

December 10, 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 Roseau Electric Cooperative, Inc. for Designation as an Eligible Telecommunications Carrier (ETC)**  
Docket No: P6996/M-18-679

Dear Mr. Wolf:

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

The petition was filed on October 31, 2018 by:  
William VanderSluis  
Olsen Thielen  
2675 Long Lake Road  
Saint Paul, MN 55113-1117

On behalf of:

Tracey Stoll  
Roseau Electric Cooperative, Inc.  
1107 3rd Street NE  
Roseau, MN 56751

The Department recommends that the Commission grant Roseau ETC status for high cost support in the designated census blocks listed in Exhibit 1, and for Lifeline only in all areas where Roseau has authority to operate.

Sincerely,

/s/ JOY GULLIKSON  
Rate Analyst

JG/ja  
Attachment



## Before the Minnesota Public Utilities Commission

---

### Comments of the Minnesota Department of Commerce

#### Petition of Roseau Electric Cooperative, Inc. for Designation as an Eligible Telecommunications Carrier (ETC)

Docket No: P69961/M-18-679

#### I. ISSUE

Whether the Minnesota Public Utilities Commission (Commission) should grant the petition of Roseau Electric Cooperative, Inc. (Roseau) for ETC status for Lifeline service in the exchanges in which it has applied for CLEC authority, and for high cost support ETC status in the census blocks for which Roseau will receive Connect America Funds II (CAFII) funding

#### II. PROCEDURAL HISTORY

Roseau is an electric cooperative that has been operating since 1940. Roseau has applied for authority to operate under Docket P69961/M-18-679 to operate in the CenturyLink exchanges of Roseau and Warroad.

By public notice from the FCC on August 28, 2018, Roseau was named a winning bidder in the CAF II auction, to receive \$2,081,769.70 and serving 326 locations. The CAF II award is given in monthly installments for 10 years (about \$53.21 per location per month for Roseau), as long as Roseau meets certain build out requirements. The 326 locations are in census blocks where Roseau is requesting authorization to provide local service. The applicable census blocks are listed in Exhibit 1. Exchanges in which the census blocks are located are also shown in Exhibit 1.

In order to receive the CAF II support, Roseau, 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 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>1</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>AVERAGE</i>	<i>2,587,252.01</i>	<i>798</i>	<i>3,558.55</i>	<b>\$29.65</b>

<sup>1</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 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>2</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>3</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>4</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>5</sup> The Minnesota Commission's request for an en banc rehearing of the Eighth Circuit decision was recently denied. If the Commission is granted a stay of the court's mandate pending the results of further litigation.

---

<sup>2</sup> USF/ICC Transformation Order, 26 FCC Rcd at 17693, para. 80.

<sup>3</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>4</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>5</sup> *Opinion*, 2018 WL 4260322 (8<sup>th</sup> Cir September 7, 2018)

**IV. ANALYSIS**

In this current application, Roseau requests ETC for high cost in the census blocks it will receive CAF II funds. The census blocks where Roseau will use high cost funds are in the Roseau and Warroad exchanges, where CenturyLink is the incumbent local exchange carrier. The census block numbers that are the subject of the CAF II award are listed in Exhibit 1. For all areas in the Roseau and Warroad exchanges, Roseau requests Lifeline ETC status. The analysis of Roseau’s fitness for ETC certification assumes that this Commission will grant Roseau a certificate of authority.

In this application, Roseau states the following:

1. Facilities and Commitment to Serve - Roseau states that it will provide broadband and voice telephone over fiber-optic facilities. Roseau certifies that it will:
  - (a) provide service on a timely basis to requesting customers within the service area where Roseau ’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 Roseau ’s current network facilities, if service can be provided at reasonable cost by constructing network facilities.
  
2. Roseau’s Basic Universal Service Offering - Roseau 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 Roseau in its CLEC exchanges with the incumbent telephone company rates. The services Roseau offers meet the Basic Local Service requirements under Minn. Rule 7812.0600 and under 47 CFR § 54.101(a).

Location	CenturyTel of MN				ROSEAU			
	Business		Residence		Business		Residence	
	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.
Roseau	37.00	2.33	24.95	0.95	30.00	0	20.00	0
Warroad	37.00	3.88	24.95	1.59	30.00	0	20.00	0

3. Roseau’s Advertising Plan - Roseau states that it will meet the advertising requirements through several different channels of general distribution. Roseau currently communicates with its members via a monthly newsletter. It also advertises services through newspaper and direct mail. Roseau 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 Roseau's web site: <https://www.rouseaelectric.coop>. Roseau's service offering will also be published at least annually in the local newspaper, and will be posted at the Roseau's office in Rouseau, MN.

4. Roseau's Ability to Remain Functional in Emergency Situations - Roseau states that its network will remain functional in emergencies. The central office serving Roseau'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. Roseau will comply 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. Roseau's Satisfaction of Consumer Protection and Service Quality Standards – Roseau is subject to, and commits to comply with, the Commission's Rules pertaining to service quality and consumer protection. Roseau's tariff will have 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>6</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>7</sup> To do otherwise would be defrauding the USF fund. Thus, in order to be granted ETC status, Roseau must offer a stand-alone voice telecommunications

---

<sup>6</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>7</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.



service. The ETC petitions filed as a result of the CAF II auction, including the petition by Roseau, are likely to use IP technology for the voice service offering.

As stated earlier, the Eighth Circuit Court of Appeals found that all VoIP service is an information service.<sup>8</sup> The Minnesota Commission's request for an en banc rehearing of the Eighth Circuit decision was recently denied. If the Commission is granted a stay of the court's mandate, then there will be no classification of VOIP until the matter is legally resolved. Thus, at the time these comments are being submitted, fixed VOIP service remains a telecommunications service under Minnesota law, as this Commission has determined, and satisfies the legal requirement.

In summary, Roseau has been operating successfully for many years as an electric cooperative and it is utilizing the services of another telecommunications company with many years of experience. Financial information has been provided and is satisfactory. These facts comport with the requirement of 47 CFR § 54.201 (h) that the carrier demonstrate it is financially and technically capable of providing the supported service.

## **V. COMMISSION OPTIONS**

The Commission may choose to:

- A. Approve Roseau's request for ETC status for high cost support in the Census Blocks listed in Exhibit 1, and for Lifeline only in all areas where Roseau has authority to operate.
- B. Deny Roseau's request for ETC status for high cost support in the Census Blocks listed in Exhibit 1, and for Lifeline only in all areas where Roseau has authority to operate.
- C. Take other action, as the Commission deems appropriate.

## **VI. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission order option A: Approve Roseau's request for ETC status for high cost support in the Census Blocks listed in Exhibit 1, and for Lifeline only in all areas where Roseau has authority to operate.

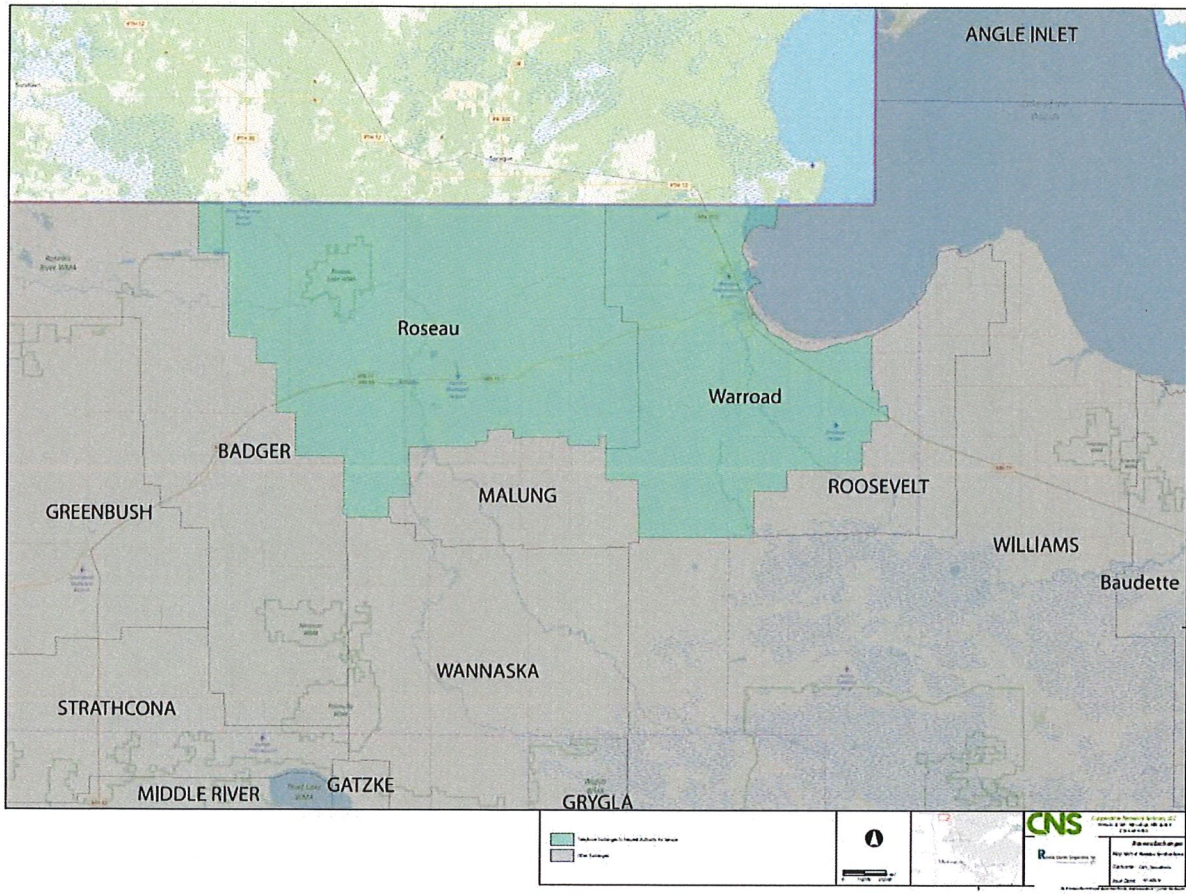
/ja



---

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

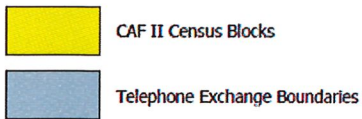
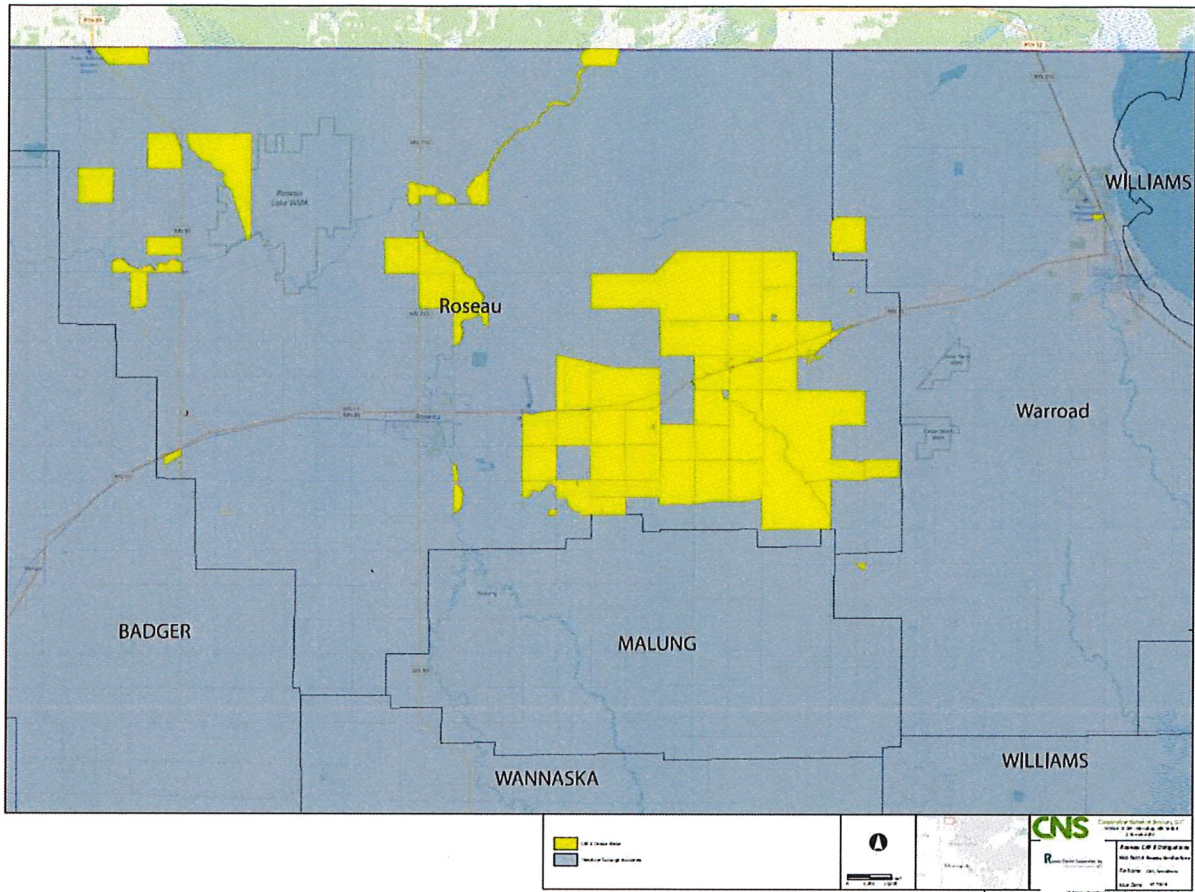
**Illustration of Proposed ETC Service Areas**

**CenturyTel of MN Exchanges:  
Roseau Exchange  
Warroad Exchange**



-  Telephone Exchanges to Request Authority for Service
-  Other Exchanges

**Illustration of CAF II Census Blocks for Roseau Electric Cooperative**





**Listing of CAF II Census Blocks for Roseau Electric Cooperative**

271359701001021	271359702001001	271359703004003	271359704001012
271359701001024	271359702001006	271359703004004	271359704001017
271359701001026	271359702001010	271359703004005	271359704001018
271359701001027	271359702001019	271359703004006	271359704001019
271359701001030	271359702001046	271359703004030	271359704001020
271359701001034	271359702001055	271359703004035	271359704001021
271359701001079	271359702001113	271359703004039	271359704001022
271359701001143 <sup>(1)</sup>	271359702001122	271359703004041	271359704001023
271359701001152	271359702001126	271359703004042	271359704001024
271359701001155	271359702001127	271359703004043	271359704001025
271359701001162	271359702001128	271359703004044	271359704001026
271359701001163	271359702001289	271359703004047	271359704001027
271359701001164	271359702001312	271359703004048	271359704001029
271359701001165	271359702001423	271359703004050	271359704001040
271359701001166		271359703004070	271359704001041
271359701001167		271359703004072	271359704001043
271359701001171		271359703004119	271359704001044
271359701001172		271359703004122	271359704001061
271359701001176		271359703004123	271359704001062
271359701001181		271359703004125	271359704001064
271359701001183		271359703004126	271359704001069
271359701001187		271359703004127	271359704001072
271359701001189			271359704001073
271359701001190			271359704001074
271359701001201			271359704001081 <sup>(1)</sup>
			271359704001096
			271359704001097
			271359704001168
			271359704001169

Note 1: Blocks 271359701001143 and 271359704001081 are in Warroad exchange  
All other blocks are in the Roseau exchange

## **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. P6996/M-18-679**

**Dated this 10<sup>th</sup> day of December 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_18-679_M-18-679
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_18-679_M-18-679
David	Denton	david.denton@state.mn.us	DPS ECN	445 Minnesota Street Suite 137 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_18-679_M-18-679
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_18-679_M-18-679
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_18-679_M-18-679
Tracey	Stoll	tstoll@roseauelectric.com	Roseau Electric Cooperative, Inc.	1107 3rd St NE PO Box 100 Roseau, MN 56751-1326	Electronic Service	No	OFF_SL_18-679_M-18-679
Jason	Topp	jason.topp@centurylink.com	CenturyLink	200 S 5th St Ste 2200  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-679_M-18-679
William	VanderSluis	bvandersluis@otcpas.com	Olsen & Thielen	2675 Long Lake Road  St Paul, MN 55113	Electronic Service	No	OFF_SL_18-679_M-18-679
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_18-679_M-18-679
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_18-679_M-18-679