

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF  
THE STATE OF MISSISSIPPI**

TOMBIGBEE FIBER, LLC

DOCKET NO. 2020-UA-213

RE: APPLICATION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER TO RECEIVE RURAL DIGITAL OPPORTUNITY FUND PHASE I AUCTION (AUCTION 904) SUPPORT FOR VOICE AND BROADBAND SERVICES

**RECOMMENDED ORDER**

On December 28, 2020, Tombigbee Fiber, LLC (“Tombigbee Fiber” or “Company”) filed with the Mississippi Public Service Commission (“Commission”), an application for designation as an Eligible Telecommunications Carrier (“ETC”), pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended (the “Act”), and in accordance with other applicable rules and orders of the Commission,<sup>1</sup> seeking ETC designation in all areas where Tombigbee Fiber has been conditionally allocated Rural Digital Opportunity Fund (“RDOF”) Phase I support by the Federal Communications Commission (“FCC”), as well as Lifeline-only ETC designation status in additional areas. Please see Exhibit A attached hereto containing the application of Tombigbee Fiber for designation as an ETC.

Tombigbee Fiber, a limited liability company organized and existing under the laws of the State of Mississippi, is a wholly-owned subsidiary of Tombigbee Electric Power Association

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<sup>1</sup> *In the Matter of Eligible Telecommunications Carrier Designation for Federal Universal Service Support*, Docket No. 2005-AD-662, Order on Rehearing Reforming and Modernizing Universal Service Support and Adopting Changes of FCC Order 11-161 (adopted Nov. 15, 2012) (“*November 2012 Order*”). An “Eligible Telecommunications Carrier (‘ETC’) Checklist, Revised to Reflect Changes of FCC 11-161” (“ETC Checklist”) is attached as Exhibit A of the *November 2012 Order*. In 2018, the Commission sought comment on amending the ETC Checklist, stating that “[a]fter receipt of comments and reply comments, the Commission will issue an appropriate Order regarding the revised checklist.” *In the Matter of ETC Designation for Federal Universal Service Support*, Docket No. 2005-AD-662, Order Amending Checklist and Updating Reporting Requirements (adopted Nov. 6, 2018).

("TEPA"), a not-for-profit, member-owned electric cooperative. TEPA provides electric service to residential, commercial, industrial, and public facilities. Today, TEPA has more than 4,000 miles of distribution lines, and nearly 43,000 business and residential members.

Tombigbee Fiber is engaged in deploying a new state-of-the-art, low-latency, fiber-to-the-home ("FTTH") network that will provide high-speed broadband and interconnected Voice over Internet Protocol ("VoIP") enabled voice services throughout the RDOF Phase I-eligible census blocks identified in Exhibit A1 of its ETC application and seeks High-Cost and Low-Income ETC designation from the Commission to serve these census blocks. In addition, Tombigbee Fiber seeks Lifeline-only ETC designation status in additional areas primarily consisting of TEPA's electric service footprint, identified in Exhibit A2 of its ETC application.

Tombigbee Fiber will offer low-latency broadband service at actual speeds of at least 1 gigabit per second (downlink) and 500 Mbps (uplink) and will offer at least 2 terabytes of monthly usage throughout its requested ETC designation area. In addition, Tombigbee Fiber will provide its customers with voice-grade access to the Public Switched Telephone Network ("PSTN") through its provision of interconnected VoIP-enabled voice service.

The Commission, being fully apprised in the premises and having considered the record before it, as authorized by law and the Commission's Public Utilities Rules of Practice and Procedure, and upon recommendation of the Mississippi Public Utilities Staff ("Staff"), finds as follows:

1. On January 30, 2020, the FCC issued a Report and Order enabling the FCC to move forward with Auction 904, committing up to \$16 billion over 10 years to support up to gigabit speed broadband networks in rural America wholly unserved by 25/3 Mbps.<sup>2</sup> The FCC allocated

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<sup>2</sup> *In the Matter of Rural Digital Opportunity Fund; Connect America Fund*, Report and Order, 35 FCC Rcd 686 (2020).

Auction 904 funding through a multi-round, reverse, descending clock auction favoring faster services with lower latency.

2. In a December 7, 2020 Public Notice, the FCC announced that the Rural Electric Cooperative Consortium (“RECC”) was a winning bidder in the RDOF Phase I auction.<sup>3</sup> Tombigbee Fiber, a member of the RECC, was assigned 679 of the census blocks in Mississippi awarded by the RECC which includes a total of 6,962 eligible locations. As a result, Tombigbee Fiber is slated to receive a total of \$9,855,102 of RDOF Phase I support over 10 years.<sup>4</sup>

3. On February 2, 2021, the Commission issued an Order referring Tombigbee Fiber’s ETC application to Commissioner Brandon Presley, Northern District, for hearing, report and recommendation of an appropriate Order, or any other action necessary, pursuant to Miss. Code Ann. § 77-3-40(6).

4. Staff issued its First Set of Data Requests to Tombigbee Fiber on February 4, 2021, and Tombigbee Fiber submitted its Responses to Staff on February 18, 2021.

5. Tombigbee Fiber’s receipt of RDOF Phase I Auction funding is conditioned upon Tombigbee Fiber obtaining designation as a High-Cost and Low-Income ETC in the census blocks identified in Exhibit A1 of its ETC application. By June 7, 2021, absent a waiver being granted by the FCC, Tombigbee Fiber must obtain ETC designation in all of the census blocks in which Tombigbee Fiber has been awarded RDOF Phase I support and submit appropriate documentation of such ETC designation to the FCC.

6. Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e)(2) shall be eligible to receive specific federal universal service

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<sup>3</sup> *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced*; FCC Form 683 Due January 29, 2021, Public Notice, 35 FCC Rcd 13888 (2020).

<sup>4</sup> See <https://www.fcc.gov/file/20525/download>.

support.”<sup>5</sup> Section 214(e)(2) of the Act provides that state commissions “shall designate” common carriers that meet the statutory requirements as ETCs. The FCC has ruled that Section 214(e)(2) of the Act “provides state commissions with the primary responsibility for designating ETCs.”<sup>6</sup>

7. The Commission has stated that the FCC has “charge[d] states with the authority and obligation to certify that all federal high-cost and CAF [Connect America Fund] support is being used by carriers in a manner for which the support is intended[,]”<sup>7</sup> and that “Section 77-3-35 explicitly authorizes the Commission to regulate and further the provision of universal service ....”<sup>8</sup> Therefore, the Commission has the authority and the primary responsibility under federal law to designate Tombigbee Fiber as an ETC for federal universal service support purposes. The *November 2012 Order* and Section I of the ETC Checklist establish the requirements that an applicant must meet in order to be designated as an ETC.

8. To be designated as an ETC, an applicant must be a common carrier.<sup>9</sup> For the customers and locations where RDOF Phase I support has been allocated, Tombigbee Fiber will provide its services on a common carrier basis. Tombigbee Fiber is a common carrier for purposes of Section 214(e) of the Act.<sup>10</sup>

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<sup>5</sup> 47 U.S.C. § 254(e).

<sup>6</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Rcd 6371, 6372 (¶ 1, n.2) (2005) (emphasis added) (interpreting 47 U.S.C. § 254(e)(2)).

<sup>7</sup> *November 2012 Order* at 3 (¶ 8).

<sup>8</sup> *Id.* at ¶ 11 (citing M.C.A. § 77-35).

<sup>9</sup> 47 U.S.C. § 214(e)(1) (providing that a “common carrier” must be designated as an ETC to receive universal service support). The Act defines a “common carrier” as “any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy ....” 47 U.S.C. § 153(11).

<sup>10</sup> 47 U.S.C. § 214(e).

9. To be designated as an ETC, an applicant must offer throughout the area in which it proposed to be an ETC, the services set forth in Section 54.101(a) of the FCC's rules,<sup>11</sup> either by using its own facilities or a combination of its own facilities and the resale of another carrier's services. Tombigbee Fiber will offer, upon designation as an ETC, all of the supported services throughout the areas in which it is requesting designation as an ETC through the provision of VoIP-enabled voice communications service that is interconnected to the PSTN, as well as high-speed broadband services. The Company commits to provide these services consistent with applicable FCC rules relating to high-cost universal service support.<sup>12</sup>

10. Tombigbee Fiber will offer both voice telephony service throughout its proposed ETC designation area and will offer such service at rates that are reasonably comparable to urban rates. This service will include minutes of use for local service provided at no charge to end users and access to emergency service via E-911, wherever available from local government or public safety organizations. If required, Tombigbee Fiber also commits to provide toll limitation services to qualifying low-income consumers as provided in Sections 54.400-54.423 of the FCC's rules.<sup>13</sup>

11. Tombigbee Fiber's broadband Internet offering will provide the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including any capabilities that are incidental to, and enable the operation of, communications services.<sup>14</sup> As noted

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<sup>11</sup> 47 CFR § 54.101(a).

<sup>12</sup> This commitment also complies with Section I.A.1.a. of the ETC Checklist (required services).

<sup>13</sup> *Id.*, §§ 54.400-54.423. Tombigbee Fiber's compliance and commitments with respect to the applicable federal rules also constitute compliance with Section I.A.4. of the ETC Checklist (voice telephony service). Tombigbee Fiber does not distinguish between toll and non-toll calls in the pricing of its services and, as a result, toll limitation services do not need to be offered for any Lifeline service offered by Tombigbee Fiber.

<sup>14</sup> See 47 CFR § 54.101(a)(2) (stating that "[e]ligible broadband Internet access services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service").

earlier, Tombigbee Fiber will (1) offer low-latency Internet service at actual speeds of at least 1 Gbps (downlink) and 500 Mbps (uplink); (2) offer at least 2 terabytes of monthly usage to customers within its proposed ETC designation area; and (3) offer such service at rates that are reasonably comparable to urban rates.

12. As required by Section 54.405(a) of the FCC's rules,<sup>15</sup> Tombigbee Fiber will offer subsidized Lifeline voice and broadband services, including a standalone voice service offering, to qualifying low-income consumers within its proposed ETC designation area and in accordance with the FCC's rules.<sup>16</sup>

13. Tombigbee Fiber will comply with the RDOF Phase I service requirements applicable to the federal universal service support that it receives,<sup>17</sup> including the requirements for receipt of RDOF Phase I support. Specifically, Tombigbee Fiber, as an FCC Form 683 applicant for RDOF Phase I support,<sup>18</sup> has:

- a. certified to the FCC that it complies with all statutory and regulatory requirements for receiving the universal service support that it seeks as of the long-form application filing deadline;<sup>19</sup>

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<sup>15</sup> *Id.*, § 54.405(a).

<sup>16</sup> *Id.*, §§ 54.400-54.423.

<sup>17</sup> See ETC Checklist, § I.A.1.b.vi.

<sup>18</sup> Each Auction 904 winning bidder "is required to file an application for Rural Digital Opportunity Fund support, referred to as a long-form application ...." *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020, Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34, *et al.*, Public Notice, 35 FCC Rcd 6077, 6163 (¶ 286) (2020) ("*Auction 904 Public Notice*").

<sup>19</sup> *Id.* at 6165 (¶ 296) (citing 47 CFR § 54.804(b)(2)(v)).

b. certified to the FCC that it is financially and technically capable of meeting the relevant public interest obligations for each performance tier and latency combination in the geographic areas in which it seeks support;<sup>20</sup>

c. certified to the FCC that it will meet the relevant public interest obligations for each performance tier and latency combination for which it was deemed a winning bidder, including the requirement that it will offer service at rates that are equal to or lower than the FCC's reasonable comparability benchmarks for fixed services offered in urban areas;<sup>21</sup>

d. demonstrated to the FCC that it has a design plan with supportable technologies to meet its RDOF Phase I public interest obligations in the areas covered by its winning bids, by submitting technical information to support the operational assertions made;<sup>22</sup> and

e. certified to the FCC that it will have available funds for all project costs that exceed the amount of RDOF support to be received for the first two years of its support term and also described how the required construction will be funded.<sup>23</sup>

14. Tombigbee Fiber's commitment to comply with the service requirements applicable to the federal universal service support that it receives satisfies the Commission's requirement that applicants for ETC designation must comply with these federal universal service requirements.<sup>24</sup>

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<sup>20</sup> *Id.* at 6166 (¶ 298) (citing 47 CFR § 54.804(b)(2)(ii)).

<sup>21</sup> *Id.* at 6166 (¶ 299) (citing 47 CFR § 54.804(b)(2)(iii)).

<sup>22</sup> *Id.* at 6167 (¶ 301) (citing 47 CFR § 54.804(b)(2)(iv)).

<sup>23</sup> *Id.* at 6174 (¶ 312) (citing 47 CFR §§ 54.804(b)(2)(v), 54.804(b)(2)(vi)).

<sup>24</sup> *See November 2012 Order* at 5 (ordering clauses 3 and 4).



15. Tombigbee Fiber commits that its FTTH network will have the ability to remain functional in emergency situations, will have a reasonable amount of back-up power to ensure functionality without an external power source, will be able to reroute traffic around damaged facilities, and will be capable of managing traffic spikes resulting from emergency situations.<sup>25</sup>

16. Under the FCC's regulations, an ETC applicant must "[d]emonstrate that it will satisfy applicable consumer protection and service quality standards."<sup>26</sup> Tombigbee Fiber commits to satisfying all FCC requirements related to consumer protection and service quality standards. In addition, with respect to Lifeline service, Tombigbee Fiber commits that it will annually certify compliance with consumer protection and service quality rules consistent with Section 54.422(b)(3) of the FCC's rules.<sup>27</sup>

17. Tombigbee Fiber commits that it will offer the supported services specified in Section 214(e)(1)(A) of the Act<sup>28</sup> throughout its proposed ETC designation area.<sup>29</sup>

18. Tombigbee Fiber commits to comply with: (1) all applicable provisions of the Commission's Rules and Regulations Governing Public Utility Service;<sup>30</sup> (2) "designated service quality standards applicable to each carrier;"<sup>31</sup> and (3) the requirement to submit to the

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<sup>25</sup> See 47 CFR § 54.202(a)(2) (providing that a common carrier seeking an ETC designation by the FCC must "[d]emonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations"). Tombigbee Fiber's commitment also satisfies the requirements of Section I.A.2.a. of the ETC Checklist (emergency operations).

<sup>26</sup> 47 CFR § 54.202(a)(3).

<sup>27</sup> *Id.*, § 54.422(b)(3).

<sup>28</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>29</sup> ETC Checklist, § I.A.1.b.iv.

<sup>30</sup> *Id.*, § I.A.3.b.i.

<sup>31</sup> *Id.*, § I.A.3.b.ii.



Commission the number of consumer complaints per 1,000 access lines, as required in annual ETC filings.<sup>32</sup>

19. Tombigbee Fiber commits that it will advertise the availability of its broadband and interconnected VoIP-enabled voice services, and their associated charges, in media of general distribution,<sup>33</sup> and that it will include Lifeline services in its advertising materials.<sup>34</sup> Tombigbee Fiber will communicate its fiber availability and construction progress to its potential customers<sup>35</sup> in three or more, or any combination of, the following methods:

- a. Direct mail (e.g., postcards, letters);
- b. Door hangers or similar door-to-door communications;
- c. Electronic mail;
- d. Social media or similar electronic communications;
- e. Online (with the option to subscribe);
- f. Live events (with the option to subscribe); and/or
- g. Other forms of advertising.

20. Tombigbee Fiber will offer Lifeline service in compliance with FCC rules. The Commission's ETC Checklist requires information concerning Lifeline plans that an applicant for

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<sup>32</sup> *Id.*, § I.A.3.b.iii.

<sup>33</sup> *Id.*, § I.A.1.b.i. *See* 47 CFR § 54.201(d)(2).

<sup>34</sup> ETC Checklist, § I.A.1.b.i.

<sup>35</sup> Nothing herein shall be interpreted to require the disclosure of any competitive data or information by Tombigbee Fiber. Tombigbee Fiber may in its business judgment determine the timing of such communications. Tombigbee Fiber is expected to inform potential customers of the availability of service in advance of or, at a minimum, simultaneously with such service availability in specific areas. Upon request, Tombigbee Fiber shall also provide its best estimate as to service availability in response to customer inquiries.

ETC designation intends to offer.<sup>36</sup> Tombigbee Fiber commits to implement its Lifeline plans in accordance with the current rules and policies adopted by the FCC.

21. Tombigbee Fiber will price its Lifeline service at discounted rates and pass through the monthly support amounts for voice and/or broadband services established by the FCC. Tombigbee Fiber's Lifeline service will represent a dollar-for-dollar reduction from its comparable non-Lifeline rates, providing a pass-through of the full amount of federal Lifeline support to qualifying customers.

22. Tombigbee Fiber commits to adhering to any FCC reporting requirements relating to the reporting of service outages, and also commits to provide copies of any such reports to the Commission, upon request.<sup>37</sup>

23. As a prerequisite to receiving RDOF support, Tombigbee Fiber is required to certify to the FCC "that it is financially and technically capable of meeting the relevant public interest obligations for each performance tier and latency combination in the geographic areas in which it seeks support."<sup>38</sup> With respect to financial resources, Tombigbee Fiber will be able to rely on TEPA for loan funds at market rates, advances of capital and loaned or leased employee support by Tombigbee Fiber, if necessary, in addition to the RDOF Phase I support being made available to the Applicant. In addition, Tombigbee Fiber must obtain an irrevocable standby letter of credit from a bank acceptable to the FCC.<sup>39</sup> Therefore, Tombigbee Fiber is financially capable of providing supported services in accordance with FCC and Commission rules.

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<sup>36</sup> *Id.*, § I.A.1.b.ii.

<sup>37</sup> *Id.*, § I.A.2.b.

<sup>38</sup> *Auction 904 Public Notice*, 35 FCC Rcd at 6166 (¶ 298) (footnote omitted).

<sup>39</sup> *Id.* at 6177 (¶ 319).

24. With respect to technical capabilities, Tombigbee Fiber is required to submit a detailed technology and system design description that explains how the design and technologies chosen will meet the relevant performance requirements, including information regarding quality, coverage, voice service, network management and on-going operations. This submission must include a detailed network diagram. The network diagram must be certified by a professional engineer.<sup>40</sup> Further, Tombigbee Fiber must “provide a project plan that describes a network build-out schedule that includes but is not restricted to plans for constructing last mile and middle mile facilities.”<sup>41</sup> These various FCC requirements ensure that Tombigbee Fiber possesses the financial and technical capabilities to pay for all start-up expenses (*e.g.*, equipment, operations, *etc.*) to deploy its fiber optic network, and to begin the provision of interconnected VoIP-enabled voice and broadband services throughout its proposed ETC designation area.

25. Designating Tombigbee Fiber as an ETC will clearly serve the public interest by enabling the Company to provide low-latency, gigabit-speed broadband, and interconnected VoIP-enabled voice services, to consumers in its proposed ETC designation area, as well as to provide subsidized voice and broadband services to those households that seek and qualify for federal Lifeline benefits. Tombigbee Fiber is well-positioned to help close the digital divide in its service area, allowing improved access to health care, education services, and other social services, helping to create jobs and boosting the economy. Approval of Tombigbee Fiber’s ETC application will help to address the urgent need to deliver broadband to rural Mississippi, enabling consumers

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<sup>40</sup> *Id.* (footnotes omitted). The FCC’s requirements include a certification from a professional engineer that the long-form applicant’s fiber optic network is capable of delivering voice and broadband service that meets the requisite performance requirements and is capable of providing sufficient capacity to meet customer demand at or above the prescribed levels during peak usage periods. *Id.*

<sup>41</sup> *Id.* at 6171 (¶ 307).

and businesses in these regions of the state to have access to broadband services comparable to those in urban areas.

26. Tombigbee Fiber's service offerings will preserve and advance universal service<sup>42</sup> by providing unique advantages to consumers in its proposed ETC designation area. Most importantly, the Company's provision of high-speed broadband Internet access and interconnected VoIP-enabled voice services using a new state-of-the-art, low-latency, FTTH network will provide enormous benefits that previously have been beyond the reach of consumers and businesses in many of Mississippi's rural areas. The FTTH network will ensure reliable access to gigabit tier broadband, thus enhancing educational programs, promoting business growth, generating jobs, and expanding cultural opportunities for Mississippi residents.

27. Designation of Tombigbee Fiber as an ETC in Mississippi will also ensure the availability of quality services at just, reasonable, and affordable rates<sup>43</sup> by facilitating the provision of high-quality communications services to those living and working within its proposed ETC designation area.

28. Tombigbee Fiber seeks a waiver of the ETC Checklist requirement for the submission of a five-year improvements and upgrades plan. Such a waiver is appropriate because deployment obligations and timetables imposed on RDOF Phase I support recipients by the FCC are sufficient to ensure timely deployment of voice and broadband services, consistent with the policies reflected in the Commission's five-year plan requirement. Specifically, the FCC requires RDOF Phase I support recipients to commercially offer voice and broadband service to "40% of [a calculated] number of locations in a state by the end of the third full calendar year following

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<sup>42</sup> ETC Checklist, § I.B.1.

<sup>43</sup> ETC Checklist, § I.B.2.

funding authorization, and 20% each calendar year thereafter.”<sup>44</sup> In addition, the FCC requires support recipients to file annual reports containing location and technology data, and to certify when they have met their service milestones.<sup>45</sup>

29. Tombigbee Fiber meets all the statutory and regulatory requirements for designation as an ETC in the State of Mississippi and is in full compliance with all applicable Commission orders, rules, and regulations and, therefore, is in good standing with the Commission.<sup>46</sup>

IT IS, THEREFORE, ORDERED that:

1. Tombigbee Fiber, LLC’s Application for Designation as an Eligible Telecommunications Carrier to Receive Rural Digital Opportunity Fund Phase I Auction (Auction 904) Support for Voice and Broadband Services in the State of Mississippi is hereby approved. Designation of Tombigbee Fiber as an ETC in the State of Mississippi in the census blocks identified in Exhibit A1 and A2 of its ETC application is in the public interest.

2. Tombigbee Fiber is hereby granted a waiver of the ETC Checklist requirement for the submission of a five-year improvements and upgrades plan. Such a waiver is appropriate because deployment obligations and timetables imposed on RDOF Phase I support recipients by the FCC are sufficient to ensure timely deployment of voice and broadband services, consistent with the policies reflected in the Commission’s five-year plan requirement.

3. At least thirty days before offering service within its ETC designation area, Tombigbee Fiber shall provide an informational tariff for its ETC designated areas in Exhibits A1

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<sup>44</sup> *RDOF Order*, 35 FCC Rcd at 709 (¶ 45).

<sup>45</sup> *Id.* at 712 (¶ 56).

<sup>46</sup> ETC Checklist, § I.A.1.b.v.

and A2 that outlines its regulatory contact information, customer service contact, terms, and conditions as well as Lifeline Programs. Tombigbee Fiber will also post this same information on its website where rates, terms and conditions may be found.

4. Tombigbee Fiber will file any future changes to its informational tariff with the Commission at least seven days prior to the effective date of change.

5. At least thirty days before offering service within its ETC designation area, Tombigbee Fiber will provide Staff copies of marketing materials, including advertising specific to Lifeline.

6. Tombigbee Fiber will comply, where applicable, with service and reporting requirements of the FCC's High-Cost and Lifeline Programs, the Commission's ETC Docket 2005-AD-662, and the Commission's Lifeline Docket 2007-AD-487.

7. Exceptions to this Recommended Order may be filed with the Commission within a period of fifteen (15) days from the date of issuance of this Order, in accordance with the provisions of Miss. Code Ann. § 77-3-40. If exceptions are not timely filed, this Recommended Order shall then become the Order of the Commission.

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This Order shall be deemed issued on the day it is served upon the parties herein by the Executive Secretary of this Commission who shall note the service date in the file of this Docket.

SO ORDERED and this the 1<sup>st</sup> day of April, 2021.



MISSISSIPPI PUBLIC SERVICE COMMISSION

A handwritten signature in black ink, appearing to read "Brandon Presley", written over a horizontal line.

BRANDON PRESLEY, COMMISSIONER

ATTEST: A true copy

A handwritten signature in black ink, appearing to read "Katherine Collier", written over a horizontal line.

Katherine Collier, Executive Secretary

Effective this the 5<sup>th</sup> day of April, 2021.



Before the  
MISSISSIPPI PUBLIC SERVICE COMMISSION

FILED  
DEC 28 2020  
MISS. PUBLIC SERVICE  
COMMISSION

Application of Tombigbee Fiber, LLC )  
For Designation as an Eligible )  
Telecommunications Carrier )  
Pursuant to Section 214(e)(2) of the )  
Communications Act of 1934 )  
In the State of Mississippi )

Docket No. '20-UA-213'

Exhibit A

APPLICATION OF TOMBIGBEE FIBER, LLC  
FOR DESIGNATION AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER

Pursuant to Section 214(e)(2) of the Communications Act of 1934 (the "Act"),<sup>1</sup> the *November 2012 Order*,<sup>2</sup> and other applicable rules and orders of the Commission, Tombigbee Fiber, LLC ("Tombigbee Fiber," the "Applicant," or the "Company"), hereby files this Application with the Mississippi Public Service Commission ("Commission") for designation as an Eligible Telecommunications Carrier ("ETC") in the State of Mississippi.

This designation is sought in all areas where Tombigbee Fiber, through its participation in the Rural Electric Cooperative Consortium, has been allocated Rural Digital Opportunity Fund ("RDOF") Phase I support by the Federal Communications Commission ("FCC") as a winner in

<sup>1</sup> 47 U.S.C. § 214(e)(2).

<sup>2</sup> *In the Matter of Eligible Telecommunications Carrier Designation for Federal Universal Service Support*, Docket No. 2005-AD-662, Order on Rehearing Reforming and Modernizing Universal Service Support and Adopting Changes of FCC Order 11-161 (adopted Nov. 15, 2012) (*November 2012 Order*). An "Eligible Telecommunications Carrier ('ETC') Checklist, Revised to Reflect Changes of FCC 11-161" ("ETC Checklist") is attached as Exhibit A of the *November 2012 Order*. In 2018, the Commission sought comment on amending the ETC Checklist, stating that "[a]fter receipt of comments and reply comments, the Commission will issue an appropriate Order regarding the revised checklist." *In the Matter of ETC Designation for Federal Universal Service Support*, Docket No. 2005-AD-662, Order Amending Checklist and Updating Reporting Requirements (adopted Nov. 6, 2018). Further Commission action is pending.

the RDOF Phase I auction ("Auction 904"),<sup>3</sup> as well as Lifeline-only ETC designation status in additional areas.

## I. INTRODUCTION.

Tombigbee Fiber meets all of the statutory and regulatory requirements and prerequisites for ETC designation by the Commission. Designation of Tombigbee Fiber as an ETC in the State of Mississippi will serve the public interest by enabling Applicant to provide subsidized voice and gigabit tier broadband services to consumers and businesses in rural areas it proposes to serve.

If designated as an ETC, Tombigbee Fiber will use high-cost support to assist with the deployment of its voice and gigabit tier broadband network to serve consumers throughout its proposed ETC designation area; to offer and maintain high-quality voice and broadband services to customers; and to ensure the reliability of its network providing advanced broadband services to the public. Additionally, Tombigbee Fiber will provide Lifeline discounted service to qualifying low-income customers who reside within the Company's service area in the State of Mississippi and who may otherwise not be able to afford service.

Tombigbee Fiber is obligated by the FCC to obtain ETC designation status by June 7, 2021, which is 180 days after the announcement by the FCC on December 7, 2020, that the Company is a winning bidder in the RDOF Phase I auction in the census blocks in which the

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<sup>3</sup> *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announced, FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90, FCC Public Notice, DA 20-1422 (Dec. 7, 2020). The Rural Electric Cooperative Consortium submitted a short-form application in the RDOF Phase I auction that included Tombigbee Fiber as a consortium member.

Company was awarded RDOF Phase I support.<sup>4</sup> As a result, Tombigbee Fiber requests expeditious action by the Commission so that the Company may meet this FCC requirement.

Please address all correspondence, communications, pleadings, notices, orders, and decisions relating to this Application to:

Christopher J. Latimer  
Mitchell McNutt & Sams, PA  
1216 Van Buren Ave.  
P.O. Box 947  
Oxford, MS 38655  
Phone: (662) 232-3208  
E-mail: [clatimer@mitchellmcnutt.com](mailto:clatimer@mitchellmcnutt.com)

## II. BACKGROUND.

Tombigbee Fiber, a limited liability company that is organized and existing under the laws of the State of Mississippi, is a wholly-owned subsidiary of Tombigbee Electric Power Association ("TEPA"), a not-for-profit, member-owned electric cooperative. TEPA, originally chartered in 1934 as the Lee County Electric Power Association, provides electric service to residential, commercial, industrial, and public facilities. In October 1935 TEPA purchased from the Tennessee Valley Authority ("TVA") all of its distribution lines serving customers in the communities of Guntown, Saltillo, Sherman, Shannon, Nettleton, Plantersville, Verona, East Tupelo, Auburn, Chesterville, and Belden in Lee County, and Fulton in Itawamba County. TEPA began operations that year with 168 miles of distribution lines and 151 members. Today, TEPA has more than 4,000 miles of distribution lines, and nearly 43,000 business and residential members.<sup>5</sup>

Tombigbee Fiber is engaged in deploying a new state-of-the-art, low-latency, fiber-to-the-home ("FTTH") network that will provide high-speed broadband Internet access and Voice

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<sup>4</sup> *Rural Digital Opportunity Fund, et al.*, WC Docket No. 19-126, *et al.*, Report and Order, 35 FCC Rcd 686, 727 (¶ 92) (2020) ("RDOF Order") (establishing the 180-day deadline).

<sup>5</sup> TVA, *TVA's Local Power Company Partners*, accessed at <https://www.tva.com/energy/public-power-partnerships/local-power-companies/tombigbee-electric-power-association>.

over Internet (“VoIP”)-enabled voice services to customers in its service area, many of whom currently lack any access to such services. The network, with an anticipated budget of \$95 million, will provide TEPA members with access to fast, reliable, and affordable broadband capabilities.<sup>6</sup>

Tombigbee Fiber will deploy broadband and interconnected VoIP-enabled voice services throughout the RDOF Phase I-eligible census blocks identified in Exhibit A1 and seeks High-Cost and Low-Income (Lifeline) ETC designation from the Commission to serve these census blocks. In addition, Applicant seeks Lifeline-only ETC designation status in additional areas primarily consisting of TEPA’s electric service footprint, identified in Exhibit A2. A map of Tombigbee Fiber’s proposed ETC designation area is displayed in Exhibit B.

Tombigbee Fiber will offer low-latency broadband service at actual speeds of at least 1 gigabit per second downstream and 500 Mbps upstream, and will offer at least 2 terabytes of monthly usage. In addition, Applicant will provide its customers with voice-grade access to the Public Switched Telephone Network (“PSTN”) through its provision of interconnected VoIP-enabled voice service.

Tombigbee Fiber is in full compliance with all applicable Commission orders, rules, and regulations, and therefore is in good standing with the Commission.<sup>7</sup>

### **III. THE COMMISSION HAS JURISDICTION AND AUTHORITY TO DESIGNATE ELIGIBLE TELECOMMUNICATIONS CARRIERS.**

Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e)(2) shall be eligible to receive specific federal universal service sup-

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<sup>6</sup> Sayidali Moalim, *Tombigbee Electric Power Association Bringing Fiber to Mississippi Co-Op Members*, COMMUNITY NETWORKS (Dec. 6, 2019), accessed at <https://muninetworks.org/content/tombigbee-electric-power-association-bringing-fiber-mississippi-co-op-members>.

<sup>7</sup> ETC Checklist, § I.A.1.b.v.

port.”<sup>8</sup> Section 214(e)(2) of the Act provides that state commissions “shall designate” common carriers that meet the statutory requirements as ETCs. The FCC has ruled that Section 214(e)(2) of the Act “provides state commissions with the primary responsibility for designating ETCs.”<sup>9</sup>

Moreover, the Commission has stated that the FCC has “charge[d] states with the authority and obligation to certify that all federal high-cost and CAF [Connect America Fund] support is being used by carriers in a manner for which the support is intended[.]”<sup>10</sup> and that “Section 77-3-35 explicitly authorizes the Commission to regulate and further the provision of universal service ....”<sup>11</sup>

Therefore, the Commission has the authority and the primary responsibility under federal law to designate Tombigbee Fiber as an ETC for federal universal service support purposes. The *November 2012 Order* and Section I of the ETC Checklist establish the requirements that an applicant must meet in order to be designated as an ETC.

#### **IV. TOMBIGBEE FIBER MEETS ALL FEDERAL AND STATE STATUTORY AND REGULATORY REQUIREMENTS TO BE DESIGNATED AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER.**

As demonstrated in the following sections, Tombigbee Fiber satisfies each of the statutory and regulatory requirements for designation as an ETC, as set forth in the Act, in the FCC’s rules, and in the rules and orders of the Commission.

##### **A. Tombigbee Fiber Will Provide Service as a Common Carrier.**

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<sup>8</sup> 47 U.S.C. § 254(e).

<sup>9</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 20 FCC Red. 6371, 6372 (¶ 1, n.2) (2005) (emphasis added) (interpreting 47 U.S.C. § 254(e)(2)).

<sup>10</sup> *November 2012 Order* at 3 (¶ 8).

<sup>11</sup> *Id.* at ¶ 11 (citing M.C.A. § 77-3-35).

To be designated as an ETC, an applicant must be a common carrier.<sup>12</sup> For the customers and locations where RDOF Phase I support has been allocated, Tombigbee Fiber will provide its services on a common carrier basis. Tombigbee Fiber is a common carrier for purposes of Section 214(e) of the Act.<sup>13</sup>

**B. Tombigbee Fiber Will Offer the Services Supported by the Federal Universal Service Support Mechanisms.**

To be designated as an ETC, an applicant must offer throughout its proposed service area the services set forth in Section 54.101(a) of the FCC's rules,<sup>14</sup> either by using its own facilities or a combination of its own facilities and the resale of another carrier's services.

Tombigbee Fiber commits to offer all of the services designated for support by the FCC.<sup>15</sup> As discussed in the following sections, the Company will offer, upon designation as an ETC, all of the supported services throughout the areas in which the Company is requesting designation as an ETC. The Company commits to provide these services consistent with applicable FCC rules relating to high-cost universal service support.<sup>16</sup>

**1. Voice Grade Access to the Public Switched Telephone Network.**

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<sup>12</sup> 47 U.S.C. § 214(e)(1) (providing that a "common carrier" must be designated as an ETC to receive universal service support). The Act defines a "common carrier" as "any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy ...." 47 U.S.C. § 153(11).

<sup>13</sup> 47 U.S.C. § 214(e).

<sup>14</sup> 47 CFR § 54.101(a).

<sup>15</sup> See *Designation of Fort Mojave Telecommunications, Inc., et al., as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, AAD/USB File No. 98-28, Memorandum Opinion and Order, 13 FCC Rcd 4547, 4552 (¶ 11) (CCB, OMD 1998) ("*Fort Mojave*"). In *Fort Mojave*, the Common Carrier Bureau and the Office of the Managing Director indicated that the FCC will designate carriers as ETCs, pursuant to Section 214(e)(6) of the Act, upon finding that they "offer or will be able to offer" the supported services throughout the service area.

<sup>16</sup> This commitment also complies with Section I.A.1.a. of the ETC Checklist (required services).

Section 54.101(b) of the FCC's rules states that an ETC must provide "voice telephony service" in order to receive federal universal support.<sup>17</sup> Section 54.101(a)(1) provides that:

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 the 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 implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers ....<sup>18</sup>

Tombigbee Fiber will meet this requirement through the provision of VoIP-enabled voice communications service that is interconnected to the PSTN. The Company will be legally responsible for dealing with customer problems, providing quality of service guarantees, and meeting universal service-related requirements.

Tombigbee Fiber will offer stand-alone voice telephony service throughout its proposed ETC designation area and will offer such service at rates that are reasonably comparable to urban rates. This service will include minutes of use for local service provided at no charge to end users and access to emergency service via E-911, wherever available from local government or public safety organizations. The Company also commits to provide toll limitation services to qualifying low-income consumers as provided in Sections 54.400-54.423 of the FCC's rules.<sup>19</sup>

## **2. Broadband Internet Access Services.**

Tombigbee Fiber's broadband Internet offering will provide the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including any capabili-

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<sup>17</sup> 47 CFR § 54.101(b).

<sup>18</sup> *Id.*, § 54.101(a)(1).

<sup>19</sup> *Id.*, §§ 54.400-54.423. Tombigbee Fiber's compliance and commitments with respect to the applicable federal rules also constitute compliance with Section I.A.4. of the ETC Checklist (voice telephony service).



ties that are incidental to, and enable the operation of, communications services.<sup>20</sup> The Company will (1) offer low-latency Internet service at actual speeds of at least 1 Gbps downstream and 500 Mbps upstream; (2) offer at least 2 terabytes of monthly usage to customers within its proposed ETC designation area; and (3) offer such service at rates that are reasonably comparable to urban rates.

### 3. Lifeline Service.

As required by Section 54.405(a) of the FCC's rules,<sup>21</sup> Tombigbee Fiber will offer subsidized Lifeline voice and broadband services, including a standalone voice service offering, to qualifying low-income consumers within its proposed ETC designation area in accordance with the FCC's rules.<sup>22</sup>

#### C. Tombigbee Fiber Will Comply with Applicable Service and Performance Quality Requirements Adopted by the FCC.

Tombigbee Fiber will comply with the RDOF service requirements applicable to the federal universal service support that it receives,<sup>23</sup> including the requirements for receipt of RDOF Phase I support.

Specifically, Tombigbee Fiber, as a "long-form" applicant for RDOF Phase I support,<sup>24</sup> must:

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<sup>20</sup> See 47 CFR § 54.101(a)(2) (stating that "[e]ligible broadband Internet access services must provide the capability to transmit data to and receive data by wire or radio from all or substantially all Internet end-points, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up service").

<sup>21</sup> *Id.*, § 54.405(a).

<sup>22</sup> *Id.*, §§ 54.400-54.423.

<sup>23</sup> See ETC Checklist, § I.A.1.b.vi.

<sup>24</sup> Each Auction 904 winning bidder "is required to file an application for Rural Digital Opportunity Fund support, referred to as a long-form application ...." *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020, Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34, *et al.*, Public Notice, 35 FCC Rcd 6077, 6163 (¶ 286) (2020) ("Auction 904 Public Notice").

(1) certify in its long-form application filed with the FCC that it complies with all statutory and regulatory requirements for receiving the universal service support that it seeks as of the long-form application filing deadline;<sup>25</sup>

(2) certify to the FCC that it is financially and technically capable of meeting the relevant public interest obligations for each performance tier and latency combination in the geographic areas in which it seeks support;<sup>26</sup>

(3) certify to the FCC that it will meet the relevant public interest obligations for each performance tier and latency combination for which it was deemed a winning bidder, including the requirement that it will offer service at rates that are equal to or lower than the FCC's reasonable comparability benchmarks for fixed services offered in urban areas;<sup>27</sup>

(4) demonstrate to the FCC that it has a design plan with supportable technologies to meet the relevant RDOF public interest obligations in the areas covered by the winning bids, by submitting technical information to support the operational assertions made in the short-form application;<sup>28</sup> and

(5) certify to the FCC that it will have available funds for all project costs that exceed the amount of RDOF support to be received for the first two years of its support term, and also describe how the required construction will be funded.<sup>29</sup>

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<sup>25</sup> *Id.* at 6165 (¶ 296) (citing 47 CFR § 54.804(b)(2)(v)).

<sup>26</sup> *Id.* at 6166 (¶ 298) (citing 47 CFR § 54.804(b)(2)(ii)).

<sup>27</sup> *Id.* at 6166 (¶ 299) (citing 47 CFR § 54.804(b)(2)(iii)).

<sup>28</sup> *Id.* at 6167 (¶ 301) (citing 47 CFR § 54.804(b)(2)(iv)).

<sup>29</sup> *Id.* at 6174 (¶ 312) (citing 47 CFR §§ 54.804(b)(2)(v), 54.804(b)(2)(vi)).

Tombigbee Fiber's commitment to comply with the service requirements applicable to the federal universal service support that it receives satisfies the Commission's requirement that applicants for ETC designation must comply with these federal service requirements.<sup>30</sup>

**D. Ability to Remain Functional in Emergency Situations.**

Tombigbee Fiber commits that its fiber optic network will have the ability to remain functional in emergency situations, will have a reasonable amount of back-up power to ensure functionality without an external power source, will be able to reroute traffic around damaged facilities, and will be capable of managing traffic spikes resulting from emergency situations.<sup>31</sup>

**E. Satisfaction of Applicable Consumer Protection and Service Quality Standards.**

Under the FCC's regulations, an ETC applicant must "[d]emonstrate that it will satisfy applicable consumer protection and service quality standards."<sup>32</sup> Tombigbee Fiber commits to satisfying all FCC requirements related to consumer protection and service quality standards. In addition, with respect to Lifeline service, the Company commits that it will annually certify compliance with consumer protection and service quality rules consistent with Section 54.422(b)(3) of the FCC's rules.<sup>33</sup>

**F. Tombigbee Fiber Meets the Requirements Adopted by the Mississippi Public Service Commission To Be Designated as an Eligible Telecommunications Carrier.**

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<sup>30</sup> See *November 2012 Order* at 5 (ordering clauses 3 and 4).

<sup>31</sup> See 47 CFR § 54.202(a)(2) (providing that a common carrier seeking an ETC designation by the FCC must "[d]emonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations"). Tombigbee Fiber's commitment also satisfies the requirements of Section I.A.2.a. of the ETC Checklist (emergency operations).

<sup>32</sup> 47 CFR § 54.202(a)(3).

<sup>33</sup> *Id.*, § 54.422(b)(3).

Tombigbee Fiber will meet each of the requirements applicable to ETCs adopted by the Commission, as described in the following sections.

**1. Offering of Supported Services in Proposed ETC Designation Area.**

Tombigbee Fiber commits that it will offer the supported services specified in Section 214(e)(1)(A) of the Act<sup>34</sup> in its proposed ETC designation area.<sup>35</sup>

**2. Consumer Protection.**

In addition to complying with federal requirements, as discussed in Section IV.E., *supra*, Tombigbee Fiber commits to comply with (1) all applicable provisions of the Commission's Rules and Regulations Governing Public Utility Service along with any amendments made in a future proceeding regarding RDOF support;<sup>36</sup> (2) "designated service quality standards applicable to each carrier;"<sup>37</sup> and (3) the requirement to submit to the Commission the number of consumer complaints per 1,000 access lines, as required in annual ETC filings.<sup>38</sup>

**3. Advertising.**

Tombigbee Fiber commits that it will advertise the availability of its broadband and interconnected VoIP-enabled voice services, and their associated charges, in media of general distribution,<sup>39</sup> and that it will include Lifeline services in its advertising materials.<sup>40</sup>

**4. Lifeline Plans.**

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<sup>34</sup> 47 U.S.C. § 214(e)(1)(A).

<sup>35</sup> ETC Checklist, § I.A.1.b.iv.

<sup>36</sup> *Id.*, § I.A.3.b.i.

<sup>37</sup> *Id.*, § I.A.3.b.ii.

<sup>38</sup> *Id.*, § I.A.3.b.iii.

<sup>39</sup> *Id.*, § I.A.1.b.i. See 47 CFR § 54.201(d)(2).

<sup>40</sup> ETC Checklist, § I.A.1.b.i.

As noted in Section IV.B.3., *supra*, Tombigbee Fiber will offer Lifeline service in compliance with the FCC's rules. The Commission's ETC Checklist requires information concerning Lifeline plans that an applicant for ETC designation intends to offer.<sup>41</sup> Tombigbee Fiber commits to implement its Lifeline plans in accordance with the current rules, policies, and requirements adopted by the FCC.

Tombigbee Fiber will price its Lifeline VoIP-enabled voice service and its broadband service at discounted rates and pass through the monthly support amounts for voice and broadband services established by the FCC and in effect from time to time. Therefore, Tombigbee Fiber's Lifeline service will represent a dollar-for-dollar reduction from its comparable non-Lifeline rates, and will represent a pass-through of the full amount of Lifeline support to the qualifying Lifeline consumer.

#### **5. Contact Information for Consumer Inquiries.**

The following contact information for Tombigbee Fiber's designated representative is provided for the purpose of assisting in the resolution of any customer service, quality of service, or Lifeline inquiries:<sup>42</sup>

Matt Fennell  
Tombigbee Fiber, LLC  
1346 Auburn Road  
Tupelo, MS 38804  
662-842-7635 Ext 401  
[mfennell@TombigbeeElectric.com](mailto:mfennell@TombigbeeElectric.com)

The designated representative shall be aware of the Commission's jurisdiction over consumer protection standards regarding ETC's and shall be familiar with the Commission's Rules Governing Public Utility Service and any subsequent orders of the Commission regarding cus-

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<sup>41</sup> *Id.*, § I.A.1.b.ii.

<sup>42</sup> *Id.*, § I.A.1.b.iii.

tomter service and quality of service obligations. The Designated Representative shall comply with any reporting requirements regarding any Commission action on customer service, quality of service or Lifeline inquiries or other Commission action regarding ETC obligations. In the event that Tombigbee Fiber replaces the designated representative, updated notice and contact information provided herein shall be filed with the Commission within seven days.

#### **6. Outage Reporting.**

Tombigbee Fiber commits to adhering to any FCC and Commission reporting requirements relating to the reporting of service outages, and also commits to provide copies of any such reports to the Commission, upon request.<sup>43</sup>

#### **V. TOMBIGBEE FIBER HAS SUFFICIENT FINANCIAL RESOURCES AND TECHNICAL CAPABILITIES TO PROVIDE THE SUPPORTED SERVICES.**

As noted in Section IV.C., *supra*, as a prerequisite to receiving RDOF support, Tombigbee Fiber is required to certify to the FCC “that it is financially and technically capable of meeting the relevant public interest obligations for each performance tier and latency combination in the geographic areas in which it seeks support.”<sup>44</sup> With respect to financial resources, Tombigbee Fiber will be able to rely upon the resources of TEPA, it will be able to obtain requisite amounts of lending pursuant to available lines of credit, and Tombigbee Fiber and TEPA will be able to obtain additional financing, if necessary, in addition to the RDOF Phase I support being made available to Applicant. In addition, Tombigbee Fiber must obtain an irrevocable standby letter of credit from a bank acceptable to the FCC.<sup>45</sup> Thus, Applicant is financially capable of providing supported services in accordance with FCC and Commission rules.

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<sup>43</sup> *Id.*, § I.A.2.b.

<sup>44</sup> *Auction 904 Public Notice*, 35 FCC Rcd at 6166 (¶ 298) (footnote omitted).

<sup>45</sup> *Id.* at 6177 (¶ 319).

With respect to technical capabilities, Tombigbee Fiber must “demonstrate that it has a design plan with supportable technologies to meet the relevant Rural Digital Opportunity Fund public interest obligations in the areas covered by the winning bids by submitting technical information to support the operational assertions made in the short-form application.”<sup>46</sup> In addition, the Company:

is required to submit a detailed technology and system design description that explains how the design and technologies chosen will meet the relevant performance requirements, including information regarding quality, coverage, voice service, network management and on-going operations. This submission must include a detailed network diagram. The network diagram must be certified by a professional engineer.<sup>47</sup>

Further, the Company must “provide a project plan that describes a network build-out schedule that includes but is not restricted to plans for constructing last mile and middle mile facilities.”<sup>48</sup>

These various FCC requirements ensure that Tombigbee Fiber possesses the financial and technical capabilities to pay for all start-up expenses (*e.g.*, equipment, operations, *etc.*) to deploy its fiber optic network, and to begin the provision of interconnected VoIP-enabled voice and broadband services throughout its proposed ETC designation area. As noted in Section II., *supra*, this deployment of Tombigbee’s fiber optic network is already well underway.

#### **VI. DESIGNATION OF TOMBIGBEE FIBER AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER WILL SERVE THE PUBLIC INTEREST.**

The Commission’s rules require it to undertake a public interest analysis of an application for ETC designation, which is carried out in a manner consistent with the Act and FCC rules,<sup>49</sup>

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<sup>46</sup> *Id.* at 6166 (¶ 301).

<sup>47</sup> *Id.* (footnotes omitted). The FCC’s requirements include a certification from a professional engineer that the long-form applicant’s fiber optic network is capable of delivering voice and broadband service that meets the requisite performance requirements, and is capable of providing sufficient capacity to meet customer demand at or above the prescribed levels during peak usage periods. *Id.*

<sup>48</sup> *Id.* at 6171 (¶ 307).

<sup>49</sup> ETC Checklist, § I.B. (citing 47 U.S.C. §§ 214(e)(2), 254; 47 CFR §§ 54.201(c), 54.202(b)).



and which considers whether an applicant for ETC designation has satisfied public interest criteria, considering general goals established by the Commission.<sup>50</sup>

The grant of this Application, designating Tombigbee Fiber as an ETC, will clearly serve the public interest by enabling the Company to provide low-latency, gigabit-speed broadband, and interconnected VoIP-enabled voice services, to consumers in its proposed ETC designation area, as well as to provide subsidized voice and broadband services to those households that seek and qualify for federal Lifeline benefits.

Tombigbee Fiber is well-positioned to help close the digital divide in its service area. It will utilize an affordable technology that will help to transform east Mississippi by allowing improved access to health care, education services, and other social services, and by helping to create jobs and boosting the economy.

The Commission has been actively engaged in addressing the needs of consumers and businesses in rural Mississippi to have access to advanced broadband services. In April of this year, for example, the Commission, in a letter to Mississippi's U.S. Senator Roger Wicker, urged that the disbursement of RDOF Phase I funding should be expedited to help improve Internet access in rural communities throughout Mississippi.<sup>51</sup> The Commission stressed that:

the severe lack of broadband Internet for all Mississippians has been brought to the forefront and cannot be overstated .... Teachers and students are conducting distance learning. Health care professionals are relying on telemedicine .... It is undeniable that the success of these efforts and functions rely on an essential service that simply does not exist.<sup>52</sup>

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<sup>50</sup> *Id.*

<sup>51</sup> Taylor Vance, "Mississippi Utility Commission Urges Broadband Investment," NORTHEAST MISSISSIPPI DAILY JOURNAL (Apr. 30, 2020), *accessed at* <https://www.govtech.com/network/Mississippi-Utility-Commission-Urges-Broadband-Investment.html>.

<sup>52</sup> *Id.* (internal quotation marks omitted).

In addition, the Commission earlier this year established the Connect Mississippi Committee “to identify broadband internet connectivity issues and establish comprehensive recommendations to address these challenges in Mississippi[.]”<sup>53</sup> and also took steps to implement the Broadband COVID-19 Grant Program (“Grant Program”), which was established by the Mississippi Electric Cooperatives Broadband COVID-19 Act.

The Grant Program addresses “an immediate increased need for reliable internet service in rural Mississippi, including expanded rural broadband capacity to facilitate and assist with distance learning, telemedicine, and telework, which are required for citizens to continue their education, receive necessary services, and work in a healthy and safe environment.”<sup>54</sup> TEPA is a recipient of Grant Program funding, receiving a maximum grant amount of \$4,198,992 from the Program.<sup>55</sup>

Approval of this Application will help to address the urgent need to deliver broadband to rural Mississippi, enabling consumers and businesses in these regions of the state to have access to broadband services comparable to those in urban areas.

**A. Preserving and Advancing Universal Service.**

Tombigbee Fiber’s service offerings will preserve and advance universal service<sup>56</sup> by providing unique advantages to consumers in its proposed ETC designation area. Most importantly, the Company’s provision of high-speed broadband Internet access and interconnected

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<sup>53</sup> “PSC Creates Connect Mississippi Committee; Presley Appoints North Mississippians to Serve,” MONROE JOURNAL, (July 7, 2020), *accessed at* [https://www.djournal.com/monroe/news/psc-creates-connect-mississippi-committee-presley-appoints-north-mississippians-to-serve/article\\_85035dbd-9852-52f0-acf0-34e085bd701f.html](https://www.djournal.com/monroe/news/psc-creates-connect-mississippi-committee-presley-appoints-north-mississippians-to-serve/article_85035dbd-9852-52f0-acf0-34e085bd701f.html).

<sup>54</sup> Mississippi PSC Website, “Broadband COVID-19 Grant Program,” *accessed at* <https://www.psc.ms.gov/covid19grant>.

<sup>55</sup> *Id.*

<sup>56</sup> ETC Checklist, § I.B.1.

VoIP-enabled voice services using a new state-of-the-art, low-latency, FTTH network will provide enormous benefits that previously have been beyond the reach of consumers and businesses in many of Mississippi's rural areas. The FTTH network will ensure reliable access to gigabit tier broadband, thus enhancing educational programs, promoting business growth, generating jobs, and expanding cultural opportunities for Mississippi residents.

**B. Ensuring the Availability of Quality Services at Just, Reasonable, and Affordable Rates.**

-A principal goal of the Telecommunications Act of 1996 is to "promote competition and reduce regulation in order to secure lower prices and high-quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."<sup>57</sup> As a general matter, designation of ETCs increases facilities and promotes development and deployment of advanced communications as carriers compete for consumers' business.

Designation of Tombigbee Fiber as an ETC in Mississippi will ensure the availability of quality services at just, reasonable, and affordable rates<sup>58</sup> by facilitating the provision of high-quality communications services to those living and working within its proposed ETC designation area. Residents in many rural areas in Mississippi have long been unable to gain access to advanced broadband services that are available to consumers living in urban areas in the State. In some rural areas, no meaningful choices for telephone and broadband services exist.

The Company's deployment of low-latency, high-speed broadband service and high-quality VoIP-enabled phone services will help to address these issues, will promote economic development in the rural areas the Company will serve, and, significantly, will help to ensure that

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<sup>57</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (preamble).

<sup>58</sup> ETC Checklist, § I.B.2.

consumers in its proposed ETC designation area will be able to subscribe to quality services at just, reasonable, and affordable rates.

**C. Promoting the Deployment of Advanced Services in Rural and High-Cost Areas.**

In the *RDOF Order*, the FCC explains that “[b]ringing digital opportunity to Americans living on the wrong side of the digital divide continues to be the Federal Communication Commission’s top priority.... Without access to broadband, rural communities cannot connect to the digital economy and the opportunities for better education, employment, healthcare, and civic and social engagement it provides.”<sup>59</sup>

There are compelling grounds for the Commission to conclude that granting Tombigbee Fiber’s application for ETC designation is in the public interest because the Company will utilize RDOF support to bring state-of-the-art low-latency, gigabit-speed broadband service to rural consumers and communities in Mississippi. The Commission’s action in granting this Application will promote this deployment, for the benefit of rural areas in Mississippi that have long been on the wrong side of the digital divide.

**VII. REQUEST FOR WAIVER OF REQUIREMENT TO SUBMIT A FIVE-YEAR UPGRADES OR IMPROVEMENTS PLAN.**

The Commission’s ETC Checklist requires that, in order to be eligible for an ETC designation, “[a]t the time of filing for designation, the ETC applicant shall be expected to submit a five year plan that describes with specificity the proposed improvements or upgrades to the applicant’s network throughout its proposed service area ....”<sup>60</sup>

Tombigbee Fiber seeks a waiver of this ETC Checklist requirement for the submission of a five-year improvements and upgrades plan. Such a waiver is appropriate because deployment

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<sup>59</sup> *RDOF Order*, 35 FCC Rcd at 687 (¶ 1).

<sup>60</sup> ETC Checklist, § I.A.1.c.

obligations and timetables imposed on RDOF Phase I support recipients by the FCC in the *RDOF Order* are sufficient to ensure timely deployment of voice and broadband services, consistent with the policies reflected in the Commission's five-year plan requirement.

Specifically, the FCC requires RDOF Phase I support recipients to commercially offer voice and broadband service to "40% of [a calculated] number of locations in a state by the end of the third full calendar year following funding authorization, and 20% each calendar year thereafter."<sup>61</sup> In addition, the FCC requires support recipients to file annual reports containing location and technology data, and to certify when they have met their service milestones.<sup>62</sup>

The FCC has previously decided that similar service milestones and reporting requirements applicable to Connect America Fund ("CAF") Phase II support recipients warranted waiver by the FCC of its requirement, in Section 54.202(a)(1)(ii) of its rules,<sup>63</sup> that support recipients must file five-year improvement plans. The FCC found that its detailed buildout obligations for CAF Phase II support recipients provide a "more defined yardstick [than the five-year improvement plans] by which to measure [carriers'] progress towards the universal availability of voice and broadband service in their areas ...."<sup>64</sup>

Significantly, the Commission also has waived its ETC Checklist five-year plan requirement in response to a request for waiver made by an applicant for ETC designation. Specifically, the Commission found that Aristotle Unified Communications, Inc. ("AUC"), was entitled to a

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<sup>61</sup> *RDOF Order*, 35 FCC Rcd at 709 (¶ 45).

<sup>62</sup> *Id.* at 712 (¶ 56).

<sup>63</sup> 47 CFR § 54.202(a)(1)(ii).

<sup>64</sup> *WCB Reminds Connect America Fund Phase II Auction Applicants of the Process for Obtaining a Federal Designation as an Eligible Telecommunications Carrier*, WC Docket No. 09-197, *et al.*, Public Notice, 33 FCC Rcd 6696, 6700 & n.34 (2018) (quotation marks and citation omitted).

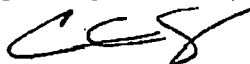
waiver of the ETC Checklist requirement because of the build-out plan requirements the FCC had adopted for CAF Phase II support recipients.<sup>65</sup>

Based on the FCC's RDOF Phase I build-out and reporting requirements, the Commission's decision in the AUC proceeding, and the fact that Tombigbee has already commenced deployment of its fiber network, Tombigbee Fiber requests that the Commission waive the requirement of ETC Checklist Section I.A.1.c., relating to the submission of a five-year improvements and upgrades plan. If the waiver is granted, then the Company will make available to the Commission all reports it is required to file with the FCC in connection with the funding awarded in the RDOF Phase I auction.

#### VIII. CONCLUSION.

For all of the foregoing reasons, Tombigbee Fiber, LLC, respectfully requests that the Commission designate the Company as both a high-cost and low-income Eligible Telecommunications Carrier, so that the Company will be eligible to receive the Rural Digital Opportunity Fund Phase I support it has been awarded in Auction 904, as well as federal Lifeline support, throughout its proposed ETC designation area.

Respectfully submitted,



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*Counsel to Tombigbee Fiber, LLC*

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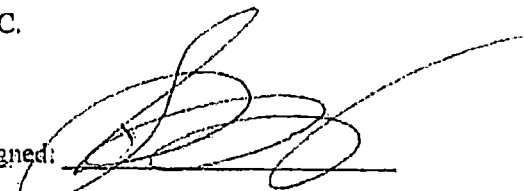
<sup>65</sup> *Aristotle Unified Communications, Inc., Application for Designation as an Eligible Telecommunications Carrier for Purpose of Receiving Federal Universal Service Support for the Purpose of Receiving Support from the FCC Connect America Fund Phase II*, Docket No. 2018-UA-224, Order (Feb. 5, 2019), at 6 (¶ 17).

**VERIFICATION**

STATE OF MISSISSIPPI     )  
                                      )  
COUNTY OF LEE            )

I, Scott R. Hendrix, state that I am the Chief Executive Officer of Tombigbee Fiber, LLC;  
that I have read the above and foregoing document; that the statements contained therein are true  
and correct to the best of my information, knowledge, and belief; and that I am authorized to  
make this statement on behalf of Tombigbee Fiber, LLC.

Signed: \_\_\_\_\_

  
Scott R. Hendrix  
Chief Executive Officer  
Tombigbee Fiber, LLC

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