

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Telecommunications Carriers Eligible for	)	WC Docket No. 09-197
Universal Service Support	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	

**ORDER**

**Adopted: November 27, 2019**

**Released: November 27, 2019**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this Order, the Wireline Competition Bureau (Bureau) designates Hughes Network Systems, LLC (Hughes) as an eligible telecommunications carrier (ETC) in eligible high-cost areas within the State of New York.<sup>1</sup> Designation is conditioned upon and limited to Hughes' authorization to receive Connect America Fund support awarded in coordination with New York's New NY Broadband Program (New York Program).<sup>2</sup> In making this designation, the Bureau finds that Hughes meets the eligibility requirements to receive universal service support, as set forth in section 214(e)(6) of the Communications Act of 1934, as amended (Act), and related Commission rules.<sup>3</sup> The Bureau will release separate public notices regarding funding authorizations.

<sup>1</sup> See Petition for Eligible Telecommunications Carrier Designation of Hughes Network Systems, LLC, WC Docket No. 09-197 (filed Feb. 5, 2018), <https://ecfsapi.fcc.gov/file/10205761817999/Hughes%20NY%20FCC%20ETC%20Petition%202-5-2018.pdf> (Petition); *as amended*, Letter from Jennifer A. Manner, Hughes Network Systems, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 (filed Mar. 27, 2018), <https://ecfsapi.fcc.gov/file/103270488909649/2018%2003%2027%20-%20Hughes%20ETC%20Supp.pdf> (NY PUC Supplement); *as amended*, Letter from Jennifer A. Manner and Jodi Goldberg, Hughes Network Systems, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 (filed May 31, 2018), [https://ecfsapi.fcc.gov/file/10531532908451/NYS\\_HNSETC%20Petition%20Supplement\\_Census%20Blocks\\_05312018.pdf](https://ecfsapi.fcc.gov/file/10531532908451/NYS_HNSETC%20Petition%20Supplement_Census%20Blocks_05312018.pdf), *erratum* (filed June 11, 2018), [https://ecfsapi.fcc.gov/file/1061132964827/NYS\\_HNS\\_ETC%20Petition%20Supplement\\_Erratum\\_Census%20Blocks\\_06112018.pdf](https://ecfsapi.fcc.gov/file/1061132964827/NYS_HNS_ETC%20Petition%20Supplement_Erratum_Census%20Blocks_06112018.pdf) (Census Block Supplement); Letter from Jennifer A. Manner and Jodi Goldberg, Hughes Network Systems, LLC to Marlene H. Dortch, Secretary, FCC, WC Docket No. 09-197 (Sept. 14, 2018), [https://ecfsapi.fcc.gov/file/109140235221556/NYS\\_HNS\\_ETC%20Petition%20Supplement\\_Tribal%20Contacts\\_09142018.pdf](https://ecfsapi.fcc.gov/file/109140235221556/NYS_HNS_ETC%20Petition%20Supplement_Tribal%20Contacts_09142018.pdf) (Tribal Supplement).

<sup>2</sup> See *Wireline Competition Bureau Announces FCC Deadlines for New York Broadband Program Winning Bidders*, WC Docket No. 10-90, Public Notice, 33 FCC Rcd 4922, 4923, App. A (2018) (*New York Long-Form Public Notice*); Phase 3 Awards, <https://nysbroadband.ny.gov/new-ny-broadband-program/phase-3-awards> (announcing carriers selected to receive support pursuant to the New York Program in areas eligible for Connect America Fund support); *see also Connect America Fund*, et al., Order, 32 FCC Rcd 968 (2017) (*New York Auction Waiver Order*).

<sup>3</sup> 47 U.S.C. § 214(e)(6); 47 CFR § 54.202.

## II. BACKGROUND

### A. CAF Support Awarded in Coordination with the New York Program

2. The Connect America Fund (CAF) Phase II auction (Phase II auction) is one part of a multi-step process to comprehensively reform and modernize the high-cost component of the Universal Service Fund (USF).<sup>4</sup> In 2017, New York sought a waiver of certain Phase II Auction rules and requirements so that, through its New York Program, it could allocate certain CAF support (that otherwise would have been included in the Phase II auction) to CAF-eligible areas.<sup>5</sup> The Commission granted this waiver request conditional on participants' compliance, including Hughes, with certain terms and conditions consistent with those imposed on Phase II auction winning bidders.<sup>6</sup> The Commission also emphasized that, like all high-cost support recipients, New York Program participants selected to receive CAF support would only be eligible to receive CAF support if designated an ETC in their CAF-eligible areas, and required winning bidders to complete an application designed to ensure that winning participant are technically and financially qualified to offer supported services and have met all regulatory prerequisites and conditions for receiving USF support.<sup>7</sup> As part of this application, the Commission required New York Program participants to submit proof of their ETC designations within 180 days of the announcement of their support awards.<sup>8</sup> On May 18, 2018, the Commission released a public notice acknowledging New York's allocation of CAF support to certain participants.<sup>9</sup>

### B. Requirements for FCC ETC Designation

3. 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."<sup>10</sup> Congress gives primary authority for ETC designations to state commissions.<sup>11</sup> The FCC has authority only when "a common carrier [is] providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission."<sup>12</sup> The petitioning carrier must demonstrate that the FCC has jurisdiction and may do so by submitting an "affirmative statement from the state commission or a court of competent jurisdiction that the carrier is not subject to the state commission's jurisdiction."<sup>13</sup>

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<sup>4</sup> *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, 17725, para. 156 (2011), *aff'd sub nom.*, *In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014).

<sup>5</sup> *See New York Auction Waiver Order*, 32 FCC Rcd at 970-71, para. 9. Specifically, New York sought to distribute the \$170.4 million in model-based support previously declined by Verizon in New York. *See id.* at 969, 970-71, paras. 3, 9.

<sup>6</sup> *Id.* at 990, para. 60. *See* 47 CFR § 54.315.

<sup>7</sup> *New York Auction Waiver Order*, 32 FCC Rcd at 990, paras. 60-65.

<sup>8</sup> *Id.* at 990, para. 59.

<sup>9</sup> *New York Long-Form Public Notice*, 33 FCC Rcd at 4922.

<sup>10</sup> 47 U.S.C. § 254(e).

<sup>11</sup> *Id.* § 214(e)(2).

<sup>12</sup> *Id.* § 214(e)(6).

<sup>13</sup> *See Federal-State Joint Board on Universal Service et al.*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12267, para. 120 (2000) (*2000 Tribal Order*); 47 U.S.C. § 214(e)(6).

The Commission has delegated authority to the Bureau to consider appropriate ETC designation requests.<sup>14</sup>

4. A petition for ETC designation by the FCC must include: (1) a certification that the petitioner offers or intends to offer all services designated for support by the Commission pursuant to section 254(c) of the Act; (2) a certification that the petitioner 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;<sup>15</sup> (3) a description of how the petitioner advertises the availability of the supported services and the charges therefor using media of general distribution;<sup>16</sup> (4) a detailed description of the geographic service area for which the petitioner requests to be designated as an ETC;<sup>17</sup> and (5) a certification that neither the petitioner, nor any party to the application, is subject to a denial of federal benefits pursuant to the Anti-Drug Abuse Act of 1988.<sup>18</sup>

5. In addition, a petitioner must demonstrate its ability to meet certain service standards. Specifically, a petitioner seeking an ETC designation for purposes of becoming eligible to receive high-cost support must: (1) certify that it will comply with the service requirements applicable to the support that it receives; (2) submit a five-year service plan (applicable only to high cost areas); (3) demonstrate its ability to remain functional in emergency situations; and (4) demonstrate its ability to satisfy applicable consumer protection and service quality standards.<sup>19</sup>

6. For a petitioner seeking ETC designation for the purpose of becoming authorized to receive Phase II Auction support, the Bureau waived the requirements that the petitioner submit a five-year service plan and 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 Phase II Auction support recipients and specific reporting obligations relating to such standards.<sup>20</sup> Because the authorization of CAF support for participants in the New York program is conditioned on meeting terms and conditions consistent with those applicable to Phase II Auction winning bidders,<sup>21</sup> we interpret this waiver as equally applicable to New York Program participants.

7. In addition, prior to designating a carrier as an ETC pursuant to section 214(e)(6) of the Act, the Commission must determine whether such designation is in the public interest.<sup>22</sup> When making a public interest determination, the Commission historically has considered the benefits of increased

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<sup>14</sup> See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Public Notice, 12 FCC Rcd 22947, 22948 (1997).

<sup>15</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(1).

<sup>16</sup> 47 U.S.C. § 214(e)(1); 47 CFR § 54.201(d)(2).

<sup>17</sup> 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. 47 U.S.C. § 214(e)(5); 47 CFR § 54.207(a). Although section 214(e)(5) of the Act, 47 U.S.C. § 214(e)(5), requires conformance of a competitive ETC's service area and an incumbent rural telephone company's service area, the Commission has separately forborne from imposing such requirements on Phase II Auction support recipients. See *Connect America Fund et al.*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949, 6006-6009 (2016) (*Phase II Auction Order*).

<sup>18</sup> 21 U.S.C. § 862; 47 CFR § 1.2002(a)–(b).

<sup>19</sup> See 47 CFR § 54.202(a).

<sup>20</sup> *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 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699-6700 (WCB 2019).

<sup>21</sup> *New York Auction Waiver Order*, 32 FCC Rcd at 990, para. 60.

<sup>22</sup> 47 U.S.C. § 214(e)(6); 47 CFR § 54.202(b).

consumer choice and the unique advantages and disadvantages of the applicant's service offering.<sup>23</sup> In the *Phase II Auction ETC Public Notice*, the Bureau found that recipients of Phase II Auction support demonstrated their ability to offer service efficiently through the competitive bidding process and their ability to meet public interest obligations through their short- and long-form applications and thus, need not submit additional support in their petitions.<sup>24</sup>

### C. Petition for ETC Designation

8. Hughes seeks an ETC designation to become eligible to receive CAF support in coordination with the New York Program for all CAF-eligible census blocks covered by its award.<sup>25</sup> On June 14, 2018, the Bureau released a public notice soliciting comments on Hughes' Petition.<sup>26</sup> Because Hughes' Petition, in part, covered Tribal lands, Hughes provided the relevant Tribal authorities with notice of its Petition, as required by section 54.202(c) of the Commission's rules.<sup>27</sup> The Commission's Office of Native Affairs and Policy (ONAP) also separately notified each of the relevant Tribal authorities of the Petition and informed them of their right to file *ex parte* comments that would be considered as part of the Bureau's determination on this Petition.<sup>28</sup> No comments addressing Hughes' Petition were filed.

## III. DISCUSSION

9. We find that Hughes satisfies the Commission's requirements for ETC designation and, therefore, designate Hughes as a high-cost ETC in New York, conditioned upon and limited to, the high-cost areas where it is authorized to receive CAF Phase II support and effective only upon such authorization. In these areas, Hughes must meet CAF Phase II requirements, Lifeline requirements, and other service obligations attendant to its high-cost designation, as specified in the Act and the Commission's rules.<sup>29</sup>

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<sup>23</sup> See, e.g., *Virgin Mobile ETC Designation Order in the States of Alabama, Connecticut, Delaware, New Hampshire and the District of Columbia*, WC Docket 09-197, Order, 25 FCC Rcd 17797, 17799, para. 6 (WCB 2010).

<sup>24</sup> *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 and 10-90, Public Notice, 33 FCC Rcd 6696, 6699-6700 (WCB 2018) (*Phase II Auction ETC Public Notice*).

<sup>25</sup> In Attachment A to this Order, the Bureau summarizes this award, and in Attachment B, the Bureau provides the CAF-eligible census blocks included in the award.

<sup>26</sup> Wireline Competition Bureau Seeks Comment on Two Petitions for Designation as Eligible Telecommunications Carriers, Separately Submitted by OEConnect, LLC and Hughes Network Systems, LLC, 33 FCC Rcd 6014 (2018) (*ETC Public Notice*).

<sup>27</sup> 47 CFR § 54.202(c); Hughes Tribal Supplement (providing notice it contacted five Tribes located within CAF-eligible census blocks, i.e., Tonawanda Seneca, Seneca, Cayuga, Onondaga, and Saint Regis Mohawk).

<sup>28</sup> 47 CFR § 54.202(c) (requiring the Commission to expeditiously send a copy of any public notice establishing a comment period for an ETC petition covering Tribal lands to affected Tribes). ONAP informed the Tribes that the Bureau would not act on Hughes' Petition for a time frame at least equivalent to the 14-day comment period specified in the *ETC Public Notice* to allow the Tribes to prepare and submit responses to the *ETC Public Notice*.

<sup>29</sup> 47 CFR § 54.202(a)(1)(i); *id.* § 54.101(d); *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3974, 4074-75, paras. 35, 311-12 (2016) (requiring all high-cost recipients to meet Lifeline obligations in all areas where they deploy a network pursuant to a broadband service obligation and are commercially offering qualifying service).

**A. Commission Authority**

10. Hughes demonstrates that the Commission has the requisite authority to designate it as an ETC pursuant to section 214(e)(6) of the Act. Hughes submitted correspondence from the New York State Public Service Commission explaining that, based on Hughes' representations that it provides only satellite services, it is declining jurisdiction to designate the carrier as a competitive ETC.<sup>30</sup> On this basis and consistent with our past decisions, we find that Hughes has demonstrated FCC authority to decide its Petition.<sup>31</sup>

**B. Eligibility Requirements**

11. *Designated Service Area.* Hughes describes a designated service area based on all CAF-eligible census blocks covered by its CAF Phase II award (as listed in the Attachment to this Order).<sup>32</sup>

12. *Offering the Services Supported by the Universal Service Support Mechanisms.* We find that Hughes establishes through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.<sup>33</sup>

13. *Compliance with the Service Requirements Applicable to CAF Phase II Support Awarded through the New York Program.* We find that Hughes establishes its ability to comply with service requirements applicable to the support that it receives.<sup>34</sup> This determination takes into account that, prior to being authorized to receive support Hughes must certify and demonstrate, as part of its FCC applications, the technical and financial ability to provide voice and broadband services meeting or exceeding CAF Phase II standards,<sup>35</sup> certify its commitment to meeting relevant public interest obligations,<sup>36</sup> and certify its compliance with all statutory and regulatory requirements for receiving the universal service support.<sup>37</sup> Moreover, once authorized, Hughes must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.<sup>38</sup>

14. We note that, subsequent to Hughes' submission of its Petition, Commission staff adopted the *Performance Metrics Order* specifying how auction support recipients in the high-latency bid category must demonstrate compliance with the requirement to meet a Mean Opinion Score (MOS) of four or higher under specific metrics.<sup>39</sup> In appealing this order, Hughes expressed concern that satellite

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<sup>30</sup> NY PUC Supplement, Attach. A.

<sup>31</sup> See *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6697 ("If a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, Commission staff would consider such a statute relevant in its determination of Commission jurisdiction.").

<sup>32</sup> Petition at 4 ("Hughes requests designation in all areas in the State of New York where it has been awarded CAF support through the New NY Broadband program"); Census Block Supplement; 47 U.S.C. § 214(e); 47 CFR § 54.201(d).

<sup>33</sup> Petition at 5; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>34</sup> Petition at 7; 47 CFR §§ 54.101(d), 54.202(a)(1)(i).

<sup>35</sup> 47 CFR §§ 54.310(e)(1); 54.315(b)(2)(ii), (b)(2)(iv).

<sup>36</sup> *Id.* § 54.315(b)(2)(iii).

<sup>37</sup> *Id.* § 54.315(b)(2)(v).

<sup>38</sup> *Id.* § 54.313 (requiring annual report); *id.* § 54.310(c) (requiring build-out milestone reporting); see also *New York Auction Waiver Order*, 32 FCC Rcd at 993-94, paras. 68-70 (extending reporting obligations to New York recipients to monitor progress in meeting benchmarks).

<sup>39</sup> *Connect America Fund*, WC Docket 10-90, Order, 33 FCC Rcd 6509, 6525-6526, paras. 44-46 (WCB WTB OET 2018) (*Performance Metrics Order*).

broadband providers using geostationary satellites could not meet this requirement under such metrics.<sup>40</sup> Hughes, however, has since withdrawn this contention and has stated that, given the clarifications and revisions of the MOS testing requirements in the September 12, 2019 *Performance Metrics Reconsideration Order*, it will be able to meet the MOS standard.<sup>41</sup> Given Hughes withdrawal and clarification of its position, we conclude that Hughes has established its ability to comply with the service requirements applicable to its provision of voice service consistent with its CAF obligations.

15. *Compliance with Service Requirements Applicable to Lifeline Services.* Hughes commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.<sup>42</sup>

16. *Offering the Supported Services Using a Carrier's Own Facilities.* Hughes certifies that it is a facilities-based provider of broadband and voice services.<sup>43</sup>

17. *Advertising Supported Services.* Hughes commits to advertising the availability of the supported services and related charges using media of general distribution.<sup>44</sup> We emphasize that, as part of this commitment, Hughes must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.<sup>45</sup>

18. *Ability to Remain Functional in Emergency Situations.* Hughes states that it can remain functional in emergency situations. Hughes states that it has sufficient back-up power to ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations.<sup>46</sup>

19. *Anti-Drug Abuse Act Certification.* Hughes submits a certification that satisfies the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.<sup>47</sup>

### C. Public Interest Analysis

20. We conclude that Hughes' participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. As noted above, ETC designations in areas where a petitioner is authorized to receive CAF Phase II Auction support serves the public interest. Through participation in the New York Program and application processes, Hughes demonstrates that it can offer voice and broadband services in high-cost areas efficiently and at a price and quality comparable to the service offerings in more competitive areas.<sup>48</sup> Moreover, granting Hughes' Petition will serve the

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<sup>40</sup> See, e.g., Petition of Hughes Network Systems, LLC, for Clarification, or in the Alternative, Reconsideration, WC Docket No. 10-90, at 2-4 (filed Sept. 19, 2018); Reply of Hughes Network Systems, LLC, to Oppositions and Comments on Petitions for Reconsideration, WC Docket No. 10-90, at 4-5 (filed Nov. 19, 2018).

<sup>41</sup> Letter from Jennifer A. Manner, Hughes Network Systems, LLC to Marlene H. Dortch, FCC, WC Docket No. 10-90 (filed Sept. 25, 2019); Hughes Network Systems, LLC, Withdrawal of Petition for Clarification or, in the Alternative, Reconsideration, WC Docket No. 10-90 (filed Oct. 10, 2019); *Connect America Fund*, Order on Reconsideration, DA 19-911 (WCB WTB OET rel. Sept. 12, 2019).

<sup>42</sup> Petition at 5.

<sup>43</sup> Petition at 6; 47 U.S.C. § 214(e)(1)(A); 47 CFR § 54.201(d)(1).

<sup>44</sup> *Id.*; 47 U.S.C. § 214(e)(1)(B); 47 CFR § 54.201(d)(2).

<sup>45</sup> 47 CFR § 54.405.

<sup>46</sup> Petition at 7; 47 CFR § 54.202(a)(2).

<sup>47</sup> Petition at 9; 47 CFR § 1.2002.

<sup>48</sup> See *New York Auction Waiver Order*, 33 FCC Rcd at 991, paras. 61-62.

interests of low-income consumers by ensuring the availability of new, facilities-based Lifeline services at competitive prices in areas eligible for high-cost support.<sup>49</sup>

21. Accordingly, based on the information, representations, and certifications in its Petition, we find that Hughes has met all applicable conditions and prerequisites for ETC designation and conditionally grant its Petition.

#### **D. Regulatory Oversight**

22. Under section 254(e) of the Act, Hughes must use universal service support “only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.”<sup>50</sup> Under section 214(e) of the Act, Hughes must provide supported services throughout its service area.<sup>51</sup> When authorized to receive high-cost support, Hughes must file an annual certification that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.<sup>52</sup> The Commission conditions future support awarded through the high-cost program on the filing of such certification.<sup>53</sup>

23. An ETC receiving Lifeline support uses that support as intended when it reduces the price of its telecommunications services by the amount of the support for the eligible consumer.<sup>54</sup> In addition, the ETC must file annual reports that include, among other things, a certification of compliance with applicable minimum service standards, service quality standards, and consumer protection rules.<sup>55</sup>

24. We find that reliance on Hughes’ 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. We conclude that fulfillment of these additional reporting requirements will further the Commission’s goal of ensuring that Hughes satisfies its obligation under section 214(e) of the Act to provide supported services throughout its respective designated service areas.

25. The Commission may initiate an inquiry on its own motion to examine any ETC’s records and documentation to ensure that the universal service support the ETC receives is being used “only for the provision, maintenance, and upgrading of facilities and services” in the areas in which it is designated as an ETC.<sup>56</sup> Hughes must provide such records and documentation to the Commission and USAC upon request.<sup>57</sup> If Hughes fails to fulfill the requirements of the Act, the Commission’s rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to

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<sup>49</sup> See *Phase II Auction ETC Public Notice*, 33 FCC Rcd at 6700-6701.

<sup>50</sup> 47 U.S.C. § 254(e).

<sup>51</sup> *Id.* § 214(e).

<sup>52</sup> 47 CFR § 54.314(b).

<sup>53</sup> *Id.*

<sup>54</sup> See *Petition of TracFone Wireless, Inc. for Forbearance from 47 U.S.C. § 214(e)(1)(A) and 47 C.F.R. § 54.201(i)*, CC Docket No. 96-45, Order, 20 FCC Rcd 15095, 15105-06, para. 26 (2005).

<sup>55</sup> 47 CFR § 54.422(b)(3); see also *id.* §§ 54.416, 54.422 (requiring an officer of the company to certify that the ETC has policies and procedures in place to ensure that its Lifeline subscribers are eligible to receive Lifeline services and that will comply with all federal Lifeline certification procedures).

<sup>56</sup> 47 U.S.C. §§ 220, 403.

<sup>57</sup> 47 CFR § 54.417.

revoke Hughes's ETC designation.<sup>58</sup> The Commission also may assess forfeitures for violations of Commission rules and orders.<sup>59</sup>

#### **E. Waiver of Deadline for Submitting Proof of ETC Designation**

26. The Commission required participants to certify that they are ETCs in the New York Program and to submit appropriate documentation supporting such certification no later than November 14, 2018.<sup>60</sup> The Bureau finds, on its own motion, good cause to waive this deadline for Hughes.<sup>61</sup> The Commission has found that waiver of this deadline is appropriate when an ETC designation proceeding is not yet complete by the deadline despite the good faith efforts of the applicant.<sup>62</sup> Hughes submitted a complete Petition that the Bureau could have acted upon by the deadline following normal procedures. The timing of this Order is unrelated to the filing date of this Petition, and accordingly, waiver of the deadline is appropriate.

#### **IV. ORDERING CLAUSES**

27. Accordingly, IT IS ORDERED, pursuant to the authority contained in section 214(e)(6) of the Communications Act of 1934, as amended, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, that HUGHES IS CONDITIONALLY DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN ALL CENSUS BLOCKS IN THE STATE OF NEW YORK FOR WHICH IT IS ELIGIBLE TO RECEIVE SUPPORT AWARDED THROUGH THE NEW YORK BROADBAND PROGRAM. This designation is contingent upon Hughes becoming authorized to receive such support, is limited to those areas where support is authorized, and is effective only upon authorization.

28. IT IS FURTHER ORDERED that pursuant to section 1.3 of the Commission's rules, 47 CFR § 1.3, and pursuant to the authority delegated under sections 0.91, and 0.291 of the Commission's rules, 47 CFR §§ 0.91, 0.291, the deadline specified in the Commission's rules, 47 CFR § 54.315(b)(5), IS WAIVED to the extent described above.

29. IT IS FURTHER ORDERED that a copy of this Order SHALL BE TRANSMITTED to the New York Public Utilities Commission, to the relevant Tribal authorities, and to the Universal Service Administrative Company.

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<sup>58</sup> *Id.* § 54.320(c); *Federal-State Joint Board on Universal Service; Western Wireless Corp. Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, Declaratory Ruling, 15 FCC Rcd 15168, 15174, para. 15 (2000).

<sup>59</sup> *See* 47 U.S.C. § 503(b).

<sup>60</sup> *New York Long-Form Public Notice*, 33 FCC Rcd at 4922.

<sup>61</sup> The Commission has delegated to the Bureau the authority to grant waivers of the filing deadline. *See Phase II Auction Order*, 31 FCC Rcd at 603, n.315; *see also* 47 CFR §§ 0.91(p) (functions of the Wireline Competition Bureau), 0.291 (delegation of authority to the Wireline Competition Bureau).

<sup>62</sup> *See Petitions for Designation as an Eligible Telecommunications Carrier in the State of New York et al.*, WC Docket No. 09-197 et al., Order, 34 FCC Rcd 2796 (WCB 2019); *Phase II Auction Closing Public Notice*, 33 FCC Rcd at 8268, para. 35 (citing *Phase II Auction Order*, 31 FCC Rcd at 6002-03, paras. 152-53). The Commission may waive its policies or rules upon a showing of good cause and may take into account, on an individual basis, considerations of hardship, equity, or more effective implementation of overall policy. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *see also Ne. Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990). Waiver of the Commission's policies or rules is appropriate only if both: (i) special circumstances warrant a deviation from the general rule; and (ii) such deviation will serve the public interest. *See Network IP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008). Deadlines can only be waived under "unusual or compelling circumstances." *Id.* at 126 (citation omitted).



30. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 CFR § 1.102(b)(1), this order SHALL BE effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith  
Chief  
Wireline Competition Bureau

**ATTACHMENT A****HUGHES NETWORK SYSTEMS, LLC CENSUS BLOCKS**

Petitioner	Census Blocks Covered by Selected Bid	Locations Covered by Selected Bid	Total Estimated CAF Award
Hughes Network Systems, LLC	5,379	22,305	\$7,026,075

## ATTACHMENT B

**Provisionally Selected Census Block IDs for which Hughes Network Systems, LLC  
Is the Designated Eligible Telecommunications Carrier**

**Project 974283**

360039501001018	360039501002090	360039501003085	360039504003001
360039501001019	360039501002091	360039501003086	360039504003002
360039501001050	360039501002093	360039501003092	360039504003009
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**Provisionally Selected Census Block IDs for which Hughes Network Systems, LLC  
Is the Designated Eligible Telecommunications Carrier**

**Project 976776**

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**Provisionally Selected Census Block IDs for which Hughes Network Systems, LLC  
Is the Designated Eligible Telecommunications Carrier**

**Project 97628**

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