

ORDER NO. 20-385

ENTERED Oct 27 2020

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1896

In the Matter of

DOUGLAS SERVICES, INC., dba
DOUGLAS FAST NET,

Supplemental Application to Expand
Designated Service Area as an Eligible
Telecommunications Carrier and Eligible
Telecommunications Provider.

ORDER

DISPOSITION: STAFF'S RECOMMENDATION ADOPTED

At its public meeting on October 20, 2020, the Public Utility Commission of Oregon adopted Staff's recommendation in this matter. The Staff Report with the recommendation is attached as Appendix A.

BY THE COMMISSION:



Nolan Moser
Chief Administrative Law Judge



A party may request rehearing or reconsideration of this order under ORS 756.561. A request for rehearing or reconsideration must be filed with the Commission within 60 days of the date of service of this order. The request must comply with the requirements in OAR 860-001-0720. A copy of the request must also be served on each party to the proceedings as provided in OAR 860-001-0180(2). A party may appeal this order by filing a petition for review with the Circuit Court for Marion County in compliance with ORS 183.484.

**PUBLIC UTILITY COMMISSION OF OREGON
STAFF REPORT
PUBLIC MEETING DATE: OCTOBER 20, 2020**

REGULAR ____ **CONSENT** X **EFFECTIVE DATE** October 21, 2020

DATE: October 6, 2020

TO: Public Utility Commission

FROM: Jon Cray and Roger White

THROUGH: Bryan Conway and Mike Dougherty **SIGNED**

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

STAFF RECOMMENDATION:

Staff recommends that the Commission expand Douglas Services, Inc. dba Douglas FastNet's (DFN) designated area as a federal Eligible Telecommunications Carrier (ETC) for purpose of low-income support (Lifeline), 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 in additional wire centers subject to the following conditions:

1. DFN must abide by all of the OUSF requirements found in OAR 860-100-0200.
2. Federal ETC designation is limited to allowing DFN to provide federal Lifeline service; federal high-cost support is excluded.
3. The additional service areas where DFN can receive OUSF support are restricted to the five wire centers found in Attachment A, Table 1. The additional designated service areas for purposes of providing federal Lifeline and OTAP services are restricted to the eight wire centers found in Attachment A, Table 2.

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DISCUSSION:

Issue

Whether the Commission should expand DFN's designated service area as a state ETC to allow it to receive OUSF support throughout five wire centers located in Douglas and Coos Counties (Bandon, Coquille, Glendale, Myrtle Point, and Reedsport) and expand designation as an ETP and federal ETC to participate in OTAP and Lifeline throughout eight wire centers in Douglas and Coos Counties (Bandon, Coquille, Glendale, Myrtle Point and Reedsport, Myrtle Creek, Coos Bay, and North Bend).

Applicable Rule or Law

Section 214(e)(2) of the federal Communications Act of 1934, as amended, gives state commissions primary responsibility for designating ETCs to receive federal universal service support for high-cost and 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

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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 the following 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 it must 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;

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- (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. DFN provides voice and broadband services to schools, government agencies, medical facilities, and almost five 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 Rural Broadband Experiments (RBE) portion of the Federal Universal Service Fund (FUSF).

On February 2, 2018, in Docket No. UM 1896, Order No. 18-040, the Commission designated DFN as a state ETC to receive OUSF support in six wire centers: Camas Valley, Drain, Glide, Yoncalla, Sutherlin, and Winston. In that same order, the Commission also designated DFN as a federal ETC, but only for the limited purpose of offering federal Lifeline services, and as an ETP for the purpose of participating in the OTAP in those same six wire centers. The federal support was limited because DFN was not eligible for federal high cost support.

With this application, DFN requests designation as a state ETC to allow it to receive OUSF support throughout five wire centers located in Douglas and Coos Counties: Bandon, Coquille, Glendale, Myrtle Point, and Reedsport. DFN also requests designation as an ETP and federal ETC to participate in OTAP and Lifeline throughout seven wire centers in Douglas and Coos Counties: Bandon, Coquille, Glendale, Myrtle Point, Reedsport, Coos Bay, and North Bend. Staff requested that DFN add the Myrtle Creek wire center to its designated service area for federal ETC/state ETP purposes and commit to provide OTAP and Lifeline throughout this additional wire center. DFN has agreed to do so.

DFN's primary objective in making this application is to obtain additional high-cost support funding from the OUSF, which Staff estimate will be an additional \$110,000 when the purchase of Comspan is completed. The \$110,000 is the amount Staff estimates will be transferred from Comspan to DFN. In total, Staff estimates that DFN will be drawing just under \$300,000 annually from the fund if this application is approved. This expansion will only result in a small net increase from what the two companies are presently receiving. If approved, DFN will be required by

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OAR 860-100-0200(e) to use the money from the fund to maintain, upgrade, and expand its current fiber network consistent with the goal of ensuring that basic telephone service is available at reasonable and affordable rates.

One of the conditions for receiving OUSF support is that the carrier obtain Commission certification to offer OTAP services, which requires it to 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 following is Staff's analysis of how DFN's application meets the requirements for each designation.

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.

Staff finds that DFN has demonstrated that it meets each of the current requirements for designation as a federal ETC for purposes of offering Lifeline as evidenced by the previous filings submitted and approved in Order No.15-159, Order No. 18-040, and Order No. 18-417. DFN has been a federal ETC for almost five years and has thereby demonstrated its ability and commitment to comply with requirements for federal ETC designation in its current designated service area. Since February 2018, the Company has met its OUSF obligations laid out in OAR 860-100-0200(1) and has been receiving disbursements from the OUSF.

Staff reviewed the services that DFN is presently offering and as previously observed, the services being offered are high quality service offerings. On its website, DFN advertises offering stand-alone voice for \$34.99 per month. DFN also bundles voice service with internet service. These packages of bundled service start at 50 Megabits per second (Mbps) download speed and 25 Mbps upload (50Mbps/25Mbps) for \$69.98 per month and include 200 minute of free, contiguous US calling; 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 carriers serving these wire centers, CenturyLink and

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NW Fiber, LLC dba Ziplly Fiber are required to offer Lifeline. DFN will provide an alternative for consumers. 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 Coos Counties and offer all consumers more choice for landline voice and broadband services.

A number of competitive providers are operating in various parts of the area where DFN is seeking designation. However, only Comspan, which DFN is planning on purchasing, is presently receiving support from the OUSF. As a result of its purchase of Comspan and the addition of two additional offices, DFN will go from receiving support for serving six wire centers to receiving support for twelve 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 Coos Counties and offer consumers in those areas more choice for landline voice and broadband services.

Under the Docket No. 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 the expansion DFN is requesting were approved, the support from the Comspan territories would be transferred to DFN with no major increases in disbursements in the first year. DFN is also requesting for support in one new office, Glendale, which has 330 lines that could receive support. Staff estimates that for the first year, the overall increase in disbursements from the fund as a result of the acquisition and the new wire centers would be very slight.

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 areas, DFN commits in its application to comply with the OTAP rules and procedures in the expanded proposed designated service areas.

The federal Lifeline program provides support of \$9.25 per month to qualifying low- income consumers for supported voice and broadband internet access services. The OTAP currently provides an additional \$12.00 of monthly subsidy for voice and broadband internet access services. See Commission Order No. 20-204. DFN currently offers OTAP and Lifeline discounts to its customers where it is already designated as an ETC.

Approval of the current application will permit DFN to offer the additional OTAP discounts to qualifying customers throughout the proposed wider designated service

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area. DFN's offering of a stand-alone voice or broadband internet access service priced at \$34.99 or \$49.99, respectively, per month will contribute to affordable service for Lifeline and OTAP customers living in the area. As required by Commission rule, DFN will also permit qualifying customers to apply the Lifeline and OTAP discounts to any service plan that meets the customer's needs and budgets.

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 eight wire centers listed in Attachment A, Table 2. 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 keep the areas consistent with those where they receive OUSF support, DFN is required to serve entire wire center areas even when they are not receiving OUSF support in a specific wire center. 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.

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 and 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 and 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, Table 1 and Table 2, subject to the conditions recommended by Staff.

ATTACHMENT A

TABLE ONE

WIRE CENTERS WHERE DFN MAY RECEIVE OUSF SUPPORT

Wire center	Comspan	New		
Owner	Support Here	Designation	County	Wire Center
Frontier	Yes	Yes	Coos	Bandon
Frontier	Yes	Yes	Coos	Coquille
Frontier	Yes	Yes	Coos	Myrtle Point
Frontier	Yes	Yes	Douglas	Reedsport
Frontier	No	Yes	Douglas	Glendale
Qwest	Yes	No	Douglas	Sutherlin
Qwest	Yes	No	Douglas	Winston

Note: DFN requested designation for the Sutherlin and Winston wire centers, but is already designated in these two wire centers.

TABLE TWO

WIRE CENTERS WHERE DFN MAY RECEIVE LIFE LINE AND OTAP SUPPORT

Wire center	Comspan	New		
Owner	Support Here	Designation	County	Wire Center
Frontier	Yes	Yes	Coos	Bandon
Frontier	Yes	Yes	Coos	Coquille
Frontier	Yes	Yes	Coos	Myrtle Point
Frontier	Yes	Yes	Douglas	Reedsport
Frontier	No	Yes	Douglas	Glendale
Frontier	No	Yes	Coos	North Bend
Frontier	No	Yes	Coos	Coos Bay
Citizens	No	Yes	Douglas	Myrtle Creek
Qwest	Yes	No	Douglas	Sutherlin
Qwest	Yes	No	Douglas	Winston
Qwest	Yes	No	Douglas	Roseburg

Note: DFN requested designation in the Roseburg, Sutherlin, and Winston wire centers but is already designated in these three wire centers.