

8300 Greensboro Dr.
Suite 1200
Tysons, VA 22102

(703) 584-8678
WWW.FCCLAW.COM

LLGS | LUKAS
LAFURIA
GUTIERREZ
& SACHS LLP

FILED 12/24/2020
DOCUMENT NO. 13754-2020
FPSC - COMMISSION CLERK

December 24, 2020

VIA ELECTRONIC FILING

Mr. Adam Teitzman
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-6100

*Re: Docket No. 2020 _____
Application of Conexon Connect for Designation as an Eligible
Telecommunications Carrier for Broadband and Voice Over Internet
Protocol Services in Connection with Funding Provided Pursuant to the
FCC's Rural Digital Opportunity Fund Phase I Auction (Auction 904) or,
In the Alternative, Petition for Expedited Declaratory Statement*

Dear Mr. Teitzman:

Conexon Connect, LLC, by counsel, hereby submits the enclosed Application for Designation as an Eligible Telecommunications Carrier.

Please do not hesitate to contact us should you have any questions regarding the enclosed or if you require anything further.

Sincerely,

/s/ Todd B. Lantor
Todd B. Lantor

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition for Conexon Connect, LLC
for Expedited Designation as an Eligible
Telecommunications Carrier or,
in the Alternative, Petition for an
Expedited Declaratory Statement

Docket No. _____

December 24, 2020

**PETITION FOR EXPEDITED DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER
OR, IN THE ALTERNATIVE,
PETITION FOR EXPEDITED DECLARATORY STATEMENT**

Conexon Connect, LLC (“Conexon Connect” or “Petitioner”), a subsidiary of Conexon, LLC (“Conexon”) hereby requests an expedited ETC Designation Order or, in the alternative, an Expedited Declaratory Statement¹ from the Florida Public Service Commission that Conexon Connect, which will soon offer fixed broadband service through the deployment of its fiber optic network in Florida at speeds of up to 1 Gbps, as well as interconnected Voice over Internet Protocol (“VoIP”)-based voice service, in the State of Florida is not subject to the jurisdiction of the Commission for purposes of seeking Eligible Telecommunications Carrier (“ETC”) designation.

Conexon Connect, through its participation in the Rural Electric Cooperative Consortium, has recently been awarded federal subsidies through the Federal Communications Commission’s (“FCC”) Rural Digital Opportunity Fund (“RDOF”) Phase I auction.² As a condition of receiving RDOF Phase I subsidies, the FCC requires that Conexon Connect seek and obtain ETC designation within 180 days of the FCC’s December 7, 2020 Public Notice announcing the winning bidders in the RDOF Phase I auction.³

If the Commission declines to exercise jurisdiction over this ETC application, Conexon Connect must file an ETC application with the FCC within 30 days of the release of the Auction 904 closing public notice.⁴

¹ Rule 28-105.001 (“A declaratory statement is a means for resolving a controversy or answering questions or doubt concerning the applicability of statutory provisions. . .”).

² See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes*, Public Notice, DA 20-1422 (December 7, 2020).

³ 47 C.F.R. § 54.804(b)(5).

⁴ See *Notice and Filing Requirements and Other Procedures for Auction 904 Public Notice*, FCC 20-77 at para. 317 (rel., June 11, 2020).

In connection with the allocation of funds to RDOF Phase I winning bidders, the FCC has stated that:

Petitioners seeking an FCC ETC designation ... must submit “an affirmative statement from the state commission ... that the carrier is not subject to the state commission’s jurisdiction.” The statement may take the form of a “duly authorized letter, comment, or order from the relevant state regulatory commission ... indicating that the state lacks authority to designate the carrier.” *Carriers cannot rely on jurisdictional statements in past orders relating to different carriers* If a state law expressly articulates that it does not have jurisdiction over a relevant type of technology, [FCC] staff would consider such a statute relevant in its determination of [FCC] jurisdiction.⁵

As a result, Conexon Connect is seeking an Order or, in the alternative, a Declaratory Statement, on an expedited basis, from the Commission that it declines to exercise jurisdiction over Conexon Connect’s ETC petition.

In 2018, the Commission issued an Order in response to an ETC petition filed by Viasat Carrier Services, Inc. (“Viasat”) stating that it would not assert jurisdiction over the ETC application of Viasat, a satellite provider also planning to offer broadband and VoIP services in Florida following the FCC’s Connect America Fund Phase II auction. However, Conexon Connect is likely not permitted by the FCC to rely upon the Commission’s prior decision involving Viasat in which the Commission directed Viasat to seek ETC designation from the FCC.⁶

As detailed 47 U.S.C. § 214(e), states have primary authority to designate carriers as ETCs. However, in 2011 the Florida Legislature detailed several services exempted from Commission jurisdiction, including broadband services and VoIP services.⁷

Conexon Connect plans to offer solely fixed broadband service and interconnected VoIP-based voice service and, as a result, it appears that Conexon Connect should seek ETC designation from the FCC, as opposed to the Commission. Conexon Connect seeks an Order or,

⁵ See *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020*, 2020 WL 3166244, Public Notice (rel. June 11, 2020).

⁶ *Application for limited designation as an eligible telecommunications carrier (ETC) to receive Connect America Fund Phase II Auction (Auction 903) support for voice and broadband services with request for expedited consideration by Viasat Carrier Services, Inc.*, Docket No. 20180180-TX, Order No. PSC-2018-0531-PAA-TX, Notice of Proposed Agency Action Order Dismissing Application for Designation as an Eligible Telecommunications Carrier, issued Nov. 13, 2018 (“*Viasat Order*”); see also Memorandum from the Office of General Counsel and the Office of Industry Development and Market Analysis to the Office of Commission Clerk, Docket No. 20180180-TX, written Oct. 18, 2018.

⁷ 2011 FL HB 1231, adopted May 5, 2011; see also Chapter 364.011, F.S.

in the alternative, a Declaratory Statement, on an expedited basis, from the Commission for direction on this issue so that it may begin pursuing ETC designation from the FCC, if necessary.

Conexon Connect respectfully requests that the Commission issue an Expedited Order or, in the alternative, an Expedited Declaratory Statement that declines to exercise jurisdiction over Conexon Connect's ETC Petition, and that the Commission provide for such further relief as may be appropriate.

Respectfully submitted,

CONEXON CONNECT, LLC

By: /s/Todd B. Lantor

Todd B. Lantor

Lukas, LaFuria, Gutierrez & Sachs, LLP

8300 Greensboro Drive, Suite 1200

Tysons, VA 22102

Tel: (703) 584-8671

E-mail: tlantor@fcclaw.com

Counsel to Conexon Connect, LLC

December 24, 2020