

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **November 19, 2015****Agenda Item # 2

Company: **Lake County**

Docket No. **P6944/M-15-65**

In the Matter of the Petition of Lake County Minnesota dba Lake Connections
for Designation as an Eligible Telecommunications Carrier

Issue:

Should the Commission give final approval to Lake County's Petition for
ETC designation in Minnesota for the purpose of qualifying for receipt of
federal Connect America Funds as part of the FCC's Rural Broadband
Experiments?

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Relevant Documents

PUC ORDER July 27, 2015
Lake County's Compliance Filing August 27, 2015
Comments
 Department of Commerce..... September 18, 2015
 Citizens September 18, 2015
Reply Comments
 Lake County Minnesota..... September 28, 2015

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Statement of the Issues

Should the Commission give final approval to Lake County's Petition for ETC designation in Minnesota for the purpose of qualifying for receipt of federal Connect America Funds as part of the FCC's Rural Broadband Experiments?

Background

On July 27, 2015, the Commission approved Lake County's (dba Lake Connections') Petition for ETC designation in Minnesota, subject to certain conditions. These conditions, identified on ordering paragraphs 1, 2, 3, and 4 of the Order may be classified into the following categories:

- Submission of Lake County's contract with Lake Communications or another voice-telephony and related services vendor,
- Submission of a detailed map and service area description, and
- Demonstration of compliance with other specific ETC conditions.

On August 27, 2015, Lake County submitted its compliance filing.

The Commission issued a notice soliciting comments on whether Lake County's compliance filing satisfies the Commission's Order and whether the Commission should now grant final approval to Lake County's ETC application.

On September 18, Comments were filed by the Department of Commerce (Department) and Citizens Telecommunications Company of Minnesota, LLC (Citizens).

Lake County replied on September 28.

Lake County's Compliance Filing

Lake County's compliance filing consists of the following parts:

Filing	Description	Compliance with Order
Part A	Transport Agreement between Lake County and Lake Communications	Ordering para. nos. 1 and 2
Part B	Listing of census blocks	Ordering para. no. 3
Part C	Map detailing Lake County's service area and listings of affected CenturyLink and Citizens exchanges	Ordering para. no. 3
Part D	Advertising and other conditions	Ordering para. no. 4

Parties' Comments

Department

The Department has reviewed Lake County's filing and believes that, for the most part, the filing satisfies the Commission's Order. The Department's review includes a listing of all the conditions directed by the Commission and the corresponding section in the filing where Lake County complies with those conditions. For example, Ordering para. 1(a) provides that the contract between Lake County and the vendor indicate that Lake County is the entity legally and financially responsible for providing the section 254(c)(1) supported telecommunications service. The Department indicates that Section 3.1.1 of the filed Contract addresses and meets said condition.

The exception noted by the Department pertains to Ordering para. 4(d) which requires the following:

Lake County to document that it has revised its website to reflect the rates actually charged and update the vendor's website or any related link that relates to its rates.

According to the Department, Lake County has posted the stand-alone voice rates in its website in such a way that may mislead consumers. While the links to the correct tariffed rates are noted, the face page of the website states the incorrect and misleading information "Service Starting at \$29.00" in large, bold letters. That may be a reference to the offering of local service bundled with unlimited long distance at a \$29.00 rate. Consequently, the Department finds that Lake County also fails to meet the following:

Ordering para. 4(e) requiring the filing of tariffs or other documents that reflect its service offerings or the service offerings of Lake Communications and demonstrate that the services offered conform to the assurances or representations made in the petition as identified in footnote 84 of the Department's comments. And,

Ordering para. 4(g) showing that it has met all the conditions required for ETC designation, including a contract between Lake County and Lake Communications that demonstrates compliance with the FCC test for ETC designation.

The Department recommends that Lake County correct its website to indicate that it 1) offers stand-alone voice service, and 2) that stand-alone voice service is available at rates as low as \$13.60 a month, as provided for in the tariffs.

Citizens

Citizens disputes Lake County's claim that the compliance filing satisfies the Commission's requirements in Ordering Paragraphs 1, 2, and 4. Citizens recommends that the Commission not grant final approval to Lake County's ETC application.

Ordering Para.1. Citizens notes that while the first part of Para. 3.1.1 appears to satisfy the Commission's conditions listed as Ordering Paragraph 1 (a), (b), (c) and (d), the last sentence of the paragraph turns the preceding language on its head. That last sentence states

Provider agrees to perform these functions on behalf of County and, to that end, shall comply, and is responsible for compliance, with all applicable state and federal law and regulations as it relates to the Telephone Services provided to End Users, including but not limited to collecting and remitting 911, TAP, and TAM charges.

Similarly, Para. 3.8.2 of the Agreement seems to shield Lake County from responsibility, as indicated in the following language

Provider agrees to defend, indemnify, and hold County harmless from any liability or legal responsibility for any noncompliance, or alleged noncompliance, with any applicable state and federal law and regulations

Ordering Para.2. Citizens also indicates that Lake County fails to satisfy the Commission's requirements in Ordering Para. 2 that the contract clearly show responsibilities of Lake County and the vendor related to certain aspects of providing service, notably Ordering paragraphs 2 (e) regarding Resolution of Customer Complaints, and 2 (f) regarding Operations and Repair of telephony-related equipment. According to Citizens, Minn. Rule 7812.0700 requires the local service provider to be directly responsible to its customers for the quality of service provided to those customers, and that the joint responsibility approach in the filed contract does not satisfy this rule. The contract's provisions on the two service-related aspects, according to Citizens do not clearly show the responsibilities of the two parties in the following sections of the Agreement:

Section 2(e) - Resolution of Customer Complaints . When trouble in reported, the Parties will work cooperatively to isolate and resolve the trouble.

Section 2(f) - Operations and Repair of telephony-related equipment. When trouble is reported the Parties will work cooperatively to isolate and resolve the trouble.

Ordering para. 4. Citizens also pointed out that Lake County failed to reflect the rates actually charged and update the vendor's website or any related link that relates to its

rates. Citizens believes that Lake County does not satisfy the Commission's requirement in Ordering Para. 4.

Lake County

In Reply Comments, Lake County did not dispute the claims of the Department and Citizens that the web sites of Lake County and its vendor failed to reflect the stand-alone rates effective in the Lake Communications' tariffs. The County, however, has since updated the web pages to show the correct \$13.60 rate per month for its stand-alone telephone service.

Regarding Citizens' other allegations, Lake County disputes the claim that the compliance filing did not satisfy the Commission's Order. According to Lake County, the Transport Agreement specifies that Lake County is the entity that is legally and financially bound to provide the supported services, as shown in sections 3.1.1 of the Agreement. It is clear from the Agreement that Lake County has the ultimate responsibility to the Commission for regulatory compliance.

The contractual relationship with Lake Communications describes the rights and responsibilities between Lake County and Lake Communications relating to operational services. Such an arrangement was found by the Commission to be consistent with both federal and state laws. If there is ever a dispute between Lake County and Lake Communications, the terms of the Agreement will inform its resolution.

Lake County also disagrees with Citizens' claim that the Agreement is inconsistent with Minn. Rule part 7812.0700, subp.4, which provides "An LSP is directly responsible to its customers for the quality of service provided to those customers. Nothing in this subpart may be interpreted or applied to impact the allocation of liability between two or more telecommunications service providers in connection with quality of service issues." Lake County asserts that, in this instance, Lake Communications is the local service provider and is responsible, pursuant to its certificate of authority, for compliance with Commission rules that are applicable to its service provision. The Agreement delineates the coordination between the parties, with Lake County as the provider of broadband network, and Lake Communications, as the provider of telephone service over that network in terms of addressing customer issues.

Staff Comments

Compliance Filing. It appears that there are three deficiencies noted by parties regarding Lake County's satisfaction of the conditions required for Commission approval of Lake County's ETC designation.

They are:

1. Both the Department and Citizens question the accuracy of rates reflected on the websites of Lake County and its vendor. Staff has verified Lake County's statement that the websites now correctly reflect the \$13.60 rate for stand-alone telephone service.
2. Citizens' argue that certain language in the Agreement fails to comport with the Commission's conditions in Ordering Para. 1, notably the specification that Lake County is the legally and financially responsible entity for the provision of supported services. The disputed sections of the Agreement are contained in the last sentence of 3.1.1 and 3.8.2.

Staff believes that Section 3.1.1 clearly defines Lake County as the entity that is legally and financially responsible for all obligations related to its ETC status. The sentence disputed by Citizens appears to Staff to conform with the Commission's conclusion in its July 27, 2015 Order that a contractual agreement for Lake Communications to deliver the supported services is permissible. The Commission, on page 6 of the Order, found that "It is therefore reasonable for the County to contract with an experienced telecommunications carrier to handle daily telephony operations..."

3. Citizens claims that the Agreement between Lake County and its vendor does not clearly show the separate responsibilities of the two parties as to certain aspects of providing service, notably Section 3.5.2 regarding Resolution of Customer Complaints, and 3.6.1 regarding Operations and Repair of telephony-related equipment. The sections include language indicating that Lake County and Lake Communications will work cooperatively to isolate and resolve the trouble. According to Citizens, such joint responsibility language does not satisfy Minn. Rule 7812.0700 that requires the local service provider to be directly responsible to its customers for the quality of service provided to those customers.

Staff believes that the Agreement adequately reflect the vendor's obligations for customer-facing operations. For example, Section 3.7.1 states that "Provider shall be ensuring that Telephone Service (including Lifeline service) complies with all telephony-related quality, legal, technical, reporting and related standards and commitments." The Agreement likewise notes in Section 3.6 that there is mutual benefit when end users interface with a single entity for the provisioning of service, and that Lake Communications, on behalf of Lake County, is responsible for providing this customer interface. Lake Communications is contractually obligated to provide telephone service, which was accepted as a reasonable arrangement by the Commission's July 27, 2015 Order.

Staff believes that Lake County satisfies the conditions of the Commission's Order.

Certification for newly designated ETC. 47 CFR 54.314 provides that the Commission certify to the Commission and the Universal Service Fund Administrator that all federal high-cost support provided to the ETC within the state will be used in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support can only be provided to the extent that the carrier has filed the requisite certification pursuant to this section. Section (6) of said provision states

Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214 (e)(2) or (e)(6) of the Act, provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) in this section must be submitted pursuant to the schedule in paragraph (d) of this section.

In its initial filing dated January 29, 2015, Lake County requested Commission certification of its use of support effective as of the date of Lake County's ETC designation. In support of its certification request, Lake County certifies that it will use all federal high cost universal service support for the intended purposes.

The Commission's July 27, 2015 Order granted Lake County's certification request, subject to the conditions placed on the County's ETC designation and found that Lake County will use the support for intended purposes.

If the Commission grants final approval of Lake County's ETC application, Staff will take the administrative steps of filing the Commission's certification with the FCC and USAC.

Commission Options

Should the Commission give final approval to Lake County's Petition for ETC designation in Minnesota for the purpose of qualifying for receipt of federal Connect America Funds as part of the FCC's Rural Broadband Experiments?

1. Approve Lake County's Petition for ETC designation in Minnesota for the purpose of qualifying for receipt of federal Connect America Funds as part of the FCC's Rural Broadband Experiments.
2. Deny Lake County's Petition for ETC designation in Minnesota for the purpose of qualifying for receipt of federal Connect America Funds as part of the FCC's Rural Broadband Experiments.
3. Other action determined by the Commission.

Staff Recommendation

Staff recommends Option 1.