

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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|-------------------------------|---|--------------------------------|
| In the Matter of the |) | Application No. C-5197/ |
| Application of Cox Nebraska |) | NUSF-123 |
| Telcom, LLC, Omaha, Nebraska, |) | |
| seeking Designation as an |) | ORDER GRANTING APPLICATION FOR |
| Eligible Telecommunications |) | ELIGIBLE TELECOMMUNICATIONS |
| Carrier in the State of |) | CARRIER STATUS |
| Nebraska. |) | |
| |) | |
| |) | Entered: March 30, 2021 |

BY THE COMMISSION:

On January 4, 2021, Cox Nebraska Telcom, LLC ("Cox" or "Applicant") of Omaha, Nebraska, filed an application seeking Eligible Telecommunications Carrier ("ETC") status. Notice of the application was published in The Daily Record, Omaha, Nebraska, on January 6, 2021. 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 Cox is a local exchange and interexchange carrier engaged in the provision of

¹ See 47 C.F.R. § 153(10).

telecommunications in the State of Nebraska. The Applicant therefore meets this requirement.

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.² The FCC's requirements under 47 C.F.R. § 54.101(a) 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.³

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

A. Voice Grade Access to the Public Switched Network

Applicant provides voice grade access to the public switched telephone network through voice over internet protocol ("VoIP"), 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.⁴ Applicant proposes to offer unlimited local and long distance calling.⁵

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.⁶ Applicant states that it has provided customers with access to emergency services for over twenty years, and that it will continue to use facilities, technology, procedures, and

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

³ See *Lifeline Reform Order* at 207-208.

⁴ 47 C.F.R. § 54.101(a)(2).

⁵ Applicant's Responses to Staff Data Requests ("Data Requests"), Items 11-12.

⁶ Application at 4; Data Requests, Item 17.

personnel identical to those it has historically used in its RDOF service territory.⁷ Applicant further states that its network is engineered to remain functional in emergency situations and that Applicant has back-up power to maintain functionality without an external power source. Lifeline customers will also be provided with access to battery installation.⁸

D. Toll Limitation for Qualified Low-Income Customers

Applicant will offer toll limitation services to qualifying low-income consumers at no additional charge in compliance with 47 C.F.R. § 54.101.⁹

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.¹⁰ 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 Applicant 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. Applicant states that it will advertise the availability of its services and charges using media of general distribution and in a manner consistent with applicable requirements.¹¹

4. Designated Service Area

Cox states in its Application that it is seeking ETC designation in the areas in which the FCC announced Cox was a winning bidder for RDOF support in Nebraska.¹² Cox provided a list of census blocks in which it obtained RDOF support as Exhibit 1 to its Application.

⁷ Data Requests, Item 17.

⁸ *Id.*

⁹ Application at 4.

¹⁰ See 47 U.S.C. § 214(e)(1)(B); 291 Neb. Admin. Code § 5-009.02A3.

¹¹ Application at 4-5.

¹² *Id.* at 1.

5. Additional Eligibility Criteria

Federal regulations at 47 CFR § 54.202 contain additional eligibility requirements that must be met by any carrier seeking ETC designation.¹³ Commission Rules substantially mirror the FCC requirements.¹⁴ 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*

Cox states that it seeks to provide high-speed broadband service in its RDOF territories in compliance with the requirements of the RDOF auction. Cox will therefore provide broadband access at 1 Gbps download / 500 Mbps upload speeds pursuant to the terms of the RDOF funding.¹⁵

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.¹⁶ Cox states that it will comply with all applicable Nebraska and FCC requirements with respect to such reports.¹⁷

C. *Ability to Remain Functional in Emergency Situations*

ETC applicants must demonstrate an ability to remain functional during emergency situations.¹⁸ Applicant has indicated it will demonstrate its ability to remain functional in emergency

¹³ See 47 C.F.R. § 54.202(a).

¹⁴ See 291 Neb. Admin. Code § 5-009.02.

¹⁵ Discovery Requests, Item 21.

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

¹⁷ Application at 5.

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

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5197/NUSF-123

Page 5

situations.¹⁹ The Commission finds that Applicant meets this requirement.

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.²⁰ 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.²¹ 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.²² 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 allowing Cox to use RDOF support to extend new broadband service, or faster broadband service, to citizens of Nebraska in Cox's RDOF designated service area.²³ Pursuant to RDOF timelines, Cox anticipates providing service to 40% of its RDOF locations within three years of receiving funding authorization, with construction required to be completed in 2027.²⁴

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.

¹⁹ Application at 6.

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

²¹ Application at 6.

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

²³ Application at 3.

²⁴ Data Requests, Item 16.

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.²⁵ We find, upon our review of the Application and 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.²⁶ Applicant states that it is committed to providing service to all customers making a reasonable request for service within its designated service area, that being the areas where Applicant has been awarded RDOF support.²⁷

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 an ETC for purposes of receiving USF support to participate in the Nebraska Telephone Assistance Program ("NTAP") and comply with applicable NTAP rules.²⁸ Applicant states that it will provide services pursuant to the NTAP program.

10. Other Issues: Service in RDOF Areas

In its Application, Applicant indicated that it intends to provide Lifeline services only in its RDOF service territory. In discovery, Applicant indicated that it is in the process of developing a plan to distinguish customers residing within RDOF geographical boundaries.²⁹

²⁵ 291 Neb. Admin. Code § 5-009.02A4.

²⁶ 291 Neb. Admin. Code § 5-009.02A5.

²⁷ Application at 5. See also 291 Neb. Admin. Code § 5-009.02(A)(5)(b).

²⁸ 291 Neb. Admin. Code § 10-004.04.

²⁹ Data Requests, Item 19.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5197/NUSF-123

Page 7

We find that while the incomplete status of this plan is not a barrier to the Applicant's award of ETC status, the Applicant should be required to file with the Commission its plan for distinguishing RDOF service territory customers upon the completion of said plan. Such filings may be made electronically to psc.communications@nebraska.gov and should be submitted within thirty (30) days following the completion of Applicant's plan, but in no event should be submitted later than the date upon which Applicant begins providing Lifeline services.

11. 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, 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-5197/NUSF-123 should be, and is hereby, granted, and Cox Nebraska Telcom, LLC is designated as an eligible telecommunications carrier in the State of Nebraska, as requested in the Application consistent with the findings and conclusions made herein.

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

IT IS FURTHER ORDERED that Cox Nebraska Telcom, 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.

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

Application No. C-5197/NUSF-123

Page 8

IT IS FURTHER ORDERED that Cox Nebraska Telcom, 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.


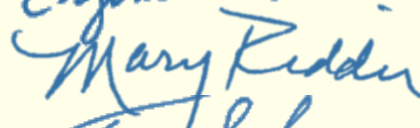

IT IS FURTHER ORDERED that Cox Nebraska Telcom, LLC shall file with the Commission its plan for distinguishing RDOF service territory customers within thirty (30) days of the completion of said plan.

IT IS FINALLY ORDERED that, should Cox Nebraska Telcom, LLC receive an award in any FCC funding auctions or other opportunities, 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.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 30th day of March, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


Chair

ATTEST:

