

November 20, 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 Paul Bunyan Rural Telephone Cooperative for Designation as an Eligible Telecommunications Carrier (ETC)**  
Docket No: P423/AM-18-605

Dear Mr. Wolf:

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

The petition was filed on September 21, 2018 by:

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

On behalf of:

Gary Johnson  
CEO & General Manager  
Paul Bunyan Rural Telephone Cooperative  
1831 Anne St NW.  
Bemidji, MN 56601

The Department recommends that the Commission grant PBT ETC status for high cost support in the designated 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 Paul Bunyan Rural Telephone Cooperative for Designation as an Eligible Telecommunications Carrier (ETC)**

Docket No: P423/AM-18-605

#### **I. ISSUE**

Whether the Minnesota Public Utilities Commission (Commission) should grant the petition of Paul Bunyan Rural Telephone Cooperative (PBT) for high cost support ETC status in the census block for which Halstad will receive Connect America Funds II (CAFII) funding.

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

As an incumbent local service provider, PBT 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 various docket numbers, listed in Exhibit 2, PBT received CLEC authority in numerous exchanges. Under Docket No. P432/M-15-433, PBT received ETC status for high cost support from the Rural Broadband Experiment in the census blocks listed in Exhibit 3 and shown pictorially in Exhibit 1. Under Docket No. P432/M-17-854, PBT received ETC status for Lifeline only in all its CLEC exchanges. PBT's service areas are show in Exhibit 1.

By public notice from the FCC on August 28, 2018, PBT was named as a winning bidder in the CAF II auction, to receive \$1,313,542.60 and serving 315 locations. The CAF II award is given in monthly installments for 10 years (about \$34.75 per location per month for PBT), as long as PBT meets certain build out requirements. The 315 locations are in the census block within the CLEC exchanges of Cass Lake, Park Rapids, Nashwak, Grand Rapids, and Coleraine. The applicable census blocks are listed in Exhibit 1.

In order to receive the CAF II support, PBT, 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.

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

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 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):

(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 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 Subp. 4. 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 are[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.

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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)

**IV. ANALYSIS**

PBT received ETC for Lifeline only status in its CLEC exchanges under Docket No. P 431/M-17-835 and for high cost support in certain census blocks under Docket No. P 431/M-15-433. In this current application, PBT requests ETC for high cost support in the census blocks it will receive CAF II funds. The census blocks are in the CLEC exchanges Cass Lake, Park Rapids, Nashwauk, Grand Rapids, and Coleraine. The census blocks that are the subject of the CAF II award are listed in Exhibit 1.

The Commission found PBT's petition in Docket No. P431/AM-17-835 to be appropriate to grant ETC status for Lifeline only. Of particular note:

1. Facilities and Commitment to Serve - PBT stated that it will provide broadband and voice telephone over its fiber-optic facilities. PBT certified that it will:
  - (a) provide service on a timely basis to requesting customers within the service area where PBT'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 PBT's current network facilities, if service can be provided at reasonable cost by constructing network facilities.
  
2. PBT's Basic Universal Service Offering - PBT agreed to provide voice telephony in the Service Area at rates that are reasonably comparable to the rates for similar service in urban areas. The chart below compares the rates of PBT in both its CLEC exchanges with the incumbent telephone company's rates. The services PBT offers meet the Basic Local Service requirements under Minn. Rule 7812.0600 and under 47 CFR § 54.101(a).

ILEC	Residence Rate	Business Rate	Install Charge Res/Bus
Paul Bunyan	\$18.00	\$25.75	\$10.00/\$10.00
Arrowhead	\$20.00	\$20.00	\$60.25/\$60.25
Arvig Tel	\$12.70	\$17.95	\$20.00/\$20.00
Callaway Tel	\$20.00	\$20.00	\$60.25/\$60.25
CenturyTel	\$9.73	\$22.71	\$ 7.00/\$12.00
Citizens	\$15.25	\$29.50	\$30.00/\$30.00
Eagle Valley	\$20.00	\$22.62	\$60.25/\$60.25
East Otter Tail Tel	\$19.20-21.20*	\$19.20-21.20*	\$60.25/\$60.25
Embarq MN	\$9.00	\$16.11	\$19.00/\$43.00
Felton Tel Co	\$20.00	\$22.16-24.61*	\$60.25/\$60.25
Midwest Tel Co	\$20.00	\$20.50	\$60.25/\$60.25
Qwest	\$15.96	\$34.61	\$18.35/\$47.90
Twin Valley – Ulen	\$21.20	\$21.20	\$60.25/\$60.25

\*multiple rates

3. PBT's Advertising Plan - PBT stated that it currently meets and will meet the advertising requirements through several different channels of general distribution, including newspaper and direct mail. PBT 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 PBT's web site: [www.paulbunyan.net](http://www.paulbunyan.net). The service offering will also be published at least annually in the local newspaper, and will be posted at the PBT office in Bemidji, MN.
4. PBT's Ability to Remain Functional in Emergency Situations - PBT stated that its network can and will remain functional in emergencies. The central office serving PBT'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. PBT 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. PBT's Satisfaction of Consumer Protection and Service Quality Standards – PBT is subject to, and complies with, the Commission's Rules pertaining to service quality and consumer protection. PBT'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

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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).



7. 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, PBT must offer a stand-alone voice telecommunications service. The ETC petitions filed as a result of the CAF II auction, including the petition by PBT, 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, PBT has been operating successfully for several 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.

## **V. COMMISSION OPTIONS**

The Commission may choose to:

- A. Approve PBT’s request for ETC status for high cost support in the census blocks listed in Exhibit 1.
- B. Deny PBT’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 PBT’s request for ETC status for high cost support in the census blocks listed in Exhibit 1.

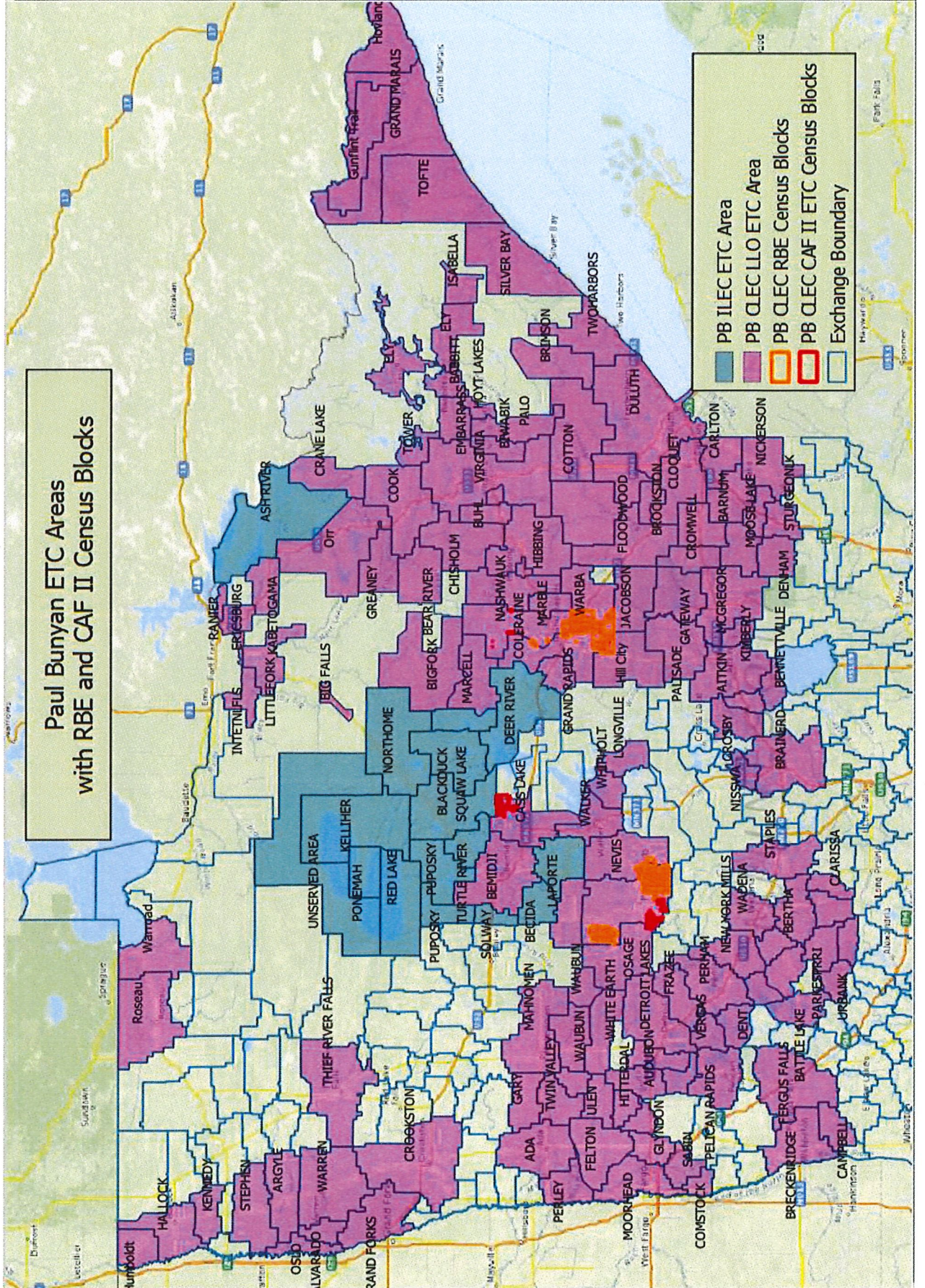
/ja

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<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.



Map of Paul Bunyan ETC Areas



**Paul Bunyan ETC Areas  
with RBE and CAF II Census Blocks**

- PB ILEC ETC Area
- PB CLEC LLO ETC Area
- PB CLEC RBE Census Blocks
- PB CLEC CAF II ETC Census Blocks
- Exchange Boundary



Paul Bunyan ETC Census Blocks

**CAF II Census Blocks (new areas)**

270054501001126	270079400021160	270570705001158
270054501001127	270570705001044	270570705001161
270054501002000	270570705001048	270570705001163
270054501002002	270570705001090	270570705001165
270054501002012	270570705001093	270570705001171
270054501002014	270570705001111	270570705001175
270079400021115	270570705001122	270570705001177
270079400021116	270570705001125	270614804003048
270079400021117	270570705001133	270614804003058
270079400021121	270570705001134	270614804003081
270079400021137	270570705001140	270614804003083
270079400021144	270570705001149	270614804003087
270079400021145	270570705001150	270614804004024
270079400021146	270570705001151	270614804004027
270079400021148	270570705001154	270614804004094
270079400021152	270570705001156	

## **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/Am-18-605**

**Dated this 20<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
Thomas	Burns	tgburns@otcpas.com	OLSEN THIELEN & CO. LTD	2675 Long Lake Rd  Saint Paul, MN 55113	Electronic Service	No	OFF_SL_18-605_AM-18-605
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_18-605_AM-18-605
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_18-605_AM-18-605
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_18-605_AM-18-605
Gary	Johnson	gjohnson@paulbunyan.net	Paul Bunyan Rural Telephone Coop.	P.O. Box 1596 1831 Anne Street NW Bemidji, MN 56601	Electronic Service	No	OFF_SL_18-605_AM-18-605
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_18-605_AM-18-605