

December 3, 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 Jaguar Communications for Designation as an Eligible Telecommunications Carrier (ETC)**  
Docket No: P5891/M-18-675

Dear Mr. Wolf:

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

The petition was filed on October 31, 2018 by:

Kristine A. Anderson  
In House Counsel  
Jaguar Communications  
213 South Oak Avenue  
Owatonna, MN 55060

The Department recommends that the Commission grant Jaguar ETC status for high cost support in the designated census blocks listed in Exhibit 2.

Sincerely,

/s/ JOY GULLIKSON  
Rate Analyst

JG/ja  
Attachment



## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce

#### Petition of Jaguar Communications for Designation as an Eligible Telecommunications Carrier (ETC)

Docket No: P5891/M-18-675

#### I. ISSUE

Whether the Minnesota Public Utilities Commission (Commission) should grant the petition of Jaguar Communications (Jaguar) for ETC status for Lifeline service in all areas in which it has CLEC authority, except CenturyTel exchanges, and high cost support ETC status in the census blocks for which Jaguar will receive Connect America Funds II (CAFII) funding

#### II. PROCEDURAL HISTORY

Jaguar received authority to operate on June 15, 2000, under Docket P5891/NA-00-357. The Commission granted Jaguar approval for a Certificate of Authority to Provide Statewide Long Distance Service and Facilities-Based and Resold Local Exchange and Intrastate Access Services in certain exchanges shown in Table 1 of Exhibit 1. Under Docket No. P 5891/M-08-446, Jaguar received authority to expand its service area to the exchanges listed in Table 2 of Exhibit 1. Under Docket Nos. P5891/M-06-1159 and P5891/M-08-1343 Jaguar received ETC status for the exchanges shown as bolded in Tables 1 and 2 of Exhibit 1, contingent upon the filing of interconnection agreements with CenturyTel of Minnesota and Embarq. Jaguar states that it filed the Embarq interconnection agreement, but it did not enter into an agreement with CenturyTel and Jaguar does not serve those exchanges.

By public notice from the FCC on August 28, 2018, Jaguar was named a winning bidder in the CAF II auction, to receive \$510,587.60 and serving 672 locations. The CAF II award is given in monthly installments for 10 years (about \$6.33 per location per month for Jaguar), as long as Jaguar meets certain build out requirements. The 672 locations are in census blocks where Jaguar is authorized to provide local service. The applicable census blocks are listed in Exhibit 2. Exchanges in which the census blocks are located are shown as highlighted cells in Exhibit 1. In order to receive the CAF II support, Jaguar, 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:

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<sup>1</sup> From <https://www.fcc.gov/auction/903>.

Company	Amount (\$)	Locations	Amount (\$) /Location	Amount (\$) /Location/10 years/month
Broadband Corporation	428,117	128	3,344.66	27.87
Consolidated Telephone	934,933.80	358	2,611.55	21.76
Farmers Mutual	348,991.60	163	2,141.05	17.84
Federated Coop	1,431,038.80	808	1,771.09	14.76
Garden Valley	880,346	95	9,266.80	77.22
Halstad Telephone	19,635.20	7	2,805.03	23.38
Interstate Telephone	552,329.60	209	2,642.73	22.02
Jaguar	510,587.60	672	759.80	6.33
Johnson Telephone	81,272.50	47	1,729.20	14.41
LTD Broadband	1,104,440.80	840	1,314.81	10.96
Midcontinent	27,977,283.80	7410	3,775.61	31.46
Paul Bunyan	1,313,542.60	315	4,169.98	34.75
Roseau Electric	2,081,769.70	326	6,385.80	53.22
West Central Telephone	611,934.40	532	1,150.25	9.59
Wikstrom	532,556.80	56	9,509.94	79.25
<b>TOTALS</b>	<b>38,808,780.20</b>	<b>11,966</b>	<b>53,378.30</b>	
<i>AVERAGES</i>	<i>2,587,252.01</i>	<i>798</i>	<i>3,558.55</i>	<b>29.65</b>

### III. LEGAL STANDARDS

The Code of Federal Regulations Part 54 governs the federal requirements for common carriers becoming ETCs. Federal Communications Commission (FCC) orders have adjusted some of these regulations over the years. Most of the adjustments have been to reduce reporting requirements. Parts relevant to this petition include:

§ 54.101 (b) requires “an eligible telecommunications carrier must offer voice telephony as set forth in paragraph (a) of this section in order to receive federal universal service support.” Part (a) requires voice grade access to the public switched network or its functional equivalent must be provided.

§ 54.201 states in parts (d), (e), and (h):

(d) “A common carrier designated as an ETC under this section shall be eligible to receive universal service support in

accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

- (1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier's services (including the services offered by another eligible telecommunications carrier); and
- (2) Advertise the availability of such services and the charges therefore using media of general distribution.

(e) For the purposes of this section, the term facilities means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.

(f) For the purposes of this section, the term "own facilities" includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term "facilities" under this subpart.

(h) A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E [Lifeline] of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part

§ 54.203 states in part: "If no common carrier will provide the services that are supported by federal universal service support mechanisms under section 254(c) of the Act and subpart B of this part to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a state commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof."

Minnesota Rules 7811.1400 and 7812.1400, subp. 13 state: “The commission may order an LSP to provide the services that are supported by a federal universal service support mechanism to an otherwise unserved area only as provided in section 102(a) of the act and consistent with Minnesota Statutes, sections 237.081 and 237.16.”

Minn. Rule 7812.0600 subp. 4 and 7811.0600, subp.4 state Subp. 4. An LSP designated an ETC by the commission must provide local service, including, if necessary, facilities-based service, to all requesting customers within the carrier's service area on a nondiscriminatory basis, regardless of a customer's proximity to the carrier's facilities. An LSP may assess special construction charges approved by the commission if existing facilities are not available to serve the customer.

Also, in Docket P999/M-05-1169, *Order Adopting FCC Requirements for Designating Eligible Telecommunications Carriers, As Modified*, the Commission ordered:

“After the date of this Order, petitioners to the Commission to be designated an eligible telecommunications carrier under 47 U.S.C. 214(e)(2) must:

- (1) (A) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it (1) provide service on a timely basis to requesting customers within the applicant’s service area where the applicant’s network already passes the potential customer’s premises; and (2) provide service within a reasonable period of time, if the potential customer is with the applicant’s licensed service are[a] but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer’s equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; € reselling services from another carrier’s facilitates 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 has requested an en banc rehearing of the Eighth Circuit decision. It is the understanding of the Department that the Eighth Circuit’s decision is not effective until they rule on the request for rehearing en banc, or during the pendency of the request if they grant it.

#### **IV. ANALYSIS**

Jaguar received ETC status for Lifeline only in certain CLEC exchanges under Docket Nos. P5891/M-06-1159 and P5891/M-08-1343, the exchanges are shown in bold in Exhibit 1. While Jaguar received ETC status from this Commission, it never took the next step to create a Study Area Code, nor to apply for reimbursement for provision of a Lifeline credit to low income customers. In this current application, Jaguar requests ETC for high cost in the census blocks it will receive CAF II funds. The census blocks are in the CLEC exchanges of New Germany, St. Bonifacious, Watertown, Belle Plaine, Jordan, Chaska, Cologne, Norwood, Victoria, Waconia, and Minneapolis. The census block numbers that are the subject of the CAF II award are listed

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<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)

in Exhibit 2. In all areas where Jaguar is authorized, other than CenturyTel exchanges, Jaguar requests ETC certification for Lifeline only.

In this application, or reapplication, as the case may be, for ETC status, Jaguar affirms the following:

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

Service	Qwest	Citizens	Frontier	Jaguar
Residence	\$15.96*	16.25*	\$13.96*	\$29.95
Business	\$34.61*	31.00*	\$21.75*	\$29.95

\* Plus varying EAS rates

3. Jaguar's Advertising Plan - Jaguar stated that it currently meets and will meet the advertising requirements through several different channels of general distribution, including newspaper and direct mail. Jaguar 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 Jaguar's web site: <https://www.jaguarcommunications.com/>. Jaguar's service offering will also be published at least annually in the local newspaper, and will be posted at the Jaguar offices in Owatonna, Rochester, Austin, Albert Lea and Northfield, MN.
4. Jaguar's Ability to Remain Functional in Emergency Situations - Jaguar stated that its network can and will remain functional in emergencies. The central office serving Jaguar'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. Jaguar complies with the Commission's Rules in Chapter 7810 establishing minimum standards on various operational matters, such as 7810.3900 (Emergency Operations); 7810.4900 (Adequacy of Service); and 7810.5300 (Dial Service Requirements).

5. Jaguar's Satisfaction of Consumer Protection and Service Quality Standards – Jaguar is subject to, and complies with, the Commission's Rules pertaining to service quality and consumer protection. Jaguar's tariff has specific provisions outlining the following terms addressing consumer protection issues:

- Deposit and guarantee requirements
- Customer billing
- Appropriate handling of customer complaints and billing disputes
- Disconnection and notice requirements

6. Requirement to provide telecommunications services. Congress, in 47 U.S.C. § 214 (e), required as a precondition to accessing FCC high cost or consumer specific "lifeline" support subsidies, that providers be designated "Eligible Telecommunications Carriers" (ETCs) by a State commission.<sup>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, Jaguar must offer a stand-alone voice telecommunications service. The ETC petitions filed as a result of the CAF II auction, including the petition by Jaguar, are likely to use IP technology for the voice service offering. As stated earlier, the Minnesota Commission has requested an en banc rehearing of the Eighth Circuit decision and it is the understanding of the Department of Commerce that the Eighth Circuit's decision is not effective until it rules on the request for rehearing en banc, or during the pendency of the request if they grant it. Thus, at this time, fixed VOIP service is a

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<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.

telecommunications service under Minnesota law, as this Commission has determined, and satisfies the legal requirement.

In summary, Jaguar has been operating successfully for several years as a CLEC. This history comports with the requirement of 47 CFR § 54.201 (h) that the carrier demonstrate it is financially and technically capable of providing the supported service.

## **V. COMMISSION OPTIONS**

The Commission may choose to:

- A. Approve Jaguar's request for ETC status for high cost support in the Census Blocks listed in Exhibit 2 and for Lifeline only in all areas where Jaguar has authority to operate, except the CenturyTel exchanges.
- B. Deny Jaguar's request for ETC status for high cost support in the Census Blocks listed in Exhibit 2 and for Lifeline only in all areas where Jaguar has authority to operate, except the CenturyTel exchanges.
- C. Take other action, as the Commission deems appropriate.

## **VI. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission order option a: Approve Jaguar's request for ETC status for high cost support in the Census Blocks listed in Exhibit 2.

/ja

Table 1

<u>US</u> <u>West(Qwest)</u>	<b>Albert Lea</b>	<b>Rochester</b>	<u>Contel/GTE</u> <u>(Citizens)</u>	<b>Blooming Prairie</b>	Wanamingo
	Austin	St. Charles		<b>Ellendale</b>	Cannon Falls
	Glenville	<b>Stewartville</b>		Hollandale	<b>Hayfield</b>
	Winona	Chatfield		<b>Clarks Grove</b>	Brownsdale
	Caledonia	Northfield		Fountain	Dexter
	St. Peter	<b>Waseca</b>		<b>Alden</b>	Lyle
	Nicollet	<b>Owatonna</b>		Keister	Adams
	New Sweden	<b>Faribault</b>		<b>Dodge Center</b>	LeRoy
		Winona		West Concord	<b>Byron</b>
				<b>Claremont</b>	Cherry Grove
				Kenyon	

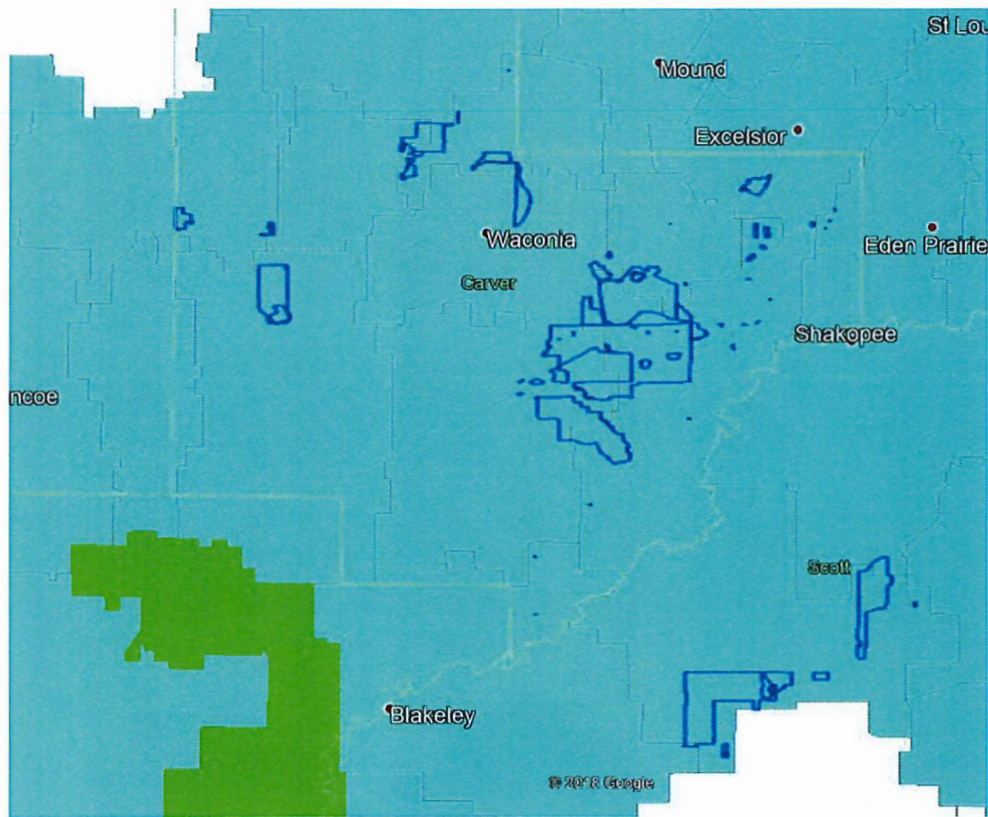
Table 2

<u>CenturyTel</u>	<u>Citizens</u>	<u>Frontier</u>	<u>Embarq</u>	<u>Qwest</u>
Beaver Creek	Almelund	Adrian	Altura	Anoka
Brewster	Arco	Apple Valley	Brownton	Braham
Dundee	Bigelow	Arlington	Buffalo Lake	Buffalo
Fairfax	Butterfield	Avoca	Chaska	Cambridge
Fulda	Comfrey	Balaton	Cokato	Elk River
Gibbon	Cottonwood	Belle Plaine	Cologne	Excelsior
Heron Lake	Delano	Burnsville	Dassel	Forest Lake
Jeffers	Delft	Canby	Elgin	Gaylord
Kellogg	Ghent	Ceylon	Eyota	Hamel
Lamberton	Hanley Falls	Chandler	Glencoe	Hanover
Minneota	Hardwick	Currie	Grove City	Isanti
North Chester	Jasper	Edgerton	Hastings	Jackson
<b>Preston</b>	Lindstrom	Ellsworth	Howard Lake	Lake Park-Iowa
Round Lake	Lynd	Elysian	Lake City	Le Sueur
Rushmore	Maple Plain	Fairmont	Lester Prairie	Litchfield
<b>Spring Valley</b>	Mound	Farmington	Lewiston	Luverne
Westbrook-Storden	Mountain Lake	<b>Green Isle</b>	Mayer	Marshall
Wilmont	<b>New Germany</b>	<b>Henderson</b>	Millville	<b>Minneapolis</b>
	Odin	Iona	<b>New Richland</b>	Navarre
	Scandia-Marine	Ivanhoe	<b>Norwood</b>	North Branch
	<b>St. Bonifacious</b>	Janesville	Osseo	Pipestone
	Taylors Falls	<b>Jordan</b>	Plainview	Princeton
	Tyler	Kilkenny	Plato	Red Wing
	<b>Watertown</b>	Lake Wilson	Rogers	Redwood Falls
	Wyoming	Lakefield	Rolling Stone	Rockford

		Lakeville	Silver Lake	Rush City
		Le Center	St. James	St. Paul
		Leota	St. Michael	Stillwater
		Lewisville	Stewart	Tracy
		Montgomery	Victoria	Wabasha
		Northrop	Waconia	Wayzata
		Okabena	Waldorf	White Bear Lake
		Porter	Zumbro Falls	Windom
		Rosemaount		
		Sherburn		
		Slayton		
		St. Leo		
		Trimont		
		Truman		
		Waterville		
		Welcome		
		Worthington		

<b>Home Telephone</b>	<b>Mankato Citizens</b>	<b>Mid Communications</b>		<b>Scott Rice Telephone</b>
Grand Meadow	Mankato	Amboy	Pemberton	New Market
Racine		Cambria	St. Clair	Prior Lake
Wykoff		Eagle Lake	Vernon Center	Webster
		Garden City		
		Good Thunder		
		Lake Crystal		
		Madison Lake		
		Mapleton		

**Map of CAF II Funded Area Census Blocks:**



CAF II Funded Areas are shown are outlined in dark blue. The relevant census blocks are identified below:

- |              |              |
|--------------|--------------|
| 270190901001 | 270190907011 |
| 270190902002 | 270190908005 |
| 270190903011 | 270190909001 |
| 270190903012 | 270190909002 |
| 270190904011 | 270190909004 |
| 270190904012 | 270190910004 |
| 270190904022 | 271090911002 |
| 270190905011 | 271390810003 |
| 270190906011 | 271390812001 |

## **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. P5891/M-18-675**

**Dated this 3<sup>rd</sup> day of December 2018**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kristine	Anderson	kanderson@jagcom.net	Jaguar Communications, Inc.	213 S Oak Ave Ste 2000  Owatonna, MN 55060	Electronic Service	No	OFF_SL_18-675_M-18-675
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_18-675_M-18-675
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_18-675_M-18-675
David	Denton	david.denton@state.mn.us	DPS ECN	445 Minnesota Street Suite 137 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_18-675_M-18-675
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_18-675_M-18-675
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_18-675_M-18-675
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_18-675_M-18-675
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_18-675_M-18-675