

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0028T

IN THE MATTER OF THE APPLICATION OF LUMINATE FIBER LLC FOR ELIGIBLE TELECOMMUNICATIONS CARRIER DESIGNATION FOR PURPOSES OF RECEIVING RURAL DIGITAL OPPORTUNITY FUND PHASE I AND LIFELINE SUPPORT.

DECISION GRANTING AMENDED APPLICATION SUBJECT TO CONDITIONS

Mailed Date: April 19, 2021
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TABLE OF CONTENTS

I. STATEMENT.....1

 A. Summary.....1

 B. Background.....2

 C. Luminate’s Application for ETC Designation3

 1. Federal Requirements for ETC Designation5

 3. Colorado Requirements for ETC Designation8

 2. Requested Waivers9

II. ORDER.....11

 A. The Commission Orders That:11

 B. ADOPTED IN COMMISSIONERS’ WEELY MEETING May 3, 2021.....12

I. STATEMENT

A. Summary

1. This Decision addresses the Application for Eligible Telecommunications Carrier (ETC) Designation for Purposes of Receiving Rural Digital Opportunity Fund (RDOF) Phase 1

and Lifeline Support filed by Luminate Fiber, LLC (Luminate or Company), doing business as Luminate Broadband, on January 5, 2021, and amended on February 17, 2021, with an additional filing made on February 23, 2021 (Affidavit Attestation, all filings abbreviated as the Amended Application). We grant the Amended Application subject to the conditions specified below.

B. Background

2. Since 1996, the Federal Communications Commission (FCC) has provided subsidies (known as federal universal service support), and imposed obligations on the recipients thereof, to provide landline (and since 2011, broadband internet) service to underserved areas. Relevant here, the FCC's Connect America Fund provides "up to \$ 1.8 billion to be spent annually to make broadband-capable infrastructure available to as many unserved locations as possible," and the agency has "adopted rules to apply generally for competitive bidding to award universal service support." To more efficiently allocate these funds, the FCC periodically undertakes auctions in which providers may bid to provide service and receive federal support. In late 2020, the FCC conducted "Auction 904" to allocate federal universal support to certain underserved census blocks, including some located in Colorado.

3. The RDOF Phase I auction (Auction 904) concluded on November 25, 2020. There were 180 winning bidders, with the budgeted ten-year support amount totaling \$9.23 billion and covering 5,220,833 census locations, in 49 states and 1 territory. Approximately 99 percent of the locations are covered by winning bids. Downstream speeds of at least 100 megabytes per second (Mbps) cover 99.7 percent of these locations and over 85 percent of locations covered by gigabit service. The auction was technologically neutral and prioritized bids for higher speeds and lower latency. In Colorado, eight bidders have won RDOF funding, with

assigned support of over ten years totaling \$249,883,710 and a total of 76,216 census blocks awarded.

4. Prior to June 7, 2021, winning bidders in Auction 904 must submit to the FCC financial statements that have been audited by an independent certified public accountant, including the balance sheets, statements of net income and cash flow, along with an opinion letter from an independent certified public accountant and the accompanying notes. An irrevocable standby letter of credit for each state where the applicant received awarded status is required. The letter of credit at a minimum must cover the first year of support. The value of the letter of credit must increase each year until it has been verified that the support recipient has met certain service milestones.

5. As well, a professional engineer must certify that they have reviewed each state network diagram and that the network is capable of delivering, at least 95 percent of the requisite performance requirements. Lastly, as a condition of receiving the “universal support” resulting from these auctions, auction winners (like the Applicant here) must receive an ETC designation from the public utilities commission(s) in the state(s) in which the winner seeks to provide service.

C. Luminate’s Application for ETC Designation

6. On January 5, 2021, Luminate filed an Application for Designation as a High Cost Eligible Telecommunications Carrier in the State of Colorado to Receive Rural Digital Opportunity Fund pursuant to Rule 2187 of the Commission’s Rules Regulating Telecommunications Services and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* 723-2, and a Request for Expedited Consideration.

7. On January 7, 2021, the Commission issued a notice of the Application and provided 30 days for interested persons to intervene.

8. On February 17, 2021, Luminate filed a Motion to Amend Application. The Company also attached a series of Exhibits to its Amended application. On February 23, 2021, Luminate filed an Affidavit Attestation for its Amended Application.

9. In its Amended Application, Luminate states that it was a winning bidder in the FCC's RDOF or Auction 904 to provide voice and broadband services in certain areas in Colorado defined by census blocks that lack these services at minimum speeds. Luminate states that it will deploy and operate a new state-of-the-art, low latency, fiber-to-the-home network that will provide high-speed broadband Internet access and Voice over Internet protocol (VoIP) services in rural areas of Colorado that currently lack access to such high-speed, broadband services. In order to be eligible to receive federal RDOF funds, winning bidders in the RDOF Auction must obtain ETC status in the state in which the carrier will provide service. State commissions are authorized under Article 47 U.S.C. § 214(e) to designate a company as an ETC if that company meets state and federal requirements as an ETC. Rules 2187 and 2002(b) of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services set out requirements for ETC designation.

10. Luminate is a wholly-owned subsidiary of Yampa Valley Electric Association, Inc. Luminate is also part of a group of companies that submitted a combined bid in Auction 904 as the Rural Electric Cooperative Consortium (RECC). The FCC, on December 7, 2020, announced the winning bidders of the RDOF auction. The RECC was one of those winning bidders. In a subsequent public announcement, on February 18, 2021, the FCC identified Luminate as having complied with the submission of its Long Form (FCC Form 683)

requirements, enabling it to continue to the post-auction review process. If Luminate is successful in the review performed by the FCC, it will become eligible to receive monthly RDOF funding for a period of ten years. In Colorado, Luminate was awarded 629 census blocks for a total award of \$21,802,776.

11. Luminate included in its original application a request that the Commission grant its Lifeline only ETC designation in census blocks other than those where it has been awarded RDOF funding. The list of census blocks where Luminate is requesting Lifeline only designation is included as Exhibit A2 of its Application.

1. Federal Requirements for ETC Designation

12. In order to be designated as a Federal ETC under the Federal Act, a provider must establish that it will: (a) provide the supported services throughout its designated service areas “either using its own facilities or a combination of its own facilities and resale of another carrier's services;”¹ (b) advertise its universal service offerings and the charges thereof, using media of general distribution;² (c) comply with the service requirements applicable to the support that it receives;³ and (d) be able to remain functional during emergency situations, including a demonstration that it 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 emergency situations.⁴

¹ 47 U.S.C. § 214(e)(1)(A); 47 *Code of Federal Regulations* (C.F.R.) § 54.201(d)(1).

² 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2).

³ 47 C.F.R. § 54.202(a)(1)(i).

⁴ 47 C.F.R. § 54.202(a)(2).

13. In addition, as to supported voice telephony services, the provider must also provide evidence that it will provide: (a) its supported voice services as a common carrier;⁵ (b) voice grade access to the public switched telephone network or its functional equivalent; (c) local usage;⁶ (d) access to emergency services;⁷ and (e) toll-limitation for qualifying low-income consumers.⁸

14. RDOF applicants are also subject to multiple obligations, service requirements, service milestones, reporting, and record retention requirements. Annual reporting for high-cost recipients includes, but is not limited to, Annual ETC certification for each state awarded, broadband deployment reporting, including number of locations deployed and served in each state, including where they are offering service at the required speeds and the technology used to serve those areas.⁹

15. In addition, there are FCC deployment obligations. Forty percent of the required number of locations need to be served by the end of the third year, 60 percent by the end of the fourth year, and 80 percent by the end of the fifth year of when funding is received. Full deployment is required by the end of the sixth year. The Wireline Competition Bureau will publish updated location counts no later than the end of the sixth year. Annually, RDOF recipients are required to submit deployment data (build out and high-speed internet service by latitude and longitude) to the High Cost Universal Broadband portal (HUBB). HUBB also

⁵ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d).

⁶ 47 C.F.R. § 54.101(a)(1).

⁷ *Id.*

⁸ *Id.*

⁹ 47 CFR §§ 54.804(c)(4), 54.320, 54.806

performs an in depth review to substantiate broadband deployment and confirm carrier build out as required.¹⁰

16. Finally, as to the supported broadband internet access services, the provider must establish that those services are capable of transmitting and receiving data, excluding dial-up service.¹¹ A provider must demonstrate that it will satisfy applicable consumer protection and service quality standings pursuant to 47 C.F.R. § 54.202(a)(1)(ii), (a)(3), respectively.¹²

17. Here, in its Amended Application, Luminate attests that it will provide VoIP and gigabit tier broadband services throughout its designated service areas using its own facilities or a combination of its own facilities and resale of another carrier's services, and advertise its universal service offerings and the charges thereof, using media of general distribution.¹³ Luminate also states that it will comply with applicable consumer protection and service quality standards,¹⁴ and has the capability to remain functional during emergency situations because it has “at least eight hours of battery back-up and a standby generator capable of running extended periods in the event of a major electrical outage.”¹⁵ Luminate also has redundancy in terms of routing traffic and the capability to manage data spikes resulting from emergency situations.¹⁶

¹⁰ <https://www.usac.org/high-cost/annual-requirements/submit-data-in-the-hubb/>

¹¹ 47 CFR §§ 54.804(c)(4), 54.320 and 54.806.

¹² See *WCB Reminds Connect America Fund Phase II Applicants of the Process for Obtaining Federal Designation as an Eligible Telecommunications Carrier*, WC Docket Nos. 09-197, 10-90, Public Notice DA 18-714, 2018 FCC LEXIS 1751, *12 (rel. July 10, 2018) (*WCB's Reminder of Process for ETC Designation*).

¹³ Application, filed January 5, 2021, pp. 7-8.

¹⁴ Application, filed January 5, 2021, p. 9.

¹⁵ Application, filed January 5, 2021, pp. 8-9.

¹⁶ Application, filed January 5, 2021, pp. 8-9.

18. As to its VoIP service, Luminate attests in the Application that it will provide voice grade access to the public switched telephone network and will include local usage, unlimited access to emergency services E-911, wherever available from local government or public safety organizations, and toll-limitation services for qualifying low-income consumers.¹⁷ Luminate also states that it will provide its proposed VoIP service as a common carrier.¹⁸

19. Finally, Luminate attests in its Amended Application that its broadband internet access services will provide the capability to transmit and receive data from all or substantially all Internet endpoints.¹⁹

20. Accordingly, Luminate has shown that it meets the federal requirements for ETC designation under 47 U.S.C. § 214(e) and 47 C.F.R. §§ 54.101(a), 54.201(d) and 54.202(a).

3. Colorado Requirements for ETC Designation

21. As noted above, Rule 2187 of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services sets out requirements for ETC designation. Rule 2187 requires an applicant for ETC designation to: (a) provide a description of the service area for which the applicant seeks designation as an ETC either by metes and bounds or the underlying carrier's exchange area map;²⁰ (b) establish that it meets the requirements of 47 CFR §§ 54.201(d) and 54.202;²¹ (c) affirm that it is a common carrier, will advertise the services and associated charges, make Lifeline available in all locations where it has been awarded support, and that it is in compliance with applicable Commission

¹⁷ Application filed January 5, 2021, p. 11.

¹⁸ Application, filed January 5, 2021, p. 12.

¹⁹ Application, filed January 5, 2021, p. 12.

²⁰ Rule 2187(d)(II), 4 CCR 723-2.

²¹ Rule 2187(d)(III-IV), 4 CCR 723-2.

rules;²² (d) establish that it will remain functional in emergency situations;²³ (e) satisfy consumer protection and service quality standards;²⁴ and (f) provide a two-year build-out plan.²⁵

22. Here, as noted above, Luminate's Amended Application establishes the requirements of 47 C.F.R §§ 54.201(d) and 54.202. In its Application, Luminate also attests that it will provide its VoIP services as a common carrier,²⁶ offer Lifeline in all locations where it has been awarded RDOF support,²⁷ remain functional during emergency situations,²⁸ satisfy consumer protection and service quality standards,²⁹ and comply with all applicable Commission rules.³⁰ Accordingly, we find that Luminate has, with the exception of the two waivers discussed below, met the Commission's Rules and qualifies for both ETC designations it seeks: the RDOF-related high-cost service areas (Application Exhibit A1) and Lifeline-only service areas (Application Exhibit A2).

2. Requested Waivers

23. In its Amended Application, Luminate is seeking a waiver of Rule 2187, Section (d)(II), which requires a description of a service area by metes and bounds or underlying carrier exchange area map. Phase I RDOF support has been awarded to Luminate by the FCC on the basis of census block geographic areas. Luminate is asking this Commission to accept a list

²² Rule 2187(d)(V-VIII), 4 CCR 723-2.

²³ Rule 2187(d)(IX), 4 CCR 723-2.

²⁴ Rule 2187(d)(X), 4 CCR 723-2.

²⁵ Rule 2187(d)(XI), 4 CCR 723-2.

²⁶ Application, filed January 5, 2021, p. 12.

²⁷ Application, filed January 5, 2021, p. 12.

²⁸ Application, filed January 5, 2021, p. 8.

²⁹ Application, filed January 5, 2021, p. 9.

³⁰ Application, filed January 5, 2021, p. 13.

of its awarded census blocks, in addition to maps of the requested ETC designation areas (both of which it has provided) rather than the metes and bounds description required by the Rule.

24. Because the FCC allocated service areas to winning bidders in Auction 904 by census blocks, it makes sense that we accept those census blocks, along with the maps Luminate provided, in lieu of the traditional metes and bounds description. Luminate's maps and census block identifiers locate with a good degree of particularity, the service area in which it will offer the services for which it seeks ETC designation, and therefore we find good cause to waive the rule.³¹

25. Luminate is also seeking a waiver of Commission Rule 2187(d)(XI) which traditionally requires a two-year build-out plan.³² The FCC's requirements for RDOF support recipients are somewhat different. Rather than a two-year build-out plan, the FCC requires winning bidders include a detailed system map that is certified by an engineer and sets specific milestones for service implementation. Support recipients are required to have 40 percent of their network built out by the end of the third year of receiving support with full buildout by the end of the sixth year of funding. Providers are required by the FCC to report their network build outs by location into the HUBB. This serves to monitor the service milestones and identify where funding recipients are able to offer service within ten business days as well as to assist in preparing coverage maps. Given that the auction winners are receiving federal support, and that the FCC has similar robust design and build-out requirements, we find good cause to waive our

³¹ See *Rural Digital Opportunity Fund Phase I (Auction 904)*; AU Docket No. 20-34, WC Docket No. 19-126, Public Notice DA 20-1422. See also Decision No. C18-1094 issued in Proceeding No. 18A-0665T on December 10, 2018 at 7 (¶¶ 21, 26(a)) (waiving requirement in Rule 2187(d)(II) based on the FCC's requirement that ETC designations based on the award of CAF II funding be made on a census block basis).

³² Application, dated January 5, 2021, p. 8.

two-year build-out plan requirement. We note that the FCC, and the public, can monitor the progress of build outs by using HUBB.

26. Overall, the Commission finds that Luminare has satisfied the requirements for ETC designation and that granting the Amended Application and designating Luminare as a high cost ETC and Lifeline ETC is in the public interest. The Amended Application shall be granted, subject to the following conditions:

Luminare must notify the Commission by filing in this proceeding, every six months from the commencement of RDOF funding, a report indicating: (1) the cumulative status and locations of its construction (build out); and (2) In which of its Auction 904 Colorado census blocks it currently offers high speed broadband internet access.

Luminare shall inform the Commission, by making a filing in this proceeding, of the status of its RDOF approval with the FCC within ten days of notification from the FCC.

Within 30 days of the date reported to the FCC, Luminare shall notify the Commission by making a filing in this proceeding if it has not met its FCC deployment build out milestones.

21. These conditions will ensure that the Commission and the public are aware of the progress Luminare is making in the important task of bringing broadband to underserved areas in Colorado. Finally, we reiterate that Luminare must comply with all applicable Commission rules, including, but not limited to, remitting its Colorado High Cost Support Mechanism, TRS, and E911 surcharges for its ETC service areas.

II. ORDER

A. The Commission Orders That:

1. The Application for Eligible Telecommunications Carrier Designation for Purposes of Receiving Rural Digital Opportunity Fund (RDOF) Phase 1 and Lifeline Support filed by Luminare Fiber, LLC, doing business as Luminare Broadband, on January 5, 2021, and amended on February 17, 2021 is granted, subject to the conditions discussed above.

2. This Proceeding will remain open to allow filings to be made. The filing obligations set forth above will end when full deployment of facilities under the RDOF Program is made and reported to the Federal Communications Commission.

3. This Decision is effective on its mailed date.

**B. ADOPTED IN COMMISSIONERS' WEELY MEETING
May 3, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners