

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF )  
JASPER COUNTY RURAL ELECTRIC )  
MEMBERSHIP CORPORATION FOR )  
DESIGNATION AS AN ELIGIBLE ) CAUSE NO. 41052 – ETC - 89  
TELECOMMUNICATIONS CARRIER FOR )  
THE PURPOSE OF RECEIVING RURAL )  
DIGITAL OPPORTUNITY FUND PHASE I )  
SUPPORT )

**SUBMISSION OF PROPOSED ORDER**

Pursuant to 170 IAC 1-1.1-23(b), Jasper County Rural Electric Membership Corporation hereby submits its proposed order, which has been reviewed by the Indiana Office of Consumer Counselor. An editable version will be emailed to the administrative law judge assigned to the proceeding and all parties of record.

Respectfully submitted,

By: /s/ Erin C. Borissov

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Submission of Proposed Order has been electronically served upon the following this 22nd day of March, 2021:

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<b>THE PURPOSE OF RECEIVING RURAL</b>	)	
<b>DIGITAL OPPORTUNITY FUND PHASE I</b>	)	
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**ORDER OF THE COMMISSION**

**Presiding Officers:**

**David Ziegner, Commissioner**

**Carol Sparks Drake, Administrative Law Judge**

On January 6, 2021, Jasper County Rural Electric Membership Corporation (“Petitioner” or “Jasper County REMC”) filed its Verified Petition for Designation as an Eligible Telecommunications Carrier for the Purpose of Receiving Rural Digital Opportunity Fund Phase I Support (the “Verified Petition”) with the Indiana Utility Regulatory Commission (the “Commission”). Petitioner seeks to become designated as an eligible telecommunications carrier (“ETC”) within certain census blocks in Indiana, as identified in the Verified Petition, pursuant to Section 214(e)(2) of the Federal Communications Act of 1934, as amended (the “Act”), in order to receive federal Rural Digital Opportunity Fund (“RDOF”) support to offer high-speed broadband and voice services to unserved rural areas of the state.

Also on January 6, 2021, Petitioner filed the testimony and exhibits of Seann Perry, broadband manager for Petitioner. On February 2, 2021, the Presiding Officers issued a Docket Entry requesting that Petitioner verify its compliance with the Commission’s ETC filing guidelines in its General Administrative Order (“GAO”) 2019-5. Petitioner responded on February 3, 2021 and filed an amended Verified Petition to identify certain information required by GAO 2019-5 that was inadvertently omitted from the Verified Petition as originally filed. On February 5, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Notice of Intent Not to File Testimony.

On February 25, 2021, the Presiding Officers issued a subsequent Docket Entry requesting that Petitioner provide additional information, and Petitioner responded in a filing on March 3, 2021. On March 9, 2021, the Presiding Officers issued a Docket Entry requesting that Petitioner clarify any inconsistencies between the Petitioner’s submitted list of RDOF-awarded census blocks and that of the Federal Communications Commission (“FCC”). On March 11, 2021, Petitioner submitted its response to the Commission’s March 9, 2021 Docket Entry, as well as a second amended Verified Petition clarifying said inconsistencies.

The Commission set this matter for an Evidentiary Hearing to be held on March 15, 2021, at 2:30 p.m. in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. A Docket Entry was issued on March 10, 2021, advising that, in accordance with Indiana Gov. Eric Holcomb's executive orders related to the COVID-19 pandemic, the hearing would be conducted via video conference. Petitioner and the OUCC, by counsel, participated in the hearing via video conference, and the testimony and exhibits of Petitioner were admitted into the record without objection.

Based upon the applicable law and the evidence presented, the Commission finds:

**1. Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. Pursuant to the Act, 47 USC § 151 *et seq.*, and 47 CFR §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under 47 USC § 254, and in accordance with the Commission's Orders in Cause Nos. 40785, 41052 and 42067. The Commission also has limited jurisdiction over certain matters related to communications service providers ("CSPs") pursuant to Ind. Code § 8-1-2.6-13, including the designation of CSPs as ETCs and their associated ETC service areas. Therefore, the Commission has jurisdiction over Petitioner with respect to the subject matter of this Cause.

**2. Petitioner's Characteristics.** Jasper County REMC is an Indiana rural electric membership corporation with its principal office at 280 E. Wood Road, Rensselaer, Indiana 47978. Petitioner is traditionally an electric utility service provider serving its members in Jasper, Newton, Porter, Pulaski, Starke and White counties. As an electric utility service provider, Petitioner has operated under a Certificate of Public Convenience and Necessity ("CPCN") issued by the Commission on April 21, 1938 in Cause No. 13110.

On January 14, 2010, Jasper County REMC filed a Notice of Change to its CPCN to become authorized to provide satellite internet services to its members. On December 7, 2020, Jasper County REMC filed a second Notice of Change to its CPCN, as amended on January 5, 2021, to become authorized to provide fixed wireless and fiber-based broadband service and interconnected VoIP service. The Commission officially acknowledged this Notice of Change on January 7, 2021 in Cause No. CSP2012-1. Petitioner also is or will be a "common carrier" and a "telecommunications carrier" as defined by 47 USC § 153.

**3. Rural Digital Opportunity Fund Phase I.** The FCC established the RDOF to provide \$20.4 billion in support through a reverse auction ("Auction 904") designed to bring broadband service to areas that lack access to both fixed voice and 25/3 Mbps broadband services.<sup>1</sup> On December 7, 2020, the FCC announced the winning bidders of Auction 904, one of which was the NRTC Phase I RDOF Consortium (the "Consortium"). Post-auction, the Consortium assigned certain RDOF Phase I support winning census blocks to Jasper County REMC for a total of

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<sup>1</sup> *In the Matter of Rural Digital Opportunity Fund et al., Notice of Proposed Rulemaking*, 34 FCC Rcd 6778 (August 1, 2019) ("Rural Digital Opportunity Fund NOPR").

\$281,470 in RDOF Phase I funding over 10 years.<sup>2</sup> In order to be authorized by the FCC to receive this RDOF support, Jasper County REMC must be designated by the Commission as an ETC for all of the eligible census blocks allocated to it by the Consortium, which comprise its requested ETC service area, by no later than June 7, 2021.<sup>3</sup>

**4. Petitioner Evidence.** Mr. Perry, broadband manager for Petitioner, testified that, in accordance with the Act and 47 CFR § 54.201, Jasper County REMC requests designation as an ETC within specified areas in order to become authorized to receive RDOF Phase I support. He testified that, according to 47 CFR § 54.101(d), an ETC must offer Lifeline service in its designated service area. Accordingly, Petitioner also requests designation as a Lifeline provider within the requested service area. Mr. Perry requested that the Commission grant Petitioner's Verified Petition on or before June 7, 2021 to ensure that Petitioner meets the FCC's deadline for designation as an ETC to be authorized to receive the RDOF support allocated to Petitioner by the Consortium.

Mr. Perry described Petitioner's involvement in Auction 904 and its broadband deployment project, stating that it would consist of a fiber-based network including transport and distribution elements and a wireless network including fiber and licensed microwave transport and gigabit passive optical network ("GPON"), citizens broadband radio service and 5GHz to provide services to end users. Mr. Perry testified that Petitioner's low-latency gigabit performance tier would be delivered by fiber and/or wireless and would provide service in Jasper, Newton, Porter, Pulaski and Starke counties. He further testified that Petitioner's low-latency above-baseline performance tier would be provided by wireless and/or fiber and provide service in Jasper, Newton, Pulaski and White counties.

On December 7, 2020, the FCC announced the winning bidders of Auction 904. The FCC awarded the Consortium \$19,791,000.70 in RDOF Phase I funding over 10 years, covering 30,318 locations in Indiana. The Consortium then participated in the FCC's Divide Winning Bids procedure to allocate \$281,470 in RDOF Phase I funding to Petitioner, covering 262 locations within 47 census blocks, in which Petitioner will provide at least one voice and one broadband service meeting the relevant RDOF service requirements. Mr. Perry testified that, per RDOF milestone requirements, all locations would be built out over the next five years. In his testimony, Mr. Perry provided the services and plans, including pricing that Petitioner plans to offer, to meet its obligations related to RDOF support. Specifically, Petitioner will offer three fixed wireless access speed tiers and three fiber-to-the-home ("FTTH") speed tiers. All areas for which Petitioner was allocated RDOF support, and for which Petitioner requests ETC designation, will be served via its FTTH network. Additionally, Petitioner will offer standalone interconnected VoIP service plans to residences and businesses within the designated ETC service area.

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<sup>2</sup> *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34; WC Docket No. 19-126; WC Docket No. 10-90 (December 7, 2020) ("Winning Bidders Announcement").

<sup>3</sup> *Auction 904 Notice*, 35 FCC Rcd 6077. The FCC indicated that if a long-form applicant is unable to obtain the necessary ETC designations within the 180-day timeframe, it would be appropriate to waive the 180-day timeframe if the long-form applicant is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete. The FCC will presume that a long-form applicant acted in good faith if it files its ETC application with the state commission within 30 days of the release of the Auction 904 closing public notice.

In his testimony, Mr. Perry further described how Petitioner was managerially, financially and technically capable of providing the required services. He stated that Petitioner has served in the electric utility industry for 82 years, providing critical utility service to rural customers. Mr. Perry noted that Petitioner had provided to the FCC financial information, and he surmised that the FCC was satisfied that Petitioner is financially capable of providing the required services. Finally, Mr. Perry provided Petitioner's initial project timeline and deployment milestones demonstrating its plans to meet RDOF-required service deployment timelines.

Mr. Perry testified that Petitioner was allocated RDOF Phase I support for census blocks within four census block groups serving 262 locations and comprising the area for which Petitioner seeks ETC designation. He stated that all of the awarded census blocks are within the ILEC study area of United Telephone Company of Indiana, Inc. d/b/a CenturyLink, which is not a rural telephone company as defined in 47 CFR § 51.5.

Mr. Perry stated that Petitioner would provide all of the required services in the designated ETC service area. Mr. Perry further testified that Petitioner is a "common carrier" as defined by 47 USC § 153(11) because it will offer communications services for sale to the public by wire and transmit communications both interstate and intrastate. He further stated that Petitioner would provide all services required to be eligible for high-cost universal service support using its own facilities or, if necessary, through resale of another carrier's services. Mr. Perry testified that Petitioner would use its own fiber-based network consisting of transport and distribution elements to provide services to end users in the required ETC service area. He stated that interconnected VoIP service would be provided to allow subscribers voice-grade access to the public switched telephone network.

In his testimony, Mr. Perry stated that Petitioner would offer local and long-distance voice rate plans that provide subscribers with minutes of use for local service at no additional charge. He further testified that Petitioner would provide access to emergency services for customers in the designated ETC service area, including 911 and enhanced 911 ("E911") service from local public service answering points ("PSAPs"). Specifically, Mr. Perry stated that using its voice server platform, Petitioner would provision a 911 or E911 address for use with PSAP offices within its serving area. Additionally, he testified that Petitioner's VoIP service offerings would not distinguish between toll and non-toll calls, but that, to the extent necessary, Petitioner would offer toll limitation to qualifying low-income customers within its designated ETC service area at no additional charge.

Mr. Perry testified that, pursuant to 47 CFR § 54.101(a)(2), Petitioner would provide broadband services with the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of communications service, but excluding dial-up service. He testified that Petitioner would not prioritize between endpoints, and that there was no plan or intent to limit connectivity within or outside the network. Petitioner's quality of service will provide high priority only to VoIP calls to improve voice quality.

Mr. Perry stated that Petitioner would advertise the availability and rates for the voice telephony and broadband access services to be offered within the designated ETC service area using media of general distribution, as required by 47 CFR § 54.201(d)(2). Specifically, Petitioner will advertise these services via outdoor media, such as billboards, and printed materials, such as local newspapers and festival guides. Additionally, Petitioner will advertise the services during public events, such as festivals and school sporting events. Petitioner will use its current website to advertise and allow potential subscribers to sign up for services and will use social media to advertise and monitor analytics to ensure Petitioner reaches its target audience within the designated ETC service area. Mr. Perry testified that Petitioner intends to follow the FCC's Lifeline advertising guidelines in establishing an advertising program for its Lifeline services to reach eligible households that do not currently receive service.

Mr. Perry testified that, in accordance with the ETC designation requirements adopted by the FCC and applicable to winning bidders in Auction 904, Petitioner requested in its Verified Petition that the Commission waive the requirement in the Commission's GAO 2019-5 that Petitioner file a five-year improvement plan. He stated that, Petitioner would provide the FCC with audited financials, cost estimates and descriptions of proposed improvements to its network throughout the designated ETC service area.

Mr. Perry testified about Petitioner's ability to remain functional in emergency situations. Petitioner will provide access to a reasonable amount of back-up power to ensure functionality without an external power source, the ability to reroute traffic around damaged facilities, and the capability of managing traffic spikes resulting from emergency situations. Petitioner will contract with other carriers to provide redundant voice services via the internet in case of service interruption. On-site generators are installed in the case of local electric power interruption. A UPS battery backup is on-site to handle traffic for a period of eight hours from the switchover from electric to the standby generator. Petitioner's fiber customers will have the option to purchase up to a 24-hour standby solution per current FCC regulations.

Regarding consumer protection and service quality with respect to the services provided using RDOF Phase I support, Mr. Perry testified that Petitioner commits to satisfying all related applicable state and federal requirements. Petitioner will use state-of-the-art firewall protection to all points within its network to protect against outside threats. Petitioner provided its Acceptable Use Policy, which is designed to help protect Petitioner, its customers and the internet community in general from irresponsible or illegal activities.

Mr. Perry testified that Petitioner's service offerings in the designated ETC service area would promote increased competitive choice, thereby increasing innovation and incentivizing other carriers to improve their existing networks to remain competitive, which would ultimately result in greater access to high-speed broadband and voice services, as well as improved service quality for customers in the designated ETC service area. He stated that Petitioner's use of the RDOF Phase I funding in the awarded census blocks would directly advance the Act's principal goals of securing lower prices and higher quality services for consumers and encouraging the rapid deployment of new technology to all citizens regardless of location or income. Mr. Perry explained that Petitioner was formed 82 years ago by members united in their cause to bring new services

(at that time electricity) to their homes and farms. Today, the new services needed are broadband and voice in order to spur economic growth and create better living conditions.

Mr. Perry testified that the FCC had set aside the funds awarded in Auction 904. Petitioner's use of said funds would have no *per se* impact on the federal Universal Service Fund ("USF"). Mr. Perry stated that the use of Auction 904 to award the funds ensured that funding went to bidders who could provide services to unserved or underserved areas for the lowest possible cost to the USF. Additionally, he noted that permitting Petitioner to provide services in previously unserved areas would increase the contributions Petitioner makes to the USF based upon a portion of its revenues. Mr. Perry testified that designation of Petitioner as an ETC in the requested service area was in the public interest because it would: (a) benefit increased consumer choice; (b) provide unserved and underserved areas with critical communications infrastructure; and (c) promote economic development without having a detrimental impact upon the USF, furthering the goals of the Act and associated FCC rules.

Finally, Mr. Perry testified regarding Petitioner's planned Lifeline service offerings. Mr. Perry stated terms and conditions are posted on Petitioner's website and would be provided to eligible customers –enrolling in Lifeline. He stated that Petitioner would complete income verifications annually based on information provided by USAC. Mr. Perry stated that Petitioner would advertise the availability of Lifeline services and charges through media of general distribution in a manner reasonably designed to reach potential Lifeline customers and make them aware of such offerings, as required by 47 CFR § 54.405(b). Specifically, he stated the Petitioner would advertise the availability of Lifeline services using the same media outlets used to advertise Petitioner's other communications services, including on Petitioner's website and in printed materials.

**5. Response to Commission's Docket Entries.** On February 2, 2021, the Commission issued a Docket Entry in this Cause seeking verification that Petitioner complied with ETC filing guidelines outlined in GAO 2019-5. Petitioner filed its response on February 3, 2021 along with an Amended Verified Petition and native files. Petitioner's response confirmed that it had complied with GAO 2019-5 and provided additional information where necessary, including documentation of Petitioner's good standing and registration of trade names.

On February 25, 2021, the Commission issued another Docket Entry in this Cause seeking additional information. Petitioner filed its response to this Docket Entry on March 3, 2021. In its response, Petitioner provided additional information regarding the Divide Winning Bids process in which the Consortium participated in order to allocate awarded census blocks to Petitioner. Specifically, Petitioner cited the FCC's released list of Auction 904 long-form applicants, which included Petitioner. Petitioner also clarified that the information regarding Lifeline service has not been posted to its website as the network is being built and no broadband or voice services are currently offered. However, Petitioner confirmed that it would offer the required Lifeline discount(s) to eligible customers in the designated ETC service area. In its response, Petitioner also confirmed its compliance with consumer rights and protections required by Ind. Code ch. 8-1-29 and 170 IAC § 7-1.3 and with all FCC service quality and consumer protections applicable to VoIP service, including but not limited to local number portability, limits on use and disclosure of CPNI, 911 service requirements and 711 abbreviated dialing for access to relay services. Finally,



in its response to the Commission's February 25, 2021 Docket Entry, Petitioner clarified that it was seeking ETC designation on a census-block level for the census blocks for which it was allocated RDOF support, although it intends to extend high-speed broadband and VoIP services throughout the entirety of its electric service territory.

The Commission issued a final Docket Entry requesting additional information on March 9, 2021. Petitioner filed its response on March 11, 2021, confirming that it was seeking ETC designation in all 47 census blocks identified by the FCC in its published Auction 904 results. Contemporaneously therewith, Petitioner filed its Second Amended Verified Petition identifying all 47 census blocks in which it seeks ETC designation.

**6. Discussion and Findings.** Pursuant to 47 USC § 214(e)(1)(A), a common carrier designated as an eligible telecommunications carrier shall be eligible to receive universal service support in accordance with 47 USC § 254 and shall, throughout the service area for which the designation is received, offer the services that are supported by USF support mechanisms under 47 USC § 254(c). Under 47 CFR § 54.101, the FCC's rules identify ETC services that are eligible for universal service support, including voice telephony and broadband internet services. Pursuant to 47 CFR §§ 54.101(d) and 54.405, to receive universal service support, ETCs must offer Lifeline service.

The FCC established four programs within the USF to implement the statute: (a) the High-Cost Fund for rural, insular and high-cost areas; (b) Schools and Libraries (the E-rate program), providing discounted telecommunications services to eligible schools and libraries; (c) Lifeline, providing low-income consumers with discounted voice telephony and broadband service; and (d) Rural Health Care, providing discounted telecommunications services to rural health care providers.<sup>4</sup> The source of support for the RDOF Phase I funding falls under the High-Cost Fund. Therefore, we evaluate Petitioner's Verified Petition based on the required criteria for an ETC applicant seeking support from the USF to provide service to high-cost areas. Because ETCs are required to offer Lifeline services, Petitioner also seeks designation as a Lifeline provider.

Petitioner seeks designation as an ETC for offering the federally supported implementation of expanded high-speed broadband and voice services for unserved rural Indiana residents. Based on the evidence in the record and the discussion below, we find that Petitioner satisfies the requirements in GAO 2019-5 and meets the eligibility criteria for ETC designation in 47 USC § 214(e)(1) and related FCC rules. Further, we find that designation of Petitioner as an ETC will allow it to deploy services in compliance with the awarded RDOF Phase I funding, satisfying the public interest analysis the Commission is required to perform under the *2005 FCC ETC Order*<sup>5</sup> and GAO 2019-5. We also find that Petitioner will be required to offer Lifeline as a participant in the high-cost program and has demonstrated its intent and capability to do so. Thus, Petitioner meets the eligibility criteria to provide Lifeline services pursuant to 47 CFR § 54.101(d).

**A. Waiver of Requirement to Submit Five-Year Plan.** As an initial matter, Petitioner seeks a waiver from GAO 2019-5's requirement to submit a five-year plan that describes

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<sup>4</sup> *Comprehensive Review of the Universal Serv. Fund Mgmt. et al.*, 22 FCC Rcd. 16372, 16373 (2007).

<sup>5</sup> *In the Matter of Fed.-State Joint Bd. on Universal Serv.*, 20 FCC Rcd. 6371, 6388 (2005) ("*2005 FCC ETC Order*").

with specificity the proposed improvements and upgrades to its network throughout its proposed service area. Petitioner explains that the FCC waived this requirement for Auction 904 applicants. However, we did not waive the five-year plan requirement in previous reverse auctions. Instead we accepted a summary overview regarding how petitioners would meet auction milestones, information regarding the tier and latency of committed broadband service, and a general overview of the technology planned to be used to meet auction milestones. Petitioner has provided details of its planned network, including milestones, tier/latency commitments and technology to be employed. The Commission finds that this information satisfies the Commission’s information requirement in GAO 2019-5. Therefore, the Commission waives the requirement for Petitioner to provide a separate five-year plan pursuant to GAO 2019-5.

**B. Common Carrier Status.** The first requirement for ETC designation is status as a common carrier under federal law. A “common carrier” under 47 USC § 153(11), in pertinent part, means any person engaged as a common carrier on a for-hire basis in interstate telecommunications utilizing either wire or radio technology. Because the Commission has officially acknowledged a Notice of Change to Petitioner’s CPCN granting Petitioner the authority to provide broadband and VoIP services, and Petitioner will provide voice and broadband services as an FCC public interest obligation, we find that Petitioner is a common carrier for purposes of obtaining ETC designation under 47 USC § 214(e)(1).

**C. Required ETC Services.** To receive funding in high-cost areas as part of RDOF Phase I, Petitioner must provide voice and broadband services to the designated ETC service area and offer the Lifeline discount on the supported services. The evidence below indicates that Petitioner’s proposed voice, broadband and Lifeline services comply with applicable federal laws and regulations.

**i. Voice Telephony Services.** Pursuant to 47 CFR § 54.101(a)(1), eligible voice telephony services must provide: (1) voice-grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) access to the emergency services provided by local government or other public safety organizations to the extent implemented; and (4) toll limitation services to qualifying low-income consumers. Petitioner meets the four voice telephony service requirements as follows:

**1. Voice-Grade Access to the Public Switched Telephone Network.** Pursuant to 47 CFR § 54.101(a)(1), eligible voice telephony services must provide voice-grade access to the public switched telephone network or its functional equivalent. Mr. Perry testified Petitioner will use a fiber-based network to provide interconnected VoIP services to end users in the requested service area to provide voice-grade access to the public switched telephone network or its equivalent. Accordingly, we find that Petitioner satisfies this requirement set forth in 47 CFR § 54.101(a).

**2. Local Usage.** Eligible voice telephony services must provide minutes of use for local service at no additional charge to end users as required by 47 CFR § 54.101(a)(1). Although the FCC has not required a minimum amount of local usage be offered by an ETC, Mr. Perry testified Petitioner would offer service to customers based upon a flat rate with no usage limit on minutes. Therefore, Petitioner’s offering is consistent with the Act’s

requirement that consumers have access to quality services at just, reasonable and affordable rates. Based on the evidence, we find that Petitioner satisfies the local usage requirement.

**3. Access to Emergency Services.** As part of a universal service offering and as required by 47 CFR § 54.101(a)(1), eligible voice telephony services must provide access to emergency services provided by local government or other public safety organizations, such as 911 and E911, to the extent the local government in an eligible carrier's service area has implemented 911 or E911 systems. Mr. Perry provided evidence that Petitioner will provide access to emergency services for customers in the designated ETC service area, including 911 and E911 service from local PSAPs. Specifically, Mr. Perry stated that Petitioner would provide a 911 or E911 address for each customer to local PSAP offices within its service area. Based on the foregoing evidence, we find that Petitioner satisfies this requirement.

**4. Toll limitation for Qualifying Low-Income Consumers.** A "toll limitation service," as defined by 47 CFR § 54.400(b)-(d), allows customers to either block the completion of outgoing long-distance calls or to specify a certain amount of toll usage to prevent them from incurring significant long-distance charges and risking disconnection. Toll limitation service is included as part of the definition of voice telephony service, which is a supported Lifeline service.<sup>6</sup> Therefore, each ETC must still offer a toll limitation service unless the Lifeline offering provides a set number of minutes that do not distinguish between toll and non-toll calls. Mr. Perry testified that Petitioner's voice telephony plans would not differentiate between local or long-distance calls. Therefore, we find that Petitioner satisfies this requirement.

**ii. Broadband Internet Access Service.** Pursuant to 47 CFR § 54.101(c), an ETC subject to a high-cost public interest obligation to offer broadband internet access services who is not receiving frozen high-cost support must offer broadband services within the areas where it receives high-cost support. These broadband services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the service, but excluding dial-up service. Mr. Perry testified that Petitioner will provide broadband services with the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of communications service, but excluding dial-up service. Accordingly, we find that Petitioner has satisfied this requirement.

**iii. Carrier Obligation to Offer Lifeline.** Under 47 CFR §§ 54.101(d) and 54.405(a), ETCs, whether seeking the designation for universal service support for high-cost areas or solely to provide universal service support for low-income consumers, must make Lifeline service available to qualifying low-income consumers. Additionally, 47 CFR § 54.401 defines Lifeline service, in part, as a non-transferable retail service offering provided directly to qualifying low-income consumers for which they pay reduced charges. Mr. Perry testified that Petitioner will offer Lifeline service in addition to its high-cost offering and will advertise its Lifeline service as required by the FCC rules. Accordingly, we find that Petitioner satisfies the requirement to offer Lifeline service in addition to its high-cost offering.

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<sup>6</sup> 47 CFR §§ 54.400(m), 54.401(a)(2).

**D. Functionality in Emergency Situations.** Under 47 CFR § 54.202(a)(2), applicants for ETC designation must demonstrate their ability to remain functional in emergency situations. This includes a demonstration that an applicant has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergencies. Mr. Perry described Petitioner's back-up power options, ability to reroute traffic, and redundant transport, and we find that Petitioner satisfied the requirement of demonstrating its ability to remain functional in emergency situations.

**E. Advertising Requirements.** Pursuant to 47 CFR § 54.201(d)(2), a common carrier designated as an ETC eligible to receive universal service support shall advertise the availability of and charges for such services using media of general distribution. Additionally, 47 CFR § 54.405(b) requires a carrier to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service. Mr. Perry stated that Petitioner will advertise the availability and rates for the voice telephony and broadband access services to be offered within the designated ETC service area using media of general distribution, as required by 47 CFR § 54.201(d)(2). Petitioner provided information about how services will be advertised on its own website and in other materials. Thus, we find that Petitioner satisfies this requirement. Once Petitioner has initiated service, the Commission finds that Petitioner also shall include the following information in its consumer marketing materials in language that is clear and comprehensible to consumers: (1) pricing information for individual services and bundles; (2) terms and conditions of service; (3) the dollar amount of a Lifeline discount; (4) the services to which a Lifeline discount can be applied; and (5) an explanation of the terms and conditions of the Lifeline discount. Further, consistent with the Commission's prior ETC Orders, Petitioner will be required to submit informational tariffs regarding its Lifeline offering.

**F. Designated ETC Service Area.** Under 47 CFR § 54.207(a), "service area" means a geographic area established by a state commission for determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from USF mechanisms. Petitioner seeks ETC designation for its requested service area, which includes the census blocks in which Petitioner was allocated RDOF Phase I funding. Petitioner described its requested ETC service area in **Exhibit A** to the Second Amended Verified Petition. Additionally, the Commission finds that an analysis pursuant to the FCC's rule in 47 CFR § 54.207(c) to define a service area served by a rural telephone company (as defined in 47 CFR § 51.5) is not necessary. This rule is in place to prevent "cream-skimming," a practice by which a communications service provider may attempt to provide service only to low-cost customers while disregarding less profitable customers. Petitioner provided evidence that the requested ETC service area is not within the service area of a "rural telephone company," as that term is defined in 47 CFR § 51.5. Therefore, we approve the requested ETC service area proposed in Petitioner's Second Amended Verified Petition.

**G. Facilities Ownership.** Consistent with the requirements of 47 USC § 214(e) and 47 CFR §§ 54.101 through 54.207, Petitioner will provide all services required to be eligible for high-cost universal service support using its own facilities or, if necessary, through resale of another carrier's services. Mr. Perry testified that Petitioner would provide all services required to be eligible for high-cost universal service support using its own facilities or, if

necessary, through resale of another carrier's services. Specifically, Petitioner will provide broadband services over its own fiber network and will utilize said network to provide VoIP services. Therefore, the FCC's requirement that an ETC provide the required voice telephony services through a "combination of its own facilities and resale of another carrier's services" under 47 USC § 214(e)(1)(A) is satisfied. Therefore, we find that Petitioner meets this requirement.

**H. Public Interest Considerations.** As noted above, the designation of Petitioner as an ETC requires a public interest analysis pursuant to 47 CFR § 54.202(b). In the absence of statutory requirements for evaluating public interest, the FCC recommended the following analysis:

The public interest benefits of a particular ETC designation must be analyzed in a manner that is consistent with the purposes of the Act itself, including the fundamental goals of preserving and advancing universal service; ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates; and promoting the deployment of advanced telecommunications and information services to all regions of the nation, including rural and high-cost areas.<sup>7</sup>

One of the principal goals of the Act is "to secure lower prices and higher quality services for American telecommunications consumer and encourage the rapid deployment of new telecommunications technologies" to all citizens, regardless of geographic location or income.<sup>8</sup> Because designation of Petitioner as an ETC will allow for the provisionally approved project to move forward and for Petitioner to receive USF support for projects that will help close the digital divide in selected portions of Indiana, we find that designation of Petitioner as an ETC in the requested service area will promote the public interest.

**i. Advantages of Petitioner's Service Offerings.** The evidence of record demonstrates that Petitioner's proposed project will directly benefit consumers. It will promote increased competitive choice, resulting in greater access to high-speed broadband and voice services, as well as improved service quality for customers in the requested ETC service area. Petitioner's proposed project will also advance the Act's principal goals of securing lower prices and higher quality services for consumers and encouraging the rapid deployment of advanced communications technology to all citizens.

**ii. Impact on Universal Service Fund.** We have previously recognized that the FCC has undertaken various steps to address the growth in high-cost universal service support disbursements.<sup>9</sup> Notably, the funds that will support Petitioner's projects will come directly from RDOF Phase I funding already allocated by the FCC for Petitioner's deployment to unserved areas. If these funds were not awarded to Petitioner, they would be awarded to another provider, possibly in another state. Additionally, the use of Auction 904 to award the funds ensured that funding went to bidders who could provide services to unserved or underserved areas for the lowest possible cost to the USF. Finally, the Lifeline services offered by Petitioner as part of its

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<sup>7</sup> 2005 FCC ETC Order, 20 FCC Rec. at 6388.

<sup>8</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>9</sup> *Perry-Spencer Communications, Inc.*, Cause No. 41052 ETC 53, 2008 WL 9832656 (IURC July 24, 2008).

ETC designation will only receive support to the extent Petitioner obtains Lifeline customers. Given the low population in the service area, this is likely to be a small number. For these reasons, we find that designation of Petitioner as an ETC in the requested service area will not have a negative impact on the USF.

iii. **Consumer Protection.** One of the requirements established by the *2005 FCC ETC Order* was that, regardless of certification date, all ETCs must submit to the FCC, on an annual basis, certification that the ETC is compliant with 47 CFR § 54.202(a)(3) by demonstrating that they meet applicable service quality standards and consumer protection rules. Petitioner provided evidence that it will satisfy all applicable state and federal requirements related to consumer protection and service quality standards with respect to the services provided using RDOF Phase I funding, including implementation of its Acceptable Use Policy. Additionally, Petitioner will use state-of-the-art firewall protection to all points within the network to protect against outside threats. We note that Indiana has consumer protection statutes for voice telecommunications services, such as Indiana Code ch. 8-1-29, which apply to Petitioner's voice telephony service. We find that Petitioner has demonstrated that it will meet applicable service quality standards and consumer protection rules.

iv. **Affordable Rates.** We must also consider whether designation of Petitioner as an ETC will "ensur[e] the availability of quality telecommunications services at just, reasonable and affordable rates" pursuant to the *2005 FCC ETC Order*. Mr. Perry has provided a summary of Petitioner's broadband and voice plans, including pricing information, to be offered in the requested service area. We note that the FCC will require Petitioner's voice telephony and broadband offerings to include at least one plan at rates that are reasonably comparable to rates for similar service in urban areas. Having reviewed Petitioner's plans and pricing information, we find that Petitioner plans to offer quality telecommunications services, including high speed broadband service and voice telephony, at just, reasonable and affordable rates.

v. **Commitment to Provide Supported Universal Service.** Petitioner provided evidence that it is prepared to deploy its own facilities and, where necessary, to resell the services of another authorized carrier to provide USF supported services to customers within Petitioner's requested ETC service area. Petitioner's commitment to provide service satisfies the requirements of 47 CFR §§ 54.202(a)(1)(i) and 54.405(a). Accordingly, we find that Petitioner has demonstrated its willingness and ability to provide supported services throughout its requested designated service area.

vi. **Provision of Universal Service.** As an ETC serving areas known to be unserved or underserved, Petitioner must respond to Commission inquiries regarding its ability to serve customers in the event no common carrier will serve a community pursuant to 47 USC § 214(e)(3) or if an ETC serving the same designated service area or portions thereof seeks relinquishment of its obligations as an ETC under 47 USC § 214(e)(4).

vii. **Additional Public Interest Analysis.** ETC designation confers both benefits and burdens upon a telecommunications service provider. Because the designation gives the provider the right to apply for USF, it is essential that the provider comply with its obligations to contribute to public interest funds and not have a competitive advantage over other

Indiana telecommunications carriers by avoiding such obligations. This is particularly true in this instance, where Petitioner is essentially representing the state of Indiana on a national stage through its participation in Auction 904. Petitioner's participation in this program may help bring additional federal grant monies to Indiana that would otherwise find their way to other states and will help keep Indiana at the technological forefront. While these benefits certainly serve the public interest in our state, Petitioner's participation in the program will also invite an additional level of scrutiny, rendering regulatory and legal compliance paramount. Based on the foregoing analysis of the public interest in this Cause, we find that providing Petitioner with its requested ETC designation in the requested service area will promote the public interest and further the goals of the Act.

**7. Regulatory Oversight and Prospective Reporting Requirements.** The Commission recognized certain specific regulatory requirements that competitive ETC applicants must satisfy to secure and maintain their ETC status in Indiana.<sup>10</sup> Such regulatory requirements stem from the FCC's mandate that state commissions certify that USF support is being used only for the provision, maintenance and upgrading of facilities and services for which the support is intended, as set forth in 47 USC § 254(e). Absent such a certification, carriers will not receive such support. For the Commission to satisfy its ETC certification requirements to the FCC, it requires ETC applicants to separately track their USF expenditures.

The record reflects Petitioner's intention to comply with the Commission's reasonable Lifeline informational tariff filing requirement for its Lifeline offerings. Petitioner must also comply with USF tracking requirements previously established by the Commission to ensure that funds received from the Universal Service Administrative Company ("USAC") for Indiana are devoted to furthering universal service goals within Petitioner's designated service area. Petitioner's Lifeline terms and conditions of service shall be incorporated into its Lifeline informational tariff for Indiana and filed with the Commission's Communications Division for review prior to Petitioner making its universal service offerings available to eligible customers in the requested service area and filed with USAC pursuant to 47 CFR § 54.401(d).

**8. Prospective ETC Reporting Requirements.** Finally, we find that as a recipient of RDOF support, Petitioner is required to meet the applicable reporting requirements consistent with the federal rules in 47 CFR § 54.313. Those requirements include, among others: (1) certification that the ETC is able to function in emergency situations; (2) certification that the pricing of the company's voice services is not more than two standard deviations above the applicable national average urban rate for voice services; (3) certification that the pricing of service meets the FCC's broadband public interest obligations and does not exceed the applicable benchmark; (4) disclosure of the ETC's holding and operating company names (if applicable), any affiliate relationships and shared branding, as well as universal service identifiers; (5) certain reporting requirements specific to tribal lands to the extent recipient serves any in its designated service area; and (6) results of the company's network performance test. Petitioner's above-listed compliance filings shall be filed under any applicable Cause established by the Commission for annually certifying Indiana ETCs' continued eligibility to receive high-cost support.

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<sup>10</sup> See, e.g., *In re Designation of Eligible Telecommunications Carriers*, Cause No. 41052 ETC 43, 2004 WL 1170027 (IURC March 17, 2004).

**9. Conditions on Petitioner's Designation as an ETC.** In accordance with the Commission's findings above, Petitioner shall be subject to the following conditions:

**A.** If another ETC serving the requested service area relinquishes its ETC designation pursuant to 47 USC § 214(e)(4), or if no common carrier will provide the services that are supported by USF mechanisms pursuant to 47 USC § 214(e)(3), the Commission is required to ensure that all customers will continue to be served. Petitioner shall respond to Commission inquiries involving the affected ETC service area, or portions thereof, if such a situation occurs.

**B.** Pursuant to 47 CFR § 54.401(d), prior to providing service in the requested ETC service area or within 60 days of the effective date of this Order, whichever occurs earlier, Petitioner shall file an informational tariff of its proposed Lifeline offerings with the Commission and USAC and notify the Commission in the form of a new tariff if any terms, conditions or an allocation of minutes change.

**C.** Petitioner shall file with the Commission a copy of its annual reports and certifications that are required by the FCC pursuant to 47 CFR § 54.313.

**D.** Petitioner shall establish safeguards to prevent its customers from receiving multiple Lifeline subsidies at the same address as required by 47 CFR § 54.405.

**E.** Petitioner shall certify the eligibility of Lifeline customers pursuant to 47 CFR § 54.410, requiring prospective Lifeline customers to demonstrate that they are eligible for Lifeline based upon participation in one of the qualifying low-income programs or based upon income.

**F.** Pursuant to 47 CFR § 54.410, Petitioner shall contact each Lifeline customer on an annual basis and request confirmation of continued eligibility by requiring that the customer re-certify continued eligibility for the discount based upon income or participation in a qualifying low-income program. Petitioner shall provide the Commission with a copy of its Lifeline re-certification results that it files annually with USAC and the FCC.

**G.** Petitioner shall pay all fees applicable to telecommunications carriers, such as the public utility fee, pursuant to Indiana Code ch. 8-1-6; the InTRAC fee, pursuant to Indiana Code ch. 8-1-2.8; the Indiana USF fee, to the extent applicable pursuant to the Commission's Orders in Cause No. 42144; the statewide E911 fee, pursuant to Indiana Code chs. 36-8-16.6 and 36-8-16.7; the Underground Plant Protection (811) fee, pursuant to Indiana Code ch. 8-1-26; and any other applicable fees.

**H.** In the event Petitioner needs to add or delete census blocks from its ETC designated service area, Petitioner should file a petition amending its service area under a subdocket in this Cause. If the FCC changes the number of funded locations that Petitioner is required to serve pursuant to Auction 904, Petitioner should provide the Commission with a courtesy notice by submitting a compliance filing in this Cause.

Based on the evidence presented and discussed above and subject to the compliance requirements set forth in this Order, we find that Petitioner has met all of the ETC eligibility



requirements and the public interest is served by Petitioner serving the requested ETC service area. As an ETC in Indiana, Petitioner must comply with the prospective reporting requirements and conditions set forth herein. The Commission has the statutory authority to investigate, as it deems necessary, Petitioner's compliance with this Order.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. Jasper County Rural Electric Membership Corporation's Verified Petition requesting designation as an ETC in the requested ETC service area for participation in the Rural Digital Opportunity Fund Phase I program is granted.

2. Petitioner's request for authority to apply to receive federal USF support pursuant to 47 USC § 254 is granted, subject to Petitioner's compliance with the terms, conditions and reporting requirements of this Order and other applicable laws.

3. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:**

**APPROVED:**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**

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**Dana Kosco  
Secretary of the Commission**

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