

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

PROCEEDING NO. 21A-0170T

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

**DECISION GRANTING APPLICATION
SUBJECT TO CONDITIONS**

Mailed Date: May 27, 2021
Adopted Date: May 26, 2021

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I. STATEMENT

A. Summary

1. This Decision addresses the Application for Eligible Telecommunications Carrier (ETC) Designation for Purposes of Receiving Federal Universal Service Support from the

Federal Communications Commission (FCC) Rural Digital Opportunity Fund (RDOF) filed by Conexon Connect, LLC (Conexon), on May 4, 2021 (all filings referred to as the Application). This Decision also addresses Conexon's Motion for Waiver of Commission Rules (Motion) requesting a waiver of certain Commission rules. We grant the Motion, and we grant the Application subject to the conditions specified below.

B. Background

2. Since 1996, the 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. 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 the locations were covered by gigabit service. The auction was technology-neutral and prioritized bids for higher speeds and lower latency. In Colorado, eight bidders won RDOF

funding, with assigned support of over ten years totaling \$249,883,710 and a total of 76,216 census blocks were awarded.¹

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 an award 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. Conexon’s Application for ETC Designation

6. On May 4, 2021, Conexon filed this second Application for Designation as a High Cost Eligible Telecommunications Carrier in the State of Colorado pursuant to Rule 2187 of the Commission’s Rules Regulating Telecommunications Services and Providers of

¹ On December 7, 2020, the FCC announced that Conexon was a winning bidder in Auction 904.

Telecommunications Services, 4 *Code of Colorado Regulations* 723-2.² Conexon requests that a final Commission decision be made by June 7, 2021. Alongside its Application, Conexon filed a Motion for Shortened Notice and Intervention Period and Request for Waiver of Response Time. By Decision No. C21-0295-I, the Commission noticed the Application and granted the Motion on May 14, 2021, and set the notice and intervention deadline to expire on May 21, 2021.

7. On February 18, 2021, the FCC identified Conexon 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 Conexon 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, Conexon was awarded 2616 census blocks for a total award of \$56,505,073.³

8. In its Application, Conexon states that it was a winning bidder in the FCC's Auction 904 and will offer low-latency broadband service of at least 1 gigabit per second downstream and 500 Mbps upstream, and providing at least 2 terabytes of monthly usage to rural communities in Colorado. Conexon represents 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.

1. Federal Requirements for ETC Designation

9. 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

² The first application was dismissed because it sought ETC designation for service on both tribal land and non-tribal land in Colorado. After dismissal, Conexon bifurcated its applications. First, it filed an application for ETC designation in tribal areas with the FCC, and then it filed this application regarding certain non-tribal areas in Colorado.

³ FCC Public Notice (DA 21-170).

carrier's services;⁴ (b) advertise its universal service offerings and the charges thereof, using media of general distribution;⁵ (c) comply with the service requirements applicable to the support that it receives;⁶ 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.⁷

10. 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;⁸ (b) voice grade access to the public switched telephone network or its functional equivalent; (c) local usage;⁹ (d) access to emergency services;¹⁰ and (e) toll-limitation for qualifying low-income consumers.¹¹

11. 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.¹²

⁴ 47 U.S.C. § 214(e)(1)(A); 47 *Code of Federal Regulations* (C.F.R.) § 54.201(d)(1) (2020).

⁵ 47 U.S.C. § 214(e)(1)(B); 47 C.F.R. § 54.201(d)(2) (2020).

⁶ 47 C.F.R. § 54.202(a)(1)(i) (2020).

⁷ 47 C.F.R. § 54.202(a)(2) (2020).

⁸ 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201(d) (2020).

⁹ 47 C.F.R. § 54.101(a)(1) (2020).

¹⁰ *Id.*

¹¹ *Id.*

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

12. 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 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 performs an in depth review to substantiate broadband deployment and confirm carrier build out as required.¹³

13. 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.¹⁴ 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) and (a)(3), respectively.¹⁵

14. Here, in its Application, Conexon states that it will provide broadband supported services using its own facilities¹⁶ and advertise its universal service offerings and the charges thereof, using media of general distribution.¹⁷ Conexon also states that it will comply with applicable consumer protection and service quality standards,¹⁸ and has the capability to remain functional during emergency situations because it “will have a reasonable amount of back-up

¹³ <https://www.usac.org/high-cost/annual-requirements/submit-data-in-the-hubb/>.

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

¹⁵ 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*).

¹⁶ Application, filed May 4, 2021, pp. 9-10.

¹⁷ Application, filed May 4, 2021, p. 10.

¹⁸ Application, filed May 4, 2021, p. 12.

power to ensure functionality without an external power source.”¹⁹ Conexon also has redundancy in terms of rerouting traffic and the capability to manage data spikes resulting from emergency situations.²⁰

15. As to its VoIP service, Conexon states in its Application that it “will utilize its own fiber optic network, and associated fiber optic equipment and other facilities, to provide all services supported by federal universal service support mechanisms, including VoIP-enabled voice and broadband service.”²¹ Conexon also affirms that it will provide its proposed services as a common carrier.²²

16. Accordingly, we are satisfied that Conexon has shown 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).

2. Colorado Requirements for ETC Designation

17. 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;²³ (b) establish that it meets the requirements of 47 CFR §§ 54.201(d) and 54.202;²⁴ (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,

¹⁹ Application, filed May 4, 2021, p. 11.

²⁰ Application, filed May 4, 2021, p. 11.

²¹ Application, filed May 4, 2021, pp .9-10.

²² Application, filed May 4, 2021, p. 16.

²³ Rule 2187(d)(II), 4 CCR 723-2.

²⁴ Rule 2187(d)(III-IV), 4 CCR 723-2.

and that it is in compliance with applicable Commission rules;²⁵ (d) establish that it will remain functional in emergency situations;²⁶ (e) satisfy consumer protection and service quality standards;²⁷ and (f) provide a two-year build-out plan.²⁸

18. Here, Conexon's Application establishes the requirements of 47 C.F.R §§ 54.201(d) and 54.202. In its Application, Conexon confirms that it will provide its services as a common carrier,²⁹ offer Lifeline in all locations where it has been awarded RDOF support,³⁰ remain functional during emergency situations,³¹ satisfy consumer protection and service quality standards,³² and comply with all applicable Commission rules.³³ Accordingly, we find that Conexon has, with the exception of the three waivers discussed below, met the Commission's Rules and qualifies for the ETC designation it seeks for its RDOF awarded high-cost service areas.

3. Requested Waivers

19. In its Application, Conexon 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 Conexon by the FCC on the basis of census block geographic areas. Conexon is asking this Commission to accept its list of awarded non-tribal census blocks, attached to the Application as Exhibit A, in addition to the

²⁵ Rule 2187(d)(V-VIII), 4 CCR 723-2.

²⁶ Rule 2187(d)(IX), 4 CCR 723-2.

²⁷ Rule 2187(d)(X), 4 CCR 723-2.

²⁸ Rule 2187(d)(XI), 4 CCR 723-2.

²⁹ Application, filed May 4, 2021, p.16.

³⁰ Application, filed May 4, 2021, p.16.

³¹ Application, filed May 4, 2021, pp.11-12.

³² Application, filed May 4, 2021, p.15.

³³ Application, filed May 4, 2021, p. 17.

maps attached as Exhibit B, instead of a metes and bounds description. 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 Conexon provided. Conexon's map and census block identifiers locate with a good degree of particularity the areas in which it will offer the services for which it seeks ETC designation, and therefore we find good cause to waive the rule.

20. Conexon is also seeking waivers of Rule 2187 Section (d)(XI), which requires a two-year build-out plan, Rule 2187 Section (d)(III), which requires the applicant to submit a five-year plan proposing improvements or upgrades to its network, and Rule 2187(e), which requires an ETC to begin offering supported services within one year of the effective date of the Commission approving an ETC designation.

21. The FCC's buildout and in-service requirements for RDOF support recipients are somewhat different than those set forth in this Commission's Rules. Rather than a two-year build-out plan, the FCC requires winning bidders to 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 robust design, build-out, and in-service requirements, we find good cause to waive our two-year build-out plan, five-year

upgrade plan, and the one-year in-service requirements. We note that the FCC, and the public, can monitor the progress of buildout by using the HUBB.

22. Overall, the Commission finds that Conexon has satisfied the requirements for ETC designation and that granting the Application and designating Conexon as a high cost ETC is in the public interest.

23. Accordingly, the Application shall be granted, subject to the following conditions:

- Conexon 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.
- Conexon 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, Conexon shall notify the Commission by making a filing in this proceeding if it has not met its FCC deployment build out milestones.

24. These conditions will ensure that the Commission and the public are aware of the progress Conexon is making in the important task of bringing broadband to underserved areas in Colorado. Finally, we reiterate that Conexon must comply with all applicable Commission rules, including, but not limited to, remitting its Colorado High Cost Support Mechanism, Telecom Relay Service, 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 Phase 1, filed by Conexon Connect LLC on May 4, 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 Rural Digital Opportunity Fund program is made and reported to the Federal Communications Commission.

3. This Decision is effective on its mailed date.

**B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING
May 26, 2021.**

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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JOHN GAVAN

MEGAN M. GILMAN

Commissioners