

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. C-5124/
of Midstates Data Transport,) NUSF-118
LLC, Norfolk, Nebraska, for)
Designation as an Eligible)
Telecommunications Carrier in) ORDER GRANTING APPLICATION
the State of Nebraska.)
)
) Entered: September 1, 2020

BY THE COMMISSION:

On May 1, 2020, Midstates Data Transport, LLC ("Midstates" or "Applicant") of Norfolk, Nebraska, filed an application seeking designation as an Eligible Telecommunications Carrier ("ETC") for purposes of the Federal Universal Service Fund ("FUSF") and Nebraska Universal Service Fund ("NUSF"). Notice of the application was published in The Daily Record, Omaha, Nebraska, on May 7, 2020. No formal interventions were filed; therefore, this application is processed pursuant to the Commission's Rule of Modified Procedure.

FINDINGS AND OPINION

The federal Communications Act of 1934, 47 U.S.C. § 214(e), sets forth the standards and processes for a state commission to grant carriers the designation of a federal eligible telecommunications carrier. 291 Neb. Admin. Code § 5-009 of the Commission Rules contains the requirements for Commission designation of ETCs and NETCs.

The three general requirements listed in Section 214(e) are: 1) the carrier must be a common carrier; 2) the carrier must offer the services supported by the federal fund; and 3) the carrier must advertise the availability of those services. The carrier must also demonstrate the ability to fulfill the requirements throughout the service area for which the carrier is seeking ETC designation.

1. Common Carrier

The Act defines a common carrier as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either a wire or radio technology.¹ However, in its

¹ See 47 C.F.R. § 153(10).

USF/ICC Transformation Order, the FCC found that its authority to promote universal service "does not depend on whether interconnected VoIP services are telecommunications services or information services under the Communications Act."² Instead the FCC adopted a technologically neutral approach, allowing companies to provide voice service over any platform, including IP networks.³ Therefore, pursuant to the FCC's guidelines, Midstates, as an interconnected VoIP provider over a fixed wireless broadband network, is potentially eligible for federal funding and agreed to operate as a common carrier in the census block areas in which it seeks FCC auction support.⁴

2. Supported Services

Federal regulations and Commission rules both require an ETC to demonstrate that it will offer the services that are supported by federal universal service.⁵ The FCC's requirements under 47 C.F.R. § 54.101(a)(1) are as follows:

- a. voice-grade access to the public switched network or its functional equivalent;
- b. minutes of use for local service without additional charge to the end user;
- c. access to emergency services; and
- d. toll limitation for qualifying low-income consumers.⁶

The Commission finds that the Applicant meets each of these requirements, as described below.

A. Voice Grade Access to the Public Switched Network

As stated above, in its 2011 USF/ICC Transformation Order, the FCC modified the definition of a supported service to a technologically neutral approach. This definition now allows companies to provide voice service over any platform, including IP

² *In the Matter of Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Intercarrier Compensation Regime; Reform - Mobility Fund*, 26 FCC Rcd 17633, at ¶63 (2011) ("USF/ICC Transformation Order").

³ USF/ICC Transformation Order at 17692-93.

⁴ See *In the Matter of Rural Digital Opportunity Fund*, 35 FCC Rcd 686.

⁵ 47 C.F.R. §§ 54.101(a), 54.202(a); 291 Neb. Admin. Code § 5-009.02A2.

⁶ See *Lifeline Reform Order* at 207-208.

networks.⁷ The FCC's regulations now specify that the functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent.⁸ Therefore, Midstates provides voice grade access to the public switched network through interconnected VoIP services as required under § 54.101(a).

B. Local Usage

The FCC has defined "local usage" to mean an amount of minutes of use of exchange services provided free of charge to end users.⁹ Midstates proposes to include unlimited local calling and 500 minutes of long distance usage in its rate plans and has committed to complying with any minimum local usage requirements adopted by the FCC or the Commission.

C. Access to Emergency Services

The Applicant states that it provides its customers with access to emergency services by dialing 911 in accordance with federal and state requirements.¹⁰ The Applicant states that it will comply with FCC requirements for back-up power and redundancy for 911 services. The Applicant further states that it will have a reasonable amount of back-up power to ensure functionality without an external source of power, and that it is able to reroute traffic around damaged facilities, and that it is capable of managing traffic spikes resulting from emergencies.¹¹

The Commission notes that it is concerned about the potential location accuracy issues and reliability with regard to 911 access through interconnected VoIP service. However, we recognize this is not unique to the Applicant's service, but a consequence of the technology. The FCC has determined not to make distinctions based on technological delivery methods of voice service. Therefore, the Commission finds the Applicant's service plan meets the requirements of 47 C.F.R. § 54.101(a). However, we find Midstates should provide information to its consumers about the limitations of VoIP-based emergency service capability, particularly with regard to battery backup in case of a power outage. The Commission therefore requires that Midstates will include this information in

⁷ USF/ICC Transformation Order at 17692-93.

⁸ *Id.* See also 47 C.F.R. § 54.101(a).

⁹ 47 C.F.R. § 54.101(a) (2).

¹⁰ *Id.*

¹¹ Application at 2-3.

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all VoIP customer billing statements or their functional equivalents for the month of October 2020, and on a regular basis thereafter.

D. Toll Limitation for Qualified Low-Income Customers

Midstates has certified that it provides toll limitation services to qualifying low-income consumers in compliance with 47 C.F.R. § 54.101.

3. Advertisement of Services

Federal and state regulations require an ETC to advertise the availability of supported services and related charges using media of general distribution.¹² ETCs must also publicize the availability of Lifeline or NTAP services in a manner reasonable calculated to reach those that qualify for the service.

Based on the Application and evidence submitted, we find Midstates has provided sufficient commitments to advertise the availability of such services and charges using media of general distribution and in a manner that is designed to reach those likely to qualify for such services. Midstates states in its Application that it will publish advertisements in local newspapers and publish information on its website.

4. Designated Service Area

Midstates states in its Application that it is seeking ETC designation in its Nebraska service area, including but not limited to the Nebraska census blocks for which it receives FUSF or NUSF support. Midstates has announced their intent to seek federal funding through the FCC's Rural Digital Opportunity Fund ("RDOF"), in which bids in a reverse auction will begin in October 2020.¹³ Applicant states that if it does not receive funding in the auction, it will invest its own money into building networks to serve those underserved areas.

As it is not possible to identify the census blocks for which Applicant may receive funding, it is therefore not possible at this time for Applicant to properly identify the service areas in

¹² See 47 U.S.C. § 214(e)(1)(B); 291 Neb. Admin. Code § 5-009.02A3.

¹³ See Report and Order, *In the Matter of Rural Digital Opportunity Fund*, 35 FCC Rcd 686 (Feb. 7, 2020) ("RDOF order").

which it is requesting ETC designation. We therefore find that Midstates shall file, within thirty (30) days following the date Midstates receives any award in the RDOF auction, a detailed description and map depicting the service area which Midstates intends to serve pursuant to the award.

5. Additional Eligibility Criteria

Federal regulations, found at 47 CFR § 54.202, contain additional eligibility requirements that must be met by any carrier seeking ETC designation.¹⁴ Commission Rules substantially mirror the FCC requirements.¹⁵ To meet the additional requirements a company must:

- a. Certify it will comply with the service requirements applicable to the support it receives;
- b. Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network;
- c. Demonstrate its ability to remain functional in emergency situations; and
- d. Demonstrate that it will satisfy applicable consumer protection and service quality standards.

A. Applicable Service Requirements

Midstates certifies that it will comply with the service requirements applicable to the support it receives.¹⁶ Pursuant to the RDOF guidelines, the FCC has established a minimum performance standard of 25 Mbps download and 3 Mbps upload speed as the threshold qualifying speeds for supported broadband services.¹⁷ Applicant states that it will be offering services that meet or exceed these speeds.¹⁸

B. Five Year Service Improvement Plan

An applicant for ETC status is required to submit to the Commission a five-year plan describing its proposed service improvements or upgrades.¹⁹ The Applicant in this docket has

¹⁴ See 47 C.F.R. § 54.202(a).

¹⁵ See 291 Neb. Admin. Code § 5-009.02.

¹⁶ Application at 3.

¹⁷ RDOF Order at 71.

¹⁸ Application at 2.

¹⁹ 47 C.F.R. § 54.202(a)(1)(ii); 291 Neb. Admin. Code § 5-009.02A6.

indicated that it will file a five-year plan for network deployment, improvements, and upgrades to the Commission consistent with state and federal requirements.²⁰

C. Ability to Remain Functional in Emergency Situations

ETC applicants must demonstrate an ability to remain functional during emergency situations.²¹ Midstates has indicated it will demonstrate its ability to remain functional in emergency situations.²² The Commission finds that Midstates meets this requirement, subject to the requirements set forth in paragraph 2(C) above.

D. Consumer Protection and Service Quality Standards

We next examine Applicant's commitment to service quality. An ETC applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards.²³ In its Application, Applicant committed to satisfying all consumer protection and service quality standards provided by the FCC and any state specific consumer protection and service quality standards.²⁴ We find that Applicant has satisfied the requirement to demonstrate it will comply with applicable consumer protection and service quality standards.

6. Public Interest

Applicants for ETC status must demonstrate that such designation is consistent with the public interest, convenience, and necessity.²⁵ The public interest consideration may include the benefits of increased consumer choice and the unique advantages and disadvantages of the Applicant's service offerings.

Applicant states that its designation as an ETC will advance the public interest by making quality voice and broadband services available in rural, high-cost areas, especially areas now unserved

²⁰ Application at 3-4.

²¹ 47 C.F.R. § 54.202(a)(2); 291 Neb. Admin. Code § 5-009.02A7.

²² Application at 4.

²³ 47 C.F.R. § 54.202(a)(3), 291 Neb. Admin. Code § 5-009.02A8.

²⁴ Application at 4.

²⁵ 47 C.F.R. § 54.202(b); 291 Neb. Admin. Code § 5-009.02A1.

or underserved, at rates comparable to urban areas.²⁶ Applicant also notes that it currently offers fiber-based service in the other rural Nebraska areas it serves, providing customers in those areas with access to affordable and reliable broadband.²⁷ Applicant states that its services will increase public access to various services, as well as create more competitive choices for consumers, causing all carriers to enhance innovation and improve existing networks.²⁸

Based on the evidence before us, we conclude that Applicant's service offerings will provide a public interest benefit and its business plan provides a unique advantage to consumers. We find Applicant has demonstrated that its designation as an ETC would be consistent with the public interest, convenience, and necessity.

7. Provision of Continuous Service

Commission Rule requires that an ETC not only demonstrate the ability and commitment to provide the supported services listed above, but must also demonstrate the ability to continuously provide such services in its designated Service Area.²⁹ We find, upon our review of the Application and Applicant's responses to Commission Data Requests, that Applicant has committed to provide the supported services listed above continuously throughout the census blocks of its Service Area.

8. Provision of Service to Requesting Customers

The Commission's Rules require an ETC to demonstrate its commitment to provide service throughout the designated area to all customers who make reasonable request for service.³⁰ Applicant states that it will provide services continuously throughout its service areas, to all customers making reasonable requests for service, and that it will do so in a timely manner. Applicant also states that it will provide service within a reasonable period of time, if the requesting customer is within Applicant's service area but beyond network coverage, if service can be provided at reasonable cost under 291 Neb. Admin. Code § 5-009.02(A)(5)(b).³¹

²⁶ Application at 3.

²⁷ *Id.*

²⁸ *Id.*

²⁹ 291 Neb. Admin. Code § 5-009.02A4.

³⁰ 291 Neb. Admin. Code § 5-009.02A5.

³¹ Application at 2.

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We find Applicant has demonstrated an ability and commitment to satisfy its obligation to provide service upon reasonable request throughout the Company's requested service areas.

9. Nebraska Telephone Assistance Program

The Commission Rules require carriers designated as ETC for purposes of receiving USF support to participate in the Nebraska Telephone Assistance Program ("NTAP") and comply with applicable NTAP rules.³² Applicant states that it will provide services pursuant to the NTAP program.

10. Conclusion

In summary, upon review of the Application and evidence presented at the hearing, we find Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e) and applicable state and federal law for the designation of eligible telecommunications carriers in the proposed census block areas for the purpose of participation in the FCC's Rural Development Opportunity Fund, and the Application should be approved.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-5024/NUSF-118 should be, and is hereby, granted, and Midstates Data Transport, LLC is designated as an eligible telecommunications carrier in the State of Nebraska for the limited purpose of receiving federal universal service support to participate in the FCC's Rural Development Opportunity Fund, as requested in the Application consistent with the findings and conclusions made herein.

IT IS FURTHER ORDERED that Midstates Data Transport, LLC is hereby declared to be a Nebraska Eligible Telecommunications Carrier for the limited purpose of receiving state universal service support to participate in the Nebraska Telephone Assistance Program.

IT IS FURTHER ORDERED that Midstates Data Transport, LLC shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1st each year hereafter.

³² 291 Neb. Admin. Code § 10-004.04.

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IT IS FURTHER ORDERED that Midstates Data Transport, LLC shall file with the Commission copies of its annual reports filed with the FCC pursuant to 47 C.F.R. § 54.313, within thirty (30) days of the date such reports are filed with the FCC. If Applicant desires a protective order for any confidential information submitted in these reports, Applicant must request one at least sixty (60) days prior to the due date of the first filing.

IT IS FURTHER ORDERED that Midstates Data Transport, LLC shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its eligibility for receipt of federal universal service support effective as of the date of this Order.





IT IS FURTHER ORDERED that, should Midstates Data Transport, LLC, receive an award in the FCC's Rural Development Opportunity Fund, it shall file with the Commission no later than thirty (30) days following the award a detailed description and map showing its service area pursuant to the award.

IT IS FINALLY ORDERED that Midstates Data Transport, LLC, shall provide information to its consumers about the limitations of VoIP-based emergency service capability as described above.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 1st day of September, 2020.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chair

ATTEST:


Executive Director