

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ALLAMAKEE-CLAYTON ELECTRIC COOPERATIVE, INC.	DOCKET NOS. ETA-2015-0001, WRU-2015-0006-0901
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**ORDER DESIGNATING ELIGIBLE CARRIER AND
GRANTING WAIVER**

(Issued March 5, 2015)

I. BACKGROUND

In its *Rural Broadband Experiments Order*,¹ the Federal Communications Commission (FCC) directed \$100 million of Connect America Fund (CAF) support to targeted experiments to study the impact of technology transitions on rural America and to explore how broadband can be expanded in rural areas.

On December 5, 2014, the FCC announced that Allamakee-Clayton Electric Cooperative, Inc. (ACEC), was provisionally selected to participate in the Rural Broadband Experiments Program. The FCC has indicated that provisionally selected bidders have until March 5, 2015, to obtain designation as an eligible telecommunications carrier (ETC). On March 3, 2015, ACEC requested the FCC to waive the March 5 deadline to allow sufficient time for ACEC to obtain ETC designation and certification as a telecommunications carrier in Iowa.

¹ *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90, 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (Rel. Jul. 14, 2014) ("*Rural Broadband Experiments Order*").

On February 12, 2015, ACEC filed with the Utilities Board (Board) an application requesting that the Board designate the company pursuant to 47 U.S.C. § 214(e)(2) as a telecommunications carrier eligible under the provisions of 47 C.F.R. § 54.201(d) to receive federal universal service support. ACEC asks that the Board issue an order on an expedited basis. ACEC seeks designation in order to receive funds from the FCC's high-cost universal service programs awarded through the Rural Broadband Experiments Program. As of the date of this order, no objections have been filed regarding ACEC's application.

The Board's rules at 199 IAC 39 provide a means by which the Board designates Iowa telecommunications carriers as eligible to receive funding from the universal service fund, pursuant to 47 U.S.C. § 214(e)(2). On February 13, 2015, in Docket No. RMU-2014-0002, the Board adopted amendments to its chapter 39 rules. Those amendments go into effect on April 8, 2015, and are intended to align the Board's rules with recent changes to the federal rules governing the USF and its component programs, including replacing the existing high-cost fund with the CAF and replacing the former list of nine supported services with a single supported service identified as "voice telephony service." See *Connect America Fund; et al.*, WC Docket Nos. 10-90, et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 F.C.C.R. 17663 (rel. Nov. 18, 2011).

On February 23, 2015, ACEC filed a request that the Board waive certain provisions of the Board's chapter 39 rules.

In its application, ACEC explains it was organized in 1938 by member-owners to provide electric service to rural areas in Iowa that were not being served due to sparse population. ACEC provides electric power to more than 9,990 customers in portions of eight counties and its customer base is 95 percent farm and rural residential. ACEC is incorporated in Iowa and maintains a status of "active and in good standing" with the Iowa Secretary of State. ACEC explains it has previously held interests in other non-electric businesses and at one time provided satellite television; more recently, ACEC has maintained an active business as an Internet Service Provider and provides satellite internet service. ACEC states that for many years it has offered "FirstCall," a service which provides personal emergency response service and has over 325 subscribers.

ACEC has partnered with Hawkeye Telephone Company, an independent telephone company located in Hawkeye, Iowa. Hawkeye Telephone Company is providing ACEC with bandwidth capacity and fiber access. ACEC states that with support from the CAF awarded through the Rural Broadband Experiments Program it intends to provide broadband and digital voice services to 663 locations in the price-cap areas of rural Fayette County, Iowa.

ACEC requests ETC designation for the service area that includes the census blocks areas listed in Exhibit D attached to its application. ACEC also submitted Exhibit E, a map of the census block areas.

II. ACEC'S APPLICATION FOR ETC DESIGNATION

In its application, ACEC explains how it will provide supported services and comply with its obligations as an ETC. ACEC explains it will use wireless technology to offer Voice over Internet Protocol (VoIP) and broadband service to residential and commercial locations. ACEC's project, known as the AC Skyways Project, will extend broadband service into the northern two-thirds of Fayette County, Iowa. ACEC describes its project area as rural in nature and explains that the project area overlaps the footprint of the cooperative's service area and that of the price-cap carriers. According to ACEC, the project will use a hybrid solution that combines fiber and fixed wireless technology to offer voice and broadband service of at least 10 Mbps downstream/1 Mbps upstream.

ACEC's service will include a broadband-only offering that will provide unlimited usage. Voice service will also be provided using VoIP technology. ACEC states that the bundled voice and broadband offerings will provide unlimited usage at 10/1 Mbps. The voice-only service option will be priced at the same cost as broadband-only service due to the infrastructure and equipment cost being essentially the same for either voice or broadband-only service.

ACEC stated in its application that its Lifeline-type offering would use the cooperative's FirstCall personal emergency response system. In a supplemental filing submitted on March 4, 2015, ACEC clarified that any reference to the FirstCall system was intended to explain an optional product separate and apart from its basic

local service. ACEC clarified that references to the FirstCall product were not meant to describe its Lifeline offering. ACEC states there will not be a discounted broadband plan for low-income consumers. ACEC states that qualifying Lifeline consumers will not be allowed to apply the Lifeline discount to bundled voice and data services.

ACEC states it will offer the services that are supported by federal universal service support mechanisms throughout the service area for which ETC designation is received. ACEC explains that in the *Rural Broadband Experiments Order*, the FCC adopted a census block methodology for designating service areas under the Rural Broadband Experiments Program.

ACEC commits to provide (i) voice grade access to the public switched telephone network (PSTN) or its functional equivalent; (ii) minutes of use for local service provided at no additional charge to end users; (iii) access to emergency services; (iv) toll limitation services to qualifying low-income consumers as provided in accordance with 47 C.F.R. Sections 54.400 et seq.

ACEC states that it will provide voice-grade access to the PSTN by providing interconnected VoIP service throughout the designated service area. ACEC states it will comply with any minimum local usage requirements adopted by the FCC or Board. ACEC acknowledges that ETCs are required to provide access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911 (E 911), to the extent the local

government in an ETC's service area has implemented 911 or E 911 systems.

ACEC initially explained it would provide access to emergency services through its FirstCall personal emergency response system but clarified in the March 4, 2015, filing that it would provide its customers with access to emergency services by dialing "9-1-1" in satisfaction of the ETC requirement in Board rule 39.2 and that references to the FirstCall product were not meant to describe ACEC's method for satisfying this requirement.

ACEC explains it does not distinguish between toll and non-toll for its voice offering. ACEC states that to the extent it offers a service that distinguishes between toll and non-toll calls, it will offer toll limitation to qualifying low-income consumers at no additional charge.

ACEC states it will comply with the requirements of 47 U.S.C. § 214(e)(1) and will use its own facilities to provide the supported services. ACEC explains it will provide high-speed broadband and digital telephone services to residential, commercial and enterprise customers using a combination of unlicensed frequencies. ACEC intends to use unlicensed 2.4 and 5.8 Ghz spectrum to connect with its subscribers.

ACEC will advertise the availability of the supported services throughout its designated service area using media of general distribution in a manner that is designed to reach those likely to qualify for such services. ACEC states it agrees to

comply with all form and content requirements, if any, established by the FCC and the Board in the future.

ACEC states it will satisfy all consumer protection and service quality standards as provided in 47 C.F.R. Section 54.202(a)(3), as well as any state consumer protection and service quality standards.

ACEC contends that granting it ETC status, thereby enabling it to receive funding from the Rural Broadband Experiments Program, would serve the public interest by furthering the FCC's goal of developing voice and broadband networks in rural, high-cost areas and ensuring that rural consumers benefit from innovations in technology. ACEC states it will use the support to expand high-speed, high quality broadband and voice provided through interconnected VoIP and wireless services. ACEC contends these advanced services will provide important connectivity, and offer a unique alternative to traditional wireline service.

According to ACEC, its designation would increase competitive choice, thereby increasing innovation and creating incentives for other carriers to improve their existing networks. ACEC asserts this will result in greater access to voice services and high-speed broadband, as well as improved service quality for residents of underserved areas in rural Iowa.

On February 27, 2015, ACEC filed an affidavit stating that all federal high-cost support provided to it will be used in the current calendar year (2015) and coming calendar year (2016) only for the provision, maintenance, and upgrading of facilities

and services for which the support is intended. In the affidavit, ACEC also certifies it will comply with applicable service quality standards and consumer protection rules, certifies that it is able to maintain a minimum of two hours of backup power to ensure functionality without an external power source, certifies that it is offering a local usage plan comparable to that offered by the ILEC in the relevant service areas, and certifies that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible carrier is providing equal access within its ETC designated service area. ACEC also states in this supplemental filing that it agrees to provide timely responses to Board requests for information related to the status of local voice service market or facilities and acknowledges it is subject to an annual assessment to fund statewide dual party relay service programs under Iowa Code Section 477C.7(2)(a).

III. ACEC'S MOTION FOR WAIVER

On February 23, 2015, ACEC filed a motion asking the Board to waive certain provisions of 199 IAC 39 relating to its application for ETC designation. ACEC requests a permanent waiver of 199 IAC 39.2(3)(e) and 199 IAC 39.5(8) and (9). These rules relate to network improvement and maintenance plans required of an applicant seeking designation as an ETC and to required extensions and progress reports required of carriers designated as ETCs. ACEC contends that the FCC's *Rural Broadband Experiments Order* contains build-out requirements for the Rural

Broadband Experiments Program that ACEC was required to meet in order to become eligible for the program.

According to ACEC, the FCC's *Rural Experiments Order* states that during the ten-year support term, recipients of the support will be required to meet interim build-out requirements consistent with build-out requirements the FCC adopted for recipients of CAF Phase II funding. ACEC explains that by certain milestones during the ten-year program, support recipients must offer service meeting the FCC's public service obligation requirements for the relevant experiment and submit required certifications and evidence. ACEC states that recipients must comply with the terms and conditions of the program for the full ten-year support term.

ACEC explains that the FCC concluded there was good cause to waive, on its own motion, 47 C.F.R. § 54.313, which requires a high-cost recipient to provide annual progress reports on its five-year service quality improvement plan.² ACEC contends that other requirements adopted for the rural broadband experiments will ensure that the FCC is kept apprised of the recipient's build-out progress and the FCC found it not necessary to require these entities to file five-year service quality plans.³ ACEC asserts that in complying with the FCC's prescribed build-out plan, ACEC will address the issues related to network improvement in the manner adopted by the FCC for participants in the Rural Broadband Experiment Program. ACEC contends that a temporary waiver would be impractical because the build-out

² See *Rural Broadband Experiments Order*, 29 FCC Rcd 8769, ¶ 77.

³ See *Rural Broadband Experiments Order*, 29 FCC Rcd 8769, ¶ 74.

requirements adopted by the FCC will be ongoing throughout the ten-year support term. ACEC states that a permanent waiver is requested to address the scope and operative period of its participation in the Rural Broadband Experiment Program.

ACEC contends that application of 199 IAC 39.2(3)(e) and 199 IAC 39.5(8) and (9) would pose an undue hardship on ACEC because, given the limited scope for which authority is being requested by ACEC, compliance would be burdensome and costly to the company and provide no additional benefit to customers. ACEC argues that 199 IAC 39.2(3)(e) and 199 IAC 39.5(8) and (9) would require it to submit a two-year network improvement and maintenance plan associated with the provision of universal supported services and subsequently file annual extensions and progress reports. ACEC argues that compliance with these Board rules would require it to prepare a plan for a two-year period which would be unnecessary and duplicative of ACEC's efforts to comply with the FCC's reporting requirements.

ACEC argues, pursuant to 199 IAC 1.3(2), that the waiver would not prejudice the substantial legal rights of any person because ACEC would provide to the FCC annual reports which address the network improvements and maintenance plan requirements outlined in the Board's rules. ACEC argues further that the rules it asks the Board to waive are not specifically mandated by the Iowa Code.

Finally, ACEC states that substantially equal protection of public health, safety, and welfare would be afforded because ACEC will comply with the reporting requirements established for the FCC's program.

IV. DISCUSSION

A. ETC Designation

Under federal law, 47 U.S.C. § 214(e)(2), states have primary responsibility for designating ETCs. The Board prefaces its discussion of whether ACEC has complied with the Board's requirements for ETC designation by noting that recipients of universal service support must offer voice telephony service on a common carrier basis throughout the carrier's service territory. ACEC, a rural electric cooperative has not been certificated by the Board to provide voice service in Iowa, but has started the process of obtaining authorization to provide voice service in Iowa pursuant to Iowa Code § 476.29. On March 2, 2015, ACEC filed with the Board an application for a certificate of public convenience and necessity in a proceeding identified as Docket No. TCU-2015-0003. A certificate may be issued as soon as 30 days from the date of the application, but time for the Board's review of the application may be extended if objections are filed.

Pursuant to Board rule 39.2, 47 U.S.C. §§ 214(e) and 254, and corresponding federal regulations, the Board must determine that a carrier meets certain requirements before designating a carrier as eligible to receive support from the USF. The Board has reviewed Allamakee's statements in its application for compliance with the Board's requirements in 199 IAC 39 for designating a carrier as eligible to receive funding from the federal USF and for compliance with federal requirements regarding ETCs. ACEC states that it will offer the services that are supported by

federal universal service support mechanisms throughout the service area for which ETC designation is received. ACEC states that it commits to provide (i) voice grade access to the public switched telephone network (PSTN) or its functional equivalent; (ii) minutes if use for local service provided at no additional charge to end users; (iii) access to emergency services; (iv) toll limitation services to qualifying low-income consumers as provided in accordance with 47 C.F.R. §§ 54.400 et seq.

ACEC explains how it satisfies the carrier eligibility requirements in Board subrule 39.2(3) by stating or certifying the following:

- that it will offer the required services using its own facilities;
- that it will advertise the availability of the support services using media of general distribution to residential customers in its approved service area and will publicize the availability of its services in a manner reasonably designed to reach those likely to qualify for such service;
- that it will provide the supported services using a hybrid solution that combines fiber and fixed wireless technology to offer voice and broadband service of at least 10 Mbps downstream/1 Mbps upstream;
- that it will provide the supported services in a service area that includes the census blocks areas listed in Exhibit D and as shown on the map of the census block areas submitted as Exhibit E;
- that it will comply with all state and federal consumer protection and service quality standards;

- that it is able to maintain a minimum of two hours of backup power to ensure functionality without an external power source;
- that it is offering a local usage plan comparable to that offered by the incumbent local exchange carrier in the relevant service areas;
- that it acknowledges that the FCC may require it to provide equal access to long distance carriers in the event that no other eligible carrier is providing equal access within its ETC designated service area; and
- that its designation as an ETC would serve the public interest by furthering the FCC's goal of developing voice and broadband networks in rural, high-cost areas and would result in improved service quality for rural lowans.

Further, ACEC has filed statements indicating that

- it agrees to respond to Board surveys and requests for information;
- it will provide voice-grade access to the PSTN by providing interconnected VoIP service throughout the ETC-designated service area; that it recognizes it is subject to an annual assessment to fund statewide dual party relay service programs under Iowa Code Section 477C.7(2)(a);
- it recognizes and understands its obligation to provide a Lifeline offering pursuant to federal rule 47 C.F.R. § 54.405 and that, as and ETC, it agrees to provide Lifeline services to qualifying Lifeline customers as defined by federal rule 47 C.F.R. § 54.401; and

- it will provide its customers with access to emergency services by dialing “9-1-1” in satisfaction of the requirement outlined in Board rule 39.2.

Based on ACEC's statements, certifications, representations, and documentation, and because ACEC has filed an application for a CPCN to provide voice service in Iowa, the Board concludes that the ACEC will offer the services supported by the USF in the manner required by 199 IAC 39.2 and will comply with applicable state and federal requirements throughout its designated service area. The Board will grant ACEC's application for designation as an ETC.

B. Motion for Waiver

To grant ACEC's request for waiver of Board rules requiring network improvement plans and associated extensions and progress reports, the Board must find, based on clear and convincing evidence, that the request meets the four criteria in 199 IAC 1.3. The four criteria are: 1) the application of the rule would cause undue hardship, 2) the waiver would not prejudice the substantial rights of any person, 3) the provisions of the rule are not specifically mandated by statute, and 4) substantially equal protection of the public health, safety, and welfare will be afforded by a means other than prescribed by the rule.

Based on the information provided by ACEC about the build-out requirements and related certifications that will be required by the FCC and which are unique to the Rural Broadband Experiments Program, the Board finds it would be an undue hardship for the Board to apply its rules at 199 IAC 39.2(3)(e) and 39.5(8) and (9) to

require ACEC to submit an initial network improvement plan with this application and subsequent extensions and progress reports relating to that plan. The first element of 199 IAC 1.3 has been met.

The Board finds that the second and third elements of rule 1.3 have also been satisfied insofar as no person's legal rights will be substantially prejudiced by granting the requested waiver and the waived provisions are not specifically mandated by Iowa statute.

Finally, the Board finds that the fourth element of rule 1.3 has been satisfied. The Board agrees with ACEC that substantially equal protection of public health, safety, and welfare will be afforded because ACEC will provide annual reports to the FCC that will address the network improvement and maintenance plan requirements in the Board's rules, modified to reflect factors unique to the Rural Broadband Experiment Program.

The Board will grant ACEC's request for a waiver but will not describe it as a "permanent" waiver, as requested by ACEC. Rather, the Board will grant a waiver for a period of ten years (what ACEC identifies as the life of the funding through the Rural Broadband Experiments Program) or until such time as there is a relevant change in the underlying facts and circumstances.

Finally, the Board observes that ACEC will be designated as an ETC under the Board's current rules at 199 IAC 39, which will shortly be revised pursuant to amendments adopted in Docket No. RMU-2014-0002. As of April 8, 2015, the

effective date of the amendments, ACEC will be subject to the new rules. The Board is granting ACEC's requested waiver of the network improvement plan requirements in Board rules 39.2(3)(e) and 39.5(8) and (9). To the extent the network improvement plan requirements appear in the schedule of filings included in the new rules at 199 IAC 39.7(3)(d) ("Progress reports and extensions on previously filed two-year network improvement and maintenance plans"), the Board clarifies that the waiver also will apply to the new paragraph 39.7(3)(d) adopted in Docket RMU-2014-0002.

V. ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. Eligible telecommunications carrier status is granted to Allamakee-Clayton Electric Cooperative, Inc., as requested in its application filed February 12, 2015, as supplemented on February 27 and March 4, 2015, subject to the commitments described in the body of this order, in the census blocks listed in Allamakee-Clayton Electric Cooperative, Inc.'s, Exhibit D, as attached to this order.
2. The designated service area shall be census blocks listed in the attachment to this order.
3. The Executive Secretary of the Utilities Board shall mail copies of this order to Allamakee-Clayton Electric Cooperative, Inc., the Universal Service Administration Company, the Federal Communications Commission Universal

Service Branch, and the Federal Communications Commission Office of the Secretary.

4. The motion for waiver of the Board's rules at 199 IAC 39.2(3)(e), 39.5(8), and 39.5(9) filed by Allamakee-Clayton Electric Cooperative, Inc., on February 23, 2015, in Docket No. WRU-2015-0006-0901, is granted as discussed in the body of this order.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Nick Wagner

ATTEST:

/s/ Joan Conrad
Executive Secretary

/s/ Sheila K. Tipton

Dated at Des Moines, Iowa, this 5th day of March 2015.

ETA-2015-0001
FILED WITH
Executive Secretary
February 12, 2015
IOWA UTILITIES BOARD

Exhibit D

CensusBlockNbr

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