

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	Application No. C-5226/
Application of Cable One VoIP	)	NUSF-127
LLC, Phoenix, Arizona,	)	
seeking designation as an	)	ORDER GRANTING APPLICATION FOR
Eligible Telecommunications	)	ELIGIBLE TELECOMMUNICATIONS
Carrier in the State of	)	CARRIER STATUS
Nebraska.	)	
	)	
	)	Entered: May 25, 2021

BY THE COMMISSION:

On March 26, 2021, Cable One VoIP LLC ("Cable One" or "Applicant") of Phoenix, Arizona, filed an application seeking Eligible Telecommunications Carrier ("ETC") status. Notice of the application was published in The Daily Record, Omaha, Nebraska, on March 31, 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.<sup>1</sup> Cable One filed concurrently with this Application an application for a Certificate of Authority to provide local exchange and interexchange voice services within the

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<sup>1</sup> See 47 C.F.R. § 153(10).

State of Nebraska.<sup>2</sup> Cable One currently offers interconnected voice over internet protocol ("VoIP") services in the state of Arizona, is registered to provide VoIP services in Iowa and Washington, and has applied for ETC status in five states in addition to Nebraska.<sup>3</sup> The Commission finds that the Applicant 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.<sup>4</sup> 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.<sup>5</sup>

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

### *A. Voice Grade Access to the Public Switched Network*

Applicant will provide voice grade access to the public switched telephone network through voice over internet protocol, 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.<sup>6</sup> Applicant proposes to offer unlimited local calling, as well as unlimited voice calling within the United States for a fixed monthly price.<sup>7</sup>

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<sup>2</sup> Commission Docket No. C-5231, *In the Matter of the Application of Cable One VoIP, LLC, Phoenix, Arizona, seeking authority to operate as a local exchange and interexchange carrier of telecommunication services within the State of Nebraska.*

<sup>3</sup> Application at 3.

<sup>4</sup> 47 C.F.R. §§ 54.101(a), 54.202(a); 291 Neb. Admin. Code § 5-009.02A2.

<sup>5</sup> See *Lifeline Reform Order* at 207-208.

<sup>6</sup> 47 C.F.R. § 54.101(a)(2).

<sup>7</sup> Application at 7.

*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.<sup>8</sup> Applicant states that it is able to remain functional in emergency situations through the use of back-up power and re-routing of traffic around damaged facilities.<sup>9</sup> Subscribers will be offered the option to purchase backup power for voice service.<sup>10</sup>

The Commission notes a standing concern regarding reliability during emergencies with regard to interconnected VoIP service. However, this concern is not unique to Applicant's provision of service, and the technology has been deemed sufficient by the FCC for participation in the RDOF auction. The Commission therefore finds that the Applicant must 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 further requires that the Applicant will include this information in all VoIP customer billing statements or their functional equivalents for the month of July 2021, and on a regular basis thereafter.

*D. Toll Limitation for Qualified Low-Income Customers*

Applicant is not required to provide toll limitation services under 47 C.F.R. § 54.101 because it provides a set amount of minutes to users that do not distinguish between toll and non-toll calls.<sup>11</sup>

**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.<sup>12</sup> 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

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<sup>8</sup> *Id.*; Applicant's Responses to Commission Data Requests ("Data Requests"), Item 11.

<sup>9</sup> Data Requests, Item 18.

<sup>10</sup> *Id.*

<sup>11</sup> Application at 7; see also 27 FCC Rcd 6656 (2012), Lifeline Reform Order, at 49.

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

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 a combination of digital and traditional media, including direct marketing, bill inserts, outdoor advertising, radio advertising, and newspaper and magazine advertising.<sup>13</sup>

#### **4. Designated Service Area**

Cable One states in its Application that it is seeking ETC designation in the areas in which the FCC announced Cable One was a winning bidder for RDOF support in Nebraska, as well as certain other geographic areas where it may receive federal Lifeline-only support.<sup>14</sup> Cable One provided a list of census blocks in which it obtained RDOF support as Exhibit 1 to its Application.

#### **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.<sup>15</sup> Commission Rules substantially mirror the FCC requirements.<sup>16</sup> 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*

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

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<sup>13</sup> Data Requests, Item 21.

<sup>14</sup> *Id.* at 1.

<sup>15</sup> See 47 C.F.R. § 54.202(a).

<sup>16</sup> See 291 Neb. Admin. Code § 5-009.02.

terms of the RDOF funding.<sup>17</sup> Cable One will also be required to meet any and all applicable requirements within the portions of its Designated Service area for which it is seeking federal Lifeline-only support.

*B. Five Year Service Improvement Plan*

An applicant for ETC status is required by Commission rules to submit to the Commission a five-year plan describing its proposed service improvements or upgrades.<sup>18</sup> Cable One requests a waiver of this requirement based upon the FCC's waiver of the requirement for Auction 904, noting that as an RDOF recipient, Cable One will be subject to rigorous deployment milestones and penalties.<sup>19</sup> The Commission finds that this request is reasonable and should be granted.

*C. Ability to Remain Functional in Emergency Situations*

ETC applicants must demonstrate an ability to remain functional during emergency situations.<sup>20</sup> Applicant submitted detailed information regarding its emergency plans.<sup>21</sup> 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.<sup>22</sup> In its Application, Applicant committed to satisfying all consumer protection and service quality standards applicable to its provision of service.<sup>23</sup> 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.<sup>24</sup>

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<sup>17</sup> Discovery Requests, Item 21.

<sup>18</sup> 47 C.F.R. § 54.202(a)(1)(ii); 291 Neb. Admin. Code § 5-009.02A6.

<sup>19</sup> Application at 10.

<sup>20</sup> 47 C.F.R. § 54.202(a)(2); 291 Neb. Admin. Code § 5-009.02A7.

<sup>21</sup> Data Requests, Item 18.

<sup>22</sup> 47 C.F.R. § 54.202(a)(3), 291 Neb. Admin. Code § 5-009.02A8.

<sup>23</sup> Application at 11.

<sup>24</sup> 47 C.F.R. § 54.202(b); 291 Neb. Admin. Code § 5-009.02A1.

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 Cable One to use RDOF support to offer voice and broadband services to unserved, high-cost areas of Nebraska, and to provide Lifeline services to low-income consumers.<sup>25</sup> The Applicant notes that its investment in its Designated Service Area will promote economic growth in rural areas, and will ensure quality communications services are available at just, reasonable, and affordable rates.<sup>26</sup>

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.<sup>27</sup> 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.<sup>28</sup> Applicant states that it will provide service to all customers making a reasonable request for service within its designated service area.<sup>29</sup>

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.

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<sup>25</sup> Application at 5-6.

<sup>26</sup> *Id.* at 6.

<sup>27</sup> 291 Neb. Admin. Code § 5-009.02A4.

<sup>28</sup> 291 Neb. Admin. Code § 5-009.02A5.

<sup>29</sup> Application at 10. See also 291 Neb. Admin. Code § 5-009.02(A)(5)(b).

**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.<sup>30</sup> 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, and the Application should be approved.

The granting of this application is conditional upon the Applicant receiving final FCC approval for RDOF support following the Applicant's submission of all required documentation to the FCC. The Applicant is hereby directed to communicate to the Commission that it has submitted said documentation to the FCC, and when and whether it receives final FCC approval.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-5226/NUSF-127 should be, and is hereby, granted, and Cable One VoIP 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 Cable One VoIP 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 upon submission of all necessary documentation to the FCC for purposes of receiving Rural Digital Opportunity Fund support, Cable One VoIP LLC must communicate to the Commission that it has submitted said documentation. Cable One VoIP LLC must then promptly communicate to the Commission any decision by

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<sup>30</sup> 291 Neb. Admin. Code § 10-004.04.

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the FCC as to whether it receives final approval to receive said support.

IT IS FURTHER ORDERED that Cable One VoIP LLC shall file information with the Commission evidencing it is advertising through media of general distribution on or before July 1<sup>st</sup> each year hereafter.

IT IS FURTHER ORDERED that Cable One VoIP 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.

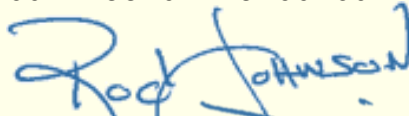

IT IS FURTHER ORDERED that Cable One VoIP LLC shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its eligibility for receipt of federal universal service support effective as of the date of this Order.

IT IS FINALLY ORDERED that, should Cable One VoIP 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 25th day of May, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

ATTEST:

  
Executive Director

COMMISSIONERS DISSENTING:

