



**EMPLOYMENT AND
ECONOMIC DEVELOPMENT**
OFFICE OF BROADBAND DEVELOPMENT

December 13, 2018

Daniel P. Wolf
Minnesota Public Utilities Commission
121 7th Place E., Suite 350
St. Paul, MN 55101-2147

RE: Petitions for Designation as Eligible Telecommunications Carriers (ETC) for Receipt of Connect America Fund (CAF) II Auction Funding

Docket Numbers:

P6994/M-18-665 – Broadband Corp; **P406/AM-18-645** – Consolidated Telephone Company;
P522/AM-18-718 – Farmers Mutual Telephone Company;
P523/AM-18-630 – Federated Telephone Cooperative;
P409/AM-18-607 – Garden Valley Telephone Company;
P530/M-18-626 – Halstad Telephone Company;
P515/AM-18-637 – Interstate Telecommunications Cooperative;
P5891/M-18-675 – Jaguar Communications
P6995/M-18-653 – LTD Broadband LLC;
P6186/M-18-661 – Midcontinent Communications;
P423/AM-18-605 – Paul Bunyan Rural Telephone Cooperative;
P6996/M-18-679 – Roseau Electric Cooperative, Inc.;
P431/AM-18-601 – West Central Telephone Association
P432/M-18-549 – Wikstrom Telephone Company; and
P999/CI-18-634 – Notice of Filing Requirement and Comment Period for CAF II Grant Winners

Dear Mr. Wolf:

Attached are reply comments of the Office of Broadband Development at the Minnesota Department of Employment and Economic Development (OBD or Office) per the comment period established in Docket No. P999/CI-18-634 and as extended by Commission notice in several of the above referenced dockets.

The Office recommends that the Commission grant the above requests for ETC designation to ensure that federal funding to support the build out of broadband service to unserved, high cost areas flows to this state for the benefit of Minnesotans. In the alternative, OBD would recommend that if the Commission believes it cannot certify as an ETC an entity that will use Voice over Internet Protocol (VoIP) service to meet the voice requirement of an ETC given the recent 8th Circuit decision and existing state law, that the Commission expeditiously provide a letter to the applicant indicating that it does not

have jurisdiction over VoIP and thus those applicants that will use VoIP to meet the voice telephony requirement of their ETC obligation should seek ETC designation from the FCC.

Sincerely,

A handwritten signature in blue ink that reads "Danna MacKenzie". The signature is written in a cursive style with a large, stylized initial "D".

Danna MacKenzie

Executive Director

Office of Broadband Development

Minnesota Department of Employment and Economic Development

Background

Office of Broadband Development

The Office of Broadband Development at the Minnesota Department of Employment and Economic Development (Office or OBD) was created in statute in 2013. As articulated in statute, the purpose of the Office is to “encourage, foster, develop, and improve broadband within the state...” (Minn. Stat. §116J.39, subd. 2.) Duties of the office are found at Minn. Stat. §116J.39, subd. 4 and include:

- Serve as the central broadband planning body for the State of Minnesota
- Develop, recommend, and implement a statewide plan to encourage cost-effective broadband access, and to make recommendations for increased usage, particularly in rural and other underserved areas
- Provide consultation services to local units of government or other project sponsors in connection with the planning, acquisition, improvement, construction, or development of any broadband deployment project
- Encourage public-private partnerships to increase deployment and adoption of broadband services

Given the statutory responsibilities of OBD, the office closely monitors all opportunities to ensure greater availability of broadband in the state.

FCC Connect America Fund II and Auction 903

As explained on the Federal Communications Commission’s website¹, “The Connect America Fund Phase II (Phase II) is part of the Commission’s reform and modernization of its universal service support programs. In 2018, the Commission conducted an auction (Auction 903) to allocate Phase II support to certain eligible areas across the United States. Auction 903 ran from July 24, 2018 to August 21, 2018. 103 bidders won \$1.49 billion over 10 years to provide fixed broadband and voice services to over 700,000 locations in 45 states.” Specifically for Minnesota, there were 16 entities selected as winning bidders to serve 11,979 locations in rural Minnesota. These 16 entities are in line to receive \$38,863,791 over the next ten years to deploy the service indicated in their winning bids.

Under the FCC’s process, upon selection as a winning bidder, the providers must next complete a long form application including additional information about qualifications, funding, and the network that they intend to use to meet their obligations (deadline was October 15, 2018)²; submit a letter from an eligible bank committing to issue a letter of credit and provide detailed technology and system design descriptions (deadline was November 6, 2018) and obtain ETC designation and certification letters and provide audited financial statements (deadline is February 25, 2019).

¹ <https://www.fcc.gov/auction/903>

² Johnson Telephone Company, which was a winning bidder to serve 47 locations in Minnesota, did not complete the long form application.

ETC Designation and State Commission Role

The FCC's Public Notice in Docket DA 18-714³ discusses state authority to grant eligible telecommunications carrier (ETC) designation and the FCC's authority. Fond du Lac Reservation Business Committee, as a tribal entity, has its ETC designation petition pending before the FCC.⁴

The FCC has been clear since its 2011 "Transformation Order"⁵ that a provider using VoIP service is offering a voice telephony service eligible for federal universal service support. That order also clearly discusses that the regulatory classification of VoIP as either a telecommunications service or an information service is irrelevant (see discussion at paragraph 63 and footnote 67).

The Office would also note that a few states, including a state within the 8th Circuit, have designated providers offering voice telephony via a VoIP product as ETCs for purposes of satisfying the requirement that CAF II auction winners receive ETC designation.

The Iowa Utilities Board approved the request by NextLink Internet for ETC designation.⁶

The New Mexico Public Regulation Commission approved Viasat's request for ETC designation.⁷

Several state ETC designation proceedings are still pending.

However, if the Minnesota Commission is either not inclined to rely on FCC statements as to what is an appropriate voice telephony service for purposes of ETC designation to qualify an entity for receipt of federal funding, or because of the recent 8th Circuit decision the Commission cannot legally unwind current state requirements around the ETC designation process to approve some or all of the currently pending ETC applications from CAF II auction winners, then OBD would recommend that the Minnesota Commission follow the FCC's directives in its July 10, 2018 Public Notice (see footnote 3 below) and provide "an affirmative statement...that the carrier is not subject to the state commission's jurisdiction." Some states have taken this approach: see the letter provided by the New York Public Service Commission for Haefele TV, Inc.⁸ and Mid-Hudson Data Corp.⁹, by the California PUC for Hankins Information Technology¹⁰, by the Virginia State Corporation Commission for EMPOWER¹¹ and PGEC Enterprises¹², and by the Tennessee Public Utility Commission for Gibson Connect.¹³ Those ETCs that will

³<https://docs.fcc.gov/public/attachments/DA-18-714A1.pdf>

⁴ <https://docs.fcc.gov/public/attachments/DA-18-1019A1.pdf>

⁵ https://docs.fcc.gov/public/attachments/FCC-11-161A1_Rcd.pdf, see paragraph 96.

⁶ <https://efs.iowa.gov/cs/groups/external/documents/docket/mdax/odi5/~edisp/1829055.pdf>

⁷ New Mexico Public Regulation Commission Case No. 18-00307-UT.

⁸ https://ecfsapi.fcc.gov/file/10817990712297/Petition%20for%20ETC%20Designation_Haefele.pdf

⁹ <https://ecfsapi.fcc.gov/file/10222356925447/Mid->

[Hudson%20Data%20Corp.%20FCC%20Petition%20re%20ETC%2010-22-18%20FINAL.pdf](https://ecfsapi.fcc.gov/file/10222356925447/Mid-Hudson%20Data%20Corp.%20FCC%20Petition%20re%20ETC%2010-22-18%20FINAL.pdf)

¹⁰ <https://ecfsapi.fcc.gov/file/109280408801307/Supplement%20to%20HITETCPetition.pdf>

¹¹ https://ecfsapi.fcc.gov/file/1092770213412/EMPOWER%20Broadband%2C%20Inc.%20-%20Petition%20for%20ETC%20Designation%20-%20FINAL%20-%2009_27_18.pdf

¹² https://ecfsapi.fcc.gov/file/10927140834349/PGEC%20Enterprises%2C%20LLC%20-%20Petition%20for%20ETC%20Designation%20-%20FINAL%20-%2009_27_18.pdf

¹³ https://ecfsapi.fcc.gov/file/1092731156967/Gibson%20Connect%2C%20LLC%20-%20Petition%20for%20ETC%20Designation%20-%20FINAL%20-%2009_27_18.pdf

rely on a VoIP service to meet their ETC voice requirement in Minnesota can than apply for ETC designation from the FCC.

Conclusion

OBD's role is to see that broadband service is deployed to all Minnesotans. The FCC is offering almost \$39 million for the construction of broadband services in some of the most rural areas of the state. Now is not the time to create barriers to seeing those federal dollars reach Minnesota. If the Commission cannot clear the way for the CAF II auction winners to receive state ETC designation under current telecommunications laws and court rulings, then the Commission should consider following the lead of the states of California, New York, Tennessee and Virginia and expeditiously provide an affirmative statement that it lacks jurisdiction, which would be consistent with the 8th Circuit's recent ruling that VoIP is an information service and outside of this Commission's authority. CAF II auction winners in Minnesota that will use VoIP technology can then seek ETC designation from the FCC and proceed to securing the auction funds to deploy broadband service in Minnesota.