

**Minnesota Public Utilities Commission**  
*Staff Briefing Papers*

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Meeting Date: 07/30/2015 ..... \*Agenda Item # 1

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Company:           **Paul Bunyan Rural Telephone Company**

Docket No.       **P423/M-15-433**

**In the matter of a Petition of Paul Bunyan Rural Telephone Cooperative for Designation as an Eligible Telecommunications Carrier.**

**Issue:** Should the Commission approve Paul Bunyan Telephone Cooperative’s Petition for ETC designation in Minnesota for the purpose of qualifying for receipt of federal Connect America Funds as part of the FCC’s Rural Broadband Experiments?

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**Relevant Documents**

Paul Bunyan Petition for ETC Designation ..... May 8, 2015  
Correction of Error in Initial Filing ..... May 11, 2015  
Department Comments ..... June 2, 2015  
Paul Bunyan Reply Comments ..... June 15, 2015

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## I. STATEMENT OF THE ISSEUES

Should the Commission approve Paul Bunyan Telephone Cooperative's Petition for ETC designation in Minnesota for the purpose of qualifying for receipt of federal Connect America Funds as part of the FCC's Rural Broadband Experiments?

## II. BACKGROUND

This petition is for Eligible Telecommunications Carrier (ETC) designation in Minnesota for the purpose of qualifying for receipt of federal Connect America Funds (CAF) as part of the Federal Communications Commission (FCC) Rural Broadband Experiments program.

FCC's Rural Broadband Experiments (RBEs) designed to use, on a limited scale, CAF for projects that would deploy broadband and voice services in rural, high-cost areas. The FCC expects the RBEs to provide last mile broadband service to consumers in rural communities, test potential bidding process for CAF Phase II, and speed up deployment of broadband and voice services in selected census blocks in designated areas. 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.<sup>1</sup>

Paul Bunyan Rural Telephone Cooperative ("PBC") is a CLEC operating in numerous exchanges in northern Minnesota (see PBC's petition at Attachment 2, pages 2-3.) On March 4, 2014 the FCC provisionally awarded PBC \$1,962,000 in RBE Funds for use in 133 Minnesota census blocks within the exchanges of Park Rapids and Grand Rapids where CenturyLink QC is the incumbent local exchange carrier. Maps of affected areas and Census Block listings are provided in the petition's Exhibits 1A, 1B and 1C.

The FCC requires awardees in this program to be designated as an Eligible Telecommunications Carrier ("ETC") as a condition of receiving these funds. While PBC was granted ETC status as an ILEC in Docket P999/M-97-1270 on December 23, 1997, it has not yet received ETC certification in the exchanges in which it operates as a CLEC. (See listing at Petition, Attachment 2, page 2, E.1.)

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<sup>1</sup> FCC's RURAL BROADBAND EXPERIMENTS ORDER, FCC 14-98, released July 14, 2014 in WC Docket 10-90 and WC Docket 14-58.

### III. GOVERNING LAW

Staff notes that this case is the second RBE-related ETC application in Minnesota (the first being Docket No. P6944/M-15-65). Other states are also in the process of reviewing the initial wave of similar applications, and that there is no specific guidance on the topic from the FCC. Staff summarizes the laws pertinent to the state designation of ETCs.

#### Applicable Law

Pages 2 through 5 of the Department Comments contain a list of applicable laws. The listing includes federal statutory provisions on:

- Qualifications of a company to be designated an ETC (47 USC §§ 214 (e)(1) (2) and (6), 254 (c), 153 (51) and 47 CFR §§54.201(b) and (d), 54.202 and the corresponding FCC rules);
- Delegation of authority to state commissions to designate an ETC (47 USC § 214 (e), 153 (51), and 254 (c), and 47 CFR §54.201);
- Obligations of an ETC (47 USC §§ 201 (d), 214 (e)(1), 54.405 (a) and (b));
- Supported services that must be provided by an ETC (47 USC § 254 (c), 47 CFR § 54.101 (a));
- Additional requirements for ETC designations (47 CFR § 54.202 (a));
- The public interest standard for ETC designation (47 USC §214(e)(2)).

In sum, federal laws direct that an ETC provide the following core requirements:

- Be a common carrier
- Offer the services supported by federal universal service support mechanisms (voice telephony, Lifeline)
- Offer services using its own facilities or a combination of its own facilities and resale of another carrier's services
- Advertise the availability of supported services and the charges thereof using media of general distribution
- Solely can receive universal service support
- Provide service throughout a designated service area
- The state commissions have primary responsibility for ETC designation, upon ETCs meeting ETC criteria and upon finding that ETC designation is in the public interest.

Additional requirements include:

- Demonstration of ways to ensure service can be provided within a reasonable amount of time,

- Submission of a five-year service improvement plan,
- Demonstration of ability to remain functional in emergency situations
- Demonstration of satisfying applicable consumer protection and service quality standards,
- Offering a local usage plan comparable to the one offered by the incumbent LEC
- Certification that the carrier acknowledges that the FCC may require it to provide equal access to long distance carrier if no other ETC provides equal access within the service area.

In addition, 47 CFR § 54.314 requires states to file a certification with the FCC and the universal service administrator a certification that all high-cost support provided to ETCs are used for the purposes of providing, maintaining, and upgrading of facilities for which the support is intended. Subpart 6 of said provision requires the submission of said certification within 60 days of the carrier's designation as an ETC.

At the state level, Minnesota Rules 7812.1400 subparts 1 and 2 provide for Commission designation of ILECs and CLECs as ETCs. The Commission may, however, waive the local exchange carrier requirement and is not precluded from designating an applicant other than a CLEC or ILEC as an ETC. Minn. Rule 7829.3200 allows the Commission to waive enforcement of a rule if such would impose an excessive burden upon the applicant or others affected by the rule; granting the variance would not adversely affect the public interest, and would not conflict with standards imposed by law.

Also, after the FCC adopted certain guidelines for ETC designation in 2005, later codified in 47 USC § 54.202 (a), the Commission adopted those additional FCC Requirements for Designating ETCs.<sup>2</sup>

#### **IV. PETITION COMPLIANCE**

The following section discusses whether PBC meets ETC requirements of law.

##### **A. Does PBC meet the common carrier requirement for ETC designation?**

As a CLEC, PBC is a common carrier as defined in 47 U.S.C. §153(11). In its Comments at page 6 the Department observed:

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

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<sup>2</sup> ORDER ADOPTING FCC REQUIREMENTS FOR DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS, AS MODIFIED dated October 31, 2005, Docket No. P999/M-05-1169.

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.

**Staff** believes that PBC meets the common carrier requirement for purposes of ETC designation.

**B. Does PBC offer the supported services required for ETC designation?**

PBC 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. PBC provides its proposed services, conditions and rates in Attachment 2, pages 3 to 5. The Department notes that PBC will offer timely, affordable voice telephony using its own facilities throughout its designated service area and highlights service details. (See Department Comments, p. 7) The Department notes:

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. 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...”

PBC will provide Lifeline, TAP and Link-Up services as provided in its Petition Exhibit 2, p. 13-18.

**Staff** believes that, for purposes of this ETC petition, PBC offers the supported services required.

### **C. Does the proposed service area conform to federal and state rules?**

The service area for which designation is sought by PBC is the set of 133 specific census blocks within the Minnesota exchanges of Park Rapids and Grand Rapids where CenturyLink QC is the incumbent local exchange carrier (“service Area”) for which the FCC has conditionally granted funding. Maps of the Proposed Service area are provided in the petition as Exhibits 1A and 1B and the listing of 133 census blocks in Exhibit 1C. (See Petition Attachment 2, p.2.)

State rules on the designation of the applicable universal service area for ETC designation (Minn. Rule 7812.1400, subp.3) provides:

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 asserts 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 exchange 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.

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.

In its petition PBC has requested the service for which ETC designation is sought to be the specific census blocks for which the FCC has granted funding.

The Department recommends that the Commission define the PBC service area as the Petitioner requested. (Department Comments, p. 6)

**Staff** agrees with the Department’s recommendation that the Commission define the PBC service area, for purposes of ETC designation, to be the requested 133 census block for which PBC has requested such designation, and for which the FCC has granted funding.

## **D. Does PBC meet the other conditions to satisfy other ETC requirements?**

### Service Quality

As a CLEC, PBC is subject to the service quality and consumer protection 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. PBC certifies in Attachment 2, page 4, and in Exhibit 2 Tariff pages that:

PBC's tariff has specific provisions outlining the following terms addressing consumer protection issues:

- Deposit and guarantee requirements
- Customer Billing
- Appropriate handling of customer complaints and billing disputes
- Disconnection and notice requirements

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

The Department Comments, page 8, also notes that:

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 required timeframes and is in compliance with all statutory and regulatory requirements 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.

**Staff** believes that PBC meets the service quality requirements for ETC certification.

### 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." (See Department Comments, p.3)

PBC states at Attachment 2, page 4, that PBC's network will remain functional in emergency situations, notably:

Commercial power outage: The central office serving PBC's 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.

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)." (See Petition, Attachment 2, p. 4)

**Staff** believes that PBC meets the emergency readiness requirements for ETC certification.

#### PBC's Advertising Plan

PBC notes in its petition in Attachment 2, page 3 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.

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

The Department recommends:

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 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. (See Department Comments, p.9-10)

**Staff** supports the Department's recommendation that the Commission condition the grant of ETC status on PBC providing a formal advertising plan, listing the specific media and means of advertising the availability of voice telephony and Lifeline and a proposed schedule and frequency of such advertising, and to post voice telephony and Lifeline terms and conditions on its website.



### Five (5) Year Service Improvement Plan

PBC has requested a waiver of the requirement that it submit a five-year service improvement plan as set forth in 47 CFR § 54.202 (a)(1)(ii);. (See Petition, Attachment 2, p. 5-6.) In its October 11, 2005 Order in Docket No. P999/M-05-1169 the Commission adopted by reference these FCC rules.

The Department asserts that the Petitioner's waiver request is not applicable under present FCC guidance, or that in the alternative, that the waiver should be granted since the 5-year service improvement report was established for purposes not applicable to RBEs. The Department Comments at page 8 state:

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.<sup>3</sup>

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.

**Staff** observes that the Commission agreed recently with the Department's position that no waiver was necessary and that the 5-year plan provision was not applicable for RBE projects such as those in Docket No. P423/M-15-433. PBC's Reply Comments indicate that it has no disagreement with the Department's recommendation that its initial request is not applicable. Staff agrees with the Department's recommendation in this proceeding that no waiver applies.

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<sup>3</sup> 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. The explicit waiver in para 77 of 47 CFR § 54.313 (a)(1)(ii) is implicitly applied to 47 CFR § 54.202 (a)(1)(ii).

**E. Is granting the ETC designation in the public interest?**

In its petition, PBC asserts its designation as an ETC is in the public interest because consumers will have increased choice in service providers, will receive quality service that is affordable and not impact the Universal Service Fund. (See Petition, Attachment 2, p. 5.) The Department also finds the designation to be in the public interest. (See Department Comments, p. 10.)

**Staff** also notes that the Commission has generally found that it is in the public interest to designate additional ETCs. In addition, the Commission considers the unique advantages and disadvantages of the applicant's service offering. In this case, PBC has also shown the benefits of bringing in funds to improve broadband availability and speed.

**V. COMMISSION OPTIONS AND STAFF RECOMMENDATIONS**

**A. Should the Commission find that PBC meets the common carrier requirement for ETC designation?**

1. Yes.
2. No.
3. Other action determined by the Commission.

**Staff Recommendation:** Staff recommends Option 1.

**B. Should the Commission find that PBC offers the supported services required for ETC designation?**

1. Yes.
2. No.
3. Other action determined by the Commission

**Staff Recommendation:** Staff recommends Option 1.

**C. Does the proposed service area conform to federal and state rules?**

1. Yes.
2. No.
3. Other action determined by the Commission.

**Staff Recommendation:** Staff recommends Option 1.

**D. Does PBC petition as filed meet the other conditions to satisfy other ETC requirements?**

1. Yes.
2. No. PBC has made a credible, but incomplete, 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.

Condition ETC designation upon 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; and
  - 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.
3. Other action determined by the Commission

**Staff Recommendation:** Staff recommends Option 2.

**E. Is granting the ETC designation in the public interest?**

1. Yes.
2. No.
3. Other action determined by the Commission.

**Staff Recommendation:** Staff recommends Option 1.