

Decision No. C24-0758

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 24A-0379T

IN THE MATTER OF THE APPLICATION OF EMERY TELECOMMUNICATIONS & VIDEO, INC. FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF COLORADO.

**COMMISSION DECISION DEEMING APPLICATION
COMPLETE AND GRANTING APPLICATION**

Issued Date: October 24, 2024

Adopted Date: October 16, 2024

I. BY THE COMMISSION

A. Summary

1. This Decision addresses the Application for Designation as an Eligible Telecommunications Carrier (“ETC”) filed by Emery Telecommunications & Video, Inc. (“Emery”) on September 4, 2024 (“Application”). Through its Application, Emery seeks to be designated as an ETC to provide Lifeline-only service to the non-tribal areas of Mesa, San Miguel, Dolores, and Montezuma Counties. We grant the Application consistent with the discussion below.

B. Application for ETC Designation

2. In its Application, Emery seeks to be designated as a Lifeline-only ETC throughout Colorado pursuant to Sections 214 and 254 of the Telecommunications Act of 1996 and Rule 2187 of the Rules Regulating Telecommunications Providers and Providers of Telecommunications Services, 4 *Code of Colorado Regulations* (“CCR”) 723-2, as well as Federal Communications Commission (“FCC”) Universal Service, 47 *Code of Federal Regulations* (“CFR”) § 54.101, *et seq.*

3. Emery represents that it is not eligible to seek access to funds from the Federal Universal Service Fund for the purpose of participating in the Link-Up program or providing service in high-cost areas.

4. Emery seeks designation as an ETC in the non-tribal areas of Mesa, San Miguel, Dolores, and Montezuma Counties, where Emery will offer voice and broadband services either using its facilities or a combination of its facilities and transport over other carriers' networks, pursuant to Section 214(e)(2) of the Telecommunications Act of 1996 and Rule 2187, 4 CCR 723-2, as well as FCC Universal Service, 47 CFR §§ 54.101 through 54.207, including voice grade access to the Public, Switched Telephone Network, and access to emergency services provided by local government or public safety organization, such as 911 and enhanced 911.

5. The Commission gave public notice of the Application on September 5, 2024.

6. On September 17, 2024, Emery supplemented its application by submitting updated maps of the proposed service area.

1. Federal Requirements for ETC Designation

7. The Federal Telecommunications Act of 1996 changed the federal approach to ensuring that the nation's population has access to landline telephone service, known as "universal service." *WWC Holding Co. v. Sopkin*, 488 F.3d 1262, 1267 (10th Cir. 2007). To develop the infrastructure necessary to provide universal service, Congress created a federal fund to which telecommunications carriers contribute. *Id.* Carriers who are designated as an ETC may receive funding from this source as a public subsidy which is known as federal universal service support. The FCC distributes universal service support to eligible carriers designated as ETCs; it has also established requirements to receive ETC designation. *See generally*, 47 CFR § 54.101 *et seq.* In 2011, the FCC expanded the definition of "universal service" to include broadband service,

thereby redirecting federal support to “networks capable of providing voice and broadband services.” *In the Matter of Connect Am. Fund*, 31 FCC Rcd. 5949, 5952, (2016). To receive universal support funds, regulated telecommunications carriers must receive an ETC designation from the Public Utilities Commission in the state in which the provider seeks to provide universal service. 47 U.S.C. § 214(e)(2).

8. In deciding whether to designate a carrier as an ETC, the Commission must find that the provider meets the federal requirements for such a designation in accordance with 47 U.S.C. § 214(e)(2). To be designated as an ETC, a provider must: (a) deliver 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” per 47 U.S.C. § 214(e)(1)(A) and 47 CFR § 54.201(d)(1); (b) advertise its universal service offerings and the charges thereof, using media of general distribution per 47 U.S.C. § 214(e)(1)(B) and 47 CFR § 54.201(d)(2); (c) certify that it will comply with the service requirements applicable to the support that it receives, per 47 CFR § 54.202(a)(1)(i); (d) submit a five-year build-out plan describing proposed improvements or upgrades to its network except for carriers seeking Lifeline-only ETC designation, per 47 CFR § 54.202(a)(1)(ii); and (e) demonstrate that it will comply with applicable consumer protection and service quality standards per 47 CFR § 54.202(a)(3).

9. In addition, a provider must also establish that it can remain functional during emergency situations, by demonstrating that it: (a) has a reasonable amount of backup power to ensure functionality without an external power source; (b) is able to reroute traffic around damaged facilities; and (c) is capable of managing traffic spikes resulting from emergency situations, per 47 CFR § 54.202(a)(2).

10. Common carriers seeking ETC designation for Lifeline-only universal service support must also: (a) demonstrate they are financially and technically capable of providing Lifeline service; (b) submit information describing the terms and conditions of telephony service plans, including minutes provided, additional charges if any for toll calls, and plan rates; and (c) submit information describing the terms and conditions of broadband internet access service plans, including speeds offered, data usage allotments, any additional charges and plan rates 47 CFR § 54.202(a)(4) to (6).

11. Finally, in determining whether to designate a carrier as an ETC, the Commission must find that the designation is in the public interest. 47 U.S.C. § 214(e)(2). The FCC encourages state commissions to conduct a public interest analysis that includes the examination of (a) the benefits of increased consumer choice; (b) the impact of the designation on the universal service fund; and (c) the unique advantages and disadvantages of the competitor's service offering, provided guidance on factors to consider in determining whether granting an ETC designation is in the public interest. *In the Matter of Federal-State Joint Board on Universal Service*, 20 FCC Rcd. 6371, 6379 (2005).

2. Colorado Requirements for ETC Designation.

12. Rule 2187 of the Commission's Rules Regulating Telecommunications Services and Providers of Telecommunications Services sets out requirements for ETC designation. Many of those mirror the federal requirements. Specifically, ETC applicants must:

- a) describe the ETC service area by metes and bounds or by providing the carrier's exchange area map;
 1. establish that it meets the requirements of 47 C.F.R. §§ 54.201(d) and 54.202;
 2. affirm that it is a common carrier, will advertise the services and associated charges, make Lifeline services available in all locations where it has been awarded support to qualifying

- low-income customers, and that it complies with applicable Commission rules;
3. establish that it will remain functional in emergency situations;
 4. satisfy consumer protection and service quality standards; and
 5. provide a two-year build-out plan demonstrating how high-cost universal service support will be used to improve coverage, service quality, or capacity.

Rule 2187(d)(II) to (XI), 4 CCR 723-2.

13. Rule 2187(d)(I) also requires ETC applicants to provide the information required by Rule 2002(b) with their applications.

14. Carriers who are granted an ETC designation must offer the supported services within one year of the Commission's decision approving the application for ETC designation in accordance with Rule 2187(e).

C. Findings, Analysis, and Conclusions

15. Having reviewed the Application, we are satisfied that the Application meets the referenced federal requirements, and the Commission's requirements, and we conclude that designating Emery a Lifeline-only ETC in Colorado is in the public interest. We highlight a few of the reasons put forth in the Application, below.

16. Emery is a common carrier as defined by 47 U.S.C. § 153(10) and 47 CFR § 20.9(a)(7). Emery provides each of the supported services set forth in 47 CFR § 54.101(a), as amended by the Lifeline Reform Order, and has shown intent and ability to offer those services once designated an ETC in Colorado. Emery indicates that it will satisfy applicable consumer protection and service quality standards.

17. Emery asserts that being designated as an Eligible Telecommunications Carrier (ETC) in Colorado will serve the public interest by helping to provide voice and broadband

services in rural, high-cost areas through a combination of their fiber optic network and transport over other carriers networks.

18. We concur with Emery and conclude that granting Emery Lifeline-only ETC designation is in the public interest.

D. Waiver of Commission Rules.

19. In its Application, Emery requests the Commission waive Rule 2187 Section (d)(II), which requires an applicant for ETC designation to provide a description of the service area in which an applicant seeks designation either with a description by metes and bounds or by the underlying carriers' exchange area maps. In the supplement to its Application, Emery provided the underlying carriers map negating any need for a waiver.

20. Emery also seeks a waiver of the provisions in Rule 2187(d)(XI), ETC applicants are required to provide a two-year buildout plan. Emery points out that it does not seek access to funds from the federal Universal Service Fund, and therefore we find good cause to grant this waiver.

E. Additional Statements

21. The Commission wishes to highlight certain requirements contained in our rules that pertain to companies designated as ETCs. In this case:

- a) Emery shall provide its ETC Lifeline universal service offerings throughout Colorado.
- b) Emery is not authorized to provide Lifeline service on federally recognized tribal reservations in the State of Colorado.
- c) Emery shall submit all reports, fees, surcharges, and any other obligation due and owing to the Colorado Public Utilities Commission or its assignee.
- d) Emery must comply with state and federal ETC reporting and certification obligations and must provide copies of these federal reports to the Commission.
- e) Emery must offer the Lifeline service authorized by this Decision within one year of the effective date of this Decision.

- f) Emery must notify the Commission 20 days prior to its initial offering and offering any new services or making any changes in its service plans through an informational filing with the Director of the Commission; the filing must detail the rates and speeds, as well as the terms and conditions, associated with the initial plans and any new plans.
- g) Emery must offer a variety of packages for its services with varying service terms and the early termination of a service agreement must result in an early termination fee that is less than the sum of the monthly fees for the remaining months of the term.
- h) Emery must not subject its Lifeline customers who subscribe to standalone voice services to a minimum service term.

II. ORDER

A. The Commission Orders That:

1. Emery's Application for designation as a Lifeline-only Eligible Telecommunications Carrier is deemed complete for purposes of § 40-6-109.5, C.R.S., and is granted.
2. The Commission grants Emery's request to waive Commission Rule 2187(d)(XI).
3. The 20-day period provided for in § 40-6-114, C.R.S., within which to file an Application for Rehearing, Reargument, or Reconsideration begins on the first day following the effective date of this Decision.

4. This Decision is effective upon its Issued Date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
October 16, 2024.**

(S E A L)



ATTEST: A TRUE COPY

Rebecca E. White,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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Commissioners