

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

In the Matter of the Application of)
Starlink Services, LLC for Designation)
As an eligible Telecommunications Carrier)
For Purposes of Receiving Rural Digital)
Opportunities Fund Support)

Docket No. P7047/M-21-26

PETITIONER’S REPLY COMMENTS

INTRODUCTION

Starlink Services, LLC (“Starlink”), respectfully submits these reply comments in support of its petition for designation, pursuant to 47 U.S.C. § 214(e) and 47 C.F.R. § 54.201, as an Eligible Telecommunications Carrier (“ETC”). In its comments, the Department of Commerce (“DOC”) recommends that the Commission grant Starlink’s ETC application. *See* Comments of the Minn. Dep’t of Commerce on the Petitions Filed by Rural Digital Opportunity Fund Grant Winners, Docket No. P999/CI-21-86, Mar. 26, 2021, at 21 (“DOC Comments”). However, both the DOC and the Office of the Attorney General – Residential Utilities Division (“OAG-RUD”) urge in their comments that this Commission impose, as a condition of approval of the ETC petitions filed by the providers that won funding in the Federal Communications Commission’s (“FCC’s”) Rural Digital Opportunity Fund (“RDOF”) program, burdensome and unnecessary legacy state telecommunications regulations. As a provider of high-speed satellite broadband internet access and voice over Internet Protocol (“VOIP”) services – both of which are legally classified as information services – the Commission lacks jurisdiction to impose such regulations. Accordingly, Starlink requests that its ETC petition be approved without the additional state law regulatory conditions proposed by DOC and OAG-RUD.

DISCUSSION

I. Granting Starlink's ETC Application is in the Public Interest

The FCC selected Starlink's parent company, Space Exploration Technologies Corp. ("SpaceX"), as a winning bidder in the RDOF auction and SpaceX subsequently assigned its rights to Starlink. The FCC authorized Starlink to receive \$885 million in RDOF funding to help support deployment of service in 35 states, including \$8,424,807 to provide service to specified Minnesota census tracts. Starlink will use these funds to provide satellite broadband and VOIP service to areas in Minnesota that are presently unserved or underserved with respect to their access to broadband service.

In order to secure RDOF funding, SpaceX went through an exhaustive review process, demonstrating to the FCC that it possessed the necessary qualifications and ability to provide service. As SpaceX's assignee, Starlink is required to commercially offer voice and broadband service consistent with certain milestones and speed and latency requirements. To that end, Starlink must offer service to 40% of the awarded locations by the end of the third full calendar year following funding authorization, and 20% each year thereafter, resulting in 100% deployment to funded locations by the end of the sixth calendar year. *See Rural Digital Opportunity Fund et al.*, WC Docket No. 19-126 et al., Report and Order, 35 FCC Rcd. 686, 696, para. 45 (2020) ("*Rural Digital Opportunity Fund Order*").

Among numerous other conditions, an RDOF grantee must obtain ETC status from the relevant state authority in each state for which funding is provided by June 7, 2021. To meet this deadline, Starlink filed its ETC application with this Commission on January 4, 2021, and requested, to the extent necessary, expedited consideration.

The federal funding available under the RDOF program offers Minnesota a unique opportunity to take a significant step toward bridging the rural-urban digital divide in the availability of high speed internet access that is so critical to the continued economic vitality of rural Minnesota. See “A Look at Minnesota’s Digital Divide During a Pandemic,” Minneapolis Star Tribune, April 15, 2020, available at <https://www.startribune.com/covid-19-isolation-hits-harder-for-300-000-minnesotans-who-don-t-have-internet/568966911/> The public interest strongly favors granting Starlink’s ETC petition.

II. Providers of Broadband and VOIP Services are not Subject to State Law Regulatory Requirements that Apply to Telecommunications Providers

The FCC, in a series of proceedings beginning in the 1960’s, has held that economic regulation of information services would disserve the public interest because these services lacked the monopoly characteristics that led to such regulation of common carrier services historically. See, e.g., *In Re Second Computer Inquiry*, Docket No. 2082877, FCC 2d 384 (1980). The FCC has found the “market for these services to be competitive and best able to burgeon and flourish in an environment of free give-and-take of the market place without the need for and possible burden of rules, regulations and licensing requirements.” *In the Matter of Vonage Holdings Corp.*, 19 F.C.C. Rcd. 22404, 22417 (2004) (internal quotations omitted). The Eighth Circuit has long held that “any state regulation of an information service conflicts with the federal policy of nonregulation” and recently reiterated that “telecommunications services are subject to state regulation, while information services are not.” *Minn. Pub. Utils. Comm'n v. F.C.C.*, 483 F.3d 570, 580 (8th Cir. 2007); *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 985 (8th Cir. 2018).

It is undisputed that the services to be offered by Starlink -- VOIP and broadband internet access service -- are information services. The FCC first classified broadband internet access

service as an information service in the 2002 *Cable Modem Order*. See *Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4802, para. 7 (2002). The Supreme Court upheld this classification in *Brand X*, noting that “the service that Internet access providers offer the public is Internet access, not a transparent ability (from the end user's perspective) to transmit information” that would qualify as a telecommunications service. See *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 1000 (2005). The FCC most recently addressed the regulatory classification of broadband internet access service in the 2018 *Restoring Internet Freedom Order*, re-classifying broadband internet access service as an information service because “this light-touch information service framework will promote investment and innovation better than applying costly and restrictive laws of a bygone era to broadband Internet access service.” *In the Matter of Restoring Internet Freedom*, WC Docket No. 17-08, Declaratory Ruling, 33 FCC Rcd. 311, 212 (2018).

VOIP is also considered an information service that may not be regulated by state commissions. This was confirmed recently by the Eighth Circuit in *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715 (8th Cir. 2018). In that case, Charter undertook a corporate reorganization for the purpose of separating its VOIP service from its regulated telecommunications service. Specifically, it transferred retail voice customers from its regulated entity, Charter Fiberlink, to a newly created entity, Charter Advanced, that was not certified to provide telecommunications service in Minnesota. DOC challenged the reorganization, asserting that Charter had violated Minnesota telecommunications law when it transferred voice customers to an uncertificated entity. The Commission ruled in favor of DOC, concluding that Charter's VOIP service was a local telephone service subject to Minnesota law regulating

telecommunications providers. *In the Matter of the Complaint of the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers*, MPUC Docket No. P-6716,5615/C-14-383, ORDER FINDING JURISDICTION AND REQUIRING COMPLIANCE FILING (July 28, 2015).

On appeal, the District Court reversed the Commission, holding that Charter's VOIP service was an information service and not a telecommunications service. *Charter Advanced Servs. (MN), LLC v. Lange*, 259 F. Supp. 3d 980, 986 (D. Minn. 2017) ("[T]he Court agrees with Charter Advanced that Spectrum Voice engages in net protocol conversion, and that this feature renders it an 'information service' under applicable legal and administrative precedent."). Because the VOIP service was properly classified as an information service, state regulation was preempted by federal law. *Id.* at 985.

The Eighth Circuit affirmed, agreeing that VOIP involves a net-protocol conversion, 903 F.3d at 719, and is therefore an information service over which state commissions have no jurisdiction:

How a service is classified affects a state's ability to regulate the service. Telecommunications services are generally subject to "dual state and federal regulation." *See Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 375, 106 S.Ct. 1890, 90 L.Ed.2d 369 (1986). By contrast, "any state regulation of an information service conflicts with the federal policy of nonregulation," so that such regulation is preempted by federal law. *See Minnesota Pub. Utilities Comm'n v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007); *see also* 47 C.F.R. § 64.702.

903 F.3d at 718.

In subsequent dockets, the Commission has given effect to this jurisdictional distinction. For example, in *In the Matter of LTD Broadband LLC's Petition for Eligible Telecommunications Carrier Designation in Minnesota* ("*LTD Broadband ETC Petition*"), MPUC Docket No. P-6995/M-18-653, LTD Broadband sought ETC designation in order to receive funding available under Connect America Fund Phase II ("*CAF2*"). LTD planned

to satisfy the requirement that it offer voice services in order to be an ETC by supplying VOIP to its customers. The DOC argued that the grant of ETC status should be conditioned on LTD's commitment to provide state-regulated telecommunications service within three years. *LTD Broadband ETC Petition*, ORDER APPROVING REQUEST FOR ETC STATUS FOR HIGH COST SUPPORT IN CERTAIN CENSUS BLOCKS at 2 (Feb. 8, 2019). The Commission rejected the Department's position, concluding that ETC status did not require a carrier to offer a telecommunication service. *Id.* at 4.

The Department sought reconsideration, arguing that LTD Broadband should be required, in connection with its ETC designation, to commit to complying with regulatory requirements applicable to a certificated telecommunications carrier. *LTD Broadband ETC Petition*, Staff Briefing Papers at 2. The Commission staff recommended that the Commission reject the argument that state telecommunications regulation was necessary to protect the public, finding that the public interest was amply protected by the FCC's authority relating to the CAF2 funding. Staff analyzed the DOC position as follows:

The public interest is served by LTD being able to offer standalone VoIP service as an ETC. The DOC goes to great lengths to make it appear as if LTD (square peg) must be a regulated telecommunications carrier within the legacy regulatory framework of semi-monopoly rural telephone carriers (round hole). The additional cost of regulatory compliance including tariff filings add no additional consumer protections. LTD is already bound by CAF2 rules that govern what is a permissible rate for our standalone VoIP offering.

Id. at 4. The Commission denied DOC's reconsideration request, finding that the request did not raise new issues, point to new and relevant evidence, expose errors or ambiguities in the Commission's order or otherwise persuade the Commission that it should rethink the order. *LTD Broadband ETC Petition*, ORDER DENYING RECONSIDERATION (March 22, 2019).

The Commission and the staff got it right in the *LTD Broadband* case, and their analysis applies with equal force here. That analysis should lead the Commission to reject the DOC's similar request here to condition Starlink's ETC status on its compliance with state telecommunications regulations. As was true in the *LTD Broadband* case, the FCC's regulatory authority -- here its authority to enforce the requirements to receive RDOF funding -- is sufficient to protect the public.

III. Starlink Will Be Subject to Substantial Public Interest Obligations Under Federal and State Law

While the legacy state telephone regulations the DOC and OAG-RUD seek to impose on the RDOF grantees do not, and should not, apply to Starlink as an information services provider, Starlink will, of course, be subject to the general state consumer protection laws that apply to all business operating in Minnesota. Moreover, Starlink will be subject to numerous public interest obligations imposed by federal regulations. *See Rural Digital Opportunity Fund Order*, paras 31-66.

The OAG-RUD acknowledges in its comments the exhaustive, multi-step process that RDOF grantees like Starlink have gone through during the auction. *See* Comments of the Office of the Attorney General, Docket Nos. P-999/CI-21-86 et al., Mar. 26, 2021, at 3-5. And both the DOC and OAG-RUD describe the extensive public interest requirements that will apply to those providers as part of their receipt of RDOF funding. *See id.* at 13-19; DOC Comments at 3-5. These include requirements, *inter alia*, to provide broadband services that meet specific speed and latency requirements; to provide voice, toll limitation, backup power and 911 services; to price services offered in rural areas at the same rates as services offered in urban areas; to comply with the Lifeline, Tribal Linkup and E-rate programs; to conduct tribal engagement; and to advertise the availability of services in media of general distribution.

Starlink's services will provide much needed broadband internet access to areas of Minnesota where it has never been available. Starlink will comply fully with all applicable state and federal regulations, but the Commission need not and should not add an addition layer of regulation that, as a matter of law, does not apply to it.

CONCLUSION

Starlink's ETC petition is in the public interest and should be granted.

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