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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held July 15, 2021 |
| Commissioners Present: |  |

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| Gladys Brown Dutrieuille, Chairman | | |
| David W. Sweet, Vice Chairman | | |
| John F. Coleman, Jr. | |
| Ralph V. Yanora | |
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| Petition of Time Warner Cable Information Services (Pennsylvania), LLC for Designation as an Eligible Telecommunications Carrier | P-2021-3023594 |

**ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for disposition is the January 6, 2021 Petition of Time Warner Cable Information Services (Pennsylvania), LLC (TWCIS), as supplemented, in which it is seeking designation as an Eligible Telecommunications Carrier (ETC) in the Commonwealth of Pennsylvania for the purpose of receiving federal Universal Service Fund (USF) high-cost support, pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 214(e)(2), and Sections 54.101, 54.201-54.203 and 54.205-54.209 of the Federal Communications Commission’s (FCC) regulations, 47 C.F.R. §§ 54.101, 54.201-54.203 and 54.205-54.209, and 52 Pa. Code § 69.2501.

Specifically, TWCIS is required to obtain a designation as an ETC from the Commission for it to be eligible to receive the federal high-cost support funding it has been awarded in the FCC’s Rural Digital Opportunity Fund (RDOF) auction (Auction 904). As such, TWCIS is required to certify to the FCC that it has received designation as a high-cost ETC in all the eligible census block in Pennsylvania for which TWCIS submitted a winning bid and has been awarded Auction 904 support.

In its Petition for ETC Designation (Petition), as supplemented, TWCIS states that it is seeking designation as an ETC only in the specific RDOF-eligible census block for which it was awarded Auction 904 funding.[[1]](#footnote-2) We have reviewed TWCIS’ Petition, as supplemented, to determine whether it meets the statutory criteria and applicable minimum standards necessary under federal and state law to obtain an ETC designation.

We hereby conclude that it meets the statutory criteria and applicable minimum standards necessary under federal and state law to obtain an ETC designation and it is in the public interest that TWCIS be designated as an ETC for purposes of receiving Auction 904 federal high-cost support in those Pennsylvania eligible census blocks where it submitted a winning bid to deploy and maintain networks capable of providing voice and broadband access services. Accordingly, TWCIS’ Petition is hereby approved under the applicable federal statutory criteria and other relevant federal and Pennsylvania law*.*

**BACKGROUND**

**A. FCC’s Re-Purposing of the High Cost Program of the Federal Universal Service Fund**

In 2011, the FCC concluded that the deployment of broadband-capable networks would also be an express universal service principle under Section 254(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 254(b).[[2]](#footnote-3) For this reason, the FCC comprehensively reformed the High Cost Program of the federal Universal Service Fund (USF) so that it would ensure that robust, affordable voice and broadband

services become available to all Americans living in rural areas across the nation who were receiving voice service but lacked access to robust broadband infrastructure and service.[[3]](#footnote-4)

Up to that time, the six pre-existing programs in the High Cost Program had only supported the provisioning of voice service.[[4]](#footnote-5) In order to accomplish its goal of ensuring all Americans had access to both voice service and robust broadband service, the FCC repurposed the six pre-existing programs so that it would distribute federal high-cost support to recipients so that they could provision both fixed broadband and voice service throughout their service territories.[[5]](#footnote-6) Concomitant with this repurposing, the FCC also renamed the federal High Cost program to the Connect America Fund (CAF). With the CAF and Auction 903, the FCC determined that it would begin to distribute federal high-cost support in the areas served by the incumbent local exchange carriers that operate as price cap carriers under federal law, through a combination of a “new forward-looking model of the cost of constructing modern multi-purpose networks” and a competitive bidding process.[[6]](#footnote-7)

**B. FCC’s Efforts to Modernize the Federal Lifeline Program**

To continue the mission of assisting qualifying low-income Americans to get and stay connected in today’s technological climate, while at the same time relieving some of the burden on the entities providing this service, the FCC also began restructuring the federal USF Lifeline program. Beginning in 2012, the FCC took several steps to comprehensively reform and modernize the Lifeline program in the *2012 Lifeline Reform Order* by improving enrollment and consumer disclosures and eliminating the previous system of tiered support and set an interim funding rate of $9.25 per month and per eligible subscriber or household.[[7]](#footnote-8)

These reforms were adopted by the FCC to strengthen protections against waste, fraud, and abuse in the federal Lifeline program by, among other things: setting a savings target; improved program administration and accountability by creating a National Lifeline Accountability Database (NLAD) to prevent multiple carriers from receiving support for the same household; and confirming a one-per-household rule applicable to all consumers and Lifeline providers in the program.[[8]](#footnote-9) The FCC also took preliminary steps to modernize the federal Lifeline program by, among other things: allowing Lifeline support for bundled service plans combining voice and broadband or packages including optional calling features.[[9]](#footnote-10) The FCC has issued three later Lifeline reform orders establishing a number of additional enhancements to the federal Lifeline Program, further connecting low-income Americans to voice services and, now, broadband access.[[10]](#footnote-11), [[11]](#footnote-12) These modified requirements have been codified in the FCC’s rules and regulations at Title 47, Chapter I, Part 54, Subpart E, which governs universal service support provided to low-income consumers.

**C. CAF Auctions**

The FCC contemplated that its new competitive bid process to disburse federal universal service high-cost support to common carriers would be done as “reverse” auctions” and rolled-out in different phases.[[12]](#footnote-13) The second phase of the CAF, but first “reverse” auction to disburse federal high-cost support, was Auction 903 (or CAF Phase II Auction) in 2018.[[13]](#footnote-14) Auction 903 awarded up to $198 million annually for 10 years to all service providers that had committed to provide voice and fixed broadband services to specific locations in unserved high-cost areas, including areas in Pennsylvania.[[14]](#footnote-15)

Acknowledging that Auction 903 was a significant step towards addressing the rural “digital divide” in America but that more work needed to be done to accelerate the deployment of access to broadband in these unserved and underserved communities, on August 1, 2019, the FCC adopted a Notice of Proposed Rulemaking (NPRM) proposing to establish the $20.4 billion RDOF as its next step in bridging the rural digital divide in America.[[15]](#footnote-16) Specifically, the FCC sought to allocate this federal universal service high-cost support to a certain number of locations in eligible census block groups (CBGs) across the United States, including areas in Pennsylvania which were entirely unserved by broadband service of at least 25/3 Mbps.[[16]](#footnote-17)

On January 30, 2020, the Commission adopted the *RDOF Order*, which established the framework for the RDOF auction.[[17]](#footnote-18) The FCC determined that the RDOF would target federal high-cost support to areas that lack access to both fixed voice and 25/3 Mbps broadband services in two phases: Phase I of the RDOF will assign up to $16 billion for those census blocks that are wholly unserved with broadband at speeds of 25/3 Mbps,[[18]](#footnote-19) and Phase II will make the remaining $4.4 billion, along with any unawarded funds from Phase I available for those census blocks that it later determined through the Digital Opportunity Data Collection, or suitable alternative data source, are only partially served, as well as census blocks unawarded in the Phase I auction.[[19]](#footnote-20)

Phase I of the RDOF Auction began on October 29, 2020, and ended on November 25, 2020. On December 7, 2020, the FCC announced the winning bidders[[20]](#footnote-21) for Phase I of the RDOF auction and awarded up to $923 million annually for 10 years to these winning bidders that had committed to provide voice and fixed broadband Internet access services (BIAS) to specific locations in unserved high-cost areas, including areas in Pennsylvania.[[21]](#footnote-22) CCO Holdings, LLC, an affiliate of TWCIS, was selected as a winning bidder in 499 census blocks in Pennsylvania.[[22]](#footnote-23) In accordance with Auction 904 rules and procedures,[[23]](#footnote-24) CCO Holdings, LLC, assigned its winning bid in Pennsylvania to its affiliate, TWCIS.[[24]](#footnote-25) TWICS’ assigned Auction 904 award is in the amount of $3,479,199 over 10 years, to serve 499 census blocks as set forth in Appendix A, to 5,328 eligible locations.[[25]](#footnote-26)

**D**. **TWCIS’ Petition and Supplements**

Pursuant to the *RDOF Order* and the *RDOF Public Notice*,[[26]](#footnote-27) winning bidders were required to certify with the FCC that they have obtained an ETC designation that covers all relevant census blocks from the relevant authority for high-cost ETC designation by June 7, 2021.[[27]](#footnote-28) In its Petition, TWCIS has requested ETC designation in the 499 census blocks where it had been awarded RDOF Phase I high-cost funding support by the FCC in Auction 904. Thus, TWCIS has not requested ETC designation in any census block where it has not been awarded Auction 904 support.

TWCIS is a Delaware limited liability company with a place of business at 12405 Powerscourt Drive, St. Louis, Missouri 63131.[[28]](#footnote-29) TWCIS provided documentation that it has the requisite authority from the Pennsylvania Department of State to do business in Pennsylvania as a limited liability company.[[29]](#footnote-30) TWCIS and CCO Holdings, LLC are both subsidiaries of Charter Communications, Inc. (Charter).[[30]](#footnote-31) TWCIS states that it is certificated by the Commission to provide local exchange telecommunications services in Pennsylvania.[[31]](#footnote-32) TWCIS further states that Charter, through its subsidiaries, provides advanced communications services including BIAS, cable video, vice, and mobile services to approximately 125,000 customers in Pennsylvania.[[32]](#footnote-33)

As an Exhibit to its Petition, TWCIS provides a detailed listing of the 499 individual census blocks for which it was awarded RDOF support,[[33]](#footnote-34) provides a map of those census blocks,[[34]](#footnote-35) lists the various incumbent local exchange carriers (ILEC) where the awarded census blocks are situated,[[35]](#footnote-36) and provides the rate centers of those ILECs where the RDOF census blocks are situated.[[36]](#footnote-37) This information is reproduced and attached hereto as Appendix A. Collectively, those local exchanges, rate centers, and census blocks where TWCIS will be designated an ETC and providing Auction 904 supported service, are referred to as TWCIS’ Designated Service Area.

TWCIS states in its Petition that while TWCIS will directly provide the supported Lifeline voice services, its affiliate, Spectrum Advanced Services, LLC may directly provide the broadband Internet access services and non-Lifeline voice services in the RDOF census blocks.[[37]](#footnote-38) TWCIS, as a Charter subsidiary, plans to extend a Fiber to the Premises (FTTP) network architecture to serve the RDOF census blocks. The network will include fiber optic cable facilities, hubs, routers, servers, session border controllers, and analog telephone adapters.[[38]](#footnote-39) Through the network serving the RDOF census blocks, Charter will offer up to 1 Gbps broadband access, with starting speeds of 200 Mbps.[[39]](#footnote-40)

Notice of TWCIS’ Petition was published in the *Pennsylvania Bulletin* at 51 Pa.B. 763 on February 6, 2021. No comments were filed in response to TWCIS’ Petition. TWCIS also filed supplements to its Petition that set forth additional pertinent information.

**DISCUSSION**

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific Federal universal service support.”[[40]](#footnote-41) Consequently, a common carrier first must be designated as an ETC under subsections (2), (3), or (6) of Section 214(e) of the Act to be eligible to receive federal high-cost universal service support in accordance with Section 254 of the Act. Pursuant to Section 214(e)(2) of the Act, state commissions have the primary responsibility for performing ETC designations for common carriers seeking to obtain federal high-cost funding support. Only in those instances where a state cannot or will not make the requisite ETC designation, will the FCC make the ETC designation.[[41]](#footnote-42)

The Commission reserves the right to review any ETC designation request on a case-by-case basis and grant or deny such designation after considering the circumstances particular to each application. Thus, the Commission has reviewed TWCIS’ Petition, as supplemented, to determine whether if it satisfies the federal and state law criteria to receive a designation as an ETC in Pennsylvania.

**I. Requirements for Designation as a High-Cost ETC**

Pursuant to 47 U.S.C. § 214(e)(1), a common carrier must satisfy the following criteria[[42]](#footnote-43) in order to obtain an ETC designation and become eligible to receive federal high-cost universal service support throughout the service area for which the designation is received: (1) certify that it offers or intends to offer all services designated for support by the Commission pursuant to Section 254(c) of the Act;[[43]](#footnote-44) (2) certify that it offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier’s services;[[44]](#footnote-45) (3) describe how it advertises the availability of the supported services and the charges therefor using media of general distribution;[[45]](#footnote-46) and (4) describe the geographic service area for which it requests to be designated an ETC.[[46]](#footnote-47)

The FCC adopted additional requirements for parties seeking ETC designation that have been codified at 47 C.F.R. § 54.202.[[47]](#footnote-48) As such, a telecommunications carrier must also satisfy the following additional mandatory requirements for it to be designated an ETC and thus eligible to receive federal universal service support: (1) certify that it will comply with the service requirements applicable to the support that it receives in its proposed service area;[[48]](#footnote-49) (2) submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area;[[49]](#footnote-50) (3) demonstrate its ability to remain functional in 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;[[50]](#footnote-51) (4) demonstrate that it will satisfy applicable consumer protection and service quality standards;[[51]](#footnote-52) and (5) offer local usage comparable to that offered by the ILEC.[[52]](#footnote-53)

The FCC subsequently added an additional requirement concerning the Anti-Drug Abuse Act of 1988.[[53]](#footnote-54) Specifically, the FCC requires a party seeking ETC designation certify that neither it, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.

In addition to meeting these statutory requirements, state commissions must also perform a “public interest” review before approving an ETC designation. Section 214(e)(2) of the Act states that, “[u]pon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier” for a designated service area, so long as the requesting carrier meets the requirements of Section 214(e)(1).

The Commission has adopted these federal standards under independent Pennsylvania law as a starting point for review of a request for ETC designation.[[54]](#footnote-55)

We also have Pennsylvania-specific guidelines discussed below that a federal high-cost ETC petitioner must satisfy before we can approve its request for ETC designation in Pennsylvania. Our review of TWCIS’ Petition is done consistent with the federal requirements that must be met for an applicant to receive designation as an ETC, as codified, which we have adopted and implemented in the Commonwealth as the minimum standards applicable to ETC designation. Additionally, our review of TWCIS’ Petition is also done to ensure consistency with independent Pennsylvania law as an ongoing obligation.

As discussed in more detail below, we determine that TWCIS satisfies all federal requirements applicable to obtaining a high-cost ETC designation, including those embodied in the FCC’s *Universal Service Order*, the *2005 ETC Designation Order*, the *USF/ICC Transformation Order*, the *Lifeline Reform Orders*, and codified in pertinent FCC regulations. TWCIS also satisfies related Pennsylvania-specific requirements or guidelines.

Nonetheless, as a RDOF winning bidder, TWCIS is still required to comply with the same long-form application process the FCC adopted for Auction 903.[[55]](#footnote-56) Thus, upon receipt of an ETC designation from us, TWCIS will be subject to a thorough financial and technical review by the FCC during the long-form application stage prior to ultimately receiving the Auction 904 support.[[56]](#footnote-57)

**A. *Certification That It Is a Common Carrier and Offering All Services Designated for Federal Universal Service Support***

TWCIS has filed this Petition seeking to have the Commission designate it a high-cost ETC in the census blocks where it has been awarded Auction 904 federal high-cost support. Federal law dictates that only a common carrier designated an eligible telecommunications carrier under 47 U.S.C. § 214(e)(2) shall be eligible to receive universal service support in accordance with Section 254 of the Act.[[57]](#footnote-58) Thus, in order to obtain an ETC high-cost designation, TWCIS must demonstrate that it is a common carrier and certify that it offers the services supported by the federal universal service support mechanisms or “supported services”.[[58]](#footnote-59)

Section 153(10) of the Act defines the term “common carrier” as “any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio[.]” 47 U.S.C. § 153(10).[[59]](#footnote-60) Additionally, pursuant to 47 C.F.R. § 54.101, the FCC defines supported services as qualifying voice service and the offering of qualifying BIAS.[[60]](#footnote-61) Also, as a condition of receiving support, the common carrier must offer qualifying voice service as a standalone service throughout its designated service area and must offer voice telephony services at rates that are reasonably comparable to urban rates.[[61]](#footnote-62)

**1. Qualifying Voice Service**

In order to satisfy the criterion of offering qualifying voice services set forth in 47 C.F.R. § 54.201(a), TWCIS must be a common carrier that certifies that its eligible voice telephony services provide (1) voice grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and (4) toll limitation services to qualifying low-income consumers. Additionally, as a RDOF support recipient, like all other high-cost ETCs, TWCIS will be required to offer standalone voice service and offer voice and broadband services at rates that are reasonably comparable to rates offered in urban areas. TWCIS certifies that its wireline service offering satisfies the FCC’s definition of voice telephony service.[[62]](#footnote-63)

**a. Voice Grade Access to the Public Switched Telecommunications Network (PSTN)**

In its Petition, TWCIS states it plans to implement an interconnected Voice over Internet Protocol (VoIP) network[[63]](#footnote-64) through its proposed FTTP network across its Designated Service Area that will allow for delivery of high-quality voice services. Stated calling features include voicemail, call waiting, caller ID, and call forwarding at no additional charge.[[64]](#footnote-65)

**b. Minutes of Use for Local Service**

As part of offering voice grade access to the PSTN, an ETC must also provide local calling services to its customers at no additional charge. Although the FCC did not set a minimum local usage requirement, in the *Universal Service Order*, it determined that ETCs should provide some minimum amount of local usage as part of their “basic service” package of supported services.[[65]](#footnote-66) However, the FCC has determined that a carrier satisfies the local usage requirements by including a variety of local usage plans as part of a universal service offering. TWCIS certifies that it will provision competitive voice service that includes minutes of use for local service provided at no charge to end users.[[66]](#footnote-67)

**c. Access to Emergency Services**

TWCIS certifies that it meets the requirement to provide access to emergency services. TWCIS states that that 911 or E911 will be a standard feature with its standalone and bundled voice service.[[67]](#footnote-68) Further, 911 or E911 emergency service will be maintained for as long as a device connected to its voice network has a dial tone, and therefore will be available during a service suspension but will not be available after the customer’s service has been disconnected.[[68]](#footnote-69) TWCIS’ E911 feature automatically provides the emergency service operator with a caller’s phone number and location.[[69]](#footnote-70)

TWCIS states that it has maintained contact with existing municipalities and 911 authorities in Pennsylvania since its initiation of voice service in 2011.[[70]](#footnote-71) It further states that as a standard business practice the initiation of voice service in any area not previously supported includes outreach to the appropriate 911 authority and testing of 911 and E911 services prior to offering voice service to any customer.[[71]](#footnote-72)

The FCC also requires interconnected VoIP carriers to obtain affirmative acknowledgment that each subscriber understands the circumstances that E911 service may be limited or unavailable. 47 C.F.R. § 9.11(b)(5)(i). All customers of Charter voice service, including customers of TWCIS, complete a 911 Acknowledgement form during the service ordering and initiation process, which informs them of any limitations with respect to Charter’s E911 service.[[72]](#footnote-73) TWCIS provides the text of this acknowledgement, which, among other things, notices the customer that the network is subject to power outages, and that if the subscriber changes address without first contacting Charter, the address that the emergency provider receives might be incorrect.[[73]](#footnote-74)

TWCIS has complied with the requirements related to the provision of 911 services and customer acknowledgment of service limitations. Accordingly, the Commission determines that TWCIS has satisfied its obligation of ensuring access to emergency services.

**d. Toll Limitation Services**

Under the language of Section 54.400, the FCC has defined three terms addressing the service provided by an ETC by which a subscriber may prevent toll charges from accumulating beyond a set point. Specifically, Subsection 54.400(b) of the FCC’s regulations defines “toll blocking” as the service a subscriber may elect to not allow outgoing toll calls. Subsection (c) defines “toll control service” as the service a subscriber may elect to specify a set amount of toll usage allowed per month or per billing cycle. Subsection (d) defines “toll limitation service” as a generic term covering either toll blocking or toll control service for ETCs that are incapable of providing both or covering both services.

Section 54.401(a)(2), toll limitation service, does not need to be offered for any Lifeline service that does not distinguish between toll and non-toll calls in the pricing of the service. If an ETC charges Lifeline subscribers a fee for toll calls that is in addition to the per month or per billing cycle price of the subscribers’ Lifeline service, the carrier must offer toll limitation service at no charge to its subscribers as part of its Lifeline service offering.

In the FCC’s *Lifeline and Link Up Reform Order*, the FCC explained that toll limitation would no longer be deemed a supported service as of 2014.[[74]](#footnote-75) However, TWCIS states that it will still provide toll limitation services to qualifying low-income customers in the RDOF census blocks.[[75]](#footnote-76)

**2. Eligible Broadband Internet Access Services**

An ETC subject to a high-cost public interest obligation to offer BIAS, must offer BIAS that provides the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service, within the areas where it receives high-cost support.[[76]](#footnote-77) Additionally, pursuant to Section 54.805 of the FCC’s regulations, recipients of RDOF support are “required to offer broadband service with latency suitable for real-time applications, including VoIP, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.”[[77]](#footnote-78) More specifically, recipients of RDOF support are required to meet the broadband service speeds and performance standards for the relevant performance or the average usage of a majority of fixed broadband customers as announced annually by the FCC’s Wireline Competition Bureau (WCB).[[78]](#footnote-79)

TWCIS is obligated to offer one service plan that provides BIAS at 1 Gbps/500 Mbps speed at low latency.[[79]](#footnote-80) For winners in the RDOF Phase I auction who submitted bids for the Gigabit tier speed, the FCC required them to show that 95% or more of all testing-hour measurements of network round trip latency are at or below 100 milliseconds (ms) as their latency standard for BIAS.[[80]](#footnote-81)

TWCIS states the proposed BIAS provides the capability to transmit data to and receive data from all or substantially all Internet endpoints including any capabilities that are incidental to and enable the operation of the communications service in the RDOF census blocks.[[81]](#footnote-82) TWCIS states that the starting speed in 75% of Charter-served communities is 200 Mbps, and this speed will be available to new customers immediately.[[82]](#footnote-83) TWCIS further states that it will offer a 1 Gbps connection to the majority of all newly served customers in the RDOF supported census blocks.[[83]](#footnote-84)

**B. *Certification Regarding the Offering of the Supported Services Using a Carrier’s Own Facilities***.

In order to obtain a high-cost ETC designation, a common carrier must offer the qualifying supported services throughout their service area “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”[[84]](#footnote-85) Thus, only common carriers that provide the qualifying supported services as defined under Section 54.101(a), as amended, by using their own facilities will be deemed to meet the requirements of Subsection 214(e)(1)(A) of the Act.

The FCC has interpreted the term “facilities” to mean “any physical components of the telecommunications network that are used in the transmission or routing of the services designated for support under Section 254(c)(1).”[[85]](#footnote-86) However, as explained by the FCC, “a carrier need not offer universal service wholly over its own facilities in order to be designated an eligible carrier because the statute allows an eligible carrier to offer the supported services through a combination of its own facilities and resale.”[[86]](#footnote-87)

Facilities are the ETC’s “own” if the ETC has exclusive right to use the facilities to provide the supported services[[87]](#footnote-88) or when service is provided by any affiliate within the holding company structure.[[88]](#footnote-89) Additionally, a common carrier satisfies its ETC designation obligation to “offer” qualifying services by being legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting federal USF-related requirements.[[89]](#footnote-90) Accordingly, a broadband provider may satisfy its voice obligation by offering voice service through an affiliate or by offering a managed voice solution (including VoIP) through a third-party vendor but cannot simply rely on the availability of over-the-top voice options.[[90]](#footnote-91)

TWCIS has attested that it will be providing the qualifying supported services and functionalities set forth in Section 54.101(a) of the FCC’s regulations throughout its proposed Designated Service Area in the Commonwealth of Pennsylvania using its own facilities or through an affiliate.[[91]](#footnote-92)

**C. *Certification Regarding Advertising Supported Services.***

TWCIS has stated that it will advertise the availability of its universal service offerings and charges for such offerings using media of general distribution and in a manner reasonably designed to reach those likely to qualify for the service.[[92]](#footnote-93) TWCIS states that it will publicize the availability of Lifeline service in the RDOF census blocks in a manner reasonably designed to reach those likely to qualify for the service.[[93]](#footnote-94) TWCIS will seek opportunities for outreach to local communities to provide information on the Lifeline voice and broadband offerings of TWCIS and its affiliates. In addition, TWCIS states that information about its Lifeline service will be posted publicly on Charter’s website.[[94]](#footnote-95) TWCIS further certifies to provide the Commonwealth’s Department of Human Services (“DHS”) with Lifeline service descriptions and subscription forms, contact telephone numbers, and a listing of the census blocks it serves, for use by DHS in providing notifications to new enrollees in DHS-administered low-income programs pursuant to 66 Pa.C.S. § 3019(f).[[95]](#footnote-96) Lastly, TWCIS states that it will provide Lifeline materials in English and Spanish.[[96]](#footnote-97)

**D. *Certification to Provide a Detailed Description of the Geographic Service Area Where It Will Be Designated an ETC***

Generally, once an entity is designated an ETC in a service area, it must offer the supported services throughout that entire designated service area. The term service area generally means the overall geographic area for which the carrier shall receive support from federal universal service support mechanisms. A service area is established by a state commission for the purpose of determining universal service obligations and support mechanisms. Thus, 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.[[97]](#footnote-98)

Pursuant to its Petition, TWCIS is seeking designation as an ETC only in the RDOF-eligible census blocks that are located within certain local exchanges of the following ILECs in Pennsylvania: Verizon North, Verizon PA, Commonwealth Telephone Company, and Windstream PA:[[98]](#footnote-99) A listing of the individual eligible census blocks where TWCIS has been awarded Auction 904 support is attached hereto as Appendix A.

Section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), normally requires that a competitive high-cost ETC’s (CETC) proposed designated service area conform with the rural incumbent ETC’s designated service area. The rural incumbent ETC’s designated service area is usually its entire service territory. Generally, if a state commission sought to designate a CETC only in a portion of a rural incumbent ETC’s designated service, that rural service area must first be redefined under the process set forth in Section 214(e)(5) of the Act.[[99]](#footnote-100) To accomplish a redefinition of a rural service area, the Commission would be required to conduct a cream-skimming analysis to compare the population density of the wire centers in which the CETC applicant seeks designation against that of the wire centers in the rural service area in which the CETC applicant does not seek designation.[[100]](#footnote-101)

In this proceeding, TWCIS requests an ETC designation that is limited only to certain portions of certain local exchanges within the service territories of two of our RLECS— Commonwealth Telephone Company and Windstream PA. The table below sets forth the specific RLEC local exchanges that contain some of the individual eligible census blocks where TWCIS has been awarded Auction 904 support.

|  |  |
| --- | --- |
| **Windstream PA** | **Commonwealth Telephone Company** |
| Albion | Lawrenceville |
| Conneaut Lake | Midlebyctr |
| Jamestown |  |
| Westford |  |
| Wspringfld |  |

As explained above, the Commission usually would have to undergo a redefinition analysis of the RLEC service territory when a CETC requests to be designated only in certain portions of the RLECs’ service areas. However, the FCC has eliminated the service area conformance requirement for those winning bidders in the Auction 904 seeking an ETC designation.[[101]](#footnote-102) Specifically, in its *RDOF Order*, the FCC held that for those entities that were seeking to obtain ETC designations solely as a result of being selected as winning bidders for the Auction 904 support, it was best to forbear from applying Section 214(e)(5) of the Act and Section 54.207(b) of the FCC’s rules insofar as those sections require that the service area of such a competitive ETC conform to the service area of any RLEC serving an area eligible for Phase I support.[[102]](#footnote-103)

The FCC noted that like the CAF Phase II auction, it will be maximizing the use of the RDOF support by making it available for only one provider per geographic area.[[103]](#footnote-104) It further noted that since price cap ETCs had declined the offer of model-based support and another entity is now receiving that declined support through Auction 904, the incumbent ETC’s service area is no longer a relevant consideration in determining the geographic scope of a winning bidder’s ETC designation.[[104]](#footnote-105) Hence, the RLEC’s service area will no longer be relevant because the incumbent ETC may be eventually replaced by the RDOF recipient in those portions of its service area where it may seek relinquishment since it will no longer receive high-cost support to provide the supported services, particularly qualifying voice service.

Here, TWCIS was a winning bidder in specific eligible census block groups located within two of our RLECs’ service areas. Consequently, it is seeking an ETC designation only in those specific census blocks. Since the FCC has waived its rules regarding the redefinition process specifically for Auction 904 funding recipients, there is no need for the Commission to consider the relevant analysis the state and the FCC historically considered when deciding whether to redefine an RLEC’s service area when it receives a request from the winning bidder to have a designated service area that is below the incumbent rural ETC’s entire service area.

Based on our analysis of the applicable and relevant governing authority, we approve TWCIS’ request for it to be designated as an ETC in a service area that is below the entire service territories of Commonwealth Telephone Company and Windstream PA. Accordingly, we approve TWCIS’ proposed Designated Service Area as set forth in Appendix A attached to this Order.

**E*. Compliance with the Service Requirements Applicable to Auction 904 Support***

TWCIS must certify that it will comply with requirements applicable to the federal universal service support that it has been awarded by the FCC. To satisfy this criterion, an ETC petitioner must demonstrate its commitment and ability to provide the supported services to all customers making a reasonable request for service within the ETC’s designated service area.[[105]](#footnote-106)

An ETC petitioner must ensure that it is providing services to all customers making a reasonable request for service throughout its proposed Designated Service Area. If the ETC’s network already passes or covers the potential customer’s premises, the ETC should provide service immediately. TWCIS certifies that it will comply with the service, deployment, and performance requirements applicable to the support that it receives through the RDOF Auction.[[106]](#footnote-107) It further certifies that it and its affiliates will provide service to all customers making a reasonable request for service throughout its proposed Designated Service Area.[[107]](#footnote-108) TWCIS describes in detail the nature and features of the services it and its affiliates will provide, which along with its selection as an auction winner, satisfy its requirements to demonstrate ability to provide the supported services.

**F*. Certification Regarding Continued Functionality in Emergency Situations***

Pursuant to 47 C.F.R. § 54.202(a)(2), an ETC petitioner is required to demonstrate its ability to remain functional in emergency situations. To satisfy this criterion, a petitioner must demonstrate 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 can manage traffic spikes resulting from emergency situations. The FCC’s regulations further require facilities-based fixed residential voice services that are not line-powered (fixed service providers) to offer for sale to subscribers “at least one option that provides a minimum of twenty-four hours of standby backup power” for customer premises equipment by February 13, 2019.[[108]](#footnote-109)

TWCIS explains that its parent company, Charter, has extensive experience managing the technical and customer service related issues associated with the provision of mass market consumer voice and BIAS.[[109]](#footnote-110) Charter monitors its network performance on a 24/7/365 basis and has implemented procedures to quickly and effectively install, modify, repair, and restore services as necessary.[[110]](#footnote-111) TWCIS states its service includes contingency plans in place for emergency situations for each of Charter’s major network hubs and facilities that are geographically distributed across the United States.[[111]](#footnote-112) All of the services’ switching facilities are equipped with independent power generators and sufficient fuel to operate for several days to mitigate commercial power outages.[[112]](#footnote-113) The design of these facilities contains multiple levels of redundancy and autonomy that also mitigate the need for dedicated human interaction.[[113]](#footnote-114) TWCIS provides a battery backup service to its customers. TWCIS has provided a copy of its offering of 8 hour and 24-hour backup power options.[[114]](#footnote-115) The offering warns customers that the VoIP service provided by TWCIS requires power, and that the emergency 911 service may not function during a power outage without backup.[[115]](#footnote-116)

**G*. Certification to Satisfy Customer Service and Service Quality Standards***

Historically, a petitioner seeking an ETC designation for purposes of becoming eligible to receive high-cost support was required to demonstrate its ability to satisfy applicable consumer protection and service quality standards.[[116]](#footnote-117) However, for petitioners seeking ETC designation for the purposes of becoming authorized to receive Auction 904 high-cost support, the FCC waived the requirement to submit proof of compliance with consumer protection and service quality standards—finding that the need for such requirements is obviated by specific service quality standards applicable to Auction 904 winning bid areas and specific reporting obligations relating to such standards.[[117]](#footnote-118)

Nonetheless, as a certificated CLEC, TWCIS is subject to the consumer protection and service quality standards promulgated by the Commission.[[118]](#footnote-119) Moreover, TWCIS proposes to offer a protected, standalone basic voice service over a fiber-based IP platform.[[119]](#footnote-120) Therefore, in addition to other Commission jurisdiction preserved under the VoIP Freedom Act, this service remains subject to all applicable consumer protections and quality of service standards under Pennsylvania law, even though it will be provided as an interconnected VoIP service.[[120]](#footnote-121)

**H*. Certification Regarding Financial and Technical Ability to Provide Lifeline Service***

Generally, a carrier seeking only low-income support under Subpart E, 47 C.F.R. §§ 54.400-54.422, must demonstrate that it possesses the financial and technical ability to provide Lifeline service.[[121]](#footnote-122) A carrier seeking only low-income support also must submit information describing the terms and conditions of any voice telephone service plans and the terms and conditions of any BIAS plans offered to Lifeline subscribers.[[122]](#footnote-123) However, TWCIS is seeking to be designated as an ETC only in those high-cost areas within its service area in Pennsylvania where it has been awarded Auction 904 support.[[123]](#footnote-124) As such, per the federal rules, TWCIS is not required to demonstrate its financial and technical ability to provide Lifeline service in these areas.

Notwithstanding, TWCIS must participate in the federal Lifeline program and offer Lifeline service to low‑income eligible customers or households in these CBGs within its Designated Service Area.[[124]](#footnote-125) Therefore, under independent state law, we will ensure that TWCIS has the technical and financial capability to provide Lifeline services to eligible low-income consumers residing in the Auction 904 census blocks.

The Commission takes note that TWCIS was one of the successful bidders in Auction 904 that is aiding with the construction of the planned network facilities in Pennsylvania, and that the FCC’s RDOF Phase I bidding process required the substantive demonstration of managerial, technical, and financial fitness elements for the participation of the successful bidders. Accordingly, the Commission determines that TWCIS has demonstrated it is technically, managerially, and financially fit to offer and provide Lifeline service to qualifying low-income consumers in all high-cost areas in Pennsylvania where it is authorized to receive support.

Further, upon review, TWCIS has committed to offering Lifeline services, consistent with the FCC’s rules and the Commission’s rules and guidelines.[[125]](#footnote-126) TWCIS has provided the requisite information in its accompanying supplements about its Lifeline service plan offerings.[[126]](#footnote-127) TWCIS describes in detail the voice and BIAS plans that it will offer to Lifeline subscribers, and provides the terms and conditions for these services.[[127]](#footnote-128) Additionally, TWCIS’ supplements include the requisite description of its voice and Internet access service offerings for Lifeline subscribers. Accordingly, the Commission determines that TWCIS will provide Lifeline service to qualifying low-income consumers consistent with 47 C.F.R. §§ 54.202(a)(5) and 54.202(a)(6) and Pennsylvania-specific rules in all high-cost areas in Pennsylvania where it is authorized to receive support.

**I. *Certification of Eligibility for Benefits under the Anti-Drug Abuse Act***

ETC petitioners must certify that neither the petitioner nor any party to the petition is subject to a denial of federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, as implemented in Section 1.2002 of the FCC’s rules. TWCIS certifies that no party to its Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.[[128]](#footnote-129)

**J*. Certification to Relinquish Its ETC Designation***

TWCIS may possibly replace the current incumbent price cap ETCs as the only carrier receiving federal USF high-cost support in certain CBGs within the ILECs’ local exchanges.[[129]](#footnote-130) In the *December 2014 Connect America Order*, the FCC determined that federal price cap carriers can remove their ETC status via the Section 214 process if (1) the census block is determined to be low cost; (2) the census block is served by an unsubsidized competitor offering voice and broadband at speeds of 10/1 Mbps or better to all eligible locations; or (3) the census block is served by a subsidized competitor (another ETC) receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations.[[130]](#footnote-131) Thus, in those areas where a new provider is granted high-cost ETC status and is authorized to receive Auction 904 support, the incumbent price cap carrier will be relieved of its federal high-cost ETC obligation to offer voice telephony services in that area.

However, this forbearance action does not relieve the price cap ETC of its other “incumbent-specific obligations” like interconnection and negotiating unbundled network elements pursuant to Sections 251 and 252 of the Act. Additionally, even if an incumbent price cap carrier is being relieved of an ETC obligation to provide qualifying voice telephony service where the CETC is the only entity that receives federal high-cost support, it is still required to do the following: (1) seek relinquishment of its ETC designation as prescribed under Section 214(e)(4) of the Act and (2) maintain existing voice service until they receive discontinuance authority under Section 214(a) of the Act and Section 63.71 of the Commission's rules.[[131]](#footnote-132) Thus, price cap carriers will remain subject to ETC obligations other than those covered by our forbearances unless or until they relinquish their ETC designations in those areas pursuant to Section 214(e)(4) of the Act.

Further, price cap carriers in these areas will remain subject to other Title II requirements, including ensuring that voice telephony rates remain just and reasonable and the nondiscrimination obligations of Sections 201 and 202 of the Act. Moreover, pursuant to our Pennsylvania-specific carrier of last resort (COLR) obligations, the Commission will ensure that the local rates that the relinquishing price cap carrier offers in the areas from which they may forbear remain just and reasonable.[[132]](#footnote-133) Lastly, these price cap carriers must continue to satisfy all Lifeline ETC obligations by offering voice telephony service to qualifying low-income households in areas in which they are subject to this limited forbearance.

The same standard will apply to TWCIS upon its ETC designation as the designation will require it to ensure that *all* customers are served in its Designated Service Area upon request. TWCIS, as a common carrier with an ETC designation, will continue to have the obligation to serve all customers in the Auction 904 census blocks where it will receive federal high-cost support up until the time it is permitted by the Commission to relinquish its ETC designation.[[133]](#footnote-134) Hence, if all other ETCs in TWCIS’ proposed Designated Service Area are permitted to relinquish their ETC designations, TWCIS, as the competitive ETC, may be required to ensure that all customers served by the relinquishing carriers in their respective service areas will continue to be served.[[134]](#footnote-135)

Accordingly, if at some point in the future TWCIS becomes the only entity in the geographic area that receives federal high-cost support, if it seeks to relinquish its ETC designation, it certifies that it will comply with the requirements of Section 54.205 as well as independent state law.[[135]](#footnote-136)

**K*. Certification Regarding Applicable Annual Reporting and Certification Requirements for High-Cost Support Recipients***

Pursuant to 47 C.F.R. § 54.806, an RDOF recipient is required to comply with

applicable annual reporting requirements, compliance measures, recordkeeping requirements and audit requirements for high-cost support recipients under Sections 54.313, 54.314, 54.316 and 54.320(a)-(c) of the FCC’s rules.[[136]](#footnote-137)

**L. *Analysis and Public Interest Standard***

TWCIS meets the ETC requirement of being a common carrier. TWCIS will provide interconnected VoIP service (and BIAS) in Pennsylvania. Additionally, TWCIS also will provide standalone interconnected VoIP service in its Designated Service Area. As such, TWCIS is a common carrier under 47 U.S.C. § 214(e)(1) for purposes of ETC designation. Moreover, the Commission finds that as a common carrier, TWCIS, has established through the required certifications and related filings that it satisfies the standards applicable to obtaining a high-cost ETC designation and that it will comply with the requisite service requirements and obligations attendant to its high-cost designation as specified in the Act, the Commission’s rules, and under independent state law.

However, pursuant to 47 U.S.C. § 214(e)(2), the Commission must still determine that designating TWCIS as a high-cost ETC in the eligible Auction 904 census blocks would be in the public interest.[[137]](#footnote-138) When making a public interest determination for an ETC designation under 47 U.S.C. § 214(e)(2), we have historically considered the benefits of increased consumer choice and the unique advantages and disadvantages of the petitioner’s service offering in the Designated Service Area.[[138]](#footnote-139)

Granting an ETC designation may serve the public interest by providing a choice of voice and BIAS service offerings to consumers residing within our rural high-cost areas. Additionally, as a condition of obtaining a high-cost ETC designation, TWCIS is required to serve low-income consumers by offering Lifeline discounts to its service offerings, which ensures the availability of new, facilities-based Lifeline services at competitive prices in these areas.

We believe the Section 214(e)(2) public-interest test has been met because TWCIS has been assigned a significant portion of winning bids in Auction 904, which will result in Pennsylvania benefitting from the federal support associated with those winning bids.[[139]](#footnote-140) Essentially, the Auction 904 support will allow TWCIS to offer voice and broadband data services to areas in Pennsylvania that currently do not have broadband access services. Receipt of Auction 904 high-cost support funding will be a considerable benefit to Pennsylvania, which is otherwise a net-contributor state to the federal USF funding mechanism. It will facilitate the provision of additional access to voice and broadband services to Pennsylvania consumers in rural areas that are expensive and difficult to serve. Recipients of RDOF Phase I support are required to offer voice and broadband access services at modern speeds with latency suitable for real-time applications, including VoIP, and usage capacity that is reasonably comparable to similar offerings in urban areas. TWCIS has certified that it will abide by the FCC’s rules for voice and broadband access services in accordance with its orders and regulations.[[140]](#footnote-141)

Granting TWCIS’ request to be designated a high-cost ETC will permit it to secure the release of the total 10-year support of $3,479,199 by the FCC from Auction 904 to deploy broadband-capable networks in rural underserved areas in Pennsylvania where such deployment might otherwise prove more expensive or take longer to implement.[[141]](#footnote-142) Accordingly, we determine that granting an ETC designation to an entity in those areas where it is authorized to receive Auction 904 support as a winning bidder serves the public interest.

Since an ETC designation will assist TWCIS to secure federal universal service high-cost support funding under RDOF Phase I in various census blocks in specific local exchanges and provide voice services while promoting the deployment of advanced telecommunications and BIAS in the relevant areas and locations of the Commonwealth addressed in the Petition, the Commission determines that ETC designation for TWCIS is in the public interest. It promotes both the FCC’s and the Pennsylvania General Assembly’s goals of preserving and advancing universal telecommunications and broadband services and ensuring the availability of quality telecommunications services at just, reasonable, and affordable rates within rural and high-cost areas. *See* 66 Pa.C.S. §§ 3011(1) and (2), 3012 (definition of universal broadband availability), and 3014(a) and (b).

**II. Federal Requirements of Eligible Telecommunications Carriers for Universal Service Support for Low-Income Consumers**

Upon receiving designation as an ETC in the CBGs throughout its service territory where it has been awarded Auction 904 federal high-cost support, the ETC is required to participate in the federal Lifeline program and must offer Lifeline service to qualified low-income eligible customers or households residing in the individual census blocks that make up the CBG.[[142]](#footnote-143) TWCIS’ Lifeline service must meet the minimum standards set forth in the FCC’s *Lifeline Reform Orders*, which have been codified at Title 47, Chapter I, Part 54, Subpart E that, which governs universal service support provided to low-income consumers. All other minimum federal requirements of the FCC’s *Lifeline Reform Order* not expressly discussed herein, are nonetheless applicable to ETC designation requests in Pennsylvania. This includes any subsequent developments in those federal requirements.

**1. 47 C.F.R. § 54.405**

**Lifeline service provider obligations.**

All ETCs must certify that they do the following: (1) make available Lifeline service, as defined in 47 C.F.R. § 54.401, to qualifying low-income consumers; (2) publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service; (3) explain in its marketing materials using easily understood language that the Lifeline program is a federal government assistance program that provides a monthly subsidy that lowers the monthly cost of phone or internet service (but not both) and is available only to one eligible consumer per household, not per person and that the benefit is non-transferable once the customer is enrolled into the program; and (4) disclose its name on all marketing materials describing the service.

**2. 47 C.F.R. § 54.410**

**Subscriber Eligibility Determinations and De-enrollments**

All high-cost ETCs must certify that they first ensure that their potential Lifeline subscribers are eligible to receive Lifeline services.[[143]](#footnote-144) In Pennsylvania, all ETCs must receive a notice from the National Verifier that their potential Lifeline subscribers are eligible to receive Lifeline services.[[144]](#footnote-145) Lifeline service providers can help Lifeline consumers obtain an eligibility decision from the National Verifier through the service provider portal that links to the National Verifier, or consumers can apply on their own by mail or online.[[145]](#footnote-146)

As Pennsylvania is a National Verifier state, TWCIS must query the NLAD to ascertain a potential Lifeline applicant’s eligibility for service as determined by the National Verifier. Thereafter, once it has been verified that the consumer is eligible to qualify for Lifeline Service, the ETC may provide the consumer with an activated device that enables use of Lifeline-supported service.[[146]](#footnote-147)

Further, a Lifeline service provider must certify that it complies with the FCC federal policy rules for de-enrolling an account from Lifeline support. [[147]](#footnote-148) There are several situations that might result in subscriber de-enrollment from Lifeline-supported service: (1) de-enrollment because the service provider has a reasonable basis to believe a subscriber is no longer eligible to receive a Lifeline benefit;[[148]](#footnote-149) (2) de-enrollment for duplicative support;[[149]](#footnote-150) (3) de-enrollment for non-usage;[[150]](#footnote-151) and (4) de-enrollment for failure to re-certify; and (5) de-enrollment requested by subscriber.

**3. 47 C.F.R. §§ 54.416, 54.417 and 54.422**

**Annual Certifications and Reporting to USAC**

ETCs must certify that they will comply with annual certification requirements relating to the Lifeline program such as certifying annually that they are in compliance with the minimum service levels set forth in 47 C.F.R. § 54.408.[[151]](#footnote-152) ETCs are required to annually certify compliance with the applicable minimum service level rules by submitting Form 481 to USAC.[[152]](#footnote-153)

**B. Pennsylvania-Specific Requirements for Lifeline Program**

In addition to the federal Lifeline standards above, the Commission also has adopted minimum service standards to govern the federal Lifeline program.[[153]](#footnote-154) Section 3019(f) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 3019(f), sets forth the minimum Pennsylvania requirements for ETCs seeking low-income support from the federal Lifeline Program.

In addition to these Pennsylvania statutory requirements, the Commission also has established other Lifeline eligibility criteria via orders.[[154]](#footnote-155) To the extent that federal law or federal requirements for Lifeline service have not preempted or made our Pennsylvania state-specific Lifeline requirements obsolete, they remain applicable to all Lifeline service providers. For example, our *PA Lifeline Order* requires ETCs to verify the ongoing eligibility of their Lifeline subscribers and submit an annual re-certification of that verification. However, we note that pursuant to the federal rules, Lifeline subscribers will be recertified either automatically through the National Verifier’s state/federal data sources or receive a recertification request from USAC.[[155]](#footnote-156) Additionally, ETCs are required to report to the Commission annual changes in their Pennsylvania Lifeline enrollment. Thus, ETCs must certify that they will comply with relevant requirements set forth in the *Pa. Lifeline Order*, *Tracking Report Order*, and *Policy Statement*.

**C. Analysis**

TWCIS certifies that it satisfies the minimum standards set forth in the FCC’s *Lifeline Reform Orders*, reporting and performance metrics set forth in the *USF/ICC Transformation Order*, and all related regulations. Further, TWCIS also certifies that it satisfies and will abide by the Commission’s requirements in the Public Utility Code, our ETC Guidelines, and all other Lifeline-related orders.

Since TWCIS has committed itself to serve low-income consumers by offering Lifeline discounts to its service offerings, we find that reliance on its commitments to meet these and other regulatory requirements, as well as representations and commitments made in its petition, is reasonable and consistent with the public interest and the Act.

**III. Change in Corporate Control and Renewed ETC Designation**

In the event of a change of or transfer in corporate control, as defined in the Commission’s regulations at 52 Pa. Code § 63.322, TWCIS will have to petition this Commission for a renewal of its ETC status. Corporate changes of control may also be accompanied with changes in ETC status of a particular telecommunications entity with reference to the various and evolving support mechanisms of the federal USF. In this respect, this Commission is lawfully entitled to timely re-examine any such changes and ascertain whether a particular telecommunications entity should continue with an ETC designation. For this reason, we shall require TWCIS to file for renewal of its ETC designation at the same time it files any application for a change or transfer of control under our regulations.

**CONCLUSION**

We acknowledge that TWCIS is only required to provide certifications as part of its ETC petition and is not required to demonstrate its capability to provide service as certified. While our ETC designation process is separate from and serves a different purpose than the authorization process and post-authorization accountability measures that will be conducted by the FCC,[[156]](#footnote-157) our action to designate TWCIS does impose certain statutory and regulatory obligations on it once it is authorized to receive the awarded Auction 904 support in the eligible census blocks in Pennsylvania.

Based upon our review of TWCIS’ Petition as supplemented, we determine that TWCIS satisfies all applicable and relevant FCC rules and federal requirements necessary to obtain a high-cost ETC designation for the purpose of receiving Auction 904 high-cost support as discussed above. Additionally, TWCIS also meets the additional requirements for ETC designation as outlined in the Commission’s Policy Statement at 52 Pa. Code § 69.2501. Further, TWCIS has certified that it will comply with all applicable annual reporting requirements for high-cost support recipients provided under 47 C.F.R. §§ 54.805-806 and 47 C.F.R. §§ 54.313, 54.316, and 54.320.

Consumers will benefit from the Commission’s decision to designate TWCIS an ETC in the townships and boroughs located throughout its service territory. Granting TWCIS an ETC designation allows it to receive the RDOF Phase I high-cost support funding to expand voice and broadband-capable networks with service quality that meets the FCC’s and Pennsylvania’s requirements in the RDOF-awarded census blocks.

As an ETC receiving federal high-cost support, TWCIS is obligated to ensure that the support it receives is being used only for the provision, maintenance, and upgrading of facilities and services in the areas where it is designated an ETC. Additionally, because TWCIS and its affiliates will also be providing voice and BIAS to non­Lifeline customers, we require TWCIS to comply with applicable Commission and FCC requirements governing the delivery of voice and BIAS to non-Lifeline consumers.

We note that with the grant of this ETC designation, TWCIS may replace the current incumbent price cap ETCs in the future as the only carrier receiving federal high-cost support in those census block groups within the local exchanges where it has received an ETC designation. If such relinquishment occurs, TWCIS, as the competitive ETC, will be required to ensure that all customers served by a relinquishing carrier in TWCIS’ Designated Service Area will continue to be served. Since TWCIS may become the entity having the ETC COLR obligation, it too must first seek to relinquish its ETC designation before ceasing to provide the qualified supported services.

Upon receipt of a federal high-cost ETC designation, a winning RDOF Phase I bidder is required to offer Lifeline services and is required to comply with the rules and requirements of the federal Lifeline program in all areas throughout its service territory.

In sum, in consideration of the TWCIS Petition for ETC designation, as supplemented, we conclude that it meets the statutory criteria and applicable minimum standards necessary under federal and state law to obtain an ETC designation and it is in the public interest to approve TWCIS’ request for designation as an ETC. As a federal high-cost ETC designee, TWCIS will become eligible to secure the federal high-cost support assigned to the geographic area for which it has received its ETC designation. Our finding to designate TWCIUS as an ETC in the discrete census blocks included in Auction 904, which includes TWCIS’ tariffed service area in Pennsylvania is in accord with Section 214 of the Act, the FCC’s regulations and orders related to ETC designation, Section 3019(f) of the Public Utility Code, and the Commission’s orders on ETC designation. 47 U.S.C.§ 214; 47 C.F.R. §§ 54.201, *et seq*.; and 66 Pa. C.S. § 3019(f); **THEREFORE,**

**IT IS ORDERED:**

1. The Petition of Time Warner Cable Information Services (Pennsylvania), LLC for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Pennsylvania is granted, subject to the terms and conditions set forth in this Order.
2. That the Commission designates Time Warner Cable Information Services (Pennsylvania), LLC as an Eligible Telecommunications Carrier in those Rural Digital Opportunity Fund Phase I-eligible census blocks in its Designated Service Area as listed in Appendix A attached to this Order.
3. That upon its designation as an Eligible Telecommunications Carrier throughout its service territory, Time Warner Cable Information Services (Pennsylvania), LLC will become qualified to receive the federal high-cost support awarded via the Rural Digital Opportunity Fund in those Phase I-eligible census blocks located in certain local exchanges throughout the Commonwealth of Pennsylvania as listed in Appendix A attached to this Order.
4. That the rules of the Federal Communications Commission regarding the redefinition process as it relates to Time Warner Cable Information Services (Pennsylvania), LLC’s designation as a federal high-cost Eligible Telecommunications Carrier below the study area levels of Frontier Communications-Commonwealth Telephone Company and Windstream Pennsylvania LLC are inapplicable for the reasons set forth in this Order.
5. That Time Warner Cable Information Services (Pennsylvania), LLC is required to offer Lifeline service to any eligible low-income consumers or households located throughout its Designated Service Area as described in this Order.
6. That Time Warner Cable Information Services (Pennsylvania), LLC shall file a Lifeline tariff supplement to its existing Commission-approved tariff for Lifeline services with the Commission’s Bureau of Technical Utility Services within 30 days of the entry of this Order.
7. That Time Warner Cable Information Services (Pennsylvania), LLC shall submit its proposed Residential Phone Terms and Conditions to the Commission’s Bureau of Consumer Services prior to the commencement of service and dissemination to the public to ensure that it complies with all applicable regulations at Chapter 64, Title 52 of the Pennsylvania Code, especially as to the terms and conditions regarding billing standards and practices, and disclosure of early termination and other fees.
8. That Time Warner Cable Information Services (Pennsylvania), LLC shall submit a mock-up of its final marketing and promotional materials (e.g., advertisements and sales brochures) regarding its RDOF-funded interconnected VoIP service and BIAS and Lifeline service to the Bureau of Consumer Services for its review and approval for plain language requirements at 52 Pa. Code § 69.251 and compliance with all applicable regulations at 47 C.F.R. § 54.405(c) and (d) prior to distribution of these materials to the public.
9. That Time Warner Cable Information Services (Pennsylvania), LLC is hereby directed to work with the Bureau of Consumer Services to resolve informal complaints and to submit to Commission jurisdiction on formal complaints filed by its Lifeline customers on Lifeline and other related issues.
10. That Time Warner Cable Information Services (Pennsylvania), LLC shall petition this Commission for any future change to the basic Lifeline service offerings provided through this ETC designation as described herein which represents a limitation or reduction of Lifeline services/equipment provided free of charge and shall provide notice to this Commission of any addition, change or new offering which is in addition to the basic Lifeline offering.
11. That Time Warner Cable Information Services (Pennsylvania), LLC shall petition this Commission for renewal of its Eligible Telecommunications Carrier status at the same time it files or is implicated in the filing of any application for a change or transfer of control as defined in Pennsylvania law.
12. That Time Warner Cable Information Services (Pennsylvania), LLC shall pay the Pennsylvania’s Telecommunications Relay Service fee, E911 fees, and Pennsylvania Universal Service Fund fees for the duration of its CLEC certification and ETC designation.
13. That Time Warner Cable Information Services (Pennsylvania), LLC shall notify the Commission of any change in its network architecture that will impact its interconnected VoIP or BIAS offerings in Pennsylvania.
14. That the failure of Time Warner Cable Information Services (Pennsylvania), LLC to comply with any of the provisions of this Order may result in revocation of its ETC designation(s) for purposes of receiving federal Universal Service Fund high-cost support and the federal Lifeline support or be subject to further Commission process.
15. That the Secretary shall serve a copy of this Order on Time Warner Cable Information Services (Pennsylvania), LLC, Frontier Communications – Commonwealth Telephone Company, Verizon North LLC, Verizon Pennsylvania LLC, Windstream Pennsylvania LLC, the Office of Consumer Advocate, and the Office of Small Business Advocate.
16. That a copy of this Order shall be published in the *Pennsylvania Bulletin*.
17. That this docket shall be marked closed.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: July 15, 2021

ORDER ENTERED: July 15, 2021

1. April 8, 2021, Data Request (DR) Responses at 1, n.2. [↑](#footnote-ref-2)
2. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 17672 para. 17 (2011) (*USF/ICC Transformation Order*), *aff’d sub nom. In re FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014). [↑](#footnote-ref-3)
3. *Id*. at 17667, para. 1. [↑](#footnote-ref-4)
4. *Id*. at 17725, para. 156-57. [↑](#footnote-ref-5)
5. *Id.* [↑](#footnote-ref-6)
6. *Id*. [↑](#footnote-ref-7)
7. *See generally Lifeline and Link Up Reform and Modernization, et al., Report and Order and Further Notice of Proposed Rulemaking,* *27 FCC Rcd 6656 (2012) (2012 Lifeline Reform Order).* Per subsequent FCC orders, the Lifeline benefit has been reduced, and it is currently set at $5.25 for standalone voice. However, Lifeline support for standalone voice services is set to go from $5.25 to zero after December 1, 2021, although that decision is under reconsideration at the FCC*.* [↑](#footnote-ref-8)
8. *Id*. at 6690-91, paras. 77-78 [↑](#footnote-ref-9)
9. *Id.* [↑](#footnote-ref-10)
10. *Lifeline and Link Up Reform and Modernization et al.*, Second Further Notice of Proposed Rulemaking, Order on Reconsideration, Second Report and Order, and Memorandum Opinion and Order, 30 FCC Rcd 7818 (2015) (*2015 Lifeline FNPRM*); *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4038, para. 211 (2016) (*2016 Lifeline Modernization Order*); *Fourth Report and Order, Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, 32 Rcd 10475 (2017), vacated and remanded, *National Lifeline Association et al. v. FCC*, Docket Nos. 18-1026, Order issued February 1, 2019 (D.C. Cir. 2019) (*2017 Lifeline NPRM and NOI*) (collectively *Lifeline Reform Orders*). [↑](#footnote-ref-11)
11. *Id.* at 6690-91, paras. 77-78. [↑](#footnote-ref-12)
12. *USF/ICC Transformation Order*, 26 FCC at 17732, para. 178. [↑](#footnote-ref-13)
13. *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, (2016) (*CAF* *Phase II Auction Order*). [↑](#footnote-ref-14)
14. *Connect America Fund Phase II Auction (Auction 903) Closes; Winning Bidders Announced; FCC Form 683 Due October 15, 2018*, AU Docket No. 17-182, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 8257 (*Auction 903 Closing Public Notice*). [↑](#footnote-ref-15)
15. *Rural Digital Opportunity Fund; Connect America Fund*; Notice of Proposed Rulemaking, 34 FCC Rcd 6778 (2019) (*Rural Digital Opportunity Fund NPRM*). [↑](#footnote-ref-16)
16. *Id*. The FCC made eligible for Auction 904 certain high-cost census block groups in RDOF Phase I in unserved areas nationwide that were not served by an unsubsidized service provider. [↑](#footnote-ref-17)
17. *Rural Digital Opportunity Fund et al.,* Report and Order, 35 FCC Rcd 686 (2020) (*RDOF Order*). [↑](#footnote-ref-18)
18. The FCC determined that eligible areas for Phase I would include (1) the census blocks for which price cap carriers currently receive CAF Phase II model-based support; (2) any census blocks that were eligible for, but did not receive, winning bids in the CAF Phase II auction; (3) any census blocks where a CAF Phase II auction winning bidder has defaulted; (4) the census blocks excluded from the offers of model-based support and the CAF Phase II auction because they were served with voice and broadband of at least 10/1 Mbps; (5) census blocks served by both price cap carriers and rate-of-return carriers to the extent that the census block is in the price cap carrier’s territory, using the most recent study area boundary data filed by the rate-of-return carriers to identify their service areas and determine the portion of each census block that is outside this service area; (6) any unserved census blocks that are outside of price cap carriers’ service areas where there is no certified high-cost eligible telecommunications carrier providing service, such as the Hawaiian Homelands, and any other populated areas unserved by either a rate-of-return or price cap carrier; and (7) any census blocks identified by rate-of-return carriers in their service areas as ones where they do not expect to extend broadband.  *Id*. at 691, para. 12. [↑](#footnote-ref-19)
19. *Id*. at 690, para. 9. [↑](#footnote-ref-20)
20. *See Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, Public Notice, 35 FCC Rcd 13888, 13890-91, paras. 9-15 (RBATF, OEA, WCB 2020) (*RDOF Closing Public Notice*). [↑](#footnote-ref-21)
21. As a result of Auction 904, some homes and businesses would have voice as well as broadband Internet access services available with download speeds of at least 100 Mbps. [↑](#footnote-ref-22)
22. Petition, Exhibits A, B. [↑](#footnote-ref-23)
23. *RDOF Order*, 35 FCC Rcd at 725, para. 85. [↑](#footnote-ref-24)
24. Petition at 1, 3, 9-10. [↑](#footnote-ref-25)
25. Auction Results Notice, Winning Bidder Summary, DA 20-1422A2 (December 7, 2020). The identified locations are the minimum deployments required by the FCC. The bidder must also deploy to other locations identified in the census block as part of their obligation. [↑](#footnote-ref-26)
26. *RDOF Order*, 35 FCC Rcd at 722, para. 79, 726, para. 90; *RDOF Closing Public Notice*, 35 FCC Rcd at 18893-95, para. 17. [↑](#footnote-ref-27)
27. *RDOF Closing Public Notice*, 35 FCC Rcd 13893-95 para. 17; *see also* 47 C.F.R. § 54.804(b)(5). On May 25, 2021, the Commission issued a “good faith” letter to TWCIS stating that our review of its Petition would not be completed prior to deadline despite TWCIS’ good faith efforts.  TWCIS filed a waiver request of the Auction 904 deadline with the FCC on June 1, 2021. *Petition of Charter Communications, Inc.; Bright House Networks Information Services (Florida), LLC; Charter Fiberlink LA-CCO, LLC; Time Warner Cable Information Services (Pennsylvania), LLC; Charter Fiberlink VA-CCO, LLC; Time Warner Cable Information Services ) (Virginia), LLC; Charter Fiberlink CCO, LLC; and Time Warner Cable Information Services (Wisconsin), LLC for Waiver of Rural Digital Opportunity Fund ETC Designation Deadline*, WC Docket No. 19-126; WC Docket No. 10-90. [↑](#footnote-ref-28)
28. Petition at 3. [↑](#footnote-ref-29)
29. Petition, Exhibit C. [↑](#footnote-ref-30)
30. Petition at 3. [↑](#footnote-ref-31)
31. Petition at 3, Exhibit D. TWCIS is authorized to operate as a CLEC in the service territories of Verizon Pennsylvania LLC (Verizon PA), Verizon North LLC (Verizon North), Citizens Telephone Company of New York, Frontier Communications– Commonwealth Telephone Company LLC (Commonwealth Telephone Company); Frontier Communications - Oswayo River LLC; Pymatuning Independent Telephone Company, and Windstream Pennsylvania LLC (Windstream PA). [↑](#footnote-ref-32)
32. An ETC may meet its obligation to offer its services if it does so through affiliates within the holding company structure. *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020*, Notice and Filing Requirements and Other Procedures for Auction 904, FCC 20-77, AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90 ¶¶ 138-39 (rel. Jun. 11, 2020). As such, the distinction between TWCIS service and the service of affiliates is in most cases immaterial for the purposes of ETC designation. Therefore, the Commission will not distinguish between the service provided by TWCIS and its affiliates. [↑](#footnote-ref-33)
33. Petition, Exhibit A. [↑](#footnote-ref-34)
34. Petition, Exhibit B. [↑](#footnote-ref-35)
35. April 8, 2021 DR Responses at 21. [↑](#footnote-ref-36)
36. *Id.* at 23. [↑](#footnote-ref-37)
37. Petition at 2, n. 6; April 8, 2021 Data Request (DR) Responses at 21. 138-39 (rel. Jun. 11, 2020). [↑](#footnote-ref-38)
38. April 8, 2021, DR Responses at 22. [↑](#footnote-ref-39)
39. *Id.* [↑](#footnote-ref-40)
40. 47 U.S.C. § 254(e). [↑](#footnote-ref-41)
41. 47 U.S.C. § 214(e)(6). [↑](#footnote-ref-42)
42. *See Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Rcd 8776, 8847‑76, paras. 128-80 (1997)*.* [↑](#footnote-ref-43)
43. 47 U.S.C. § 214(e) (1)(A); *see also* 47 C.F.R. § 54.201(d)(1). [↑](#footnote-ref-44)
44. 47 U.S.C. § 214(e)(1)(A); *see also* 47 C.F.R. § 54.201(d)(1). [↑](#footnote-ref-45)
45. 47 U.S.C. § 214(e)(1)(B); *see also* 47 C.F.R. § 54.201(d)(2). [↑](#footnote-ref-46)
46. 47 U.S.C. § 214(e)(5); *see also* 47 C.F.R. § 54.207(a). [↑](#footnote-ref-47)
47. *See 2005 ETC Designation Order*,20 FCC Rcd at 6380, para. 20 (citing *Federal-State Joint Board on Universal Service*, Recommended Decision, 19 FCC Rcd 4259, para. 5 (Fed-State Jt. Bd. 2004)).  [↑](#footnote-ref-48)
48. 47 C.F.R. § 54.202(a)(1)(i). [↑](#footnote-ref-49)
49. 47 C.F.R. § 54.202(a)(1)(ii). The FCC subsequently eliminated the five-year improvement plan requirement for CAF recipients since it had adopted more specific measures to track deployment, including annual reporting of service to geocoded locations and certification of compliance with benchmark milestones. *See Connect America Fund et al.*, ETCs Annual Reports and Certifications, Report and Order, 32 FCC Rcd 5944, 5944-48, paras. 3-14 (2017) (*ETC Reporting Streamlining Order*) (eliminating requirements relating to the reporting of network outages, unfulfilled service requests, complaints, and pricing and the certification of compliance with applicable service quality standards). [↑](#footnote-ref-50)
50. 47 C.F.R. 54.202(a)(2). [↑](#footnote-ref-51)
51. 47 C.F.R. § 54.202(a)(3). The FCC also has eliminated this requirement for CAF support recipients finding that the need for it was obviated by the specific service quality standards applicable to CAF support recipients and specific reporting obligations relating to such standards. *See generally ETC Reporting Streamlining Order*. [↑](#footnote-ref-52)
52. In the *2005 ETC Designation Order*, the FCC had established that an ETC may be required to provide equal access if all other ETCs in the service area relinquish their designations. In the *USF/ICC Transformation Order*, the FCC determined that the above ETC equal access requirement was obsolete and deleted it from 47 C.F.R. § 54.202. The FCC stated because this rule was obsolete, it found good cause to delete it without notice and comment. *USF/ICC Transformation Order*, FCC Rcd 17872, para. 647and Appendix A. [↑](#footnote-ref-53)
53. 21 U.S.C. § 862; 47 C.F.R. § 1.2002(a)–(b). [↑](#footnote-ref-54)
54. 52 Pa. Code § 69.2501(a). [↑](#footnote-ref-55)
55. *RDOF Order*, 35 FCC Rcd at 724-725, para. 84. [↑](#footnote-ref-56)
56. As a part of the FCC’s long-form application process, TWCIS must file more extensive information demonstrating to the FCC that it is legally, technically, and financially qualified to receive support and meet the public interest obligations in each area for which it seeks Auction 904 support. *Id*. at 717-18, paras. 66-70. [↑](#footnote-ref-57)
57. 47 U.S.C. § 254(e). [↑](#footnote-ref-58)
58. 47 C.F.R. § 54.201(d). [↑](#footnote-ref-59)
59. Pursuant to Section 153(10) of the Act, a "telecommunications carriers" has been defined to include, with one minor exception, any provider of "telecommunications services."' 47 U.S.C. §153(51). The Act defines a "telecommunications service," as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. §153(53). In turn, telecommunications means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received." 47 U.S.C. § 153(50). The definition of "telecommunications carrier" in the Act goes on to state that "[a] telecommunications carrier" shall be treated as a *common carrier* under this Act only to the extent that it is engaged in providing telecommunications services, except that the Commission shall determine whether the provision of fixed and mobile satellite service shall be treated as "common carriage." 47 U.S.C. §153(51) (emphasis supplied). [↑](#footnote-ref-60)
60. 47 C.F.R. § 54.101 (including both eligible voice telephony and eligible broadband Internet access as services “supported by federal universal service support mechanisms,” and characterizing the provision of eligible broadband service as a high-cost public interest obligation); *see also USF/ICC Transformation Order,* 26 FCC Rcd at 17691-94, paras. 74-89 (describing the “core functionalities of the supported services as ‘voice telephony service,’” and as a separate condition of receiving federal high-cost universal service support, all ETCs are required to offer BIAS in their supported area that meets certain basic performance requirements). [↑](#footnote-ref-61)
61. *USF/FCC Transformation Order*, 26 FCC Rcd at 17693, paras. 80-81; *see also* 47 C.F.R. § 54.101(b). [↑](#footnote-ref-62)
62. Petition at 13-14. [↑](#footnote-ref-63)
63. Petition at 5. [↑](#footnote-ref-64)
64. Petition at 5. [↑](#footnote-ref-65)
65. *See Universal Service Order*,12 FCC Rcd 8776, 8813, para. 67. Although the FCC’s rules define “local usage” as “an amount of minutes of use of wire center service, prescribed by it, provided free of charge to end users,” the FCC has not specified a number of minutes of use. *See* 47 C.F.R.  54.101(a)(1). *See also Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96‑45, FCC 02J-1 (rel. Jul. 10, 2002). [↑](#footnote-ref-66)
66. Petition at 14. [↑](#footnote-ref-67)
67. April 8, 2021 DR Responses at 15. [↑](#footnote-ref-68)
68. *Id.* [↑](#footnote-ref-69)
69. Petition at 5. [↑](#footnote-ref-70)
70. April 8, 2021 DR Responses at 15. [↑](#footnote-ref-71)
71. *Id.* [↑](#footnote-ref-72)
72. June 22, 2021 DR Responses, Answer 9. [↑](#footnote-ref-73)
73. *Id.* [↑](#footnote-ref-74)
74. *See 2012 Lifeline Reform Order*, 27 FCC Rcd at 6756, para. 229. [↑](#footnote-ref-75)
75. Petition at 14. [↑](#footnote-ref-76)
76. 47 C.F.R. §§ 54.101(a)(2) and (c). [↑](#footnote-ref-77)
77. 47 C.F.R. § 54.805(a). [↑](#footnote-ref-78)
78. 47 C.F.R. § 54.805(b). [↑](#footnote-ref-79)
79. *RDOF Phase I Auction Order*, para. 43. [↑](#footnote-ref-80)
80. *Id*. at para. 32. [↑](#footnote-ref-81)
81. Petition at 14. [↑](#footnote-ref-82)
82. Petition at 24. [↑](#footnote-ref-83)
83. April 8, 2021 DR Responses at 22. [↑](#footnote-ref-84)
84. 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.101. [↑](#footnote-ref-85)
85. *Universal Service Order*, 12 FCC Rcd at 8847, para. 128; 47 C.F.R. § 54.201(e). [↑](#footnote-ref-86)
86. *Id.* at 8870, para. 169; 47 C.F.R. § 54.201(f) and (g). [↑](#footnote-ref-87)
87. *Id.* at 8866, para. 160. [↑](#footnote-ref-88)
88. *December 2014 CAF Order*,29 FCC Rcd at 15668 n.43*; see also* 47U.S.C. § 153(2) (defining an affiliate as “a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person”). [↑](#footnote-ref-89)
89. *Cf. Connect America Fund*,Report and Order, 28 FCC Rcd 7211, 7215, para. 9 (2013) (*Phase II Challenge Process Order*) (finding that it is not sufficient for a broadband provider to qualify as an “unsubsidized competitor” if a consumer must obtain voice service from a third party, because that broadband provider would not be offering a voice service)*.* [↑](#footnote-ref-90)
90. *See Rural Digital Opportunity Fund Phase I Auction Order*, FCC 20-77, Para. 139*.* [↑](#footnote-ref-91)
91. *See* Petition at 13-15; see also Petition at 14, n. 28. [↑](#footnote-ref-92)
92. Petition at 15. [↑](#footnote-ref-93)
93. April 8, 2021 DR Responses at 19. [↑](#footnote-ref-94)
94. *Id.* [↑](#footnote-ref-95)
95. Petition at 18. [↑](#footnote-ref-96)
96. April 8, 2021 DR Responses at 6. [↑](#footnote-ref-97)
97. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). [↑](#footnote-ref-98)
98. April 8, 2021 DR Responses at 21. [↑](#footnote-ref-99)
99. Section 214(e)(5) of the Act provides that a CETC service area is defined as the RLEC’s study area unless and until the state commission and the FCC, taking into consideration any recommendations from the Joint Board, redefine the RLEC’s service area to be something other than its study area. [↑](#footnote-ref-100)
100. *See ETC Designation Order*, 20 FCC Rcd at 6392-95, paras. 48-53. [↑](#footnote-ref-101)
101. *RDOF Order*, 35 FCC Rcd at 727-728, paras. 91-93. [↑](#footnote-ref-102)
102. *Id.* para. 92. [↑](#footnote-ref-103)
103. *Id.* [↑](#footnote-ref-104)
104. *Id.* [↑](#footnote-ref-105)
105. The FCC has determined CAF high-cost recipients need not submit a formal five-year improvement plan that demonstrates how universal service funds will be used to improve coverage, signal strength, or capacity that would not otherwise occur absent the receipt of high-cost support. *See generally* *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, 3-4 (rel. July 10, 2018)). [↑](#footnote-ref-106)
106. Petition at 15; April 8, 2021 DR Responses at 18; April 22, 2021 Supplemental DR Responses, Answer 2. [↑](#footnote-ref-107)
107. July 8, 2021, DR Responses, Answer 1. [↑](#footnote-ref-108)
108. 47 C.F.R. § 9.20; *see also* *Ensuring Continuity of 911 Communications*, Report and Order, 30 FCC Rcd 8677 (2015). [↑](#footnote-ref-109)
109. April 8, 2021 DR Responses at 24. [↑](#footnote-ref-110)
110. *Id.* [↑](#footnote-ref-111)
111. *Id.* [↑](#footnote-ref-112)
112. *Id.* [↑](#footnote-ref-113)
113. *Id.* [↑](#footnote-ref-114)
114. April 8, 2021 DR Responses, Exhibit 2. [↑](#footnote-ref-115)
115. *Id.* [↑](#footnote-ref-116)
116. 47 C.F.R. § 54.202(a)(3). [↑](#footnote-ref-117)
117. *See* *RDOF Order*. [↑](#footnote-ref-118)
118. Petition, Exhibit D (Certificate of Public Convenience of TWCIS). The Commission’s consumer protection and quality of service regulations applicable to CLECs apply to both competitive and non-competitive services. [↑](#footnote-ref-119)
119. We note that standalone basic voice service has not been reclassified as competitive under Section 3016 of the Code, 66 Pa.C.S. § 3016, in any of the ILEC service area exchanges or wire centers where TWCIS proposes to provide CLEC services. [↑](#footnote-ref-120)
120. *See* 73 P.S. §§ 2251.5 and 2251.6(1)(v). Under the VoIP Freedom Act, the Commission has retained jurisdiction to enforce applicable federal and Pennsylvania statutes or regulations on interconnected VoIP services relating to the following subject matters: (i) The provision and administration of enhanced 911 service and nondiscriminatory enhanced 911 fees; (ii) telecommunications relay service fees; (iii) universal service fund fees; (iv) switched network access rates or other intercarrier compensation rates for interexchange services provided by a local exchange telecommunications company; and (v) Rates, terms or conditions of protected services provided under tariffs which are subject to approval by the Commission.  73 P.S. § 2251.6(1).  *See also Eileen Floyd v. Verizon Pennsylvania LLC*, Docket No.

     C-2012-2333157 (Order entered April 30, 2013); *Application of Momentum Telecom, Inc. for Approval of the Abandonment or Discontinuance of Competitive Local Exchange Carrier and Interexchange Carrier Reseller Services to the Public in the Commonwealth of Pennsylvania*, Docket No. A-2014-2450071, (Order entered May 20, 2015). *See also Mozilla Corp. v. FCC*, 940 F.3d 1, 74-86 (D.C. Cir. 2019). [↑](#footnote-ref-121)
121. 47 C.F.R. § 54.202(a)(4) [↑](#footnote-ref-122)
122. 47 C.F.R. §§ 54.202(a)(5) and 54.202(a)(6). [↑](#footnote-ref-123)
123. April 8, 2021 DR Responses at 1, n.2. [↑](#footnote-ref-124)
124. Currently, federal rules limit Lifeline funding support to $5.25 per month per subscriber for voice services. The Lifeline subscriber’s $5.25 support may also be applied to BIAS a Lifeline consumer may choose to purchase but subscribers cannot receive the $5.25 support separately for each service. However, Lifeline also supports broadband access and voice bundles so consumers choosing a bundled package containing voice and broadband access service can apply the $5.25 monthly support to that bundle. [↑](#footnote-ref-125)
125. Petition at 13-20. [↑](#footnote-ref-126)
126. *See generally* April 8, 2021 DR Responses, April 22, 2021 Supplemental DR Responses, June 22, 2021 DR Responses. [↑](#footnote-ref-127)
127. See Mockup of advertising and marketing materials: April 8, 2021 DR Responses, Exhibits 1 and 2 ; June 22, 2021 DR Responses, Exhibit 1. [↑](#footnote-ref-128)
128. July 8, 2021, DR Responses, Answer 2. [↑](#footnote-ref-129)
129. Notwithstanding Pennsylvania state law, a state commission must allow an ETC to relinquish its designation in any area served by more than one ETC pursuant to Section 214(e)(4) of the Act if conditions are met. *See* 47 U.S.C. § 214(e)(2). The relinquishing ETC must provide advance notice of such relinquishment to the state commission. Prior to allowing the relinquishing carrier to cease providing universal service, the state commission must require the remaining ETC or ETCs to ensure that all customers served by the relinquishing carrier will continue to be served. The state commission also must require sufficient notice to the remaining ETC or ETCs to permit the purchase or construction of adequate facilities, with such purchase occurring within a specific time period. *See* 47 U.S.C. § 214(e)(4). [↑](#footnote-ref-130)
130. *See* *December 2014* *Connect America Order*, Report and Order, 29 FCC Rcd 15644, 15663-71, paras. 50-70. [↑](#footnote-ref-131)
131. *RDOF Order*, 35 FCC Rcd at 743-744, paras. 134-35. [↑](#footnote-ref-132)
132. *Id.* at para. 134. *See also* 66 Pa.C.S. §1301. [↑](#footnote-ref-133)
133. 47 U.S.C. § 214(e)(4). [↑](#footnote-ref-134)
134. *2005 ETC Designation Order*, 20 FCC Rcd at 6386, para 36.  The FCC stated that under Section 214(e)(4) of the Act, the state commission or, in the case of a common carrier not subject to state commission jurisdiction, the FCC “shall permit an eligible telecommunications carrier to relinquish its designation as such a carrier in any area served by more than one eligible telecommunications carrier.”  However, prior to allowing the carrier to cease providing universal service in the area, the remaining ETC or ETCs will be required to ensure that all customers served by the relinquishing carrier will continue to be served.  Furthermore, under Section 251(h)(2) of the Act, the Commission may treat another carrier as the incumbent LEC if that carrier occupies a position in the market that is comparable to the position occupied by the incumbent LEC, if such carrier has substantially replaced an incumbent LEC, and if such treatment is consistent with the public interest, convenience and necessity. Moreover, applicable Pennsylvania law notwithstanding, ILECs seeking to relinquish their ETC designations will remain obligated, however, to maintain existing voice service unless and until they receive authority under 47 U.S.C. § 214(a) to discontinue that service. They also will remain subject to the obligation to offer Lifeline service to qualifying low-income consumers or households throughout their service territory. [↑](#footnote-ref-135)
135. July 8, 2021 DR Responses, Answer 3. [↑](#footnote-ref-136)
136. 47 C.F.R. §§ 54.313, 54.314, 54.316 and 54.320(a)-(c). [↑](#footnote-ref-137)
137. The FCC’s regulations impose a public interest requirement at 47 C.F.R. Section 54.202(b).  However, this public interest requirement is not applicable here. Rather, it is applicable only when the FCC is designating a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission.  [↑](#footnote-ref-138)
138. *See generally* *Federal-State Joint Board on Universal Service, Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier for the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd. 6422, 6424, para. 4 (2004); *Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, Memorandum Opinion and Order, 19 FCC Rcd 1563, 1565. para. 4 (2004)*.* [↑](#footnote-ref-139)
139. *See* Petition at 1-2. [↑](#footnote-ref-140)
140. July 8, 2021 DR Responses, Answers 4, 5; *see also* Petition at 13-16. [↑](#footnote-ref-141)
141. Auction Results Notice, Winning Bidder Summary, DA 20-1422A2 (December 7, 2020) (noting the support for CCO Holdings, LLC which in turn assigned its winning bids to TWCIS). [↑](#footnote-ref-142)
142. *RDOF Order*, 35 FCC Rcd. at 707-08, para. 42. [↑](#footnote-ref-143)
143. 47 C.F.R. § 54.410. [↑](#footnote-ref-144)
144. In its *2016 Lifeline Order*, the FCC established the National Verifier as the entity designated to make the initial eligibility determination regarding a potential Lifeline subscriber. *2016 Lifeline Order*, 31 FCC Rcd 3962, 4007, para. 128 (2016). [↑](#footnote-ref-145)
145. New and potential Lifeline consumers receive their initial eligibility determination by signing into CheckLifeline.org from any computer or mobile device to create an account, receive an eligibility decision, and use the list of service providers in their area to contact one to enroll. [↑](#footnote-ref-146)
146. The Universal Service Administrative Company (USAC), the administrator of the federal Lifeline program, manages the National Verifier and its customer service department, the Lifeline Support Center. The National Verifier makes an initial determination of a subscriber's eligibility based on prospective subscriber’s eligibility to qualify for Lifeline service using either income-based eligibility criteria or program-based eligibility criteria is codified at Sections 54.410(b) and (c), respectively. [↑](#footnote-ref-147)
147. *See* 47 C.F.R. § 54.405(e). Every Lifeline consumer’s eligibility is to be recertified annually. 47 C.F.R. § 54.410(f). Lifeline subscribers will be recertified either automatically through the National Verifier’s state/federal data sources or receive a recertification request from USAC. In Pennsylvania, service providers query NLAD to verify their current Lifeline subscribers’ continued eligibility. [↑](#footnote-ref-148)
148. 47 C.F.R. § 54.405(e)(1). [↑](#footnote-ref-149)
149. If the USAC provides notification to a service provider that a subscriber has more than one discounted account, or that more than one member of a subscriber’s household is receiving service, the service provider must de-enroll the subscriber within five business days. 47 C.F.R. § 54.405(e)(2). [↑](#footnote-ref-150)
150. If the subscribers do not use their Lifeline service at least every 30 days, they will be notified by the provider that they may be de-enrolled if they do not use their service during the 15-day notice period (the “cure period”). [↑](#footnote-ref-151)
151. 47 C.F.R. § 54.416. [↑](#footnote-ref-152)
152. 47 C.F.R. § 54.422. [↑](#footnote-ref-153)
153. 52 Pa. Code § 69.2501. [↑](#footnote-ref-154)
154. *In Re: Lifeline and Link-up Programs*, Docket No. M-00051871 (Order entered May 23, 2005) (*PA Lifeline Order*); *Re: Section 3015(f) Review Regarding Lifeline Tracking Report, Accident Report, and Services Outage Report*, 100 Pa. P.U.C. 553 (Dec. 30, 2005) (*Tracking Report Order*); *Final Policy Statement on Commonwealth of Pennsylvania Guidelines for Designation and Annual Recertification as an Eligible Telecommunications Carrier (ETC) for Purposes of Federal Universal Service Support*, Docket No. M-2010-2164741, Final Policy Statement Order (Order entered August 2, 2010). [↑](#footnote-ref-155)
155. We acknowledge that many of the Pennsylvania-specific requirements set forth in our *PA Lifeline Order* such as the requirements for certification and verification of a customer’s initial and continued eligibility for Lifeline services have been impacted by developments at the federal level. For example, the creation of the National Verifier and the NLAD has made certain Pennsylvania-specific requirements for verification of Lifeline eligibility and re-certification moot. [↑](#footnote-ref-156)
156. The ETC designation that we grant to TWCIS simply establishes its general eligibility for receiving the awarded Auction 904 support in the eligible CBGs in Pennsylvania. [↑](#footnote-ref-157)