

May 29, 2019

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101

RE: In The Matter of The Petition Of Lake County for Relinquishment of Eligible  
Telecommunications Carrier Designation  
Docket No. P6944/RL-19-195

Dear Mr. Wolf:

Attached are the comments of the Department of Commerce concerning the petition of Lake  
County to relinquish its Eligible Telecommunication Carrier designation.

Sincerely,

/s/ JOY GULLIKSON  
Rates Analyst

/s/ GREG DOYLE  
Manager, Telecommunications Unit

JG/GD/ja  
Attachment



## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce Division of Energy Resources

IN THE MATTER OF THE PETITION OF LAKE COUNTY FOR RELINQUISHMENT OF ELIGIBLE  
TELECOMMUNICATIONS CARRIER DESIGNATION

Docket No. P6944/RL-19-195

#### I. PROCEDURAL BACKGROUND

In 2010, Lake County applied for and obtained a federal stimulus grant and loan combination totaling \$66,369,064 from the Rural Utilities Service under the Broadband Initiatives Program (“BIP”) established by the American Recovery and Reinvestment Act of 2009. Lake County sought these funds in order to help support the construction of a fiber optic broadband network throughout Lake County and parts of St. Louis County, Minnesota. (See Attachment 1).

In 2016, Lake County was awarded nearly \$3.5 million as a Federal Universal Fund Rural Broadband Experiment (RBE) grant, to be distributed 30% in the first month and the remainder in equal monthly payments over 10 years.<sup>1</sup> In order to qualify for the RBE grant program, Lake County was required to be designated as an Eligible Telecommunications Carrier (ETC) by the Minnesota Public Utilities Commission (Commission or PUC).<sup>2</sup> As part of its ETC application, Lake County proposed the use of a certified telecommunications carrier, Lake Communications,<sup>3</sup> to manage the provision of the required voice service, while directly providing the broadband service under the d/b/a Lake Connections. To date, Lake County has received \$1,633,393.53 of that grant and seeks to retain \$1,274,666.30 and return the balance of the funds.<sup>4</sup> ETC requirements include participation in the federal Lifeline program to help make broadband and telephone service more affordable for eligible low income customers.

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<sup>1</sup> FCC Public Notice, *Rural Broadband Experiment Support Authorized for Winning Bid Submitted by Lake County, Minnesota dba Lake Connections*. December 12, 2016

<sup>2</sup> *In the Matter of the Petition of Lake County, Minnesota dba Lake Connections for ETC Designation in Minnesota*. ORDER GRANTING PETITION SUBJECT TO CONDITIONS AND REQUIRING COMPLIANCE FILING, Docket No. P6994/M-15-65, July 27, 2015.

<sup>3</sup> On June 14, 2011, Lake Communications, a newly formed company, applied for a certificate of authority to provide resold local exchange service and interexchange services in certain exchanges in Lake County and St. Louis County. The Commission granted that authority through Docket P6869/NA-11-581 on September 27, 2011.

<sup>4</sup> See Attachment 1, page 7.

On April 5, 2017, the Commission approved Lake Communications petition to sell its assets associated with voice service to Contel Systems, Inc. (CSI), a subsidiary of Consolidated Telephone Company.<sup>5</sup> The Commission permitted the transfer of the tangible and intangible assets used in connection with Lake Communications' regulated telecommunications business operations within Lake and eastern St. Louis Counties, Minnesota. The provisioning of the voice service required of Lake County, as an ETC, was transferred from Lake Communications to CSI with this transaction. The asset transfer was approved with the following conditions:

- a. CSI must file the TAP reports formerly filed by Lake Communications. CSI must continue to file jurisdictional annual reports and other regulatory filings, as well as pay any regulatory fees for its operations following the closing of the transaction.
- b. Commission approval of the transaction is not to imply that there has been any accounting of the broadband funds received by Lake County.
- c. Lake Communications will pay for assessments on 2016 traffic billed in 2017. For assessments based on 2017 traffic billed in 2018, Lake Communications and CSI will do an estimate of the traffic for which Lake Communications was operating the business, and Lake Communications will pay that amount to CSI at closing. CSI will then pay the assessment for all of the 2017 traffic.
- d. Petitioners must notify the Commission within 20 days of closing of the proposed transaction.

On February 28, 2019, Lake County filed to relinquish its ETC status, in this 19-195 Docket. Lake County intends to sell its network facilities to Pinpoint, Inc. (Pinpoint), a Nebraska company that offers internet, television, and telephone service.

On May 7, 2019, CSI filed in this current docket a notice of termination of CSI's contractual relationship with Lake County in providing telephone service in the portions of Lake County and Cook County in which certain network facilities owned by Lake County are located.<sup>6</sup> In its notice CSI states "the termination agreement provides that residential VoIP customers will transition to Pinpoint within 3 days of the closing of Asset Purchase Agreement between Pinpoint and Lake County and that business VoIP customers will transition to Pinpoint within 60 days of the closing of that agreement. CSI understands that Pinpoint has entered into an arrangement with Zito West Holding LLC to provide operations management to Pinpoint." Pinpoint does not possess a certificate of authority from the Commission to provide telecommunications service in Minnesota.

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<sup>5</sup> In the matter of the Joint Petition of Contel Systems, Inc. (CSI) and Lake Communications for Approval of Transfer of Assets, April 5, 2017 Order in Docket No. P6006, P6869/PA-17-139,

<sup>6</sup> Although the notice references Lake County and Cook County, the network facilities are in Lake County and St. Louis County.

On May 17, 2019, Lake County filed a petition with the FCC to relinquish its status as an RBE recipient.<sup>7</sup> The petition states in part:

Even with the RUS funding and the RBE grant, the County faced a shortfall in capital funding. The County sought, but was unable to secure, favorable financing that would allow it to continue to operate and expand its network. Given these circumstances, in 2017 Lake County entered into collaborative discussions with RUS to develop a highly structured sales process, under which RUS would defer Lake County's outstanding principal and interest payments on its BIP loan while Lake County sought out and obtained an established qualified broadband provider to purchase the Lake County network, with the proceeds of the sale going to RUS in satisfaction Lake County's obligations. Lake County would continue to provide services throughout the bidding and sale process. Consistent with these discussions, on June 13, 2017, Lake County adopted a resolution to commence a bidding process to select a purchaser that would best provide continuing quality and expansion of broadband services to Lake County customers.<sup>8</sup>

On August 31, 2017, the County and RUS entered into a Memorandum of Understanding ("MOU") providing the framework for a final settlement between the County and RUS with respect to all amounts that the County owes to RUS under the BIP loan. Under the terms of the MOU, RUS has agreed that RUS will (i) continue to defer principal and interest owed to RUS until the County's sale of the network, (ii) accept the proceeds of the sale of the network in full satisfaction of all amounts owed by the County to RUS under the RUS Funding documents, and (iii) release RUS's lien on the network upon receipt of the proceeds of the sale of the Network.

In December 2018, Lake County selected Pinpoint Holdings as the winning bidder and entered into a purchase agreement for the sale of the Lake County network. Throughout the bidding and sales selection process, the County retained its RBE support recipient status, as it wanted to retain the option for the winning bidder to utilize the RBE funds for continued expansion of services. Pinpoint has indicated, however, that it does not desire to continue with the RBE grant program upon completion of the sale. Therefore, Lake County is seeking to relinquish its RBE support recipient status and return non-expended grant funds to the Commission.

## II. APPLICABLE LAW

47 U.S.C. § 214 (e) (2) provides that a State commission shall... designate a common carrier<sup>9</sup> that meets the requirements of [§ 214 (e)] (1) as an eligible telecommunications carrier for a

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<sup>7</sup> See Attachment 1. Lake County did not file a copy of this petition with the Commission.

<sup>8</sup> [http://www.co.lake.mn.us/document\\_center/Comm\\_Doc\\_Center/2018-7-24%20Press%20RELEASE%20.PDF](http://www.co.lake.mn.us/document_center/Comm_Doc_Center/2018-7-24%20Press%20RELEASE%20.PDF)

<sup>9</sup> 47 U.S.C. § 214 (e)(2) also states that the term "common carrier" or "carrier" "means any person engaged as a common carrier for hire in . . .communications by wire...."

service area designated by the State commission.... consistent with the public interest, convenience, and necessity....”

47 U.S.C. § 214 (e) (1) states that a “common carrier designated as an eligible telecommunications carrier” must “offer the services that are supported by Federal universal service support mechanisms under section 254 (c) of this title” and “advertise the availability of such services.”

47 U.S.C. § 254 (c) defines universal service as the “evolving level of *telecommunications services* that the [FCC] shall establish periodically” “that are supported by Federal universal service support mechanisms.” (emphasis added.)

FCC Rule, 47 C.F.R. 54.5 defines “Eligible telecommunications carrier” to mean “a carrier designated as such under [47 C.F.R. 54.201].

FCC Rule 47 C.F.R. 54.201(b) states that a state commission “shall ...upon request designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.”

FCC Rule 47 C.F.R. 54. 201 (d) states that a “common carrier designated as an eligible telecommunications carrier under this section” ... shall, throughout the service area for which the designation is received (1) Offer the services that are supported by federal universal service support mechanisms ...and (2) Advertise the availability of such services and the charges therefore using media of general distribution.”

FCC Rule 47 C.F.R. 54.101 (a) defines the supported services that must be offered by eligible telecommunications carriers, and states:

*Services designated for support.* Voice Telephony services shall be supported by federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.

FCC Rule 47 C.F.R. 54.205 (a) allows for the relinquishment of universal service “. . . in any area served by more than one eligible telecommunications carrier.”

FCC Rule 47 C.F.R. 54.205 (b) states that “Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.”<sup>10</sup>

Minnesota Rules 7811.1400 and 7812.1400, both subparts 14, provide for relinquishment if at least one other ETC serves the area for which the relinquishment is sought. An ETC’s obligations apply until the date specified in the commission’s order approving the relinquishment. The commission shall specify the date upon which the local service provider may discontinue service based on the ability of other ETCs to serve the relinquishing provider’s customers as provided in section 102(a) of the Telecommunications Act.<sup>11</sup>

## II. STATEMENT OF ISSUES

- a. Whether Lake County may discontinue serving as an ETC where there are no other ETCs.
- b. Whether the Commission should order one or more other ETCs to provide broadband or voice services in areas where Lake County is petitioning to relinquish its ETC status.
- c. Whether the Commission will require a process for TAP/Lifeline customers to seamlessly transition to another ETC.
- d. Whether any Commission action is required pertaining to federal funds.

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<sup>10</sup> This rule is based upon 47 U.S.C. 214 (e) (4). Relinquishment of universal service.

<sup>11</sup> Section 102 (e) requires an ETC to: (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), 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 (B) advertise the availability of such services and the charges therefor using media of general distribution.

### III. ANALYSIS

#### **a. Whether Lake County may discontinue serving as an ETC where there are no other ETCs.**

Neither FCC Rules, nor federal statutes make any provision for a carrier to leave an area where that carrier is the only authorized ETC. Instead, the FCC and Commission rules<sup>12</sup> appear to require that an ETC (Lake County) must continue providing service to customers where no other ETC exists. Congress has delegated to the Minnesota Public Utilities Commission (Commission) the authority to designate a carrier as an ETC. Congress also delegated the authority to the Commission to approve a petition for the relinquishment of an ETC if it qualifies. FCC Rule 47 C.F.R. § 54.205 (a) allows for the relinquishment of universal service [and therefore ETC status] “. . . in any area served by more than one eligible telecommunications carrier.”

With its filing to relinquish ETC status, Lake County did not identify those areas where it is the sole ETC and where another telecommunications provider has also been designated as an ETC. Lake County’s response to Department Information Request Number 2 (Attachment 2), indicates that between 6 and 19 customers may be in locations that are not served by any alternative facilities. Again, by allowing for relinquishment of ETC status only where another ETC can provide service, the FCC and Commission rules<sup>13</sup> appear to require that Lake County must continue providing service to customers where no other ETC exists. However, MOU between Lake County and the Rural Utilities Service (RUS) to defer principal and interest on the loan is conditioned upon Lake County selling its network.<sup>14</sup> Thus, while the FCC and Commission rules appear to not allow the relinquishment of ETC status where another ETC does not exist, the Commission may not be able to deny the relinquishment without disrupting the terms of the MOU between Lake County and the RUS.

#### **b. Whether the Commission should order one or more other ETCs to provide broadband or voice services in areas where Lake County is petitioning to relinquish its ETC status.**

In areas where there is another ETC, Lake County has not identified whether both broadband and voice services will be available to customers from that other ETC. Pinpoint is being proffered as the voice and broadband provider for existing customers of those services, but Pinpoint is not an ETC, and in the absence of a certificate of authority from the Commission, there will be no consumer protections as provided by the Commission’s rules, including the Commission being a venue for complaints and the availability of the Telephone Assistance Plan (TAP). Among other operational issues, the Department is unaware of Pinpoint receiving a 911

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<sup>12</sup> 47 C.F.R. 54.205 (b) and Minnesota Rules 7811.1400 and 7812.1400, both subparts 14

<sup>13</sup> CC Rule 47 C.F.R. 54.205 (b) and Minnesota Rules 7811.1400 and 7812.1400, both subparts 14

<sup>14</sup> See Attachment 1.

plan, and in the absence of a certificate of authority, there has been no information provided on how Pinpoint will gain access to rights-of-way for maintaining the network it is acquiring.

Lake County received Universal Service funds under the RBE program in areas partially served by Qwest Corporation dba CenturyLink (CenturyLink) and Citizens Telecommunications Company of MN, LLC dba Frontier (Frontier). CenturyLink and Frontier do not serve all of the areas that have been receiving service from Lake County and neither CenturyLink nor Frontier provide broadband in the census blocks in which Lake County received high cost funding. As incumbent telephone companies, CenturyLink and Frontier are ETCs for voice service in areas where they served as incumbents in 1998.<sup>15</sup>

**Obligation to provide broadband service:**

The RBE program required Lake County to deploy broadband to 2125 locations, and to date, Lake County has deployed broadband to 3102 locations.<sup>16</sup> Broadband support was intended to be offered in rural areas that are not served by an unsubsidized competitor, and thus, broadband is not available to the funded locations by CenturyLink and Frontier.<sup>17</sup> Pinpoint has informed customers that it will continue to offer the same services to customers that they currently receive. There is, however, no obligation on the part of Pinpoint to continue to serve customers in any portion of the current service area. FCC Rule 47 C.F.R. 54.205 (b) and Minnesota Rules 7811.1400 and 7812.1400, subparts 14, both provide that the state commission shall require the remaining ETCs to serve all customers served by the relinquishing ETC. To the extent that Pinpoint continues to provide broadband service to the customers being acquired from Lake County, it seems illogical to require CenturyLink and Frontier to expand their networks to compete in these high cost areas, against a carrier that has a network built with government subsidies. For those areas to be served by Pinpoint that do not have CenturyLink and Frontier as ETCs, there will not be a remaining ETC with Commission approval of this relinquishment petition.

**Obligation to provide voice service:**

As part of its application for ETC status, Lake County was required to provide voice telecommunications services. Lake County initially contracted with Lake Communications for the voice network and customer management aspects required to provide voice service. In 2017, CSI began provisioning the voice service upon the Commission approved sale of regulated assets from Lake Communications to CSI.<sup>18</sup> Lake Connections and Pinpoint recently sent a

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<sup>15</sup> See Minn. Rules 7812.1400, subp. 1.

<sup>16</sup> <https://data.usac.org/publicreports/caf-map/>

<sup>17</sup> *Rural Broadband Experiments Order* at para 25.

<sup>18</sup> In the Matter of the Joint Petition of Contel Systems, Inc. (CSI) and Lake Communications for Approval of Transfer of Assets. Docket No. P6006,6869/PA-17-139, April 5, 2017.



notice to customers that their voice and broadband services are being transferred (see Attachment 3). Prior to the May 7, 2019 filing by CSI, the Commission was not informed that voice customers would be transferred to a company (Pinpoint) that has not filed for a Certificate of Authority to provide voice services in Minnesota. Pinpoint has not sought a certificate of authority to provide telecommunications service, presumptively due to the determination by Pinpoint that the manner in which it provides VoIP service makes it an information service.<sup>19</sup> The Department of Commerce was unable to ascertain that Pinpoint is currently operating in any capacity in Minnesota, and it appears that Pinpoint is not registered with the Minnesota Secretary of State's office. For companies seeking PUC authority, the process includes verification that the company is registered with the Secretary of State. Finally, no evidence has been provided by Lake County that Pinpoint is able to seamlessly continue service for customers.

For the provision of local voice service, CenturyLink and Frontier are ETCs, and as such, are required to serve any customer who desires service. Thus, there is no need for the Commission to compel CenturyLink and Frontier to provide voice service in their designated service areas. In the event CenturyLink or Frontier deny service to customers in the areas where they are ETCs, with the relinquishment of Lake County's ETC status, the Commission could be petitioned to require CenturyLink and/or Frontier to serve customers, even if that service requires the construction of facilities. The Commission may allow up to a year for these remaining ETCs to build facilities.<sup>20</sup> In the event Pinpoint chooses to discontinue service to any customer, a customer is unsatisfied with Pinpoint, a customer desires to participate in the available low income assistance programs, or if a customer seeks to be served by a company subject to regulatory protections, etc., then CenturyLink and Frontier are required to serve any such customer in its service area.

**c. Whether the Commission will require a process for TAP/Lifeline customers to seamlessly transition to another ETC.**

In its petition to relinquish its ETC status, Lake County provided no information concerning customers who receive TAP and/or Lifeline services. The Department requested information from Lake County on the number of customers that participated in each program. Lake County responded that four customers receive TAP and four customers receive Lifeline service. Lake County did not indicate if the customers who receive TAP are the same customers who receive Lifeline. However, Lake County stated that each of these customers is located in an area served by an ILEC.

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<sup>19</sup> The Department of Commerce does not intend to address whether the service provided by Pinpoint is subject to the jurisdiction of the Commission until a determination is made by the United States Supreme Court on the Commission's petition for a writ of certiorari.

<sup>20</sup> Minn. Rules 7812.1400 and 7811.1400.

The Lifeline credit received by the four customers cannot continue unless they are served by an ETC, which Pinpoint is not. The TAP credit is slightly different since all local service providers certified by the Commission are required to provide TAP. If Pinpoint is providing an information service and not a telecommunications service, consumer protections afforded by Minnesota Statutes and Commission Rules will not apply to Pinpoint and its customers, including to those customers where there is not another company offering service. The lost protections include the availability low income assistance programs that are accessible to other customers in the state for broadband and voice services, specifically Lifeline and TAP. There will also be no collection and remittance of fees that support either the Telecommunications Access Minnesota (TAM) program that facilitates communications with persons that are deaf, deaf/blind, hard of hearing, or physically handicapped, or the Telephone Assistance Plan (TAP) serving low income Minnesotans. It is unknown whether Pinpoint will file a 911 plan and collect and remit 911 fees.<sup>21</sup>

It is possible TAP and Lifeline recipients could be transitioned to an incumbent carrier, but customers in areas outside of the CenturyLink and Frontier exchange boundaries, that are currently eligible or may become eligible for Lifeline and TAP, will no longer have an ETC available that offers the government low income assistance program credits for either telephone or broadband services. By telephone, CSI has indicated that it will work with the four TAP customers to ensure a seamless transition to an incumbent carrier. However, neither CSI nor Lake County has provided any information about customers who receive Lifeline service. For existing Lifeline and TAP customers in locations also served by an ILEC, the Commission may wish to order Lake County to provide a plan to seamlessly transition those customers to an ILEC, if the customer so chooses, to provide the same level of service as the customer has been receiving. To the extent that a customer desires voice service from an ETC to receive the Lifeline and TAP credits, but must retain broadband service from Pinpoint as the sole broadband provider, the customer will experience the inefficiencies of having two service providers, which includes the inability to benefit from bundled service offerings, if any are offered.

**d. Whether any Commission action is required pertaining to the receipt of federal funds.**

The Department understands that Lake County is receiving forgiveness on the balance of its \$56 million loan with the Department of Agriculture on the condition that it sells its network to a private entity. With respect to the \$3,491,280.18 in grant money awarded to Lake County in 2016, \$1,633,393.53 has been distributed to date. On May 17, 2019, Lake County filed a petition with the FCC to relinquish RBE status and to address the disposition of remaining funds. The Department is aware of no action required of the Commission with respect to the federal funds received by Lake County.

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<sup>21</sup> The Department is not addressing any regulatory action that may be appropriate pertaining to Pinpoint providing broadband and voice services in these comments.

#### **IV. COMMISSION ALTERNATIVES**

##### **A. Whether Lake County's petition to relinquish its ETC designation should be accepted.**

1. Allow Lake County to relinquish its ETC status.
2. Allow Lake County to relinquish its ETC status, except in those areas where another ETC has not been designated.
3. Deny Lake County's petition to relinquish its ETC designation until it is clear that customers will have the ability to receive broadband and telephone services, including low income assistance programs, that have been available by virtue of Lake County's ETC status.

##### **B. Whether the Commission should order one or more other ETCs to provide broadband or voice services in areas where Lake County is petitioning to relinquish its ETC status.**

1. Request comments from CenturyLink and from Citizens/Frontier and any other interested party on whether 47 C.F.R. § 54.205 requires existing ETCs to serve broadband customers in census blocks where the relinquishing ETC provided broadband service? If not, why not?
2. Allow Lake County to relinquish its ETC status for broadband without requiring service by other ETCs.
3. Require other ETCs to offer voice services in the Lake County ETC areas, including the building of facilities where needed.
4. Allow Lake County to withdraw as an ETC and not require incumbent companies to provide voice service.

##### **C. Whether TAP/Lifeline customers will seamlessly transition to another ETC.**

1. For Lifeline Service
  - a. Require Lake County to contact Lifeline customers and arrange for the seamless transfer of service to an ETC.
  - b. Allow Lake County to relinquish its ETC status with no further responsibility for Lifeline customers.
2. For TAP customers
  - a. Require CSI to continue providing TAP to existing customers.
  - b. Require Lake County and CSI to provide a plan for the seamless transition of TAP customers.
  - c. Allow CSI to discontinue providing TAP.

**D. Whether any Commission action is required pertaining to the receipt of federal funds.**

- 1) Seek comments from interested parties on any action required of the Commission on the federal funds received by Lake County.
- 2) Take no action.

**V. DEPARTMENT RECOMMENDATION**

**A. Whether Lake County's petition to relinquish its ETC designation should be accepted.**

The Department recommends Commission Alternative A.1, granting Lake County's petition to relinquish its ETC status. This appears to be the only option consistent with the requirement that Lake County sell its network to a private entity to receive forgiveness on its loan with the RUS. The Department notes that it is unable to reconcile the terms of the MOU between Lake County and the RUS with FCC Rule 47 C.F.R. § 54.205 (a) and Minnesota Rules 7811.1400 and 7812.1400, subparts 14.

**B. Whether the Commission should order one or more other ETCs to provide broadband or voice services in areas where Lake County is petitioning to relinquish its ETC status.**

The Department recommends Commission Alternatives B.2, allow Lake County to relinquish its ETC status for broadband without requiring service by other ETCs. There is no need to adopt Commission Alternate B.3., since existing ETCs are required to provide voice service in their existing service areas.

If the Commission so desires, it may also adopt Alternative B.1. to obtain comments from CenturyLink and from Citizens/Frontier and any other interested party on whether 47 C.F.R. § 54.205 requires existing ETCs to serve broadband customers in census blocks where the relinquishing ETC provided broadband service? If not, why not?

**C. Whether TAP/Lifeline customers will seamlessly transition to another ETC.**

The Department recommends Alternatives C.1.a, C.2.b and C2.c. Eligible customers of the low income assistance programs will need to change service providers to the incumbent telephone companies to retain these benefits. To the extent that Pinpoint is the sole provider of service in an area, which it will be for the broadband service offering unless the Commission orders the existing ETCs to expand their broadband services to those areas where Lake County provided broadband, customers will not have broadband available from an ETC. The Department's

recommendation is for the seamless transfer of customers to the low income assistance programs, since there can otherwise be a lag from when customers lose benefits to when they are enrolled with a new provider.

**D. Whether any Commission action is required pertaining to the receipt of federal funds.**

The Department recommends alternative D.2, to take no action concerning federal funds received by Lake County.

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**BALLER STOKES & LIDE**

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May 17, 2019

Ms. Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12th Street, SW,  
Room TW-A325  
Washington, DC 20554

Re: Lake County, Minnesota's Petition to Relinquish RBE Status in WC Docket Nos.  
10-90; 14-58; and 14-259

Dear Secretary Dortch:

Attached, please find a petition filed by Lake County, Minnesota, a municipal corporation of the State of Minnesota, seeking to relinquish its status as a Rural Broadband Experiments recipient.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

*Sean A Stokes*

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Sean A. Stokes

cc: Nissa Laughner, WCB

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
ETC Annual Reports and Certifications	)	WC Docket No. 14-58
	)	
Rural Broadband Experiments	)	WC Docket No. 14-259

**PETITION OF LAKE COUNTY MINNESOTA  
FOR RELINQUISHMENT OF ITS STATUS  
AS A RURAL BROADBAND EXPERIMENTS SUPPORT RECIPIENT  
AND FOR A SECTION 1.3 WAIVER OF THE DEPLOYMENT SCHEDULE**

Lake County Minnesota (“Lake County”) respectfully submits this petition to the Federal Communications Commission (“Commission”) seeking to relinquish Lake County’s status as a Rural Broadband Experiment (“RBE”) support recipient. As discussed below, Lake County has at all times acted in good faith to fulfill the requirements established under the *Rural Broadband Experiments Order*<sup>1</sup> and obligations under its *RBE Grant Notice*,<sup>2</sup> and more important, it has succeeded in meeting the underlying goal of the RBE program by dramatically expanding the availability of advanced broadband capabilities and services in unserved and underserved areas of

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<sup>1</sup> *In the Matter of Connect America Fund*, WC Docket No. 10-90, *Report and Order and Further Notice of Proposed Rulemaking (Rural Broadband Experiments Order)*, released July 14, 2014.

<sup>2</sup> *FCC Public Notice, Rural Broadband Experiment Support Authorized for Winning Bid Submitted by Lake County, Minnesota D/B/A Lake Connections (Grant Notice)*, WC Docket No. 10-90, WC Docket No. 14-259, released December 12, 2016.

its community. This would not have occurred if Lake County had not built its network. Now, however, in accordance with a Memorandum of Understanding with the Rural Utilities Service (“RUS”),<sup>3</sup> Lake County has entered into an agreement to sell its broadband network. Lake County therefore seeks to relinquish its status as an RBE support recipient and to remit to the Commission an amount of money equal to the RBE grant money received to date that Lake County has not spent in furtherance of providing and expanding broadband availability throughout its community. Granting this request would be consistent with the Commission’s rules and in the public interest.

## **I. BACKGROUND**

In 2010, Lake County applied for and obtained a federal stimulus grant and loan combination totaling \$66,369,064 from the Rural Utilities Service under the Broadband Initiatives Program (“BIP”) established by the American Recovery and Reinvestment Act of 2009. Lake County sought these funds in order to help support the construction of a fiber optic broadband fiber network throughout the County and parts of St. Louis County, Minnesota. This project was aimed at bringing a state-of-the-art broadband system to the rural unserved and underserved communities in these counties,<sup>4</sup> and all of the advanced broadband services and capabilities that the system could enable and support, including sufficient bandwidth to simultaneously drive and support economic development, enhanced governmental, education, healthcare, and, public safety services.

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<sup>3</sup> Memorandum of Understanding between Lake County and the Rural Utilities Service, dated August 31, 2017.

<sup>4</sup> These Counties are comprised of eight cities, twelve townships and large areas of unorganized territories.



On December 12, 2016, the Commission awarded Lake County an RBE support grant of \$3,491,280.<sup>5</sup> Lake County obtained the RBE funding to help supplement its ongoing activities to extend and provide broadband capabilities and services to its rural underserved and unserved community.

While Lake County has been largely successful in advancing its goal of dramatically increasing the availability of affordable broadband services and capabilities throughout much of its area, the County has been beset throughout this process with unexpected challenges and delays, including barriers and disruptions that have impaired the County's ability to fulfill its economic commitments while also serving the best overall interests of its community.

Even with the RUS funding and the RBE grant, the County faced a shortfall in capital funding. The County sought, but was unable to secure, favorable financing that would allow it to continue to operate and expand its network. Given these circumstances, in 2017 Lake County entered into collaborative discussions with RUS to develop a highly structured sales process, under which RUS would defer Lake County's outstanding principal and interest payments on its BIP loan while Lake County sought out and obtained an established qualified broadband provider to purchase the Lake County network, with the proceeds of the sale going to RUS in satisfaction Lake County's obligations. Lake County would continue to provide services throughout the bidding and sale process.

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<sup>5</sup> *Grant Notice.*

Consistent with these discussions, on June 13, 2017, Lake County adopted a resolution to commence a bidding process to select a purchaser that would best provide continuing quality and expansion of broadband services to Lake County customers.<sup>6</sup>

On August 31, 2017, the County and RUS entered into a Memorandum of Understanding (“MOU”) providing the framework for a final settlement between the County and RUS with respect to all amounts that the County owes to RUS under the BIP loan. Under the terms of the MOU, RUS has agreed that RUS will (i) continue to defer principal and interest owed to RUS until the County’s sale of the network, (ii) accept the proceeds of the sale of the network in full satisfaction of all amounts owed by the County to RUS under the RUS Funding documents, and (iii) release RUS’s lien on the network upon receipt of the proceeds of the sale of the Network.

In December 2018, Lake County selected Pinpoint Holdings as the winning bidder and entered into a purchase agreement for the sale of the Lake County network. Throughout the bidding and sales selection process, the County retained its RBE support recipient status, as it wanted to retain the option for the winning bidder to utilize the RBE funds for continued expansion of services. Pinpoint has indicated, however, that it does not desire to continue with the RBE grant program upon completion of the sale. Therefore, Lake County is seeking to relinquish its RBE support recipient status and return non-expended grant funds to the Commission.

## **II. RELINQUISHING RBE STATUS**

The *Rural Broadband Experiments Order* creating the RBE program did not establish a specific process for an entity to discontinue its participation in the program. In the absence of such a process, Lake County submits that it would be reasonable to follow the discontinuation process

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<sup>6</sup> [http://www.co.lake.mn.us/document\\_center/Comm\\_Doc\\_Center/2018-7-24%20Press%20RELEASE%20.pdf](http://www.co.lake.mn.us/document_center/Comm_Doc_Center/2018-7-24%20Press%20RELEASE%20.pdf)

that the Commission utilizes in similar situations in which a carrier seeks to relinquish Connect America Funds.

For example, in a *Public Notice* on the Connect America Phase II Auction, the Commission indicated that a provider seeking to relinquish its Connect America Fund support must discontinue its ETC status pursuant to the requirements of Section 214 of the Communications Act and the Commission’s implementing regulations in Section 54.205.<sup>7</sup>

**A. Section 214(e)(4) Relinquishment of ETC Status**

Under both Section 214(e)(4) of the federal Communications Act and the Commission’s implementing regulations, entities with state issued ETC certifications, such as Lake County, may relinquish their ETC designation upon approval of the applicable state public utility commission (“PUC”).

Consistent with this requirement, and concurrent with the Commission’s action on this petition, Lake County is working with the Minnesota PUC to comply with all requirements for relinquishing its ETC status. As part of this petition, Lake County seeks to coordinate with the Commission to establish a process to ensure that any actions in surrendering its ETC status before the Minnesota PUC do not inadvertently create any procedural deficiencies in Lake County’s RBE status while this petition is pending.

**B. Section 63.71 Discontinuation of Service Not Required**

Lake County does not itself provide “telecommunications services” as defined under the federal Communications Act. Instead, Lake County satisfies its obligation to furnish voice telephony under its RBE award (and ETC status) through a contractual agreement with Contel

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<sup>7</sup> Connect America Fund Phase II Auction Public Notice, at p. 9, released on July 10, 2018. <https://docs.fcc.gov/public/attachments/DA-18-714A1.pdf>

Systems, Inc (“CSI”). In 2017, as part of its agreement to provide services for Lake County, CSI acquired all of the telecommunications services and assets of Lake Communications, an affiliate of Lake County, that had previously been meeting the County’s voice telephony requirements. The transfer of the assets and services from Lake Communications to CTC was approved under the Commission’s 214 process on April 20, 2017.<sup>8</sup> Accordingly, Lake County will not be required to obtain any prior authorization under Section 63.71 in order to effectuate its relinquishment of RBE grant recipient status.

**C. Compliance with RBE Service Quality Requirements**

Throughout its period as an RBE grant recipient, Lake County has fully met or exceeded all of its services obligations related to the broadband services including speed, latency, usage, and pricing, as set out in the *Rural Broadband Experiments Order* and in the terms of its *RBE Grant Notice*. On August 1, 2018, Lake County made its required 15-month certification that it had completed its 25% build-out milestone by serving 3,102 locations<sup>9</sup>

**III. RBE GRANT FUNDS TO BE RETURNED**

As indicated, the RBE program rules adopted in the *Rural Broadband Experiments Order* do not prescribe a process for a party to voluntarily relinquish RBE status. Among the areas not addressed in the RBE rules is the treatment of grant funds where the recipient relinquishing RBE status has properly spent money in support of the RBE objectives. The RBE program requires

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<sup>8</sup> *Notice of Domestic Section 214 Authorization Granted*, WC Docket No. 17-64, DA 17-374, April 20, 2017.

<sup>9</sup> See Lake County’s annual filings of FCC Form 481. On March 6, 2019, the Wireline Competition Bureau inadvertently issued a letter of default finding that the County had not met its build-out milestone but this letter has since been rescinded in recognition that the County’s 85% build-out milestone is not until January 2020.

participants to provide a letter of credit (“LOC”) for the recovery of funds in the event of a termination as a result of default, but Lake County is voluntarily relinquishing its RBE status, not terminating for default, so resort to Lake County’s LOC is not warranted. Instead, as discussed below, Lake County should be able to retain funds in the amount equal to the amount of money that it properly spent in meeting its RBE grant obligations that satisfied its initial fifteen-month milestone. In the alternative, Lake County seeks a waiver under Section 1.3 of the Commission’s rules of the LOC termination provisions of *the Rural Broadband Experiments Order*. As demonstrated below, a waiver in this instance is for good cause and is in the public interest.

To date, Lake County has received \$1,633,393.53 in RBE support payments out of its total RBE grant award of \$3,491,280. As indicated, on August 1, 2018, Lake County made its required 15-month certification that it had completed its 25% build-out milestone by serving 3,102 locations, which is equal to a 36.51% of Lake County’s eligible RBE locations under the program. Lake County properly and in good faith expended time, effort, and County funds in support of extending broadband services to these locations in fulfillment of its RBE obligations. Lake County’s actions furthered the underlying public interest goals of the RBE program (and the Connect America Fund in general) by extending advanced broadband capabilities and services into rural areas that would not have otherwise been served. Accordingly, Lake County proposes that, in conjunction with its relinquishment of RBE grant status, the Commission and Lake County enter into an agreement under which Lake County would retain 36.51% (\$1,274,666.30) of the total RBE grant support it was awarded and return any funds that it has received beyond that amount.<sup>10</sup>

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<sup>10</sup> Lake County also requests that the Commission immediately direct USAC to discontinue issuing any further RBE support payments to Lake County in recognition that Lake County is relinquishing its REB recipient status.

Lake County's retention of this amount of its total RBE grant award is reasonable and justified. While the County was not able to complete the network buildout there can be no argument that the County's actions did not appreciably advance the Commission's underlying goal of expanding rural broadband availability. The County should not now be penalized for this action by being required to remit money that it spent in furtherance of these efforts.

#### **IV. CONCLUSION**

Based on the foregoing, Lake County respectfully requests that Commission grant this petition and associated waiver(s) for Lake County to relinquish its RBE grant recipient status.

Respectfully Submitted,

*Sean A. Stokes*

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Sean A. Stokes  
James Baller

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*Counsel for Lake County Minnesota*

May 17, 2019

**Minnesota Department of Commerce  
Information Request**

Docket Number: P6944/RL-19-195  Nonpublic  Public  
In the Matter of the Petition of Date of Request: 3/21/2019  
Lake County for Relinquishment of Response Due: 4/1/2019  
ETC Designation

Requested From: Lake County Minnesota d/b/a Lake Connections  
Gregory Merz  
Gray Plant Mooty  
500 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

Type of Inquiry: General

Requested by: Joy Gullikson  
Email Address(es): joy.gullikson@state.mn.us  
Phone Number(s): 651-539-1877

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**Request Number:** 2  
Topic: Click or tap here to enter text.  
Reference(s): Click or tap here to enter text.

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**Request:**

47 C.F.R. § 54.205 (b) states: (b) Prior to permitting a telecommunications carrier designated as an eligible telecommunications carrier to cease providing universal service in an area served by more than one eligible telecommunications carrier, the state commission shall require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier. The state commission shall establish a time, not to exceed one year after the state commission approves such relinquishment under this section, within which such purchase or construction shall be completed.

Also, Minn. Rule 7812.1400 and Minn. Rule 7811.1400 states (in part): “. . . (A) A local service provider seeking to relinquish its ETC designation shall file a petition with the commission, specifying the service area for which it seeks to relinquish its designation, its proposed timetable for relinquishing its designation, and the identity of other ETCs serving the service area.”

*(Continued on next page)*

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To be completed by responder

Response Date: 4/5/19  
Response by: Gregory Merz, attorney for petitioner, Lake County, d/b/a Lake Connections  
Email Address: [Gregory.merz@gpmlaw.com](mailto:Gregory.merz@gpmlaw.com)  
Phone Number: 612 632 3257

**Minnesota Department of Commerce  
Information Request**

Docket Number: P6944/RL-19-195  Nonpublic  Public  
In the Matter of the Petition of Date of Request: 3/21/2019  
Lake County for Relinquishment of Response Due: 4/1/2019  
ETC Designation

Requested From: Lake County Minnesota d/b/a Lake Connections  
Gregory Merz  
Gray Plant Mooty  
500 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

Type of Inquiry: General

Requested by: Joy Gullikson  
Email Address(es): joy.gullikson@state.mn.us  
Phone Number(s): 651-539-1877

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- a. Of the 845 Census Blocks for which Lake County was awarded ETC status, please identify all Census Blocks that are not served by another ETC for:
  - 1) Voice service
  - 2) Broadband internet access service
- b. Of the 845 Census Blocks for which there is another ETC, please explain the actions necessary by the state commission to “require the remaining eligible telecommunications carrier or carriers to ensure that all customers served by the relinquishing carrier will continue to be served, and shall require sufficient notice to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier.”

**Response:**

- a. A map identifying the census blocks that are considered to be unserved is being provided with this response. However, Lake County believes that an ILEC has or is providing service in census blocks that are outside their established exchanges that have been designated as unserved. Of Lake County’s approximately 2,684 customers as of January 2019, 89 are at locations that are outside of an ILEC exchange. Of those 89 customers, 70 customers have telephone numbers that were ported from an ILEC. Of the remaining 19 customers, Lake County believes that only six of those customers may be in a location that is not served by any alternative facilities.

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To be completed by responder

Response Date: 4/5/19  
Response by: Gregory Merz, attorney for petitioner, Lake County, d/b/a Lake Connections  
Email Address: [Gregory.merz@gpmlaw.com](mailto:Gregory.merz@gpmlaw.com)  
Phone Number: 612 632 3257



**Minnesota Department of Commerce  
Information Request**

Docket Number: P6944/RL-19-195  Nonpublic  Public  
In the Matter of the Petition of  
Lake County for Relinquishment of  
ETC Designation  
Date of Request: 3/21/2019  
Response Due: 4/1/2019

Requested From: Lake County Minnesota d/b/a Lake Connections  
Gregory Merz  
Gray Plant Mooty  
500 IDS Center  
80 South Eighth Street  
Minneapolis, MN 55402

Type of Inquiry: General

Requested by: Joy Gullikson  
Email Address(es): joy.gullikson@state.mn.us  
Phone Number(s): 651-539-1877

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- b. All Lake County customers will be able to continue to receive service provided via the broadband network that Pinpoint is purchasing from Lake County. No customer will be left without voice service as a result of Lake County's sale of its network. Most Lake County customers will have the option of receiving service from an ILEC.

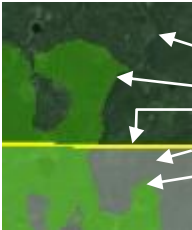
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To be completed by responder

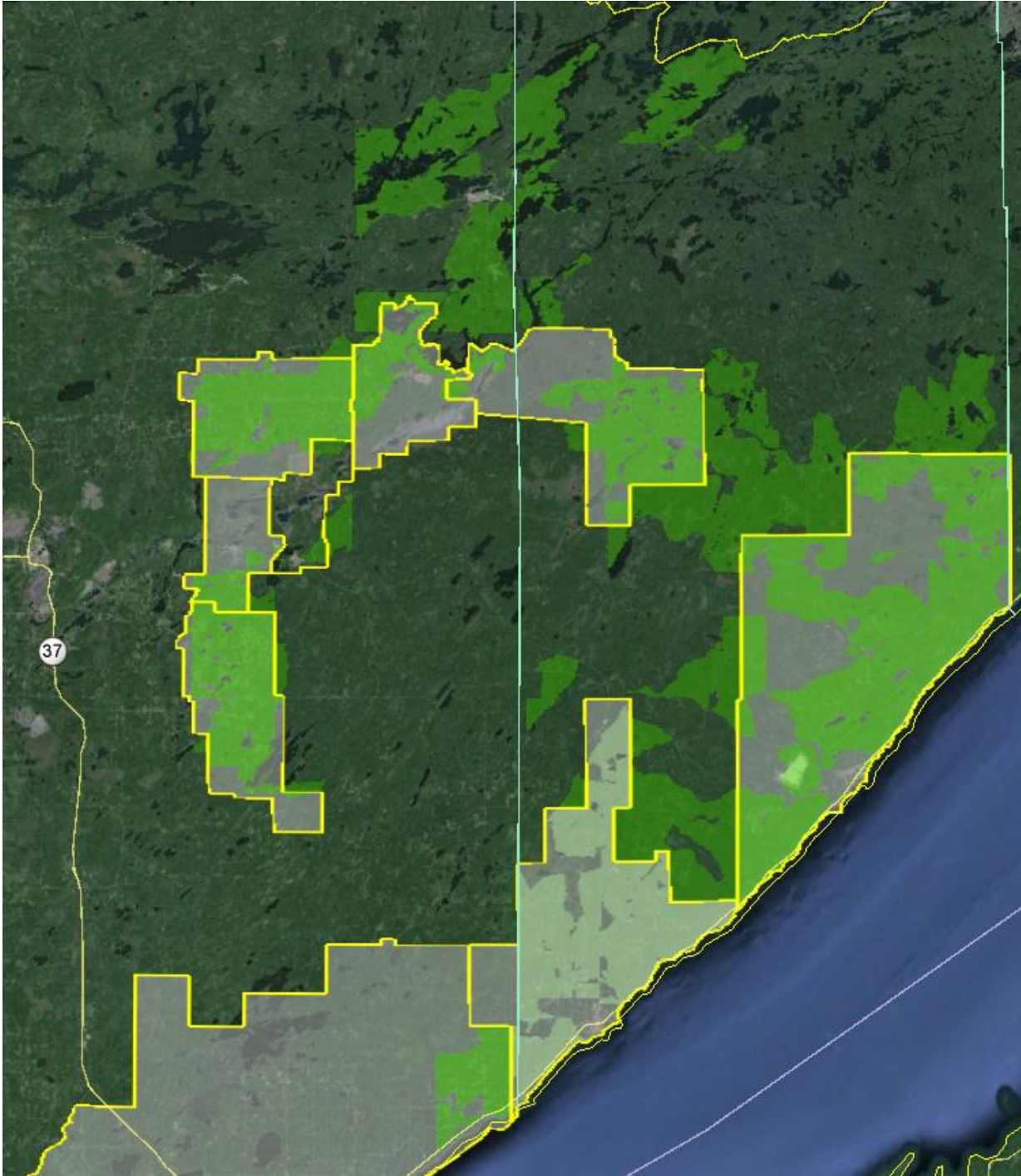
Response Date: 4/5/19  
Response by: Gregory Merz, attorney for petitioner, Lake County, d/b/a Lake Connections  
Email Address: [Gregory.merz@gpmlaw.com](mailto:Gregory.merz@gpmlaw.com)  
Phone Number: 612 632 3257

The ETC Service Area is defined by the Census Blocks approved in the FCC project as represented on this map and listed following.

Key:



- Unservd Territory
- Served by LC in Unserved Territory
- Exchange Boundary
- Unservd by LC in MN Exchange
- Served by LC in MN Exchange





## IMPORTANT INFORMATION ABOUT YOUR SERVICE

Dear Lake Connections Customer:

Lake County has entered into an agreement that will lead to the sale of its cable and broadband communications system, Lake Connections, to Pinpoint Minnesota, LLC ("Pinpoint"). Following completion of the transaction, which is expected to be completed on or after June 3, 2019, the services that you currently receive from Lake County will be provided by Pinpoint. Pinpoint and its operations manager, Zito West Holding, LLC ("Zito"), a leading provider of cable, broadband and voice communications services, pride themselves on their ability to build long-term relationships with their customers and they look forward to serving you.

You are not required to do anything to continue receiving the high-quality services you have come to expect at the same competitive rates you currently pay. There will be no charges associated with the transfer of your account to Pinpoint.

Pinpoint is dedicated to earning and keeping your business. We are confident that this transaction will strengthen and improve the high quality of services that you currently receive from Lake County. That said, you have the right to change providers at any time, provided another service provider is available, and subject to the terms of your service contract, if you have one. If you do want to select another provider, you should contact that provider directly. Assuming you do not transfer your service to a different provider by June 3, 2019, Pinpoint will become your service provider thereafter.

If you choose to stay with Pinpoint and you currently receive phone service over the Lake Connections network, your telephone number will not change as a result of the transfer. Notice of any future changes in rates, terms and conditions of service will be provided to you by mail or in your bill in the format that you currently receive it, or as otherwise provided in your service contract, if you have one. In addition, any deposit or prepayment you have paid, if any, will be transferred with your account to Pinpoint. If you have arranged a preferred carrier freeze with Lake County with respect to any services involved in this transfer, this freeze will be lifted in order to transition the services to Pinpoint; following the transfer, you must contact your new local provider to reinstate the freeze.

Prior to the actual transfer of service, Lake County will continue to be responsible for all customer service inquiries, complaints, billing issues and service questions, and you should contact the Lake Connections customer services representatives at the following number: 1-888-262-7971. You may also contact Pinpoint's manager, Zito at: 1-800-365-6988.

Lake Connections thanks you for your business in the past and Pinpoint looks forward to providing you with superior products and services for many years to come.

Sincerely,

**Lake County and Pinpoint Minnesota, LLC**

## **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. P6944/RL-19-195**

**Dated this 29<sup>th</sup> day of May 2019**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
John	Auerbach	jauerbach@somos.com	NANPA/Somos, Inc.	1800 Sutter St Ste 780  Concord, CA 94502	Electronic Service	No	OFF_SL_19-195_RL-19-195
Scott	Bohler	scott.bohler@ftr.com	Frontier Communications Corporation	2378 Wilshire Blvd  Mound, MN 55364-1652	Electronic Service	No	OFF_SL_19-195_RL-19-195
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_19-195_RL-19-195
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	No	OFF_SL_19-195_RL-19-195
David	Denton	david.denton@state.mn.us	DPS ECN	445 Minnesota Street Suite 137 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_19-195_RL-19-195
Ian	Dobson	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	No	OFF_SL_19-195_RL-19-195
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_19-195_RL-19-195
Michelle	Garber	mgarber@usac.org	USAC - Universal Service Administrative Company	2000 L St NW Ste 200  Washington, DC 20036	Electronic Service	No	OFF_SL_19-195_RL-19-195
Gregory R.	Merz	gregory.merz@gpmlaw.com	Gray, Plant, Mooty	80 S 8th St Ste 500  Minneapolis, MN 55402-5383	Electronic Service	No	OFF_SL_19-195_RL-19-195
Beth	Sprague	bsprague@somos.com	NANPA/Somos, Inc.	2411 Dulles Corner Park Ste 250 Herndon, VA 20171	Electronic Service	No	OFF_SL_19-195_RL-19-195

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jason	Topp	jason.topp@centurylink.com	CenturyLink	200 S 5th St Ste 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-195_RL-19-195
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_19-195_RL-19-195
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	No	OFF_SL_19-195_RL-19-195