

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
CONNECT EVERYONE LLC FOR
DESIGNATION AS A COMPETITIVE
ELIGIBLE TELECOMMUNICATIONS
CARRIER FOR PURPOSES OF RECEIVING
FEDERAL UNIVERSAL SERVICE
SUPPORT.

CASE NO. 21-26-TP-UNC

FINDING AND ORDER

Entered in the Journal on June 2, 2021

I. SUMMARY

{¶ 1} The Commission designates Connect Everyone LLC as a 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} 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.

{¶ 9} 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.

{¶ 10} 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.

{¶ 11} 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.

{¶ 12} Connect Everyone LLC was one of the entities provisionally selected by the FCC as a recipient of RDOF Phase I support for census blocks in Ohio. Specifically, Connect Everyone LLC was awarded \$38.27 million over ten years to provide RDOF supported services to the designated Ohio census block groups.

IV. APPLICATION

{¶ 13} On January 6, 2021, Connect Everyone LLC (Connect Everyone) filed an application seeking designation as an ETC in order to receive RDOF support in the newly awarded 3,376 census block groups for 18,280 locations in the state of Ohio, which are listed in Application Exhibit E (Proposed ETC Service Area). Connect Everyone must provide a certification of ETC status with supporting documentation to the FCC by June 7, 2021 in order to receive RDOF Phase I support.

{¶ 14} Connect Everyone is wholly owned by Starry, Inc. (Starry). While Connect Everyone will be the ETC designation holder and will receive RDOF funds, Starry will operate and provide the service. For that reason, Connect Everyone's documents pertaining to the ETC list Starry as the company.

{¶ 15} Starry is a facilities-based Internet service provider that has offered service since 2017. Starry's network technology currently provides high-speed, low latency-service coverage to millions of households across six states and the District of Columbia. Starry's

mission is to connect millions of consumers to better broadband by offering high-speed, low-cost service with exceptional customer care.

{¶ 16} As part of its application, Starry represents that it will comply with the service and performance requirements applicable to the support that it receives, including the requirements for RDOF Phase I support.

{¶ 17} Starry plans to offer gigabit low latency broadband service and voice grade access to the Public Switched Telephone Network (PSTN) through an interconnected Voice over Internet Protocol (VoIP) service via an integrated third-party VoIP vendor in the Proposed ETC Service Area.

{¶ 18} Starry commits to offer interconnected VoIP service on a common carrier basis in the Proposed ETC Service Area, in accordance with 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d).

{¶ 19} Starry states that it will offer the services supported by the federal universal service support mechanism, including voice grade access to the PSTN and broadband internet access services, pursuant to 47 C.F.R. § 54.101. Specifically, Starry will provide VoIP service that is interconnected to the PSTN, which will be offered as a standalone telephony service throughout the Proposed ETC Service Area. Starry will also offer gigabit low latency broadband service using primarily licensed millimeter wave point-to-multipoint fixed wireless. Starry will make Lifeline services available to qualifying low-income consumers at all locations in Ohio where it is authorized to receive RDOF support. Starry commits to provide these services consistent with applicable high-cost universal service support rules and will meet the service requirements for RDOF Phase I support. Starry will offer at least one standalone voice plan and one service plan that provides gigabit, low latency broadband at rates that are reasonably comparable to rates in urban areas. Starry commits to provide customer care, provide quality of service guarantees, and meet the FCC's universal service fund-related requirements.

{¶ 20} Starry plans to primarily offer supported services using its own facilities and may use a combination of its own facilities and resale of another carrier's services depending on the deployment scenario, in accordance with 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(d)(1). Starry will also integrate a managed VoIP service into its network through a third party.

{¶ 21} Pursuant to 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d), Starry commits to providing its services throughout the Proposed ETC Service Area, consistent with all applicable requirements.

{¶ 22} In accordance with 47 U.S.C. § 214(e)(1)(B) and 47 C.F.R. § 54.201(d)(2), Starry states that it will advertise the availability of and charges for its supported service offerings using media of general distribution and will undertake outreach initiatives to increase consumer awareness of its service offerings, consistent with all applicable requirements. The marketing channels it plans to use include direct mail, email, local and community outreach events, and targeted online electronic advertising. Starry commits to publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service. Starry also states that it will seek to develop partnerships with state and local organizations focused on digital equity and inclusion, including private and public affordable housing owners and agencies.

{¶ 23} Starry asserts that it meets all the applicable requirements for designation as an ETC under 47 C.F.R. § 54.202. It certifies that it will comply with the service and performance requirements applicable to the support that it receives, including the requirements for RDOF Phase I support. Starry certifies that its point-to-multipoint fixed wireless and fiber network will have the ability to remain functional in emergency situations. Specifically, the deployed network will include backup power sources at fiber locations and at fixed wireless base stations serving voice customers to ensure at least eight hours of backup power. It will also deploy a network that is designed for peak voice usage during times of emergency and will deliver fully functional voice services, including 911

capabilities, by integrating a managed VoIP product into its network. Starry also commits to satisfy consumer protection and service quality standards to the extent applicable. Starry will retain all records required to demonstrate that its support is consistent with universal service high-cost program rules for at least ten years.

{¶ 24} Connect Everyone asserts that designating it as an ETC will serve the public interest by supporting the FCC's priority of closing the digital divide by bringing essential connectivity to residents and businesses of Ohio. Connect Everyone states that granting its application will result in investments in infrastructure in the state, along with increased consumer choice and competition with respect to these services, which will serve the public interest. Connect Everyone states that these benefits will increase innovation, stimulate productivity and efficiency, and offer new and improved goods, services and providers to a wider range of Ohio residents and businesses.

V. DISCUSSION

{¶ 25} The Commission finds that Connect Everyone, 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 Connect Everyone for the purpose of receiving RDOF Phase I support in the Proposed ETC Service Area as determined by the FCC. 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. Connect Everyone 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, Connect Everyone must provide annual updates in this docket as to the status of its deployment of its RDOF Phase I supported services in the Proposed ETC Service Area.

{¶ 26} Starry will participate in the provision of Lifeline service. In accordance with 47 C.F.R. 54.101(c) and 47 C.F.R. 54.101(d), as designated as a competitive ETC, Starry will

participate in the Federal Lifeline Program as both a voice and broadband Internet access service (BIAS) provider. Therefore, Starry will provide Lifeline BIAS in accordance with the obligations of RDOF auction support recipients.

{¶ 27} 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).

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

VI. REQUEST FOR A WAIVER

{¶ 29} To the extent applicable, Connect Everyone filed a request as part of its application seeking 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 its network throughout the Proposed ETC Service Area. Notably, the FCC has waived the requirement that a petitioner seeking an FCC ETC designation submit a five-year improvement plan and eliminated the annual reporting obligations associated with this plan. *See RDOF Winning Bidders PN*, 35 FCC Rcd at 13901, fn. 71; see also *ETC Designation Public Notice*, 33 FCC Rcd at 6699-6700. Additionally, the Commission granted a waiver of the requirement to all RDOF Phase I support ETC applicants on a going forward basis. *In re the Application of Mercury Wireless Indiana, LLC d/b/a Mercury Broadband for Designation as a High-Cost Rural*

Competitive Eligible Telecommunications Carrier, Case No. 18-1491-TP-UNC, Supplemental Finding and Order (May 5, 2021) at ¶ 36. Accordingly, the Commission finds that the request is reasonable and should be granted.

VII. MOTION FOR A PROTECTIVE ORDER

{¶ 30} On February 25, 2021, Connect Everyone filed a motion for a protective order, pursuant to Ohio Adm.Code 4901-1-24(D). Connect Everyone sought confidential treatment for its responses to Staff's data requests, which consist of seven documents. Connect Everyone identified the seven documents as (1) FCC Auction 904 Initial Project Overview, (2) FCC Auction 904 Form 683 - Long-Form Application, (3) FCC Auction 904 Census Block List, (4) Financial Statements, (5) Background and Information on Starry's Connect program, (6) Samples of Proposed Advertising Materials, and (7) Detailed Description of Technology and System Design with Project Plan. The documents in question were marked as confidential and filed under seal. Connect Everyone did not file a redacted version of the documents in the public record. Connect Everyone also requested that its responses to any subsequent data requests that Staff might make also be permitted to be filed under confidential seal, pursuant to this protective order. Connect Everyone provided no justification for its request as to future filings.

{¶ 31} 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). Additionally, Ohio Adm.Code 4901-1-24(D) states that the following information is required for a motion for protective order:

- (1) All documents submitted pursuant to paragraph (D) of this rule should be filed with only such information redacted as is essential to prevent disclosure of the allegedly confidential information. Such redacted documents should be

filed with the otherwise required number of copies for inclusion in the public case file.

(2) Two unredacted copies of the allegedly confidential information shall be filed under seal, along with a motion for protection of the information, with the secretary of the commission, the chief of the docketing division, or the chief's designee. Each page of the allegedly confidential material filed under seal must be marked as "confidential," "proprietary," or "trade secret."

(3) The motion for protection of allegedly confidential information shall be accompanied by a memorandum in support setting forth the specific basis of the motion, including a detailed discussion of the need for protection from disclosure, and citations of any authorities relied upon. The motion and memorandum in support shall be made part of the public record of the proceeding.

{¶ 32} On May 7, 2021, the attorney examiner denied the motion for protective order as overly broad, explaining that by filing the entire documents under seal, Connect Everyone did not meet the requirements of Ohio Adm.Code 4901-1-24(D)(1). Additionally, the attorney examiner declined to prospectively grant a protective order for documents Connect Everyone may file in the future. The attorney examiner invited Connect Everyone to file an amended motion for protective order along with redacted documents in the public docket by May 21, 2021.

{¶ 33} On May 21, 2021, Connect Everyone filed an amended motion for protective order. As an appendix to that motion, Connect Everyone filed redacted documents in the public docket. In support of its motion, Connect Everyone argues that the documents marked as confidential include highly confidential information regarding its network deployment and business plans, finances, and operations that would cause considerable competitive harm if publicly disclosed. Specifically, Connect Everyone explains that the documents it seeks to keep confidential include proprietary technology and network system

architecture across multiple states, internal non-public financial information, and/or strategic marketing and business plans in connection with its broadband buildout in Ohio. In support of its motion, Connect Everyone asserts that none of this information is known outside of Starry, with the exception of information that was filed with the FCC as part of the RDOF Auction 904 application and bidding processes, which is treated by the FCC as highly confidential and will not be released to the public. The FCC has committed to keep Form 683 confidential until after the FCC completes its full review of a winning bidder's qualifications, at which time the information will be made publicly available. Additionally, Connect Everyone represents that the public release of this information would allow competitors to quickly and easily identify its planned operations and could cause serious financial and competitive harm. Connect Everyone submits that a protective order is reasonable, necessary, and will not prejudice any other party or individual.

{¶ 34} On May 24, 2021, Connect Everyone filed additional documents in the public docket, including its proposed advertising materials and a description of Starry's Connect program for low-income subscribers.

{¶ 35} The Commission has reviewed the information filed under seal, as well as the assertions set forth in the Connect Everyone'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 identified information and data responses be kept under seal.

{¶ 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 Connect Everyone is conditionally designated as a high-cost, competitive ETC for the purpose of RDOF funding in the Proposed ETC Service Area, subject to Connect Everyone obtaining final FCC approval at the conclusion of the auction process. It is, further,

{¶ 40} ORDERED, That, consistent with Paragraph 25, Connect Everyone 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 Connect Everyone provide annual updates as to the status of its deployment of RDOF supported services in accordance with Paragraph 25. It is, further,

{¶ 42} ORDERED, That Connect Everyone 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 29. It is, further,

{¶ 44} ORDERED, That the motion for a protective order be granted consistent with Paragraphs 35 and 37. It is, further,

{¶ 45} ORDERED, That the docketing division maintain the confidential 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

JWS/kck

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Case No(s). 21-0026-TP-UNC

Summary: Finding & Order designating Connect Everyone LLC as a 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