

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION BY )</b>	<b>ORDER GRANTING</b>
<b>VALLEY TELECOMMUNICATIONS )</b>	<b>EXPANDED ELIGIBLE</b>
<b>COOPERATIVE ASSOCIATION, INC. FOR )</b>	<b>TELECOMMUNICATIONS</b>
<b>EXPANDED DESIGNATION AS AN ELIGIBLE )</b>	<b>CARRIER DESIGNATION IN</b>
<b>TELECOMMUNICATIONS CARRIER IN THE )</b>	<b>CERTAIN CENSUS BLOCKS;</b>
<b>STATE OF SOUTH DAKOTA )</b>	<b>ORDER GRANTING WAIVER</b>
<b>)</b>	<b>)</b>
<b>)</b>	<b>TC21-003</b>

On January 29, 2021, the South Dakota Public Utilities Commission (Commission) received an application from Valley Communications, Inc. dba Valley FiberCom (Valley FiberCom) for designation as an Eligible Telecommunications Carrier (ETC) in all census blocks where it has been awarded Rural Digital Opportunity Fund (RDOF) Phase 1 support (Application) as shown in Exhibit A of the filing.

On February 4, 2021, the Commission electronically transmitted notice of the filing and the intervention deadline of February 19, 2021, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. No petitions to intervene or comments were filed. On March 15, 2021, Valley FiberCom responded to Commission staff's data request.

On March 30, 2021, Valley Telecommunications Cooperative Association, Inc. (Valley) filed an Amended Application for Expanded Designation as an Eligible Telecommunications Carrier (Amended Application). The Amended Application updates the Application from Valley FiberCom (a CLEC) to its ILEC, Valley Telecommunications Cooperative Association, Inc. (Valley). Valley was previously designated by the Commission as an ETC within the local exchange areas that constitute its service area in Docket TC97-071. Valley has been awarded RDOF support for 266 census blocks in South Dakota that are within the service area of Qwest Corporation d/b/a CenturyLink QC, (CenturyLink), a non-rural incumbent local exchange carrier. Valley requested a waiver of the two-year plan requirement found in ARSD 20:10:32:43.02.

The Commission has jurisdiction in this matter pursuant to SDCL Chapter 49-31, specifically 49-31-78, ARSD 20:10:32:42-46, and 47 U.S.C. § 214.

At its April 29, 2021, regularly scheduled meeting, the Commission considered the request for expanded ETC designation. The Commission voted unanimously to grant the application for expanded ETC designation, and it further voted unanimously to grant the waiver request.

In order to be designated an ETC, a carrier must offer the supported services throughout the service area for which the designation is received and advertise the availability of, and the charges for, those services throughout the service area. 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201. The Federal Communications Commission (FCC) has designated the following services for support by federal universal service support mechanisms: (1) voice grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) 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; (4) toll limitation services to qualifying low-income consumers; and (5) eligible broadband internet access services which will provide the capability to transmit data to and receive data by wire or radio from all internet endpoints, including any capabilities that are incidental to and enable the operation of the communication service. 47 C.F.R. § 54.101. In its filing, Valley stated that it can and will provide all of the supported services through the provision of TDM, VOIP, and high-speed broadband Internet services. (App. pg. 3). The Commission finds that Valley is able to offer the supported services.

A carrier must offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services...." 47 U.S.C. § 214(e)(1)(A). Valley will primarily use its own facilities, but at times may resell another carrier's services to offer the services that are supported by Federal universal service support mechanisms. Valley is a facilities-based fiber to the premises (FTTP) carrier and will primarily use its own state-of-the-art facilities to provide any requested services (App. pg. 3 and 4).

The carrier must also advertise the availability of such services and the rates for the services using media of general distribution. 47 U.S.C. § 214(e)(1)(B). Valley stated that it will advertise the availability of the supported services and the charges thereof using media of general distribution with methods that may include newspapers, bill inserts, contacts with social service agencies, and its website. (App. pg. 4). Valley also stated it will advertise the availability of Lifeline service available to qualifying low-income consumers and publicize the availability of Lifeline service in a manner reasonably designated to reach those likely to qualify for the service. Valley may advertise via newspapers, bill inserts, and on its website. (App. pg. 4 and 5).

Pursuant to ARSD 20:10:32:43.01, an applicant for ETC designation must commit to providing service to customers making a reasonable request for service in the designated service area. Valley has made that commitment in its filing. (App. pg. 4). Valley certified that it will:

- A. Provide service on a timely basis to requesting customers within its proposed designated service area where its network already passes the potential customer's premises or will pass, consistent with FCC RDOF buildout requirements; and
- B. If the potential customer is within Valley's proposed designated service area but outside its existing network coverage, it will provide service within a reasonable period of time, if the service can be provided at a reasonable cost, by
  1. Extending, modifying, adjusting, or replacing network or customer's facilities; or
  2. Reselling services of another carrier's facilities to provide service.

Pursuant to ARSD 20:10:32:43.02, an applicant must provide a two-year plan that explains upgrades or improvements the applicant will make in each wire center. Valley requested a waiver of this rule since Valley will be required to meet all buildout and public interest reporting requirements for the RDOF support and all buildout progress will be included in annual ETC recertification requests to the Commission. (App. pg. 7).

Pursuant to ARSD 20:10:32:43.03, an applicant must demonstrate its ability to remain functional in emergency situations including a demonstration to remain functional in emergency situations without an external power source, is able to reroute traffic around damaged facilities,

and is capable of managing traffic spikes resulting from emergency situations. Valley stated it has a reasonable amount of back-up power to ensure functionality of voice services without a commercial power source. Further the company has a fiber optic protected ring as its backbone to each exchange area served and can reroute traffic around damaged facilities automatically to a redundant back-up route (App. pg. 5).

Pursuant to ARSD 20:10:32:43.04, an applicant must demonstrate that it will satisfy applicable consumer protection and service quality standards. Valley stated that it will comply with all applicable regulations concerning consumer protection and service quality throughout its proposed ETC designated service areas. (App. pg. 6).

Pursuant to ARSD 20:10:32:43.05, an applicant must demonstrate that it offers a local usage plan comparable to the one offered by the incumbent carrier. Valley's voice and fiber internet service plans are found on page 3 of the Amended Application.

The Commission finds that Valley has met the requirements of ARSD 20:10:32:43.01 through 20:10:32:43.05.

In order to designate an applicant as an ETC, the Commission must also determine whether such designation is in the public interest. See ARSD 20:10:32:43.07. When making this determination, the Commission must consider the following:

Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the public interest. The commission shall consider the benefits of increased consumer choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the applicant's service offering, commitments made regarding the quality of the telephone service provided by the applicant, and the applicant's ability to provide the supported services throughout the designated service area within a reasonable time frame. In addition, the commission shall consider whether the designation of the applicant will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. If an applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. In its creamskimming analysis, the commission shall consider other factors, such as disaggregation of support pursuant to 47 C.F.R. § 54.315 (January 1, 2006) by the incumbent local exchange carrier.

The Commission will first consider the benefits of increased consumer choice, the unique advantages and disadvantages of the service offerings, commitments regarding telephone service quality, and ability to provide the supported services throughout the designated service area within a reasonable time frame. Valley stated that it will deploy state-of-the-art FTTP services in the census blocks in Exhibit A, in order to provide communities access of up to Gigabit speeds and better voice service. Lifeline-eligible customers will have a greater choice of providers for accessing telecommunications services that may not be available today. (Amended App. pg. 3). The Commission finds that the designation of Valley will bring the benefits of increased consumer choice and it has committed to providing quality services to the designated service area.

Regarding the impact of multiple designations on the universal service fund, the incumbent local exchange carrier is CenturyLink. CenturyLink did not intervene or submit comments in this docket. Valley was also awarded RDOF funding from the FCC to provide services in the requested areas. The Commission finds that no evidence was presented to show that the designation of Valley as an ETC would have a detrimental effect on the provisioning of universal service by the incumbent local exchange carrier.

After evaluating the public interest considerations, the Commission finds that the expanded designation of Valley as an ETC is in the public interest. Valley will provide the supported services in the service areas and will upgrade the network infrastructure and improve and expand on the services currently being offered. It is therefore

ORDERED, that Valley's request for expanded designation as an ETC in the requested ETC service area as shown in Exhibit A is hereby granted. It is further

ORDERED that Valley's request for a waiver of ARSD 20:10:32:43.02 is hereby granted.

Dated at Pierre, South Dakota, this 17<sup>th</sup> day of May 2021.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u><i>Amash M. Reiss</i></u>
Date: <u>5/17/2021</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

*Chris Nelson*  
CHRIS NELSON Chairperson

*Kristie Fiegen*  
KRISTIE FIEGEN, Commissioner

*Gary Hanson*  
GARY HANSON, Commissioner