



November 29, 2018

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place E. Suite 350  
St. Paul, MN 55101-2147

RE: **Petition of West Central Telephone Association for Designation as an Eligible Telecommunications Carrier (ETC)**  
Docket No: P431/AM-18-601

Dear Mr. Wolf:

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

The petition was filed on October 1, 2018 by:  
Thomas G. Burns  
Olsen Thielen and Co.  
2675 Long Lake Road  
St. Paul, MN 55113-1117

On behalf of:  
Chad Bullock  
General Manager  
West Central Telephone Association  
308 Frontage Rd.  
Sebeka, MN 56477

The Department recommends that the Commission grant West Central ETC status for high cost support in the designated census blocks listed in Exhibit 1.

Sincerely,  
/s/ JOY GULLIKSON  
Rate Analyst

JG/jl  
Attachment

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## Before the Minnesota Public Utilities Commission

### Comments of the Minnesota Department of Commerce

#### Petition of West Central Telephone Association for Designation as an Eligible Telecommunications Carrier (ETC)

Docket No: P431/AM-18-601

#### I. ISSUE

Whether the Minnesota Public Utilities Commission (Commission) should grant the petition of West Central Telephone Association (West Central) for high cost support ETC status in the census block for which West Central will receive Connect America Funds II (CAFII) funding.

#### II. PROCEDURAL HISTORY

As an incumbent local service provider, West Central became an ETC eligible to receive universal service support on July 28, 1997, in the exchange service areas in which it is the incumbent.<sup>1</sup> Under Docket No. P431/NA-06-723, West Central received CLEC authority in the exchanges of Wadena and Staples. Under Docket No. P431/AM-17-835, West Central received ETC status for Lifeline only in its two CLEC exchanges. West Central's service areas are shown in Exhibit 1.

By public notice from the FCC on August 28, 2018, West Central was named as a winning bidder in the CAF II auction, to receive \$611,934.40 and serving 532 locations. The CAF II award is given in monthly installments for 10 years (about \$9.59 per location per month for West Central), as long as West Central meets certain build out requirements. The 532 locations are in the census block within the two CLEC exchanges. The applicable census blocks are listed in Exhibit 1.

In order to receive the CAF II support, West Central, along with all other recipients, must certify to the FCC and USAC that it has received designation as an ETC eligible for high cost funding no later than February 25, 2019.

Additional requirements for CAF II support recipients include:

- Offer commercially at least one voice and one broadband service meeting the relevant service requirements to the required number of locations in the following timeframe:
  - 40% of the required number of locations in a state by the end of third year of support

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<sup>1</sup> Minn. Rules 7812.1400, subp.1.

- An additional 20% in each subsequent year
- 100% by the end of the sixth year of support
- The exact deployment schedule is determined by the carriers themselves, not the FCC.
- File with USAC annual reports and build-out milestone certifications, as well as data on the locations where service is available. Failure to meet the terms and conditions of support can result in increased reporting obligations and possible withholding and/or recovery of support.
- Offer at least one broadband and voice service at rates that are reasonably comparable to the rates for similar service in urban areas. The FCC uses its annual Urban Rate Survey to determine the range of rates that are reasonably comparable<sup>2</sup>.

The FCC named fifteen companies as CAF II winners for Minnesota locations. They are:

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

<sup>2</sup> From <https://www.fcc.gov/auction/903>.

### III. LEGAL STANDARDS

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

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

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

(d) “A common carrier designated as an ETC under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

(1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and

(2) Advertise the availability of such services and the charges therefore using media of general distribution.

(e) For the purposes of this section, the term facilities means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part. (f) For the purposes of this section, the term “own facilities” includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term “facilities” under this subpart.

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

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

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

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

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

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

- (1) (A) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is with the applicant's licensed service area[a] but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; (e) reselling services from another carrier's facilities to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment . . . .”

In setting the requirements for this round of auction to receive the CAF II funding, the FCC required:

“Each Connect America Fund support recipient must offer voice as a standalone service, but may separately bundle its broadband offerings with a voice service.”<sup>3</sup>

Congress, in 47 USC § 214 (e), requires as a precondition to assessing FCC high cost or Lifeline support subsidies, that providers be designated Eligible Telecommunication Carriers by a state commission. Telecommunications carriers are defined by 47 USC § 153 (51) as “any provider of telecommunications services [and a] telecommunications carrier shall be treated as a common carrier . . . only to the extent that it is engaged in telecommunications services.”

The regulatory status of VOIP service is currently in litigation. The Minnesota Commission found that fixed<sup>4</sup> VOIP services are subject to applicable consumer protections for telecommunications service under Minnesota statutes, as there has been no federal preemption of the Commission’s authority.<sup>5</sup> Although the FCC has not classified fixed or over-the-top VoIP as being either an information service or a telecommunications service, in a 2-1 split decision, the Eighth Circuit Court of Appeals found that all VoIP service is an information service.<sup>6</sup> The Minnesota Commission has requested an en banc rehearing of the Eighth Circuit decision. It is the understanding of the Department that the Eighth Circuit’s decision is not effective until they rule on the request for rehearing en banc, or during the pendency of the request if they grant it.

#### **IV. ANALYSIS**

West Central received ETC for Lifeline only status in its CLEC exchanges under Docket No. P 431/AM-17-835. In this current application, West Central requests ETC for high cost in the census blocks it will receive CAF II funds. The census blocks are in the CLEC exchanges Wadena and Staples. The census blocks that are the subject of the CAF II award are listed in Exhibit 1.

The Commission found West Central's petition in Docket No. P431/AM-17-835 to be appropriate to grant ETC status for Lifeline only. Of particular note:

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<sup>3</sup> USF/ICC Transformation Order, 26 FCC Rcd at 17693, para. 80.

<sup>4</sup> The term “fixed” represents those services at a stationary location, as opposed to “over-the-top” or “bring your own broadband” VoIP services that may be used from any location that the customer has access to the internet. Over-the-top VoIP is also referred to as “nomadic VoIP.”

<sup>5</sup> See. *In the Matter of the Complaint of the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers*, Order Finding Jurisdiction and Requiring Compliance Filing, Docket No. P6716,5615/C-14-383. July 28, 2015.

<sup>6</sup> *Opinion*, 2018 WL 4260322 (8<sup>th</sup> Cir September 7, 2018)

1. Facilities and Commitment to Serve - West Central stated that it will provide broadband and voice telephone over its fiber-optic facilities. West Central certified that it will:
  - (a) provide service on a timely basis to requesting customers within the service area where West Central’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 West Central’s current network facilities, if service can be provided at reasonable cost by constructing network facilities.
  
2. West Central’s Basic Universal Service Offering - West Central agreed to provide voice telephony in the Service Area at rates that are reasonably comparable to the rates for similar service in urban areas. The chart below compares the rates of West Central in both its CLEC exchanges with the incumbent telephone company’s rates. The services West Central offers meet the Basic Local Service requirements under Minn. Rule 7812.0600 and under 47 CFR § 54.101(a).

Service	CL QC		WCTA	
	MRC	EAS	MRC	EAS
Residence	\$15.96	Staples \$0.52 Wadena \$1.16	\$18.00	N/A
Business	\$34.61	Staples \$1.28 Wadena \$2.82	\$21.75	N/A

3. West Central’s Advertising Plan - West Central stated that it currently meets and will meet the advertising requirements through several different channels of general distribution, including newspaper and direct mail. West Central plans to advertise the availability of its Lifeline universal service offering throughout the Service Area through the same advertising channels it currently employs. In addition, the availability of the offering throughout the service area will be listed continuously on West Central's web site: [www.wcta.net](http://www.wcta.net). The service offering will also be published at least annually in the local newspaper, and will be posted at the West Central office in Sebeka, Minnesota.
  
4. West Central’s Ability to Remain Functional in Emergency Situations - West Central stated that its network can and will remain functional in emergencies. The central office serving West Central’s customers is equipped with battery power supply and electrical generators to provide service in the event of a commercial power outage. The interoffice facilities serving the service area are on a diverse routed fiber optic ring, which if cut will be automatically rerouted. West Central complies with the Commission's Rules in Chapter 7810 establishing minimum standards on various operational matters, such as 7810.3900

(Emergency Operations); 7810.4900 (Adequacy of Service); and 7810.5300 (Dial Service Requirements).

5. West Central's Satisfaction of Consumer Protection and Service Quality Standards – West Central is subject to, and complies with, the Commission's Rules pertaining to service quality and consumer protection. West Central's tariff has specific provisions outlining the following terms addressing consumer protection issues:
  - Deposit and guarantee requirements
  - Customer billing
  - Appropriate handling of customer complaints and billing disputes
  - Disconnection and notice requirements
  
6. Requirement to provide telecommunications services. Congress, in 47 U.S.C. § 214 (e), required as a precondition to accessing FCC high cost or consumer specific "lifeline" support subsidies, that providers be designated "Eligible Telecommunications Carriers" (ETCs) by a State commission.<sup>7</sup> As explained by the National Association of Regulatory Utility Commissioners (NARUC) and the National Association of State Utility Consumer Advocates (NASUCA) in their September 28, 2108 Amicus Brief to the United States Court of Appeals for the Eighth Circuit, "State commissions across the country have certified numerous ETCs based on their provision of I-VoIP as a telecommunications service. Neither the FCC nor any State Commission can ignore the Congressional restrictions and certify carriers that only provide information services."<sup>8</sup> To do otherwise would be defrauding the USF fund. Thus, in order to be granted ETC status, West Central must offer a stand-alone voice telecommunications service. The ETC petitions filed as a result of the CAF II auction, including the petition by West Central, are likely to use IP technology for the voice service offering. As stated earlier, the Minnesota Commission has requested an en banc rehearing of the Eighth Circuit decision and it is the understanding of the Department of Commerce that the Eighth Circuit's decision is not effective until it rules on the request for rehearing en banc, or during the pendency of the request if they grant it. Thus, at this time, fixed VOIP service is a telecommunications service under Minnesota law, as this Commission has determined, and satisfies the legal requirement.

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<sup>7</sup> "Telecommunications carriers" are defined as "any provider of telecommunications services [and a] telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services." 47 U.S.C. § 153 (51). (emphasis added). The federal universal service fund program is "under this chapter" in 47 U.S.C. § 254 (51).

<sup>8</sup> See Motion Seeking Leave to File Brief of Amici Curiae The National Association of Regulatory Utility Commissioners and The National Association of State Consumer Advocates Supporting Defendant-Appellants Petition for Rehearing En Banc, Appeal from the U.S. District Court for the District of Minnesota, No.15-cv-3925, at page 5.



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

## **V. COMMISSION OPTIONS**

### **West**

The Commission may choose to:

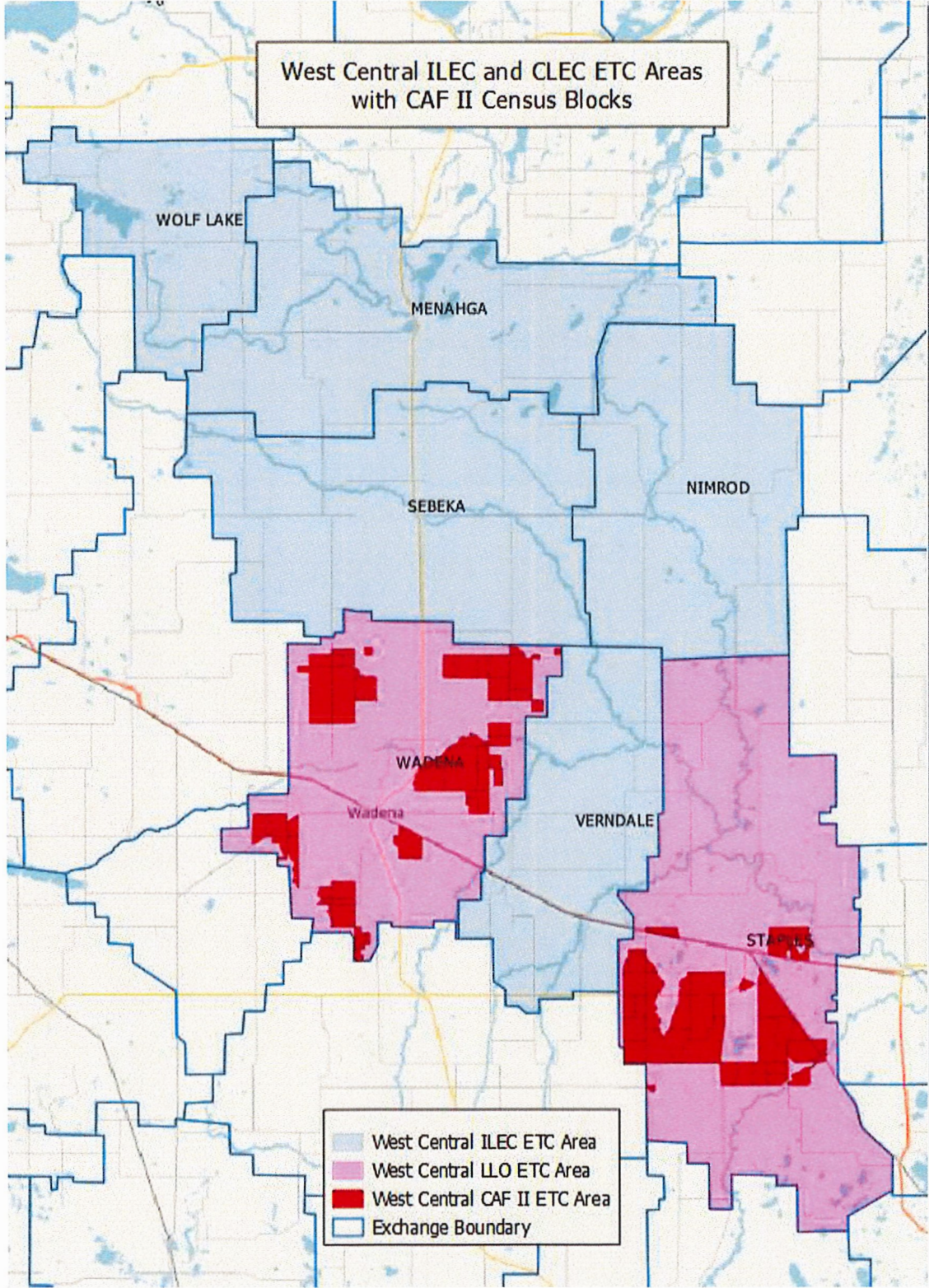
- A. Approve West Central 's request for ETC status for high cost support in the census blocks listed in Exhibit 1.
- B. Deny West Central 's request for ETC status for high cost support in the census blocks listed in Exhibit 1.
- C. Take other action, as the Commission deems appropriate.

## **VI. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission order option a: Approve West Central's request for ETC status for high cost support in the census blocks listed in Exhibit 2.

/jl  
Attachment

West Central ILEC and CLEC ETC Areas  
with CAF II Census Blocks



**ETC Service Areas:** Staples and Wadena exchanges where CenturyLink QC is the incumbent local exchange carrier.

**CAF II Census Blocks**

271119605004203	271537901001047	271537902003014
271119605004204	271537901001057	271537902003016
271119605004205	271537901001058	271537902003017
271119605004206	271537901001059	271537902003019
271119606004001	271537901001060	271594802002017
271119606004002	271537901001061	271594802002019
271119613004013	271537901001062	271594802002020
271119613004014	271537901001064	271594802002021
271119613004015	271537901001065	271594802002045
271119613004017	271537901001075	271594802002088
271119613004020	271537901001076	271594802006012
271119613004022	271537901001077	271594802006036
271119613004023	271537901001083	271594802006037
271119613004024	271537901001084	271594802006038
271119613004038	271537901001085	271594802006039
271119613004044	271537901001086	271594802006042
271119613004045	271537901001087	271594802006051
271119613004046	271537901001088	271594802006053
271119613004047	271537901001089	271594802006055
271119613004048	271537901001091	271594802006064
271119613004050	271537901001093	271594802006072
271119613004051	271537901001094	271594802006074
271119613004052	271537901001095	271594802006075
271537901001002	271537901001096	271594802006078
271537901001003	271537901001098	271594802006079
271537901001030	271537902001008	271594802006081
271537901001031	271537902001009	271594802006082
271537901001035	271537902001010	271594802006083
271537901001036	271537902001012	271594802006094
271537901001037	271537902001085	271594802006096
271537901001039	271537902001086	271594802006098
271537901001044	271537902001087	271594802006101
271537901001045	271537902001088	271594803006039
271537901001046	271537902001104	

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Comments**

**Docket No. P431/AM-18-601**

**Dated this 29<sup>th</sup> day of November 2018**

**/s/Sharon Ferguson**



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Chad	Bullock	chadb@wcta.net	West Central Telephone Association	308 Frontage Road PO Box 304 Sebeka, MN 56477	Electronic Service	No	OFF_SL_18-601_AM-18-601
Thomas	Burns	tgburns@otcpas.com	OLSEN THIELEN & CO. LTD	2675 Long Lake Rd  Saint Paul, MN 55113	Electronic Service	No	OFF_SL_18-601_AM-18-601
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_18-601_AM-18-601
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-601_AM-18-601
David	Denton	david.denton@state.mn.us	DPS ECN	445 Minnesota Street Suite 137 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_18-601_AM-18-601
Ian	Dobson	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_18-601_AM-18-601
Pete	Eggimann	PEGGIMANN@MN-MESB.ORG	Metropolitan Emergency Services Board	2099 University Ave W Ste 201  St. Paul, MN 551043431	Electronic Service	No	OFF_SL_18-601_AM-18-601
Dana	Wahlberg	dana.wahlberg@state.mn.us	Department of Public Safety	Town Square Ste 137 444 Cedar St St. Paul, MN 551015126	Electronic Service	No	OFF_SL_18-601_AM-18-601
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_18-601_AM-18-601