

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
IMAGINE NETWORKS, LLC FOR
DESIGNATION AS A HIGH-COST RURAL
COMPETITIVE ELIGIBLE
TELECOMMUNICATIONS CARRIER.

CASE NO. 21-29-TP-UNC

FINDING AND ORDER

Entered in the Journal on May 19, 2021

I. SUMMARY

{¶ 1} The Commission designates Imagine Networks, LLC as a high-cost rural competitive eligible telecommunications carrier in order to receive Rural Digital Opportunity Fund support in the applicable census blocks or portions thereof as determined by the Federal Communications Commission.

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 ETC 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.

{¶ 5} Ohio Adm.Code 4901:1-6-09 sets forth the requirements for a competitive ETC designation.

III. PROCEDURAL BACKGROUND

{¶ 6} 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).

{¶ 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} In *In re Rural Digital Opportunity Connect America Fund*, WC Docket Nos. 19-126 and 10-90, Report and Order, 35 FCC Rcd 686 (2020) (RDOF Order), the FCC established the Rural Digital Opportunity Fund (RDOF). The FCC will use the RDOF to continue to build on the success of the CAF Phase II model to connect millions more rural and small business to high-speed broadband networks.

{¶ 9} Pursuant to the RDOF Order, the FCC established the parameters of the RDOF Phase I single nationwide, multi-round reverse auction providing \$16 billion of support for voice and broadband service in unserved, high-cost areas over a ten-year period. For the purpose of the RDOF Order, unserved area signifies a census block group not receiving download speed of at least 25 Mbps and an upload speed of at least 3 Mbps.

{¶ 10} The FCC conducted auction 904 on October 29, 2020, to allocate RDOF Phase I support to service providers that commit to offer voice and broadband services to fixed locations in unserved, high-cost areas. Pursuant to the auction, 180 bidders were selected

to provide fixed-location broadband and voice services in unserved communities within 49 states and one territory. The FCC announced the winning bids on December 7, 2020.

{¶ 11} Imagine Networks, LLC (Imagine or Applicant), is an assignee of Nextier Consortium, one of the entities provisionally selected by the FCC as a recipient of RDOF Phase I support for additional census blocks in Ohio. Specifically, Imagine Networks was assigned \$577,503 over ten years to provide RDOF supported services to the designated Ohio census blocks.

IV. APPLICATION

{¶ 12} On January 6, 2021, Imagine filed an application seeking ETC designation for its service area in order to receive RDOF support in the newly awarded 127 census blocks encompassing 872 locations in Champaign, Clark, and Miami counties in the state of Ohio. According to the Applicant, in order to receive the awarded RDOF support, the FCC requires that the state issue an ETC designation in each census block for which an entity has been provisionally selected to receive support and submit the appropriate documentation of this designation to the FCC by June 7, 2021. Imagine holds Certificate No. 90-6439 and is authorized to provide competitive telecommunications services in Ohio.

{¶ 13} Imagine plans to offer standalone broadband, standalone voice over internet protocol (VoIP), and bundled broadband and VoIP. Imagine will provision voice and broadband services using its existing facilities and fiber network and plans to extend existing facilities into those locations where its network does not already exist.

{¶ 14} Imagine will satisfy the requirement that it offer services that are supported by the federal universal service support mechanisms throughout its competitive ETC service area using facilities that it owns. It will provide supported services using its network infrastructure consisting of last mile connections, network equipment, and network components. It will utilize its own facilities to provide last mile connection to subscribers using a combination of fiber to the premises and fixed LTE technologies and to provide

backhaul for interconnection between sites using a combination of fiber and wireless microwave backhauls. Imagine commits to provide the supported service throughout its designated service area consistent with the applicable requirements and on a common carrier basis.

{¶ 15} Imagine certifies that its standalone VoIP and broadband services will be offered in its designated service area at rates that are at or below the reasonable comparability benchmark as established by the FCC's Wireline Competition Bureau on an annual basis. Imagine plans to offer in RDOF locations its digital voice service plan, which can be purchased stand-alone for \$30, or bundled for \$19.95 plus the cost of the broadband service plan.

{¶ 16} Imagine submits that its designation as a competitive ETC will serve the public interest by ensuring that the company is eligible to receive additional federal universal service fund support for the purpose of deploying voice and broadband-capable networks in rural, high cost areas. According to the Applicant, its designation as a competitive ETC will promote increased competitive choice, thereby furthering innovation and spurring other carriers to improve their existing networks. As a result, Imagine opines that the requested competitive ETC designation will lead to greater access to high-speed broadband and voice services, as well as improved service quality for residents of unserved communities in rural Ohio. The Applicant believes that the resulting advanced communications services will provide important connectivity to consumers, businesses, and community anchor institutions.

{¶ 17} Imagine contends that its provision of interconnected VoIP throughout its service area is sufficient to provide voice-grade access to the public switched telephone network in accordance with 47 C.F.R. 54.101(a). Pursuant to 47 C.F.R. 54.101(a)(1) and (b), voice telephony services must include (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. 54.500, et seq.

{¶ 18} Imagine 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. While recognizing that the FCC has not specified a minimum amount of local usage that an ETC must offer, Imagine commits to complying with any and all minimum local usage requirements adopted by the FCC or this Commission and will include such local usage in its rate plans.

{¶ 19} With respect to requisite provision of access to emergency services, Imagine 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.

{¶ 20} In regard to toll limitation services for qualifying low-income customers, Imagine states that it will participate in the provision of Lifeline service and toll blocking service but will not seek reimbursement for toll limitation services.

{¶ 21} Pursuant to 47 C.F.R. 54.101(a)(2), Imagine 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 enable the operation of the communications service, but excluding the dial-up service.

{¶ 22} Pursuant to 47 U.S.C. 214(e)(2) and 47 C.F.R. 54.201(d), Imagine will advertise the availability of each of its supported services and the availability of Lifeline benefits throughout its ETC service area by media of general distribution, including post cards, local newspapers, and the Internet via a dedicated “landing page” on its website. Imagine will advertise the availability of its services and charges through media of general distribution in a manner reasonably designed to reach potential Lifeline consumers and make them aware of such offerings as required by 47 C.F.R. 54.405(b).

{¶ 23} According to Imagine, it will have sufficient back-up battery power to remain functional without an external power source in emergency situations, will be able to reroute traffic around damaged facilities, and will be able to manage traffic spikes resulting from emergency situations via the increase of bandwidth. Applicant uses battery back-up power in the field and battery back-up power at its network operations center for broadband internet service.

{¶ 24} Imagine will satisfy applicable consumer protection and service quality standards.

{¶ 25} Broadband availability will be tied to the buildout of facilities within the RDOF ETC designation area in accordance with the FCC's RDOF service deployment milestones.

V. DISCUSSION

{¶ 26} The Commission finds that Imagine, 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 Applicant for the purpose of receiving RDOF Phase I support in its competitive ETC service area. This authorization is conditional in the sense that any high-cost ETC seeking RDOF Phase I support must first receive final FCC approval following the submission of all the requisite documentation. Imagine is directed to make a supplemental filing in this docket upon receipt of its final FCC approval, and attest as to whether Imagine will be operating as a high-cost, competitive ETC subject to this conditional authorization granted herein. Additionally, Applicant must provide annual updates in this docket as to the status of its deployment of its RDOF Phase I supported services in the designated service area.

{¶ 27} Imagine 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 a competitive ETC, Imagine will participate in the Federal Lifeline Program as both a voice and broadband Internet access service (BIAS) provider. Therefore, the Applicant will provide Lifeline BIAS in accordance with the obligations of RDOF auction support recipients.

{¶ 28} 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).

{¶ 29} Imagine must provide the requisite contribution to Ohio's Telephone Relay Service for all of its VoIP subscribers in its expanded competitive ETC service area. It must also pay its annual Commission assessment. The Commission reserves the right to perform an audit of Applicant's contribution into Ohio's Telephone Relay Service Fund. The Commission further directs Imagine to make available to the Commission Staff, upon request, information concerning the Applicant's contributions into Ohio's Telephone Relay Service Fund.

VI. REQUEST FOR A WAIVER

{¶ 30} To the extent applicable, Imagine requests a waiver of the requirement set forth in the current telecommunications filing form establishing that an ETC designation application contain a five-year improvement plan detailing proposed improvements or upgrades to the applicant's network throughout its proposed designated area. In support of its request, the Applicant notes that it anticipates completing its RDOF construction well before the FCC timeline dictates.

{¶ 31} Upon a review of the arguments set forth in Applicant's waiver request, the Commission finds that the request is reasonable and should be granted. Specifically, the

Commission relies on the fact that, pursuant to the RDOF Order, Imagine is obligated to comply with specified reporting requirements regarding deployment.

{¶ 32} In reaching this determination, the Commission recognizes that the FCC has waived the requirement set forth in 47 C.F.R. 54.202(a)(1)(ii) to submit a five-year plan. See WC Docket Nos. 09-197, 10-90, Public Notice, DA 18-714, at 4, 5 (rel. July 10, 2018); AU Docket No. 20-34, WC Docket Nos. 19-126, 10-90, Public Notice, DA 20-1422, at 14, Footnote 71 (rel. Dec. 7, 2020). In granting a waiver to Mercury Wireless Indiana, LLC, the Commission granted a similar waiver to all other RDOF Phase I support ETC applicants on a going forward basis. See *In re Mercury Wireless Indiana, LLC DBA Mercury Broadband for Designation as a High-Cost Rural Competitive Eligible Telecommunications Carrier*, Suppl. Finding and Order, May 5, 2021, at 36.

VII. MOTION FOR A PROTECTIVE ORDER

{¶ 33} In conjunction with its application, Imagine filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D), related to portions of responses to a Staff data request specific to spectrum access and the description of its technology and system design for the network that will provide the proposed high-cost RDOF supported services. Imagine asserts that the confidential 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.

{¶ 34} 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).

{¶ 35} 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.

{¶ 36} 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 Finding and Order shall remain under seal for a period ending 24 months from the date of this Finding and Order.

{¶ 37} 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

{¶ 38} It is, therefore,

{¶ 39} ORDERED, That Imagine is conditionally designated as a high-cost, competitive ETC for the purpose of RDOF funding in the applicable census blocks subject to Imagine obtaining final FCC approval at the conclusion of the auction process. It is, further,

{¶ 40} ORDERED, That, consistent with Paragraph 26, Imagine 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,

{¶ 41} ORDERED, That Imagine provide annual updates as to the status of its deployment of RDOF supported services in accordance with Paragraph 26. It is, further,

{¶ 42} ORDERED, That Imagine comply with the provisions of this Finding and Order. It is, further,

{¶ 43} ORDERED, That the request for a waiver is granted consistent with Paragraph 32. It is further,

{¶ 44} ORDERED, That the motion for a protective order be granted consistent with Paragraph 35. It is, further,

{¶ 45} 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,

{¶ 46} 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,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JMD/kck

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Case No(s). 21-0029-TP-UNC

Summary: Entry designating Imagine Networks, LLC as a high-cost rural competitive eligible telecommunications carrier in order to receive Rural Digital Opportunity Fund support in the applicable census blocks or portions thereof as determined by the Federal Communications Commission. electronically filed by Kelli C. King on behalf of The Public Utilities Commission of Ohio