

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: **May 28, 2015**.....**Agenda Item # 6

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 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?

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Relevant Documents

Amended Petition by Lake County Minnesota dba Lake Connections January 30, 2015
Citizens' Challenge to the Form or Completeness February 6, 2015
Lake County's Response to Challenge February 11, 2015
Comments
 Department of Commerce..... March 16, 2015
 Minnesota Telecom Alliance March 16, 2015
 Citizens (with exhibit)..... March 16, 2015
Reply Comments
 Lake County Minnesota..... March 26, 2015
 Lake Communications March 26, 2015
 Citizens March 26, 2015
Lake County's Response to Commission Staff's Information Requests April 2, 2015

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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Statement of the Issues

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

Case Overview

On January 30, 2015, Lake County Minnesota dba Lake Connections (Lake County) filed a petition asking the Minnesota Public Utilities Commission to be designated an eligible telecommunications carrier (ETC) for the limited purposes of 1) receiving federal funds awarded by the Federal Communications Commission (FCC) as part of the Rural Broadband Experiment; and 2) providing local services under the Lifeline program.

A significant assertion in the initial filing was Lake County's claim that it is not providing telecommunications services. According to the petition, the Courts have determined that Interconnected VoIP services are information services that are not subject to state regulation.¹ In light of the FCC's *Open Internet Order*,² Lake County has changed its position and now states that as a provider of broadband internet access service, it qualifies as a provider of a telecommunications service under Title II of the federal Communications Act. (See Lake County's response to Staff Information Request No. 7 and Lake County's Reply Comments, pages 1 – 4).

On February 6, 2015, Citizens Telecommunications Company of Minnesota, LLC (Citizens) filed a Challenge to the form and completeness of the petition. Lake County filed a response to the challenge on February 11. Citizens' arguments did not address any deficiency in the filing, but pertained instead to the merits of the case, and are included in the main discussion below.

At the requests of the Minnesota Department of Commerce (Department), the Commission extended the deadlines for comments and reply comments. The deadlines were set for March 16, and March 26, 2015 for initial and reply comments, respectively.

On March 16, 2015, Comments were filed by the Department, Citizens, and Minnesota Telecom Alliance (MTA). On March 26, 2015, Replies were filed separately by Lake County Minnesota and Lake Communications, and also by Citizens. Lake Communications' filing was supportive of Lake County's petition. Commission Staff sent out information requests to Lake County on March 24, 2015, with Lake County's response filed on April 2.

¹ The filing cites the U.S. Court of Appeals Eighth Circuit conclusion filed March 21, 2007 that state preemption of fixed VoIP service is not ripe for review.

² FCC's *Open Internet Order*, released March 12, 2015, published in the Federal Register April 13, 2015, *In the Matter of Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling and Order*, GN Docket No. 14-28, 80 FR 19737.

All commenting parties raised issues about Lake County's eligibility as an ETC. All expressed reservations whether Lake County qualifies as a common carrier, partly based on Lake County's original claim that it is providing information services, and not telecommunications services. All also questioned Lake County's relationship with Lake Communications, the vendor which will provide the voice telephony functions to customers.

The Department recommends a conditional grant of Lake County's ETC application, subject to the filing of additional information. Citizens and the MTA both recommend that the Commission conduct a contested case proceeding due to the numerous questions raised by the filing.

In most other respects, the Department believes that Lake County has made a credible showing of its capability and intent to provide and advertise a telecommunications service supported by 47 USC § 254, including Lifeline, throughout its proposed service area and has met the applicable requirements of 47 C.F.R. 54.202. The Department recommends a number of other conditions including those similar to conditions imposed on other ETC applicants that Lake County must satisfy before it can be granted an ETC designation.

The Briefing Papers reflect how the initial positions of the parties have been overtaken by the FCC's determinations in the *Open Internet Order* published on April 13, 2015. The final rules, which address in part the issues pertaining to what constitute a common carrier for ETC eligibility, take effect on June 12, 2015.

Lake County's Petition

Why the ETC petition was filed

The ETC designation is a condition that Lake County must satisfy to receive the \$3.5 million one-time federal Rural Broadband Experiment Funds provisionally awarded by the Federal Communications Commission (FCC) on December 5, 2014.

The Department's Comments includes a comprehensive description of the FCC's Rural Broadband Experiments (RBEs) designed to use, on a limited scale, Connect America Funds (CAF) for projects that would deploy broadband and voice services in rural, high-cost areas. The FCC expects the RBEs to provide last mile broadband service to consumers in rural communities, test potential bidding process for CAF Phase II, and speed up deployment of broadband and voice services in selected census blocks in designated areas.³

³ FCC's RURAL BROADBAND EXPERIMENTS ORDER, FCC 14-98, released July 14, 2014 in WC Docket 10-90 and WC Docket 14-58.

Lake County/ Lake Connections/ Lake Communications roles as described by the petition

The legal entity petitioning for ETC designation is **Lake County**, a political subdivision of the State of Minnesota. Lake County also received an earlier federal grant under the American Recovery and Reinvestment Act passed in 2010. The \$10 million grant and the accompanying \$55.5 loan was used by Lake County in constructing a fiber optic telecommunications network. As the provider of broadband internet access, Lake County applies for ETC status needed to get the \$3.5 million RBE funds. Lake County commits to be responsible for compliance with the legal requirements regarding the ETC designation.

The petition is characterized as a filing by Lake County Minnesota dba **Lake Connections** (Lake County). Lake Connections is an assumed name and the trademark/service mark used by Lake County for its broadband internet access business. Lake Connection's website indicates that it is "a self-sustaining business owned by Lake County working to bring high speed internet, digital TV, and voice services to Lake County and Eastern St. Louis County in northeastern Minnesota...."

Lake Communications, on the other hand, is a CLEC given authority to provide resold local and interexchange service in Minnesota in 2011.⁴ The filing describes Lake Communications as Lake County's selected vendor and the provider of Interconnected VoIP voice telephony service over Lake County's network. Lake Communications is the entity authorized to provide local exchange service and will be responsible for compliance with the legal requirements regarding voice telephony service. Lake Communications' service area as described in Appendix B of its initial filing in docket 11-581 includes the entirety of the exchanges proposed by Lake County as its service area.

Lake County and Lake Communications have entered into a business relationship whereby Lake Communications will operate and manage Lake County's broadband network and provide voice telephony services using Voice over Internet Protocol (VoIP) to residential and business end user customers using that network. According to Lake County, there is no common ownership, personnel or management between Lake County and Lake Communications. Although the parties have not completed the documentation of that business relationship, they have agreed in principle on the following:

Lake County will

- Use Lake Communications to provide its customers throughout its service territory with VoIP-based voice telephony service;
- Provide all transport from the network-to-network interconnection to end user premises.

Lake Communications will

- Establish interconnection with Lake County for the purpose of delivering voice telephony;

⁴ ORDER GRANTING AUTHORITY, *In the Matter of the Application of Lake Communications to Provide Resold Local Exchange Service and Interexchange Service*, dated September 27, 2011, in Docket No. 6869/NA-11-581.

- Be solely responsible for interactions with end users concerning voice telephony;
- Provide Lifeline service to qualified consumers and advertise its availability;
- Likely agree to purchase end user billing service from Lake County for the voice telephony to end users;
- Be responsible for compliance with all applicable state and federal law and regulations as it relates to voice telephony provided to end users;
- Perform necessary regulatory requirements related to voice telephony;
- Make available voice telephony to all customers in Lake County's service areas on a non-discriminatory basis pursuant to Lake Communications' tariff filed with the Commission and/or published on Lake Communications' website.

Lake County will provide the Commission with a copy of the contract with Lake Communications after it has been finalized. (See Lake County's response to Staff Information Request No. 4).

Proposed Service Area

The initial filing indicates the proposed service area as:

CenturyLink exchanges of

- Duluth
- Silver Bay

And, Citizens Telecommunications Company of Minnesota exchanges of

- Aurora
- Babbitt
- Ely
- Embarrass
- Hoyt Lakes
- Isabella
- Palo
- Two Harbors

And, the filing indicates the inclusion of unserved areas as indicated in the map shown as Exhibit 1. It also lists the census blocks covered, which are the census blocks for which Lake County has been provisionally granted Connect America Funds through the FCC's RBEs.

Additional Information about the Petition

Lake County claims that its designation is in the public interest, citing the increased customer choice in the service providers and its strengths including its superior fiber to the home

network, and being a locally-based provider with demonstrated commitment to customer needs.

Lake County also requests the Commission to waive its requirement pursuant to Commission Rule 7811.1400 requiring ETCs to provide service throughout its exchange. Lake County indicates that the census blocks comprising the Lake County project *do* (Staff's note: presumably meant to say *do not*, otherwise there would have been no need for a waiver) correlate to exchange boundaries as required in the Rule.⁵

Lake County, through Lake Communications, will provide interconnected VoIP services throughout the service area over its newly-installed fiber-optic facilities. It commits to provide service to all customers making a reasonable request for service. Lake County also commits to advertise the availability of its universal service offering throughout the service area.

The petition claims that Lake County and Lake Communications together have the ability and the intention to provide the voice telephone services required by 47 C.F.R. § 54.101(a), the ability to remain functional in emergency situations, comply with and satisfy specific Commission Rules pertaining to service quality and consumer protection, and will provide equal access to long distance carriers within the service area. Lake Communications' monthly rates for residential and business customers are also lower than those of the incumbent local exchange carriers.

Lake County also requests that the Commission certify to the FCC that it will use its federal support for the purposes intended.

DISCUSSION

Whether Lake County Qualifies as an ETC

Staff summarizes the laws pertinent to the state designation of ETCs and the effect of the new FCC *Internet Order* on entities' qualification as an ETC.

Applicable Law

Pages 3 through 5 of the Department Comments contain a list of applicable laws. The listing includes federal statutory provisions on

- Qualifications of a company to be designated an ETC (47 USC §§ 214 (e)(1) (2) and (6), 254 (c), 153 (51) and 47 CFR §§54.201(b) and (d), 54.202 and the corresponding FCC rules);

⁵ Also, as Citizens pointed out, the relevant rule reference should have 7812.1400, rather than 7811.1400, since the area in question is served by ILECs with more than 50,000 subscribers.

- Delegation of authority to state commissions to designate an ETC (47 USC § 214 (e), 153 (51), and 254 (c), and 47 CFR §54.201);
- Obligations of an ETC (47 USC §§ 201 (d), 214 (e)(1), 54.405 (a) and (b));
- Supported services that must be provided by an ETC (47 USC § 254 (c), 47 CFR § 54.101 (a));
- Additional requirements for ETC designations (47 CFR § 54.202 (a));
- The public interest standard for ETC designation (47 USC §214(e)(2)).

In sum, federal laws direct that an ETC provide the following core requirements:

- Be a common carrier
- Offer the services supported by federal universal service support mechanisms (voice telephony, Lifeline)
- Offer services using its own facilities or a combination of its own facilities and resale of another carrier's services
- Advertise the availability of supported services and the charges thereof using media of general distribution
- Solely can receive universal service support
- Provide service throughout a designated service area
- The state commissions have primary responsibility for ETC designation, upon ETCs meeting ETC criteria and upon finding that ETC designation is in the public interest.

Additional requirements include:

- Demonstration of ways to ensure service can be provided within a reasonable amount of time,
- Submission of a five-year service improvement plan,
- Demonstration of ability to remain functional in emergency situations
- Demonstration of satisfying applicable consumer protection and service quality standards,
- Offering a local usage plan comparable to the one offered by the incumbent LEC
- Certification that the carrier acknowledges that the FCC may require it to provide equal access to long distance carrier if no other ETC provides equal access within the service area.

In addition, 47 CFR § 54.314 requires states to file a certification with the FCC and the universal service administrator a certification that all high-cost support provided to ETCs are used for the purposes of providing, maintaining, and upgrading of facilities for which the support is intended. Subpart 6 of said provision requires the submission of said certification within 60 days of the carrier's designation as an ETC.

At the state level, Minnesota Rules 7812.1400 subparts 1 and 2 provide for Commission designation of ILECs and CLECs as ETCs. The Commission may, however, waive the local exchange carrier requirement and is not precluded from designating an applicant other than a CLEC or ILEC as an ETC. Minn. Rule 7829.3200 allows the Commission to waive enforcement of a rule if such would impose an excessive burden upon the applicant or others affected by the rule; granting the variance would not adversely affect the public interest, and would not conflict with standards imposed by law.

Also, after the FCC adopted certain guidelines for ETC designation in 2005, later codified in 47 USC § 54.202 (a), the Commission adopted those additional FCC Requirements for Designating ETCs.⁶

Staff notes that this case is the first RBE-related ETC application in Minnesota. Other states are also in the process of reviewing the initial wave of similar applications, and that there is no specific guidance on the topic from the FCC.

Impact of the FCC's *Open Internet Order* on ETC Designations

Prior to the FCC's *Open Internet Order*, a common carrier for ETC purposes must be a telecommunications carrier.

47 USC § 153 (51) specifies that a telecommunications carrier “shall be treated as a common carrier only to the extent it is engaged in providing telecommunications services.”

In its *Open Internet Order*, the FCC has now determined that broadband internet access service constitutes a “telecommunications service” under Title II, the common carrier provisions of the Communications Act.

Some relevant provisions of the *Open Internet Order* are:

¶331. Classification of Broadband Internet Access Service

In this section, we reconsider the Commission's prior decisions that classified wired and wireless broadband Internet access service as information services, and conclude that broadband Internet access service is a telecommunications service subject to our regulatory authority under Title II of the Communications Act regardless of the technological platform over which the service is offered.

¶355. Broadband Internet Access Service Is a Telecommunications Service

We now turn to applying the statutory terms at issue in light of our updated understanding of how both fixed and mobile broadband Internet access services

⁶ ORDER ADOPTING FCC REQUIREMENTS FOR DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS, AS MODIFIED dated October 31, 2005, Docket No. P999/M-05-1169.

are offered. Three definitional terms are critical to a determination of the appropriate classification of broadband Internet access service. First, the Act defines “telecommunications” as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” Second, the Act defines “telecommunications service” as “the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.” Finally, “information service” is defined in the Act as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via telecommunications . . . , but does not include any use of any such capability for the management, control, or operation of a telecommunications system or the management of a telecommunications service.” We observe that the critical distinction between a telecommunications and an information service turns on what the provider is “offering.” If the offering meets the statutory definition of telecommunications service, then the service is also necessarily a common carrier service.

¶363. Broadband Internet Access Service is a “Telecommunications Services

Having affirmatively determined that broadband Internet access service involves “telecommunications,” we also find that broadband Internet access service is a “telecommunications service.” A “telecommunications service” is the “offering of telecommunications for a fee directly to the public . . . regardless of the facilities used.” We find that broadband Internet access service providers offer broadband Internet access service “directly to the public.” As discussed above, the record indicates that broadband providers routinely market broadband Internet access services widely and to the general public. Because a provider is a common carrier “by virtue of its functions,” we find that such offerings are made directly to the public within the Act’s definition of telecommunications service. We draw this conclusion based upon the common circumstances under which providers offer the service, and we reject the suggestion that we must evaluate such offerings on a narrower carrier-by-carrier or geographic basis. Further, that some broadband providers require potential broadband customers to disclose their addresses and service locations before viewing such an offer does not change our conclusion. The Commission has long maintained that offering a service to the public does not necessarily require holding it out to all end users. Some individualization in pricing or terms is not a barrier to finding that a service is a telecommunications service.

On Whether Lake County meets the requirements of the law

The following sections discuss whether Lake County meets the ETC requirements of the law, namely:

Section	Topic	Pages
A	Is it a common carrier?	9 - 10
B	Does it offer the supported services?	11- 15
C	Does the proposed service area conform to federal and state rules?	16 - 20
D	Does it meet the other ETC requirements?	20 - 22
E	Is it in the public interest to designate Lake County as an ETC	23

A. Does Lake County meet the common carrier requirement for ETC designation?

In light of the FCC's *Open Internet Order*, it appears that Lake County, as a provider of Broadband Internet Access Service, is indeed a common carrier for purposes of ETC designation.

Lake County, in Reply Comments and in response to Staff Information Request No. 6 cites the following additional provisions of the *Open Internet Order* in support of its new position:

¶47. Based on this updated record, this 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 telecommunication service) and (2) various “add-on” applications, content, and services that generally are information services...

¶336. As discussed below, we conclude that broadband Internet access service is a telecommunications service. We define “broadband Internet access service” as a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service...

¶365.To the extent that broadband Internet access service is offered along with some capabilities that would otherwise fall within the information service definition, they do not turn broadband Internet access service into a functionally integrated information service. To the contrary, we find these capabilities either fall within the telecommunications systems management exception or are separate

offerings that are not inextricably integrated with broadband Internet access service, or both.

Lake County also notes that although the FCC exercised its authority to forbear from applying certain statutory and regulatory provisions to providers of broadband internet access service, the FCC determined it would not forbear from requirements “necessary to ensure consumers are protected, promote competition, and advance universal access,” including the following sections of the Communications Act⁷:

- Section 201 - duty to furnish communications service on reasonable request, on just and reasonable terms,
- Section 202 – prohibition on unjust and unreasonable discrimination,
- Section 208 – enforcement,
- Section 222 – consumer privacy,
- Sections 225, 255, 251 (a) (2) – disability access,
- Section 224 – infrastructure access, and
- Section 254 – universal access, and
- Associated implementing regulations.

Lake County states it is operating today as a common carrier and has interconnected with other carriers. It has a state of the art fiber optic network that provides high speed data transmission capability, through which Lake County’s retail customers have access to a variety of services and applications. One such service is VoIP-based voice telephony service provided by Lake Communications. Regardless of the regulatory treatment of Lake Communications’ VoIP- provided voice telephony, Lake County now meets the telecommunications service definition by the FCC and thus, satisfies the common carrier requirement for ETC designation. Lake County states it will be subject to the consumer protection provisions of the Communications Act.

The positions espoused by the parties may have changed due to the late developments affecting determinations on what constitute a common carrier for ETC designation purposes.

The Department’s earlier recommendation was for the filing of information regarding Lake County’s satisfaction of the common carrier requirement and its relationship with Lake Communications since Lake Communications was the entity by which the common carrier requirement may have previously hinged upon.

Citizens and MTA earlier asked for a contested case proceeding to determine whether the Lake County/Lake Communications arrangement satisfies the common carrier requirement by law.

Staff believes that, in light of the FCC’s *Open Internet Order*, Lake County meets the common carrier requirement for purposes of ETC designation.

⁷ *OPEN INTERNET ORDER*, at §§ 53-58.

B. Does Lake County offer the supported services required for ETC designation?

According to **Lake County**, it will offer voice telephony service to its customers on a standalone basis through its business arrangement with Lake Communications. Lake Communications, as a CLEC authorized to provide local exchange service in Minnesota, will offer voice telephony over Lake County's broadband network, at terms and conditions reflected in the tariff on file with the Commission, and will be subject to the same regulations and enforcement authority as other CLECs.

The Department states that Lake County has not identified a telecommunications service supported under the universal service support mechanism that it is being offered or will be offered directly to the public for a fee. The Department disagrees with Lake County's characterization of the interconnected VoIP telephone service and the state of the law regarding Commission jurisdiction over voice telephony service. Further legal discussions on the topic of "fixed interconnected VoIP service as telecommunications service" are covered on pages 10 through 25 of the Department's March 11 Comments. The Department recommends that further information on how it meets the common carrier requirement should be filed by Lake County.

The Department, on page 34 of its Comments) recommends that Lake County shall notify the Department and the Commission if it is unable to serve a Lifeline qualified customer within its service area within 10 days of making the determination. This recommendation is consistent with conditions imposed on other ETC applications as a means of ensuring that qualified Lifeline customers are adequately informed and served with Lifeline service. The condition is based on the requirement that all ETCs provide Lifeline pursuant to 47 CFR 54.405.

Citizens and MTA argue that, on its own, Lake County does not offer the services required by law, but instead relies on Lake Communications to provide the required services.

All parties indicate that the arrangement between Lake County and Lake Communications merits careful factual review to determine both the factual and legal implications.

Staff believes that, for purposes of this ETC petition, the Commission need not address the question of whether the VoIP service provided by Lake Communications using Lake County's broadband network is a telecommunications service. That issue is being determined in the ongoing Charter Case.⁸

⁸ The formal Order has not been issued as of writing, but during its May 8, 2015 meeting, the Commission determined that Charter's interconnected VoIP service is a telecommunications service, and that Charter must comply with all Minnesota's statutes and rules applicable to the provision of local telephone service. *In the Matter of the Complaint by the Minnesota Department of Commerce (DOC) against the Charter Affiliates regarding Transfer of Customers*, Docket No. P6716, 5615/C-14-383

The question here is whether the voice telephony and Lifeline services offered by Lake Communications on behalf of Lake County satisfy a requirement for ETCs to offer supported services pursuant to FCC Rule § 54.101 (a) and § 54.405 of the Act.

FCC Rule § 54.101 (a) defines the supported services that must be offered by ETCs as Voice Telephony services providing voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services such as 911 or E911, and toll limitation services as applicable. Additionally, 47 CFR § 54.405 requires all ETCs to make Lifeline service available to all qualifying consumers.

In this unique arrangement between Lake County and Lake Communications, Lake County is the owner of the backbone internet infrastructure and the legal entity behind the grant and the ETC obligations. Among the requirements for ETC designation, the ETC applicant has to offer the supported services. In addition, Commission rules 7812.1400 Subparts 1 and 2 limit Commission-designated ETCs to incumbent and competitive LECs. Lake County relies on Lake Communications, as a regulated CLEC covering the proposed service area and offering the ETC-supported services, to fulfill the requirements not presently met by Lake County.

Staff expounds on alternative scenarios by which the Commission can deal with this decidedly novel arrangement:

1. Lake County's proposal where Lake Communications fills the requirement gaps not fulfilled by Lake County.

Staff notes that as pointed out by the Department, this type of arrangement seems expected or encouraged by the FCC. As stated by the Department, albeit in the context of the common carrier discussion, the FCC's *Tech Transitions Order*⁹ addressed the topic of partnering of different entities in the provision of required services for ETC designation.

In the *Tech Transitions Order*, the FCC indicated the following:

¶121. We also address the role of ETC designation in situations where there is a multi-stakeholder group working together to bring broadband-capable infrastructure to unserved communities. We welcome participation in the Connect America Phase II experiment from a wide variety of entities, including partnerships or consortia of entities that may include service providers, vendors, governmental agencies, and others. Indeed, in other contexts, we have recognized the value of consortia bulk purchasing in driving down service rates, increasing bandwidth, and reducing administrative overhead.

¶122. For the Connect America Phase II experiment, we conclude that the requirement to be an ETC is met if one entity that is part of the group, partnership

⁹ *Tech Transitions Order*, at ¶¶ 117-118 (citations omitted)

or consortia obtains ETC designation from the relevant State or this Commission. Thus, for instance, the entity that is designated as the ETC could be a competitive local exchange carrier that offers the telecommunications services eligible for support pursuant to section 254(c)(1) of the Act in partnership with another entity that constructs and operates the broadband-capable network. Comparable to the requirements adopted by the Commission for consortia leaders in the Healthcare Connect Fund, we require that the ETC be legally and financially responsible for providing the section 254(c)(1) supported telecommunications service; serve as the point of contact for the Commission, USAC, the relevant State, and Tribal governments, as appropriate; be responsible for submitting required forms and certifications to the Commission, USAC, the relevant State, and Tribal governments, as appropriate; receive funding disbursements; and be responsible for recordkeeping and coordinating any audits for members of the group.

In this case, Lake County, as the group member who receives the RBE grant and who will be responsible for compliance with legal requirements regarding the ETC designation, partners with a CLEC, Lake Communications, which will step into Lake County's shoes in fulfilling the CLEC requirement of Minn. Rule 7812.1400 subpart 2, and the offering of voice telephony and related services to Lake County's customers. Lake County, as the grant awardee and broadband facilities owner apparently wants control of the project and hence is the entity seeking the ETC status.

In the absence of a filed contract, however, it is difficult in this case to ascertain accountability between the partners. For example, will it be clear to customers which entity is providing and billing services, or responding to complaints? Which name shows on the bill as the provider of telephony services? From a customer's perspective, which company is providing voice telephony? What happens if Lake Communications cannot fulfill its obligations integral to Lake County's responsibilities as an ETC? Can a contract ensure that all ETC-related obligations are complied with by the non-ETC entity?

Even with the positive take by the FCC on partnership arrangements, ¶122 cited above from the Tech Transitions Order specify that "the ETC be legally and financially responsible for providing the section 254(c)(1) supported telecommunications service; serve as the point of contact for the Commission, USAC, the relevant State, and Tribal governments, as appropriate; be responsible for submitting required forms and certifications to the Commission, USAC, the relevant State, and Tribal governments, as appropriate; receive funding disbursements; and be responsible for recordkeeping and coordinating any audits for members of the group."

Staff recommends that if the Commission decides to grant Lake County's application, it should condition its approval, among others, on Lake County's submission of the contract with Lake Communications, specifying the inclusion of the following provisions and commitments:

- a. Lake County is the entity legally and financially responsible for providing the section 254(c)(1) supported telecommunications service; serve as the point of contact for the Commission, FCC, Universal Service Administrator, Tribal governments, as appropriate; be responsible for submitting required forms and certifications to the Commission, FCC, Universal Service Administrator, Tribal governments, as appropriate; receive funding disbursements; and be responsible for recordkeeping and coordinating any audits for members of the group.
- b. Clearly show the responsibilities of Lake County and Lake Communications in terms of:
 1. Actual provision of services
 2. Setting of rates
 3. Advertising the products
 4. Billing and name of company on bill
 5. Resolution of customer complaints
 6. Operations and Repair of telephony-related equipment
 7. Compliance with telephony-related service quality, legal, technical, reporting and related standards and commitments
 8. Resolutions in the event of Lake Communications cannot fulfill its role as the provider of telephony and related services.

Staff also recommends that if the Commission finds that Lake County's proposal to offer voice telephony and related services through contract with Lake Communications, it also waive the requirement under Minn. Rule 7812.1400, subpart 2 about ETC designation to a non-CLEC.

2. In the event the Commission determines that a contract between Lake County and Lake Communications does not adequately meet **the offering of supported services requirement**, the Commission should condition its ETC approval on Lake County getting a certificate of authority as a CLEC in Minnesota.

It appears more straightforward and consistent with ¶ 122 of the FCC's Tech Transitions Order if Lake County, as the entity seeking ETC designation, is in itself the CLEC. There will be no ambiguity about responsibilities entailed by being a designated ETC. It will also conform to Minn. Rule 7812.1400, subparts. 1 and 2 limiting Commission designation of ETC to either an incumbent or a competitive LEC, and in the process avoid the unusual complication of acting on a request by a nonregulated entity for waivers of rules applicable to regulated telecommunications carriers.

Minnesota law defines “Telecommunications,” “Telecommunications service” and “Telecommunications service provider” as follows:

Minn. Rule 7812.0100 Subp. 45. “*Telecommunications*” means any transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

Minn. Rule 7812.0100 Subp. 46. “*Telecommunications carrier*” means a person, firm, association, or corporation as defined in Minnesota Statutes, section 237.01, subdivision 6.

Minn. Rule 7812.0100 Subp. 47. “*Telecommunications service*” means the offering of telecommunications under the commission’s jurisdiction for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of facilities used.

Minn. Rule 7812.0100 Subp. 48. “*Telecommunications service provider*” means any provider of telecommunications service.

Minn. Stat. § 237.01, Subd. 6 . “*Telecommunications carrier*” means a person, firm, association, or corporation authorized to furnish one or more of the following telephone services to the public, but not otherwise authorized to furnish local exchange service: (1) interexchange telephone service; (2) local telephone service pursuant to a certificate granted under the authority of section 237.16, subdivision 4, before August 1, 1995; or (3) local services pursuant to a certificate granted under section 237.16, for the first time after August 1, 1995, except if granted to a successor to a telephone company, otherwise authorized to furnish local exchange service.

In response to Staff’s Information Request No. 8 seeking an explanation on why Lake County does not or cannot seek a certificate of authority under Minn. Stat. § 237.74 in tandem with its ETC application, Lake County explained that it does not furnish telephone service to the public, and therefore not a telecommunications carrier under Minnesota law. Staff believes that acting as a reseller of Lake Communications’ voice telephony and related services or subcontracting those services to an underlying provider, Lake County may qualify as a telecommunications carrier regulated under Minn. Stat. § 237.74, and furnish telephony, with its high speed internet and digital services, to the public.

C. Does the proposed service area conform to federal and state rules?

47 CFR § 54.201 (d)(1) provides

d) A common carrier designated as an eligible telecommunications carrier 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);

47 USC § 214 (e)(5) defines Service Area as a geographic area established by a State commission for the purpose of determining universal service obligations and support mechanisms.

Minn. Rule 7812.1400, subp.3 provides

Determining applicable universal service area. A decision on a petition for designation to receive universal service support under this part must include a determination of the applicable universal service area. The commission shall determine whether the LEC serving the area for which the CLEC seeks designation to receive universal service support is a rural telephone company if the competitive local exchange carrier's petition or another party's initial comments under subpart 8 asserts that the LEC is a rural telephone company. If the applicable LEC has 50,000 or more subscribers and is not found by the commission to be a rural telephone company, the commission shall designate **the local exchange carrier's exchange area** as the universal service area unless the commission finds that a smaller geographic unit would be more appropriate, based on consideration of the relevant high-cost areas designated by the FCC and the public interest.

Thus, the relevant service area here should correspond to the LECs' exchange/s unless the Commission finds that a smaller geographic unit is more appropriate. Lake County has clarified its proposed service area as smaller than the exchanges.

There are three topics presented under this section:

- a) Lake County's proposed service area as revised
- b) Lake County's waiver request to serve specific census blocks in portions of the exchanges instead of the entire exchanges, and
- c) Other Comments related to service area.

They are discussed in turn.

a. Lake County's proposed service area as revised

Citizens seeks clarification on Lake County's proposed service area. Lake County's Exhibit 1 shows a map that does not reflect the identified service area as served by Citizens, namely, the Ely exchange is not reflected on the map, and 2) the map appears to include Citizens' exchange of Brimson, but such was not mentioned in the petition. Lake County should also clarify how it will provide service to the Aurora and Babbitt exchanges since Lake Communication does not provide service to those exchanges.

Lake County's petition, on page 2, indicated its original proposed service area as follows, implying that it will be serving the entire exchanges mentioned:

The service area for which Lake County requests designation as an ETC is the following area:

The Minnesota exchanges of Duluth, and Silver Bay where Qwest Corporation dba CenturyLink (CenturyLink) is the incumbent local exchange carrier; and Aurora, Babbitt, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors Minnesota exchanges where Citizens Telecommunications Company of Minnesota, LLC ("Citizens") is the incumbent local exchange carrier. Unserved areas are also included in the Service Area.

Lake County later clarified that it is seeking ETC designation, not for the entire exchanges but only as to those portions of the exchanges relating to the census blocks included in its RBE grant (Response to Staff Information Request No. 9, and pages 6-7 and Attachment C of Reply Comments). These 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 to build facilities in portions of Citizens' Aurora, Babbitt, Brimson, Duluth, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, Silver Bay, and Two Harbors exchanges if the ETC designation is granted.

Staff notes that 47 USC § (214 e)(5) defines a service area as a geographic area established by a State commission for the purpose of determining universal service obligations (i.e., offering of supported services) and support mechanisms (presumably for calculating high cost supports, but for RBE funds may correspond to targeted facilities' build out areas).

Thus, if the Commission determines that Lake County's service area should correspond to the applicable exchanges of the incumbent LECs, Lake County's service area would be:

The Minnesota exchanges of Duluth, and Silver Bay where Qwest Corporation dba CenturyLink (CenturyLink) is the incumbent local exchange carrier; and Aurora, Babbitt, Brimson, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors Minnesota exchanges where Citizens Telecommunications Company of Minnesota, LLC ("Citizens") is the incumbent local exchange carrier. Unserved areas are also included in the Service Area.

Lake County now proposes a service area that corresponds to portions of the exchanges relating to census blocks included in its RBE grant, areas that are smaller than a telephone exchange. The specific census blocks are listed in Lake County's Attachment C and described on pages 6 – 7 of Reply Comments. Lake County believes that the proposed service area, as revised, corresponds to the support mechanisms it expects from the RBE grant.

Staff appreciates the clarifications made regarding the proposed service area and observes that the FCC entertained competitive bids based on census tracts in the RBE grant proposals, noting that such have been used as the basis for the cost model support for CAF Phase II bidding. The FCC was concerned that requiring larger geographic areas could deter participation in the experiment.¹⁰

However, Staff notes that the service area should also correspond to the area where services are available, rather than just where the facilities are located. It is still not clear why Lake County cannot serve the entire exchange. The applicable exchanges are now currently served by Lake Communications, Lake County's chosen voice telephony vendor. In previous ETC applications where an applicant may not have ubiquitous facilities throughout the proposed service area, it was asked to provide for alternate ways to ensure the delivery of service.

Staff recommends that at the meeting on May 28, Lake County be asked to further explain the financial and other constraints in serving the entire exchanges. Staff notes that Lake County has not fully explained, other than say that facilities are situated within specific census tracts, why they are proposing a service area smaller than directed in Minn. Rule 7812.1400, subpart 3.

If the Commission approves Lake County's proposal for service area corresponding to the census blocks, Staff suggests for precision in the record that Lake County be directed to submit a more detailed map showing: 1) the boundaries of the county, 2) Lake County's broadband footprint, 3) each affected CenturyLink and Citizens exchange where Lake County seeks ETC designation within the entire exchange, if applicable, 4) the boundaries of included census tracts for each affected CenturyLink and Citizens exchange not included as service area on an exchange-wide basis, 5) the county's unassigned area included in the proposed

¹⁰ RURAL EXPERIMENT ORDER, FCC 14-98 released July 14, 2014, para. 13. *In the Matter of Connect America Fund, WC Docket No. 10-30*,

service area, and 6) the county's unassigned area excluded in the proposed service area, if applicable.

b. Lake County seeks waiver of exchange-wide service area requirement

Lake County seeks a waiver of Minn. Rule 7812.1400 subpart 3 requiring ETCs to provide service throughout an exchange. Lake County submits that the census blocks do not correlate to exchange boundaries required in the Commission rule. The waiver is requested to reflect the geographic area served by Lake County's broadband network and to avoid creating a competitive disadvantage for companies whose networks do not mirror the ILEC network.

Citizens does not think that a waiver is necessary. Presumably, Lake County's waiver request is for those instances where the census blocks comprising the project *do not* correlate to exchange boundaries, thereby limiting their service area to the identified census blocks within the various exchanges. Lake County has not explained why it cannot service the entire exchange areas given that it is using approximately \$70 million of federal funding. Lake County has previously committed that it is able to serve entire exchanges. Citizens likewise showed in its Exhibit 1 a map taken from Lake County's website apparently showing that the planned service territory covers the entirety of Citizens' exchanges. Citizens believes that the waiver is not necessary.

If the Commission approves Lake County's proposed service area, **Staff** agrees that a waiver of Minn. Rule 7812.1400 subpart 3 is warranted. Such rule states that "the commission shall designate the local exchange carrier's exchange area as the universal service area unless the commission finds that a smaller geographic unit would be more appropriate...."

Minn. Rule 7829.3200 allows the Commission to waive enforcement of a rule if such would impose an excessive burden upon the applicant or others affected by the rule; granting the variance would not adversely affect the public interest, and would not conflict with standards imposed by law.

c. Other service area-related comments.

The Department does not raise any objection related to the proposed service area but recommends that, as a condition of ETC designation, Lake County provide the Commission a copy of the engineer-certified description of the technology and system design for the delivery of voice and broadband service in Minnesota that was provided to the FCC. The condition is likewise mentioned as to Lake County's satisfaction of service requirement to demonstrate its technical capability to serve the designated service area.

Citizens indicates that it seems unlikely that Lake County will be able to provide service throughout its proposed service area upon its ETC designation, as it is still in the process of building its network. Lake Country should provide more information how it will serve customers throughout the service area where Lake County does not yet have facilities.

In response to the Department and Citizens, **Lake County** provided in Attachment B of its Reply Comments a copy of the documentation filed with the FCC showing the technology and design of the system that will be used to deliver telecommunications services to consumers. Lake County also indicated that its current schedule shows that the core network will be substantially complete by the end of this summer.

It appears to **Staff** that Lake County's submission of the network system description in Attachment B of the Reply Comments satisfies the Department's concern. The issue raised by Citizens is partly addressed by Lake County's reply above and in Lake County's clarification of its proposed service area and the accompanying waiver request.

D. Does Lake County meet the conditions specified by the Department or Citizens to satisfy the other ETC requirements?

The Department suggests that the Commission find that Lake County has made a credible showing of its capability and intent to provide and advertise a telecommunications service supported by 47 USC § 254, including Lifeline, throughout its proposed service area, and has met the applicable requirements of 47 C.F.R. 54.202. The Department recommends that the Commission condition the grant of Lake County's petition for ETC status upon Lake County agreeing to some or all of the conditions described below.

The other parties did not take issue with Lake County meeting the other ETC requirements, except as otherwise noted here.

1. Advertise the supported service throughout its requested service area pursuant to 47 CFR 54.201 (d)(2).

The Department notes that Lake County proposes to advertise its universal service offering throughout the service area using the same advertising channels of general distribution, including newspaper and direct mail currently being used in its operations. The Department recommends that, similar to requirement for other ETC applicants, the Commission condition the grant of ETC status on Lake County providing a formal advertising plan, listing the specific media and means of advertising the availability of voice telephony and Lifeline and a proposed schedule and frequency of such advertising, and to post voice telephony and Lifeline terms and conditions on its website.

Lake County commits to provide an advertising plan consistent with what the Commission has approved in similar cases.

Staff supports the Department's recommendation that the Commission condition the grant of ETC status on Lake County providing a formal advertising plan, listing the specific media and means of advertising the availability of voice telephony and Lifeline and a proposed schedule

and frequency of such advertising, and to post voice telephony and Lifeline terms and conditions on its website.

2. Able to remain functional in emergency situations, as required by 47 CFR § 54.202 (a)(3).

The Department recommends that Lake County's ETC designation should be conditioned upon a demonstration of the means by which it will reroute traffic in the event of damaged facilities and the way in which it will manage traffic spikes resulting from emergency situations.

Citizens notes that the petition is silent regarding the impact of loss of commercial power at the customer premises and that Lake County should describe such impact to the customers.

Lake County states that the central office serving Lake County's customers is equipped with electrical generators and battery power supply to provide service in case of a commercial power outage. However, with respect to its ability to reroute traffic around damaged facilities, Lake County states only that loop plant facilities are not redundant since the switch serving its customers is collocated with CenturyLink's access tandem. In Reply Comments, Lake County includes Attachment B to demonstrate that Lake County's network employs a fiber ring design that is configured to assure survivability and the ability to re-route traffic as needed to respond to emergencies or technical failures.

Unless parties provide evidence otherwise, **Staff** suggests that Lake County has satisfied this requirement.

3. Comply with the service requirements applicable to the support that it receives as required by 47 CFR § 54.202 (a)(1)(i).

The Department indicates that Lake County is "committed to provide service to all customers making a reasonable request for service." Lake County certifies that it will "a) provide service on a timely basis to requesting customers within the service area where Lake County'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 Lake County's current network facilities, if service can be provided at reasonable cost by constructing network facilities." Lake County will be subject to the reporting requirements, compliance reviews and the FCC's record retention requirements.

In addition, outside of the ETC designation process, Lake County is required to submit directly to the FCC a demonstration of its technical and financial qualifications and its compliance with all statutory requirements.

The Department recommends that Lake County be required to provide a certification, signed by an authorized county official, that it will comply with the service requirements applicable to the funding that it will receive.

Lake County states that it will provide a certification from an authorized county official that it will comply with service requirements applicable to the support it receives. As shown in Section 2 above, Lake County has provided in Attachment B a copy of the documentation filed with the FCC showing the technology and design of the system that will be used to deliver telecommunications services to consumers.

Staff supports the Department's recommendation that the Commission direct Lake County to file a certification from an authorized county official that it will comply with service requirements applicable to the support it receives.

4. Offer service at rates that are reasonably comparable to rates for similar service plans offered by voice and broadband providers in urban areas pursuant to DA 14-1203.

The Department agrees that Lake Communications' tariffed local residential monthly rates are within the range of residential rates charged by the incumbents CenturyLink and Citizens. Lake Communications' tariffed local residential monthly rate is \$14.25 versus \$15.96 in CenturyLink's area, and \$13.60 versus \$15.25 in Citizens area.

However, the Department notes that Lake County's website provides a link to Lake Communications' website where it advertises a standalone voice offering "starting at \$29.99." The Department does not know how this advertisement squares with Lake Communications' tariffed rates and asks that, as a condition of its ETC designation, Lake County file a petition supplement indicating the price for standalone fixed interconnected VoIP service offered to its customers. Such price shall be within the range of the rates charged by the ILECs in the service area, and should be reflected in the tariff and in the website of any vendor providing Lake County's voice telephony.

Lake County states that it will revise the content of its website to accurately reflect the correct rate for standalone voice service and the availability of Lifeline service. The rates will be available to Lake County's customers on a nondiscriminatory basis as set forth in Lake Communications' tariff shown in Attachment A of the Reply Comments.

As of writing, **Staff** notes that Lake County and Lake Communications websites have not been updated. Staff recommends that the Commission direct Lake County to show the accurate rates in its website, the vendor's website or in any link that relates to its rates.

E. Is granting the ETC status in the public interest?

The Department believes that Lake County's ETC designation is in the public interest. In addition to the usual public interest for consumer choices brought in by qualified competitive ETCs, the Department agrees that Lake County's participation in the RBE will bring the benefit of increased broadband availability to currently unserved and underserved areas in Minnesota. Lake County also states that its offerings are superior to that received by the incumbents' customers in the service area. It presently has fiber to the home and offers technically superior network to that of the ILECs.

Staff notes that the Commission has generally established that it is in the public interest to designate additional ETCs. In addition, the Commission considers the unique advantages and disadvantages of the applicant's service offering. In this case, Lake County has also shown the benefits of bringing in funds to improve broadband availability and speed, particularly in areas of rural Minnesota that are currently unserved.

COMMISSION OPTIONS AND STAFF RECOMMENDATIONS

A. Should the Commission find that Lake County meets the common carrier requirement for ETC designation?

1. Yes.
2. No.
3. Other action determined by the Commission.

Staff Recommendation

Staff recommends Option 1.

B. Should the Commission find that Lake County offers the supported services?

1. Yes. Find that Lake County's proposal to offer the supported services through a contract with Lake Communications is reasonable.
2. Yes. Find that Lake County's proposal to offer the supported services through a contract with Lake Communications is reasonable. And

Condition approval on Lake County's submission within 30 days of the contract with Lake Communications or other voice telephony and related services vendor, specifying the inclusion of the following provisions and commitments:

- a. Lake County is the entity legally and financially responsible for providing the section 254(c)(1) supported telecommunications service; serve as the point of contact for the Commission, FCC, Universal Service Administrator, Tribal governments, as appropriate; be responsible for submitting required forms and certifications to the Commission, FCC, Universal Service Administrator, Tribal governments, as appropriate; receive funding disbursements; and be responsible for recordkeeping and coordinating any audits for members of the group.
- b. Clearly show the responsibilities of Lake County and the voice telephony and related services vendor in terms of:

1. Actual provision of services
2. Setting of rates
3. Advertising the products
4. Billing and name of company on bill
5. Resolution of customer complaints
6. Operations and Repair of telephony-related equipment
7. Compliance with telephony-related service quality, legal, technical, reporting and related standards and commitments
8. Resolutions in the event of Lake Communications cannot fulfill its role as the provider of telephony and related services.

3. Yes. Find that Lake County's proposal to offer the supported services through a contract with Lake Communications is reasonable. And

Condition approval on Lake County's submission within 30 days of the contract with Lake Communications or other voice telephony and related services vendor, specifying the inclusion of the following provisions and commitments:

- a. Lake County is the entity legally and financially responsible for providing the section 254(c)(1) supported telecommunications service; serve as the point of contact for the Commission, FCC, Universal Service Administrator, Tribal governments, as appropriate; be responsible for submitting required forms and certifications to the Commission, FCC, Universal Service Administrator, Tribal governments, as appropriate; receive funding disbursements; and be responsible for recordkeeping and coordinating any audits for members of the group.
- b. Clearly show the responsibilities of Lake County and the voice telephony and related services vendor in terms of:
 1. Actual provision of services
 2. Setting of rates
 3. Advertising the products
 4. Billing and name of company on bill
 5. Resolution of customer complaints
 6. Operations and Repair of telephony-related equipment
 7. Compliance with telephony-related service quality, legal, technical, reporting and related standards and commitments

8. Resolutions in the event of Lake Communications cannot fulfill its role as the provider of telephony and related services.

And grant a waiver of Minn. Rule 7812.1400, subpart 2 relating to the CLEC requirement for an ETC designation.

4. Yes. Condition approval on Lake County getting a certificate of authority as a CLEC in Minnesota.
5. No.
6. Other action determined by the Commission.

Staff Recommendation

Staff recommends either Option 3 or Option 4.

C. Does the proposed service area conform to federal and state rules?

1. Yes. Approve Lake County's proposed service area which are portions relating to the census blocks within the Minnesota exchanges of Duluth, and Silver Bay where Qwest Corporation dba CenturyLink (CenturyLink) is the incumbent local exchange carrier; and Aurora, Babbitt, Brimson, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors Minnesota exchanges where Citizens Telecommunications Company of Minnesota, LLC ("Citizens") is the incumbent local exchange carrier. Unserved areas are also included in the Service Area.
2. Yes. Approve Lake County's proposed service area which are portions relating to the census blocks within the Minnesota exchanges of Duluth, and Silver Bay where Qwest Corporation dba CenturyLink (CenturyLink) is the incumbent local exchange carrier; and Aurora, Babbitt, Brimson, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors Minnesota exchanges where Citizens Telecommunications Company of Minnesota, LLC ("Citizens") is the incumbent local exchange carrier. Unserved areas are also included in the Service Area. And
 - a). Direct Lake County to submit within 30 days a more detailed map showing: 1) the boundaries of the county, 2) Lake County's broadband footprint, 3) each affected CenturyLink and Citizens exchange where Lake County seeks ETC designation within the entire exchange, if applicable, 4) the boundaries of included census tracts for each affected CenturyLink and Citizens exchange not included as service area on an exchange-wide basis, 5) the county's unassigned

area included in the proposed service area, and 6) the county's unassigned area excluded in the proposed service area, if applicable. And

b). Waive the requirement of Minn. Rule 7812.1400 for Lake County to serve the entire relevant exchanges of the ILECs in the service area.

3. No. Require that the service area correspond to the entire Minnesota exchanges of Duluth, and Silver Bay where Qwest Corporation dba CenturyLink (CenturyLink) is the incumbent local exchange carrier; and Aurora, Babbitt, Brimson, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors Minnesota exchanges where Citizens Telecommunications Company of Minnesota, LLC ("Citizens") is the incumbent local exchange carrier. Unserved areas are also included in the Service Area.

4. Other action determined by the Commission.

Staff Recommendation

Staff recommends either Option 2 or Option 3.

D. Does Lake County meet the other ETC requirements?

1. Yes.

2. Yes, and direct Lake County to satisfy any or all of the following conditions within 30 days of the Commission Order:

- With respect to the advertising requirement:

- a. Lake County to submit a formal advertising plan, listing the specific media and means of advertising the availability of voice telephony and Lifeline, and a proposed schedule and frequency of such advertising, and to post voice telephony and Lifeline terms and conditions on its website and website of any telephony vendor.

- With respect to service requirements compliance:

- b. Lake County to file a certification, signed by a county official, that it will comply with the service requirements applicable to the support that it receives as required by 47 CFR § 54.202 (a)(2).

- With respect to comparable rates requirement:

c. Lake County to show the accurate rates in its website, the vendor's website, or in any link that relates to its rates.

•With respect to other obligations:

d. Lake County to ensure performance of the representations made in the Petition as recommended by the Department in footnote 84 of its Comments.

e. Lake County commits to notify the Department and the Commission if it is unable to serve a Lifeline-qualified customer within its service area within 10 days of making the determination as recommended by the Department on page 34 of Comments.

3. No.

4. Other action determined by the Commission.

Staff Recommendation

Staff recommends Option 2 with a, b, c, d, and e.

E. Is granting the ETC status in the public interest?

1. Yes.

2. No.

3. Other action determined by the Commission.

Staff Recommendation

Staff recommends Option 1.

F. Should the Commission approve Lake County's petition for ETC designation in Minnesota for the limited purpose of qualifying for receipt of federal Connect America Funds as part of the FCC's Rural Broadband Experiments?

1. Yes.
2. Yes, subject to the conditions above.
3. No.
4. Refer matter to the OAH for contested case proceeding.
5. Other action determined by the Commission.

Staff Recommendation

Staff recommends Option 2.

G. Should the Commission grant Lake County's request for certification to the FCC and the universal service administrator that it will use its federal support for the intended purpose?

1. Yes, grant the request and certify to FCC and the universal service administrator that the ETC will use the federal support for the intended purpose pursuant to 47 CFR 54.313 (3)(vi). Include the conditions determined by the Commission for the ETC designation.
2. No, do not grant the requested certification.
3. Other action determined by the Commission.

Staff Recommendation

Staff recommends Option 1.