



# PUBLIC NOTICE

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## WIRELINE COMPETITION BUREAU SEEKS COMMENT ON EMPOWER BROADBAND, INC.'S PETITION FOR EXPANSION OF ITS ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION

WC Docket No. 09-197

Comment Date: July 12, 2024

Reply Comment Date: July 29, 2024

The Wireline Competition Bureau (WCB or Bureau) seeks comment on the petition of EMPOWER Broadband, Inc. (EMPOWER) to expand its Eligible Telecommunications Carrier (ETC) designated service area in Virginia.<sup>1</sup> EMPOWER seeks to expand its ETC designated service area to become eligible to receive Connect America Fund (CAF) Phase II Auction (Auction 903) support associated with certain census blocks (constituting complete census block groups (CGBs)) in Virginia, a subpart of an original CAF II support award authorized to RiverStreet Communications of Virginia, Inc.(RiverStreet).<sup>2</sup> In connection with this ETC petition, EMPOWER and RiverStreet have sought WCB's approval of a section 214 authorization transfer application to assign this support in addition to all rights, obligations, and conditions associated with the receipt of this support, which remains pending.<sup>3</sup>

<sup>1</sup> EMPOWER Broadband, Inc. Petition for Designation as an Expanded Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act of 1934, WC Docket No. 09-197 (filed May 14, 2024), <https://www.fcc.gov/ecfs/document/10514443805984/1> (ETC Petition). EMPOWER has been designated an ETC by the Commission in areas where it has been authorized to receive Connect America Fund (CAF) Phase II Auction and Rural Digital Opportunity Fund (RDOF) support, and as a Lifeline-only ETC in areas where it is not eligible to receive high cost support. See *Telecommunications Carriers Eligible for Universal Service Support, et al.*, WC Docket Nos. 09-197, 10-90, Order, 34 FCC Rcd 1966 (WCB 2019) (designating EMPOWER as an ETC in areas where it becomes authorized to receive CAF II support and additional areas for the purpose of becoming eligible to receive only lifeline support); *Connect America Fund II Support Authorized for 856 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 4725, Attach. A at 10 (AU/WCB 2019) (authorizing EMPOWER to receive \$1,868,320.00 in CAF II support in Virginia to serve 838 locations); *Telecommunications Carriers Eligible for Universal Service Support, et al.*, WC Docket Nos. 09-197, 10-90, Order, 36 FCC Rcd 9384 (WCB 2021) (designating EMPOWER as an ETC in areas where it becomes authorized to receive RDOF support); *Rural Digital Opportunity Fund Support Authorized For 469 Winning Bids*, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, DA 21-1287, Attach. A (WCB 2021) (authorizing EMPOWER to receive \$5,053,914.90 in RDOF support in Virginia to serve 3,602 locations).

<sup>2</sup> See ETC Application at 3, Exh. A1, List of Census Blocks in which Petitioner Seeks an Expanded Designation as a High-Cost and Low-Income (Lifeline) Eligible Telecommunications Carrier; *Connect America Fund Phase II Auction Support Authorized for 2,413 Winning Bids*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 34 FCC Rcd 5966, Attach. A at 118 (AU/WCB 2019) (authorizing RiverStreet to receive \$32,140,887.10 in CAF II support to serve 13,518 locations in eligible areas in Virginia).

<sup>3</sup> See Domestic Section 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations of RiverStreet Communications of Virginia, Inc. by Empower

(continued....)

Accordingly, the expansion of EMPOWER's ETC designated service area to include the Assigned CGBs will be conditioned upon approval of the 214 Transfer Application.<sup>4</sup> EMPOWER also seeks to expand its designation to include additional areas that are not eligible for high cost support but for which it intends to seek Lifeline support, which we will evaluate separately from the general ETC designation request to become eligible to receive support for areas where it may be authorized to receive high cost support.<sup>5</sup>

ETC designation is a prerequisite to receiving universal service support available through the high-cost and Lifeline programs.<sup>6</sup> To receive an ETC designation, a petitioner must, in addition to meeting high-cost program requirements and other related obligations as specified below, offer the Lifeline discount on all qualifying services in areas where it receives high-cost support, deploy a network capable of delivering service that meets the Lifeline program's minimum service standards, and commercially offer such service pursuant to its high-cost obligations.<sup>7</sup>

### Requirements for FCC ETC Designation

Section 254(e) of the Communications Act of 1934, as amended (the Act), provides that "only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific federal universal service support."<sup>8</sup> Congress gives primary authority for ETC designations to state commissions.<sup>9</sup> The Federal Communications Commission (FCC or Commission) has authority only when "a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>10</sup> The petitioner for ETC designation must demonstrate that the FCC has jurisdiction and may do so by submitting an "affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction."<sup>11</sup> The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.<sup>12</sup>

A petition for ETC designation by the FCC must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) a certification that the petitioner offers or intends to offer the supported services either

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Broadband, Inc., WC Docket No. 24-145 (filed May 14, 2024). Applicants provide a list of each of the CBGs to be assigned (Assigned CGBs). See Application, Exh. A (Census Block Groups, Location Figures and 10 Year CAF II Funding Amounts Applicants Propose to Assign from RiverStreet Communications of Virginia, Inc. to EMPOWER Broadband, Inc.) at 1. On May 15, 2024, Applicants filed a supplement to their domestic section 214 application. Supplement to Joint Domestic 214 Application for Consent to Assign Connect America Fund Phase II Auction Funding and Related Buildout and Service Obligations, WC Docket No. 24-145 (filed May 15, 2024) (Supplement).

<sup>4</sup> We will define the expanded designated service area based on the published list of CAF-eligible census blocks associated with the assigned CGBs, thus superseding any discrepancies in the ETC petition's descriptions of such areas. See Connect America Fund Phase II: Assignments - Assigned Census Blocks, [https://auctiondata.fcc.gov/public/projects/auction903/reports/all\\_assigned\\_census\\_blocks](https://auctiondata.fcc.gov/public/projects/auction903/reports/all_assigned_census_blocks).

<sup>5</sup> ETC Petition at 3; *id.* at Exh. A2, List of Census Blocks in which Petitioner Seeks Designation Solely as a Low-Income (Lifeline) Eligible Telecommunications Carrier.

<sup>6</sup> 47 U.S.C. § 254(e).

<sup>7</sup> 47 CFR part 54, subparts D, K, L, M.

<sup>8</sup> 47 U.S.C. § 254(e).

<sup>9</sup> *Id.* § 214(e)(2).

<sup>10</sup> *Id.* § 214(e)(6).

<sup>11</sup> See *Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000); 47 U.S.C. § 214(e)(6).

<sup>12</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

using its own facilities or a combination of its own facilities and resale of another carrier's services;<sup>13</sup> (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;<sup>14</sup> (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;<sup>15</sup> and (5) a certification that neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.<sup>16</sup>

In addition, a petitioner must demonstrate its ability to meet certain service standards. A petitioner seeking an ETC designation for purposes of becoming eligible to receive high cost support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) demonstrate its ability to remain functional in emergency situations; and (3) demonstrate its ability to satisfy applicable consumer protection and service quality standards.<sup>17</sup> To receive a Lifeline-only ETC designation, a petitioner must specifically commit to meeting Lifeline consumer enforcement and certification standards and describe how it intends to meet such standards.<sup>54</sup> Further, prior to designating a petitioner as an ETC pursuant to section 214(e)(6) of the Act, the Commission must determine whether such designation is in the public interest.<sup>18</sup>

### Comment Filing Requirements

Interested parties may file **comments on or before July 12, 2024** and **replies on or before July 29, 2024**. All pleadings must reference **WC Docket No. 09-197**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.<sup>19</sup>

- *Electronic Filers*: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs>.
- *Paper Filers*: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

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<sup>13</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

<sup>14</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

<sup>15</sup> An ETC's "service area" is set by the designating authority and is the geographic area within which an ETC has universal service obligations and may receive universal service support. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC's service area and an incumbent rural telephone company's service area, the Commission has separately forborne from imposing such requirements on Auction 904 support recipients. *See Rural Digital Opportunity Fund; Connect America Fund*, WC Docket Nos. 19-126, 10-90, Report and Order, 35 FCC Rcd 686, 728, paras. 93-94 (2020).

<sup>16</sup> 21 U.S.C. § 862; 47 CFR § 1.2002(a)-(b).

<sup>17</sup> *See* 47 CFR § 54.202(a).

<sup>18</sup> 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b). For CAF II support recipients, the Bureau waived certain requirements in section 54.202 of the Commission's rules and adopted a presumption that designation will serve the public interest. *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699-6701 (WCB 2019). Because EMPOWER will stand in the shoes of RiverStreet with respect to service and support for the Assigned CGBs if the 214 Transfer Application is approved, the Bureau finds that EMPOWER is in the same position as an Auction 903 awardee with respect to a future ETC designation conditioned upon such approval and is entitled to the same waivers and presumption.

<sup>19</sup> *See Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998); 63 Fed. Reg. 24121 (1998).

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.<sup>20</sup>

*Additional Copies.* Parties should send a copy of their filings to by e-mail to [Nissa.Laughner@fcc.gov](mailto:Nissa.Laughner@fcc.gov).

*People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

*Permit but Disclose Ex Parte Communications.* For the purposes of the Commission's *ex parte* rules, each petition submitted pursuant to section 214(e)(6) will be treated as initiating a permit-but-disclose proceeding under the Commission's rules.<sup>21</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies).<sup>22</sup> Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation.<sup>23</sup> If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum.<sup>24</sup> Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b).<sup>25</sup> In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable.pdf).<sup>26</sup> Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

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<sup>20</sup> See *FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy*, Public Notice, 35 FCC Rcd 2788 (OMD 2020), <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

<sup>21</sup> See 47 CFR § 1.1206.

<sup>22</sup> *Id.* § 1.1206(b)(2)(iii).

<sup>23</sup> *Id.* § 1.1206(b)(1).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* § 1.1206(b)(2).

<sup>26</sup> *Id.* § 1.1206(b)(2)(i); see also *id.* § 1.49(f).

For additional information on this proceeding, please contact Nissa Laughner [Nissa.Laughner@fcc.gov](mailto:Nissa.Laughner@fcc.gov) of the Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418-7400.

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