

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION)	
OF VIASAT CARRIER SERVICES, INC. FOR)	CASE NO. VCS-T-18-01
DESIGNATION AS AN ELIGIBLE)	
TELECOMMUNICATIONS CARRIER)	ORDER NO. 34253
)	

On September 27, 2018, Viasat Carrier Services, Inc. (“Viasat” or the “Company”) applied¹ to the Commission for an order designating it as an eligible telecommunications carrier (ETC) in specific Idaho census blocks. The Company seeks ETC designation in Idaho so it can receive funding it was provisionally awarded² under the Federal Communications Commission (FCC) Connect America Fund Phase II Auction (CAF II Auction). Application at 1-2. The Commission issued a Notice of Application and Notice of Modified Procedure on December 19, 2018. Order No. 34221. Staff filed timely comments and the Company filed a timely reply. The Commission now approves the Company’s Application.

BACKGROUND

A. The Connect America Fund

On January 31, 2018, the FCC issued an Order on Reconsideration concerning its Connect America Fund initiative, which enabled the FCC to move forward with the CAF II Auction, in which service providers competed to receive up to \$1.98 billion to offer voice and broadband service in unserved high-cost areas.³ That Order followed a series of orders establishing the details of the CAF II Auction.⁴ Under this program the FCC will disburse up to \$198 million annually for providers – including competitive providers such as competitive local exchange carriers, cable operators, fixed wireless ISPs, satellite broadband, or alternative providers such as electric utilities and governmental entities – to deploy broadband networks in high-cost unserved price cap areas.

On August 28, 2018, the FCC announced the Auction 903 results. The FCC designated Viasat as a winning bidder in 127 Census Block Groups in Idaho. Funding is

¹ Viasat filed a Supplement to its Application with the Commission on December 12, 2018.

² Viasat, Inc. (“VSI”), the parent company of Viasat Carrier Services, Inc., was provisionally awarded the CAF II Auction funding and, it claims, properly assigned its winning bid to Viasat. See Application at 4.

³ Connect America Fund, et al., Order on Reconsideration, 33 FCC Rcd 1380 (2018).

⁴ See, e.g., Connect America Fund et al, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016).

contingent on Viasat demonstrating that it meets the FCC’s technical and financial qualifications, including obtaining ETC designation from the Idaho Public Utilities Commission by February 25, 2019, for the service area. ETC designation by this Commission is, therefore, a prerequisite for Viasat’s eligibility for funding.⁵

B. ETC Designation Requirements

Under the federal Telecommunications Act of 1996 (the “Federal Act”), a carrier designated as an ETC is eligible to receive federal support from the federal Universal Service Fund (USF).⁶ 47 U.S.C. § 214(e). This Commission has the authority, under the Federal Act, to grant ETC designations within Idaho. 47 U.S.C. § 214(e)(2). Authority for the Commission to designate ETC status is also provided in Idaho law—the Idaho Telecommunications Act of 1988 (the “Idaho Act”)—and expounded upon in prior Commission orders. *See Idaho Code* §§ 62-610D(1), 62-615(1); Order No. 29841 (“ETC Requirements Order”). Under this authority, this Commission has granted ETC designations to numerous carriers in Idaho, including wireless carriers. *See e.g.* Order Nos. 32586, 32645, and 34163.

To qualify as an ETC, an applicant must satisfy several requirements established in federal and state law. 47 U.S.C. § 214(e); Order No. 29841. The Federal Act requires the applicant to be a “common carrier,” offering services supported under Section 254(c) of the Federal Act “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(10), 214(e)(1)(A), 160(a)(3) (FCC has regulatory flexibility to forbear application where consistent with public interest). The Federal Act also requires that the applicant “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B).

⁵ Auction 903 Results Notice, para. 15, n. 11.

⁶ The FCC established the federal USF with the intent to make adequate, efficient communications available nationwide, at reasonable charges. *In the Matter of Lifeline and Link Up Reform and Modernization, Lifeline and Link Up, Federal-State Joint Board on Universal Service, Advancing Broadband Availability Through Digital Literacy Training (“Lifeline and Link Up Reform Order”)* 27 F.C.C.R. 6656, at 6660-62 (Feb. 6, 2012); 47 U.S.C. § 254(b). Lifeline is a program supported by the USF that provides monthly discounts to eligible low-income subscribers in order to maintain access to communications networks. *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656 at 6662-63. High-cost support through the Connect America Fund, addresses initial connections for services in high-cost areas. *See In the Matter Connect America Fund*, 27 F.C.C.R. 4040, 17672-73 (Nov. 18, 2011) (goals for high-cost support include ensuring and advancing the availability of communications services). Idaho has an analogous state USF program, established in Idaho Code §§ 62-610 and 62-610A-610F, and a Lifeline program known as the Idaho Telecommunications Service Assistance Program (ITSAP).

Under the Federal Act, state commissions are granted the authority to determine whether ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2). In evaluating this public interest element, this Commission has generally considered two factors. *See* Order Nos. 33002 at 2-3; and 33226 at 3. First, the Commission evaluates whether the carrier contributes to state assistance programs such as ITSAP and the Idaho Telecommunications Relay Services (TRS) program. *Id.*; *Idaho Code* § 61-1301. Second, the Commission considers if the designation is sought for only part of a rural telephone company’s study area, thus leaving some (perhaps less profitable) customers without service. *See* Order Nos. 33002 at 2-3; and 33226 at 3. Such practice, known as “cream skimming,” has been determined by this Commission to be contrary to the public interest. *Id.*

Federal regulations include the following additional requirements, which the Commission has adopted by reference, in evaluating applications for ETC designation: (1) compliance with service requirements applicable to support received; (2) submission of a plan for proposed improvements or upgrades to the network (where applicable); (3) demonstrated ability to remain functional in emergencies without an external power source; (4) demonstrated willingness to satisfy consumer protection and service quality standards; (5) financial and technical capability to provide Lifeline service; and (6) notice to affected Tribes where designation is sought for any part of Tribal lands. *See* 47 C.F.R. § 54.202; “ETC Requirements Order” No. 29841 at 5 and 16.

For applicants seeking Lifeline-only ETCs, the FCC has waived the requirement to submit a network improvement and upgrade plan, noting that such ETCs do not receive funds to improve or extend their networks. *Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656, ¶ 386. This Commission—which requires a two-year network improvement plan and progress report (Order No. 29841 at 18) where applicable—has also waived the requirement where a Lifeline-only ETC is requested. Order No. 33002 at 3, *citing Lifeline and Link Up Reform Order*, 27 F.C.C.R. 6656, ¶ 386.

THE APPLICATION

Viasat is a Delaware corporation with its principal place of business in Carlsbad, California. Application at 2. Viasat states it is an innovator in broadband technologies and services. Using end-to-end platform of high-capacity ka-band satellites, ground infrastructure and user terminals enabling it to provide “cost-effective, high-speed, high-quality broadband

solutions to enterprises, consumers and government users around the globe.” *Id.* The Company also provides advanced wireless communications systems, secure networking systems and cybersecurity and information assurance products and services. The service for which the Company requests designation is set forth in the Company’s Application. *Id.* at 14. The Company states it qualifies for ETC designation under the Federal Telecommunications Act (47 U.S.C. § 214(e)(1)), the Federal Communications Commission’s eligibility rules (47 C.F.R. § 54.101(a)), and other requirements set forth by this Commission, outlined in the Appendix to Commission Order No. 29841. *Id.* at 10-15.

In summary, the Company asserted it satisfies the requirements for designation as an ETC in that it: (1) has common carrier status; (2) commits and is able to provide services supported by federal universal support mechanisms; (3) will advertise the availability of supported services; (4) will, through its ETC designation, advance the public interest, convenience and necessity; (5) has contacted the Coeur d’Alene Tribe, Shoshone-Paiute Tribes, Nez Perce Tribe and has provided relevant and necessary Tribal notification; (6) commits and is able to provide supported services as required by this Commission for ETC status; (7) is capable of managing traffic and maintaining functionality without an external power source; (8) complies with applicable consumer protection and service quality standards; and (9) will comply with annual reporting requirements established by this Commission. *Id.*

THE COMMENTS

A. Staff

Staff reviewed Viasat’s Application and conducted an analysis of the Company’s fulfillment of the Federal Telecommunications Act of 1996, the Connect America Fund requirements, and Commission Order No. 29841. In addition, Staff analyzed the public interest benefits of awarding the Company ETC designation.

Staff determined that Viasat either fulfilled or met waiver requirements of each requirement to be an ETC in Idaho. Specifically, Staff determined that: (1) Viasat satisfied the public interest considerations related to Idaho ETC designation; (2) a two-year network improvement and progress report is not required due to the FCC’s waiver of the five-year plan as part of its ETC designation process; and (3) the Company has the ability to remain functional in emergency situation in accordance with Order No. 29841 and 47 C.F.R. § 54.202(a)(2).

Staff further determined the Company meets all other requirements of Commission Appendix 1 of Order No. 29841. Specifically, Viasat committed: (1) to be a common carrier as defined by 47 U.S.C. § 214(e)(1); (2) to provide universal services; (3) to advertise the availability of its service offerings; (4) to describe local usage plans; (5) to the Application being in the public interest; (6) to maintaining the ability to provide supported services; (7) to be able to remain functional in emergencies; and (8) to maintaining sufficient consumer protection and service. Accordingly, Staff recommended the Commission approve the Company's Application.

B. Company Reply Comments

The Company provided reply comments in order to respond to comments made in a similar case with the same February 25, 2019, FCC deadline (Case No. NEW-T-18-01) by the Coeur d'Alene Tribe ("CDA Tribe"). *See* Reply Comments of Viasat Carrier Services, Inc. and Supplement at 2. In its reply, Viasat stated that it initially provided notice of its ETC Application to the CDA Tribe because it believed some of the census blocks for which it had been provided provisional CAF II funds lay within CDA Tribal lands. *Id.* However, upon additional analysis, the Company determined that no census block overlay CDA Tribal land. *Id.* However, the Company did note that some of the applied for census blocks overlay other tribal lands in Idaho. *Id.*

Against the backdrop of the CDA Tribe's arguments in Case No. NEW-T-18-01, the Company argued that it will offer Lifeline service as required by the FCC's rules at all locations where it has been awarded support, including locations on Tribal lands. *Id.* at 3. It committed to working with Tribal authorities as required by the Lifeline rules. It committed to working with Tribal authorities to fulfill its advertising requirements in a "culturally sensitive manner." *Id.* Viasat further reiterated statements made in its Application, namely that it will only use federal universal support for those purposes that the support is intended, as a facilities-based provider in Idaho, including on Tribal lands. *Id.* at 4. While it will be supported initially by its parent company, Viasat will only use its own or its parent company's satellite or terrestrial network for services provided in Idaho and not other's services. *Id.* at 5.

Viasat next stated that it provided notice to those tribes where it was seeking ETC designation in Idaho, according to the Idaho Commission's ETC eligibility requirements. *Id.* As a result, Viasat received a consultation request from the Nez Perce Tribe, met with that tribe for a teleconference and continues to consult as the process moves forward. *Id.* Viasat reconfirmed

that it “stands ready to cooperate with the Tribes regarding any applicable regulatory, business or licensing requirements to do business on Tribal lands, and that its Application is in the public interest.” *Id.* at 5-6.

DISCUSSION AND FINDINGS

The Commission has authority to grant ETC designation to a telecommunications carrier under federal and state law. 47 U.S.C. § 214(e); and *Idaho Code* §§ 62-610D, 62-615(1). The Commission has reviewed and considered the record in this case, including Viasat’s Application and exhibits, Staff comments, and the Company’s reply comments. We now make the following findings.

A. Common Carrier, Own-Facilities, and Advertising

We first address requirements listed in § 214(e)(1) of the federal Telecommunications Act. That provision requires an applicant to be a “common carrier” offering services “using its own facilities or a combination of its own facilities and resale of another carrier’s services,” unless otherwise granted FCC forbearance. 47 U.S.C. §§ 153(10), 214(e)(1)(A), 160(a)(3). Viasat stated that it “will obtain the right to use satellite transponder capacity from its parent company as part of its own network to provide supported services to customers in Idaho and accordingly will provide services as a facilities-based provider in the State of Idaho, including on Tribal lands.” Reply Comments of Viasat Carrier Services, Inc. and Supplement (“Reply Comments”). Therefore, we find that Viasat will utilize its own facilities as a facilities-based provider. On the record before us, we find that Viasat is also a “common carrier.” *See* 47 U.S.C. § 153(11); and Application at 10.

An applicant seeking ETC designation must also “advertise the availability of such services and the charges therefor using media of general distribution.” 47 U.S.C. § 214(e)(1)(B). Based on the record and the Company’s assurances, we find this requirement to also be satisfied. Application at 11.

B. Public Interest and Related ETC Designation Requirements

Under the federal Telecommunications Act, state commissions shall determine whether granting the requested ETC designation is “consistent with the public interest, convenience, and necessity.” 47 U.S.C. § 214(e)(2).

First, Viasat committed to offering “voice telephony and broadband services supported by federal universal service support mechanisms,” including voice grade access to the

public switched telephone network and broadband internet access services. Application at 11. Viasat also committed to offering Lifeline services, as required by FCC rules. *See* 47 C.F.R. § 54.101(d). We find that the Company's offering of these services in the CAF II Auction awarded service areas promotes the public interest because this services will deploy CAF II Auction funds to high-cost areas of Idaho which are unserved or underserved and provide investment in facilities and equipment in these areas. This deployment also furthers this Commission and the FCC's goals of expanding the reach of digital connectivity to promote economic growth in rural areas. In pursuit of deployment Viasat has made a commitment to satisfying all applicable state and federal requirements related to consumer protection and service quality standards. Application at 14.

We also consider whether the Company would contribute to the appropriate Idaho funds. Order Nos. 33002 at 2-3, 33226 at 3. Staff confirmed that Viasat, upon approval and commencement of business operation in Idaho, will participate in the appropriate Idaho programs, specifically the Idaho 9-1-1 program and any additional reporting requirements for competitive telecommunications providers. Comments at 3. We find that the Company's commitment to participating in the appropriate Idaho programs advances the public interest.

Next we consider whether the Company is engaged in "cream skimming," which we have found to be contrary to the public interest. Order Nos. 33002 at 2-3, 33226 at 3. We agree with Staff, because the Company requested ETC designation for entire census blocks where price cap carriers previously declined support to serve, no cream skimming analysis is required.

We therefore find that granting Viasat ETC designation in the applied for Census Block Groups satisfies state and federal public interest requirements.

C. Remaining Requirements

Finally, we address the six remaining requirements from federal regulations and our "ETC Requirements Order." 47 C.F.R. § 54.202; "ETC Requirements Order" No. 29841.

(1) Service Requirements for Support Received. We find that Viasat has sufficiently committed to meeting these requirement. Application at 10-15.

(2) Plan for Proposed Improvements or Upgrades to the Network. We agree with Staff. Because the FCC waived the requirement for a winning bidder to file a five-year plan as part of the ETC designation process, a network improvement plan is not required under Viasat's ETC Application. Order Nos. 29841, 32501; *Lifeline and Link Up Reform Order*, 27 F.C.C.R.

6656, ¶ 386 (requirement waived because Lifeline-only ETCs receive no network improvement funds).

(3) Ability to Remain Functional in Emergencies. We find the Company has demonstrated sufficient compliance with this requirement. Application at 13-14.

(4) Willingness to Satisfy Consumer Protection and Service Quality Standards. We are satisfied with the Company's assurances as to this requirement. *Id.* at 14.

(5) Financial and Technical Capability. Based on the Company's assurances and description of its financial and technical qualifications, as well as the way that it interacts and partners with its parent company, we also find this requirement to be satisfied. *Id.* at 5-10.

(6) Notice to Affected Tribes. For purposes of obtaining ETC designation by this Commission we find the Company has sufficiently notified and engaged tribal authorities according to 47 C.F.R. § 54.202, and our Order No. 29841 at pages 5 and 16. We appreciate its Commitment to keeping this Commission apprised of its interactions with and progress toward operating on Tribal lands. *See* Viasat's Supplement to its Application at 2-3; and Reply Comments at 2-6.

Based on the above findings, we conclude that Viasat has satisfied the federal and state requirements for an ETC designation, and we therefore grant the Application for the Census Block Groups described in Exhibit A to the Company's Application.

ORDER

IT IS HEREBY ORDERED that the Commission approves Viasat's Application for designation as an eligible telecommunications carrier as discussed herein.

THIS IS A FINAL ORDER. Any person interested in this Order may petition for reconsideration within twenty-one (21) days of the service date of this Order. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration. *See Idaho Code* § 61-626.

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DONE by Order of the Idaho Public Utilities Commission at Boise, Idaho this
day of February 2019.

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PAUL KJELLANDER, PRESIDENT




KRISTINE RAPER, COMMISSIONER



ERIC ANDERSON, COMMISSIONER

ATTEST:



Diane M. Hanian
Commission Secretary

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