

November 30, 2018

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

RE: **Petition of Farmers Mutual Telephone Company for Designation as an Eligible  
Telecommunications Carrier (ETC)**  
Docket No: P522/AM-18-718

Dear Mr. Wolf:

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

The petition was filed on November 20, 2018 by:

Thomas G. Burns  
Olsen Thielen and Co.  
2675 Long Lake Road  
St. Paul, MN 55113-1117

On behalf of:

Kevin Beyer  
General Manager  
Farmers Telephone Cooperative  
301 2<sup>nd</sup> St. South  
Bellingham, MN 56212

The Department recommends that the Commission grant Farmers ETC status for high cost support in the designated census blocks for which the company will receive CAF II funds.

Sincerely,

/s/ JOY GULLIKSON  
Rate Analyst

JG/ja  
Attachment



## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce

#### **Petition of Farmers Mutual Telephone Company for Designation as an Eligible Telecommunications Carrier (ETC)**

Docket No: P522/AM-18-718

#### **I. ISSUE**

Whether the Minnesota Public Utilities Commission (Commission) should grant the petition of Farmers Mutual Telephone Company (Farmers) for Lifeline only ETC status in the areas in which it has CLEC authority and for high cost support ETC status in the census blocks for which Farmers will receive Connect America Funds II (CAFII) funding.

#### **II. PROCEDURAL HISTORY**

As an incumbent local service provider, Farmers became an ETC eligible to receive universal service support on July 28, 1997, in the exchange service areas in which it is the incumbent telephone company.<sup>1</sup> Under Docket No. P522/AM-07-1372, Farmers expanded its service area and received CLEC authority for the Madison exchange. Under Docket P522/AM-09-12, Farmers received CLEC authority for the Dawson exchange. Under Docket P522/SA-12-1187 Farmers received CLEC authority for portions of Ortonville, Montevideo, and Boyd exchanges. Under Docket P522/AM-12-118 Farmers received ETC status for Lifeline only in its Dawson and Madison exchanges.

By public notice from the FCC on August 28, 2018, Farmers was named a winning bidder in the CAF II auction, to receive \$384,991.60 for serving 163 locations. The CAF II award is given in monthly installments for 10 years (about \$17.84 per location per month for Farmers), as long as Farmers meets certain build out requirements. The 163 locations are in census blocks within the Ortonville, Madison, Canby, Dawson, Boyd and Montevideo exchange areas, identified in dark pink on Exhibit 1. The census blocks are also listed on Exhibit 1.

In order to receive the CAF II support, Farmers, 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.

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

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
  - 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:

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

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>

### 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.

§ 54.201 states in parts (d), (e), and (h): “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<sup>3</sup> 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 are[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 facilitates to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment . . . .”

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<sup>3</sup> Local Service Provider

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>4</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>5</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>6</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>7</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**

Farmers plans to offer service to its new ETC customers in a similar manner to its provision of service to customers in its incumbent area. Farmers’ application and follow up discussions assert that Farmers wishes to expand its ETC status under the same standards that it filed for ETC authority through Docket No. P522/AM-12-118. Its petition to the Commission at that time was thorough. Of particular note:

1. As noted above, Farmers received authority to operate in the CLEC areas in Exhibit 1 in between 2010 and 2016.

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<sup>4</sup> USF/ICC Transformation Order, 26 FCC Rcd at 17693, para. 80.

<sup>5</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>6</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>7</sup> *Opinion*, 2018 WL 4260322 (8<sup>th</sup> Cir September 7, 2018)

2. Farmers' Facilities and Commitment to Serve - Farmers stated in 2012 that it will provide broadband and voice telephone over its copper (and now mostly fiber-optic) facilities. In response to the Commission's order in Docket P999/M-05-1169 Farmers certified that it will:

- (a) provide service on a timely basis to requesting customers within the service area where Farmers' 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 Farmers' current network facilities, if service can be provided at reasonable cost by constructing network facilities.

3. Farmers' Basic Universal Service Offering – In its 2012 filing, Farmers agreed to provide voice telephony in the service area at rates that are reasonably comparable to the rates for similar service in urban areas. Farmers has provided no updated information regarding the comparability to similar services. However, below shows comparable rates filed in 2012:

	Frontier	Farmers
Service	Monthly	Monthly
Residence Service	\$14.40	\$14.96
Business Service	\$47.90	\$34.61

4. Farmers' Advertising Plan - Farmers stated in its filing that it meets and will meet the advertising requirements by advertising its services through several different channels of general distribution, including newspaper and direct mail. Farmers plans to advertise the availability of its Lifeline universal service offering through the same advertising channels it currently employs. In addition, the availability of the offering throughout the service area will be listed continuously on Farmers' web site: <http://www.aciracoop.net>. The service offering will also be published at least annually in the local newspaper, and will be posted at the Farmers office in Bellingham, MN.

5. Farmers' Ability to Remain Functional in Emergency Situations. Farmers stated in its 2012 filing that its network can and will remain functional in emergencies. The central office serving Farmers' customers is equipped with electrical generators and battery power supply 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. Farmers 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).

6. Farmers' Satisfaction of Consumer Protection and Service Quality Standards –Farmers is subject to and complies with the Commission's Rules pertaining to service quality and consumer protection. Farmers' 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
7. 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>8</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>9</sup> To do otherwise would be defrauding the USF fund. Thus, in order to be granted ETC status, Farmers must offer a stand-alone voice telecommunications service. The ETC petitions filed as a result of the CAF II auction, including the petition by Farmers, 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>8</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>9</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, Farmers has been operating successfully for a number of 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**

The Commission may choose to:

- A. Approve Farmers' request for Lifeline ETC status in all areas in which Farmers has CLEC authority but has not yet received ETC status and additionally approve Farmers request for high cost ETC status in the census blocks listed in Exhibit 1.
- B. Deny Farmers' petition for ETC status in the areas in which Farmers has CLEC authority.
- C. Take other action, as the Commission deems appropriate.

## **VI. DEPARTMENT RECOMMENDATION**

The Department recommends that the Commission order option A: Approve Farmers' request for Lifeline ETC status in all areas in which Farmers has CLEC authority but has not yet received ETC status and additionally approve Farmers request for high cost ETC status in the census blocks listed in Exhibit 1.

/ja

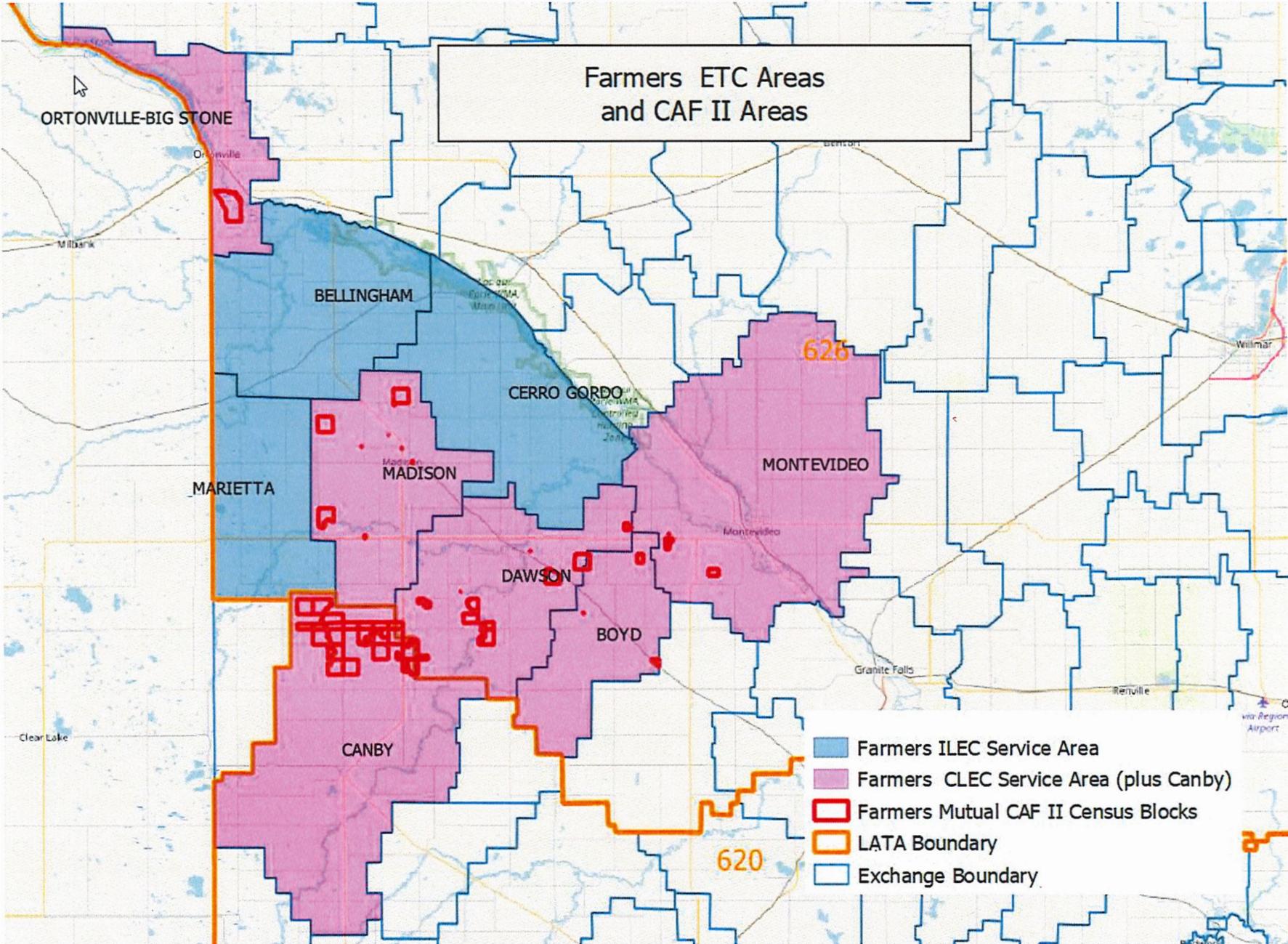


Exhibit 1

<b>Census Block</b>	<b>Exchange</b>		
270731802002255	DAWSON	270731803001150	MONTEVIDEO
270731802002272	DAWSON	270731803001207	MONTEVIDEO
270731802002166	DAWSON	270731803001153	MONTEVIDEO
270731803003152	DAWSON	270731802002255	CANBY
270731803001136	DAWSON	270731802002221	CANBY
270731802002164	DAWSON	270731802002208	CANBY
270731802002161	DAWSON	270731802002220	CANBY
270731803002078	DAWSON	270731802002210	CANBY
270731803001232	DAWSON	270731802002259	CANBY
270731802002156	DAWSON	270731802002242	CANBY
270731802002254	DAWSON	270731802002245	CANBY
270731802002194	DAWSON	270731802002182	CANBY
270731803001131	DAWSON	270731802002209	CANBY
270731802002206	DAWSON	270731802002193	CANBY
270731803002074	DAWSON	270731802002241	CANBY
270731802002253	DAWSON	270731802002213	CANBY
270731803002145	BOYD	270731802002257	CANBY
270731803001172	BOYD	270731802002240	CANBY
270731803002139	BOYD	270731802002189	CANBY
270731803001131	BOYD	270731802002109	CANBY
270731802001014	ORTONVILLE-BIG STONE	270731802002254	CANBY
270731801002100	MADISON	270731802002186	CANBY
270731802002044	MADISON	270731802002218	CANBY
270731801003001	MADISON	270731802002252	CANBY
270731802001301	MADISON	270731802002194	CANBY
270731801001155	MADISON	270731802002243	CANBY
270731801002008	MADISON	270731802002206	CANBY
270731801001185	MADISON	270731802002249	CANBY
270731802001323	MADISON	270731802002207	CANBY
270731801001137	MADISON	270731802002253	CANBY
270731802002119	MADISON		

## **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. P522/AM-18-718**

**Dated this 30<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
Kevin	Beyer	kbeyer@fedtel.net	Farmers Mutual Telephone Company	301 2nd St S Bellingham, MN 56212-1000	Electronic Service	No	OFF_SL_18-718_AM-18-718
Thomas	Burns	tgburns@otcpas.com	OLSEN THIELEN & CO. LTD	2675 Long Lake Rd Saint Paul, MN 55113	Electronic Service	No	OFF_SL_18-718_AM-18-718
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_18-718_AM-18-718
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_18-718_AM-18-718
David	Denton	david.denton@state.mn.us	DPS ECN	445 Minnesota Street Suite 137 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_18-718_AM-18-718
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_18-718_AM-18-718
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_18-718_AM-18-718
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_18-718_AM-18-718
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_18-718_AM-18-718