

PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: January 30, 2018

REGULAR CONSENT EFFECTIVE DATE _____ N/A

DATE: January 22, 2018

TO: Public Utility Commission

FROM: Kay Marinos ^{KM} and Roger White ^{RW}

THROUGH: Jason Eisdorfer ^J and Bryan Conway ^{BC}

SUBJECT: DOUGLAS SERVICES, INC. DBA DOUGLAS FASTNET:
(Docket No. UM 1896) Application for Federal and State ETC and ETP Designations.

STAFF RECOMMENDATION:

Staff recommends that the Commission designate Douglas Services, Inc. dba Douglas FastNet (DFN) as a federal Eligible Telecommunications Carrier (ETC) for purposes of receiving support from the Federal Universal Service Fund (FUSF)¹, as an Eligible Telecommunications Provider (ETP) for purposes of participating in the Oregon Telephone Assistance Program (OTAP), and as a state ETC eligible to receive Oregon Universal Service Fund (OUSF) support subject to the following conditions:

1. DFN must abide by the terms of the UM 1481, Revised Phase III Stipulation, adopted by the Commission in Order No. 16-093, including those terms regarding disbursements, contributions, and the use of money received from the fund.
2. Federal ETC designation is limited to designation only for purposes of receiving federal Lifeline (and not high-cost) support.
3. The designated service area for purposes of OUSF support is comprised of the areas associated with the six wire centers listed in Attachment A of this memo. The designated service area for FUSF and OTAP purposes is comprised of those same areas, but excludes the census blocks within the wire centers for which DFN was designated previously for Rural Broadband Experiment ("RBE")

¹ Staff uses the term "federal ETC" to refer to a provider that the Commission designates as an ETC for purposes of receiving support from the FUSF. We use the term "state ETC" to refer to designation to receive support from the OUSF to distinguish between the two different ETC designations.

funding in Order No. 15-159. DFN's previous ETC designation for federal support is separate and unaffected by this newer designation.

DISCUSSION:

Issue

Whether the Commission should grant DFN's application to be designated as a federal ETC to receive FUSF support, as a state ETC to receive OUSF support, and as an ETP to participate in the OTAP throughout six specific wire centers in Douglas and Lane Counties: Camas Valley, Drain, Glide, Yoncalla, Sutherlin, and Winston. The decision rests on whether DFN meets the requirements for each type of designation.

Applicable Rule or Law

Section 214(e)(2) of the federal Communications Act of 1934, as amended, gives state commissions primary responsibility for designating Eligible Telecommunications Carriers (ETCs) to receive federal universal service support for high-cost and low-income (Lifeline) purposes. General federal ETC and Lifeline requirements are reflected in Federal Communications Commission (FCC) regulations, 47 CFR Part 54. The Commission updated its own ETC requirements for initial designation of carriers requesting federal support, consistent with federal regulations, in Order No. 15-382, Appendix A, issued December 1, 2015, in Docket No. UM 1648. The requirements address:

1. Information regarding the applicant and its common carrier status;
2. Type of federal universal service support for which designation is requested;
3. Commitment and ability to provide all supported services;
4. Identification and definition of proposed designated service area;
5. Commitment and ability to offer supported services throughout the proposed service area and to provide service to all requesting customers;
6. Types of facilities used to offer supported services;
7. Commitment to use support funds in accordance with FCC and Commission rules;
8. Commitment to advertise high-cost supported services throughout the designated service area;
9. Commitment to offer and advertise Lifeline and OTAP services throughout the designated service area;
10. Ability to remain functional in emergencies;
11. Commitment to meet service quality and consumer protection standards;
12. Designation on tribal lands;

13. Public interest showing, addressing how customer choices will increase, advantages and disadvantages of service offerings and any other criteria determined by the Commission; and
14. Commitment to provide reports as required by the Commission.

Per OAR 860-033-0005(8), an ETP is a provider certified by order of the Commission as eligible to provide OTAP services, having met these eligibility criteria:

- (a) Offering services under 47 C.F.R. § 54 Subpart E (2013) using either its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another ETC) throughout the service area;
- (b) Advertising the availability of and the charges for such services using media of general distribution; and
- (c) Demonstrating that it will comply with the OTAP rules, as set forth in OAR 860-033-0005 through 860-033-0110.

Under ORS 759.425, the Commission has established the OUSF and may designate telecommunications carriers as eligible to participate in this fund. Per the Commission's administrative rules, a telecommunications provider (a competitive provider, cooperative or telecommunications utility) may be designated by the Commission as eligible for OUSF support in a particular geographic area. Under OAR 860-100-0200(2), a provider must petition for designation in a specific geographic area, and demonstrate through its petition that it is capable of meeting the criteria for receiving an OUSF distribution listed in OAR 860-100-0200(1)(a)-(k). These require that the provider:

- (a) Hold a certificate of authority issued under ORS 759.020;
- (b) Offer all supported services included in basic telephone service;
- (c) Offer, throughout the provider's designated service area, all supported services included in basic telephone service;
- (d) Use the provider's own facilities, leased UNE facilities, or a combination of its own or leased facilities and resale of another provider's retail services to provide the supported services;
- (e) Use funds distributed from the OUSF for investment, construction, operation, maintenance, and repair to ensure that basic telephone service is available at reasonable and affordable rates in areas designated by the Commission for support;
- (f) Advertise the supported services included in basic telephone service;

- (g) Is certified by the Commission to offer and advertise OTAP supported services or a Commission-approved alternative plan, along with Tribal Lifeline and Tribal Link Up benefits;
- (h) Has the ability to remain functional during emergencies;
- (i) Is committed to and maintains service quality and consumer protection standards as required under OAR 860-023-0055 and OAR 860-034-0390;
- (j) Demonstrate that the provision of support is in the public interest; and
- (k) Meet all Commission reporting requirements related to OUSF contributions and distributions.

Analysis

Background

Since 2001, DFN has held a certificate of authority to provide telecommunications services in Oregon as a competitive provider.² DFN provides voice and broadband services to schools, government agencies, medical facilities and over six thousand individual customers within Douglas and Lane Counties. In addition, the Commission previously designated DFN as a federal ETC and ETP in Order No. 15-159, issued on May 19, 2015. That designation was limited to specific census blocks in which DFN was awarded federal high-cost support from the RBE portion of the FUSF.

DFN's primary objective in making this application is to obtain high-cost support funding from the OUSF, which DFN estimates will be \$155,000 in the first year and \$186,000 in the second year. DFN seeks OUSF support in order to maintain, upgrade and expand its current fiber network consistent with the goals of universal service.

One of the conditions for receiving OUSF support is that the carrier obtain Commission certification to offer OTAP services, i.e., be granted ETP designation. In order to offer OTAP services, a carrier must also offer federal Lifeline services, which requires Commission designation as a federal ETC. Therefore, DFN must receive three types of designation in order to obtain the OUSF support that it seeks: 1) federal ETC, 2) ETP, and 3) state ETC.

The Commission previously granted state ETC designation for OUSF eligibility, as well as federal ETC and ETP designations, to two carriers – ComSpan Communications and Warm Springs Telecommunications Company.³ While the OUSF has changed since

² See Order No. 09-322 released August 20, 2009 for details.

³ ComSpan Communications fka Wantel Inc. was designated to receive OUSF support in several wire centers. See Order No. 06-081 entered Feb. 23, 2006 (Winston, Sutherlin, Roseburg), Order No. 07-116 entered April 2, 2007 (Bandon), Order No. 07-574 entered Dec. 20, 2007 (Coquille), and Order No. 08-157 entered March 5, 2008 (Veneta, Reedsport and Myrtle Point). Warm Springs Telecommunications Company was granted designation for OUSF support in the Warm Springs wire center in Order No. 12-089 entered March 13, 2012.

Comspan and Warm Springs were designated as eligible for support⁴, DFN's application meets the requirements of designation.

Staff's analysis of how DFN's application meets the requirements for each designation is below.

ETC Designation for FUSF Purposes/OUSF Eligibility

In general, Staff notes that most of the requirements in OAR 860-100-0200(1) that a company must meet to be designated as eligible for OUSF support are similar to the Commission's current ETC requirements for federal support that are found in Order No. 15-382. For this reason, Staff's analysis of DFN's filing under both sets of requirements is combined in this section. However, we note that the means for determining whether a requirement is met may be different for each type of ETC designation, particularly because DFN is requesting high-cost support from the OUSF but not from the FUSF, and FUSF includes requirements for Broadband Internet Access Service (BIAS) while OUSF requirements relate to basic voice service.

Staff finds that in its application, DFN demonstrates that it meets each of the current requirements in Order No. 15-382 for designation as a federal ETC for purposes of offering Lifeline. DFN has been a federal ETC for the past two years and has thereby demonstrated its ability and commitment to comply with requirements for federal ETC designation in its current designated service area. Furthermore, the company appears able to meet its obligations laid out in OAR 860-100-0200(1).

Staff reviewed the services that DFN is presently offering and observes that many of them are superior to those being provided by other carriers. In its application, DFN states that it will be offering stand-alone voice for a price that will not exceed \$34.99 per month. DFN also states that it will be offering voice service bundled with broadband service. These packages of bundled service would start at 50 Megabits per second (Mbps) download speed/10 Mbps upload for \$59.99 per month; this significantly exceeds the current FCC speed standard for broadband service of 25 Mbps/3Mbps.

Granting federal ETC status to DFN will serve the public interest by increasing Lifeline customers' choices for voice service and broadband internet access service in that area. As the incumbent local exchange carrier in these wire centers, CenturyLink is required to offer Lifeline, but only one other landline ETC, ComSpan, offers Lifeline and that is in only two of the wire centers (Winston and Sutherlin) at issue in this case. Designating DFN as eligible for OUSF funds also serves the public interest as it will allow DFN to expand services and facilities in Douglas and Lane Counties and offer all consumers more choice for landline voice and broadband services.

⁴ Examples of changes are a statutory cap on the surcharge rate and the Commission's ability to consider plans that, in addition to meeting the standard requirements set out in rule, encourage broadband.

DFN is significantly expanding the area that it must serve. OAR 860-100-0200(1) requires DFN to provide service to any requesting customer located in any of the wire centers where it is designated. Further, DFN is required to actively advertise its supported services throughout the designated area. To meet this likely increase in demand, DFN must have the financial capability to meet the additional investment and expenses.

A number of CLECs are operating in various parts of the area where DFN is seeking designation. However, only one of these other CLECs (ComSpan) is presently receiving support from the OUSF, and that CLEC receives support in only two of the six wire centers for which DFN is seeking support. In contrast, DFN will serve throughout all six wire center areas. Granting DFN's request for eligibility to receive OUSF support funds will enable DFN to expand services and facilities in Douglas and Lane Counties and offer consumers in those areas more choice for landline voice and broadband services.

Staff responsible for OUSF administration reviewed DFN's audited financial statements as part of its determination as to whether the company is capable of providing service to an expanded customer base in the service area. Specifically, Staff reviewed key financial ratios and total utility plant growth. Staff concludes that the company will be able to meet its obligations laid out in OAR 860-100-0200.

Under the UM 1481, Revised Phase III Stipulation, each new provider drawing from the OUSF results in an increase in the size of the disbursement obligation. This would happen at the same time the fund available for disbursements is shrinking. If DFN were added as a recipient, the disbursement obligation would conservatively increase by \$155,000 in the first year and \$185,000 in the second year. To ensure fairness in administration of the fund, Staff recommends that designation be conditioned on DFN's compliance with the terms of the UM 1481, Revised Phase III Stipulation, adopted by the Commission in Order No. 16-093, including those terms regarding disbursements, contributions, and the use of money received from the fund.

ETP Designation

In addition to federal ETC designation, a carrier must receive ETP designation from the Commission before it can participate in the OTAP. Having already met the requirements for ETP designation in its current designated service area, DFN commits in its application to comply with the OTAP rules and procedures in the expanded proposed designated service area.

The federal Lifeline program provides support of \$9.25 per month to qualifying low-income consumers for supported voice and BIAS services. The OTAP provides an additional \$3.50 of monthly subsidy for voice services. DFN currently offers OTAP/Lifeline discounts to its customers where it is already designated as an ETC for

federal RBE funding. Approval of the current application will permit DFN to offer the additional OTAP discounts to qualifying customers throughout the proposed wider designated service area. DFN's offering of a stand-alone voice service priced at \$34.99 per month will contribute to affordable service for Lifeline/OTAP customers living in the area. As required by Commission rule, DFN will also permit qualifying customers to apply the Lifeline/OTAP discounts to any bundled service plans that include voice service.

Designated Service Area

Designation as an ETC and ETP requires identification of a "designated service area." The designated service area is defined in terms of specific geographic units. In this case, those units are the areas associated with the six specific wire centers listed in Attachment A and shown in the map in Attachment B. While wire centers are no longer the required basis for federal ETC and ETP designations for purposes of FUSF and OTAP support, they remain the geographic units upon which OUSF costs and support payments have been determined. Therefore, in order to receive OUSF support, DFN is required to serve entire wire center areas. These encompass larger areas than the census blocks in which DFN is currently designated to receive FUSF support. An ETC must offer service throughout its designated service area, although it is not required to be able to do so at the time it receives designation.

Due to the existence of DFN's previous designation in some census blocks for federal and OTAP purposes, and the need to define OUSF support areas in terms of wire centers, the designated service areas in this case will necessarily differ slightly based on the type of designation. For purposes of OUSF support, the designated service area will be the areas consistent with the boundaries of the six wire centers. But for purposes of federal ETC and ETP designations for Lifeline and OTAP support, the designated service area will consist of the areas included in the six wire centers, *exclusive* of the census blocks in which DFN has already been designated as a federal ETC and as an ETP.

There is another important distinction related to DFN's request for federal ETC designation. DFN was designated previously in the census blocks for FUSF high-cost RBE support and Lifeline support. In the case at hand, however, there is no federal high-cost support available at this time to DFN. Therefore, Staff recommends that the federal ETC designation requested in the current application be limited to only Lifeline support. Indeed that is the only type of federal ETC designation that DFN needs at this time to be able to offer Lifeline and OTAP services and thereby meet the OUSF requirement. While DFN's application appears to request "general" federal ETC status, the Commission cannot approve DFN for federal support that is not currently available. If specific federal high-cost support becomes available sometime in the future, then DFN can submit a new application to request designation for the purposes of receiving

that support. That application will need to demonstrate that DFN meets the specific requirements for receiving the type of high-cost support made available at that time.

Conclusion

DFN generally satisfies the conditions for the designations that it requests, but some qualifications and conditions that Staff has identified at the beginning of this memo are needed. With these conditions, designating DFN as a federal ETC, an ETP and a state ETC eligible for OUSF distributions in the geographic area requested is in the public interest. Federal ETC and ETP status will enable DFN to offer Lifeline/OTAP services to qualifying low-income consumers in a wider area than it currently serves, and will give residents another choice of providers for Lifeline/OTAP services. Granting DFN's request for eligibility to receive OUSF support funds will enable DFN to expand services and facilities in Douglas and Lane Counties and offer consumers in those areas more choice for landline voice and broadband services.

PROPOSED COMMISSION MOTION:

Designate DFN as a federal ETC for the limited purpose of offering federal Lifeline services, as an ETP to participate in the OTAP, and as a state ETC to receive OUSF support in the areas of the wire centers listed in Attachment A (as footnoted), subject to the conditions recommended by Staff.

Attachment A

**Wire Centers in Douglas FastNet's Designated Service Area
for Purposes of Federal Lifeline,* OTAP*
and OUSF Support****

Wire Center Name	CLLI Code	ILEC
Camas Valley	CMVYOR	CenturyTel of Eastern Oregon dba CenturyLink
Drain	DRANOR	CenturyTel of Eastern Oregon dba CenturyLink
Glide	GLIDOR	CenturyTel of Eastern Oregon dba CenturyLink
Yoncalla	YNCLOR	CenturyTel of Oregon dba CenturyLink
Sutherlin	STHROR	Qwest Corporation dba CenturyLink QC
Winston	WNTNOR	Qwest Corporation dba CenturyLink QC

*The new federal ETC and ETP designated service area excludes the census blocks for which DFN was previously designated as a federal ETC (for RBE funding and Lifeline) and ETP in Order No. 15-159.

**The designated service area for OUSF support includes all areas within the wire centers listed.

