

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application    ) Application No. C-4647/NUSF-94  
of PBN, LLC, Pierce, seeking        )  
designation as an Eligible            )  
Telecommunications Carrier in        ) GRANTED  
its designated service area.         )  
  ) Entered: February 25, 2014

APPEARANCES:

For the Applicant:  
Paul M. Schudel  
Woods & Aitken LLP  
301 South 13<sup>th</sup> Street, Suite 500  
Lincoln, Nebraska 68508

For the Commission:  
Nichole Mulcahy  
300 The Atrium  
1200 N Street  
Lincoln, NE 68508

BY THE COMMISSION:

On December 2, 2013 an application was filed by PBN, LLC (PBN or Applicant), of Pierce, Nebraska, seeking designation as an Eligible Telecommunications Carrier (ETC) in its designated service area. Notice of this application was published in the Daily Record, Omaha, Nebraska, on December 11, 2013. A corrected notice appeared in the Daily Record on January 22, 2014. No interested person protested the application or filed a Petition seeking Formal Intervention.

A hearing on the application was held on February 4, 2014, in the Commission Hearing Room, Lincoln, Nebraska. Appearances at the hearing are indicated above. PBN presented one witness in support of its application.

**Summary of Testimony and Evidence**

PBN presented one witness, Mr. Klint Arnold, General Manager for Pierce Telecommunications and for PBN, who testified in support of the application. PBN is a Nebraska company headquartered in Pierce, Nebraska. PBN is authorized to provide telecommunications services by virtue of the Commission's grant of authority issued in Docket C-4527 on November 19, 2012. PBN's request for designation includes all its authorized service territory in Nebraska which is statewide; however,

applicant initially intends to offer telecommunications services in the geographic areas served by CenturyLink QC and Citizens Telecommunications Company of Nebraska d/b/a Frontier Communications of Nebraska.

#### O P I N I O N     A N D     F I N D I N G S

Section 214(e) of the Telecommunications Act of 1996 (the Act) initially set forth the standards and processes for a state commission to grant carriers the designation of eligible telecommunications carrier. The three general requirements listed in Section 214(e) are that: (1) the carrier must be a common carrier; (2) the carrier must offer the "services" that are supported by the federal fund; and (3) the carrier must advertise the availability of those services. In addition, the carrier must fulfill these criteria throughout the service area for which the designation is received.

The required "services" state commissions must consider as a baseline for ETC designation described in 47 C.F.R. § 54.101(a) and are as follows

Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

Federal law also requires that before designating a competitive ETC in a rural telephone company service area the Commission finds that the designation is in the public interest. 47 U.S.C. § 214(e)(2). The FCC offered additional guidance on the public interest question through its decisions in *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC, Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket 96-45, *Memorandum Opinion and Order*, FCC 03-338 (rel. Jan 22, 2004) ("Virginia Cellular"); *In the Matter of Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications*

*Carrier in the Commonwealth of Virginia*, CC Docket 96-45, *Memorandum Opinion and Order*, FCC 04-37 (rel. April 12, 2004) ("*Highland Cellular*"); and *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Report and Order*, FCC 05-46 (rel. March 17, 2005) ("*March 2005 Order*").

To implement the foregoing federal requirements and FCC guidance, the Commission has adopted regulations governing the application process and ETC designation requirements in the State of Nebraska ("ETC designation rules"). The Commission's ETC designation rules are found at Neb. Admin. Code, Title 291, Ch. 5, §§ 009.01-009.02C. The Commission's annual reporting rules are codified at Neb. Admin. Code, Title 291, Ch. 5, §§ 009.03-009.04B.

### **Common Carrier**

Upon review of the Application and testimony presented, the Commission finds that PBN is a common carrier for purposes of ETC designation. The Act defines a common carrier as a person engaged as a common carrier on a for-hire basis in interstate communications utilizing either wire or radio technology. 47 U.S.C. § 153(10).

### **Supported Services**

We further find that PBN has demonstrated the ability and commitment to provide the supported services required by federal and state regulations using its own network facilities or a combination of its own facilities and the resale of another carrier's services. PBN's application states it will make service available to consumers primarily through its own network infrastructure or through resale. In testimony, the witness for PBN testified that the company will offer the supported services mainly through its own facilities. PBN is currently offering the supported services to its Nebraska subscribers through its own facilities.

PBN demonstrated its subscribers will receive voice grade access to the telephone network and provided information relative to its local usage plans and rates. We find that the Applicant offers comparable local usage plans as the incumbent LEC. PBN further demonstrated it meets the "single-party service" requirement with respect to its service offerings.

In addition, PBN provided evidence of its ability to remain functional during emergency situations. PBN demonstrated that it was capable of delivering automatic numbering information

(ANI) and automatic location information (ALI) over its existing network, and otherwise satisfies applicable Nebraska and federal E-911 requirements.

PBN demonstrated it provides all of its subscribers with access to operator services.

PBN provided evidence that it meets this requirement by providing all of its subscribers with the ability to make and receive interexchange or toll calls through PBN's network. PBN provides equal access to long distance carriers.

PBN demonstrated it provides access to directory assistance and provides subscribers with white page directory listings.

In sum, we find PBN provided evidence that it will fulfill the requirements of 47 C.F.R. § 54.101(a) and confirmed that it will provide all of the above-referenced services.

### **Advertising**

We find that PBN has provided sufficient evidence of its commitment to advertise the availability of and charges for the supported services using media of general distribution. The application provided that PBN will advertise through word of mouth, and other media channels such as television and radio, print advertisements, direct marketing, and the internet.

### **Designated Service Areas**

We further find that PBN has properly identified the service areas in which it is requesting ETC designation. PBN seeks to be designated as an ETC throughout the State of Nebraska. The Commission has previously found that PBN possessed the technical, managerial and financial ability to provide telecommunications services throughout the State of Nebraska.

### **Provision of Service to Requesting Customers**

Pursuant to Section 009.02A5 of the Commission's ETC designation rules, an applicant must demonstrate its commitment to provide service throughout its designated service area to customers who make a reasonable request for service. If a potential customer requests service within PBN's designated ETC service area but outside its existing network coverage, PBN will be required to follow the six-step process specified in Section 009.02A5b of the Commission's rules.

**Ability to Function During Emergencies**

Pursuant to Section 009.02A7 of the Commission's ETC designation rules, applicants must demonstrate an ability to remain functional during emergency situations. As a certificated carrier, PBN is required to comply with the Commission's rules relative to functionality during emergencies. PBN has demonstrated its ability to function during emergencies.

**Public Interest**

In the case of an applicant seeking designation in an area served by a rural telephone company, the applicant must demonstrate that the designation would be consistent with the public interest, convenience and necessity. Public interest considerations may include the benefits of increased consumer choice and the unique advantages of the applicant's service offering. In support of this requirement, PBN stated that its designation will serve the public interest by providing greater consumer choice created through the broadening of telecommunications service alternatives and affordable rates maintained by competition.

Applicant has demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e), and applicable federal law for the designation of eligible telecommunications carriers in the proposed geographic area.

**Lifeline Certification and Verification Requirements**

The Commission utilizes a coordinated enrollment process to initially enroll and certify Lifeline/NTAP subscriber eligibility. The Commission maintains an agreement with the Nebraska Department of Health and Human Services (NDHHS) to determine whether a subscriber participates in a number of qualifying programs. In addition, all ETCs are required to utilize the Commission's NTAP Application form for the enrollment of potential subscribers. At the hearing, PBN committed to comply with the Commission's requirements relative to Lifeline/NTAP certification and verification. PBN will also be required, on a monthly basis, to provide the Commission with a list of all subscribers added or removed and a full report of all Lifeline/NTAP subscribers twice annually. PBN committed to following these requirements.

**Continuing Jurisdiction**

Finally, the Commission has jurisdiction and authority to ensure that PBN continues to meet the ETC criteria set forth in Section 214(e) of the Act and the Commission's rules and regulations. Nothing prevents the Commission from, on its own motion, modifying, suspending, or revoking PBN's ETC designation if it at any time fails to meet the obligations of the Act, applicable federal rules, Commission rules and regulations, or if it fails to provide the supported services within a reasonable time frame.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the application of PBN, LLC to be designated as an Eligible Telecommunications Carrier in the State of Nebraska shall be, and is hereby, granted.

IT IS FURTHER ORDERED that PBN, 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 PBN, LLC is hereby declared to be an Eligible Telecommunications Carrier for the purpose of receiving universal service support throughout the state of Nebraska.

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

MADE AND ENTERED at Lincoln, Nebraska, this 25th day of February, 2014.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

Continuing Jurisdiction

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NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Aune Boyle*  
*Tim Schram*  
*Dee Jansen*  
*Gerard Up*

*Joan Smith*  
Chairman

ATTEST:

*Steve Meradith*  
Executive Director

//s//Frank E. Landis