IN THE MATTER OF THE PETITION OF
PERRY SPENCER RURAL TELEPHONE
COOPERATIVE, INC. FOR DESIGNATION AS
AN ELIGIBLE TELECOMMUNICATIONS CARRIER FOR THE PURPOSE OF RECEIVING CONNECT AMERICA FUND PHASE II SUPPORT

CAUSE NO. 41052 ETC 32 S1
APPROVED: FEB 20 2019

ORDER OF THE COMMISSION

Presiding Officers:
David L. Ober, Commissioner
Lora L. Manion, Administrative Law Judge

On December 3, 2018, Perry Spencer Rural Telephone Cooperative, Inc. ("Petitioner") filed with the Indiana Utility Regulatory Commission ("Commission") its Verified Petition for Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Connect America Fund Phase II Support ("Verified Petition"). Pursuant to 47 U.S.C. § 214(e)(2) and 47 C.F.R. § 54.201, Petitioner seeks to become authorized to receive support from the Connect America Fund Phase II ("CAF II"). Petitioner also requested designation as a Lifeline provider pursuant to 47 C.F.R. § 54.101(d), which mandates that Eligible Telecommunications Carriers ("ETCs"), including those designated to receive high-cost support, offer Lifeline service in their designated service areas. Lifeline is a federal program through which low-income customers can receive a discount on telecommunications services.

On December 28, 2018, Petitioner filed the testimony and exhibits of James M. Dauby, President and Chief Executive Officer of Petitioner and its wholly-owned subsidiary, Perry-Spencer Communications, Inc. ("PSC"). On January 2, 2019, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its Notice of Intent Not to File Testimony.

The Commission held an evidentiary hearing in this Cause at 1:00 p.m. on January 18, 2019, in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC were present and participated. Petitioner’s evidence was admitted into the record without objection.

Based upon the applicable law and the evidence presented, the Commission finds:

1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. Pursuant to the Telecommunications Act of 1996, 47 U.S.C. § 151 et seq. (the "Act"), and 47 C.F.R. §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for Federal Universal Service Funds ("USF") under 47 U.S.C. § 254 and in accordance with the Commission’s
Orders in Cause Nos. 40785, 41052, and 42067. The Commission has jurisdiction over communication service providers ("CSPs") under Indiana Code § 8-1-2.6-13(c)(5)(A). Therefore, the Commission has jurisdiction over Applicant and the subject matter of this Cause.

2. **Petitioner's Characteristics.** Petitioner is a rural telephone cooperative organized under Indiana Code § 8-1-17 with its principal office located at 11877 East State Road 62, Saint Meinrad, Indiana. Petitioner is the incumbent local exchange carrier ("ILEC") in portions of Crawford, Dubois, Perry, Pike, Spencer, and Warrick counties in Indiana. Petitioner holds certificates of territorial authority ("CTAs") in six counties, as issued by this Commission. Petitioner provides telephone, fiber-to-the-premises ("FTTP") internet, and television services through its competitive local exchange carrier ("CLEC"), PSC. It also provides fixed wireless and satellite services. On December 27, 2018, in non-docketed Cause No. CSP1812-10, Petitioner filed a Verified Notice of Change in its CTA issued under Cause No. 23805 to provide telephone and broadband service in the ETC service area requested in this Verified Petition.

3. **Connect America Fund Phase II.** The CAF II Auction is part of the Federal Communications Commission’s ("FCC") reform and modernization of its universal service support programs. Through the CAF II Auction, the FCC has awarded funding to 103 bidders to provide fixed broadband and voice services to over 700,000 unserved or underserved locations in 45 states over the course of ten years. From July 24 through August 21, 2018, the FCC conducted the CAF II Auction to allocate support to certain eligible areas across the United States. Bids were accepted for four service tiers, each with varying speed and usage allowances, and two latency tiers, one high latency and one low latency. Petitioner participated in the CAF II Auction. On August 28, 2018, the FCC provisionally awarded Petitioner $118,242.57 annually in CAF Phase II funding over ten years.

1 Petitioner was the successful bidder on two census block groups, which collectively contain 73 census blocks that the FCC deemed eligible for CAF II support, and 359 locations required to be served.

The FCC requires CAF II Auction recipients to: (a) offer at least one voice and one broadband service meeting the relevant service requirements to the required number of locations in a specified timeframe; (b) offer at least one broadband and voice service at rates that are reasonably comparable to the rates for similar service in urban areas in accordance with the FCC’s annual urban rate survey; and (c) file annual reports, build-out milestone certifications, and data on locations where service is available with the Universal Service Administrative Company ("USAC").

4. **Petitioner's Evidence.** Mr. Dauby, President and Chief Executive Officer of Petitioner and PSC, testified Petitioner requests designation as an ETC within specified areas outside of its ILEC study area to become authorized to receive CAF II funding in accordance with the Act and 47 C.F.R. § 54.201. He testified that, according to 47 C.F.R. § 54.101(d), any ETC, including an ETC designated to receive high-cost support, must offer Lifeline service in its designated service area. Accordingly, to the extent necessary, Petitioner also requests designation as a Lifeline provider within the requested service area. Mr. Dauby requested that the Commission

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grant Petitioner’s Verified Petition on or before the Commission’s February 20, 2019 weekly conference to ensure that Petitioner meets the FCC’s February 25, 2019 deadline for designation as an ETC to receive the CAF II support provisionally awarded to Petitioner.

Mr. Dauby described Petitioner’s involvement in the CAF II Auction. He testified in compliance with the procedure established in the Auction 903 Notice. Petitioner submitted its FCC Form 183 short-form application prior to the March 30, 2018 deadline. Petitioner provided identification, operations, and financial information. Petitioner described its proposed network if awarded CAF II funding. The proposed network includes an FTTP network to provide voice and data services across a broadband platform to the eligible census blocks within each census block group for which Petitioner was awarded CAF II funding. Mr. Dauby noted that Petitioner’s FCC Form 183 application specifically described Petitioner’s proposed network as permitting Petitioner to utilize various technologies, such as active Ethernet, gigabit passive optical network (“GPON”), and other next-generation technologies to deliver the required services. He stated that Petitioner would use its FTTP technology to transmit voice and data over the same physical network and could prioritize voice traffic over other types of traffic. Mr. Dauby testified that, based upon its Form 183 short-form application, the FCC determined that Petitioner met the legal, technical, and financial qualifications to participate in the CAF II Auction and met the service requirements associated with the performance tier and latency combination(s) for the CAF II Auction.

Mr. Dauby stated that, on August 28, 2018, the FCC announced the winning bidders of the CAF II Auction. The FCC awarded Petitioner $118,242.57 annually in CAF Phase II funding over ten years. Petitioner was the successful bidder on the following two census block groups: #181479527002 and #181479528001, which have 161 and 198 locations, respectively. Petitioner bid on gigabit service tier and low-latency tier for these eligible census blocks and committed to building out network infrastructure to enable broadband speeds of 1 Gbps downstream and 500 Mbps downstream, to be available. Mr. Dauby stated Petitioner committed to providing service with a latency of less than 100 milliseconds. Petitioner will utilize the network deployment to provide a comprehensive suite of services, including broadband internet, subscription video, carrier-grade voice communications, and other ancillary services.

Mr. Dauby testified Petitioner intends to complete its FTTP buildout in the specific requested eligible census blocks within the census block groups within a three-year timeframe. Detailed engineering design and planning of the network construction will occur in the first year. Construction of a state-of-the-art broadband network to applicable portions of both census block groups will occur in the second and third years. Mr. Dauby testified that the deployment of the broadband network infrastructure would improve lives by providing needed access to broadband services that enable students to complete homework from home, employees to work from home for virtually any employer, and households to have access to comparable services that are available in large metropolitan areas. He stated that the FTTP network that Petitioner will construct also promotes economic development by providing access to broadband services.

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3 In a response to the Presiding Officers’ January 17, 2019 Docket Entry, Petitioner clarified that its network infrastructure would enable the availability of 500 Mbps upstream (not downstream, as Mr. Dauby previously testified).
He stated that Petitioner is managerially, financially, and technically capable of providing these services. Specifically, Mr. Dauby noted that Petitioner’s management is familiar with the managerial, financial, and technical needs of a communications company via Petitioner’s wholly-owned subsidiary, PSC. Mr. Dauby testified that each person on Petitioner’s professional staff had at least 25 years’ of industry experience, with some having more than 40 years’ of industry experience. Additionally, he testified that Petitioner owns and operates various network facilities, back office, billing, and customer support functions to provide the services required as an ETC. Finally, Mr. Dauby noted that Petitioner has provided to the FCC audited financial statements. Mr. Dauby surmised that the FCC was satisfied that Petitioner is financially capable of providing the required services based on the financial information provided.

Mr. Dauby testified that, in the Public Notice of Winning Bidders, Petitioner was named the winning bidder for 359 locations contained within 73 eligible census blocks and two census block groups in Spencer County, Indiana, as set forth on the map attached to the Verified Petition, for an annual CAF Phase II funding amount of $118,242.57 over ten years. He noted that all of the awarded census blocks are outside of Petitioner’s ILEC study area and within the ILEC study area of AT&T Indiana, which is not a “rural telephone company” as the term is defined in 47 C.F.R. § 51.5. Mr. Dauby further testified that Petitioner would provide the required voice and broadband services throughout the entire area in which it seeks ETC designation, including state-of-the-art broadband services via an FTTP network deployment that would provide carrier-grade internet, voice, and video services over a fiber optic cable network. Additionally, Petitioner plans to leverage its existing central offices, fiber optic transport network, voice-switching platform, and core data network to fulfill the services to the funded census blocks.

Mr. Dauby testified that Petitioner meets the requirements for ETC designation in Indiana. He stated that Petitioner is a “common carrier” as defined by 47 U.S.C. § 153(11) because it will offer communications services for sale to the public by wire and transmit communications both interstate and intrastate. He further stated that Petitioner would provide all services required to be eligible for high-cost universal service support using its own facilities. He stated that Petitioner would provide voice grade access to the public switched telephone network or its equivalent through its own facilities. He stated that the voice service would be delivered to the end user over packet-based protocols on this private fiber network. Mr. Dauby testified Petitioner would offer rate plans that provide subscribers with minutes of use for local service at no additional charge and access to emergency services, including 911 and enhanced 911 (“E911”) service from local public service answering points (“PSAP”). Specifically, Mr. Dauby stated that Petitioner would provide 911 and E911 services via jointly facilities to AT&T Indiana, who provides the PSAPs to the Spencer County 911/E911 dispatch center. Additionally, Mr. Dauby testified Petitioner would offer toll limitation to qualifying low-income customers at no additional charge, including toll-blocking services, upon customer request.

Mr. Dauby stated that Petitioner will provide broadband services with the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of communications service, but excluding dial-up service. Specifically, Petitioner would provide broadband services to the end users within the funded census blocks via FTTP network architecture whereby customer data
traffic would be uplinked to Petitioner’s existing core data network via redundant interfaces and transported via a carrier-grade fiber optic transport infrastructure. Mr. Dauby testified that Petitioner has uplinks from its core data network to multiple upstream internet service providers, including Intelligent Fiber Network and Zayo, which provide robust access to internet services that can survive a catastrophic failure of one of the upstream internet service provider’s networks. Mr. Dauby testified that Petitioner would advertise the availability of the voice and broadband services required to be provided by an ETC using media of general distribution as required by 47 C.F.R. § 54.201(d)(2). This would include use of Petitioner’s internet website, printed materials submitted to local agencies serving Lifeline customers, and its telephone directory.

Mr. Dauby testified that, in accordance with the ETC designation requirements applicable to winning bidders in the CAF II Auction adopted by the FCC, Petitioner requested in its Verified Petition that the Commission waive the requirement in the Commission’s General Administrative Order (“GAO”) 2013-2 that Petitioner file a five-year improvement plan. He stated that, as an CAF II Auction winning bidder, Petitioner has provided the FCC with audited financials, cost estimates, and descriptions of proposed improvements to its network throughout the proposed service area, as well as a project schedule describing major milestones associated with the project and defining a plan to complete the network deployment in both census block groups within three years. Additionally, Mr. Dauby testified that Petitioner, in its capacity as an ILEC and a CLEC, provides access to a reasonable amount of back-up power to ensure functionality without an external power source, the ability to reroute traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. He explained that Petitioner will satisfy all applicable state and federal requirements related to consumer protection and service quality standards with respect to the services provided using CAF Phase II funding, including through implementation of Petitioner’s policies regarding customer proprietary network information, Red Flag Rules, and customer rights and responsibilities.

Mr. Dauby testified that Petitioner’s service offerings in the requested ETC service area would promote increased competitive choice. This would also increase innovation and incentivize other carriers to improve their existing networks to remain competitive, which would ultimately result in greater access to high-speed broadband and voice services, as well as improved service quality for customers in the requested ETC service area. He stated that Petitioner’s use of the CAF Phase II funding in the awarded census blocks would directly advance the Act’s principal goals of securing lower prices and higher quality services for consumers and encouraging the rapid deployment of new technology to all citizens regardless of location or income. He noted that Petitioner’s main office and significant resources are in Spencer County, where the awarded census blocks are located, and are less than a 30-minute drive from any location within the awarded census blocks, making customer service operations convenient and timely for those within the requested ETC service area.

Mr. Dauby testified that the FCC has set aside the funds for the CAF II Auction awards. Petitioner’s use of said funds would have no per se impact on the federal USF. Mr. Dauby stated that the use of the CAF II Auction to award the funds ensured that funding went to bidders who could provide services to unserved or underserved areas for the lowest possible cost to the USF.

Additionally, he indicated that permitting Petitioner to provide services in previously unserved areas would increase the contributions Petitioner makes to the Federal USF based upon a portion of its revenues. Mr. Dauby testified that designation of Petitioner as an ETC as requested was in the public interest because: (a) it would benefit increased consumer choice; (b) provide unserved and underserved areas with critical communications infrastructure; and (c) promote economic development without having a detrimental impact upon the USF, furthering the goals of the Act and associated FCC rules.

Mr. Dauby stated that Petitioner would offer service plans within the requested service areas that include residential- and business-calling plans with optional call features, as well as broadband services that meet the CAF Phase II tier/latency requirements of Petitioner’s winning bids.

Finally, Mr. Dauby testified regarding Petitioner’s planned Lifeline service offerings. He provided the terms and conditions of Petitioner’s Lifeline service, including the number of minutes of use provided as part of the plan, additional charges (if any) for toll calls, and rates for each plan. Mr. Dauby stated terms and conditions are posted on Petitioner’s website and terms and conditions will be provided to enrolled customers. Mr. Dauby stated that Petitioner would advertise the availability of Lifeline services and charges through media of general distribution in a manner reasonably designed to reach potential Lifeline customers and make them aware of such offerings, as required by 47 C.F.R. § 54.405(b). Petitioner would advertise the following about the service: (a) it is “Lifeline” service, a government assistance program; (b) it is non-transferable; (c) it is available to eligible consumers only; and (d) it is limited to one discount per household.

5. **Petitioner’s Docket Entry Response.** The Presiding Officers’ January 17, 2019 Docket Entry requested additional information from Petitioner. Petitioner filed its response to the Docket Entry on January 18, 2019. Petitioner clarified in this Cause, Petitioner requests ETC designation only in the 73 census blocks colored green on Exhibit A, which are the only areas that will receive CAF Phase II funding. Petitioner also clarified that its network infrastructure would enable 500 Mbps upstream (not downstream, as Mr. Dauby previously testified) to be available to all locations within the eligible census blocks.

6. **Commission Discussion and Findings.** Pursuant to 47 U.S.C. § 214(e)(1)(A), a common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support in accordance with 47 U.S.C. § 254 and shall, throughout the service area for which the designation is received, offer the services that are supported by Federal USF support mechanisms under 47 U.S.C. § 254(c). Under 47 C.F.R § 54.101, the FCC’s rules identify ETC services that are eligible for universal service support, including voice telephony and broadband internet services. Pursuant to 47 C.F.R §§ 54.101(d) and 54.405, to receive universal service support, ETCs must offer Lifeline service.

The FCC established four programs within the Federal USF: (a) the High-Cost Fund for rural, insular, and high-cost areas; (b) Schools and Libraries (the E-rate program), providing discounted telecommunications services to eligible schools and libraries; (c) Lifeline, providing low-income consumers with discounted voice telephony and broadband service; and (d) Rural
Health Care, providing discounted telecommunications services to rural health care providers. The source of support for the CAF Phase II funding falls under high-cost support. Therefore, we evaluate Petitioner’s Verified Petition based on the required criteria for an ETC applicant seeking support from the Federal USF to provide service to high-cost areas. Because ETCs are required to offer Lifeline services, Petitioner also seeks designation as a Lifeline provider.

Petitioner seeks designation as an ETC for offering the federally supported implementation of expanded telecommunications and broadband network capabilities in Indiana with CAF Phase II funding. Based on the evidence in the record and the discussion below, we find that Petitioner meets the eligibility criteria for ETC designation pursuant to 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201. We also find that Petitioner will be required to offer Lifeline as a participant in the high-cost program and has demonstrated its intent and capability to do so. Thus, Petitioner meets the eligibility criteria to provide Lifeline services pursuant to 47 C.F.R. § 54.101(d).

A. **Waiver of Requirement to Submit a Five-Year Plan.** As an initial matter, Petitioner seeks waivers from the following requirements in GAO 2013-2: (1) submission of a five-year plan that describes with specificity the proposed improvements and upgrades to its network in the designated service area; and (2) demonstration of applicable consumer protection and service quality standards. Petitioner explains that the FCC waived this requirement for CAF II Auction applicants in FCC Public Notice DA 18-714. We note that FCC Public Notice DA 18-714 does not apply to providers seeking ETC designation in Indiana because the Commission has jurisdiction to designate ETCs in Indiana. However, Petitioner provided a copy of its Indiana project overview and its CAF II milestones that it also submitted to the FCC in the CAF II Auction. This information, coupled with the milestones and FCC reporting requirements for CAF II Auction recipients over the ten-year support term, satisfies the Commission’s information requirement in GAO 2013-2. The Commission finds that Petitioner provided sufficient information to demonstrate it will provide acceptable consumer protections and service quality, as discussed below in Consumer Protection, Section No. 6(H)(iii). Therefore, the Commission waives the requirement for Petitioner to provide a separate five-year plan pursuant to GAO 2013-2.

B. **Common Carrier Status.** The first requirement for ETC designation is status as a common carrier under federal law. The term “common carrier” as defined by 47 U.S.C. § 153(11), in part, means as any person engaged as a common carrier on a for-hire basis in interstate communication utilizing either wire or radio technology. Because the Commission granted CTAs certifying Petitioner as a communications service provider, including as a telecommunications service provider, and because Petitioner will provide voice telephony and broadband services as an FCC public interest obligation, as set forth in its Petition, we find that it is a “common carrier” for purposes of obtaining ETC designation under 47 U.S.C. § 214(e)(1).

C. **Required ETC Services.** To receive funding in high-cost areas as part of CAF II, Petitioner must provide voice telephony and broadband services in its designated census

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blocks. The evidence of record discussed below indicates as a recipient of CAF II funding, Petitioner’s proposed voice telephony and broadband services comply with applicable federal laws and regulations.

i. **Voice Telephony Services.** Eligible voice telephony services must provide:

1. **Voice-Grade Access to the Public Switched Telephone Network.** Pursuant to 47 C.F.R. § 54.101(a)(1), eligible voice telephony services must provide voice-grade access to the public switched telephone network or its functional equivalent. Mr. Dauby testified Petitioner would provide supported voice telephony services using its own facilities. Accordingly, we find that Petitioner satisfies this requirement set forth in 47 C.F.R. § 54.101(a).

2. **Local Usage.** Eligible voice telephony services must provide minutes of use for local service at no additional charge to end users as required by 47 C.F.R. § 54.101(a)(1). Although the FCC has not specified a minimum amount of local usage be offered by an ETC, Mr. Dauby testified Petitioner would offer rate plans that provide subscribers with minutes of use for local service at no additional charge and are consistent with the Act’s requirement that consumers have access to quality services at just, reasonable, and affordable rates. Based on the evidence, we find that Petitioner satisfies the local usage requirement.

3. **Access to Emergency Services.** As part of a universal service offering and as required by 47 C.F.R. § 54.101(a)(1), eligible voice telephony services must provide access to emergency services provided by local government or other public safety organizations, such as 911 and E911, to the extent the local government in an eligible carrier’s service area has implemented 911 or E911 systems. Mr. Dauby provided evidence that Petitioner will provide 911 and E911 services via joint provisioned facilities to AT&T of Indiana, which provides the public service answering points to the Spencer County 911/E911 dispatch center. Based on the foregoing evidence, we find that Petitioner satisfies this requirement.

4. **Toll Limitation for Qualifying Low-Income Customers.** A “toll limitation service”, as defined by 47 C.F.R. § 54.400(b)-(d), allows customers to either block the completion of outgoing long-distance calls or to specify a certain amount of toll usage to prevent them from incurring significant long-distance charges and risking disconnection. Toll limitation service is included as part of the definition of voice telephony service, which is a supported Lifeline service. 47 C.F.R. §§ 54.400(m), 54.401(a)(2). Therefore, each ETC must still offer a toll limitation service unless the Lifeline offering provides a set amount of minutes that do not distinguish between toll and non-toll calls. Mr. Dauby testified that Petitioner would offer toll limitation to qualifying low-income customers at no additional charge, including toll-blocking services upon customer request. Lifeline participants would not be disconnected from local service for non-payment of toll charges or denied reestablishment of local service if they have been previously disconnected for non-payment of toll charges. Therefore, we find that Petitioner satisfies this requirement.
ii. **Broadband Internet Access Service.** Pursuant to 47 C.F.R. § 54.101(c), an ETC subject to a high-cost public interest obligation to offer broadband internet access services who is not receiving CAF Phase I frozen high-cost support must offer broadband services within the areas where it receives high-cost support. These broadband services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up service. Mr. Dauby testified Petitioner would provide the required broadband service. Specifically, Petitioner would provide broadband services to the end users within the funded census blocks via FTTP network architecture. Accordingly, we find that Petitioner has satisfied this requirement.

iii. **Carrier Obligation to Offer Lifeline.** Under 47 C.F.R. §§ 54.101(d) and 54.405(a), ETCs, whether seeking the designation for universal service support for high-cost areas or solely to provide universal service support for low-income consumers, must make Lifeline service available to qualifying low-income consumers. Additionally, 47 C.F.R. § 54.401 defines Lifeline service, in part, as a non-transferrable retail service offering provided directly to qualifying low-income consumers for which they pay reduced charges. Mr. Dauby testified Petitioner will offer Lifeline service in addition to its high-cost offering and will advertise its Lifeline service as required by the FCC rules. Accordingly, we find that Petitioner satisfies the requirement to offer Lifeline service in addition to its high-cost offering.

D. **Functionality in Emergency Situations.** Under 47 C.F.R. § 54.202(a)(2), adopted in GAO 2013-2, applicants for ETC designation must demonstrate their ability to remain functional in emergency situations. This includes a demonstration that an applicant has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergencies. In the Verified Petition and Mr. Dauby’s testimony, Petitioner described its network redundancy, reliability, and battery back-up options, and we find that Petitioner satisfied the requirement of demonstrating its ability to remain functional in emergency situations.

E. **Advertising Requirements.** Pursuant to 47 C.F.R. § 54.201(d)(2), a common carrier designated as an ETC carrier eligible to receive universal support shall advertise the availability of such services and the charges using a media of general distribution. Additionally, 47 C.F.R. § 54.405(b) requires a carrier to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service. Petitioner demonstrated that it would advertise the availability of the voice and broadband services using media of general distribution, including its internet website, in printed materials submitted to local agencies serving Lifeline customers, and within its telephone directory, among other means. Petitioner offered a working draft example of its planned advertising of its Lifeline services in Mr. Dauby’s testimony, including terms and conditions with a general description of its proposed Lifeline offering. The Verified Petition described how Petitioner will advertise the availability of its services as required by 47 C.F.R. § 54.405(b). Thus, we find that Petitioner satisfies this requirement. Once Petitioner has initiated service, the Commission finds that Petitioner shall include the following information in its consumer marketing materials in language that is clear and comprehensible to consumers: (1) pricing information for individual services and bundles; (2) terms and conditions of service; (3) the dollar amount of a Lifeline discount; (4) the identity of the services to which a Lifeline
discount can be applied; and (5) an explanation of the terms and conditions of the Lifeline discount. Further, consistent with the Commission’s prior ETC Orders, Petitioner will be required to submit informational tariffs regarding its Lifeline offering.

**F. Petitioner’s Designated ETC Service Area.** Under 47 C.F.R. § 54.207(a), “service area” means a geographic area established by a state commission for determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from Federal USF mechanisms. Petitioner seeks ETC designation for the service area contained in 73 eligible census blocks located within two census block groups in Spencer, Indiana. Mr. Dauby described the locations in his testimony. Petitioner indicated the service area on the map in Exhibit A to the Petition. As Petitioner clarified in its Responses to the Presiding Officers’ January 17, 2019 Docket Entry, Petitioner seeks ETC designation only in the 73 census blocks indicated in green in Exhibit A, which are the only areas that will receive CAF Phase II support.

We find that to make the record of the designated ETC service area clear, Petitioner shall amend the legend on its Exhibit A map to indicate that the green area indicates the proposed ETC service area. Petitioner shall also amend the legend to indicate the meaning of the yellow line on the map or eliminate the yellow line. In addition, an attachment shall be added to the map which lists all eligible census blocks and each census block identification number for which Petitioner was awarded CAF II funding.

The Commission finds that an analysis pursuant to the FCC’s rule in 47 C.F.R. § 54.207(c) to define a service area served by a “rural telephone company,” as that term is defined in 47 C.F.R. § 51.5, is not necessary in this cause. This rule is in place to prevent “cream-skimming,” a practice by which a communications service provider may attempt to provide service only to low-cost customers while disregarding less profitable customers. Petitioner provided evidence that the area it seeks to be designated as an ETC is not within the service area of a “rural telephone company,” as that term is defined in 47 C.F.R. § 51.5. All of the awarded eligible census blocks are in the study area of AT&T Indiana, which is not a rural telephone company. Therefore, we approve the service area proposed in Petitioner’s Verified Petition.

**G. Facilities Ownership.** Consistent with the requirements of 47 U.S.C. § 214(e) and 47 C.F.R. §§ 54.101 through 54.207, Petitioner will provide services in Indiana using its own facilities, thus allowing it to meet the FCC’s requirement that an ETC provide the required voice telephony services through a “combination of its own facilities and resale of another carrier’s services” under 47 U.S.C. § 214(e)(1)(A). Service will be provided using Petitioner’s own network infrastructure and network components.

**H. Public Interest Considerations.** As noted above, the designation of Petitioner as an ETC requires a public interest analysis pursuant to 47 C.F.R. § 54.202(b). In the absence of statutory requirements for evaluating compliance with public interest, the FCC recommended the following analysis:

The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the
fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.


One of the principal goals of the Act is “to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income. Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). Because designation of Petitioner as an ETC will allow for the provisionally approved project to move forward and for Petitioner to receive funding support for projects that will help close the digital divide in selected portions of Indiana, we find that designation of Petitioner as an ETC in the requested service area will promote the public interest, as discussed below:

**i. Advantages of Petitioner’s Service Offerings.** The evidence of record demonstrates that Petitioner’s proposed project will directly benefit consumers. It would promote increased competitive choice, resulting in greater access to high-speed broadband and voice services, as well as improved service quality for customers in Petitioner’s requested ETC service area. Petitioner’s proposed project will also advance the Act’s principal goals of securing lower prices and higher quality services for consumers and encouraging the rapid deployment of new technology to all citizens. A specific advantage of Petitioner’s service offerings is that Petitioner’s main office and resources are less than a 30-minute drive from any location within the awarded census blocks, making customer service operations convenient and timely for those within the requested ETC service area.

**ii. Impact on Federal Universal Service Fund.** We have previously recognized that the FCC has undertaken various steps to address the growth in federal high-cost universal service support disbursements. _Perry-Spencer Communications, Inc., Cause No. 41052 ETC 53, 2008 WL 9832656 (IURC July 24, 2008)_. Notably, the funds that will support Petitioner’s projects will come directly from CAF Phase II funding already allocated by the FCC for Petitioner’s deployment to unserved areas. If these funds were not awarded to Petitioner, they would be awarded to another provider, possibly in another state. Additionally, the use of the CAF II Auction to award the funds ensured that funding went to bidders who could provide services to unserved or underserved areas for the lowest possible cost to the USF. Finally, the Lifeline services offered by Petitioner as part of its ETC designation will only receive support to the extent Petitioner obtains Lifeline customers. Given the low population in the service area, this is likely to be a small number. For these reasons, we find that designation of Petitioner as an ETC will not have a negative impact on the Federal USF.

**iii. Consumer Protection.** One of the requirements established by the 2005 FCC ETC Order was that, regardless of certification date, all ETCs must submit to the FCC, on an annual basis, certification that the ETC is compliant with 47 C.F.R. § 54.202(a)(3) by demonstrating that it is meeting applicable service quality standards and consumer protection rules.
Petitioner is designated as an ETC in its ILEC study area and states that it intends to provide all the required services in the area for which it is requesting ETC designation. We note that Petitioner has provided evidence that it will satisfy all applicable state and federal requirements related to consumer protection and service quality standards with respect to the services provided using CAF Phase II funding, including implementation of Petitioner’s policies regarding customer proprietary network information, Red Flag Rules, and customer rights and responsibilities. Accordingly, we find that Petitioner has demonstrated its intent to comply with applicable service quality standards and consumer protection rules.

iv. Affordable Rates. We must also consider whether designation of Petitioner as an ETC will “ensur[e] the availability of quality telecommunications services at just, reasonable, and affordable rates” pursuant to 2005 FCC ETC Order, 20 FCC Red. at 6388. Mr. Dauby testified Petitioner currently provides DSL internet, FTTP internet, and television services; however, Petitioner did not provide the pricing for these services. Petitioner provided pricing for its voice telephony services, indicating that single-party residential services are $7.45 per month and include local usage, free of per minute charges. As an ETC, Petitioner is required to provide Lifeline service. The evidence of record demonstrates that Petitioner will provide a monthly discount up to $9.25 to Lifeline customers. The discount is applicable to either broadband internet service or voice service. Lifeline customers also have the option to apply the discount to a service bundle, such as home phone or home Internet. The Lifeline voice service also includes toll blocking to qualifying customers without charge. In addition, we note that FCC will require Petitioner’s voice telephony and broadband offerings to include at least one plan at rates that are reasonably comparable to rates for similar service in urban areas. Based on the foregoing, we find that Petitioner plans to offer quality telecommunications services at just, reasonable, and affordable rates.

v. Commitment to Provide Service Applicable to Support Received. Petitioner provided evidence that it is prepared to deploy its own facilities to provide the supported services to customers within its proposed Indiana service area. Petitioner’s commitment to provide service satisfies the requirements of 47 C.F.R. §§ 54.202(a)(1)(i), which was adopted by GAO 2013-2, and 54.405(a). Accordingly, we find that Petitioner has demonstrated its willingness and ability to provide service throughout its requested service area.

vi. Provision of Universal Service. As an ETC serving areas known to be unserved or underserved, Petitioner must respond to Commission inquiries regarding its ability to serve customers in the event no common carrier will serve a community pursuant to 47 U.S.C. § 214(e)(3) or if an ETC serving the same designated service area or portions thereof seeks relinquishment of its obligations as an ETC under 47 U.S.C. § 214(e)(4).

vii. Additional Public Interest Analysis. ETC designation confers both benefits and burdens upon a telecommunications service provider. Because the designation gives the provider the right to apply for Federal USF, it is essential that the provider comply with its obligations to contribute to public interest funds and not have a competitive advantage over other Indiana telecommunications carriers by avoiding such obligations. This is particularly true in this instance, where Petitioner is essentially representing the state of Indiana on a national stage with its participation in the CAF II Auction. Petitioner’s participation in this program may
help bring additional federal grant monies to Indiana that would otherwise find their way to other states and will help keep Indiana at the technological forefront. While these benefits certainly serve the public interest in our state, Petitioner’s participation in the program will also invite an additional level of scrutiny, rendering regulatory and legal compliance paramount. Based on the foregoing analysis of the public interest in this Cause, we find that providing Petitioner with its requested ETC designation will promote the public interest and further the goals of the Act.

7. Regulatory Oversight. The Commission recognized certain specific regulatory requirements that competitive wireless ETC applicants must satisfy to secure and maintain their ETC status in Indiana. See, e.g., In re Designation of Eligible Telecommunications Carriers, Cause No. 41052 ETC 43, 2004 WL 1170027 (IURC March 17, 2004). Such regulatory requirements stem from the FCC’s mandate that state commissions certify that Federal USF support is being used “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended,” as set forth in 47 U.S.C. § 254(e). Absent such a certification, carriers will not receive such support. For the Commission to satisfy its ETC certification requirements to the FCC, it requires ETC applicants to track separately USF expenditures.

The record reflects Petitioner’s intention to comply with the Commission’s reasonable Lifeline informational tariff filing requirement for its Lifeline offerings. Petitioner’s Lifeline terms and conditions of service shall be incorporated into its Lifeline informational tariff for Indiana and filed with the Commission’s Communications Division for review prior to Petitioner making its universal service offerings available to eligible customers in its ETC service area. Petitioner shall concurrently file such information with USAC as required pursuant to 47 C.F.R. § 54.401(d).

8. Prospective ETC Reporting Requirements. Finally, we find that as a recipient of CAF II support, Petitioner is required to meet the applicable reporting requirements consistent with the federal rules in 47 C.F.R. § 54.313. Those requirements include, among others: (1) a certification that the ETC is able to function in emergency situations; (2) a certification that the pricing of the company’s voice services is not more than two standard deviations above the applicable national average urban rate for voice services; (3) a certification that the pricing of service that meets the FCC’s broadband public interest obligations is no more than the applicable benchmark; (4) the ETC’s holding company and operating company names, any affiliate relationships, and branding, as well as universal service identifiers; (5) certain reporting requirements specific to tribal lands to the extent recipient serves them; and (6) the results of the company’s network performance test. Petitioner’s compliance filings shall be filed under the applicable Cause to be announced by the Commission for certifying ETCs eligible to receive high-cost support in the coming year.

9. Conditions on Petitioner’s Designation as an ETC. In accordance with the Commission’s findings above, Petitioner shall be subject to the following conditions:

A. As a post-Order compliance requirement, Petitioner shall file under this Cause a revised Petitioner’s Exhibit A, Requested Service Area Map, within 15 days after the date of the final Order in this Cause. Petitioner shall amend the map legend and attach the list of eligible census blocks consistent with our findings in Section No. 6(F). This revision is consistent with the Petitioner’s response to the Presiding Officers’ January 17, 2019 Docket Entry.
B. If another ETC serving Petitioner's service area relinquishes its ETC designation pursuant to 47 U.S.C. § 214(e)(4), or if no common carrier will provide the services that are supported by Federal USF mechanisms pursuant to 47 U.S.C. § 214(e)(3), the Commission is required by federal statute to ensure that all customers will continue to be served. Petitioner shall respond to Commission inquiries in a case involving its service area, or portions thereof, in the event that such a situation occurs.

C. Pursuant to 47 C.F.R. § 54.401(d), prior to providing service in its designated service area or within 60 days of the effective date of this Order, whichever is soonest, Petitioner shall file an informational tariff with the Commission and USAC of its proposed Lifeline offerings and notify the Commission in the form of a new informational tariff if any terms, conditions, or an allocation of minutes change.

D. Petitioner shall file with the Commission a copy of its annual reports and certifications that are required by the FCC pursuant to 47 C.F.R. § 54.313 in a Cause to be announced by the Commission.

E. Petitioner shall establish safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. § 54.405.

F. Petitioner shall certify the eligibility of Lifeline customers pursuant to 47 C.F.R. § 54.410, requiring prospective Lifeline customers to demonstrate that they are eligible for Lifeline based upon participation in one of the qualifying low-income programs or based upon income.

G. Pursuant to 47 C.F.R. § 54.410, Petitioner shall contact each Lifeline customer on an annual basis and request confirmation of continued eligibility by requiring that the customer re-certify continued eligibility for the discount based upon income or participation in a qualifying low-income program. Petitioner shall provide the Commission with a copy of its Lifeline re-certification results that it files annually with USAC and the FCC.

H. Petitioner shall pay all fees applicable to telecommunications carriers, such as the public utility fee, pursuant to Indiana Code ch. 8-1-6; the InTRAC fee pursuant to Indiana Code ch. 8-1-2.8; the Indiana USF fee pursuant to the Commission’s Order in Cause No. 42144; the statewide E911 fee pursuant to Indiana Code ch. 36-8-16.6 and Indiana Code ch. 36-8-16.7; the Underground Plant Protection (811) fee pursuant to Indiana Code ch. 8-1-26; and any other applicable fees.

I. In the event Petitioner needs to add or delete census blocks from its ETC designated service area, or otherwise expand or decrease its designated service area, Petitioner should file a petition amending its service area under a subdocket in this Cause. If the FCC changes the number of funded locations that Petitioner is required to serve pursuant to the CAF II Auction, Petitioner should provide the Commission with a courtesy notice by submitting a compliance filing in this Cause.

Based on the evidence presented and discussed above and subject to the compliance requirements set forth in this Order, we find that Petitioner has met all of the ETC eligibility requirements and the public interest supports granting ETC status to Petitioner for participating in
the CAF II program. As an ETC in Indiana, Petitioner must comply with the prospective reporting requirements and conditions set forth herein. The Commission has the statutory authority to investigate, as it deems necessary, Petitioner’s compliance with this Order and its eligibility for ETC designation.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. As a post-Order compliance requirement, Petitioner shall file under this Cause a revised Petitioner’s Exhibit A, Requested Service Area Map, within 15 days after the date of the final Order in this Cause. Petitioner shall amend the map legend and clarify its service area consistent with our findings herein.

2. Perry Spencer Rural Telephone Cooperative, Inc.’s Verified Petition requesting designation as an ETC for the service area identified herein for participation in the Connect America Fund Phase II program is granted.

3. Petitioner’s request for authority to apply for or receive Federal Universal Service Funds pursuant to 47 U.S.C. § 254 is granted, subject to Petitioner’s compliance with the terms, conditions, and reporting requirements of this Order and other applicable laws.

4. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:**

**APPROVED:** FEB 20 2019

I hereby certify that the above is a true and correct copy of the Order as approved.

Mary M. Beverra
Secretary of the Commission