

199—39.3(476) Applying for designation as an eligible telecommunications carrier.

39.3(1) A telecommunications carrier must be designated as an ETC to qualify for support from the federal universal service fund. The Iowa utilities board reviews applications for designation as an ETC for compliance with 47 U.S.C. § 214(e)(1) and grants ETC designations to qualified applicants for a service area designated by the board. If an applicant requests an expedited ruling from the board on an application to be designated as an ETC or on an amendment to an existing ETC designation, the applicant shall specify why an expedited process is necessary and why an expedited review would not be contrary to the public interest.

39.3(2) An application for an ETC designation must contain the following:

a. Where an applicant offers more than one type of communications service, a clear statement of which entity is requesting the designation.

b. A clear statement of the purposes for which the designation is sought, and a statement of financial and technical qualification to provide the supported service. An applicant shall specify whether designation is sought for purposes of receiving support from the high-cost fund or mobility fund; for Lifeline purposes only; or other specified purpose recognized by the Federal Communications Commission (FCC).

c. A certification that the applicant offers or intends to offer all services designated for support throughout the applicant's approved service area. The services designated for support are identified in 47 CFR § 54.101.

d. An explanation of how the carrier will provide voice telephony service and broadband service as defined in 199—39.2(476) and 47 CFR § 54.101.

e. A certification that the applicant offers or intends to offer the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services. "Own facilities" includes unbundled network elements, in whole or in part. The facilities providing the services supported by the universal service fund need not be physically located in the area served. Wireless resellers shall provide the name of the facilities-based wireless carrier(s) whose services they are reselling and demonstrate they have an agreement with the carrier(s) in Iowa that will cover the applicant's proposed designated service area. Except for wireless resellers seeking ETC designation for Lifeline purposes only that have obtained FCC approval of a compliance plan and committed to certain 911 conditions, the board will not designate as an eligible telecommunications carrier a carrier that offers the services supported by federal universal service support mechanisms exclusively through the resale of another carrier's services.

f. A description of how the applicant advertises the availability of supported services and the charges therefor using media of general distribution.

g. A detailed description, including a map or maps, of the geographic service area for which the applicant requests an ETC designation from the board. An applicant seeking designation in connection with the connect America fund Phase II auction or other similar conditional support mechanism shall file a list of the census blocks in which the applicant will serve as an ETC, in addition to the map included with the description required by this paragraph. Wireless telecommunications carriers, defined as commercial mobile radio service providers in 47 CFR Parts 20 and 24, shall file coverage area maps and maps that depict signal strength. Requests to withhold from public inspection maps depicting signal strength will be deemed granted as provided in 199—paragraph 1.9(5) "c."

h. Where the application is from a carrier seeking a designation as an ETC for an area served by a rural telephone company as defined in 47 CFR § 51.5, a demonstration that the requested designation is in the public interest.

i. An affirmative statement that the applicant will use the support only for the provision, maintenance, and upgrading of facilities to deploy, improve, and support services to consumers in the applicant's designated service area. Applicants seeking designation only for purposes of receiving support from the Lifeline program need not include an affirmative statement or other information concerning network improvements planned for the designated service area.

j. An affirmative statement explaining how the applicant will remain functional in emergency situations. The statement shall include examples illustrating that the applicant 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.

k. A certification that the applicant will comply with the service requirements applicable to the support that it seeks to receive.

l. A certification that the applicant will satisfy applicable consumer protection and service quality standards. Wireless ETC applicants shall commit to complying with the following minimum consumer protection standards:

(1) Disclose rates and terms of service to consumers. For each service plan offered to new consumers, wireless carriers will disclose to consumers at point of sale and on their websites at least the following information, as applicable: (a) the coverage area for the service; (b) any activation or initiation fee; (c) the monthly access fee or base charge; (d) the amount and nature of any voice, messaging, or data allowances included in the plan (such as night and weekend minutes); (e) the charges for domestic usage in excess of any included allowances or outside of the coverage area; (f) for prepaid service plans, the period of time during which any balance is available for use; (g) whether there are prohibitions on data service usage and whether there are network management practices that will have a material impact on the customer's wireless data experience; (h) whether any additional taxes, fees or surcharges apply; (i) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (j) the amount or nature of any late payment fee; (k) whether a fixed-term contract is required and its duration; (l) the amount and nature of any early termination fee that may apply; and (m) the trial period during which a consumer may cancel service without any early termination fee, as long as the consumer complies with any applicable return policy.

(2) Make available maps showing where service is generally available. Wireless carriers will make available at point of sale and on their websites maps depicting approximate domestic coverage applicable to each of their service plans currently offered to consumers. To enable consumers to make comparisons among carriers, these maps will be generated using generally accepted methodologies and standards to depict the carrier's outdoor coverage. All such maps will contain or link to an appropriate legend concerning limitations or variations, or both, in wireless coverage and map usage, including any geographic limitations on the availability of any services included in the plan. Wireless carriers will periodically update such maps as necessary to keep them reasonably current. If necessary to show the extent of service coverage available to customers from carriers' roaming partners, carriers will request from roaming partners and incorporate coverage maps that are generated using similar industry-accepted criteria, or if such information is not available, incorporate publicly available information regarding roaming partners' coverage areas.

(3) Provide contract terms to customers and confirm changes in service. When a customer initiates new service or a change in existing service, the carrier will provide or confirm any new material terms and conditions of the ongoing service with the customer.

(4) Allow a trial period for new service. When a customer initiates postpaid service with a wireless carrier, the customer will be informed of and given a period of not less than 14 days to try out the service. The carrier will not impose an early termination fee if the customer cancels service within this period, provided that the customer complies with applicable return policies and exchange policies. Other charges, including usage charges, may still apply.

(5) Provide specific disclosures in advertising. In advertising of prices for wireless service plans or devices, wireless carriers will disclose material charges and conditions related to the advertised prices and services, including if applicable and to the extent the advertising medium reasonably allows: (a) whether activation or initiation fees apply; (b) monthly access fees or base charges; (c) the amount and nature of any voice, messaging, or data service allowances included in the plan; (d) the charges for any domestic usage in excess of any included allowances or outside of the coverage area; (e) for prepaid service plans, the period of time during which any balance is available for use; (f) whether there are network management practices that will have a material impact on the customer's wireless data experience; (g) whether any additional taxes, fees or surcharges apply; (h) the amount or range of any such fees or surcharges that are collected and retained by the carrier; (i) whether a fixed-term contract is required and its duration; (j) early termination fees; (k) the terms and conditions related to receiving a

product or service for “free”; (l) for any service plan advertised as “nationwide” (or using similar terms), the carrier will have available substantiation for this claim; and (m) whether prices or benefits apply only for a limited time or promotional period and, if so, whether any different fees or charges will apply for the remainder of the contract term.

(6) Separately identify carrier charges from taxes on billing statements. On customers’ bills, carriers will distinguish (a) monthly charges for service and features, and other charges collected and retained by the carrier, from (b) taxes, fees and other charges collected by the carrier and remitted to federal, state or local governments. Carriers will not label cost recovery fees or charges as taxes.

(7) Provide customers the right to terminate service for changes to contract terms. Carriers will not modify the material terms of their postpaid customers’ contracts in a manner that is materially adverse to those customers without providing a reasonable advance notice of a proposed modification and allowing those customers a time period of not less than 14 days to cancel their contracts with no early termination fee.

(8) Provide ready access to customer service. Customers will be provided a toll-free telephone number to access a carrier’s customer service during normal business hours. Customer service contact information will be provided to customers online and on billing statements. Each wireless carrier will provide information about how customers can contact the carrier in writing, by toll-free telephone number, via the Internet or otherwise with any inquiries or complaints, and this information will be included, at a minimum, on all billing statements, in written responses to customer inquiries and on carriers’ websites. Each carrier will also make such contact information available, upon request, to any customer calling the carrier’s customer service departments.

(9) Promptly respond to consumer inquiries and complaints received from government agencies. Inquiries for information or complaints to a wireless ETC shall be resolved promptly and courteously. If a wireless ETC cannot resolve a dispute with the applicant or customer, the wireless ETC shall inform the applicant or customer of the right to file a complaint with the board. The wireless ETC shall provide the following board address and toll-free telephone number: Iowa Utilities Board, Customer Service, 1375 E. Court Avenue, Des Moines, Iowa 50319-0069; 1-877-565-4450. When the board receives a complaint, the procedures set out in 199—Chapter 6, “Complaint Procedures,” shall be followed to enforce the minimum consumer protection standards in paragraph 39.3(2)“l.” When the board receives a complaint alleging the addition or deletion of a product or service for which a separate charge is made to a customer account without the verified consent of the customer, the complaint shall be processed by the board pursuant to 199—Chapter 6. In any complaint proceeding pursuant to this subparagraph, if the wireless ETC asserts that the complainant is located in an area where the wireless ETC is not designated as an ETC, the wireless ETC must submit evidence in support of its assertion.

(10) Abide by policies for protection of customer privacy. Each wireless carrier will abide by a policy regarding the privacy of customer information in accordance with applicable federal and state laws, and will make available to the public its privacy policy concerning information collected online. Each wireless carrier will abide by the Cellular Telecommunications and Internet Association’s Best Practices and Guidelines for Location-Based Services.

(11) Provide consumers with free notifications for voice, data and messaging usage, and international roaming. Each wireless provider will provide, at no charge: (a) a notification to consumers of currently offered and future domestic wireless plans that include limited data allowances when consumers approach and exceed their allowance for data usage and will incur overage charges; (b) a notification to consumers of currently offered and future domestic voice and messaging plans that include limited voice and messaging allowances when consumers approach and exceed their allowance for those services and will incur overage charges; and (c) a notification to consumers without an international roaming plan/package whose devices have registered abroad and who may incur charges for international usage. Wireless providers will generate the notifications described above to postpaid consumers based on information available at the time the notification is sent. Wireless consumers will not have to affirmatively sign up in order for these notifications to be sent. Wireless providers will clearly and conspicuously disclose tools or services that enable consumers to track, monitor or set limits on voice, messaging and data usage.

(12) Abide by the mobile wireless device unlocking standards established in the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service.

m. A certification that the applicant will contribute to the dual party relay service, as provided in Iowa Code section 447C.7(1).

n. For applications from carriers seeking designation as an ETC for any part of tribal lands, the applicant shall provide a copy of its application to the affected tribal government and tribal regulatory authority at the time it files the application with the board.

39.3(3) Amendments, assignments and transfers of control. Except as otherwise provided in this subrule, a carrier's ETC designation may be amended or assigned, or control of such designation may be transferred by the transfer of control of the carrier, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the board.

a. Assignment. For purposes of this subrule, an assignment of a designation is a transaction in which a board-issued ETC designation is assigned from one carrier to another carrier. Following an assignment, the designation is held by a carrier other than the carrier to which it was originally granted.

b. Transfers of control. For purposes of this subrule, a transfer of control is a transaction in which a board-issued designation remains held by the same carrier, but there is a change in the individuals or entities that control the carrier. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to, the following:

- (1) Power to constitute or appoint more than 50 percent of the board of directors or partnership management committee;
- (2) Authority to appoint, promote, demote and fire senior executives who control the day-to-day activities of the carrier;
- (3) Ability to play an integral role in major management decisions of the carrier;
- (4) Authority to pay financial obligations, including expenses arising out of operations;
- (5) Ability to receive moneys and profits from the carrier's operations; and
- (6) Unfettered use of all of the carrier's facilities and equipment.

c. Pro forma assignments and transfers of control. Assignments or transfers of control that do not result in a change in the actual controlling party are considered nonsubstantial or pro forma. If a transaction is one of the types listed below, the transaction is presumptively pro forma and prior board approval need not be sought:

- (1) Assignment from an individual or individuals to an entity owned and controlled by such individuals without any substantial change in their relative interests;
- (2) Assignment from an entity to its individual equity holders without effecting any substantial change in the disposition of their interests;
- (3) Assignment or transfer by which certain equity holders retire and the interest transferred is not a controlling one;
- (4) Entity reorganization that involves no substantial change in the beneficial ownership of the carrier (including reincorporation or reorganization in a different jurisdiction or change in form of the business entity);
- (5) Assignment or transfer from a carrier to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a carrier to an entity owned or controlled by the same equity holders without substantial change in their interests; or
- (6) Assignment of less than a controlling interest in a carrier.

d. Applications for substantial transactions. In the case of an assignment or transfer of control of board-designated ETC that is not pro forma, the parties to such transaction must file a joint application with the board prior to consummation of the proposed assignment or transfer of control. The application shall include the following information:

(1) A brief narrative of the means by which the proposed transfer or assignment will take place. This narrative should include a statement concerning how the transaction will be classified for the purposes of any filings required to be made by the parties with the Universal Service Administrative Company.

(2) Identification of each applicant, including the legal name and state or other governmental authority under the laws of which each entity applicant is incorporated or organized.

(3) The name, title, mailing address, telephone number and email contact information for each applicant.

(4) The name, title, mailing address, telephone number and email contact information for an application contact point, such as an executive officer, legal counsel or regulatory consultant, to whom correspondence concerning the application should be addressed.

(5) A statement identifying the date on which the applicants are asking for the transfer of the ETC designation to be effective. Where the timing of a transaction is dependent on facts objectively ascertainable outside of the filing (i.e., regulatory, lender or other third-party approval), the parties should include a statement concerning the manner in which such facts will operate on the effective date or other terms of the transaction.

(6) A certification as to whether the assignee/transferee is a board-designated ETC. If the assignee/transferee is not a board-designated ETC, the assignee/transferee shall separately file with the board an application for designation as an ETC as provided in subrule 39.3(2). If the assignee/transferee is a board-designated ETC, the joint application shall include a certification from the assignee/transferee that (a) the assignee/transferee is a board-designated ETC in good standing and (b) the assignee/transferee will comply with the state and federal requirements for eligibility as an ETC, including the use of support to provide designated services within the assigned or transferred service area.

(7) Whether as part of the transaction, the assignor/transferor is requesting to relinquish its ETC status in whole or in part. If the assignor/transferor is requesting to relinquish its ETC status, the joint application shall be deemed to be the assignor/transferor's request for relinquishment of ETC designation under 199—39.8(476); provided that such relinquishment shall be conditioned on consummation of the transaction described in the application. If the assignor/transferor is for any reason seeking the unconditional relinquishment of its ETC status, such request should be filed separately under 199—39.8(476).

e. Board approval. Where an assignment or transfer of control involves a transferee/assignee which is already a board-designated ETC, such application shall be granted by the board 30 days after the date the complete application seeking approval of the assignment or transfer of control is accepted for filing, unless the board, for good cause, docket the application for further investigation. Where an assignment or transfer of control involves a transferee/assignee which is not already a board-designated ETC, such application shall be granted by the board at the same time as the board grants the assignee/transferee's application for ETC designation in accordance with the timelines and procedures set forth in subrule 39.3(2).

f. Notification of pro forma transactions. In the case of a pro forma assignment or transfer of control, the designated ETC is not required to seek prior board approval. Instead, a pro forma assignee or a carrier that is subject to a pro forma transfer of control must file a notification with the board no later than 30 days after the assignment or transfer is completed. The notification must contain the following:

(1) The information requested in subparagraphs 39.3(3) "d"(1) to (4) for the transferee/assignee.

(2) A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, the transfer of control or assignment does not result in a change in the actual control of the carrier.

(3) A certification from the assignee/transferee that the assignee/transferee will comply with the state and federal requirements for eligibility as an ETC, including the use of support to provide designated services within the assigned or transferred service area.

g. Involuntary assignments or transfers of control. In the case of an involuntary assignment or transfer of control to a bankruptcy trustee appointed under involuntary bankruptcy; to an independent

receiver appointed by a court of competent jurisdiction in a foreclosure action; or in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved, the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

h. Notification of consummation. An assignee or transferee must notify the board no later than 30 days after either consummation of the proposed assignment or transfer of control or a decision not to consummate the proposed assignment or transfer of control. The notification shall identify the docket number(s) under which the authorization of the assignment or transfer of control was granted.

i. Amendments other than transactions. Where a carrier that has been designated by the board as an ETC intends to serve as an ETC in a new service area for the purpose of receiving support from the CAF Phase II auction or for other similar purposes, the carrier shall file a request to amend its designation with a notice of expansion at least 30 days in advance of the expansion and shall certify that the carrier intends to amend its designation to serve as an ETC in the expanded service area.

[ARC 1899C, IAB 3/4/15, effective 4/8/15; ARC 4254C, IAB 1/16/19, effective 2/20/19]