

November 27, 2018

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place E. Suite 350  
St. Paul, MN 55101-2147

RE: **Petition of Interstate Telecommunications Cooperative for Designation as an Eligible Telecommunications Carrier (ETC)**  
Docket No: P515/AM-18-637

Dear Mr. Wolf:

Attached are comments of the Department of Commerce concerning the Petition of Interstate Telecommunications Cooperative (ITC) for Designation as an Eligible Telecommunications Carrier (ETC). This petition is in response to ITC's winning bid in the Connect America Fund Auction (CAF II).

The petition was filed on October 9, 2018 by:  
John Kuykendall  
Vice President  
JSI  
7852 Walker Drive, Ste 200  
Greenbelt, Maryland 20770

On behalf of:  
Interstate Telecommunications Cooperative  
312 4<sup>th</sup> Street West  
PO Box 920  
Clear Lake, SD 57226

The Department recommends that the Commission grant ITC ETC status for high cost support in the designated census blocks listed in Exhibit 1.

Sincerely,  
/s/ JOY GULLIKSON  
Rate Analyst

JG/jl  
Attachment

## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce

#### **Petition of Interstate Telecommunications Cooperative for Designation as an Eligible Telecommunications Carrier (ETC)**

Docket No: P515/AM-18-637

#### **I. ISSUE**

Whether the Minnesota Public Utilities Commission (Commission) should grant the petition of Interstate Telecommunications Cooperative (ITC) for high cost support ETC status in the census block for which ITC will receive Connect America Funds II (CAFII) funding

#### **II. PROCEDURAL HISTORY**

As an incumbent local service provider, ITC became an ETC eligible to receive universal service support on July 28, 1997, in the exchange service areas in which it is the incumbent.<sup>1</sup> Under Docket No. P515/SA-18-680, ITC is requesting CLEC authority in the exchanges of Ivanhoe, Tyler, and the Lincoln County portion of the Minneota exchange.

By public notice from the FCC on August 28, 2018, ITC was named as a winning bidder in the CAF II auction, to receive \$522,329.60 and serving 209 locations. The CAF II award is given in monthly installments for 10 years (about \$22.02 per location per month for ITC), as long as ITC meets certain build out requirements. The 209 locations are in the census blocks within the proposed CLEC exchanges of Ivanhoe, Tyler and Minneota. The applicable census blocks are shown in the map in blue and also listed in Exhibit 1.

In order to receive the CAF II support, ITC, along with all other recipients, must certify to the FCC and USAC that it has received designation as an ETC eligible for high cost funding no later than February 25, 2019.

Additional requirements for CAF II support recipients include:

- Offer commercially at least one voice and one broadband service meeting the relevant service requirements to the required number of locations in the following timeframe:
  - 40% of the required number of locations in a state by the end of third year of support
  - An additional 20% in each subsequent year
  - 100% by the end of the sixth year of support
- The exact deployment schedule is determined by the carriers themselves, not the FCC.
- File with USAC annual reports and build-out milestone certifications, as well as data on the locations where service is available. Failure to meet the terms and conditions of support

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<sup>1</sup> Minn. Rules 7812.1400, subp.1.

can result in increased reporting obligations and possible withholding and/or recovery of support.

- Offer at least one broadband and voice service at rates that are reasonably comparable to the rates for similar service in urban areas. The FCC uses its annual Urban Rate Survey to determine the range of rates that are reasonably comparable<sup>2</sup>.

The FCC named fifteen companies as CAF II winners for Minnesota locations. They are:

Company	Amount (\$)	Locations	Amount (\$) /Location	Amount (\$) /Location/10 years/month
Broadband Corporation	428,117	128	3,344.66	27.87
Consolidated Telephone	934,933.80	358	2,611.55	21.76
Farmers Mutual	348,991.60	163	2,141.05	17.84
Federated Coop	1,431,038.80	808	1,771.09	14.76
Garden Valley	880,346	95	9,266.80	77.22
Halstad Telephone	19,635.20	7	2,805.03	23.38
Interstate Telephone	552,329.60	209	2,642.73	22.02
Jaguar	510,587.60	672	759.80	6.33
Johnson Telephone	81,272.50	47	1,729.20	14.41
LTD Broadband	1,104,440.80	840	1,314.81	10.96
Midcontinent	27,977,283.80	7410	3,775.61	31.46
Paul Bunyan	1,313,542.60	315	4,169.98	34.75
Roseau Electric	2,081,769.70	326	6,385.80	53.22
West Central Telephone	611,934.40	532	1,150.25	9.59
Wikstrom	532,556.80	56	9,509.94	79.25
<b>TOTALS</b>	<b>38,808,780.20</b>	<b>11,966</b>	<b>53,378.30</b>	
<i>AVERAGES</i>	<i>2,587,252.01</i>	<i>798</i>	<i>3,558.55</i>	<b>29.65</b>

<sup>2</sup> From <https://www.fcc.gov/auction/903>.

### III. LEGAL STANDARDS

The Code of Federal Regulations Part 54 governs the federal requirements for common carriers becoming ETCs. Federal Communications Commission (FCC) orders have adjusted some of these regulations over the years. Most of the adjustments have been to reduce reporting requirements. Parts relevant to this petition include:

§ 54.101 (b) requires “an eligible telecommunications carrier must offer voice telephony as set forth in paragraph (a) of this section in order to receive federal universal service support.” Part (a) requires voice grade access to the public switched network or its functional equivalent must be provided.

§ 54.201 states in parts (d), (e), and (h): “A common carrier designated as an ETC under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

- (1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, 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
- (2) Advertise the availability of such services and the charges therefore using media of general distribution.

(e) For the purposes of this section, the term facilities means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part. (f) For the purposes of this section, the term “own facilities” includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term “facilities” under this subpart.

(h) A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E [Lifeline] of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part

§ 54.203 states in part: “If no common carrier will provide the services that are supported by federal universal service support mechanisms under section 254(c) of the Act and subpart B of this part to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a

state commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.”

Minnesota Rules 7811.1400 and 7812.1400, subp. 13 state: “The commission may order an LSP to provide the services that are supported by a federal universal service support mechanism to an otherwise unserved area only as provided in section 102(a) of the act and consistent with Minnesota Statutes, sections 237.081 and 237.16.”

Minnesota Rules 7811.0600, subp.4 and 7812.0600 subp. 4 state: “An LSP 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 serve the customer.”

Also, in Docket P999/M-05-1169, *Order Adopting FCC Requirements for Designating Eligible Telecommunications Carriers, As Modified*, the Commission ordered:

“After the date of this Order, petitioners to the Commission to be designated an eligible telecommunications carrier under 47 U.S.C. 214(e)(2) must:

- (1) (A) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it will (1) provide service on a timely basis to requesting customers within the applicant’s service area where the applicant’s network already passes the potential customer’s premises; and (2) provide service within a reasonable period of time, if the potential customer is with the applicant’s licensed service area[a] but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer’s equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier’s facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment . . . .”

In setting the requirements for this round of auction to receive the CAF II funding, the FCC required:

“Each Connect America Fund support recipient must offer voice as a standalone service, but may separately bundle its broadband offerings with a voice service.”<sup>3</sup>

Congress, in 47 USC § 214 (e), requires as a precondition to assessing FCC high cost or Lifeline support subsidies, that providers be designated Eligible Telecommunication Carriers by a state commission. Telecommunications carriers are defined by 47 USC § 153 (51) as “any provider of telecommunications services [and a] telecommunications carrier shall be treated as a common carrier . . . only to the extent that it is engaged in telecommunications services.”

The regulatory status of VOIP service is currently in litigation. The Minnesota Commission found that fixed<sup>4</sup> VOIP services are subject to applicable consumer protections for telecommunications service under Minnesota statutes, as there has been no federal preemption of the Commission’s authority.<sup>5</sup> Although the FCC has not classified fixed or over-the-top VoIP as being either an information service or a telecommunications service, in a 2-1 split decision, the Eighth Circuit Court of Appeals found that all VoIP service is an information service.<sup>6</sup> The Minnesota Commission has requested an en banc rehearing of the Eighth Circuit decision. It is the understanding of the Department that the Eighth Circuit’s decision is not effective until they rule on the request for rehearing en banc, or during the pendency of the request if they grant it.

#### **IV. ANALYSIS**

In this current application, ITC requests ETC status for high cost in the census blocks it will receive CAF II funds. The census blocks are in the CLEC exchanges Ivanhoe, Tyler, and Minneota (Lincoln County portion only). The census blocks that are the subject of the CAF II award are listed in Exhibit 1.

1. Facilities and Commitment to Serve - ITC states that it has the facilities to offer service. It will offer voice grade access to the Public Switched Network or its functional equivalent through its Calix E7 last mile platform equipment.

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<sup>3</sup> USF/ICC Transformation Order, 26 FCC Rcd at 17693, para. 80.

<sup>4</sup> The term “fixed” represents those services at a stationary location, as opposed to “over-the-top” or “bring your own broadband” VoIP services that may be used from any location that the customer has access to the internet. Over-the-top VoIP is also referred to as “nomadic VoIP.”

<sup>5</sup> See. *In the Matter of the Complaint of the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers*, Order Finding Jurisdiction and Requiring Compliance Filing, Docket No. P6716,5615/C-14-383. July 28, 2015.

<sup>6</sup> *Opinion*, 2018 WL 4260322 (8<sup>th</sup> Cir September 7, 2018)

2. ITC’s Basic Universal Service Offering - ITC agrees to provide services that meet the Basic Local Service requirements under Minn. Rule 7812.0600 and under 47 CFR § 54.101(a). Further, while its rates are high, the 2018 ILEC rate floor weighted average for unlimited flat rate local service is \$25.50. Interstate CLEC customers will not pay an ARC or SLC charge, nor any EAS charges.

	Res.	EAS	Bus.	EAS
Frontier Comm.	13.56		28.75	
Citizens Telecom	16.25	.45	31.00	.90
CenturyTel of MN	14.96	1.23	35.61	3.00
Interstate current rate in ILEC areas	22.50		22.50	
Interstate rate in CLEC areas	29.00		50.00	

In its Public Notice released November 8, 2017, the FCC announced the 2018 reasonable comparability benchmarks for fixed voice and broadband services for incumbent ETCs. The FCC stated that rates should be between \$25.50, the urban average monthly rate, and \$45.38, two standard deviations above the average.

3. ITC’s Advertising Plan - ITC stated that it currently meets and will meet the advertising requirements through several different channels of general distribution, including newspaper, social media, and TV ads. In addition, the availability of the offering throughout the service area will be listed continuously on ITC's web site: [www.itc-web.com](http://www.itc-web.com). The service offerings will be published at least annually in the local newspaper, and will be posted at the ITC office in Clear Lake, SD.
4. ITC’s Ability to Remain Functional in Emergency Situations - ITC stated that its network can and will remain functional in emergencies. The central office serving ITC’s customers is equipped with battery power supply and electrical generators to provide service in the event of a commercial power outage. The interoffice facilities serving the service area are able to reroute traffic. ITC 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).
5. ITC’s Satisfaction of Consumer Protection and Service Quality Standards – ITC is subject to, and complies with, the Commission's Rules pertaining to service quality and consumer protection. ITC’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
6. Requirement to provide telecommunications services. Congress, in 47 U.S.C. § 214 (e), required as a precondition to accessing FCC high cost or consumer specific “lifeline” support subsidies, that providers be designated “Eligible Telecommunications Carriers” (ETCs) by a State commission.<sup>7</sup> As explained by the National Association of Regulatory Utility Commissioners (NARUC) and the National Association of State Utility Consumer Advocates (NASUCA) in their September 28, 2108 Amicus Brief to the United States Court of Appeals for the Eighth Circuit, “State commissions across the country have certified numerous ETCs based on their provision of I-VoIP as a telecommunications service. Neither the FCC nor any State Commission can ignore the Congressional restrictions and certify carriers that only provide information services.”<sup>8</sup> To do otherwise would be defrauding the USF fund. Thus, in order to be granted ETC status, ITC must offer a stand-alone voice telecommunications service. The ETC petitions filed as a result of the CAF II auction, including the petition by ITC, are likely to use IP technology for the voice service offering. As stated earlier, the Minnesota Commission has requested an en banc rehearing of the Eighth Circuit decision and it is the understanding of the Department of Commerce that the Eighth Circuit’s decision is not effective until it rules on the request for rehearing en banc, or during the pendency of the request if they grant it. Thus, at this time, fixed VOIP service is a telecommunications service under Minnesota law, as this Commission has determined, and satisfies the legal requirement.

In summary, ITC has been operating successfully for many years as an incumbent. This history comports with the requirement of 47 CFR § 54.201 (h) that the carrier demonstrate it is financially and technically capable of providing the supported services.

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<sup>7</sup> “Telecommunications carriers” are defined as “any provider of telecommunications services [and a] telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services.” 47 U.S.C. § 153 (51). (emphasis added). The federal universal service fund program is “under this chapter” in 47 U.S.C. § 254 (51).

<sup>8</sup> See Motion Seeking Leave to File Brief of Amici Curiae The National Association of Regulatory Utility Commissioners and The National Association of State Consumer Advocates Supporting Defendant-Appellants Petition for Rehearing En Banc, Appeal from the U.S. District Court for the District of Minnesota, No.15-cv-3925, at page 5.



**V. COMMISSION OPTIONS**

The Commission may choose to:

- A. Approve ITC's request for ETC status for high cost support in the census blocks listed in Exhibit 1.
- B. Deny ITC's request for ETC status for high cost support in the census blocks listed in Exhibit 1.
- C. Take other action, as the Commission deems appropriate.

**VI. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission order option A: Approve ITC's request for ETC status for high cost support in the census blocks listed in Exhibit 1.

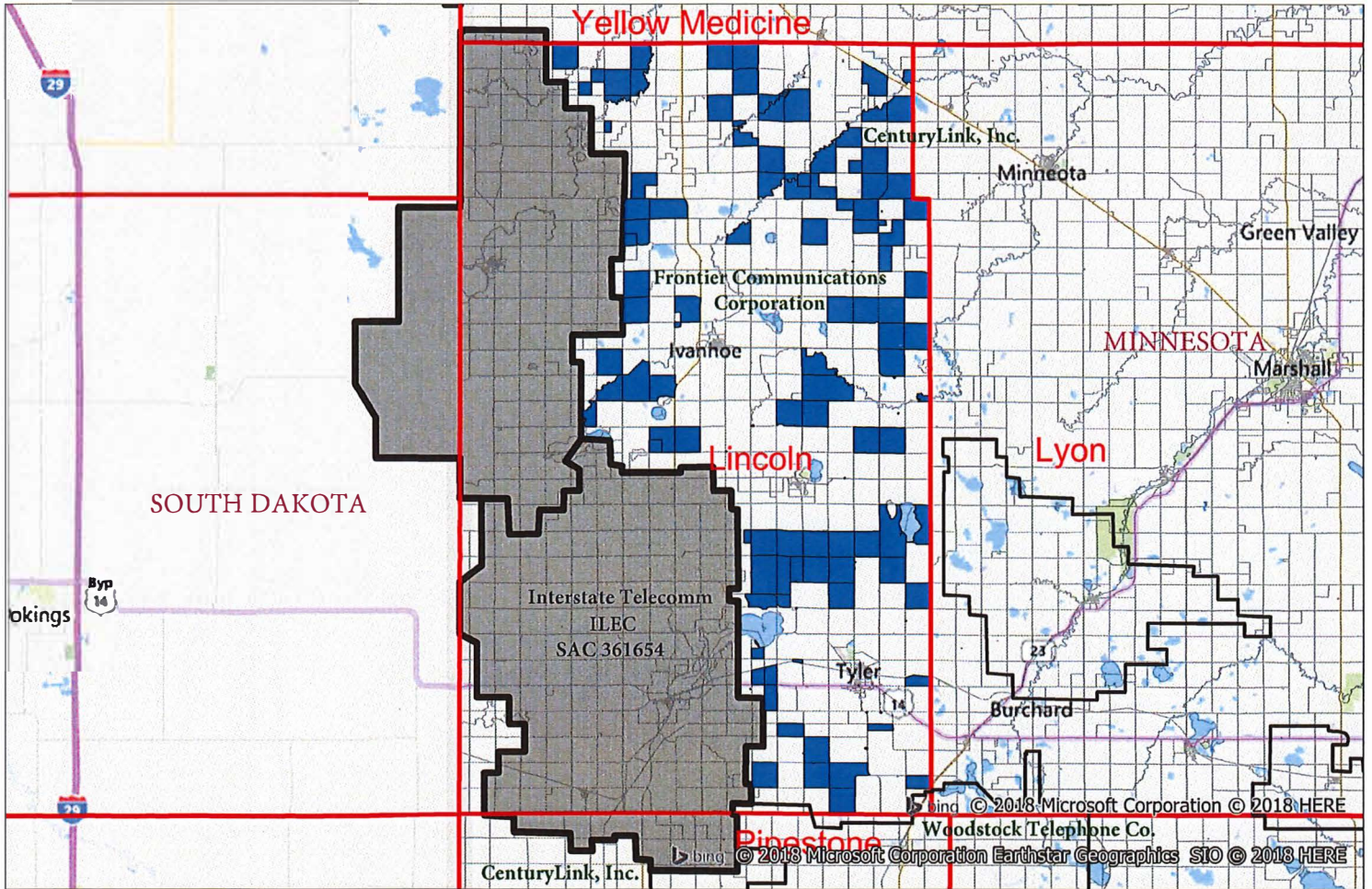
/jl  
Attachment

Interstate Telecommunications Cooperative, Inc. CAF Phase II Funded Area - MN

BLUE census blocks - funded blocks won in CAF Phase II Auction 903

Interstate has applied for ETC Designation for the funded blocks won in CAF Phase II Auction 903 (Docket No. 18-637)

Interstate seeks CLEC status in the remainder of Lincoln County where its ILEC does not currently operate, except for the portion of Woodstock Telephone Co. that resides in Lincoln County.



## **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. P515/AM-18-637**

**Dated this 27<sup>th</sup> day of November 2018**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_18-637_M-18-637
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-637_M-18-637
Ian	Dobson	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_18-637_M-18-637
John	Kuykendall	jkuykendall@jsitel.com	JSI on behalf of Interstate Telecommunications Cooperative, Inc.	7852 Walker Dr Ste 200  Greenbelt, MD 20770	Electronic Service	No	OFF_SL_18-637_M-18-637
Bryan	Roth	Bryan.roth@itctel.com	Interstate Telecommunications Coop.	P.O. Box 920  Clear Lake, SD 57226	Electronic Service	No	OFF_SL_18-637_M-18-637
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_18-637_M-18-637