

February 27, 2018

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East
St. Paul, Minnesota 55101-2147

RE: **West Central Telephone Association Petition for ETC Designation in Minnesota**
Docket No. P431/AM-17-835

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce in the above referenced matter.

The petition was filed on November 30, 2017 by:

Thomas G. Burns
Olsen Thielen
2675 Long Lake Road
Saint Paul, MN 55113-1117

On behalf of:
Chad Bullock
West Central Telephone Association
308 Frontage Rd.
Sebeka, MN 56477

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/JOY GULLIKSON
Rates Analyst

JG/lt
Attachment

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce

Docket No. P431/AM-17-835

I. **BACKGROUND**

A. *PROCEDURAL BACKGROUND*

On November 30, 2017, West Central Telephone Association (WCTA) requested that the Minnesota Public Utilities Commission (PUC or Commission) designate WCTA as an Eligible Telecommunications Carrier (ETC) “. . . for the limited purposes of providing local services under the Lifeline program.” WCTA Application, p.1.

The application is for the exchanges of:

- Staples
- Wadena

The incumbent telephone company in these exchanges is Qwest Corporation dba CenturyLink QC.

B. *HISTORICAL BACKGROUND*

WCTA is an incumbent telephone company (ILEC) serving exchanges in Northwestern Minnesota. On June 22, 2006, WCTA received authority to expand and provide competitive local exchange service in the exchanges of Staples and Wadena. The authority was dependent upon the filing of:

- 911 plan—subsequently approved
- An interconnection agreement with Qwest—subsequently approved

WCTA provides its competitive local exchange service as a part of WCTA and not as a separate entity.

II. STATEMENT OF ISSUES

1. Whether WCTA has demonstrated the intent and capability of providing and advertising the services required in 47 CFR § 54.101 (a) throughout its proposed expanded ETC area
2. Whether the request for ETC status for Lifeline only in the Staples and Wadena areas is in the public interest.
3. Whether the ETC designation is appropriate for the entire exchanges of Staples and Wadena, or if a more restrictive ETC designation is appropriate.

III. APPLICABLE LAW

A. STATE LAW

Under Minn. Rules pt. 7811.1400, a person wishing to comment on a designation petition shall file initial comments within 20 days of the filing¹. Initial comments must include a recommendation on whether the filing requires a contested case proceeding, expedited proceeding, or some other procedure, together with reasons for the recommendation. Minn. Rules pt. 7811.1400 also requires the Commission to act within 180 days of the filing of the petition.

Further, subpart 3 of Minn. Rules 7811.1400 and 7812.1400 states: "A decision on a petition for designation to receive universal service support under this part must include a determination of the applicable universal service area. The universal service area shall be the study area of the relevant LEC unless the commission and the FCC adopt a different service area pursuant to Code of Federal Regulations, title 47, section 54.203, paragraphs (c) and (d)².

Minnesota Rules 7811.0600 and 7812.0600, Subp.4 , Service area obligations, states:

An LSP [local service provider] designated an ETC by the commission must provide local service, including, if necessary, facilities-based service, to all requesting customers within the carrier's service area on a nondiscriminatory basis, regardless of a customer's proximity to the carrier's facilities. An LSP may assess special construction charges approved by the commission if existing facilities are not available to the serve the customer.

¹ The Department of Commerce sought and received an extension until March 1, 2018.

² The current applicable Code of Federal Regulations is title 47, section 54.207, paragraphs (c) and (d).

B. FEDERAL LAW

47 U.S.C § 214(e)(1) provides that:

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—

- A. offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- B. advertise the availability of such services and the charges therefor using media of general distribution.

§54.405 states: "All eligible telecommunications carriers must:

- (a) Make available Lifeline service, as defined in §54.401, to qualifying low income consumers.
- (b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.
- (c) Indicate on all materials describing the service, using easily understood language that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household.

For the purposes of this section, the term "materials describing the service" includes all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms. (d) Disclose the name of the eligible telecommunications carrier on all materials describing the service."

47 C.F.R. § 54.207 defines a service area as ". . . a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms." Paragraph (b) of the same section states: ". . . in the case of a service area served by a rural telephone company, *service area* means such company's study area unless and until the Commission and the states, after taking into account recommendations of a Federal-State Joint Board . . . establish a different definition of service area for such company."

IV. ANALYSIS

1. *Has WCTA demonstrated the intent and capability of providing and advertising the services required in 47 CFR § 54.101 (a) throughout its proposed expanded ETC area?*

WCTA has been operating as an ETC in its study area since 1998, when all LECs were designated an ETC by Minnesota Rule 7811.1400 and 7812.1400. WCTA's expansion into Staples and Wadena means that service will be offered in those areas in much the same manner as the ILEC service. WCTA states that it offers last mile service via its own fiber where the fiber has been laid.

Advertising for the WCTA Lifeline services in the expanded areas will follow the same format as its current Lifeline service. WCTA's web page has a link to the Telephone Assistance Plan and a connection to the Minnesota Department of Commerce for a downloadable application form for customers. WCTA also plans to advertise at least annually, as well as sending brochures and a letter to the local Social Service offices.

As discussed in the following paragraphs, WCTA customers may not be able to obtain Lifeline service, in parts of the Staples and Wadena exchanges, without incurring excess construction charges.

WCTA has its 911 plan approved.

2. *Is the request for ETC status for Lifeline only in the Staples and Wadena areas in the public interest?*

WCTA is applying for ETC status in the expanded areas of Staples and Wadena because its current ETC status as an ILEC covers only the WCTA "study area," which does not include these two exchanges. Thus, in order to provide and be reimbursed for Lifeline, an affirmative finding is needed by the state commission to certify the expanded ETC area.

There is no evidence to suggest that WCTA would behave in any way that is contrary to the public interest. Indeed, it proposes to bring advanced facilities to the area to provide choice to customers, and the Lifeline component would help to ensure that low income customers with access to WCTA's facilities are not left behind. However, WCTA does not have facilities that cover all customers in the entire Staples and Wadena exchange service areas. Customers that may desire to subscribe to WCTA service may be required to pay excess construction charges.

Both federal and state law require an ETC designated by the commission to provide local service to all requesting customers within the carrier's service area on a nondiscriminatory basis, regardless of a customer's proximity to the carrier's facilities. To ensure compliance with this requirement, the Commission may require WCTA to report any inquiries for service where excess construction charges are being sought from the customer in the expanded service area. The report could be filed within 45 days of the quote being provided to the customer, contain the date that the service inquiry was made, the amount of excess construction charges quoted and the decision of the potential subscriber to formally request or decline service.

WCTA and similarly situated companies that seek ETC designation have opposed any reporting requirement when the customer either is provided a quote for excess construction charges or is otherwise denied service. The Department is bringing this forward as it believes ETC designations are being broadly obtained without companies having the intent to serve all customers in the designated service area on a non-discriminatory basis.

3. ETC designation may be more restrictive than the entire exchanges of Staples and Wadena

In previous similar filings by Garden Valley Telephone Company and Halstad Telephone Company, the companies objected to the Department's recommendation for reporting on instances where excess construction charges caused customers to decline requests for service. If a company advertises that it offers Lifeline service in a whole exchange, but in fact only has facilities in a small part of that exchange, customers are not receiving appropriate information upon which to base their decisions.

If a company does not wish to serve an entire exchange, the Commission may consider requiring that the company file for ETC status according to the census blocks in which they have the ability to serve requesting customers.

V. COMMISSION ALTERNATIVES

1. Grant ETC status for Lifeline purposes only in the expanded exchanges of Staples and Wadena for so long as WCTA complies with 47 U.S.C § 214(e)(1).
2. Grant ETC Status contingent upon agreement from WCTA that it shall file a written report with the Commission and the Department within 45 days of an inquiry for service for which excess construction charges are or would be assessed. The report shall contain the date that the service inquiry was made, the amount of excess construction charges quoted, and the decision of the potential subscriber to formally request or decline service.

3. Require WCTA to refile for ETC status in the census blocks in which the Company plans to actually offer service.
4. Deny ETC status in the expanded exchanges of Staples and Wadena.

VI. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission adopt Alternative 2 and grant ETC status for Lifeline purposes only in the expanded exchanges of Staples and Wadena for so long as WCTA complies with 47 U.S.C § 214(e)(1). WCTA shall file a written report with the Commission and the Department within 45 days of an inquiry for service for which excess construction charges are or would be assessed. The report shall contain the date that the service inquiry was made, the amount of excess construction charges quoted, and the decision of the potential subscriber to formally request or decline service.

In the alternative, the Department recommends that the Commission adopt Alternative 3 and require WCTA to refile for ETC status in the census blocks in which the Company plans to actually offer service.

/lt

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. P431/AM-17-835

Dated this 27th day of February 2018

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Thomas	Burns	tgburns@otcpas.com	OLSEN THIELEN & CO. LTD	2675 Long Lake Rd Saint Paul, MN 55113	Electronic Service	No	OFF_SL_17-835_AM-17-835
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_17-835_AM-17-835
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_17-835_AM-17-835
David	Denton	david.denton@state.mn.us	DPS ECN	445 Minnesota Street Suite 137 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_17-835_AM-17-835
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Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_17-835_AM-17-835