifying consumers. The Lifeline program reimburses ETCs for providing qualifying low-income consumers with discounts of \$9.25 off the monthly cost of their telephone service.¹³ The Kentucky Lifeline program currently provides additional reimbursement to ETCs for providing eligible consumers with discounts of up to an additional \$3.50 off the monthly cost of their telephone service, and \$6.00 for ETCs that provide unlimited voice service.¹⁴

As described below, Cumberland Connect 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 Cumberland Connect's compliance with the representations and commitments made by Cumberland Connect 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).¹⁵ Cumberland Connect has demonstrated through the required certifications and related filings that it now offers or will offer upon designation as a limited ETC, the voice telephony services supported by the Lifeline program. Cumberland Connect certifies that it now provides, or will provide

¹³ 47 C.F.R. § 54.403(a)(1).

¹⁴ Administrative Case No. 360, *An Inquiry into Universal Service and Funding Issues* (Ky. PSC May 22, 1998), at 37, determining Kentucky USF support of \$3.50 per line per month.

¹⁵ See 47 U.S.C. § 214(e)(1)(A); § 214(e)(6) Public Notice, 12 FCC Rcd at 22948, Paragraph 2.

throughout its designated service area, the services and functionalities enumerated in 47 C.F.R. § 54.101(a) throughout the licensed service areas of its underlying carriers.¹⁶

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.¹⁷ Cumberland Connect has committed to advertise the availability of the supported services using media of general distribution.¹⁸ In addition, Cumberland Connect has committed to advertising and promoting the availability of Lifeline services in a manner reasonably designed to reach those likely to qualify for Lifeline.¹⁹ 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, 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.²⁰ Cumberland Connect has demonstrated its commitment to comply with these FCC rules regarding marketing of Lifeline service.²¹

¹⁶ Specifically, Cumberland Connect certifies that it provides voice telephony 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) Lifeline service plans that do not distinguish between toll and non-toll calls in the pricing of service. See Response to Staff's First Request Item 2. In the *Lifeline Reform Order*, the FCC adopted rules that provide that toll-limitation service is no longer necessary for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of service. See *Lifeline Reform Order* at paragraph 49.

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

¹⁸ Application at 4.

¹⁹ *Id.*

²⁰ *Lifeline Reform Order* at paragraphs 274–77; 47 C.F.R. § 54.405.

²¹ Application at 4.

DESIGNATED SERVICE AREAS

Petitioners for ETC designation must provide a detailed description of the geographic service area for which they seek designation.²² In its application, Cumberland Connect seeks designation as an ETC eligible only for Lifeline support in the 18 census blocks identified in the application.²³

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.²⁴ The Commission finds that Cumberland Connect 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.²⁵

ABILITY TO REMAIN FUNCTIONAL IN EMERGENCY SITUATIONS

Petitioners for ETC designation must demonstrate their ability to remain functional in emergency situations.²⁶ Cumberland Connect provides service to its customers through other carriers; therefore, it is able to provide to its customers the same ability to remain functional in emergency situations as is currently provided by its underlying wireline providers to their respective customers. Such service includes access to a reasonable amount of back-up power to ensure functionality without an external power

²² Section 214(e)(6), Public Notice, 12 FCC Rcd at 22949, paragraph 5.

²³ Application at 1 and Exhibit A.

²⁴ 47 C.F.R. § 54.202(a)(1)(i).

²⁵ Staff's First Request for Information (filed Mar. 15, 2021), Item 3.

²⁶ 47 C.F.R. § 54.202(a)(2).

source, re-routing of traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. The Commission finds that Cumberland Connect has demonstrated its ability to remain functional in emergency situations.²⁷

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.²⁸ Cumberland Connect 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.²⁹ The Commission finds that Cumberland Connect'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.³⁰ Cumberland Connect as a wholly owned subsidiary of CEMC has the financial backing of its parent which has established lines of credit to ensure it can meet the needs of the project.³¹ Cumberland Connect began building its network in 2019 and has the technical capability to construct

²⁷ Staff's First Request for Information (filed Mar. 15, 2021), Item 3.

²⁸ 47 C.F.R. § 54.202(a)(3).

²⁹ Application at 4; *See also* 47 C.F.R. § 54.202(a)(3).

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

³¹ Staff's First Request for Information (filed Mar. 15, 2021), Item 3.

the network to its members.³² Based on the foregoing, the Commission finds that Cumberland Connect 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.³³ We find that Cumberland Connect offers Lifeline plans that will provide a variety of benefits to Lifeline-eligible consumers, including increased consumer choice, and high-quality service offerings. New entrants in the landline Lifeline service market should incent existing ETCs to offer better service and terms to their subscribers.

Cumberland Connect will provide competitive wireline services throughout its service area in Kentucky. Cumberland Connect will offer all of the services and functionalities detailed in 47 C.F.R. § 54.101(a), ensuring that Cumberland Connect can provide services to customers throughout the service area.³⁴

The Commission recognizes that the designation of Cumberland Connect as an ETC also creates competitive pressure for other wireline and wireless providers that are designated as ETCs within the proposed service areas. Consistent with federal law, the designation benefits consumers by allowing Cumberland Connect to offer the services designated for support at rates that are “just, reasonable and affordable.”³⁵ Cumberland

³² *Id.*

³³ See 47 U.S.C. § 214(e)(6); and 47 C.F.R. § 54.202(b).

³⁴ Application at 4 and 16.

³⁵ 47 U.S.C. § 254(b)(1).

Connect plans to offer affordable wireline telecommunications service to qualified low-income consumers.³⁶

In order to promote public safety and safeguard against waste, fraud, and abuse in the Lifeline program, the Commission finds it necessary to require Cumberland Connect to comply with certain conditions. The designation of Cumberland Connect as a limited ETC is conditioned on Cumberland Connect's compliance with (1) the representations and commitments made by Cumberland Connect in its ETC application and its Compliance Plan; and (2) the FCC rules, including those adopted by the FCC in the Lifeline Reform Order and the Third Report and Order, Further Report and Order, and Order on Reconsideration Adopted March 31, 2016.³⁷

Subject to the above-stated conditions, the Commission finds that designating Cumberland Connect as an ETC eligible only to receive Lifeline support is in the public interest.

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.”³⁸ An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications

³⁶ Staff's First Request for Information (filed Mar. 15, 2021), Item 3.

³⁷ See generally *Lifeline Reform Order* and *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket No. 11-42, WC Docket No. 00-197, WC Docket No. 10-90, *Third Report and Order, Further Report and Order, and Order on Reconsideration*, FCC 16-38 (rel. Apr. 27, 2106) (*Third Report and Order*).

³⁸ 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.

services by the amount of the support for the eligible consumer.³⁹

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.⁴⁰ 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,⁴¹ 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.⁴² The FCC also may assess forfeitures for violations of FCC rules and orders.⁴³

ANNUAL CERTIFICATION AND VERIFICATION

Each year Cumberland Connect 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.⁴⁴ The Commission finds that Cumberland Connect's plan to meet the annual certification and

³⁹ See *TracFone Forbearance Order*, 20 FCC Rcd at 15105-06, paragraph 26.

⁴⁰ 47 U.S.C. §§ 220, 403.

⁴¹ 47 U.S.C. Section 151 *et seq.*

⁴² 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).

⁴³ See 47 U.S.C. § 503(b).

⁴⁴ Case No. 2012-00146, *Lifeline Reform* (Ky. PSC May 1, 2012).

verification requirements is in accordance with the FCC's requirements.⁴⁵

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

1. Cumberland Connect is designated as a limited ETC for the purpose of offering Lifeline service only in Kentucky in the designated service area in its application at Exhibit A.

2. During the current certification period, Cumberland Connect shall be eligible to receive federal and state USF support for Lifeline.

3. Cumberland Connect shall advertise the availability of and charges for these services using media of general distribution.

4. Cumberland Connect shall comply with the FCC's annual certification process for Lifeline customers.

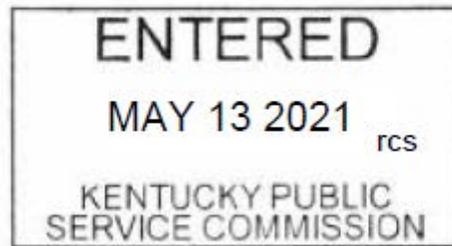
5. Cumberland Connect is a utility under the definitions contained in KRS 278.010(3) and shall include revenue generated from the sale of intrastate wireline service, including Lifeline revenues, in its reports filed pursuant to KRS 278.140.

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

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

⁴⁵ Application at 4.

By the Commission



ATTEST:


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