

SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of Windstream Communications, LLC, Lincoln, Nebraska, seeking designation as an Eligible Telecommunications Carrier in the State of Nebraska.) Application No. C-5227/
) NUSF-128
)
) ORDER GRANTING APPLICATION
) FOR ELIGIBLE
) TELECOMMUNICATIONS CARRIER
) STATUS
)
)
) Entered: May 25, 2021

BY THE COMMISSION:

On March 24, 2021, Windstream Communications, LLC ("Windstream" or "Applicant") of Lincoln, Nebraska, filed an application seeking Eligible Telecommunications Carrier ("ETC") status. Notice of the application was published in The Daily Record, Omaha, Nebraska, on March 29, 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 Windstream is a provider of interexchange services certificated in Nebraska and

¹ See 47 C.F.R. § 153(10).

providing voice, broadband, and television services across eighteen states.² 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.³ 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.

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 ("VoIP"), as required under § 54.101(a).⁴

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.⁵ Applicant states that its service will include minutes of use for local service provided at no additional charge to end users. Applicant proposes to offer unlimited voice calling within the United States for a fixed monthly price.⁶

² Application at 1-2; see also Commission Docket No. C-4337, *In the Matter of the Application of Windstream Communications, Inc., Little Rock, Arkansas, seeking authority to operate as an interexchange carrier of telecommunications services within the State of Nebraska*.

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

⁴ Windstream's Amended Response to Staff Data Requests ("Data Requests"), Item 9.

⁵ 47 C.F.R. § 54.101(a)(2).

⁶ Data Requests, Item 19.

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.⁷ Applicant states that it will ensure customers have access to 911 and enhanced 911 through either its own fiber network or through resale and interconnection agreements with underlying providers. Applicant states that its voice and broadband network is designed to remain functional in emergency situations without an external power source, will remain functional using backup power, and is able to reroute traffic and manage traffic spikes as needed.⁸

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 will provide toll limitation services to qualifying low-income customers as required under 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.

⁷ Application at 6; Data Requests, Item 14.

⁸ Data Requests, Item 14.

⁹ Application at 4; see also 27 FCC Rcd 6656 (2012), Lifeline Reform Order, at 49.

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

Windstream states that it will undertake outreach initiatives to increase consumer awareness of its Lifeline service offerings, and will publicize the availability of the service through means including local and community outreach events, direct mail, and email.¹¹ 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.

4. Designated Service Area

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

¹¹ Application at 4-5; Data Requests, Item 17.

¹² Application at 5-6.

¹³ See 47 C.F.R. § 54.202(a).

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

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A. Applicable Service Requirements

Windstream states that it seeks to provide high-speed broadband service in its RDOF territories in compliance with the requirements of the RDOF auction.¹⁵ Windstream will therefore provide broadband access at 1 Gbps download / 500 Mbps upload speeds pursuant to the terms of the RDOF funding.¹⁶

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.¹⁷ Windstream agrees to provide a five-year plan to the extent required by the Commission.¹⁸

C. Ability to Remain Functional in Emergency Situations

ETC applicants must demonstrate an ability to remain functional during emergency situations.¹⁹ Applicant submitted information regarding its emergency plans.²⁰ 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.²¹ In its Application, Applicant committed to satisfying all consumer protection and service quality standards applicable to its provision of service.²² 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,

¹⁵ Application at 5-6.

¹⁶ Discovery Requests, Item 12.

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

¹⁸ Application at 6.

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

²⁰ Data Requests, Item 14.

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

²² Application at 6.

and necessity.²³ The public interest consideration may include the benefits of increased consumer choice and the unique advantages and disadvantages of the Applicant's service offerings.

Windstream states that its designation as an ETC will advance the public interest by allowing Windstream to use funds awarded in the RDOF auction to extend new and/or broadband services to Nebraskans. Windstream states that this RDOF support will enable unserved Nebraskans to receive broadband who may not be eligible to be reached through the NUSF.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.

7. Provision of Continuous Service

Commission Rules require 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 will provide service to all customers making a reasonable request for service within its designated service area.²⁷

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

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

²⁴ Application at 3-4.

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).

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9. Nebraska Telephone Assistance Program

The Commission Rules require carriers designated as an ETC for purposes of receiving federal USF support to participate in the Nebraska Telephone Assistance Program ("NTAP") and comply with applicable NTAP rules.²⁸ Applicant will therefore be required to 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-5227/NUSF-128 should be, and is hereby, granted, and Windstream Communications, 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 Windstream Communications, 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, Windstream Communications, LLC must communicate to the Commission that it has submitted said documentation. Windstream Communications, LLC must then promptly

²⁸ 291 Neb. Admin. Code § 10-004.04.

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communicate to the Commission any decision by the FCC as to whether it receives final approval to receive said support.

IT IS FURTHER ORDERED that Windstream Communications, 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 Windstream Communications, 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.

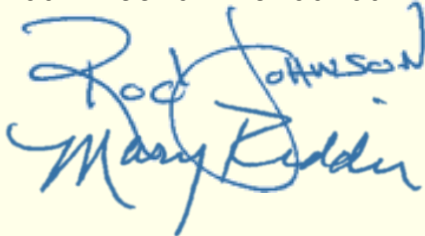
IT IS FURTHER ORDERED that Windstream Communications, LLC shall file a copy of this Order with the Universal Service Administrative Company ("USAC") and the FCC to commence its eligibility for receipt of federal universal service support effective as of the date of this Order.

IT IS FINALLY ORDERED that, should Windstream Communications, 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