

ORIGINAL

STATE OF INDIANA

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda			✓
Ober	✓		
Ziegner	✓		

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF)
 JACKSON COUNTY RURAL ELECTRIC)
 MEMBERSHIP CORPORATION FOR) CAUSE NO. 41052 ETC 94
 DESIGNATION AS AN ELIGIBLE)
 TELECOMMUNICATIONS CARRIER FOR THE) APPROVED: MAY 19 2021
 PURPOSE OF RECEIVING RURAL DIGITAL)
 OPPORTUNITY FUND PHASE I SUPPORT)

ORDER OF THE COMMISSION

Presiding Officers:
Sarah E. Freeman, Commissioner
David E. Veleta, Senior Administrative Law Judge

On January 7, 2021, Jackson County Rural Electric Membership Corporation (“Petitioner” or “Jackson County REMC”) filed its Verified Petition for Designation as an Eligible Telecommunication Carrier for the Purpose of Receiving Rural Digital Opportunity Fund Phase I Support (the “Verified Petition”) with the Indiana Utility Regulatory Commission (the “Commission”). Petitioner seeks to become designated as an eligible telecommunications carrier (“ETC”) within certain census blocks in Indiana, as identified in the Verified Petition, pursuant to Section 214(e)(2) of the Federal Communications Act of 1934, as amended (the “Act”), in order to receive federal Rural Digital Opportunity Fund (“RDOF”) support to offer high-speed broadband and voice services to unserved rural areas of the state.

Also, on January 7, 2021, Petitioner filed the testimony and exhibits of Mark McKinney, president and chief executive officer of Petitioner. On February 5, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Notice of Intent Not to File Testimony. On March 29, 2021, the Presiding Officers issued a Docket Entry requesting the Petitioner provide additional information, and Petitioner responded in a filing on April 1, 2021.

The Commission set this matter for an Evidentiary Hearing to be held on March 31, 2021, at 11:30 a.m. in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. A Docket Entry was issued on March 23, 2021, advising that, in accordance with Indiana Gov. Eric Holcomb’s executive orders related to the COVID-19 pandemic, the hearing would be conducted via video conference. On March 29, 2021, the Presiding Officers issued a Docket Entry continuing the video conference hearing to April 8, 2021, at 10:30 a.m. Petitioner and the OUCC, by counsel, participated in the hearing via video conference, and the testimony and exhibits of Petitioner were 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 Act, 47 USC § 151 *et seq.*, and 47 CFR §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under 47 USC § 254, and in accordance with the Commission’s Orders in Cause Nos. 40785, 41052 and 42067. The Commission also has limited jurisdiction over certain matters related to communications service providers (“CSPs”) pursuant to Ind. Code § 8-1-2.6-13, including the designation of CSPs as ETCs and their associated ETC service areas. Therefore, the Commission has jurisdiction over Petitioner with respect to the subject matter of this Cause.

2. Petitioner’s Characteristics. Jackson County REMC is an Indiana rural electric membership corporation with its principal office at 274 E. Base Road, P.O. Box K, Brownstown, IN 47220. Jackson County REMC is a member-owned rural electric cooperative with approximately 20,300 members and 25,000 accounts, 2,886 miles of electric service line and an average of 8.4 electric meters per mile. The service territory extends to 10 counties in southern Indiana. Jackson County REMC was founded in 1937 and is governed by a nine-member Board of Directors. The financial history of the cooperative has been steady throughout its history. Electric service reliability ratings over the past five years have been 99.95% with distribution automation and self-healing technologies.

Jackson County REMC has traditionally provided electric utility service within the service area designated by the Commission and last modified by Order of the Commission dated November 21, 2018 in Cause No. 45156. On May 9, 2018 in Cause No. 1804-2, the Commission officially acknowledged a Notice of Change to Jackson County REMC’s Certificate of Public Convenience and Necessity (“CPCN”) issued on April 30, 1937 in Cause No. 12551. This Notice of Change added broadband service to Jackson County REMC’s authorized service offerings within in CPCN service area, including portions of Bartholomew, Brown, Clark, Jackson, Jefferson, Jennings, Lawrence, Monroe, Scott and Washington counties. On August 3, 2018 in Cause No. CSP1806-10, the Commission officially acknowledged a Notice of Change to Jackson County REMC’s CPCN that added additional areas within Jackson, Jennings, Scott and Washington counties to Jackson REMC’s authorized broadband service area. On January 11, 2021, Jackson County REMC filed a Notice of Change (CSP # 2101-6) to its CPCN to become authorized to provide broadband service as an information service and interconnected VoIP as a telecommunications service throughout Indiana, which will encompass all of Jackson County REMC’s designated ETC service area as requested herein. The Commission officially acknowledged Jackson County REMC’s Notice of Change to its CPCN on March 4, 2021. Jackson County REMC also is or will be a “common carrier” and a “telecommunications carrier” as defined by 47 USC § 153.

3. Rural Digital Opportunity Fund Phase I. The FCC established the RDOF to provide \$20.4 billion in support through a reverse auction (“Auction 904”) designed to bring broadband service to areas that lack access to both fixed voice and 25/3 Mbps broadband services.¹ On December 7, 2020, the FCC announced the winning bidders of Auction 904, one of which was the NRTC Phase I RDOF Consortium (the “Consortium”). Post-auction, the Consortium assigned

¹ *In the Matter of Rural Digital Opportunity Fund et al., Notice of Proposed Rulemaking*, 34 FCC Rcd 6778 (August 1, 2019) (“*Rural Digital Opportunity Fund NOPR*”).

certain RDOF Phase I support winning census blocks to Jackson County REMC for a total of \$2,188,212 in RDOF Phase I funding over 10 years.² In order to be authorized by the FCC to receive this RDOF support, Jackson County REMC must be designated by the Commission as an ETC for all of the eligible census blocks allocated to it by the Consortium, which comprise its requested ETC service area, by no later than June 7, 2021.³

4. Petitioner's Evidence. Mr. McKinney, president and chief executive officer for Petitioner, testified that, in accordance with the Act and 47 CFR § 54.201, Petitioner requests designation as an ETC within specified areas in order to become authorized to receive RDOF Phase I support. He testified that, according to 47 CFR § 54.101(d), an ETC must offer Lifeline service in its designated service area. Accordingly, Petitioner also requests designation as a Lifeline provider within the requested service area. Mr. McKinney requested that the Commission grant Petitioner's Verified Petition on or before June 7, 2021 to ensure that Petitioner meets the FCC's deadline for designation as an ETC to be authorized to receive the RDOF support allocated to Petitioner by the Consortium.

Mr. McKinney described Petitioner's involvement in Auction 904 and its broadband deployment project, stating that it would consist of installation of a fiber optic network capable of providing internet access at speeds ranging from 100 Mbps (symmetrical) to 1 Gbps (symmetrical) to both residential and commercial customers. On December 7, 2020, the FCC announced the winning bidders of Auction 904. The FCC provisionally awarded the Consortium \$19,791,000.70 in RDOF Phase I funding over 10 years, covering 30,318 locations in Indiana. The Consortium then participated in the FCC's Divide Winning Bids procedure to allocate \$2,188,212 in RDOF Phase I funding to Petitioner over 10 years, covering 7,999 locations within 1,105 census blocks (within 41 census block groups), in which Petitioner will provide at least one voice and one broadband service meeting the relevant RDOF service requirements. Mr. McKinney testified that, per RDOF requirements, Petitioner would deliver high-speed internet access by installing a fiber optic network capable of providing internet access at speeds ranging from 100 Mbps (symmetrical) to 1 Gbps (symmetrical) to both residential and commercial customers and voice grade access to the public switched telephone network using its own fiber-based network to resell interconnected VoIP services for which it will contract with a vendor its choosing that will enable Petitioner to provide the voice telephony services at the appropriate service levels. Mr. McKinney stated that Petitioner's deployment timeline includes having the awarded census block served with broadband services within three years and VoIP services within the RDOF timeline required. He stated that benefits of Petitioner's service offerings to the community include school and work from home capability, decrease in the "homework gap" between students who have/don't have broadband internet access, telemedicine options and electronic health record access, positive economic impact due to e-commerce capability, and increase in property value for homeowners with the installation

² *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34; WC Docket No. 19-126; WC Docket No. 10-90 (December 7, 2020) ("*Winning Bidders Announcement*").

³ *Auction 904 Notice*, 35 FCC Rcd 6077. The FCC indicated that if a long-form applicant is unable to obtain the necessary ETC designations within the 180-day timeframe, it would be appropriate to waive the 180-day timeframe if the long-form applicant is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete. The FCC will presume that a long-form applicant acted in good faith if it files its ETC application with the state commission within 30 days of the release of the Auction 904 closing public notice.

of broadband service. In his testimony, Mr. McKinney provided the services and plans, including pricing that Petitioner plans to offer, to meet its obligations related to RDOF support. Specifically, Petitioner will offer three residential and four commercial broadband plans with speeds up to 1,000/1,000 Mbps. Additionally, Petitioner will offer bundled and unbundled voice service.

In his testimony, Mr. McKinney further described how Petitioner was managerially, financially and technically capable of providing the required services. He stated that Petitioner has served in the electric utility industry for more than 80 years. He stated that Petitioner's broadband internet project buildout began in 2017, and the cooperative is now serving more than 5,000 members with electric and broadband service. He further testified that Petitioner has full financial capabilities to underwrite its share of construction and start-up expenses to get its fiber optic network built and to begin operations in the internet and VoIP business. In addition, Petitioner owns and operates various network facilities and back office, billing and customer support functions to provide the services required as an ETC. Mr. McKinney also noted that Petitioner had provided to the FCC financial information, and he surmised that the FCC was satisfied that Petitioner is financially capable of providing the required services.

Mr. McKinney testified that Petitioner was allocated RDOF Phase I support for 1,105 census blocks within 41 census block groups serving 7,999 locations and comprising the area for which Petitioner seeks ETC designation. Mr. McKinney testified that the FCC has waived the statutory requirement that the ETC service area of an RDOF participant conform to the service area of a rural telephone company serving the same area.⁴

Mr. McKinney stated that Petitioner would provide all of the required services in the designated ETC service area. Mr. McKinney further testified that Petitioner is a "common carrier" as defined by 47 USC § 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 or, if necessary, through resale of another carrier's services. Mr. McKinney testified that Petitioner would use its own fiber-based network to provide services to end users in the requested ETC service area. He stated that interconnected VoIP service would be provided to allow subscribers voice-grade access to the public switched telephone network.

In his testimony, Mr. McKinney stated that Petitioner would offer local voice rate plans that provide subscribers with minutes of use for local service at no additional charge. He further testified that Petitioner would provide access to emergency services for customers in the designated ETC service area, including 911 and enhanced 911 ("E911") service from local public service answering points ("PSAPs"). Specifically, Mr. McKinney stated that Petitioner would provide 911 and enhanced 911 services via VoIP service provided by its third-party VoIP services vendor. Additionally, he testified that Petitioner's voice service offerings would not distinguish between toll and non-toll calls, so Petitioner would not be required to provide toll limitation service.

⁴ *Rural Digital Opportunity Fund Order*, 35 FCC Rcd 686 para 93-94 (January 30, 2020).

Mr. McKinney testified that, pursuant to 47 CFR § 54.101(a)⁵, Petitioner would 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. He testified that Petitioner would not prioritize between endpoints, and that there was no plan or intent to limit connectivity within or outside the network.

Mr. McKinney stated that Petitioner would advertise the availability and rates for the voice telephony and broadband access services to be offered within the designated ETC service area using media of general distribution, as required by 47 CFR § 54.201(d)(2). Specifically, Petitioner will advertise these services via outreach materials and methods designed to reach households that currently do not have telephone service and those likely to qualify for the service. Advertising will include, but not be limited to, targeted direct mail and email, advertisements in monthly Cooperative magazine, billboards and social media advertising. Petitioner will also coordinate with relevant state agencies, community outreach organizations, and non-profit organizations to make information regarding supported service offering available in their respective resource guides, other printed materials and offices. Petitioner will also advertise through online search engines. Mr. McKinney testified that Petitioner intends to follow the FCC's Lifeline advertising guidelines in establishing an advertising program for its Lifeline services to reach eligible households that do not currently receive service.

Mr. McKinney testified that, in accordance with the ETC designation requirements adopted by the FCC and applicable to winning bidders in Auction 904, Petitioner requested in its Verified Petition that the Commission waive the requirement in the Commission's GAO 2019-5 that Petitioner file a five-year improvement plan. He stated that, Petitioner would provide the FCC with audited financials, cost estimates and descriptions of proposed improvements to its network throughout the designated ETC service area.

Mr. McKinney testified about Petitioner's ability to remain functional in emergency situations. Petitioner will provide 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. Petitioner can modify network routing and weighting as needed to reroute traffic around damaged facilities. Traffic management capabilities will also allow Petitioner to manage traffic spikes throughout its network, as emergency situations require. Petitioner has established reasonable provisions to meet emergencies resulting from failures of lighting or power service, sudden and prolonged increases in traffic, illness of operators or from fire, storm or acts of God, including provisions to supply a reasonable amount of emergency power to provide a reasonable amount of battery service at members' premises. Petitioner's network facilities will have off-grid backup power available, as well, from its backup generator system. In the case of damaged facilities, Petitioner will be able to re-route traffic to circumvent such facilities by utilizing its secondary connections and will maintain adequate capacity to manage traffic spikes from emergency situations. Petitioner has informed employees as to the procedures to be followed, including reasonable rerouting of traffic around damaged facilities and the deployment of emergency power

⁵ *Restoring Internet Freedom Order on Remand*, 35 FCC Rcd 12328 (15) (2020), effective January 7, 2021, reordered 47 CFR § 54.101; however, the applicable requirements to this Cause are materially unchanged.

in the event of emergency to prevent or mitigate interruption or impairment of telecommunications service. Finally, Petitioner's VoIP services contract arrangement imposes certain obligations on the provider to ensure Petitioner's supported service offering remains functional during emergency situations. Regarding consumer protection and service quality with respect to the services provided using RDOF Phase I support, Mr. McKinney testified that Petitioner commits to satisfying all related applicable state and federal requirements. Petitioner will provide a router with a firewall, anti-virus and anti-spam protections and a battery backup for VoIP services if applicable.

Mr. McKinney testified that Petitioner's service offerings in the designated ETC service area would promote increased competitive choice, thereby increasing innovation and incentivizing 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 designated ETC service area. He stated that Petitioner's use of the RDOF Phase I 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. Mr. McKinney explained that Petitioner's ETC designation would bring another competitive voice and broadband provider to consumers in the designated service area. He stated that Petitioner had been an active member in its community and committed to supporting efforts to help its region grow and prosper. He explained that Petitioner understood that access to voice services and high-speed broadband internet services would attract more business and residents to the area, creating better jobs and allowing families to enjoy a decent lifestyle.

Mr. McKinney testified that the FCC had set aside the funds awarded in Auction 904. Petitioner's use of said funds would have no *per se* impact on the federal Universal Service Fund ("USF"). Mr. McKinney stated that the use of Auction 904 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 noted that permitting Petitioner to provide services in previously unserved areas would increase the contributions Petitioner makes to the USF based upon a portion of its interstate revenues. Mr. McKinney testified that designation of Petitioner as an ETC in the requested service area was in the public interest because it would: (a) 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.

Finally, Mr. McKinney testified regarding Petitioner's planned Lifeline service offerings. Mr. McKinney stated that Petitioner's Lifeline terms and conditions would be posted on Petitioner's website and would be provided to eligible customers enrolling in Lifeline. He stated that Petitioner would complete income verifications annually based on information provided by USAC. Mr. McKinney 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 CFR § 54.405(b). Specifically, he stated the Petitioner would advertise the availability of Lifeline services using the same media outlets used to advertise Petitioner's other communications services, including Petitioner's website and printed materials.

5. Response to Commission’s Docket Entries. On March 29, 2021, the Commission issued a Docket Entry in this Cause seeking additional information. Petitioner filed its response to this Docket Entry on April 1, 2021. In its response, Petitioner provided additional information regarding its planned partnership with Momentum Telecom to offer VoIP service. Petitioner further described the minimum downstream and upstream broadband speeds, latency commitment and monthly usage allowances of its broadband plans, as well as the monthly pricing for the same. It explained that small businesses would be eligible for its residential or commercial broadband tier pricing based upon their needs, including whether they needed 24/7 support and/or more than one static IP address. Petitioner expanded upon that answer to explain that it “will offer its proposed RDOF services to all eligible residential and small business customers and to all high-cost/RDOF non-Lifeline subscribers and eligible Lifeline subscribers in the proposed ETC service area at rates that are reasonably comparable to rates in urban areas for similar services.” Petitioner also included the pricing for its various broadband service plans in its response.

In its response, Petitioner further clarified that its voice service plan would offer unlimited local and domestic long-distance calls; therefore, Petitioner is not required to offer toll limitation. Petitioner further confirmed that it would offer the required Lifeline discounts on its voice-only plan and at least one bundled broadband/voice package.

Petitioner confirmed that is requesting ETC designation on the census-block level, including the 1,105 census blocks for which it was allocated RDOF support. Petitioner filed with its response an amended Exhibit B to the Verified Petition identifying the corresponding census blocks. In lieu of a five-year plan, Petitioner provided portions of its FCC Form 683 long-form RDOF application, which described its planned network architecture, buildout schedule and deployment milestones. Finally, Petitioner explained in its response how it intended to meet all FCC service quality and consumer protections applicable to VoIP service. Petitioner included materials from its VoIP service provider, Momentum Telecom, describing the service quality and customer service standards that Momentum will provide to Petitioner in the delivery of the VoIP service.

6. Discussion and Findings. Pursuant to 47 USC § 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 USC § 254 and shall, throughout the service area for which the designation is received, offer the services that are supported by USF support mechanisms under 47 USC § 254(c). Under 47 CFR § 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 CFR §§ 54.101(d) and 54.405, to receive universal service support, all ETCs must offer Lifeline service.

The FCC established four programs within the USF to implement the statute: (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.⁶ The source of support for the RDOF Phase I funding falls under the High-Cost Fund.

⁶ *Comprehensive Review of the Universal Serv. Fund Mgmt. et al.*, 22 FCC Rcd. 16372, 16373 (2007).

Therefore, we evaluate Petitioner’s Verified Petition based on the required criteria for an ETC applicant seeking support from the 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 high-speed broadband and voice services for unserved rural Indiana residents. Based on the evidence in the record and the discussion below, we find that Petitioner satisfies the requirements in GAO 2019-5 and meets the eligibility criteria for ETC designation in 47 USC § 214(e)(1) and related FCC rules, subject to the terms, conditions, and reporting requirements set forth herein and other applicable laws. Further, we find that designation of Petitioner as an ETC will allow it to deploy services in compliance with the provisionally awarded RDOF Phase I funding, satisfying the public interest analysis the Commission is required to perform under the *2005 FCC ETC Order*⁷ and GAO 2019-5. 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 CFR § 54.101(d).

A. Waiver of Requirement to Submit Five-Year Plan. As an initial matter, Petitioner seeks a waiver from GAO 2019-5’s requirement to submit a five-year plan that describes with specificity the proposed improvements and upgrades to its network throughout its proposed service area. Petitioner explains that the FCC waived this requirement for Auction 904 applicants. However, we did not waive the five-year plan requirement in previous reverse auctions. Instead, we accepted a summary overview regarding how petitioners would meet auction milestones, information regarding the tier and latency of committed broadband service, and a general overview of the technology planned to be used to meet auction milestones. We take the same approach now. In the instant case, Petitioner has provided details of its planned network, including milestones, tier/latency commitments and technology to be employed. The Commission finds this information sufficient to satisfy the information objective in GAO 2019-5, Appendix A (“Filing Guidelines”), Item # 10.

B. Common Carrier Status. The first requirement for ETC designation is status as a common carrier under federal law. A “common carrier” under 47 USC § 153(11), in pertinent part, means any person engaged as a common carrier on a for-hire basis in interstate telecommunications utilizing either wire or radio technology. Because the Commission has officially acknowledged Petitioner’s Notice of Change (# CSP2101-6) to its CPCN granting Petitioner statewide authority to provide broadband and VoIP services, and Petitioner will provide voice telephony service as a supported telecommunications service and broadband as an FCC public interest obligation, we find that Petitioner is a common carrier for purposes of obtaining ETC designation under 47 USC § 214(e)(1).

C. Required ETC Services. To receive funding in high-cost areas as part of RDOF Phase I, Petitioner must provide voice and broadband services to all eligible residential and

⁷ *In the Matter of Fed.-State Joint Bd. on Universal Serv.*, 20 FCC Rcd. 6371, 6388 (2005) (“*2005 FCC ETC Order*”).

small business customers in the designated ETC service area⁸ and offer the Lifeline discount on the supported services. The evidence, as discussed below, demonstrates that Petitioner’s proposed voice, broadband and Lifeline services comply with applicable requirements.

i. Voice Telephony Services. Pursuant to 47 CFR § 54.101(a), eligible voice telephony services must provide: (1) voice-grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) access to the emergency services provided by local government or other public safety organizations to the extent implemented; and (4) toll limitation services to qualifying low-income consumers. Petitioner meets the four voice telephony service requirements as follows:

1. Voice-Grade Access to the Public Switched Telephone Network. Under 47 CFR § 54.101(a), eligible voice telephony services must provide voice-grade access to the public switched telephone network or its functional equivalent. Mr. McKinney testified Petitioner will use a fiber-based network to provide interconnected VoIP services to end users in the requested service area to provide voice-grade access to the public switched telephone network or its equivalent. Accordingly, the Commission finds Petitioner satisfies the voice-grade access requirements set forth in 47 CFR § 54.101(a).

2. Local Usage. Under 47 CFR § 54.101(a), eligible voice telephony services must provide minutes of use for local service at no additional charge to end users. The FCC has not required a minimum amount of local usage be offered by an ETC; Mr. McKinney testified Petitioner would offer local service to customers based upon a flat rate with no usage limit on minutes. Therefore, Petitioner’s offering is consistent with the Act’s requirement that consumers have access to quality services at just, reasonable and affordable rates. Based on the evidence, the Commission finds that Petitioner satisfied the local usage requirement in 47 CFR § 54.101(a).

3. Access to Emergency Services. As part of a universal service offering and as required by 47 CFR § 54.101(a), 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 connecting into local PSAPs. Mr. McKinney provided evidence that Petitioner will provide access to emergency services for customers in the designated ETC service area, including 911 and E911 service from local PSAPs. Specifically, Mr. McKinney stated that Petitioner would provide 911 or E911 access via its VoIP service provider. Based on this evidence, the Commission finds that Petitioner satisfied the access to emergency service requirement in 47 CFR § 54.101(a).

4. Toll limitation for Qualifying Low-Income Consumers. A “toll limitation service,” as defined by 47 CFR § 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

⁸ *In the Matter of Rural Digital Opportunity Fund et al.*, WC Docket Nos. 19-126 & 10-90, Report and Order, at paras. 6, 47, & n. 141 (FCC 20-5, rel. Feb. 7, 2020) (“Rural Digital Opportunity Fund Order”).

supported Lifeline service.⁹ Therefore, each ETC must still offer a toll limitation service unless the Lifeline offering provides a set number of minutes that do not distinguish between toll and non-toll calls. Mr. McKinney testified that Petitioner's voice service offerings would not distinguish between toll and non-toll calls. Accordingly, the Commission finds that Petitioner satisfied this requirement.

ii. Broadband Internet Access Service. Pursuant to 47 CFR § 54.101(c), an ETC subject to a high-cost public interest obligation to offer broadband internet access services who is not receiving 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. McKinney testified 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. Accordingly, the Commission finds that Petitioner has satisfied this requirement.

iii. Carrier Obligation to Offer Lifeline. Under 47 CFR §§ 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 CFR § 54.401 defines Lifeline service, in part, as a non-transferable retail service offering provided directly to qualifying low-income consumers for which they pay reduced charges. Mr. McKinney testified that 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, the Commission finds that Petitioner has satisfied this requirement to offer Lifeline service.

D. Functionality in Emergency Situations. Under 47 CFR § 54.202(a), 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. Mr. McKinney described Petitioner's back-up power options, ability to reroute traffic, and redundant transport. Based on his testimony, the Commission finds Petitioner demonstrated its ability to remain functional in emergency situations, and consequently, satisfied this requirement.

E. Advertising Requirements. Pursuant to 47 CFR § 54.201(d)(2), a common carrier designated as an ETC eligible to receive universal service support shall advertise the availability of and charges for such services using media of general distribution. Additionally, 47 CFR § 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. Mr. McKinney stated that Petitioner will advertise the availability and rates for the voice telephony and broadband access services to be offered within the designated ETC service area using media of general distribution, as required by 47 CFR § 54.201(d)(2). Petitioner provided information about how services will be

⁹ 47 CFR §§ 54.400(m), 54.401(a).

advertised on its own website and in other materials. Thus, we find that Petitioner satisfies this requirement. Once Petitioner has initiated service, the Commission finds that Petitioner also 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 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. Designated ETC Service Area. Under 47 CFR § 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 USF mechanisms. Petitioner seeks ETC designation for its requested service area, which includes the census blocks in which Petitioner was allocated RDOF Phase I funding. Petitioner described its requested ETC service area in the Verified Petition and amended Exhibit B thereto, submitted in its response to the Commission's March 29, 2021 Docket Entry. Additionally, the Commission finds that an analysis pursuant to the FCC's rule in 47 CFR § 54.207(c) to define a service area served by a rural telephone company (as defined in 47 CFR § 51.5) is not necessary. 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. That is not a concern for RDOF ETC applicants seeking to become designated as ETCs pursuant to the RDOF program, which is limited to areas in which competitive high-speed broadband internet access service providers have not already deployed or leased facilities needed to offer those services. Therefore, the Commission approves the requested ETC service area proposed in Petitioner's Verified Petition, including the exhibits thereto.

G. Facilities Ownership. Consistent with the requirements of 47 USC § 214(e) and 47 CFR §§ 54.101 through 54.207, Petitioner will provide all services required to be eligible for high-cost universal service support using its own facilities or, if necessary, through resale of another carrier's services. Mr. McKinney testified that Petitioner would provide all services required to be eligible for high-cost universal service support using its own facilities or, if necessary, through resale of another carrier's services. Specifically, Petitioner will provide broadband services over its own fiber network and will utilize said network to provide VoIP services. Petitioner explained in its April 1st response (Response # 1) that it will partner with Momentum Telecom ("Momentum") for the provision of VoIP telephone services within the requested RDOF ETC area. Petitioner will resell Momentum's VoIP services and provide them over its own fiber network. Petitioner is not affiliated with Momentum. Based on Mr. McKinney's testimony and other filings in this Cause, the Commission finds Petitioner has satisfied the requirement that an ETC provide the required voice telephony service through a combination of its own facilities and resale of another carrier's services under 47 USC § 214(e)(1)(A).

H. Public Interest Considerations. As noted above, the designation of Petitioner as an ETC requires a public interest analysis pursuant to 47 CFR § 54.202(b). In the absence of statutory requirements for evaluating 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.¹⁰

One of the principal goals of the Act is “to secure lower prices and higher quality services for American telecommunications consumer and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.¹¹ Because designation of Petitioner as an ETC will allow for the provisionally approved project to move forward and for Petitioner to receive USF support for projects that will help close the digital divide in selected portions of Indiana, the Commission finds that designation of Petitioner as an ETC in the requested service area will promote the public interest.

i. Advantages of Petitioner’s Service Offerings. The evidence of record demonstrates that Petitioner’s proposed project will directly benefit consumers. It will promote increased competitive choice, resulting in greater access to high-speed broadband and voice services, as well as improved service quality for customers in the 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 advanced communications technology to all citizens.

ii. Impact on Universal Service Fund. We have previously recognized that the FCC has undertaken various steps to address the growth in high-cost universal service support disbursements.¹² Notably, the funds that will support Petitioner’s projects will come directly from RDOF Phase I 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 Auction 904 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, the Commission finds that designation of Petitioner as an ETC in the requested service area will not have an unduly negative impact on the 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 CFR § 54.202(a)(3) by demonstrating that they meet applicable service quality standards and consumer protection rules. Petitioner 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

¹⁰ *2005 FCC ETC Order*, 20 FCC Rec. at 6388.

¹¹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

¹² *Perry-Spencer Communications, Inc.*, Cause No. 41052 ETC 53, 2008 WL 9832656 (IURC July 24, 2008).

RDOF Phase I funding. We note that Indiana has consumer protection requirements for voice telecommunications services, including, but not necessarily limited to, those requirements set forth at Indiana Code ch. 8-1-29 and 170 IAC 7-1.3, which apply to Petitioner's voice telephony service. Based upon the record, the Commission finds that Petitioner has demonstrated that it will meet applicable service quality standards and consumer protection rules.

iv. **Affordable Rates.** The Commission 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 the *2005 FCC ETC Order*. Mr. McKinney has provided a summary of Petitioner's broadband and voice plans, including pricing information, to be offered in the requested service area. We note that the 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.¹³ Having reviewed Petitioner's plans and pricing information, the Commission finds that Petitioner's plans to offer quality telecommunications services, including high speed broadband service and voice telephony, at just, reasonable and affordable rates.

v. **Commitment to Provide Supported Universal Service.** Petitioner provided evidence that it is prepared to deploy its own facilities and, where necessary, to resell the services of another authorized carrier to provide USF-supported services to customers within Petitioner's requested ETC service area. Petitioner's commitment to provide service satisfies the requirements of 47 CFR §§ 54.202(a)(1)(i) and 54.405(a). Accordingly, the Commission finds that Petitioner has demonstrated its willingness and ability to provide supported services throughout its requested designated 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 USC § 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 USC § 214(e)(4).

vii. **Additional Public Interest Analysis.** The ETC designation confers both benefits and burdens upon a telecommunications service provider. Because the designation gives the provider the right to apply for 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 through its participation in Auction 904. 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. 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, the Commission finds that providing Petitioner with its requested ETC designation in the requested service area will promote the public interest and further the goals of the Act.

¹³ 47 U.S.C. 254(b)(3).

7. **Regulatory Oversight and Prospective Reporting Requirements.** The Commission recognized certain specific regulatory requirements that competitive ETC applicants must satisfy to secure and maintain their ETC status in Indiana.¹⁴ Such regulatory requirements stem from the FCC's mandate that state commissions certify that 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 USC § 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 separately track their USF expenditures.

No party questioned Petitioner's intention to comply with the Commission's reasonable Lifeline informational tariff filing requirement for its Lifeline offerings, and the record reflects Petitioner's intention to comply. Petitioner must also comply with USF tracking requirements previously established by the Commission to ensure that funds received from the Universal Service Administrative Company ("USAC") for Indiana are devoted to furthering universal service goals within Petitioner's designated service area. 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 the requested service area and filed with USAC pursuant to 47 CFR § 54.401(d).

8. **Prospective ETC Reporting Requirements.** The Commission also finds that as a recipient of RDOF support, Petitioner is required to meet the applicable reporting requirements consistent with the federal rules in 47 CFR § 54.313. Those requirements include, among others: (1) certification that the ETC is able to function in emergency situations; (2) 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) certification that the pricing of service meets the FCC's broadband public interest obligations and does not exceed the applicable benchmark; (4) disclosure of the ETC's holding and operating company names (if applicable), any affiliate relationships and shared branding, as well as universal service identifiers; (5) certain reporting requirements specific to tribal lands to the extent recipient serves any in its designated service area; and (6) results of the company's network performance test. Petitioner's above-listed compliance filings shall be filed under any applicable Cause established by the Commission for annually certifying Indiana ETCs' continued eligibility to receive high-cost support.

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. If another ETC serving Petitioner's requested 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 USF mechanisms pursuant to 47 U.S.C. § 214(e)(3), the Commission is required to ensure that all customers will continue to be served; consequently, Petitioner shall respond to Commission inquiries involving the affected ETC service area, or portions thereof, if such a situation occurs.

¹⁴ See, e.g., *In re Designation of Eligible Telecommunications Carriers*, Cause No. 41052 ETC 43, 2004 WL 1170027 (IURC March 17, 2004).

B. Applicant shall meet the minimum service standards for Lifeline voice telephony and broadband Internet access pursuant to 47 C.F.R. 54.408, as well as any other applicable FCC service standards or requirements. Pursuant to 47 C.F.R. § 54.401(d), prior to providing service in the requested ETC service area or within 60 days of the final approval by the FCC, whichever occurs earlier, Petitioner shall file an informational tariff of its proposed Lifeline offerings with the Commission and USAC and notify the Commission in the form of a new tariff if any terms, conditions, or an allocation of minutes change.

C. 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.

D. Petitioner shall publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service and comply with safeguards established by the FCC and/or USAC to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 C.F.R. § 54.405.

E. Pursuant to 47 C.F.R. §§ 54.410(f) and 54.416, Petitioner shall provide the Commission with a copy of its Lifeline re-certification results that it files annually with USAC and the FCC.

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

G. In accordance with GAO 2019-5, if Petitioner wants to add or delete census blocks from its approved ETC designated service area, Petitioner shall file a petition requesting an amendment to its service area under a subdocket to this Cause.

H. If the FCC changes the RDOF funded locations within an area that Petitioner is required to serve, Petitioner shall promptly provide the Commission with a copy of the FCC's notice evidencing this change via 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, the Commission finds that Petitioner has met all of the ETC eligibility requirements and the public interest is served by Petitioner serving the requested ETC service area. 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.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

1. Jackson County REMC's request for designation as an ETC in the requested ETC

service area to participate in the RDOF Phase I program, as set forth in the Petition (filed January 7, 2021) and the attached exhibits and/or the direct testimony of Mr. Mark McKinney, as well as the Excel spreadsheet filed on April 1, 2021 listing the census blocks included in Petitioner's proposed ETC service area; Petitioner's April 1 responses to the March 29 docket entry; and other exhibits and materials filed on April 1, is approved.

2. Petitioner's request for authority to apply to receive federal USF support pursuant to 47 U.S.C. § 254 is granted, subject to Petitioner's compliance with all the terms, conditions, and reporting requirements of this Order and applicable laws.

3. Jackson County REMC shall comply with the Reporting Requirements and the Conditions set forth above in Finding Nos. 8 and 9 with respect to Petitioner's designation as an ETC.

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

HUSTON, FREEMAN, OBER AND ZIEGNER CONCUR; KREVDA ABSENT:

APPROVED: MAY 19 2021

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

Dana Kosco
Secretary of the Commission