GRAY PLANT MOOTY

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GREGORY R. MERZ
ATTORNEY
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GREGORY.MERZ@GPMLAW.COM

April 2, 2015

Dan P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

Via: E-File

Re: In the Matter of a Petition of Lake County Minnesota for Designation as an Eligible Telecommunications Carrier
Docket No. M-15-65

Dear Mr. Wolf:

Enclosed for E-filing in the above-referenced matter please find Lake County's Responses to Commission's Information Requests and a Certificate of Service.

Sincerely,

/s/Gregory R. Merz

Gregory Merz

GRM/akm
Enclosure
cc: Service List

## CERTIFICATE OF SERVICE

I, Amy K. Milbradt, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, email, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at Minneapolis, Minnesota.

**Lake County's Responses to Commission's Information Requests**

**Re: Docket No. M-15-65**

Dated this 2nd day of April, 2015.

s/Amy K. Milbradt
Amy K. Milbradt

GP:3959546 v1

| First Name | Last Name | Email | Company Name | Address | Delivery Method | View Trade Secret | Service List Name |
|---|---|---|---|---|---|---|---|
| Julia | Anderson | Julia.Anderson@ag.state.mn.us | Office of the Attorney General-DOC | 1800 BRM Tower<br>445 Minnesota St<br>St. Paul,<br>MN<br>551012134 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Scott | Bohler | scott.bohler@ftr.com | Frontier Communications Corporation | 2378 Wilshire Blvd<br><br>Mound,<br>MN<br>55364-1652 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Thomas | Burns | tgburns@otcpas.com | OLSEN THIELEN & CO. LTD | 2675 Long Lake Rd<br><br>St. Paul,<br>MN<br>55113 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Linda | Chavez | linda.chavez@state.mn.us | Department of Commerce | 85 7th Place E Ste 500<br><br>Saint Paul,<br>MN<br>55101-2198 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Pete | Eggimann | PEGGIMANN@MN-MESB.ORG | Metropolitan Emergency Services Board | 2099 University Ave W Ste 201<br><br>St. Paul,<br>MN<br>551043431 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Matthew | Huddleston | matthew.huddleston@co.lake.mn.us | Lake County Minnesota | 601 3rd Ave<br><br>Two Harbors,<br>MN<br>55616 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| John | Lindell | agorud.ecf@ag.state.mn.us | Office of the Attorney General-RUD | 1400 BRM Tower<br>445 Minnesota St<br>St. Paul,<br>MN<br>551012130 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Gregory R. | Merz | gregory.merz@gpmlaw.com | Gray, Plant, Mooty | 80 S 8th St Ste 500<br><br>Minneapolis,<br>MN<br>55402-5383 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Jeffrey | Roiland | jeff.s.roiland@gmail.com | Lake Communications | 409 17th Ave<br><br>Two Harbors,<br>Mn<br>55616 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Kevin | Saville | kevin.saville@ftr.com | Citizens/Frontier Communications | 2378 Wilshire Blvd.<br><br>Mound,<br>MN<br>55364 | Electronic Service | No | OFF_SL_15-65_M-15-65 |

| First Name | Last Name | Email | Company Name | Address | Delivery Method | View Trade Secret | Service List Name |
|---|---|---|---|---|---|---|---|
| Jason | Topp | jason.topp@centurylink.com | CenturyLink | 200 S 5th St Ste 2200<br>Minneapolis,<br>MN<br>55402 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Dana | Wahlberg | dana.wahlberg@state.mn.us | Department of Public Safety | Town Square Ste 137<br>444 Cedar St<br>St. Paul,<br>MN<br>551015126 | Electronic Service | No | OFF_SL_15-65_M-15-65 |
| Daniel P | Wolf | dan.wolf@state.mn.us | Public Utilities Commission | 121 7th Place East<br>Suite 350<br>St. Paul,<br>MN<br>551012147 | Electronic Service | No | OFF_SL_15-65_M-15-65 |

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

| | |
|---|---|
| Beverly Jones Heydinger | Chair |
| Nancy Lange | Commissioner |
| Dan Lipschultz | Commissioner |
| John Tuma | Commissioner |
| Betsy Wergin | Commissioner |

| | |
|---|---|
| In the Matter of a Petition of Lake County Minnesota for Designation as an Eligible Telecommunications Carrier | Docket No. M-15-65 |

**LAKE COUNTY'S RESPONSES TO COMMISSION'S INFORMATION REQUESTS**

Lake County Minnesota, d/b/a Lake Connections ("Lake County"), for its responses to Information Requests propounded by the Minnesota Public Utilities Commission, states as follows:

REQUEST NO. 1: Provide a copy of responses to all information requests received. Provide on an ongoing basis.

RESPONSE: Lake County has not, to date, responded to any information requests. To the extent that Lake County responds to any information requests, a copy of all such responses will be provided to the Commission at the time the responses are served on the requesting party.

REQUEST NO. 2: Lake County/Lake Connections relationship.

a. Explain the Lake County d/b/a Lake Connections designation. Explain if this is a joint filing by two distinct entities.

b. Detail any changes in structure, ownership, operations of Lake Connections, as a nonprofit corporation since it received CLEC authority from the Commission in Docket 11-581 to what is now currently described in its web site as a self-sustaining business owned by Lake County.

RESPONSE: a. "Lake Connections" is an assumed name and also a trademark/service mark used by Lake County for purposes of its broadband internet access business. Lake County and Lake Connections are two names for the same legal entity.

b. Lake County Minnesota is a political subdivision of the State of Minnesota and is the recipient of governmental funding for the purpose of constructing a fiber optic telecommunications network to serve residential and business customers in underserved and unserved areas in northern Minnesota. Lake Connections is the trade name for Lake County's broadband internet access business. Lake County is not authorized to provide service as a CLEC and there have not been any changes in its structure, ownership or operations.

Lake Communications was authorized by the Commission to provide service as a CLEC in Docket No. 11-581. Lake County has entered into a business relationship with Lake Communications for Lake Communications to operate and manage Lake County's broadband network and also to provide voice telephony services to residential and business end user customers using that network.

Lake Communications and Lake County are separate entities. Neither is a corporate affiliate of the other and there is no common ownership, personnel, or management between the two entities.

REQUEST NO. 3: Provide the legal, financial, personnel, and other arrangements between Lake County (the local government), and Lake Connections (the high speed internet and voice service provider). Besides being Lake County's selected vendor for access to the PSTN and to the Rural Broadband project, specify and submit any special registration, ownership, county approval or other arrangement between Lake Connections and Lake County.

RESPONSE: The reference to Lake Connections as a high speed internet and voice service provider is incorrect. Lake County, d/b/a Lake Connections is a provider of broadband internet access service but it does not, itself, provide voice service. Rather, Lake County has entered into a business relationship with Lake Communications under which Lake Communications provides Voice over Internet Protocol ("VoIP")-based voice telephony service over Lake County's broadband network.

Although the parties have not yet finalized the documentation of their business relationship, they have reached agreement in principle on the key elements of that relationship, which include:

- Lake County will provide its customers throughout its service territory with access to VOIP-based voice telephony service ("Voice Telephony") provided by Lake Communications;
- Lake County and Lake Communications will establish network-to-network interconnection for the purpose of delivering Voice Telephony;
- Lake County will provide all transport from the network-to-network interconnection to end user premises;
- Lake Communications will be solely responsible for interactions with end users concerning Voice Telephony;
- Lake Communications may agree to purchase end user billing service from Lake County for the Voice Telephony provided to end users;
- Lake Communications agrees to comply, and will be solely responsible for compliance, with all applicable state and federal law and regulations as it relates to Voice Telephony provided to end users;
- Lake Communications agrees to perform any necessary regulatory requirements related to Voice Telephony;
- Lake Communications agrees to make Voice Telephony available to all customers in Lake County's service areas on a non-discriminatory basis pursuant to the terms and conditions in Lake Communications' tariff filed with the commission and/or as published on Lake Communications' website.

REQUEST NO. 4: Include a copy of any agreement between Lake County and Lake Connections relating to Lake County's participation in the Rural Broadband Experiment Funds and in the Petition for ETC designation in Minnesota.

RESPONSE: Lake County refers the Commission to its response to Request No. 3, above. Lake County will provide the Commission with a copy of the parties' contract after it has been finalized.

REQUEST NO. 5: Distinguish between Lake County and Lake Connections in terms of:

a. Services that will be provided under the petition.

b. Provision of any telecommunications service for a fee to the public. List applicable services provided.

c. Authority to provide local telecommunications service in the state of Minnesota.

d. Legal responsibility: a) for providing voice telephony, and b) related to the ETC designation.

e. Financial responsibility: a) for providing voice telephone, and b) related to the ETC designation.

f. Ownership of facilities needed to provide: a) voice telephony, and b) internet access.

g. Operation of facilities needed to provide: a) voice telephony, and b) internet access.

h. Compliance/Intent to comply with applicable state laws and rules, including Minn. Stat. 237.74, 237.035, 237.16, 237.121 and Minn. Rules 7812.0600, 7812.0700, 7812.2210, 7810.4900.

i. Role in seeking ETC designation.

j. Role if ETC designation is granted.

Submit documents to substantiate your response.

a. Lake County is the provider of broadband internet access services; Lake Communications is the provider of voice telephony services over Lake County's network.

b. Lake County's ETC petition is based on its provision of broadband internet access services on a retail, mass market basis which, pursuant to the FCC's *Open Internet Order*, is a telecommunications service subject to Title II of the federal Communications Act. By way of further response, Lake County refers the Commission to its response to Request No. 6, below.

c. Lake Communications is the entity that is authorized by the Commission to provide local exchange service.

d. Lake County is the entity that will be responsible for compliance with all legal requirements regarding its designation as an ETC; Lake Communications is the entity that will be responsible for compliance with all legal requirements regarding voice telephony service.

e. Lake County is the entity that will be financially responsible for designation as an ETC, including for the construction, maintenance and operation of its fiber network; Lake Communications is the entity that will be financially responsible for the provision of voice telephony service.

f. Lake County is the entity that owns the facilities used to provide broadband internet access service; Lake Communications is the entity that owns the facilities used to provide voice telephony service over Lake County's network.

g. Lake County is the entity that is responsible for operation of the facilities used to provide broadband internet access service and Lake County and Lake Communications have entered into a business arrangement under which Lake Communications will operate and manage the Lake County network on Lake County's behalf. Lake Communications is the entity that is responsible for operation of the facilities used to provide voice telephony service over Lake County's network.

h. Lake Communications, as a CLEC authorized by the Commission to provide local exchange service, is subject to Minnesota statutes and rules that apply to providers of telephone service, including the specific provisions referenced.

i. Lake County is the entity seeking ETC designation.

j. If Lake County's petition for ETC designation is granted, Lake Communications will be the party that, pursuant to a contract with Lake County, manages and operates the

network on Lake County's behalf and, as a vendor to Lake County, provides voice telephony service over that network to residential and business end user customers.

Lake County is producing with these responses, as Attachment A, the Minnesota Secretary of State certificate of assumed name for Lake County d/b/a Lake Connections. Lake County also refers the Commission to its petition for designation as an ETC and documents already submitted to the Commission in support of that petition.

REQUEST NO. 6: In light of the FCC's Open Internet Order released March 12, 2015, does the entity seeking ETC status believe it is providing telecommunications service?

RESPONSE: Pursuant to the FCC's *Open Internet Order, In the Matter of Protecting and Promoting the Open Internet, Report and Order on Remand,* Declaratory Ruling and Order, GN Docket No. 14-28 (Rel. March 12, 2015), broadband internet access service, which is defined as "a mass-market and retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet points, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service," is categorized as a telecommunications service. *See Open Internet Order* at ¶¶ 336, 361-64; *see also Open Internet Order* at ¶ 43. ("As the record reflects, times and usage patterns have changed and it is clear that broadband providers are offering both consumers and edge providers straightforward transmission capabilities that the Communications Act defines as a 'telecommunications service.'")

In its *Open Internet Order*, the FCC distinguished between the transmission capability of broadband Internet access service and the services delivered via that transmission capability:

> [T]his Order concludes that the retail broadband Internet access service available today is best viewed as separately identifiable offers of (1) a broadband Internet access service that is a telecommunications service (including assorted functions and

> capabilities used for the management and control of that telecommunications service) and (2) various "add-ons" applications, content, and services that generally are information services.

*Open Internet Order* at ¶ 47.

Lake County is a provider of broadband internet access service and, therefore, qualifies as a provider of a telecommunications service under Title II of the federal Communications Act.

REQUEST NO. 7: Did Lake County receive FCC approval for waiver of the 90 day period for state ETC designation? If so, provide a copy of the approval.

RESPONSE: Lake County has sought a waiver but the FCC has not yet determined its request. A copy of Lake County's request for waiver and supporting document accompanies these responses as Attachment B.

REQUEST NO. 8: Does Lake County consider itself a telecommunications carrier? Explain why Lake County does not or cannot seek a certificate of authority under Minn. Stat. § 237.74 and other related laws to provide local telephone service in the state.

RESPONSE: Lake County does not furnish telephone service to the public and, accordingly, is not a telecommunications carrier as that term is defined under Minnesota law. Lake County provides the broadband connection to the customers' premises over which another entity, Lake Communications, which is certified by the Commission as a CLEC, provides VoIP-based telephone service.

REQUEST NO. 9: Re Waiver Request: Specify technical, financial or other reasons for the request to waive the exchange-wide requirement in favor of census blocks.

RESPONSE: Lake County is petitioning to be designated as an Eligible Telecommunications Carrier in order to satisfy a condition to receipt of a grant under the Rural Broadband Experiment program. Lake County was conditionally approved to receive this grant for the purpose of

providing broadband internet access service to specific census blocks, which do not follow the boundaries of a telephone exchange and are significantly smaller than a telephone exchange. Funds received by Lake County under the grant will be used by Lake County to build out its network in order to serve customers located in those specific census blocks.

Waiver of the requirement to provide service throughout an entire telephone exchange is necessary to reflect the geographic area served by Lake County's broadband network and to avoid creating a competitive disadvantage for ETC-eligible companies, such as Lake County, whose networks do not mirror the ILEC network.

REQUEST NO. 10: Re Amended petition filed on 01/30/2015: List all the changes included in the amended filing.

RESPONSE: Lake County filed an amended petition for ETC designation to provide the Commission with a signature page executed by the County Administrator, which had been inadvertently omitted from the filing on January 29, 2015.

Dated: April 2, 2015

**GRAY, PLANT, MOOTY,**
**MOOTY & BENNETT, P.A.**

By s/Gregory R. Merz
Gregory Merz, Atty. # 185942
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone No.: (612) 632-3257
Facsimile No.: (612) 632-4257
Gregory.merz@gpmlaw.com

GP:3948397 v1

# Attachment A

AN - original

73002640002

# Office of the Minnesota Secretary of State

## Assumed Name | Certificate of Assumed Name

*Minnesota Statutes, Chapter 333*

**Read the instructions before completing this form.**

**Filing Fee: $50 for expedited service in-person and online filings, $30 if submitted by mail**

**Note: An Annual Renewal is required to be filed once every calendar year, beginning in the calendar year following the original filing with the Secretary of State.**

The filing of an assumed name does not provide a user with exclusive rights to that name. The filing is required for consumer protection in order to enable consumers to be able to identify the true owner of a business.

1. List the exact assumed name under which the business is or will be conducted: (Required)

Lake Connections

2. Principal Place of Business: (Required)

| 409 17th Avenue | Two Harbors | MN | 55616 |
|---|---|---|---|
| Street Address *(A PO Box by itself is not acceptable)* | City | State | Zip |

3. List the name and complete street address of all persons conducting business under the above Assumed Name, OR if an entity, provide the legal corporate, LLC, or Limited Partnership name and registered office address: (Required)
Note: A PO Box by itself is not acceptable. Attach additional sheet(s) if necessary.

| Lake County | 601 Third Avenue | Two Harbors | MN | 55616 |
|---|---|---|---|---|
| Name | Street | City | State | Zip |
| Name | Street | City | State | Zip |
| Name | Street | City | State | Zip |

4. I, the undersigned, certify that I am signing this document as the person whose signature is required, or as agent of the person(s) whose signature would be required who has authorized me to sign this document on his/her behalf, or in both capacities. I further certify that I have completed all required fields, and that the information in this document is true and correct and in compliance with the applicable chapter of Minnesota Statutes. I understand that by signing this document I am subject to the penalties of perjury as set forth in Section 609.48 as if I had signed this document under oath.

Signature *(Only one nameholder or an authorized agent is required to sign)* — Date: 7 Jan 2014

Russell Conrow, Special Assistant County Attorney

Print Name and Title

**Email Address for Official Notices**
Enter an email address to which the Secretary of State can forward official notices required by law and other notices:

laurel.buchanan@co.lake.mn.us

☑ Check here to have your email address excluded from requests for bulk data, to the extent allowed by Minnesota law.

nameholder holds TM - 64532 7700028

## Office of the Minnesota Secretary of State

**Assumed Name | Certificate of Assumed Name**

*Minnesota Statutes, Chapter 333*

**List a name and daytime phone number of a person who can be contacted about this form:**

| Russ Conrow | (218)830-8871 |
|---|---|
| Contact Name | Phone Number |

**Entities that own, lease, or have any financial interest in agricultural land or land capable of being farmed must register with the MN Dept. of Agriculture's Corporate Farm Program.**

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 29 2014

Mark Ritchie
Secretary of State

# Attachment B

February 21, 2015

***VIA ECFS***

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Attention: Wireline Competition Bureau

**Re: Lake County Minnesota Petition for Waiver of ETC Designation Deadline for Rural Broadband Experiments**
**WC Docket No. 10-90, WC Docket No. 14-259**

Dear Ms. Dortch:

Lake County Minnesota ("Lake County") respectfully submits the above-referenced Petition for Waiver. Lake County seeks a waiver of the deadline established in the above proceeding to notify the Wireline Competition Bureau of eligible telecommunications carrier status.

Please direct inquiries regarding the Lake County Petition for Waiver to me.

Dated: February 21, 2015

**GRAY, PLANT, MOOTY,**

**MOOTY & BENNETT, P.A.**

By s/Gregory R. Merz
Gregory Merz, Atty. # 185942
500 IDS Center
80 South Eighth Street
Minneapolis, Minnesota 55402
Telephone No.: (612) 632-3257
Facsimile No.: (612) 632-4257
Gregory.merz@gpmlaw.com

Enclosures

cc: Ian Forbes, Telecommunications Access Policy Division

Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| Rural Broadband Experiments | ) | WC Docket No. 14-259 |

**EMERGENCY REQUEST FOR EXPEDITED TREATMENT**

**PETITION OF LAKE COUNTY MINNESOTA FOR WAIVER OF ETC DESIGNATION DEADLINE FOR RURAL BROADBAND EXPERIMENTS**

Pursuant to Section 1.3 of the rules of the Federal Communications Commission ("FCC" or "Commission"),[1] Lake County Minnesota ("Lake County" or the "Company") respectfully requests waiver of the March 5, 2015, deadline to submit appropriate documentation of its eligible telecommunications carrier ("ETC") designation in each census block for which the Company is provisionally selected to receive Rural Broadband Experiment ("RBE") support. Lake County was included among the entities provisionally accepted for RBE support in the FCC Public Notice of December 5, 2014,[2] and has worked diligently to ensure all RBE requirements are completed correctly and on time.

However the Minnesota Public Utilities Commission ("MN PUC") process for review and approval of the Company's ETC designation will extend beyond March 5 and could be further delayed because a party has filed a challenge to the Company's petition.[3] Although the FCC encouraged state commissions to adopt expedited approval processes for entities

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[1] 47 C.F.R. § 1.3.

[2] *Wireline Competition Bureau Announces Entities Provisionally Selected for Rural Broadband Experiments; Sets Deadlines for Submission of Additional Information*, WC Docket No. 10-90, FCC Public Notice DA-14-1772 (Dec. 5, 2014) ("Public Notice").

[3] Challenge filed by Citizens Telecommunications Company of Minnesota, February 6, 2015.

participating in the RBE, staff for the MN PUC has indicated that the Commission's schedule, as well as the MN PUC's established procedures regarding public notice and providing an opportunity for hearing, will not allow the Company's ETC petition to be determined by the deadline.

For the purpose of ETC designation, the MN PUC has adopted rules which parallel federal ETC requirements to prevent fraud and abuse of the universal service programs.[4] Applicants must demonstrate ability to provide the supported services over its own facilities, to comply with service requirements and consumer protection and service quality standards, to remain functional in an emergency, and must describe with specificity a five-year plan for proposed improvements or upgrades. Further, applicants must demonstrate service offerings are comparable to or exceed the incumbent offerings.

Lake County began to prepare for its Minnesota ETC application upon release of the Public Notice and worked diligently to prepare a complete application which addressed all of the MN PUC's ETC designation criteria. The Lake County ETC petition was filed on January 29, 2015.[5] A challenge to the petition was filed by the incumbent. The MN PUC manager has indicated the MN PUC will not be able to consider the matter before the deadline. Therefore, Lake County respectfully requests the Commission waive the March 5, 2015 filing deadline for provisionally-selected RBE participants to submit documentation of ETC designation.

## I. GOOD CAUSE EXISTS TO GRANT REQUESTED WAIVER

In general, the FCC's rules may be waived for good cause shown.[6] Waiver is

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[4] See Minn. R., part 7812.1400.
[5] Application of Petition of Lake County Minnesota for Designation as an Eligible Telecommunications Carrier Docket No. P6944/M-15-65 PUC filed January 29, 2015.
[6] 47 C.F.R. § 1.3.

appropriate where the "particular facts would make strict compliance inconsistent with the public interest."[7] The FCC may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question, special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.[8]

The Commission likely anticipated that there would be circumstances wherein a provisional winner would not be able to provide documentation of ETC designation within the 90- day timeframe, and the Commission noted in the *Rural Broadband Experiments Order,* "a waiver of this deadline may be appropriate if a winning bidder is able to demonstrate that it has engaged in good faith to obtain ETC designation, but has not received approval within the 90-day timeframe."[9] Lake County has acted in good faith to obtain ETC designation from the MN PUC, diligently worked to prepare the substantial information required, and timely filed its ETC application. However, the Company has been advised that the MN PUC will not be able to consider the ETC petition until after the March 5, 2015, deadline.

The FCC has good cause to grant the Company's petition and extend the deadline to allow for the MN PUC public notice and review process. Lake County does not anticipate a significant delay and as such does not expect it will significantly impact the FCC's RBE schedule. The FCC has good cause to grant Lake County waiver of the March 5 deadline as the company has put forth a considerable amount of time and resources into its ETC application.

Lake County's proposed RBE projects will bring service to currently unserved, rural,

---

[7] *See AT&T Wireless Services, Inc. et al. v. Federal Communications Commission*, No. 00-1304 (D.C. Cir. 2001), *citing Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) ("*Northeast Cellular*").

[8] *See* generally, *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *see also Northeast Cellular* (D.C. Cir. *1990*).

[9] Rural Broadband Experiments Order at 22.

sparsely populated areas in which historically there has not been a viable business case that makes financial and operational sense for investing in broadband infrastructure. Without RBE, these areas would continue to go unserved due to the extremely high cost of bringing the proposed services to these rural areas.

## II. CONCLUSION

Lake County is has consistently committed its resources to the fullest extent to meet the deadlines established for the RBE. It is in the public interest to waive the March 5 deadline for Lake County so that the Company can secure the necessary ETC designation from the MN PUC and move forward to bring affordable and reliable broadband to unserved rural areas.

Dated: February 17, 2015

**GRAY, PLANT, MOOTY,**
**MOOTY & BENNETT, P.A.**

By s/Gregory R. Merz
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GP:3908573 v1

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GREGORY R. MERZ
ATTORNEY
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DIRECT FAX (612) 632-4257
GREGORYMERZ@GPMLAW.COM

March 2, 2015

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

**VIA ECFS**

Attention: Wireless Competition Bureau

Re: Lake County Minnesota Petition for Waiver of ETC Designation Deadline for Rural Broadband Experiments, WC Docket No. 10-90, WC Docket No. 14-259

Dear Ms. Dortch:

Lake County Minnesota ("Lake County") respectfully submits the accompanying Affidavit of Thomas Burns in Support of Petition of Lake County Minnesota for Waiver of ETC Designation Deadline for Rural Broadband Experiments. This Affidavit is intended to supplement the Petition of Lake County Minnesota for Waiver of ETC Designation Deadline for Rural Broadband Experiments, which was filed on February 21, 2015.

Lake County filed its petition with the Minnesota Public Utilities Commission ("MPUC"), seeking designation as an Eligible Telecommunications Carrier ("ETC") on January 29, 2015. On February 6, 2015, Citizens Telecommunications of Minnesota, LLC ("Citizens"), the incumbent local exchange carrier in the area serviced by Lake County, filed an objection to the form and completeness of Lake County's ETC petition. On February 11, 2015, I filed, on behalf of Lake County, a response to Citizens' objection. On that same date, mindful of the March 5, 2015, for reporting to the FCC that Lake County had received ETC status, I contacted the staff at the MPUC responsible for scheduling to attempt to determine when Lake County's ETC petition would come before the MPUC for decision. I was told at that time that, because an objection to petition had been filed and the Department of Commerce had not yet filed comments regarding the petition, it was virtually certain that the Commission would not be able to address the matter before March 5 and that it was unlikely that the matter would be place on the MPUC's agenda before April. Subsequent to this conversation, the DOC twice requested, and was granted, an extension of time to file comments regarding Lake County's ETC petition. The DOC's comments are now due on March 15, 2015. It is reasonable to believe that, even had Lake County's ETC petition been filed a month sooner, it would not have received a determination of its petition before the FCC's March 5 deadline.

Accordingly, and for the reasons set forth in its Petition for Waiver, Lake County respectfully requests that the March 5, 2015, deadline for obtaining ETC status be waived.

Thank you for your consideration of this matter.

Sincerely,

Gregory Merz

Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

| | | |
|---|---|---|
| In the Matter of | ) | |
| | ) | |
| Connect America Fund | ) | WC Docket No. 10-90 |
| | ) | |
| Rural Broadband Experiments | ) | WC Docket No. 14-259 |

**AFFIDAVIT OF THOMAS BURNS IN SUPPORT OF PETITION OF LAKE COUNTY MINNESOTA FOR WAIVER OF ETC DESIGNATION DEADLINE FOR RURAL BROADBAND EXPERIMENTS**

Thomas Burns, upon being sworn, states as follows:

1. I am employed by Olsen Thielen & Co., Ltd. as a telecommunications consultant. My business address is 2675 Long Lake Road, St. Paul, Minnesota 55113. I am submitting this affidavit in support of the request of Lake County Minnesota ("Lake County") for a waiver of the March 5, 2015, deadline for obtaining designation as an Eligible Telecommunications Carrier ("ETC") in order to meet the conditions of a grant under the Rural Broadband Experiment program.

2. I was initially contacted by Lake Communications on December 9, 2014, regarding assisting with the preparation of an application for Lake County to be designated as an ETC. From prior business dealings, I knew that Lake Communications that has a contract with Lake County for telecommunications operations. I was aware that Lake County had been conditionally approved to receive a grant under the Rural Broadband Experiment program. It was my understanding that being designated as an ETC was one of the conditions that Lake County had to meet in order to receive the grant funds.

3. On December 12, 2014, I participated in a conference call with representatives of Lake Communications. In that telephone conference, we discussed how service would be

provided and a broad outline of an ETC filing to be made by Lake County.

4. Lake County serves end user customers via Voice over Internet Protocol ("VoIP") service that is provided over Lake County's broadband network. Minnesota's rules regarding ETC petitions do not directly address service provided using VoIP and accordingly, it was not clear whether that ETC petition should be filed with the Minnesota Public Utilities Commission ("MPUC") or FCC. It took me a few days to analyze the pros and cons of either approach and I ultimately came to the conclusion that although filing with the FCC was an option, the better course would be to file with the MPUC. I made this recommendation to the client and the client agreed.

5. On or about January 14, 2015, I had a conference call with Greg Doyle, the Telecommunications Manager at the Minnesota Department of Commerce ("DOC"), to discuss Lake County's anticipated ETC filing and to obtain DOC's input.

6. On January 15, 2015, I sent a draft of the ETC petition to Lake County and Lake Communications for their review and comment.

7. After receiving input and approval from Lake County and Lake Communications, I finalized the petition and filed it with the MPUC on January 29, 2015.

8. On February 6, 2015, Citizens Telecommunications Company of Minnesota LLC ("Citizens"), the incumbent local exchange carrier in the area served by Lake County, filed a challenge to the completeness and form of Lake County's ETC petition. A copy of Citizens' challenge is attached to this affidavit as Exhibit A. Lake County filed its response to Citizen's Challenge on February 11, 2015. In its response, Lake County noted the FCC's March 5 deadline and requested expedited consideration. A copy of Lake County's response is attached to this affidavit as Exhibit B.

9. Concurrent with the filing of Lake County's response to Citizen's challenge, counsel for Lake County contacted staff at the MPUC with responsibility for scheduling to attempt to determine when Lake County's ETC petition would likely be placed on the MPUC's agenda for decision. Staff informed counsel that there was essentially no chance that Lake County's ETC petition would be determined before March 5 and further indicated that, in light of the challenge that had been asserted and because the DOC had not yet filed comments on the petition, it was unlikely that the matter would be placed on the MPUC's agenda before April.

10. The DOC has sought, and been granted, two extensions of the deadline for submitting comments on Lake County's ETC petition. The DOC's comments on Lake County's petition are now due on March 15, 2015. Attached to this affidavit as Exhibit C is a copy of the order of the MPUC's order granting DOC's request for a waiver.

Thomas Burns

Thomas Burns

Subscribed and sworn before me this
27th day of February, 2015.

Holly Marie Preisler

Notary Public

GP:3916188 v1

HOLLY MARIE PREISLER
NOTARY PUBLIC - MINNESOTA
MY COMMISSION EXPIRES 01/31/18

STATE OF MINNESOTA

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

| | |
|---|---|
| Beverly Jones Heydinger | Chair |
| Nancy Lange | Commissioner |
| Dan Lipschultz | Commissioner |
| John Tuma | Commissioner |
| Betsy Wergin | Commissioner |

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| In the Matter of a Petition of Lake County Minnesota for Designation as an Eligible Telecommunications Carrier | Docket M-15-65 |

**CHALLENGE TO THE FORM OR COMPLETENESS OF PETITION**

On January 29, 2015, Lake County Minnesota d/b/a Lake Connections ("Lake County") filed a petition asking the Minnesota Public Utilities Commission ("Commission") to issue an order designating Lake County as an eligible telecommunications carrier ("ETC"). The Commission's rule covering the process for ETC designation in this case is 7812.1400.

Citizens Telecommunications Company of Minnesota, LLC ("CTC-MN") is the incumbent local exchange carrier ("ILEC") in much of the area for which Lake County is seeking ETC designation, as the petition notes. In accordance with Rule 7812.1400, Subpart 6, CTC-MN challenges the form and completeness of Lake County's petition[1].

Rule 7812.1400 lays out the process the Commission uses for designating ETCs. Subpart 1 of that rule applies to the designation of an ILEC as an ETC, and Subpart 2 of the rule applies to the designation of a competitive local exchange carrier ("CLEC") as an ETC. Lake County is neither an ILEC nor a CLEC. Indeed, Lake County does not appear to be a local service "carrier" at all, as it does not now and apparently has no intent of providing service to end users. Under the text of Rule 7812.1400, ILECs and CLECs may be designated as ETCs, but the language of the rule does not provide for the designation of non-provider entities such as Lake County. Thus, it does not appear that the petition conforms to the rule requirements for ETC designation that the Commission has adopted.

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[1] Lake County's petition references Rule 7811.1400 in its discussion of intervention, comments, and challenge matters. However, Rule 7812.1400 is actually the relevant rule, since the area in question is served by incumbent local exchange carriers with more than 50,000 subscribers in the state.

The federal statutory requirements regarding ETCs state that a common carrier designated as an eligible telecommunications carrier 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), 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);

It does not appear that Lake County is a common carrier, nor will it be offering services to end user customers, as directed by the federal statute.

The petition does note that Lake County has some type of arrangement with Lake Communications, under which Lake Communications will provide service to end users. The petition states that Lake Communications is Lake County's "selected vendor for this function". Lake Communications is a CLEC, with authority to operate from the Commission. However, Lake Communications is not a party to this petition seeking ETC designation for Lake County.

**Conclusion**

CTC-MN believes that Lake County's petition does not conform to the requirements of Rule 7812.1400, as a non-provider entity of the nature of Lake County is not encompassed by the language of the rule. Since Lake County is not a common carrier and does not intend to offer service to end users throughout its service area, it does not comport with federal ETC requirements. CTC-MN suggests that the Commission reject the filing as out of compliance with the relevant rules and requirements.

Dated February 6, 2015

Respectfully submitted,
CITIZENS TELECOMMUNICATIONS COMPANY OF MINNESOTA, LLC.

*/s/ Scott Bohler*

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Manager, Government and External Affairs
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Mark E. Oberlander for

Daniel P. Wolf, Executive Secretary

STATE OF MINNESOTA PUBLIC UTILITIES COMMISSION

# SECOND NOTICE OF EXTENDED COMMENT PERIOD

*Issued: February 23, 2015*

**In the Matter of the Petition of Lake County Minnesota d/b/a Lake Connections for Designation as an Eligible Telecommunications Carrier**

**PUC Docket Number/s: P6944/M-15-65**

The comment period in this case has been extended at the request of the Minnesota Department of Commerce under Minn. Rules, Chapter 7829.

The new deadline for filing *initial* comments is **March 16, 2015** at 4:30pm.

The new deadline for filing *reply* comments is **March 26, 2015** at 4:30pm.

**Filing Requirements:** Utilities, telecommunications carriers, official parties, and state agencies are **required** to file documents using the Commission's electronic filing system (eFiling). All parties, participants and interested persons are encouraged to use eFiling.

**Change your mailing preferences:** E-mail docketing.puc@state.mn.us or call 651-201-2204.

**This document can be made available in alternative formats (e.g., large print or audio) by calling 651-296-0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.**