

Staff Briefing Papers

Meeting Date September 19, 2019 Agenda Item 5*

Company Local Exchange Companies, Eligible
Telecommunications Carriers

Docket No. **P999/PR-19-8**

In the Matter of Annual Certification related to Eligible Telecommunications Carrier's (ETCs) Use of the Federal Universal Service Support required pursuant to C.F.R. 54.313

Issues 1. Should the Commission approve all petitioning ETCs' requests for high cost support certification?

2. Should the Commission order other action in this matter?

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Relevant Documents

Date

Filings for High-Cost Certifications

July 2019

Comments by the Department of Commerce

September 3, 2019

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The attached materials are work papers 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.

I. Statement of the Issues

1. Should the Commission approve all petitioning ETCs' requests for high cost support certification?
2. Should the Commission order other action in this matter?

II. Background

Since 2001 States have filed annual certification of Federal Communications Commission (FCC) Form 481 compliance filings by Eligible Telecommunication Carriers (ETCs) regarding high-cost program support from the Universal Service Fund (USF). All companies filing FCC Form 481 under 47 C.F.R. 54.313 are normally certified via the Universal Service Administrative Company (USAC) electronic certification roster and by being sent hardcopy to the FCC by USPS as per federal practice. The Commission does this under authority delegated in 47 C.F.R. 54.314. Wireless companies filing FCC Form 481 under 47 C.F.R. 54.422 do so for the Commission's information only. Those wireless companies are appropriately not listed on the USAC verification system and not certified by the Commission to the FCC.

In Minnesota in 2018, USAC disbursed \$215.3 million in high cost support funds. Certification of the related company/SAC number combinations is the primary purpose of this proceeding.

III. Department's Comments

A. Department Recommended 54.314 Certifications

The Minnesota Department of Commerce (Department) filed initial and corrected Comments in this proceeding on September 3, 2019. No other parties have filed comments in this proceeding as of the September 9, 2019 deadline for Reply Comments. The Department provides in its Comments on pages 1-5 a historical and legal background of the oversight of ETC receipt and use of high cost funding from the Federal USF. In Section V (page 5) and in Appendix A the Department explains the high cost funds received in Minnesota for 2018. The Department presents its recommendations for certifying individual company/SAC combinations in Attachment 1 of its original filing in Parts A, B and C.

Part A: These are routine FCC Form 481 filings with the FCC and in Docket 19-8, including the affidavits required by the Commission. All are listed on the USAC certification roster. The Department recommends them for certification to the FCC under 47 C.F.R. 54.314.

Part B: The Department describes these company/SAC combinations as having filed FCC Form 481, affidavits affirming receipt of funds in 2019. The Department stated at page 6 that "These companies and study area codes are listed on the USAC web site for 54.314 certification". However, Commission Staff notes this is not the case for 3 of the 7 listings. The Department recommends them all for certification to the FCC under 47 C.F.R. 54.314.

Part C: The Department describes these company/SAC combinations as having filed affidavits addressing pending funds, but not an FCC Form 481. The Department describes these company/SAC combinations as:

"... winning bidders in the CAF II reverse auction, but have either not received funds, or received them just recently in 2019, and do not otherwise receive high cost support."
(Department Comments, p. 6.)

The Department states that “these companies are asking the Commission to acknowledge that they have been granted ETC status.” (Department Comments, p. 5) The Department recommends the Commission “Certify that the companies listed in Part C keep their ETC status through the 481 filings required in 2020.” (Department Comments, p. 12.)

B. Department Recommended Exclusions from Certification

In a change from past practice, the Department does not recommend certifying 7 border state ETCs. Supporting information, not part of the Department’s Comments, includes: 1) confirmation from USAC that the Commission is not required to do so (USAC direction by email of 2:49 p.m. September 5, 2019 from Elizabeth Pertsevoi); and 2) verbal confirmation on September 6, 2019 by Department Staff Joy Gullikson that she has called each of the other involved state commissions to confirm that the provider/SAC combinations in question are on those state’s USAC certification rosters and those commissions will address related certifications. Hence, these items are not the Commission’s responsibility. Although those companies serve Minnesota customers, certifications are being done by the commissions which initially provided ETC certification for those providers.

In addition, in footnote 9 the Department notes the proper exclusion of Lake County from certification because they relinquished their ETC status and did not file in this proceeding. In footnote 10 the Department notes the proper exclusion of LTD Broadband and Broadband Corporation noting without elaboration that they have not filed FCC Form 481s and “There is no requirement that they do so.” (See Department Comments, p. 6.)

C. Other items addressed by the Department

The Department addresses 9 additional issues on pages 9-11.

1. **Tribal engagement** -- Sending a letter to a tribe that is not acknowledged and not followed up on, does not constitute “tribal engagement” under 47 C.F.R. 54.313(A)(9). (See Department Issue 2a, p. 7.)
2. **Neighboring state ETC’s** -- Companies certified by neighboring state commissions and primarily serving customers in neighboring states need not be certified by the Commission. (See Department Issue 2b, p. 8.)
3. **File in eDockets** -- FCC Form 481 filings by Minnesota companies from previous years will not be available to compare multi-year progress unless the Commission will order them filed in eDockets. FCC records available to the States appear to be current year only. (See Department Issue 2c, p. 8.)
4. **Performance monitoring** -- The Department will monitor network performance testing when reporting begins next year under Section 54.313(A)(11). (See Department Issue 2d, p. 9.)
5. **Capital expenditure monitoring** -- “While there is no action that the Commission can take to require price cap companies to expend more on capital, the Department will [monitor capital expenditures] over the years that the price cap companies receive high cost support in return for an obligation to serve a certain number of locations.” (See Department Issue 2e, p. 9.)
6. **Lifeline** -- ‘... [T]here are currently 9,362 customers who currently receive Lifeline service. Department Staff checked each filer’s website to see if the website showed the Lifeline terms and conditions. Of the 109 [FCC Form]481 filings, about 10 percent did not have the Lifeline terms and conditions on their website, or in a manner that was reasonably accessible. The Department is working with the companies to ensure the websites offer clear information about

stand alone service, Lifeline and TAP, through its own investigation and through Docket No. P999/CI-18-112. (See Department Issue 2f, p. 10.)

7. **Location Legitimacy** -- The Department has recently been looking at the locations funds were reported deployed, USAC's interactive online project map, and has some concerns that it intends to further investigate. (See Department Issue 2g, p. 10.)
8. **Financial review** -- All carriers filed required copies of their audited or reviewed financial statements. Publicly traded companies are not required to file financial statements because their financial statements are available on the Securities Exchange Commission's website. The Department will consider whether it is appropriate to look at financial information as a means to ensure that funds are being appropriately used. (See Department Issue 2h, p. 10.)
9. **Frontier's ETC Certification** -- "On February 12, 2018, the Commission initiated an Inquiry into the Service Quality, Customer Service, and Billing Practices of Frontier Communications, Docket Number P407, 405/CI-18-122. In the 2018 ETC certification proceeding, the Department recommended that Frontier be certified ... as there was an inadequate record to determine whether Frontier has or has not used the federal funds it has received in a manner that complies with FCC requirements, and denying Frontier the federal funds it is scheduled to receive could have adverse consequences for Minnesota consumers. ... Unfortunately, the Department is in a similar position to where it was a year ago on whether Frontier has used CAF funds appropriately. ..."

"On August 2, 2019, Frontier and Commerce filed a settlement agreement for the Commission's consideration to resolve many of the issues raised in the 18-122 investigation. The use of CAF funds was explicitly excluded from that settlement and the Department has stated that the investigation on the appropriate use of CAF funds should continue. As there is an inadequate record at this time to determine whether Frontier has or has not used the federal funds it has received in a manner that complies with FCC requirements, and denying Frontier the federal funds it is scheduled to receive could have adverse consequences for Minnesota consumers, the Department recommends that Frontier be certified in the current process." (See Department p. 11.)

D. Department Recommendations

The Department recommends A, B, and C.

- A. Certify that all of the petitioning ETCs listed in Parts A and B of Attachment 1 have used Federal High Cost Universal Service Support received in 2018, and will use Federal High Cost Universal Service Support received in the coming year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Certify that the companies listed in Part C keep their ETC status through the 481 filings required in 2020.
- B. Require companies serving Tribal lands need to fully cooperate with both the Department and the Tribes to comply with Section 54.313(a)(9), using FCC Form 481 to ensure Tribal engagement occurs in the future.
- C. Require Form 481 filings to be efiled with the Minnesota Public Utilities Commission beginning in 2020, in addition to the affidavit required by Commission Order in Docket 18-8

IV. Staff Analysis

A. Certification

The Commission's primary task in this proceeding is the exercise of its responsibility and authority under 47 C.F.R. 54.314 to review and appropriately certify company/SAC number combinations that have been properly filed under 47 C.F.R. 54.313. A typical starting point for assessment is to note whether or not the company/SAC combination are included on the USAC website certification roster for Minnesota.

The Department's listing in Attachment 1, Part A are all complete and appropriately available on the USAC website roster for electronic certification. Staff concurs with the Department in their certification to the USAC and the FCC.

At issue are the remaining 11 company/SAC combinations presented by the Department in Attachment 1, Parts B and C. The Department's differentiation in its Comments between those 11 in Part B and Part C needs further clarity. (See Department Comments, p. 6)

All 11 have filed a forward-looking affidavit with the State of Minnesota in this proceeding. Five (5) of the 11 have filed FCC Form 481 materials which appear to be an optional acknowledgement of funds that will be assessed in the upcoming year. Of these 5, only Mid Continent Communications explicitly ask the Commission to certify its SAC 369015 filing to the FCC, while the Commission might reasonably construe the other 4 to have implicitly requested certification from their having submitted FCC Form 481 filings. While the filings of this group of 5 are short, they do affirm upcoming actions and do not lack any required information. All 5 are presented on the USAC website certification roster for Minnesota. The Department's recommendation was to certify these 5 company/SAC combinations. Staff concurs.

Recommended to Certify (From Department Attachment 1, Parts B and C)

<u>Company</u>	<u>SAC</u>	<u>Filed in USAC</u>	<u>MN Affidavit</u>
Consolidated Tel Co	369044	yes	yes
Garden Valley Tel Co	369039	yes	yes
Halstad Tel Co	369040	yes	yes
West Central Tel Assn	369042	yes	yes
Mid Continent Comm	369015	yes	yes

B. Exclusion from Certification

Those not filing FCC Form 481 have not requested certification nor presented materials to be reviewed under the Commission's delegated responsibility and authority under 47 C.F.R. 54.314. Therefore, while listed on the USAC website for electronic certification, Lake County (SAC 366110) and Jaguar Communications (SAC 369038) are not among those recommended by the Department for certification in this proceeding because they did not submit FCC Form 481 filings.

For the 6 company/SAC combinations from the Department's Attachment 1, Part B and Part C which did not file FCC Form 481 filings, Staff does not recommended certification under 47 C.F.R. 54.314 although the Department had recommended doing so. It is Staff's understanding that those company/SAC combinations will be timely filed in upcoming FCC Form 481 filings as 2019 disbursements proceed and are received as anticipated. Absent filing of FCC Form 481, no request for certification in this proceeding is pending upon which to act. Given that their present ETC status and low cost program awards remain

unchanged from other proceedings, Staff is not aware why inaction in this docket would introduce any risk to expected future program funding for those company/SAC combinations.

Although presented on USAC's website roster for certification by Minnesota, the seven company/SAC combinations identified by the Department as serving border areas from out of state may be excluded from Commission action in this proceeding. The ETC's involved are certified by neighboring states and those states will address pending certification of high cost funds under their own responsibility and authority under 47 C.F.R. 54.314. Department Staff have confirmed their doing so by telephone. USAC Staff have indicated that there is no need for action on these items by the Commission. While the Commission is not prohibited from certifying these as per past practice, the Department recommends not doing so. Staff concurs.

C. Other Issues

- i. **Tribal engagement:** The Department's Tribal liaison notes that sending a letter, receiving no response and taking no further action does not constitute "tribal engagement" as envisioned by 47 C.F.R. 54.313(a)(9). No individual tribe filed comments requesting this engagement. Staff agrees with the Department's goal of enhancing tribal engagement. Because the ultimate decision-making in these high cost filings rests with the Commission, who may wish to include its own Tribal Liaison in these efforts, Staff suggests some minor procedural edits to the Department recommendation to clarify that other interested stakeholders may participate in these discussions. This will ensure the Commission receives proper information in the record through an inclusive and transparent process on what should be expected in terms of Tribal engagement in Minnesota.
- ii. **Efile Forms with Minnesota Commission:** Department and Commission Staff had understood that the FCC making its Form 481 filings available to states online would include archival access to each proceeding year's records. This does not appear to be the case. The Department appropriately notes the need to review initiatives that fund multiple years through access to more than just a current year's filing. Since companies presently file a separate affidavit with the State, and file electronically with the FCC, there would be little to no additional burden to electronically file their annual FCC Form 481 with the state. In addition, state statute requires carriers to make filings in edockets.¹ Not only does this satisfy state statute but provides for transparency to those following Commission proceedings.
- iii. **Lifeline and TAP online content:** It is important to note that other annual Commission dockets have been specifically working on Lifeline and TAP outreach; this docket neither provided notice of any Lifeline issues nor does the service list include the type of stakeholders that have been involved in these dockets. Commission Staff particularly noted the Department's reporting that it is "... working with companies to ensure the websites offer clear information about ... Lifeline and TAP through its own investigation and through Docket No. P999.CI-18-112." However, the Department did not update the Commission nor the service list in Docket 18-112 of its plans. In that docket, the Commission already delegated similar work to the Executive Secretary in January of this year:
 3. Local service providers shall:
 - A. Include TAP information on their websites; and
 - B. Inform customers who are behind on bill payments about TAP.
 4. The Commission delegates authority to the Executive Secretary to determine:

¹ See Minn. Stat. §216B.17, subd. 3.

- A. the timing and content of the TAP information to be provided on the local service provider website; and
- B. the timing and content of the TAP information to be provided by local service providers.

This ordering language was adopted at the request of stakeholders, particularly the OAG and Legal Services Advocacy Project. Neither party is participating in the current docket but are part of the Commission's Lifeline-TAP group where most outreach discussions would be occurring.

On February 27, 2019 a Notice was provided by the Commission to companies advising them of significant changes to the TAP credit and surcharge, and about information to be posted online and provided to customers behind on their bill payments.

On April 26, 2019 a Notice was provided by the Commission to companies approving and providing TAP information to be provided by local service providers.

On August 6, 2019 the Commission Order accepted the TAP fund review and approved the outreach plan and expenditures presented by the Commission's Consumer Affairs Office.

Presently the CAO is in the process of reviewing compliance with individual companies and assisting them to meet their website and other informational obligations.

For companies to effectively respond to State oversight and direction, it is important that they receive consistent and complete information. While Commission Staff welcome collaboration with the Department and others in carrying out this mission, the Commission may find it helpful to reaffirm leadership by its CAO and to request the collaborative assistance of the Department in this effort.

V. Decision Options and Recommendations

Certification

- A. Certify that all of the petitioning ETCs listed in the Department's Attachment 1 Part A have used Federal High Cost Universal Service Support received in 2018, and will use Federal High Cost Universal Service Support received in the coming year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. **(Staff Recommendation)**
- B. Certify that all of the petitioning ETCs listed in in the Staff Analysis "Recommended to Certify" table as having affirmed use Federal High Cost Universal Service Support received in the coming year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. **(Staff Recommendation)**
- C. Certify that all of the petitioning ETCs listed in Parts A and B of Attachment 1 have used Federal High Cost Universal Service Support received in 2018, and will use Federal High Cost Universal Service Support received in the coming year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Certify that the companies listed in Part C keep their ETC status through the 481 filings required in 2020. **(Department Recommendation)**
- D. Certify out-of-state ETC's company/SAC combinations serving border areas identified by the Department in its Comments at page 8.
- E. Certify other company/SAC combinations deemed appropriate by the Commission.

Other Issues

- F. Require companies filing FCC Form 481 under 47 C.F.R §54.313 and serving Tribal lands to enter into a dialogue with the Department's Tribal Liaison and any other interested stakeholders on the topic of tribal engagement. The Department, companies, or any other interested stakeholders shall file recommendations on a schedule to be set by the Executive Secretary. **(Staff modification of Department recommendation, to provide transparency and record building)**
- G. Beginning in 2020, require FCC Form 481 filings by companies filing under 47 C.F.R. 54.313 to be e-filed with the Minnesota Public Utilities Commission, in addition to the affidavit required by Commission Order in Docket 18-8. **(Modified Department Recommendation; Staff concurs)**
- H. Request the collaborative support of the Department for the CAO's outreach to companies to ensure compliant and timely online content regarding available assistance for low income consumers through the Lifeline and TAP programs. **(Staff recommendation)**