

March 19, 2018

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

RE: **Paul Bunyan Rural Telephone Cooperative Petition for ETC Designation in Minnesota**  
Docket No. P423/M-17-854

Dear Mr. Wolf:

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

The petition was filed on November 30, 2017 by:

Thomas G. Burns  
Olsen Thielen  
2675 Long Lake Road  
Saint Paul, MN 55113-1117

On behalf of:  
Paul Bunyan Rural Telephone Cooperative  
1831 Anne St. NW  
Bemidji, MN 56601

The Department recommends that the Commission grant ETC status in the exchanges listed in PBC's application for so long as PBC complies with 47 U.S.C § 214(e)(1), and 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?

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- Should the Commission consider a rule change concerning ETCs serving customers through facilities plus excess construction charges or facilities plus resold services?

Sincerely,

/s/ JOY GULLIKSON  
Rates Analyst

JG/lt  
Attachment



## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce

Docket No. P423/M-17-854

#### I. BACKGROUND

##### A. PROCEDURAL BACKGROUND

On December 6, 2017, Paul Bunyan Rural Telephone Cooperative (PBC ) requested that the Minnesota Public Utilities Commission (PUC or Commission) designate PBC as an Eligible Telecommunications Carrier (ETC) “. . . for the limited purposes of providing local services under the Lifeline program.” The exchanges where PBC has requested ETC designation are listed in Attachment 2, paragraph D 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.

This filing by Paul Bunyan is similar to three other recent petitions for ETC designation:

West Central Telephone Association	P431/AM-17-835
Garden Valley Telephone Cooperative	P409/M-17-837
Halstad Telephone Company	P530/M-17-838

These filings all pertain to incumbent local exchange carriers (ILECs) that have expanded their serving areas and now seek ETC status for the purpose of offering Lifeline in those expanded areas. The Department recommends that the Commission consider these filings together.

##### B. HISTORICAL BACKGROUND

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.

## **STATEMENT OF ISSUES**

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.

Two broad issues are presented by PBC's application for ETC status:

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 ETC status imply Commission acknowledgment that the market in question is competitive?

As discussed later in these comments, the Department recommends that these broader issues may be better addressed in a separate proceeding, such as 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)*.

## **III. APPLICABLE LAW**

### **A. STATE LAW**

Subpart 3 of Minn. Rules 7811.1400 and 7812.1400 states: "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 universal service area shall be the study area of the relevant LEC unless the commission and the FCC adopt a different service area pursuant to Code of Federal Regulations, title 47, section 54.203, paragraphs (c) and (d)<sup>1</sup>.

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<sup>1</sup> The current applicable Code of Federal Regulations is title 47, section 54.207, paragraphs (c) and (d).

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.”

Subpart 8 of Minn. Rules 7811.1400 and 7812.1400 states: “a person wishing to comment on a designation petition shall file initial comments within 20 days of the filing<sup>2</sup>. Initial comments must include a recommendation on whether the filing requires a contested case proceeding, expedited proceeding, or some other procedure, together with reasons for the recommendation.”

Subpart 12 of Minn. Rules pt. 7811.1400 and 7812.1400 requires the Commission to act within 180 days of the filing of the petition.

*B. FEDERAL LAW*

47 U.S.C § 214(e)(1) provides that:

A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and 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.

§54.405 states: “All eligible telecommunications carriers must:

- (a) Make available Lifeline service, as defined in §54.401, to qualifying low income consumers.
- (b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service.
- (c) Indicate on all materials describing the service, using easily understood language that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household.

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<sup>2</sup> The Department of Commerce sought and received an extension until March 15, 2018.

For the purposes of this section, the term “materials describing the service” includes all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms. (d) Disclose the name of the eligible telecommunications carrier on all materials describing the service.”

47 C.F.R. § 54.207 defines a service area as “. . . a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms.” Paragraph (b) of the same section states: “. . . in the case of a service area served 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 . . . establish a different definition of service area for such company.”

#### IV. ANALYSIS

1. *Has PBC demonstrated the intent and capability of providing and advertising the services required in 47 CFR § 54.101 (a) throughout its proposed expanded ETC area?*

PBC has been operating as an ETC in its incumbent study area since 1998, when all LECs were designated an ETC by Minnesota Rule 7811.1400 and 7812.1400. PBC states that it offers last mile service via its own fiber where the fiber has been laid.

Advertising for the PBC Lifeline services in the expanded areas will follow the same format as its current Lifeline service. PBC’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. PBC also plans to advertise at least annually, as well as sending brochures and a letter to the local Social Service offices.

As discussed in the following paragraphs, 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.

PBC’s 911 plan has been approved.

2. *Is the request for ETC status for Lifeline only in the multiple areas beyond the incumbent area in the public interest?*

PBC is petitioning for designation at an ETC to provide the Lifeline discount in 129 exchanges beyond its ILEC borders. There is no evidence to suggest that PBC would behave in any way that is blatantly contrary to the public interest. Indeed, it proposes to bring advanced facilities to the

area to provide choice to customers, and the Lifeline component would help to ensure that low income customers with access to PBC's facilities are not left behind.

However, PBC does not have facilities to serve all customers in the 129 proposed exchanges. The Department understands that there are exchanges where PBC has been granted authority to provide service but still has no facilities or other arrangements in place to serve customers. The likely absence of facilities in exchanges where PBC is applying for ETC designation raises the question of how potential customers will know if Lifeline service is an option. It also raises the dilemma of an ILEC, in whose territory PBC is operating, seeking reduced regulatory obligations, including exemption from its carrier of last resort obligation as there is another company designated as an ETC in the area, even though that other company does not offer service throughout the exchange, and perhaps not in the exchange at all.

The definition of "public interest" is open to the Commission's interpretation. How could the ability to offer a discount to low income customers be against "public interest?" Unfortunately, there is no classification for "Lifeline only" ETC status. Either a carrier is an ETC or it is not. Wireless carriers are often referred to as "Lifeline only" as a way to describe the service they offer. However, wireline carriers, such as PBC, also receive high cost support in at least some of the areas in which they serve. The Department suggests that if the Commission is clear in its order, that conferring ETC status in no way imparts a sanction that an area is competitive, designating PBC as an ETC for the provision of Lifeline service may be in the public interest.

*3. ETC designation may be more restrictive than the 129 entire exchanges as requested by Paul Bunyan*

Federal and state laws require an ETC designated by the commission to provide local 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. In recent ETC petitions, the Department recommended that the ETC be required to report to the Commission within 45 days of an inquiry for which excess construction charges are, or would be, assessed. In the ETC petitions for ETC designation filed by Garden Valley Telephone Company, Halstad Telephone Company, and West Central Telephone Association, the companies objected to the Department's recommendation on reporting.

If a company advertises that it offers Lifeline service in an exchange as required by 47 U.S.C § 214(e)(1), but in fact only has facilities in a small part of that exchange or in no part of the exchange, customers are not receiving appropriate information upon which to base their decisions. If a company does not wish to serve an entire exchange, 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. 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.

Two broad issues are presented by PBC's application for ETC status:

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?

With respect to the reporting recommended by the Department, the companies may be willing to file an annual filing that shows how many customers formally requested service, but declined after receiving estimates of excess construction charges. This information would serve to inform the Commission about the extent of unmet demand in the areas served by ETCs. However, if the Commission seeks such reporting, it may wish to consider requiring all ETCs to have the requirement. An examination of the requirements that should apply to all ETCs could occur in Docket No. P999/CI-17-509, the Commission's investigation into the appropriate notice and outreach requirements for ETCs. Thus far, the 17-509 Docket was primarily focused on wireless ETC requirements.

Additional questions that could be considered in the 17-509 Docket or a broader proceeding include:

- What information should customers receive about the availability of Lifeline if it is not provided throughout the entire exchange by the ETC?
- How granular should information be about where a company provides Lifeline if it is not the entire exchange?
- Should the Commission be informed about customers that requested service but declined due to the cost of excess constructions charges?
- Should the Commission consider a rule change about ETCs serving customers though facilities plus excess construction charges or facilities plus resold services.

## **V. COMMISSION ALTERNATIVES**

1. 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).
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). PBC 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.
3. Require PBC to refile for ETC status, with its petition specifying the census blocks in which the company plans to actually offer service.
4. 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 concerning ETCs serving customers though facilities plus excess construction charges or facilities plus resold services?
5. Deny ETC status in the expanded exchanges.

## **VI. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission adopt Alternatives 1 and 4: 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), and 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 concerning ETCs serving customers though facilities plus excess construction charges or facilities plus resold services?

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## **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-17-854**

**Dated this 19<sup>th</sup> day of March 2018**

**/s/Sharon Ferguson**

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