

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION
OF W.A.T.C.H. TV COMPANY FOR
DESIGNATION AS A HIGH-COST RURAL
COMPETITIVE ELIGIBLE
TELECOMMUNICATIONS CARRIER.

CASE NO. 18-1555-TP-UNC

FINDING AND ORDER

Entered in the Journal on January 23, 2019

I. SUMMARY

{¶ 1} The Commission designates W.A.T.C.H. TV Company as a high-cost rural competitive eligible telecommunications carrier.

II. APPLICABLE LAW

{¶ 2} Pursuant to 47 U.S.C. 214(e)(2) a state commission shall, upon request, designate a common carrier that meets the requirements of an eligible telecommunications carrier (ETC) for a service area designated by the state commission.

{¶ 3} In accordance with 47 C.F.R. 54.101, to receive federal high-cost support, an eligible telecommunications carrier must offer voice telephony service and broadband service consistent with the rule.

{¶ 4} Consistent with 47 C.F.R. 54.201, an ETC is eligible to receive universal service support in accordance with 47 U.S.C. 254 provided it offers the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services and advertises the availability of such services and charges using media of general distribution.

III. PROCEDURAL BACKGROUND

{¶ 5} In *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), the Federal Communications Commission (FCC) comprehensively reformed the universal service

high-cost program in order to focus support on networks capable of providing voice and broadband services. As part of this process, the FCC created the Connect America Fund for the purpose of making voice and broadband-capable infrastructure available in high-cost areas where it is lacking. See *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order (rel. Dec. 18, 2014).

{¶ 6} The FCC utilized the Connect America Fund to provide support in price cap areas via a forward-looking model of the cost of constructing modern multi-purpose networks. Specifically, the FCC offered support to incumbent price cap carriers serving certain high-cost areas in exchange for a commitment to offer voice and broadband services meeting certain requirements in those areas. In the areas of the states where the incumbent price cap carrier declined model-based support, the FCC decided to award support through a competitive bidding process. See *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Notice (rel. Feb. 1, 2018).

{¶ 7} Pursuant to *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Notice (rel. Feb. 1, 2018), the FCC established the parameters of the Connect America Fund Phase II (CAF Phase II) multi-round, reverse auction providing up to \$198 million in annual support for voice and broadband service in unserved, high-cost areas over a ten-year period.

{¶ 8} The CAF Phase II is part of the FCC's reform and modernization of its universal service support programs. CAF Phase II provides ongoing support to deploy and maintain fixed-location broadband and voice services in high-cost areas at rates comparable to those offered in urban areas. Companies that accept CAF Phase II support must comply with FCC performance requirements pertaining to broadband speed, latency, data usage, pricing, and buildout.

{¶ 9} The FCC conducted Auction 903 from July 24, 2018 to August 21, 2018, to allocate CAF Phase II support for service providers that commit to offer voice and

broadband services to fixed locations in unserved, high-cost areas. Pursuant to the auction, 103 bidders were selected to provide fixed-location broadband and voice services in unserved communities within 45 states for relatively lower levels of support. The FCC announced the winning bids on August 28, 2018. Winning bidders were required to submit to the FCC a post-auction, long-form application portion of FCC Form 683 covering the winning bids. The requisite information includes a letter of credit commitment and a detailed technology and system design description.

{¶ 10} By February 25, 2019, the long-form applicant must obtain a high-cost ETC designation from the relevant state commission.

{¶ 11} Support is to be provided for a 10-year period of time. Providers are required to build out to 40 percent of the assigned homes and businesses within three years of becoming authorized to receive CAF II funding. Buildout must increase by 20 percent each subsequent year and complete buildout is required by the end of the sixth year.

IV. APPLICATION

{¶ 12} On October 16, 2018, as amended on November 29, 2018, November 30, 2018, and December 18, 2018, and January 22, 2019, W.A.T.C.H. TV Company (W.A.T.C.H. TV or Applicant) filed an application for designation as an ETC in order to receive CAF Phase II support for the purpose of deploying its high-speed broadband and voice services in rural Ohio.

{¶ 13} W.A.T.C.H. TV is an Ohio corporation that is a wholly-owned subsidiary of Benton Ridge Telephone Company (BRTC), an Ohio rural incumbent local exchange carrier designated as an eligible telecommunications carrier. W.A.T.C.H. TV has a certificate of territorial authority from the Indiana Utility Regulatory Commission to provide telecommunications services within the state of Indiana.

{¶ 14} W.A.T.C.H. TV represents that pursuant to the FCC Order of August 28, 2018, its parent, BRTC, was designated as a provisional winning bidder to receive CAF Phase II Support to provide services to certain census blocks in Ohio, Illinois, and Indiana. Specific to Ohio, this designation includes 150 census block groups serving 6,379 locations. It includes an award of annual support in the amount of \$1,312,199 for a 10-year period of time. The awarded census blocks are located in Allen, Auglaize, Crawford, Darke, Hardin, Huron, Logan, Marion, Mercer, Miami, Montgomery, Morrow, Preble, Richland, Seneca, Shelby, Union, Van Wert, and Wyandot counties, Ohio,

{¶ 15} BRTC assigned its winning bid for census blocks in Ohio to W.A.T.C.H. TV, its subsidiary for providing information and VoIP services to customers in the CAF Phase II award areas.

{¶ 16} W.A.T.C.H. TV intends to utilize the CAF Phase II funding for the purpose of extending broadband and digital voice services around the designated rural markets in Ohio. Specifically, W.A.T.C.H. TV will utilize fixed wireless technology to offer information and VoIP services to enterprise, anchor institutions, and rural subscribers with speeds of up to 100 Mbps downstream and 20 Mbps upstream or 25 Mbps downstream and 3 Mbps upstream.

{¶ 17} W.A.T.C.H. TV certifies that its standalone VoIP and broadband services will be offered in its designated service area at rates that are reasonably comparable to urban rates and consistent with the corresponding benchmarks established by the FCC.

{¶ 18} W.A.T.C.H. TV submits that its designation as a competitive ETC is in the public interest because such designation will facilitate the FCC's goal of developing voice and broadband networks in rural, high cost areas. Specifically, W.A.T.C.H. TV will use the CAF Phase II funding to expand access to high-speed quality broadband and voice provided through interconnected VoIP.

{¶ 19} According to the Applicant, these advanced communications services will provide important connectivity to residents and businesses, and are a unique alternative to the services provided by traditional wireline carriers within the W.A.T.C.H. TV designated service area. Additionally, W.A.T.C.H. TV opines that its ETC designation is in the public interest because it will promote increased competitive choice, thereby increasing innovation and incenting other carriers to improve their existing networks in order to remain competitive. As a result, W.A.T.C.H. TV believes that its ETC designation will result in greater access to high-speed broadband and voice service offerings at competitive rates, as well as improved service quality for residents of underserved communities.

{¶ 20} W.A.T.C.H. TV contends that its provision of interconnected VoIP throughout its service area is sufficient to provide voice-grade access to the public switched telephone network pursuant to 47 C.F.R. 54.101. Therefore, W.A.T.C.H. TV states that it will provide voice telephony services, including (a) voice-grade access to the public switched telephone network or its functional equivalent; (b) minutes of use for local service provided at no additional charges to end users; (c) access to emergency services; and, (d) toll limitation services to qualifying low-income consumers in accordance with 47 C.F.R. 54.101.

{¶ 21} W.A.T.C.H. TV recognizes that as part of the required voice-grade access to the public switched network, it must provide minutes of local service at no additional charge to end users. The Applicant represents that there will be no charges on a toll basis. Therefore the Applicant will be in compliance with any local usage requirements adopted by the FCC or the Commission.

{¶ 22} With respect to requisite provision of access to emergency services, W.A.T.C.H. TV represents that it will satisfy this requirement by providing 9-1-1 and E9-1-1 for all of its customers to the extent that the local governments in its service areas have implemented 9-1-1 and E9-1-1. Upon activation, W.A.T.C.H. TV will provide all customers with a notification containing the clear instruction on the use of emergency

services and limitations, if any, at their location. In areas where an E911 service fee is imposed on the interconnected VoIP services by law, the fee will be passed through to the end user.

{¶ 23} In regard to toll limitation services for qualifying low-income customers, W.A.T.C.H. TV represents that it does not distinguish between toll and non-toll calls for its voice offering. Toll limitation is not necessary due to the fact that the Applicant will not assess any charges on a toll basis.

{¶ 24} Pursuant to 47 C.F.R. 54.101(a)(2), W.A.T.C.H. TV will provide broadband services with the capability to transmit data 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.

{¶ 25} Consistent with 47 C.F.R. 54.405(a), W.A.T.C.H. TV will offer a Lifeline discount credit of \$9.25 or any such amount as defined by the Lifeline Program rules to qualified low-income subscribers.

{¶ 26} W.A.T.C.H. TV will advertise the availability of each of its supported services through its designated service area using media of general distribution in a manner that is designated to reach those likely to qualify for such services. The Applicant agrees to comply with all form and content requirements promulgated by the FCC or the Commission in the future and required of all designated ETCs.

{¶ 27} In accordance with 47 C.F.R. 54.202(a)(2), W.A.T.C.H. TV certifies that it is capable of remaining functional in emergency situations within industry standards for VoIP services. Specifically, the Applicant has contracted with underlying wholesale providers in multiple geographical locations served by varying power utility companies. Additionally, each of the facilities have back-up power generation to ensure functionality without an external power source. Further, W.A.T.C.H. TV can reroute traffic around damaged facilities due to redundant fiber serving each of its facilities.

{¶ 28} W.A.T.C.H. TV will satisfy applicable consumer protection and service quality standards as provided in 47 C.F.R. 54.202(a)(3), as well as all applicable state-specific consumer protection and service quality standards.

V. DISCUSSION

{¶ 29} The Commission finds that W.A.T.C.H. TV, through its application, has demonstrated that it has met the standards established by the FCC and has provided sufficient evidence for the Commission to grant conditional high-cost, competitive ETC status to the Applicant for the purpose of receiving CAF II support. This authorization is conditional in the sense that any high-cost ETC seeking CAF II support must first receive final FCC approval following the submission of all the requisite documentation. W.A.T.C.H. TV is directed to make a supplemental filing in this docket upon receipt of its final FCC approval, and attest as to whether it will be operating as a high-cost, competitive ETC subject to this conditional authorization granted herein. Additionally, W.A.T.C.H. TV must provide annual updates in this docket as to the status of its deployment of its CAF II supported services in the designated service area.

{¶ 30} As stated above, W.A.T.C.H. TV will participate in the provision of Lifeline service. This service will be offered utilizing the Applicant's VoIP platform. In accordance with 47 C.F.R. 54.101(c) and 47 C.F.R. 54.101(d), as designated as an ETC, W.A.T.C.H. TV will participate in the Federal Lifeline Program as both a voice and broadband Internet access service (BIAS) provider. Therefore, it will provide Lifeline BIAS in accordance with the obligations of CAF II auction support recipients.

{¶ 31} The Commission notes that for ETCs offering voice service that is not Lifeline-only, the FCC has interpreted such carriers' ETC designations as being broad enough to make them eligible for Lifeline broadband support. *See In re Lifeline and Link Up Reform and Modernization, et al.*, WC Docket Nos. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962 (rel. Apr. 27, 2016).

{¶ 32} W.A.T.C.H. TV must provide its requisite contribution to Ohio's Telephone Relay Service for all of its VoIP subscribers. It must also pay its annual Commission assessment. The Commission reserves the right to perform an audit of W.A.T.C.H. TV's contribution into Ohio's Telephone Relay Service fund. The Commission further directs W.A.T.C.H. TV to make available to the Commission Staff, upon request, information concerning the Applicant's contributions into Ohio's Telephone Relay Service fund.

VI. MOTION FOR A WAIVER

{¶ 33} On December 5, 2018, W.A.T.C.H. TV filed a motion seeking a waiver of Ohio Adm.Code 4901:1-6-09(B)(2) and the corresponding requirement contained in Ex. A of the Commission's CETC Filing Form pertaining to the submission of a 5-year plan detailing the proposed improvements or upgrades on a wire center basis and other related information. In support of its motion, W.A.T.C.H. TV notes that the FCC, in *In re Connect America Fund*, WC Docket Nos. 10-90, 14-58, 14-259, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (rel. May 26, 2016), adopted specific service milestones with which CAF Phase II auction recipients must comply within the 6-year period following approval of the application.

{¶ 34} Upon a review of the arguments set forth in W.A.T.C.H. TV's motion for a waiver, the Commission finds that the request is reasonable and should be granted. Specifically, the Commission relies on the fact that the FCC has already required W.A.T.C.H. TV to submit annual reports that include specific measures for tracking deployment of the supported services. The Commission also notes that the FCC, pursuant to its own motion, waived the requirement to submit a five-year plan for all winning bidders of the CAF Phase II auction because it adopted more specific measures to track deployment, including annual reporting of service to geocoded locations and certification of compliance with benchmark milestones. See *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible*

Telecommunications Carrier, WC Docket Nos. 09-197, 10-90, Public Notice (DA 18-714) (Jul. 10, 2018).

VII. MOTION FOR A PROTECTIVE ORDER

{¶ 35} On November 29, 2018, W.A.T.C.H. TV filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), specific to information related to its spectrum access and technology and system design descriptions for the network that will provide the proposed high-cost CAF II supported services. W.A.T.C.H. TV asserts that the confidential business information constitutes a trade secret under Ohio law and that nondisclosure of the information is consistent with the purpose of Title 49 of the Revised Code. In support of its motion, W.A.T.C.H. TV asserts that the specific information is not publicly disclosed and is treated as proprietary and confidential by its employees. Additionally, W.A.T.C.H. TV represents that public disclosure of this information would impair its ability to respond to competitive opportunities in the marketplace and would provide competitors with an unfair competitive advantage.

{¶ 36} Ohio law defines a trade secret as “information that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means, by other persons who can obtain economic value from its disclosure or use; (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.” R.C. 1333.61(D).

{¶ 37} The Commission has reviewed the information filed under seal, as well as the assertions set forth in the Applicant’s memorandum in support of a protective order. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Ohio Supreme Court in *State ex rel. The Plain Dealer v. Ohio Dept. of Insur.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997), the Commission

finds that the motion should be granted and the technology and system design information be kept under seal.

{¶ 38} Ohio Adm.Code 4901-1-24(F) provides that, “[u]nless otherwise ordered, any order prohibiting public disclosure pursuant to this rule shall automatically expire twenty-four months after the date of its issuance, and such information may then be included in the public record of the proceeding.” The information protected by this Order shall remain under seal for a period ending 24 months from the date of this Order (January 23, 2021).

{¶ 39} Ohio Adm.Code 4906-1-24(F) also requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Docketing Division may release the information without prior notice to the Applicant.

VIII. ORDER

{¶ 40} It is, therefore,

{¶ 41} ORDERED, That W.A.T.C.H. TV is conditionally designated as a high-cost, competitive ETC for the purpose of CAF II funding in the applicable census blocks, subject to W.A.T.C.H. TV obtaining final FCC approval at the conclusion of the auction process. It is, further

{¶ 42} ORDERED, That, consistent with paragraph 29, W.A.T.C.H. TV provide an update of its FCC auction status and its willingness to operate in the state of Ohio in accordance with the conditions set forth in this Finding and Order. It is, further,

{¶ 43} ORDERED, That W.A.T.C.H. TV provide annual updates as to the status of its deployment of CAF II supported services in accordance with paragraph 29. It is, further,

{¶ 44} ORDERED, That W.A.T.C.H. TV comply with the provisions of this Finding and Order. It is, further,

{¶ 45} ORDERED, That the motion for a limited waiver is granted consistent with paragraph 34. It is, further,

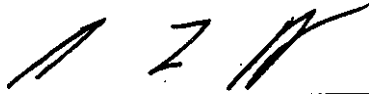
{¶ 46} ORDERED, That the motion for a protective order be granted consistent with paragraph 37. It is, further,

{¶ 47} ORDERED, That the Docketing Division maintain the proprietary information under seal for a period of 24 months from the date of this Finding and Order. It is, further,

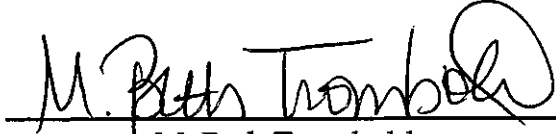
{¶ 48} ORDERED, That nothing contained in this Finding and Order shall be deemed binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

{¶ 49} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

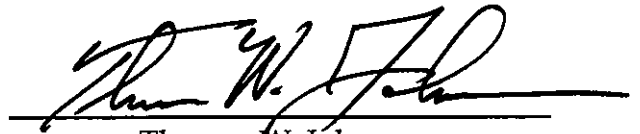
THE PUBLIC UTILITIES COMMISSION OF OHIO



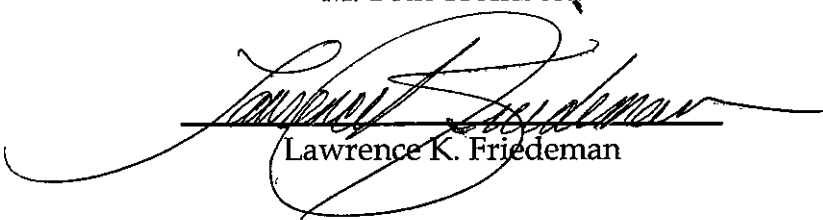
Asim Z. Haque, Chairman



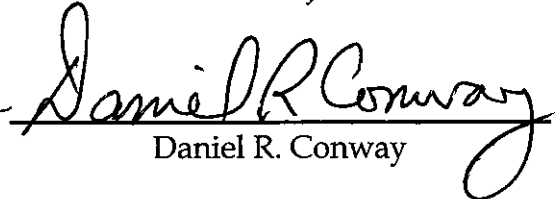
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