

November 6, 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 Wikstrom Telephone Company for Designation as an Eligible Telecommunications Carrier (ETC)**  
Docket No: P432/M-18-549

Dear Mr. Wolf:

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

The petition was filed on August 24, 2018 and revised on September 12, 2018 by:

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

On behalf of:

Curtiss Wikstrom  
President  
Wikstrom Telephone Company  
212 South Main Street  
Karlstad, MN 56732-0217

The Department recommends that the Commission approve WikTel's request for Lifeline ETC status in all areas in which WikTel has CLEC authority and additionally approve WikTel's request for high cost ETC status in the census blocks listed in Exhibit 1.

Sincerely,

/s/ JOY GULLIKSON  
Rate Analyst

JG/ja  
Attachment



## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce

#### Petition of Wikstrom Telephone Company for Designation as an Eligible Telecommunications Carrier (ETC)

Docket No: P432/M-18-549

#### I. ISSUE

Whether the Minnesota Public Utilities Commission (Commission) should grant the petition of Wikstrom Telephone Company (WikTel) for Lifeline only ETC status in the areas in which it has CLEC authority and for high cost support ETC status in the census blocks for which WikTel will receive Connect America Funds II (CAFII) funding.

#### II. PROCEDURAL HISTORY

As an incumbent local service provider, WikTel 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> In 2009, under Docket No. P432/NA-09-984, WikTel expanded its service area and received CLEC authority for the exchanges shown in pink in Exhibit 1.

By public notice from the FCC on August 28, 2018, WikTel was named a winning bidder in the CAF II auction, to receive \$532,556.80 by serving 56 locations. The CAF II award is given in monthly installments over 10 years (about \$79.25 per location per month for WikTel) as long as WikTel meets certain build out requirements. The 56 locations are in the census blocks within the Roseau and Warroad exchange service areas, identified by the yellow outline on Exhibit 1. The census blocks of the CAF II award are also listed at the bottom of Exhibit 1.

In order to receive the CAF II support, Wikstrom, 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 recipients of CAF II support must meet include:

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

- 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 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:

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

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>

### 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) states: “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.

§ 54.201 states in parts (d), (e), (f) and (h):

(d) “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<sup>3</sup> 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.”

Minn. Rule 7812.0600 subp. 4 and 7811.0600, 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 (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 facilitates 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:

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<sup>3</sup> Local Service Provider

“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>4</sup> USF/ICC Transformation Order, 26 FCC Rcd at 17693, para. 80.

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>5</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>6</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>7</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**

WikTel plans to offer service to its new ETC customers in a similar manner to its provision of service to customers in its incumbent area. WikTel’s application for expanded ETC status is thorough. Of particular note:

1. WikTel received authority to operate in the CLEC areas in Exhibit 1 in 2009 under Docket No: P-432/NA-09-984.

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<sup>4</sup> USF/ICC Transformation Order, 26 FCC Rcd at 17693, para. 80.

<sup>5</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>6</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>7</sup> *Opinion*, 2018 WL 4260322 (8<sup>th</sup> Cir September 7, 2018)

- WikTel's Facilities and Commitment to Serve - WikTel states that it will provide broadband and voice telephone over its fiber-optic facilities. In response to the Commission's order in Docket P999/M-05-1169, WikTel certifies that it will:
- (a) provide service on a timely basis to requesting customers within the service area where WikTel'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 WikTel's current network facilities, if service can be provided at reasonable cost by constructing network facilities.
2. WikTel's Basic Universal Service Offering - WikTel agrees to provide voice telephony in the Service Area at rates that are reasonably comparable to the rates for similar service in urban areas. Attachment 2 is a chart that compares the rates of Wikstrom with the incumbent telephone company's rates. The services WikTel offers meet the Basic Local Service requirements under Minn. Rule 7812.0600 and under 47 CFR § 54.101(a).
  3. WikTel's Advertising Plan - WikTel states that it currently meets and will meet the advertising requirements through several different channels of general distribution, including newspaper and direct mail. WikTel plans to advertise the availability of its Lifeline universal service offering throughout the Service Area through the same advertising channels it currently employs. In addition, the availability of the offering throughout the service area will be listed continuously on WikTel's web site: [www.WikTel.net](http://www.WikTel.net). The service offering will also be published at least annually in the local newspaper, and will be posted at the WikTel office in Sebeka, MN.
  4. WikTel's Ability to Remain Functional in Emergency Situations - WikTel states that its network can and will remain functional in emergencies. The central office serving WikTel'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 on a diverse routed fiber optic ring, which if cut will be automatically rerouted. WikTel 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. WikTel's Satisfaction of Consumer Protection and Service Quality Standards – WikTel, is subject to, and complies with, the Commission's Rules pertaining to service quality and consumer protection. WikTel'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>8</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>9</sup> To do otherwise would be defrauding the USF fund. Thus, in order to be granted ETC status, WikTel must offer a stand-alone voice telecommunications service. The ETC petitions filed as a result of the CAF II auction, including the petition by Wikstrom, 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, WikTel has been operating successfully for a number of years as a CLEC and many more 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 Lifeline service.

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<sup>8</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>9</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:

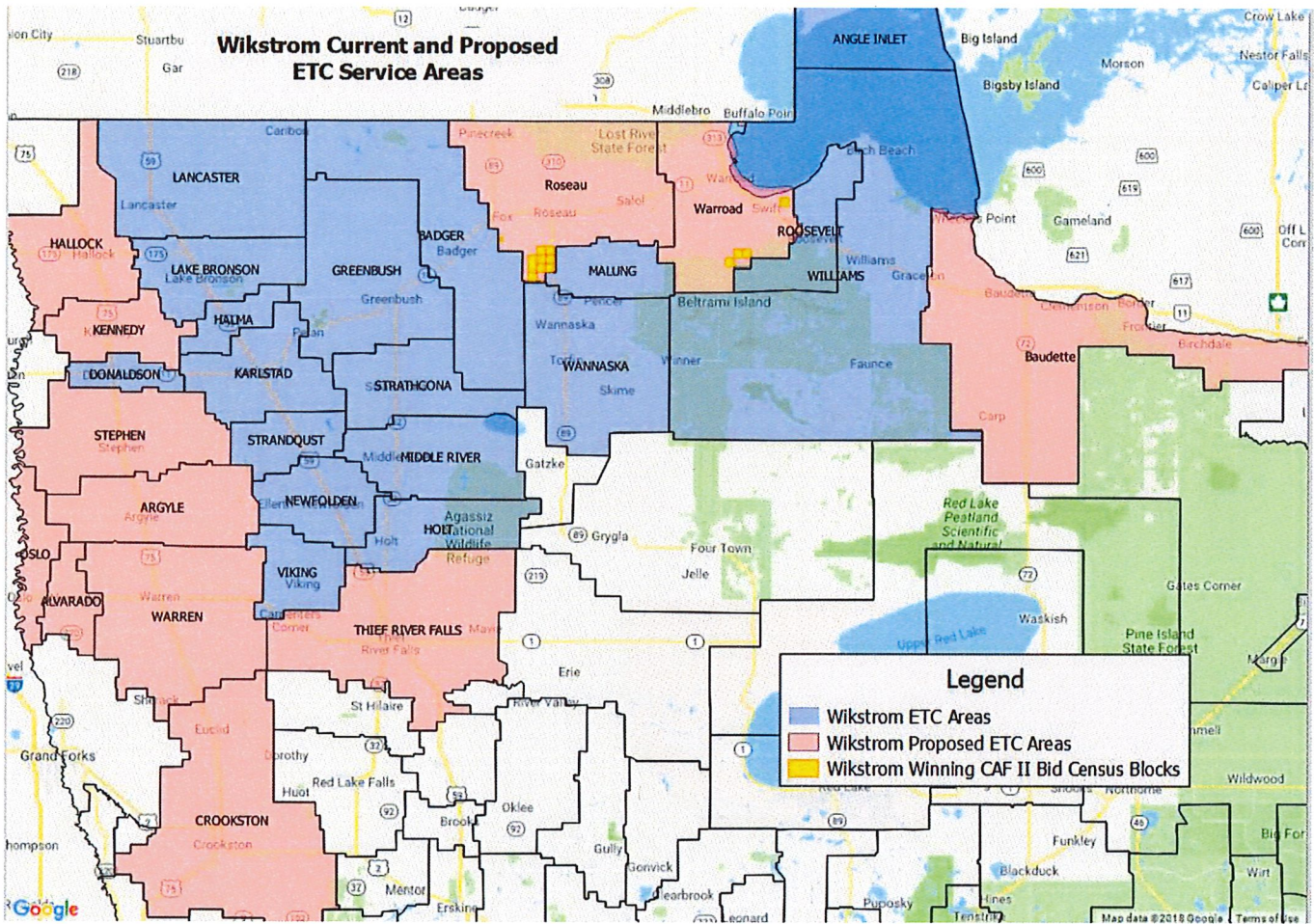
- A. Approve WikTel's request for Lifeline ETC status in all areas in which WikTel has CLEC authority and additionally approve WikTel's request for high cost ETC status in the census blocks Listed in Exhibit 1.
- B. Deny WikTel's petition for ETC status in the areas in which Wikstrom has CLE authority.
- C. Take other action, as the Commission deems appropriate.

## **VI. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission order option A: Approve WikTel's request for Lifeline ETC status in all areas in which WikTel has CLEC authority and additionally approve WikTel's request for high cost ETC status in the census blocks Listed in Exhibit 1.

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Exhibit 1  
 Wikstrom Existing and Proposed ETC Service Areas



**Proposed ETC Service Areas:**

**Citizens Telecom Exchanges:** Alvarado, Argyle, Hallock, Kennedy, Oslo, Stephen, Warren

**CenturyTel of MN Exchanges:** Baudette, Roseau, Warroad

**Qwest Corporation:** Crookston, Thief River Falls

**CAF II Census Blocks**

271359702002213  
 271359704003270  
 271359702002196  
 271359704002055  
 271359704003267  
 271359704003268

271359702002195  
 271359702002209  
 271359704002015  
 271359704002020  
 271359702002008  
 271359702002192

271359702002186  
 271359702002185  
 271359704003279  
 271359702002183  
 271359702002193  
 271359702002182

	CenturyTel of MN				Wikstrom			
	Business		Residence		Business		Residence	
Location	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.
Baudette	37.00	1.48	24.95	0.64	24.95	see note	13.25	See note
Roseau	37.00	2.33	24.95	0.95	24.95	0	13.25	0
Warroad	37.00	3.88	24.95	1.59	24.95	0	13.25	0

	Qwest				Wikstrom			
	Business		Residence		Business		Residence	
Location	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.
Crookston	34.61	.35	15.96	0.15	24.95	.15	13.25	.35
Thief River Falls	34.61	1.42	15.96	0.62	24.95	n/a	13.25	n/a

	Citizens				Wikstrom			
	Business		Residence		Business		Residence	
Location	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.
Alvarado	29.50	-	21.50	-	24.95	0	13.25	0
Argyle	29.50	3.03	21.50	1.52	24.95	0	13.25	0
Hallock	29.50	1.90	21.50	0.95	24.95	0	13.25	0
Kennedy	29.50	-	21.50	-	24.95	0	13.25	0
Oslo	29.50	-	21.50	-	24.95	0	13.25	0
Stephen	29.50	-	21.50	-	24.95	0	13.25	0
Warren	29.50	0.92	21.50	0.46	24.95	0	13.25	0

## **CERTIFICATE OF SERVICE**

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, 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 Nos. **P432/M-18-549**

Dated this **7th** day of **November, 2018**.

/s/Linda Chavez

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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd Mound, MN 55364-1652	Electronic Service	No	OFF_SL_18-549_M-18-549
Thomas	Burns	tgburns@otcpas.com	OLSEN THIELEN & CO. LTD	2675 Long Lake Rd Saint Paul, MN 55113	Electronic Service	No	OFF_SL_18-549_M-18-549
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_18-549_M-18-549
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_18-549_M-18-549
David	Denton	david.denton@state.mn.us	DPS ECN	445 Minnesota Street Suite 137 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_18-549_M-18-549
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_18-549_M-18-549
Pete	Eggimann	PEGGIMANN@MN-MESB.ORG	Metropolitan Emergency Services Board	2099 University Ave W Ste 201 St. Paul, MN 551043431	Electronic Service	No	OFF_SL_18-549_M-18-549
Al	Lundeen	alundeen@wiktel.com	Wikstrom Telephone Company	212 S Main St Karlstad, MN 56732-0217	Electronic Service	No	OFF_SL_18-549_M-18-549
Jason	Topp	jason.topp@centurylink.com	CenturyLink	200 S 5th St Ste 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-549_M-18-549
Dana	Wahlberg	dana.wahlberg@state.mn.us	Department of Public Safety	Town Square Ste 137 444 Cedar St St. Paul, MN 551015126	Electronic Service	No	OFF_SL_18-549_M-18-549

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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_18-549_M-18-549