

STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of a Petition of
Lake County Minnesota for Designation as an
Eligible Telecommunications Carrier

Docket M-15-65

**COMMENTS OF
CITIZENS TELECOMMUNICATIONS COMPANY OF MINNESOTA, LLC**

On January 29, 2015, Lake County Minnesota d/b/a Lake Connections (“Lake County”) filed a petition asking the Minnesota Public Utilities Commission (“Commission”) to issue an order designating Lake County as an eligible telecommunications carrier (“ETC”). The Commission’s rule covering the process for ETC designation in this case is 7812.1400.

Citizens Telecommunications Company of Minnesota, LLC (“CTC-MN”) is the incumbent local exchange carrier (“ILEC”) in much of the area for which Lake County is seeking ETC designation, as the petition notes. In accordance with Rule 7812.1400, Subpart 8, CTC-MN submits the follow comments regarding Lake County’s petition¹.

The petition describes an arrangement between Lake County (the potential ETC) and Lake Communications (an independent entity, unaffiliated with Lake County)² through which the two entities propose to provide basic service to customers. This is a unique approach, and the petition does not expand on how this arrangement is structured or how it is proposed to operate. There are many aspects of the petition that raise questions or are incorrect. CTC-MN submits that the

¹ Lake County’s petition references Rule 7811.1400 in its discussion of intervention, comments, and challenge matters. However, Rule 7812.1400 is actually the relevant rule, since the area in question is served by incumbent local exchange carriers with more than 50,000 subscribers in the state. On February 17, 2015, the Commission extended the comment period to February 23, 2015.

² Docket P-6869/NA-11-581, Application of Lake Communications for a Certificate of Authority, page 2.

numerous unanswered questions would warrant further Commission investigation through a contested case procedure to fully understand the proposal being made by Lake County.

Service Area

The petition states that Lake County seeks designation as an ETC in the following area:

The Minnesota exchanges of Duluth, and Silver Bay where Qwest Corporation dba CenturyLink (CenturyLink) is the incumbent local exchange carrier; and Aurora, Babbitt, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors Minnesota exchanges where Citizens Telecommunications Company of Minnesota, LLC (“Citizens”) is the incumbent local exchange carrier. Unserved areas are also included in the Service Area.³

The petition also states that a map of the Proposed Service Area is attached as Exhibit 1 to the petition.⁴ Yet an inspection of that map shows a proposed service area that does not comport to this description. The CTC-MN exchange of Ely is not reflected on the map as part of the service area. And the map appears to show an area north of the Two Harbors exchange where Lake County intends to provide service. This area would seem to be within the CTC-MN exchange of Brimson, but there is no mention of that exchange in the text of the petition or on the Exhibit 1 map.

Lake County includes “Selected Lake Communications Tariff Sections” as Exhibit 2 of its petition. Section 6 of those tariff pages identifies the exchanges where Lake Communications provides basic service, and the prices for service in those exchanges⁵. Two exchanges for which Lake County seeks ETC designation (Aurora and Babbitt) are not included in the service area of Lake Communications. Clarification is needed as to how Lake County will provide service in those exchanges, if Lake Communications is not providing service there.

The petition also includes waiver requests, one of which addresses the ETC service area. The waiver request notes that the Commission rules require an ETC to provide service throughout an exchange. Lake County requests that, “...the PUC waive its requirement to the extent that the census blocks comprising the Lake County project do correlate to exchange boundaries as

³ Lake County petition, page 2.

⁴ Lake County petition, page 2.

⁵ Lake County petition, Exhibit 2, page 23.

contemplated in the Commission's rules.”⁶ Presumably, Lake County intended to seek relief in instances where the census blocks comprising the project *do not* correlate to exchange boundaries. With the intent, apparently, of limiting their ETC service area to just the identified census blocks within the various exchanges. However, it is not clear why it is not possible for Lake County to serve the entire exchange areas. Lake County is building its fiber network using approximately \$70M of federal funding, received through the federal Broadband Initiatives Program. That project was described by the federal agency granting the funding as, “The Lake County Fiber Network will provide fiber to the premise connectivity to all homes and businesses in Lake County and eastern Saint Louis County, MN.”⁷ On its website, Lake County described the project this way, “Lake County government applied for and received federal funding to make broadband available to all residents.”⁸ Also on their website, Lake County shows a map of their planned service territory, which is attached as Exhibit 1.⁹ That map seems to show that the planned service territory covers the entirety of CTC-MN's exchanges at issue here. Thus, the constriction of ETC service territory that Lake County seeks in the waiver does not seem to be necessary, since it will be able (and apparently intends) to serve entire exchanges.

Rural Carrier Status

The petition states that, “Lake County believes that neither CenturyLink nor Citizens is a rural carrier as defined under 47 USC §153(44).”¹⁰ On the contrary, CTC-MN is a rural carrier under that definition.

Regulatory Authority

The petition notes that the service to be offered is an interconnected voice over internet protocol service, and states that, “The Courts have determined that Interconnected VoIP Services are information services pursuant [sic] and are not subject to state regulation.”¹¹ This seems to beg the question of whether the Commission has jurisdiction to designate Lake County as an ETC if, as Lake County asserts, VoIP services are not subject to state regulation.

⁶ Lake County petition, page 6.

⁷ United States Department of Agriculture, *Rural Utilities Service Broadband Initiatives Program Round Two Application Directory Last Mile and Middle Mile Infrastructure Applications*, issued June 2, 2010, page 390.

⁸ www.lakeconnections.com, accessed on February 5, 2015.

⁹ www.lakeconnections.com, accessed on February 5, 2015.

¹⁰ Lake County petition, page 2.

¹¹ Lake County petition, page 2.

Relationship between Lake County and Lake Communications

The petition describes some type of cooperative effort between Lake County and Lake Communications to provide the basic services that are the focus of ETC designation. However, the petition is silent on the type of arrangement between Lake County and Lake Communications, and inconsistent in its description of what part each intends to play in their cooperative efforts. For example, the petition states that:

“Lake Communications provides Interconnected VoIP Service as defined by the FCC rule Title 47 CFR Section 9.3, over Lake County’s fiber optic network.”¹²

“Lake County will provide Interconnected VoIP Services throughout the Service Area over its newly-installed fiber-optic facilities, through Lake Communications.”¹³

“Lake County currently advertises its services through several different channels of general distribution, including newspaper, and direct mail.”¹⁴

“Lake Communications network will remain functional in emergency situations”¹⁵

The petition seems to portray Lake County as the driving force in the arrangement, capable of directing and controlling Lake Communications’ actions. But the petition does not make clear how Lake County will ensure its ability to direct Lake Communications going forward. The nature of this cooperative effort would be important information for the Commission to have, as it evaluates the petition. Many aspects of this arrangement between the two entities are left unanswered, such as: which entity is responsible for operation and maintenance of plant; what is the term of the arrangement; what happens if either party decides to terminate the arrangement.

Rule 7812.0700, subpart 4 states that, “An LSP [local service provider] is directly responsible to its customers for the quality of service provided to those customers. Nothing in this subpart may be interpreted or applied to impact the allocation of liability between two or more telecommunications service providers in connection with quality of service issues.” The petition is unclear as exactly which entity (Lake County or Lake Communications) is the single entity that will be responsible to customers for the quality of service.

The nature of this arrangement seems to require some sort of “co-ETC” status for both entities. In the petition, Lake County makes a number of assertions and commitments on behalf

¹² Lake County petition, page 2.

¹³ Lake County petition, page 3.

¹⁴ Lake County petition, page 3.

¹⁵ Lake County petition, page 4.

of Lake Communications; however, Lake Communications is not a party to this petition. Without Lake Communications' participation in the filing, it is unclear how those assertions and commitments can bind Lake Communications.

Compliance with statutory requirements for ETCs

There are federal statutory requirements regarding the designation of ETCs by state authorities. Specifically, the federal statutes state:

"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."¹⁶

The paragraph (1) referenced here states that an eligible telecommunications carrier 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."¹⁷

Thus, under the federal statute, a carrier designated as an ETC must meet three requirements: 1) be a common carrier, 2) offer services either using its own facilities or a combination of its own facilities and resale of another carrier's services, and 3) advertise the services it offers. It does not appear that the arrangement that Lake County describes in its petition meets these requirements.

Lake County is not a common carrier, failing the first requirement. It does not appear that Lake County will be providing services to customers, as Lake Communications will be taking this role. Thus, Lake County would fail this second requirement.

Lake Communications will not offer service using its own facilities or a combination of its own facilities and resale of another carrier's services. Thus Lake Communications fails the second requirement. Lake County asserts that it will be doing advertising of the services, rather than Lake Communications. Therefore, Lake Communications would fail the third requirement.

¹⁶ 47 U.S. Code § 214 (e) (2)

¹⁷ 47 U.S. Code § 214 (e) (1)

When compared against the federal statutory requirement for ETCs, neither Lake County nor Lake Communications measure up. While the Commission has discretion regarding designation of carriers as ETCs that meet the federal requirements, it may not designate a carrier as an ETC that does not meet the threshold federal requirements.

Status of network construction

The petition requests that an ETC designation be effective immediately upon the Commission's issuance of an order granting the designation, and states that, "The universal service offering will be made available throughout the Service Area upon its designation as an ETC."¹⁸ However, it does not appear that Lake County will be able to provide service throughout its proposed ETC service area at that time, as it is still in the process of building its network. The petition does not provide the status of the construction. It is not clear how much of its requested ETC service area is currently served by Lake County, or when it intends to fully deploy its network.

In a January 2015 filing¹⁹, Lake Communications reported that it served less than 100 customers at the end of 2014. Therefore, it appears that Lake County is currently capable of serving only a small fraction of the customers in its proposed ETC service area. There is no discussion regarding how it will address customers within the ETC service area where Lake County does not yet have facilities. Further information regarding how Lake County would fulfill its ETC responsibilities in those areas is necessary.

Emergency situations

Regarding functionality of the service in emergencies, the VoIP service being provided by Lake County differs from traditional wireline service. In general, traditional wireline service will remain operational in spite of loss of commercial power at either the customer premises or at the company's central office. The petition addresses the matter of commercial power loss at the company's central office, but is silent regarding the impacts of loss of commercial power at the customer premises. Some further description of the impact of loss of commercial power on customer services would be important.

¹⁸ Lake County Petition, page 3.

¹⁹ Lake Communications filing in Docket P999/PR-14-1, filed 1/30/15.

The petition asserts that Lake Communications complies with the Commission's rules in Chapter 7810, and specifically rules such as 7810.3900 (Emergency Operations); 7810.4900 (Adequacy of Service); and 7810.5300 (Dial Service Requirements)²⁰. These particular rules cited (and Chapter 7810, broadly) address the operation of a company's telephone plant and facilities. However, as the petition describes it, Lake County will own and presumably operate the network facilities, rather than Lake Communications. Further explanation would be useful to understand which party will be responsible for network operation, and how Lake Communications will be able to ensure that the underlying facilities of Lake County will comply with Chapter 7810 Rules.

Eligibility to intervene

CTC-MN believes that it is entitled to participate in this proceeding as a full party, in light of its status as a regulated local exchange carrier, because the company is mentioned in the petition, and because the requested ETC service area of Lake County overlaps that of CTC-Minnesota. Nevertheless, to address any question regarding its status, CTC-MN requests to be allowed to intervene as a party in this proceeding, if it does not have that status.

Conclusion

CTC-MN believes that Lake County's petition for ETC designation raises many questions and concerns that are not adequately addressed in the petition. CTC-MN suggests that further development of these matters is needed, and that the most appropriate venue for the development would be a contested case proceeding.

Dated March 16, 2015

Respectfully submitted,

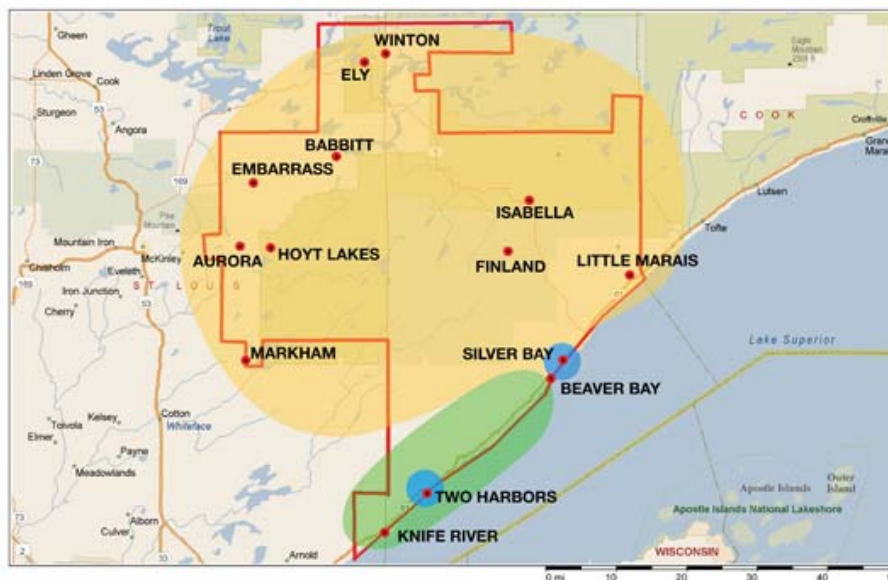
CITIZENS TELECOMMUNICATIONS COMPANY OF MINNESOTA, LLC.

/s/ Scott Bohler

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²⁰ Lake County petition, page 4.

LAKE COUNTY FIBER NETWORK



PROJECT OVERVIEW

Can your Internet connection keep up with your life?

In June 2012, Lake Connections, the fiber-optic broadband company owned by Lake County, began constructing a network to offer residents of Lake and eastern St. Louis Counties the same High-Speed Internet access that city residents enjoy.

The construction project will take three years. It is divided into three phases, explained below. Funding comes mainly from a large federal grant and a low-interest loan through the American Recovery and Reinvestment Act.

Progress has been rapid, with over 200 miles of fiber installed in 2013 alone. 2014 promises to be busy, too, with hundreds more miles of fiber slated to be installed and High-Speed Internet, Digital TV, and Voice services becoming available to residents in Phase One and Phase Two. Broadband services will be made available to residents and businesses in each phase as construction is completed.

Phases of the Lake Connections Broadband Network Construction Project

Phase One

Communities: Two Harbors, Silver Bay

Miles of fiber: 75

Estimated completion: First half of 2014

Phase Two

Communities: Duluth Township, Knife River, Silver Creek Township, Beaver Bay Township
Miles of fiber: 400

Estimated completion: July 2014

Phase Three

Communities: Ely, Aurora, Babbitt, Hoyt Lakes, Basset Township, Colvin Township, Crystal Bay Township, Embarrass Township, Fall Lake Township, Morse Township, Stony River Township, Waasa Township, White Township, several unorganized townships
Miles of fiber: 900

Estimated completion: July 2015



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