

June 2, 2015

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

**RE: Petition of Paul Bunyan Rural Telephone Cooperative for Designation as an Eligible
Telecommunications Carrier**
Docket No. P423/M-15-433

Dear Mr. Wolf:

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

The petition was filed on May 8, 2015 by:

Thomas G. Burns
Olsen Thielen & Co., Ltd.
2675 Long Lake Road
Saint Paul, MN 55113

The Department recommends approval of the petition with conditions, and is available to
answer any questions the Commission may have.

Sincerely,

/s/ KATHERINE DOHERTY
Rates Analyst

KD/lt
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE

DOCKET No. P423/M-15-433

I. PROCEDURAL BACKGROUND

On May 8, 2015, Paul Bunyan Rural Telephone Cooperative (PBC) filed a petition with the Minnesota Public Utilities Commission (Commission) seeking designation as an Eligible Telecommunications Carrier (ETC) in Minnesota for the purpose of qualifying for the receipt of Federal Connect America Funds awarded, on a provisional basis, in conjunction with the Federal Communications Commission's Rural Broadband Experiments.

II. RURAL BROADBAND EXPERIMENTS

On July 14, 2014, the FCC issued a Report and Order and Further Notice of Proposed Rulemaking¹ in which it announced its intent to use Connect America funding, on a limited scale, for rural broadband experiments (RBEs) that would deploy "new, robust, broadband to consumers."² To that end, the FCC adopted a ten year \$100 million annual budget and established a methodology for selecting projects among formal applications from carriers that would deploy broadband and voice services in selected census blocks in price cap areas.

On March 4, 2015, the FCC issued a public notice, announcing that PBC was included among the provisionally selected bidders and would be eligible, subject to a post selection review process, to receive \$1,962,000.00 for use in 134 Minnesota census blocks.

While the FCC did not require that entities be designated as ETCs at the time they initially submitted their proposals for funding, it did require that such entities obtain ETC designation within 90 days of the public notice announcing the winning bidders.

¹ In the Matter of the Connect America Fund, WC Docket 10-90, Report and Order and Further Notice of Proposed Rulemaking, July 14, 2014 (*Report and Order*).

² *Id.*, para. 1.

III. APPLICABLE LAW

Federal Law

47 U.S.C Section 254(e) provides that “only an eligible telecommunications carrier designated under 214(e) shall be eligible to receive specific Federal universal support.”

47 U.S.C. Section 214(e) (1) states:

A common carrier designated as 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(e) 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 supported services and the charges therefore using media of general distribution.

FCC Rule 47 C.F.R. § 54.101 (a) defines the supported services that must be offered and advertised eligible telecommunications carriers, and states:

(a) *Services designated for support.* Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

47 C.F.R. §54.201 (b) states that [a] state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.

FCC Rule 47 C.F.R. §54.202 sets forth specific requirements for designation of eligible telecommunications carriers,³ and states, in relevant part:

- a) In order to be designated an eligible telecommunications carrier under section 214(e) (6), any common carrier in its application must:
 - 1) (i) Certify that it will comply with the service requirements applicable to the support that it receives.
 - (ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements. Except, a common carrier seeking designation as an eligible telecommunications carrier in order to provide supported services only under subpart E of this part does not need to submit such a five-year plan.
 - (2) 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.
 - (3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
 - (4) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.
 - (5) For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, submit information describing the terms and conditions of any voice telephony service plans offered to Lifeline subscribers, including details on the number of minutes

³ The FCC did not establish additional rules to govern the ETC designation process solely for the purpose of designating entities to receive Rural Broadband Experiment Funding

provided as part of the plan, additional charges, if any, for toll calls, and rates for each such plan. To the extent the eligible telecommunications carrier offers plans to Lifeline subscribers that are generally available to the public, it may provide summary information regarding such plans, such as a link to a public Web site outlining the terms and conditions of such plans.

(b) *Public interest standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e) (6), the Commission determines that such designation is in the public interest.

(c) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected tribal government and tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send any public notice seeking comment on any petition for designation as an eligible telecommunications carrier on Tribal lands, at the time it is released, to the affected tribal government and tribal regulatory authority, as applicable, by the most expeditious means available.

47 §54.207 (a) defines “service area” as a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms.

47 §54.207 (b) states that in the case of a service area *serviced 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 instituted under section 410(c) of the Act, establish a different definition of service area for such company (emphasis added.)

State Law

Minnesota Rules 7812.1400 and 7811.1400 address Commission designation of incumbent local exchange carriers and competitive local exchange carriers as ETCs.

Minnesota Rule 7812.1400, subpart 2, states as follows:

Designation of CLECs upon petition. Upon request and consistent with the public interest, convenience, and necessity, the commission may designate a competitive local

exchange carrier (CLEC) as an ETC and eligible to receive universal support from the federal universal support mechanisms under section 254 of the federal act and any state universal service fund established under Minnesota Statutes, section 237.16, subdivision 9, if the CLEC qualifies as an ETC under 7812.0100, subpart 15. Before designating an additional eligible telecommunications carrier, the commission shall find that the designation is in the public interest.

Minnesota Rule 7812.1400, subp. 3 provides for Commission determination of the applicable universal service area.

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 commission shall determine whether the LEC serving the area for which the CLEC seeks designation to receive universal service support is a rural telephone company if the competitive local exchange carrier's petition or another party's initial comments under subpart 8 assert that the LEC is a rural telephone company. If the applicable LEC has 50,000 or more subscribers and is not found by the commission to be a rural telephone company, the commission shall designate the local exchange carrier's service area as the universal service area unless the commission finds that a smaller geographic unit would be more appropriate, based on consideration of the relevant high-cost areas designated by the FCC and the public interest.

IV. STATEMENT OF ISSUES

- Whether PBC has met the applicable requirements for ETC designation.
- Whether designation of PBC as an ETC is in the public interest.

V. ANALYSIS

The Commission's Authority to Designate Eligible Telecommunications Carriers

The Minnesota Public Utilities Commission (Commission) has the authority to designate ETCs under Minnesota Rules 7811.1400 and 7812.1400, 47 U.S.C. §214(e), and 47 C.F.R. §54.201.

While Rules 7811.1400 and 7812.1400 are applicable to the designation of competitive local exchange carriers and incumbent local exchange carriers as ETCs, they do not preclude the Commission from designating an applicant other than a CLEC or an ILECs as an ETC, provided that the applicant meets the requirements enumerated in FCC Rules 47 C.F.R. §54.201 and 202, and the Commission finds that such designation is in the public interest. 47 C.F.R. §54.201(d) states that “A state commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.”

PBC's Requested Service Area

PBC requests ETC designation in specific census blocks in the exchanges of Park Rapids and Grand Rapids for which the FCC has granted funding and is certified to provide facilities based and local exchange service within those exchanges. PBC has included a map illustrating the area throughout which it intends to provide service (see Exhibit 1B, attached to PBC's petition).

Qwest is the incumbent local exchange carrier serving the area in which PBC seeks ETC designation and is not a rural telephone company. Minn. Stat. 7812.1400 provides that “the commission shall designate the local exchange carrier's service area as the universal service area unless the commission finds that a smaller geographic unit would be more appropriate, based on consideration of the relevant high-cost areas designated by the FCC and the public interest.”

In defining the census blocks in which PBC will receive Connect America Funds, the FCC has already established the specific area in which PBC will receive funding pursuant to the Rural Broadband Experiments, and throughout which PBC will be obligated to provide voice and broadband service to consumers. The Department recommends that the Commission define PBC service area as it requests.

PBC is a Common Carrier

The Commission granted ETC status to all Minnesota incumbent local exchange carriers (ILECs), including Paul Bunyan Rural Telephone Cooperative (Paul Bunyan) throughout its ILEC serving area, in Docket P999/M-97-1270 on December 23, 1997. Since that time, Paul Bunyan has been authorized to expand its service area to offer local exchange service as a competitive local exchange carrier (CLEC) doing business as Paul Bunyan Communications (PBC), in 52 additional Minnesota exchanges. The ILECs in whose service areas PBC operates include Qwest Corporation dba CenturyLink (Qwest), CenturyTel of Minnesota dba CenturyLink (CenturyTel), and Citizens Telecommunications Company of Minnesota (Citizens). The specific exchanges are listed in Attachment 2, pages 2- 3 of PBC's petition. PBC has not yet received ETC certification in the exchanges in which it operates as a CLEC.

As a CLEC, PBC is common carrier as defined in 47 U.S.C. §153(11).⁴

PBC will offer Voice Telephony Using its Own Facilities Throughout its Designated Service Area.

PBC commits to offer voice telephony,⁵ which 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, throughout its designated service area.

PBC commits to “provide broadband and voice telephone over its newly-installed fiber-optic facilities ...to all customers making a reasonable request for service. PBC’s residential local rate of \$15.96 compares favorably with that of Qwest in whose territory PBC proposes to operate and can be considered affordable.⁶ PBC states “it presently has fiber to the home in [its requested] service area and plans to place fiber to the home going forward, offering a technically superior network...”⁷

PBC’s residential local rate of \$15.96 also compares favorably with that of Qwest, in whose territory PBC proposes to operate, and can be considered affordable.⁸

PBC certifies that it will: (a) provide service on a timely basis to requesting customers within the Service Area where PBC’s 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 PBC’s current network facilities, if service can be provided at reasonable cost by constructing network facilities.”⁹

⁴ The term “common carrier” or “carrier” means any person engaged as a common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign radio transmission of energy, except where reference is made to common carriers not subject to this chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be deemed a common carrier.

⁵ As a CLEC, PBC already provides the basic services enumerated in Minn. Rules Part 7812.0600 including single party voice-grade service and touch-tone capability, 911 or enhanced 911 access, 1 + intraLATA and interLATA presubscription and code-specific equal access to interexchange carriers subscribing to its switched access service, access to directory assistance, directory listings, and operator service, toll and information service-blocking capability without recurring monthly charges, one white pages directory per year for each local calling area, a white pages and directory assistance listing, or, upon customer request, a private listing that allows the customer to have an unlisted or unpublished telephone number, call-tracing capability according to chapter 7813, blocking capability, and telecommunications relay service access.

⁶ The Commission has not defined “affordable” in previous dockets designating ETCs, but has considered affordability on a case by case basis. The Commission has generally considered a residential rate affordable, for the purpose of ETC status, when it falls within the range of the residential local exchange rates provided by ILECs in whose territory the ETC proposes to operate.

⁷ PBC Petition, Attachment 2, page 5.

⁸ The Commission has not defined “affordable” in previous dockets designating ETCs, but has considered affordability on a case by case basis. The Commission has generally considered a residential rate affordable, for the purpose of ETC status, when it falls within the range of the residential local exchange rates provided by ILECs in whose territory the ETC proposes to operate.

⁹ PBC Petition, Attachment 2, page 3.

5 Year Service Improvement Plan

PBC has requested a waiver of the requirement that it submit a five-year service improvement plan.

In the CAF-ICC Order, the FCC eliminated the identical support rule that provided for competitive ETCs to receive per line high cost support to the extent that the incumbent in whose area the competitive ETC serves receives high cost support. Further, Qwest does not receive legacy high cost support.

Recipients of Rural Broadband Experiment funds will receive support in 120 equal monthly disbursements over a ten year term. The FCC requires that recipients meet interim build out requirements consistent with the build out requirements that the FCC has adopted for recipients of Connect America Phase II funding. The FCC has found it unnecessary to require that Rural Broadband Experiment recipients file annual service improvement plans.¹⁰

The Department does not believe that a waiver is necessary in light of the elimination of the identical support rule, the fact that PBC will not be eligible for the receipt of legacy high cost funding, and the FCC's determination with respect to the Rural Broadband Experiments. To the extent a waiver is required; the Department recommends that it be granted.

PBC's Willingness and Ability to Comply with the Applicable Service Requirements

As a CLEC, PBC is subject to the service quality rules contained in Minn. Rules Part 7810, the requirements of 7812.2210, and the terms of its local exchange tariff with respect to the voice service it provides.

With respect to requirements related to technical and financial capability applicable to recipients of Rural Broadband Experiments funding, the FCC has stated that "the Bureau (itself) will determine whether each selected applicant has demonstrated that it has the technical and financial qualifications to successfully complete the proposed project within the required timeframes and is in compliance with all statutory and regulatory requirements for the universal service support that it receives, prior to disbursing funds.

PBC will be subject to the annual reporting requirements of 47 C.F.R. §54.313 to the extent applicable to recipients of Rural Broadband Experiment universal service funds.

¹⁰ In the Matter of Connect America Fund WC Docket No. 10-90 and ETC Annual Reports and Certifications, WC Docket No. 14-58, Report and Order and Further Notice of Proposed Rulemaking, July 14, 2014, paras. 74 and 77.

PBC's Ability to Remain Functional in Emergency Situations

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.

PBC states that PBC's network will remain functional in emergency situations, notably:

Commercial power outage: The central office serving PBC's customers is equipped with electrical generators and battery power 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.¹¹

PBC 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)."¹²

PBC's Intent to Advertise the Supported Services throughout its Requested Service Area

PBC notes in its petition that:

PBC currently advertises its services through several different channels of general distribution, including newspaper, and direct mail. PBC will advertise the availability of its universal service offering throughout the Service Area through these same advertising channels.¹³

PBC also states that the availability of the offering will be listed continuously on PBC's website, that PBC will publish the availability of the offering at least annually in the local newspaper, and will be posted at PBC's offices in Bemidji.¹⁴

The Department recommends that the Commission incorporate a condition in its order requiring, as it has for other ETC applicants, that PBC provide a formal advertising plan, listing the specific media and means through which it intends to advertise the availability of voice telephony and Lifeline and a proposed schedule or anticipated frequency of such

¹¹ Petition, Attachment 2, page 4.

¹² *Id.*

¹³ *Id.*, page 3.

¹⁴ *Id.*

advertising within 30 days of the Commission order approving PBC's petition. PBC should also be required to post Lifeline terms and conditions, as well as the terms and conditions applicable to its Voice Telephony service on its website.

Public Interest

The Commission has found, in its consideration of past ETC applications, that, in general, the designation of qualified competitive ETCs is in the public interest and comports with Minnesota's telecommunications goals of supporting universal service, maintaining just and reasonable rates, promoting customer choice, encouraging fair and reasonable competition for telephone service in a competitively neutral manner, and maintaining or improving quality of service.

In addition, with respect to the rural broadband experiments, the FCC has imposed specific public interest obligations on successful applicants that if not fulfilled can result in revocation of support, including build-out requirements with deadlines and certification requirements, annual reporting and certification requirements under 47 C.F.R. 54.313 and 54.314, requirements to meet FCC latency standards, record retention requirements, and compliance reviews and investigations.

VI. COMMISSION ALTERNATIVES

A. 5-year Service Improvement Plan

1. Grant a waiver of the requirement that ETCs file a five year service improvement plan.
2. Require that PBC file a five-year service improvement plan prior to ETC designation.
3. Do not require that PBC file a five year service improvement plan and find that a waiver of the requirement is not necessary.

B. ETC designation

1. Find that PBC has made a credible showing of its capability and intent to provide and advertise an affordable, quality "voice telephony" service, including Lifeline, throughout its proposed service area, and that such designation is in the public interest. Grant PBC's petition for ETC status.
2. Find that PBC has not made a credible showing of its capability and intent to provide and advertise an affordable, quality "voice telephony" service, including Lifeline, throughout its proposed service area, or that its designation is not in the public interest. Deny PBC's petition for ETC status.
3. Find that PBC has made a credible showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering, throughout its proposed service area, and that its designation for the provision of Lifeline service is in the public

interest subject to conditions. Approve PBC's petition for ETC designation, conditioned upon some or all of the following:

- a) Within 30 days of the Commission's Order conditionally approving PBC's petition, PBC must submit a formal advertising and outreach plan listing the specific local and community newspapers and commercial broadcast stations in Minnesota through which it intends to advertise the availability of voice telephony, including Lifeline service, and a proposed schedule or anticipated frequency of such advertising.
- b) Require PBC to notify the Commission and the Department, in writing, immediately upon any change to its voice telephony offering terms, conditions, or rates.
- c) Require PBC to notify the Department and the Commission if it is unable to serve a Lifeline qualified customer within its service area within ten days of making the determination.
- d) Other conditions of the Commission's choosing.

VII. DEPARTMENT RECOMMENDATION

The Department recommends alternatives A3 and B3, conditioned upon PBC's satisfying requirements (a) through (c).

/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. P423/M-15-433

Dated this 2nd day of June 2015

/s/Sharon Ferguson

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