

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

**-M-E-M-O-R-A-N-D-U-M-**

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**DATE:** March 19, 2021

**TO:** Office of Commission Clerk (Teitzman)

**FROM:** Office of Industry Development and Market Analysis (Yglesias de Ayala,<sup>CH</sup>  
Fogleman, Wendel)  
Office of the General Counsel (Passidomo)<sup>TLT</sup>

**RE:** Docket No. 20210047-TX – Petition for designation as eligible telecommunications carrier (ETC) in the State of Florida, by CenturyLink Communications, LLC.

**AGENDA:** 04/01/21 – Regular Agenda – Proposed Agency Action – Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** La Rosa

**CRITICAL DATES:** June 7, 2021 for qualification for RDOF auction disbursement

**SPECIAL INSTRUCTIONS:** None

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## Case Background

On February 26, 2021, CenturyLink Communications, LLC (CenturyLink or Company) filed a petition with the Florida Public Service Commission (Commission) seeking designation as an eligible telecommunications carrier (ETC) to receive rural digital opportunity fund (RDOF) support. CenturyLink was granted competitive local exchange carrier certificate No. 5801 in 1999 under the name “Qwest Communications Corporation.”<sup>1</sup> CenturyLink is an indirect, wholly-

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<sup>1</sup> Order No. PSC-99-0439-FOF-TX issued on March 3, 1999, in Docket No. 19981873-TX, Application for certificate to provide alternative local exchange telecommunications service by Qwest Communications Corporation. *See also* Order No. PSC-09-0089-FOF-TP, issued on February 10, 2009, in Docket No. 20080648-TP, In re: Request for approval of name change on CLEC Certificate No. 5801 and IXC Registration No. TI215 from Qwest

owned subsidiary of Lumen Technologies, Inc. (CenturyLink/Lumen).<sup>2</sup> CenturyLink/Lumen provides voice and data services over its IP-based network. CenturyLink and its affiliates offer a variety of services, some of which are regulated telecommunications services and some of which are not.

On December 7, 2020, CenturyLink/Lumen was selected as one of the winning bidders for the Federal Communications Commission's (FCC) RDOF auction. Consistent with FCC rules, CenturyLink/Lumen assigned its winning bid to Embarq Florida, Inc. d/b/a CenturyLink (Embarq FL), one of its subsidiaries operating in Florida. Embarq FL is an incumbent local exchange carrier (ILEC) and has been an ETC in Florida since 1997.<sup>3</sup> Most of the RDOF census blocks won by CenturyLink/Lumen fall within Embarq FL's incumbent service area for which it already has an ETC designation. CenturyLink is seeking to obtain ETC designation for the 16 census blocks that fall outside of Embarq FL's existing ETC designation.

The RDOF is a form of high-cost support that is funded through the federal universal service fund (USF). The FCC's RDOF initiative allocates up to \$20.4 billion through a two-phase competitive auction to help connect millions of unserved rural homes and small businesses to high-speed broadband. Phase I of the auction will provide up to \$16 billion to be used over a period of 10 years to service providers that commit to offer voice and broadband services to fixed locations in eligible unserved high-cost census blocks.<sup>4</sup> In Florida, a total of eleven bidders were selected to receive approximately \$192 million of high-cost support in phase I.<sup>5</sup> CenturyLink/Lumen will receive \$5 million in phase I to be used in specified census blocks in Florida.<sup>6</sup>

An ETC designation is a requirement for telecommunications carriers to receive USF dollars for the Lifeline and High-Cost programs. The Lifeline program enables low-income households to obtain and maintain basic telephone and broadband services, and offers qualifying households a discount on monthly bills. The High-Cost program helps carriers provide voice and broadband service in remote and underserved communities. Although the FCC did not require RDOF auction

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Communications Corporation to Qwest Communications Company, LLC, effective 1/12/09. *See also* Order No. PSC-11-0315-FOF-TX, issued on July 27, 2011 in Docket No. 20110217-TX, In re: Request for approval of name change on CLEC Certificate No. 5801 from Qwest Communications Company, LLC to Qwest Communications Company, LLC d/b/a CenturyLink QCC. *See also* Memorandum filed June 20, 2014, in Docket No. 20140090-TX, In re: Request for approval of name change on Certificate No. 5801 from Qwest Communications Company, LLC d/b/a CenturyLink QCC to CenturyLink Communications, LLC d/b/a Embarq Communications. *See also* Memorandum filed November 13, 2020, in Docket No. 20200235-TX, In re: Request for approval of name change on Certificate of Necessity No. 5801 from CenturyLink Communications, LLC d/b/a Embarq Communications to CenturyLink Communications, LLC d/b/a Embarq Communications d/b/a Lumen d/b/a Lumen Technologies d/b/a Lumen Technologies Group.

<sup>2</sup> On January 22, 2021 CenturyLink, Inc., the ultimate parent of CenturyLink Communications, LLC, formally changed its name to Lumen Technologies Inc. As a result, CenturyLink, Inc. is now referred to as "Lumen Technologies," or simply "Lumen".

<sup>3</sup> Order No. PSC-97-1262-FOF-TP issued on October 14, 1997, in Docket No. 19970644-TP, Establishment of eligible telecommunications carriers pursuant to section 214(e) of the Telecommunications Act of 1996.

<sup>4</sup> FCC, DA 20-1422, Public Notice, 904 Winning Bidders, <https://docs.fcc.gov/public/attachments/DA-20-1422A1.pdf>, accessed March 4, 2021.

<sup>5</sup> *Id.*, Attachment B, <https://docs.fcc.gov/public/attachments/DA-20-1422A3.pdf>, accessed March 4, 2021.

<sup>6</sup> *Id.*, Attachment A (*See* CenturyLink, Inc. which has assigned its winning bid to its affiliate Embarq Florida, Inc. d/b/a CenturyLink) <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>, accessed March 4, 2021.

participants to be designated as an ETC to apply, the FCC did require winning bidders to obtain ETC designation within 180 days of being selected.

47 U.S.C. 214(e)(2) authorizes state commissions to designate common carriers as an ETC as follows:

(2) Designation of eligible telecommunications carriers

A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

47 U.S.C. 214(e)(6) provides that the FCC will make such ETC designations in cases where a state commission lacks jurisdiction over the common carrier as follows:

(6) Common carriers not subject to State commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

CenturyLink asserts that it meets all applicable federal requirements for designation as an ETC in Florida pursuant to 47 U.S.C. 214(e) and 47 C.F.R. 54.201. The company asserts that it will offer Lifeline to qualifying consumers in the incremental census blocks consistent with the FCC's Lifeline rules. The company will rely upon teams at Embarq FL, who have substantial experience in providing Lifeline.

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CenturyLink acknowledges and asserts that, if approved, it will comply with Sections 364.10, and 364.105, F.S., and Rule 25-4.0665, Florida Administrative Code (F.A.C), which govern Lifeline service and provide for a transitional discount for those customers no longer eligible for Lifeline.

In addition to the federal rules and statutes discussion above, the Commission has jurisdiction in this matter pursuant to Section 364.10, F.S.

## Discussion of Issues

**Issue 1:** Should the Commission grant CenturyLink Communications, LLC ETC status in Florida to Receive Rural Digital Opportunity Fund Auction (Auction 904) Support for Voice and Broadband Services?

**Recommendation:** Yes. CenturyLink Communications, LLC is a telecommunications company certificated to provide service in Florida and meets all of the requirements for designation as an ETC under Section 364.10, F.S., and applicable federal law. The Company has acknowledged the requirement to comply with Sections 364.10 and 364.105, F.S., and Rule 25-4.0665, F.A.C., which govern Lifeline service and provide for a transitional discount for those customers no longer eligible for Lifeline. (Passidomo, Yglesias de Ayala, Fogleman, Wendel)

**Staff Analysis:** Pursuant to 47 U.S.C. 214(e)(2), and 47 C.F.R. 54.201(b), state commissions have the primary responsibility to designate carriers as ETCs. In instances where a state lacks jurisdiction, the FCC is to make such a designation.<sup>7</sup> Section 364.10(1)(a), F.S., defines an ETC as “a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201.” A “telecommunications company” is an entity offering “two-way telecommunications service to the public for hire within [Florida] by the use of a telecommunications facility.” Section 364.02(13), F.S. Thus, whether a carrier is offering a telecommunications service is the threshold question for whether the Commission is authorized to grant an ETC designation.<sup>8</sup> Staff recommends that CenturyLink Communications, LLC is a telecommunications company for purposes of receiving an ETC designation in accordance with Section 364.10, F.S. and is certificated as a competitive local exchange carrier. Although the Commission does not have jurisdiction over VoIP providers,<sup>9</sup> CenturyLink Communications provides telecommunications services in Florida in addition to nonregulated services. Thus, the regulatory status of VoIP service is not relevant to the Commission’s decision in this docket.

To qualify as an ETC, telecommunications carriers must provide the services identified in 47 C.F.R. 54.101 as follows:

- (a) Services designated for support. Voice telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has

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<sup>7</sup> 47 U.S.C. 214(e)(6)

<sup>8</sup> In this context, a “telecommunications facility” includes real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within [Florida]. 364.02(14), F.S. “Service” is to be construed in its broadest and most inclusive sense;” however, the term “does not include broadband service or voice-over-Internet protocol service for purposes of regulation. *Id.* at (12).

<sup>9</sup> Section 364.011(3), F.S.

implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.<sup>10</sup>

(b) An eligible telecommunications carrier must offer voice telephony service as set forth in paragraph (a) of this section in order to receive federal universal service support.

(c) An eligible telecommunications carrier (ETC) subject to a high-cost public interest obligation to offer broadband internet access services and not receiving Phase I frozen high-cost support must offer broadband services within the areas where it receives high-cost support consistent with the obligations set forth in this subpart and subparts D, K, L, and M of this part.<sup>11</sup>

(d) Any ETC must comply with subpart E of this part.

In addition, ETCs must advertise the availability of such services and the associated charges using media of general distribution.<sup>12</sup>

Staff has reviewed CenturyLink's petition for ETC designation in Florida, as well as additional documents filed with the Commission. Staff has confirmed that CenturyLink meets the above requirements to qualify as an ETC in Florida. In addition, the Company has demonstrated sufficient financial, managerial, and technical capabilities.

Furthermore, staff notes that the FCC awarded CenturyLink/Lumen, the parent company to CenturyLink, as the winning RDOF bidder in the census blocks for which CenturyLink is seeking ETC designation. Pursuant to the procedures developed by the FCC, CenturyLink/Lumen assigned the winning bids to its affiliate, Embarq FL for implementation of the RDOF bids. Embarq FL is an incumbent ILEC and an ETC in Florida. While most of the RDOF census blocks won by CenturyLink/Lumen in Florida fall within its authorized service area, 16 incremental census blocks fall outside of Embarq FL's authorized service area. In its petition, CenturyLink is seeking ETC designation for these incremental census blocks.

47 U.S.C. 214(e)(2) requires state commission to determine if an ETC designation is consistent with the public interest, convenience, and necessity for rural areas. CenturyLink asserts granting its ETC designation will bring voice and broadband Internet access services to consumers in the incremental census blocks, thus advancing the goals of universal service under the FCC's RDOF program. Based on staff's review, along with CenturyLink's commitment to abide by both state

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<sup>10</sup> Subpart E addresses Universal Service Support for Low-Income Consumers. *See* 47 C.F.R. §54,400 through §54,422.

<sup>11</sup> Subparts D, K, L, and M refer to rules regarding Universal Service Support for High Cost Areas, Interstate Common Line Support Mechanisms for Rate-of-Return Carriers, Mobility Fund and 5G Fund, and High-Cost Loop Support for Rate-of-Return Carriers, respectively.

<sup>12</sup> 47 U.S.C. §314(e)(1)(B).

and federal requirements, staff recommends that designating CenturyLink as an ETC meets this requirement.

In conclusion, CenturyLink meets all requirements for designation as an ETC under Section 364.10, F.S., and applicable federal law. Therefore, staff recommends CenturyLink Communications, LLC should be granted ETC designation in the census blocks listed in Attachment A of this recommendation. Staff further recommends that if there is a future change of Company ownership, the new owners should be required to file a petition with the Commission and make a showing of public interest to maintain the Company's ETC designation.

**Issue 2:** Should this docket be closed?

**Recommendation:** Yes. If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the Proposed Agency Action Order, this docket should be closed upon the issuance of a consummating order. (Passidomo)

**Staff Analysis:** At the conclusion of the protest period, if no protest is filed, this docket should be closed upon the issuance of a consummating order.

<b>List of census blocks where CenturyLink, Inc. was assigned RDOF auction support and requires ETC status -FL</b>				
1	120990083011072			
2	120990083011117			
3	120990083011118			
4	120990083011122			
5	120990083011126			
6	120990083011129			
7	120990083011130			
8	120990083011131			
9	120990083011132			
10	120990083011189			
11	120990083011190			
12	120990083011244			
13	120990083011260			
14	120990083011276			
15	120990083011409			
16	120990083011412			
	<b>Total = 16</b>			