

State of Florida



# Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

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

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**DATE:** February 18, 2021

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

**FROM:** Office of Industry Development and Market Analysis (Wendel, Deas, Fogleman)<sup>CH</sup>  
Office of the General Counsel (Weisenfeld, DuVal)<sup>TLT SC</sup>

**RE:** Docket No. 20200263-TX – Petition for expedited designation as an eligible telecommunications carrier in the State of Florida or, in the alternative, petition for expedited declaratory statement, by Conexon Connect, LLC.

**AGENDA:** 03/02/21 – Regular Agenda – Proposed Agency Action - Interested Persons May Participate

**COMMISSIONERS ASSIGNED:** All Commissioners

**PREHEARING OFFICER:** Graham

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

**SPECIAL INSTRUCTIONS:** None

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## Case Background

On December 24, 2020, Conexon Connect, LLC (Conexon) 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 or, in the alternative, an expedited declaratory statement declining jurisdiction. Conexon is a fixed broadband and interconnected voice over internet protocol (VoIP) provider that participates in the Rural Electric Cooperative Consortium (RECC). The RECC is a collective of rural electric cooperatives operating throughout the United States that participated in the 2018 Federal Communication Commission (FCC) Connect America Fund Phase-II auction. On December 7, 2020, the RECC was selected as one of the winning bidders for the FCC's RDOF auction.

Consistent with the FCC's rules, the RECC assigned its winning bid to Conexon for its Florida census blocks.

The RDOF is a form of high-cost support and 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>1</sup> In Florida, a total of eleven bidders were selected to receive approximately \$192 million of high-cost support in phase I.<sup>2</sup> Conexon will receive \$82.5 million in phase I to be used in certain census blocks in Florida.<sup>3</sup>

An ETC designation is a requirement for telecommunications carriers to receive USF 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 their 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 participants to be designated as an ETC to apply, they did require winning bidders to obtain ETC designation within 180 days of being selected.

Conexon 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. In addition, Conexon acknowledges and asserts that if approved, it will comply with Sections 364.10 and 364.105, Florida Statutes (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.

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.

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<sup>1</sup> FCC, DA 20-1422, Public Notice, 904 Winning Bidders, <https://docs.fcc.gov/public/attachments/DA-20-1422A1.pdf>, accessed February 1, 2021.

<sup>2</sup> *Id.*, Attachment B, <https://docs.fcc.gov/public/attachments/DA-20-1422A3.pdf>, accessed February 1, 2021.

<sup>3</sup> *Id.*, Attachment A, <https://docs.fcc.gov/public/attachments/DA-20-1422A2.pdf>, accessed February 1, 2021.

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.

The Commission's authority to designate a telecommunications company as an ETC is found in Section 364.10, F.S. However, pursuant to Section 364.011, F.S., the Commission does not have jurisdiction over wireless/satellite, or broadband service.

## Discussion of Issues

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

**Recommendation:** No. Staff recommends that the Commission lacks jurisdiction to grant Conexon Connect, LLC ETC status in Florida. Staff further recommends that, as a provider of non-jurisdictional fixed broadband service, Conexon should apply directly to the FCC for a Florida ETC designation. Since staff is recommending that the Commission issue an order that it lacks jurisdiction, Conexon Connect, LLC's alternative request for a declaratory statement is moot. (Weisenfeld, DuVal, Fogleman, Wendel)

**Staff Analysis:** Pursuant to 47 U.S.C. 214(e)(2), and 47 C.F.R 54.201(b), state commissions designate carriers as ETCs consistent with criteria set forth therein. Per 47 U.S.C. 214(e)(6), if a state lacks jurisdiction over a carrier, the FCC is to make such a designation. Section 364.011, F.S., identifies services that are exempt from Commission oversight. Included in these non-jurisdictional services are broadband and wireless telecommunications. Until 2011, there was an exception in Section 364.011, F.S., which permitted Commission oversight of a service if "specifically authorized by federal law." The legislature struck this exception by Section 3, Ch.2011-36, Laws of Florida. Thus, the Commission no longer grants ETC designations to broadband carriers.<sup>4</sup> Therefore, because the fixed broadband service provided by Conexon is exempt from Commission oversight, staff recommends that the Commission lacks jurisdiction to grant Conexon ETC designation in Florida.

Moreover, by Section 364.10(1)(a), F.S., the legislature defined 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." Section 364.02(13), F.S., provides that 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." Thus, whether a carrier is a telecommunications company offering a telecommunications service is also a threshold question for whether the Commission has jurisdiction to grant an ETC designation.<sup>5</sup> Conexon is not currently certificated in Florida, and therefore does not meet the Florida statutory definition of a telecommunications company under Section 364.02(13), F.S. As such, staff recommends that this is a reason to deny the Company's petition for ETC status.

In sum, staff recommends that the Commission lacks jurisdiction to grant Conexon Connect, LLC ETC status in Florida. Staff further recommends that, as a provider of non-jurisdictional

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<sup>4</sup> The Commission only has the powers, duties, and authority that have been conferred expressly or impliedly to it by the Florida Legislature through statute. *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493, 495-96 (Fla. 1973). Further, the Commission is barred from exercising a power when there is any reasonable doubt as to the lawful existence of that power. *See id.*

<sup>5</sup> In this context, 364.02(14), F.S., provides that 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]." "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).

fixed broadband service, Conexon should apply directly to the FCC for a Florida ETC designation. Since staff is recommending that the Commission issue an order that it lacks jurisdiction, Conexon Connect, LLC's alternative request for a declaratory statement is moot.

**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. (Weisenfeld)

**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.