

Staff Briefing Papers

Meeting Date May 24, 2018 Agenda Item *2

Company West Central Telephone
Garden Valley Telephone Cooperative
Halstad Telephone Company
Paul Bunyan Telephone Cooperative

Docket No. **P431/AM-17-835**
P409/M-17-837
P530/M-17-838
P432/M-17-854

In the Matter of Petitions for Eligible Telecommunications Carrier (ETC) Designation in Minnesota

Issues

1. Should the Commission approve the requests for ETC designation in Minnesota for purposes of providing local services under the Lifeline program?
2. Should the Commission refer questions regarding service availability, excess construction costs, and reporting to be addressed in Docket P999/CI-17-509?

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Relevant Documents

Date

West Central Petition for ETC Designation

Nov. 30, 2017

Halstad Petition for ETC Designation

Dec. 1, 2017

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.



Relevant Documents

Date

Garden Valley Petition for ETC Designation	Dec. 1, 2017
Paul Bunyan Petition for ETC Designation	Dec. 6, 2017
Department Comments on Garden Valley Petition	Feb. 5, 2018
Department Comments on Halstad Petition	Feb. 7, 2018
Halstad Reply Comments Opposing Department Recommendations	Feb. 9, 2018
Department Revised Comments on Garden Valley Petition	Feb. 13, 2018
Department Comments on West Central Petition	Feb. 27, 2018
Department Comments on Paul Bunyan Petition	Mar. 19, 2018
Department Supplemental Comments	Mar. 22, 2018
Department Correction to Citation	May 11, 2018

I. Statement of the Issues

1. Should the Commission approve the requests for ETC designation in Minnesota for purposes of providing local services under the Lifeline program?
2. Should the Commission refer questions regarding service availability, excess construction costs, and reporting to be addressed in Docket P999/CI-17-509?

II. Background

A. Company Overview

West Central Telephone Assoc.

On November 30, 2017, West Central Telephone Association (WCTA) requested that the Minnesota Public Utilities Commission (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 and Wadena. The incumbent telephone company in these exchanges is Qwest Corporation dba CenturyLink QC.

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 its 911 plan (subsequently approved) and an interconnection agreement with Qwest (also subsequently approved). WCTA provides its competitive local exchange service as a part of WCTA and not as a separate entity.

Garden Valley Telephone

On December 1, 2017, Garden Valley Telephone Company (GVTC) requested that the Commission designate GVTC as an Eligible Telecommunications Carrier (ETC) “. . . for the limited purposes of providing local services under the Lifeline program.” GVTC Application, p.1. The application is for the exchanges of Thief River Falls and Mahnomen. The incumbent telephone company in these exchanges is CenturyLink QC.

GVTC is an incumbent telephone company (ILEC) serving exchanges in Northwestern Minnesota. On April 5, 2017, GVTC received authority to expand and provide competitive local exchange service in the exchanges of Thief River Falls and Mahnomen. The authority was

dependent upon the filing of its 911 plan (pending through Docket No. P 409/EP-17-896) and interconnection (met through Docket No. P409, 421/IC-17-788). GVTC provides its competitive local exchange service as a part of GVTC and not as a separate entity.

Halstad Telephone Company

On December 1, 2017, Halstad Telephone Company (Halstad) requested that the Commission designate Halstad as an Eligible Telecommunications Carrier (ETC) “. . . for the limited purposes of providing local services under the Lifeline program.” Halstad Application, p.1. The application is for the exchanges of Crookston and East Grand Forks. The incumbent telephone company in these exchanges is Qwest Corporation dba CenturyLink QC.

Halstad is an incumbent telephone company (ILEC) serving exchanges in Northwestern Minnesota. On August 4, 2016, Halstad received authority to expand and provide competitive local exchange service in the exchanges of Crookston and East Grand Forks. The authority was dependent upon the filing of its 911 plan (pending through Docket No. P530/EP-18-106) and the filing of updated tariffs (completed). Halstad provides its competitive local exchange service as a part of Halstad and not as a separate entity.

Paul Bunyan Rural Telephone Cooperative

On December 6, 2017, Paul Bunyan Rural Telephone Cooperative (PBC) requested that the Commission designate PBC as an Eligible Telecommunications Carrier (ETC) “. . . for the limited purposes of providing local services under the Lifeline program.” PBC has requested ETC designation in a large number of exchanges listed in Attachment 2, paragraph D and mapped in Exhibit 1 of the Company’s application. The incumbent telephone companies serving the exchanges where PBC is seeking ETC designation are:

Arrowhead Communications, Arvig Telephone Co. (TDS), Callaway Telephone, CenturyTel of MN dba CenturyLink, Citizens Telecommunications Company of MN, Eagle Valley Telephone Company, East Otter Tail Telephone Company, Embarq MN d/b/a CenturyLink, Felton Telephone Company, Loretel Systems, Inc., Midwest Telephone Company, Qwest Communications dba CenturyLink, and Twin Valley-Ulen Telephone Company.

PBC is an ILEC serving numerous exchanges in northwestern Minnesota. Between 1999 and 2017, PBC received authority to expand and provide competitive local exchange service in the same exchanges in which PBC is now seeking designation as an ETC. Where PBC provides

service as a competitive local exchange carrier, it does so as part of PBC and not as a separate affiliate.

B. Procedural Overview

These filings pertain to incumbent local exchange carriers (ILECs) petitioning for ETC status for the purpose of offering the federal Lifeline subsidy to qualifying low income customers in new areas.

The first task before the Commission is to determine if the company petitions qualify for ETC designation. This is addressed in Section III below.

Section IV below addresses the Department's newly articulated concerns over whether or not undue construction costs burdensome prospective service subscribers in the company's service area and if that burden is contrary to existing universal service requirements. After receiving time extensions for the filing of Comments, and a succession of filings developing its position, the Department concludes that its concerns do not require the addition of remedies specific to these petitions at this time. Instead the Department asks that the questions in Section IV below instead be incorporated by the Commission into an on-going ETC investigation in Docket P999/CI-17-509.

The Department further requested the consideration of these four filings together.

The Department notes that the process for ETC designation by the Commission is outlined in Minn. Rules pt. 7811.1400 and 7812.1400. These require the Commission to act within 180 days of the filing of the petition for ETC designation. The Department provides a one page overview of applicable federal law in each initial set of Comments, emphasizing service provided throughout the service area.

III. Staff Analysis of Petitions Compliance for ETC Designation

The Commission has routinely applied the following evaluation in its assessment of the adequacy of ETC petitions (e.g., see Docket Nos. 15-65; 15-691; and 15-433). Staff presents its analysis for the companies below, incorporating Department input where provided.

A. Do the companies meet the common carrier requirements for ETC designation?

In its initial Comments on each ETC petition (see Analysis section), the Department notes that each company has been operating as an ETC since all LECs were designated an ETC by Minnesota Rule 7811.1400. Each company's expansion "means that service will be offered in those areas in much the same manner as the ILEC service" and that each company "states that it offers last mile service via its own fiber where the fiber has been laid."

Staff believes that as ILECs each company is a common carrier as defined in 47 U.S.C. §153(11).

B. Do the companies offer the supported services required for ETC Designation?

Each company affirms in its petition that it already provides voice telephony enumerated in Minn. Rules Part 7812.0600 and 47 CFR § 54.101 (a). This includes: 1) voice grade access to the public switched network, 2) minutes of use for local service 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, and 4) toll limitation for qualifying low income consumers.

Each company's petition notes that it will:

... provide broadband and voice telephone over its fiber-optic facilities. [The company] is committed to provide service to all customers making a reasonable request for service. [The company] certifies that it will: (a) provide service on a timely basis to requesting customers within the Service Area where [its] network already passes the potential customer's premises; and (b) provide service within a reasonable period of time, if the potential customer is within the Service Area but not passed by [the company's] current network facilities, if service can be provided at reasonable cost by constructing network facilities.

Each company commits to provide Lifeline services as provided in its Petition Exhibit 2.

Staff believes that for purposes of these ETC petitions, each company offers the supported services required.

C. Do the companies meet other conditions to satisfy other ETC requirements?

Service Quality and Consumer Protection.

47 C.F.R. §54.202 (a)(3) requires the companies to demonstrate they will satisfy applicable consumer protection and service quality standards. The Companies affirm compliance with Minnesota Rule 7810 establishing minimum standards on operational matters. The companies each certify in its petition's Attachment 2 and in Exhibit 2 Tariff pages that its tariff has specific provisions outlining the following terms addressing consumer protection issues including:

- Deposit and guarantee requirements
- Customer Billing

- Appropriate handling of customer complaints and billing disputes
- Disconnection and notice requirements

The specific provisions in each company's tariff, as well as the Commission's service quality rules by which the companies are bound, will apply throughout the Service Area and assure a high level of service quality and consumer protection.

Staff believes that each company meets the service quality requirements applicable to its ETC designation for Lifeline.

Emergency Readiness

47 C.F.R. §54.202 (a)(2) requires that an applicant for ETC status "Demonstrate 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."

Each company states in Attachment 2 that its network will remain functional in emergency situations, notably:

Commercial power outage: The central office serving customers is equipped with generators and battery supply to provide service in the event of a commercial power outage.

Network failure: The interoffice facilities serving the Service Area are on a diverse routed fiber optic ring, which if cut will be automatically rerouted.

Each company also states also that it "complies with the Commission's Rules in Chapter 7810 establishing minimum standards on various operational matters, such as 7810.3900 (Emergency Operations); 7810.4900 (Adequacy of Service); and 7810.5300 (Dial Service Requirements)."

Each company's 911 Plan status as indicated in Department Comments is as follows:

Approved:	West Central Telephone
Pending (PUC)	Garden Valley Telephone Cooperative
Pending (PUC)	Halstad Telephone Company
Approved	Paul Bunyan Telephone Cooperative

Staff believes that that each company meets the emergency readiness requirements for ETC certification *upon approval of its 911 Plan*. Garden Valley Telephone Cooperative and Halstad Telephone Company should have ETC status approved upon condition of having its 911 Plan approved.

Advertising

In its Comments the Department notes that 47 U.S.C § 214(e)(1) requires the companies to “advertise the availability of such services and the charges therefor using media of general distribution.” §54.405 requires companies to “publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.”

In the Department’s analysis of each filing, it notes that:

“Advertising for [each company’s] Lifeline services in the expanded areas will follow the same format as its current Lifeline service. [The company’s] web page has a link to the Telephone Assistance Plan and a connection to the Public Utilities Commission website for a downloadable application form for customers. [The company] also plans to advertise at least annually, as well as sending brochures and a letter to the local Social Service offices.”

The Department does not note any inadequacy in the company’s advertising plans.

Staff believes that each company’s advertising plan is adequate.

Public Interest

47 C.F.R. §54.202 (b) requires a finding that granting the requested ETC designation is in the public interest. All of the company petitions assert their petition is in the public interest stating:

Designation ... as a Lifeline ETC in the Proposed Service Area is in the public interest, since it affords qualifying customers a choice of service providers while retaining the Lifeline benefit.

The companies support the claim of their petition being in the public interest by stating that they have superior facilities to many locations and plans to place fiber to the home going forward, offering technically superior networks. They further state their rates are affordable indicating they will provide Lifeline discounts to qualifying subscribers and that their rates for services are otherwise affordable as shown in comparison tables. The companies reaffirm their compliance to the Commission’s Rules pertaining to service quality and consumer protections

and note that they would receive no federal high cost USF support as a result of these petitions, only support for Lifeline.

The Department's assessment of the petitions overall public interest concludes in its Supplemental Comments filed on March 22, 2018, for all four dockets. In its opening paragraph of Analysis the Department states:

... [T]he Department agrees that there is no evidence to suggest that any of the companies would behave in any way contrary to the public interest. Indeed, the proposals to bring advanced facilities to the areas in question will provide choice to customers, and the Lifeline component would help to ensure that low income consumers are not left behind.

Staff believes that the granting of the requested ETC designation is in the public interest.

D. Do the proposed service areas conform to federal and state laws?

The proposed service areas are clearly listed in the petitions pending and illustrated in maps attached to each company's filing.

Staff believes that for purposes of these ETC petitions, and in accord with previous decisions granting ETC status by the Commission, each company's proposed service areas conform to federal and state laws.

E. Options and Recommendation for ETC Designation

The Department, in its Supplemental Comments at page 1 states that:

" ... in alignment with the recommendations for PBC, the Department recommends that the Commission designate West Central Telephone Association, Garden Valley Telephone Company, and Halstad Telephone Company as eligible telecommunications carriers in the exchanges listed in each of their petitions, for *so long as the companies comply with 47 U.S.C §214(e)(1)*. (Emphasis added.)

Staff notes that 47 U.S.C § 214(e)(1) defines an Eligible Telecommunications Carrier and the criteria against the State Commission is charged to make its evaluation in 47 U.S.C § 214(e)(2). It is unclear if the Department's use of "so long as" means "if" or "for as long as" or another interpretation. Staff does not find this embellishment to the usual recommending language to add clarity and recommends instead a direct finding by the Commission only contingent upon those still needing approval of their 911 Plans to do so.

Options and Recommendations for ETC Designation

1. Grant ETC status in the expanded exchanges listed in each company's application with the designation for GVTC and Halstad being contingent upon approval of each company's 911 Plan. **(Staff recommended)**
2. Grant ETC status in the expanded exchanges listed in PBC's application for so long as PBC complies with 47 U.S.C § 214(e)(1). **(Department recommended)**
3. Grant ETC status in the expanded exchanges listed in each companies application for so long as it complies with 47 U.S.C § 214(e)(1). Each company is to file an annual written report showing formal requests for service where the company provided the customer with an estimate of excess construction charges.
4. Require each company to refile for ETC status, with its petition specifying the census blocks in which the company plans to actually offer service.

IV. Department Concerns for Referral

For possible consideration in Docket No. 17-509: *In the Matter of a Commission Investigation into the Appropriate Notice and Outreach Requirements for Eligible Telecommunications Carriers Under 47 U.S.C. § 214(e)*.

A. Department and Company Comments on Halstad

In the Department's initial Comments on the petition by Halstad Telephone Company, concerns were raised over the granting of ETC status throughout a geographic area in which the company was not yet ready to serve all customers without imposing additional construction fees. In its original filing the Department had recommended:

To ensure that Halstad will make services available to all in its ETC area, ***the Department recommends that Halstad be required to report to 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 should 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. (Emphasis added. Department Comments at page 4.)

In Reply Comments on February 9, 2018 ***Halstad objected in part because this would be an undue burden*** stating:

Would-be customers, from outside planned project areas, approach Halstad frequently during construction season, perhaps 2-3 times per week. Special

construction charges can apply when facilities do not run down a road or street, or if a new pedestal must be placed. Fiber placement costs are approximately \$15K per mile in rural areas, and higher in town. Special construction charges are rarely employed, primarily because the costs can be prohibitive

B. Department Comments in Paul Bunyan

In the Department's March 19, 2018 filing in the Paul Bunyan proceeding (Docket No. 17-854), the Department extends its argument that the assignment of construction charges within its service area may not constitute compliance with universal service standards for those geographic areas stating at page 2:

The immediate issues of PBC's application for ETC designation are whether PBC meets federal requirements, and Minnesota statutes and rules. ***The instant issues in this proceeding are:***

1. Whether PBC 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 designation as an ETC to provide Lifeline in the multiple exchanges beyond its incumbent service area is in the public interest.
3. ***Whether the ETC designation is appropriate for the entirety of the exchanges listed, or if a more restrictive ETC designation is appropriate.*** (Emphasis added)

The Department explores state and federal law requiring that all potential customers be served within a service area (e.g., an exchange) in its March 19th filing on pages 2-4. Regarding state requirements, the Department states at page 3:

Subpart 4 of Minn. Rules 7811.0600 and 7812.0600 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.***" (Emphasis added.)

The Department then describes the core problem to be address as:

PBC customers may not be able to obtain Lifeline service, in parts of the 129 exchanges in which PBC seeks ETC status, ***without incurring excess construction charges.*** (Emphasis added.)

As a potential solution, the Department suggests at page 5 that:

“... the **Commission may require the company to file for ETC status according to the census blocks** in which they have the ability to serve requesting customers.” (Emphasis added.)

As the Department acknowledges at page 5:

“**However, tracking status by census block has not been undertaken** by the Commission to date. Further examination of **how this may work is best examined in a more inclusive and wider ranging docket** than this particular company filing. (Emphasis added.)

The Commission and Department both have experience in developing service area maps for telecommunications and electric service areas. MnGEO, the state of Minnesota’s Geospatial Information Office, is familiar with developing maps using census block data for other state agencies. A discussion on the possibility of a statewide online map showing the specific service areas for all Lifeline providers in the state would be consistent with the purpose of Docket 17-509, which is exploring the types of disclosures that Lifeline providers in Minnesota should make to consumers.

In addition, the Department also raised two broad issues regarding application for ETC status but notes they are best addressed in a manner applicable to all ETC rather than just these pending applications. While not explicitly recommended for consideration elsewhere, the two issues are:

1. What distinction, if any, should be made for a carrier seeking designation as an ETC to offer Lifeline service, and a carrier seeking designation to be an ETC to participate in the FCC’s High Cost fund, or other reasons?
2. Does designation of an ETC status imply the existence of competition in the affected area?

C. Department Comments in Supplemental Filing

On March 22, 2018 the Department filed Supplemental Comments modifying its earlier recommendations to those in V.B.1. below and conforming its final input for all 4 dockets addressed in this briefing paper. In its explanation at page 2, the Department states:

In its previous comments, the Department recommended that WCTA, GVTC, and Halstad file reports to the Commission and the Department showing instances where customers requested service from the petitioning companies, but subsequently declined due to the imposition of excess constructions charges. While the Department [believes] it is important to understand the extent of unmet service demand, especially in rural Minnesota, the issue of reporting may be best addressed in a larger proceeding where the Commission can apply its decision to all ETCs.

An examination of the requirements that should apply to all ETCs could occur in Docket No. P999/CI-17-509, *In the Matter of a Commission Investigation into the Appropriate Notice and Outreach Requirements for Eligible Telecommunications Carriers under 47 U.S.C. § 214(e)*. Thus far, the 17-509 Docket has been primarily focused on wireless ETC requirements.

Further, at pages 2 and 3 the Department clarifies the need for the recommended question:

Should the Commission consider a rule change to 7811.0600, Subp 4 and 7812.0600 Subp.4, to require ETCs to serve customers either through facilities plus excess construction charges, or through facilities plus resold services?

The Department clarifies at page 3 and in its subsequent citation correction that:

Currently, Minnesota Rules require that all customers in an ETC's serving area be provided service, but allow for excess construction charges to be applied, while 47 CFR 54.201(d)(1) require provider to offer services either through its own facilities or a combination of its own facilities and resale of another carrier's services.

D. Options and Recommendations for Department's Requested Referral

Staff believes that the issues raised by the Department warrant a collaborative discussion among stakeholders that could be accomplished by their inclusion in Docket No. 17-509. Through these proceedings' timeline legitimate concerns appear to have been raised by both the Department and companies.

The final questions below in V.B.1 proposed by the Department provide a sound framework within which to engage these issues while not being too constraining of the evolving discussion in a proceeding relevant to ETCs beyond these presently being considered.

Furthermore, Staff believes that if the Department or Commission were to explore the concept of a Lifeline service area map, this would also enable Minnesota to evaluate the consequences of FCC decisions now relying on census blocks, and for Minnesota to engage in those proceedings affecting Minnesota customers. This would be a benefit in addition to addressing the issues raised in these immediate proceedings.

V. Decision Options and Recommendations Summary

A. Options and Recommendations for ETC Designation

1. Grant ETC status in the expanded exchanges listed in each company's application with the designation for GVTC and Halstad being contingent upon approval of each company's 911 Plan. **(Staff recommended)**
2. Grant ETC status in the expanded exchanges listed in PBC's application for so long as PBC complies with 47 U.S.C § 214(e)(1).
(Department recommended)
3. Grant ETC status in the expanded exchanges listed in in each companies application for so long as it complies with 47 U.S.C § 214(e)(1). Each company is to file an annual written report showing formal requests for service where the company provided the customer with an estimate of excess construction charges.
4. Require each company to refile for ETC status, with its petition specifying the census blocks in which the company plans to actually offer service.

B. Options and Recommendations for Referral of Additional Questions

1. Refer the following questions to P999/CI-17-509:
 - What information should customers receive about the availability of Lifeline if Lifeline is not provided throughout the entire exchange by the ETC?
 - How granular should information be about where a company provides Lifeline if the proposed ETC does not have facilities in the entire exchange?
 - Should the Commission be informed about customers who requested service but subsequently declined due to the cost of excess constructions charges?
 - Should the Commission consider a rule change to 7811.0600, Subp 4 and 7812.0600 Subp.4, to require ETCs to serve customers either through facilities plus excess construction charges, or through facilities plus resold services?
 - If the Commission consider a change to Minnesota rules so they are consistent with 47 CFR 54.201(d)(1) then under what terms and conditions may the ETC impose excess construction charges?

(Department and Staff recommend)

2. Take no action regarding these questions recommended for consideration elsewhere.
3. Other options as the Commissions deems appropriate.

Staff recommends adoption of Options A.1 and B.1.