

Staff Briefing Papers

Meeting Date **May 14, 2020** Agenda Item *1

Companies Lake Connections (Lake County)

Docket No. **P6944/RL-19-195**

In the Matter of the Petition of Lake County for
Relinquishment of ETC Designation

Issue(s) 1. Should Lake County's petition to relinquish its ETC designation be granted?

2. Should the Commission order one or more other ETCs to provide broadband or voice services in areas where Lake County is petitioning to relinquish its ETC status?

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Relevant Documents

Date

Amended Lake County Minnesota Petition for ETC Designation (Docket No. P-6944/M-15-65) January 30, 2015

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 **Relevant Documents**

Date

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| Initial Filing- Lake County Petition to Relinquish Its Designation as an Eligible Telecommunications Carrier | February 28, 2019 |
| Notice of Termination by Contel Systems, Inc. | May 7, 2019 |
| Comments Minnesota Department of Commerce (DOC) | May 29, 2019 |
| Reply Comments Lake County | June 7, 2019 |
| Lake County letter Submitting December 18, 2019 FCC Order | December 27, 2019 |
| Lake County letter updating the record | February 14, 2020 |

I. Statement of the Issue(s)

1. Should Lake County's petition to relinquish its ETC designation should be granted?
2. Should the Commission order one or more other ETCs to provide broadband or voice services in areas where Lake County is petitioning to relinquish its ETC status?

II. Background

On December 5, 2014, the Federal Communications Commissioner ("FCC") provisionally awarded Lake County \$3.5 M in Rural Broadband Experiment funds ("RBE"), to be used for the purpose of expanding broadband access in rural Minnesota. Lake County's receipt of the RBE funds was conditional on, among other things, Lake County being designated as an Eligible Telecommunications Carrier ("ETC").

On January 29, 2015, Lake County filed a petition with this Commission to be designated as an ETC in specific census blocks for which the FCC had granted funding. The area for which Lake County sought ETC designation included specific census blocks for which the FCC approved funding, including census blocks located in Duluth and Silver Bay, where Century Link is the incumbent carrier; census blocks in Aurora, Babbitt, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors where Citizens Telecommunications Company of Minnesota, LLC is the incumbent carrier, and a limited number of specified, neighboring census blocks not at the time being served by any carrier. By Order dated July 27, 2015, this Commission granted Lake County's petition subject to conditions and required a compliance filing. This was Docket P-6944/M-15-65.

Lake County subsequently made the required compliance filing and, by Order dated December 2, 2015, Docket P-6944/M-15-65, the Commission found that Lake County had satisfied the conditions set out in its July 27 Order and granted Lake County's petition without conditions. Lake County has annually recertified its ETC status by filing Form 481 with the FCC and this Commission.

Lake County subsequently ran into unanticipated challenges obtaining financing necessary to complete the expansion of its network. Accordingly, Lake County embarked on a competitive bidding process to identify a purchaser for the network. Pinpoint Holdings, Inc. ("Pinpoint") was the winning bidder. On February 28, 2019, Lake County filed a petition to relinquish its ETC status. In that petition, Lake County informed the Commission that it had entered into an agreement with Pinpoint under which Pinpoint would purchase Lake County's broadband network. Upon completion of that sale on June 3, 2019, Lake County no longer met the qualifications for designation as an ETC.

On May 7, 2019, Contel Systems, Inc. (CSI) submitted a notice of termination of contractual relationship with Lake County to provide assistance to Lake County and Cook County in which certain network facilities owned by Lake County are located.

On May 17, 2019, Lake County also petitioned the Federal Communications Commission for relinquishment of its status as a Rural Broadband Experiments support Page 2 February 14, 2020 recipient and for waiver of the deployment schedule. FCC released its Order on Lake County's petition on December 18, 2019, and Lake County filed a copy of that Order with the Commission on December 27, 2019. In its Order, the FCC denied Lake County's request for a waiver and directed Lake County to return Rural Broadband Experiment funds it had received. Lake County has now repaid the funds as required by the FCC.

On May 29, 2019 comments were filed by the Minnesota Department of Commerce.

On June 7, 2019, reply comments were filed by Lake County.

On December 27, 2019, Lake County filed the Federal Communications Commission (FCC) December 18, 2019 Order which denied Lake County's waiver of the Commission's default rules to permit it to retain a percentage of its disbursed support based on the average amount of disbursed support per location reported as served as of its 15-month milestone.

On February 14, 2020, Lake County filed a letter with the Commission updating the record in this proceeding, stating that it had paid back federal funds as required by the FCC.¹

III. Parties' Comments

Lake County: Lake County is not, itself, a Local Service Provider certificated by the Commission to provide telecommunications service. To meet the requirements to be designated an ETC, Lake County entered into a contract with a certificated Local Service Provider, initially Lake Communications, Inc., and subsequently Contel Systems, Inc. (CSI), to operate and manage Lake County's broadband network in order to provide broadband internet access service and voice services to Lake County's customers.

Lake County was successful in expanding its fiber network and, therefore, in expanding availability of broadband services in rural Minnesota. However, Lake County also experienced a number of unanticipated delays and issues with obtaining necessary financing on favorable terms. As a result of these problems, Lake County concluded that it was not financially feasible to continue to expand and operate the network. Accordingly, Lake County entered into a Memorandum of Understanding with RUS under which Lake County's repayment obligations

¹ This item was originally scheduled to be on the Commission's July 11, 2019 agenda meeting. At the request of the FCC, the Commission deferred acting on Lake County's petition until proceedings before the FCC could be completed. The FCC has now ruled and Lake County has complied with the obligations arising from that ruling. The last remaining issue is for the Commission to take action to formally grant Lake County's petition for relinquishment of its ETC status.

would be deferred pending a sale of the fiber network and, upon completion of a sale, the proceeds would be used to satisfy Lake County's financial obligations under the Broadband Initiative Program (BIP).

After entering into a Memorandum of Understanding with RUS, Lake County began soliciting proposals from parties interested in purchasing Lake County's network. Lake County ultimately entering into a purchase agreement with Pinpoint Minnesota. In connection with Lake County's anticipated sale of its network to Pinpoint Minnesota, it filed a petition with the Federal Communications Commission for relinquishment of its status as a Rural Broadband Experiment (RBE) support recipient.

Lake County notified its customers of the sale of the network to Pinpoint Minnesota and that Pinpoint Minnesota will, upon completion of the sale, begin providing their service. The nature of the service will not change; Pinpoint Minnesota will, using the assets acquired from Lake County, provide broadband service as well as voice service using Voice Over Internet Protocol technology, as has been the case since even before Lake County was designated as an ETC.

1. Should Lake County's petition to relinquish its ETC designation should be granted?

Lake County:

Whether Federal Law Allows for Relinquishment of its ETC Designation

First, almost all of Lake County's customers, including all customers who are receiving subsidies under the Lifeline and TAP programs, are located in areas where there is another ETC providing service. Those customers will have the option of selecting either CenturyLink or Frontier as their provider of voice service if they so choose. As Lake County explained in its response to a Department Information Request, at the time of its response, Lake County estimated that fewer than six of its more than 2,600 customers were located in areas served by only one ETC.

As the Department notes, both federal and Minnesota law direct that the Commission "shall" grant a petition for relinquishment of ETC status in any area served by more than one ETC. The applicable rules, however, while stating what the Commission "shall" do in specific circumstances, do not state any prohibition on Commission action. Thus, those rules do not preclude relinquishment of ETC status where there is no other ETC serving the area. To the contrary, the rules do not expressly address the circumstances presented here, where portions of an ETC's territory are not served by more than one ETC. Contrary to the Department's suggestion, the rules do not prohibit the Commission from exercising its discretion to permit relinquishment of its ETC status in its designated service territory, including portions of that service territory that are served by only one ETC where, as here, doing so is in the public interest.

Whether Lake County's status Should be Considered in its Relinquishment Request

Second, Lake County is a governmental entity with obligations to the public that it serves, not obligations to owners. As explained in Lake County's petition to the FCC, Lake County has determined that it is unable to meet its economic commitments relating to building out and maintaining the network while still serving the best overall interests of its community. By virtue of the agreement reached with RUS, Lake County's sale of its network to Pinpoint Minnesota enables it to satisfy its financial obligations under the BIP loan/grant in a way that does not interfere with its ability to also satisfy its obligations to the public as a governmental unit.

Third, Pinpoint Minnesota has the technical expertise, financial wherewithal, and incentive to provide customers with high quality service at a reasonable price. As explained in the notice to customers, customers who wish to continue receiving service as they have been need to do nothing; those customers will be automatically transferred to Pinpoint Minnesota. Lake County respectfully requests that the Commission grant its petition.

DOC:

The Department walks through the requirements of federal law on ETC Relinquishment and acknowledges the uniqueness of this particular situation. It ultimately concludes that it would be difficult to deny the relinquishment request, as listed in more detail below.

Federal Law on ETC Relinquishments May not Have Contemplated this Exact Situation

Neither FCC Rules, nor federal statutes make any provision for a carrier to leave an area where that carrier is the only authorized ETC. Instead, the FCC and Commission rules appear to require that an ETC (Lake County) must continue providing service to customers where no other ETC exists. Congress has delegated to the Minnesota Public Utilities Commission (Commission) the authority to designate a carrier as an ETC. Congress also delegated the authority to the Commission to approve a petition for the relinquishment of an ETC if it qualifies. FCC Rule 47 C.F.R. § 54.205 (a) allows for the relinquishment of universal service [and therefore ETC status] “. . . in any area served by more than one eligible telecommunications carrier.”

With its filing to relinquish ETC status, Lake County did not identify those areas where it is the sole ETC and where another telecommunications provider has also been designated as an ETC. Lake County's response to Department Information Request Number 2, indicates that between 6 and 19 customers may be in locations that are not served by any alternative facilities. Again, by allowing for relinquishment of ETC status only where another ETC can provide service, the FCC and Commission rules appear to require that Lake County must continue providing service to customers where no other ETC exists.

Rural Utilities Service Involvement Appears to Direct Certain Action

However, MOU between Lake County and the Rural Utilities Service (RUS) to defer principal and interest on the loan is conditioned upon Lake County selling its network. Thus, while the FCC and Commission rules appear to not allow the relinquishment of ETC status where another ETC

does not exist, *the Commission may not be able to deny the relinquishment without disrupting the terms of the MOU between Lake County and the RUS.*²

2. Should the Commission should order one or more other ETCs to provide broadband or voice services in areas where Lake County is petitioning to relinquish its ETC status.

Lake County: The vast majority of customers will have access an alternative provider, should they be dissatisfied with the service the Pinpoint Minnesota provides. Further, there is no reason to believe that VOIP service is in any way technologically inferior. Indeed, VOIP has become increasingly popular, because of its low cost and innovative features and either is or will soon be the predominant technology for providing voice service.

DOC: For the provision of local voice service, CenturyLink and Frontier are ETCs, and as such, are required to serve any customer who desires service. Thus, there is no need for the Commission to compel CenturyLink and Frontier to provide voice service in their designated service areas. In the event CenturyLink or Frontier deny service to customers in the areas where they are ETCs, with the relinquishment of Lake County's ETC status, the Commission could be petitioned to require CenturyLink and/or Frontier to serve customers, even if that service requires the construction of facilities. The Commission may allow up to a year for these remaining ETCs to build facilities. In the event Pinpoint chooses to discontinue service to any customer, a customer is unsatisfied with Pinpoint, a customer desires to participate in the available low income assistance programs, or if a customer seeks to be served by a company subject to regulatory protections, etc., then CenturyLink and Frontier are required to serve any such customer in its service area.

To the extent that Pinpoint continues to provides broadband service to the customers being acquired from Lake County, it seems illogical to require CenturyLink and Frontier to expand their networks to compete in these high cost areas, against a carrier that has a network built with government subsidies. For those areas to be served by Pinpoint that do not have CenturyLink and Frontier as ETCs, there will not be a remaining ETC with Commission approval of this relinquishment petition.

3. Is any Commission action is required pertaining to the receipt of federal funds?

Lake County: Lake County's most recent letter to the Commission indicated that it has paid back the funds as required by the FCC.

DOC: The Department summarized the funding provided to Lake County from the U.S. Department of Agriculture and the FCC. The Department stated it is aware of no action required of the Commission with respect to the federal funds received by Lake County. Staff has not included any decision options to this effect.

² Emphasis added by Staff.

IV. Staff Analysis

Lake County Relinquishment Request

Staff observes that both parties in this proceeding have reached the same conclusion from different perspectives that Lake County should be allowed to relinquish its ETC status. The DOC reached that conclusion based on the memorandum of understanding (MOU) between the Rural Utilities Service (RUS) and Lake County to defer the principal and interest on the loan conditioned upon Lake County selling its network.

On the other hand, Lake County takes a more permissive interpretation of federal and state law in this area. Lake County identifies that the rules and law direct that the Commission shall grant a petition for relinquishment of ETC status in any area served by more than one ETC. However, the same rules do not preclude relinquishment of ETC status where there is no other ETC serving all or parts the area. In Lake County's view, the rules allow the Commission to exercise discretion to permit relinquishment as the specific circumstances warrant. If not for this flexibility, the Commission's ability fulfill its public interest obligations may be compromised.

With both of these perspectives in mind either individually or in concert, the Commission should allow Lake County to relinquish its ETC status.

Service to Affected Customers

With respect to service provision, former Lake County/Zito customers have been informed of the situation and it is clear that if they do nothing, they will continue to receive service as they have. For customers who were receiving Lifeline and TAP subsidies, Zito identified four customers receiving Lifeline and TAP subsidies and provided those customers written notice that they will need to transfer their service to either CenturyLink or Frontier if they wish to continue to receive the subsidy. This notice was followed up with a notice from Pinpoint to Customers.³⁴

911 Service

³ On May 1, 2020, Staff inquired with the Commission's Consumer Affairs Office (CAO) regarding any pending or past complaints related to Lifeline/TAP issues in the Lake County area. CAO informed Staff that there have been no Lifeline/TAP related complaints for these companies (Lake County, Zito, or Pinpoint).

⁴ Per May 4, 2020 email exchange with Lake County's counsel, each of the four customers was located in an area served by either CenturyLink or Frontier/Citizens. Of those four, three are receiving service from the current owner of the Lake County network and one customer terminated service in September 2019.

The Department stated at page 6 of its comments that it was unaware of Pinpoint filing a 911 plan. Commission staff contacted the Department of Public Safety to see if the agency was aware of Lake County's relinquishment. Public Safety confirmed that it was aware of the transaction and stated that the new carrier approached them, voluntarily agreeing to file a 911 plan although not technically required.

V. Decision Options

1. Should Lake County's petition to relinquish its ETC designation should be granted?
 - a. Allow Lake County to relinquish its ETC status.⁵
 - b. Allow Lake County to relinquish its ETC status, except in those areas where another ETC has not been designated.
2. Should the Commission should order one or more other ETCs to provide broadband or voice services in areas where Lake County is petitioning to relinquish its ETC status.
 - a. Allow Lake County to withdraw as an ETC and not require incumbent companies to provide voice service.
 - b. Allow Lake County to withdraw as an ETC and require incumbent companies to provide voice service.

Staff Recommendation

Staff recommends that the Commission adopt alternatives 1a and 2a.

⁵ *Staff note:* in reply comments, Lake County asked that the relinquishment be granted "effective retroactively upon closing of Lake County's sale of its fiber network to Pinpoint Minnesota." Staff takes no position on this language.