

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
Commissioner
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In the Matter of the Petition of Lake County
Minnesota d/b/a Lake Connections for ETC
Designation in Minnesota

ISSUE DATE: July 27, 2015

DOCKET NO. P-6944/M-15-65

ORDER GRANTING PETITION
SUBJECT TO CONDITIONS, AND
REQUIRING COMPLIANCE FILING

PROCEDURAL HISTORY

I. Introduction and Background

Under the Federal Telecommunications Act of 1996, telecommunications carriers must be designated “eligible telecommunications carriers” (ETCs) to qualify for subsidies from the federal Universal Service Fund for serving high-cost areas and low-income consumers.¹ To be designated an ETC, a carrier must offer and advertise throughout its designated service area the basic services the Federal Communications Commission has determined merit support with universal service funding:²

- Voice grade access to the public switched network or its functional equivalent,
- Minutes of use for local service at no additional charge,
- Access to emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, and
- Toll limitation services for qualifying low-income customers.

These services must be provided using the carrier’s own facilities or a combination of its own facilities and the resold services of other carriers.³

State regulatory commissions have primary responsibility for designating ETCs, but the Federal Communications Commission (FCC) acts on ETC applications when no state has jurisdiction.⁴ In either case, the application must be consistent with the public interest, convenience, and

¹ 47 U.S.C. §§ 214 (e) (1); 254 (e).

² 47 U.S.C. § 214 (e); 47 C.F.R. § 54.101 (a).

³ 47 U.S.C. § 214 (e) (1) (A).

⁴ 47 U.S.C. § 214 (e) (6).

necessity.⁵ To implement this public interest standard, the FCC has adopted – and urged state commissions to adopt – additional substantive requirements for ETC applicants, set forth in brief below.⁶

- Commitment to provide service throughout designated service area to all customers making reasonable requests for service and submission of periodic plans to upgrade infrastructure to improve service coverage, quality, and capacity,
- Demonstrated ability to remain functional in emergency situations, and
- Demonstrated ability to satisfy consumer protection and service quality standards.

This Commission has adopted the additional substantive requirements recommended by the FCC, with minor variations.⁷

II. Lake County's Filing

On January 29, 2015,⁸ Lake County, Minnesota filed a petition for designation as an Eligible Telecommunications Carrier in specified census blocks within the exchanges of Duluth, Silver Bay, Aurora, Babbitt, Brimson, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors, as well as in specified, neighboring census blocks not served by any carrier.

Its petition and subsequent comments explained that the County is constructing a fiber-optic broadband network throughout the service area outlined in its petition, using loan and grant funds awarded earlier under the American Recovery and Reinvestment Act. As it installs facilities, the County provides broadband internet access, digital television service, and VoIP telephony service,⁹ using its newly constructed broadband facilities and, in the case of telephony, the services of a local, licensed telecommunications carrier, Lake Communications.

Lake Communications provides VoIP telephony services over the County's fiber-optic broadband network and interacts with County subscribers, using the County's assumed business name, Lake Connections. It may also contract with the County to use County billing services, facilitating seamless billing for bundled services, but relevant contract provisions have not yet been negotiated.

⁵ 47 U.S.C. § 214 (e) (2) and (6); Minn. R. 7812.1400, subp. 2.

⁶ 47 C.F.R. § 54.202 (a).

⁷ *In the Matter of a Commission Investigation to Consider Adopting the Federal Communications Commission's Standards for Designating Eligible Telecommunications Carriers*, Docket No. P-999/M-05-1169, Order Adopting FCC Requirements for Designating Eligible Telecommunications Carriers, as Modified (October 31, 2005).

⁸ On January 30, the County filed an amended petition, supplying the signature page inadvertently omitted from the original filing.

⁹ Voice over Internet Protocol service, a service in which the voice signal is transmitted using Internet Protocol, i.e., packet switching, rather than circuit switching.

The petition stated that the County would comply with all ETC eligibility requirements. It also explained that the reason for the application was that the County needed ETC designation to qualify for a \$3.5 million grant it had been provisionally awarded under the FCC's Rural Broadband Experiments program.¹⁰ And it argued that ETC designation was in the public interest both because it would promote consumer choice and because it would advance Minnesota's statutory goal of achieving statewide access to high-speed broadband as soon as possible.¹¹

Finally, the petition asked the Commission to find, under Minn. R. 7812.1400, subp. 3, that it was appropriate to designate as the County's universal service area an area smaller than the total area of the affected local exchanges, i.e., the census blocks specified in its petition.

III. Comments on the Petition

Three parties filed comments on the County's petition: the Minnesota Department of Commerce (the Department), Citizens Telecommunications Company of Minnesota, LLC (Citizens), and the Minnesota Telecom Alliance (MTA).

A. "Common Carrier" Issue

All three parties initially questioned whether the County met the federal ETC requirement that it be a "common carrier,"¹² since the Telecommunications Act defined common carriers as carriers providing "telecommunications services,"¹³ and the FCC had found that internet access was not a telecommunications service, but an "information service." By the date of hearing, however, all three parties agreed that the FCC's recent *Open Internet* order,¹⁴ reclassifying internet access as a telecommunications service, invalidated that argument and rendered the County a common carrier. The Commission concurs.

B. The Department

The Department conducted a close examination of the petition and recommended granting conditional ETC designation, subject to the County's prompt provision of further information and clarification on several issues, summarized below:

- More precise delineation of the census blocks making up the County's proposed service area,

¹⁰ In July 2014 the FCC issued its *Rural Broadband Experiments Order*, establishing a grant competition for targeted broadband-expansion projects; this competition was designed to help the agency and stakeholders learn more about the impact of technology transitions on rural America. *In the Matter of the Connect America Fund*, WC Docket 10-90, and 14-58, FCC-14-98, Report and Order and Notice of Proposed Rulemaking, 29 FCC Rcd 8769, July 14, 2014 (*Rural Broadband Experiments Order*).

¹¹ Minn. Stat. § 237.012.

¹² 47 U.S.C. § 214(e)(1).

¹³ 47 U.S.C. § 153 (51).

¹⁴ *In the Matter of Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling and Order, GN Docket No. 14-28, 80 FR 19737.

- Clearer demonstration of the County’s ability to meet the FCC’s emergency power requirements,
- Detailed information on how the County would reroute calls in the event of damaged facilities and how it would manage traffic spikes resulting from emergency situations,
- Detailed description of the technology and system design the County would use to provide voice services,
- Fuller explanation of the County’s plan for serving new customers on request, as required under 47 U.S.C. § 214 (e)(1)(A),
- Clear plans for meeting the requirement to advertise supported services throughout the service area,
- Demonstration that both the County and the Lake Communications websites provide accurate information on rates and services,
- Certification from a County official that the County will comply with the service requirements applicable to the Universal Service Fund support that it receives, as required under 47 C.F.R. § 54.202(a)(ii), and
- Complete information regarding the relationship between the County and Lake Communications

C. Citizens and the MTA

Citizens and the MTA emphasized that the County’s ability to fulfill its ETC responsibilities would depend heavily on an entity not before the Commission (Lake Communications) and an agreement not before the Commission (the pending contract between the County and Lake Communications). They recommended convening a contested-case proceeding to develop the facts on the relationship between the two entities, especially on the County’s ability to control Lake Communications’ actions to ensure compliance with ETC requirements on service quality and consumer protection.

They also challenged the legal adequacy of using a contract with another carrier to provide the supported services required of an ETC, given the requirement in 47 U.S.C. § 214 (e) (1) (A) that an ETC

(A) offer the services that are supported by Federal universal service support mechanisms under section 254 (c) of this title, 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)

Citizens and the MTA argued that, to qualify as an ETC, the County must itself directly provide the required services, using (a) facilities under its direct ownership and control, and (b) wholesale services directly resold and deployed by the County itself. They argued that there was no room in the federal statute for an ETC to rely on another vendor to provide supported services on its behalf.

D. The County

The County argued that it met the statutory requirement—that it was offering the supported services using *a combination of its own facilities* (its fiber-optic network) and *resale of another*

carrier's services (Lake Communications'), with Lake Communications serving as its administrator and agent. The County stated that it was ultimately legally and financially responsible for the provision of the required services and would ensure their provision in the unlikely event that Lake Communications could not or did not.

The County also pointed out that the FCC orders establishing the Rural Broadband Experiments program and the Connect America Fund, of which that program is a part, encouraged partnerships, consortia, and other cooperative ventures to extend broadband facilities to unserved or underserved areas.

Finally, the County expressed its willingness to provide the information and clarifications recommended by the Department as conditions on its ETC designation.

FINDINGS AND CONCLUSIONS

IV. Summary of Commission Action

The Commission finds that the County's proposal to offer the Universal-Service-Fund-supported services through a contract with Lake Communications is reasonable and permissible; the Commission will grant Lake County's petition for ETC designation for the limited purpose of receipt of funds under the FCC's Rural Broadband Experiments program.

This ETC designation will be subject to conditions to ensure compliance with all ETC requirements and accountability by both parties to the contract under which supported services will be provided.

The Commission finds that the requested designation, as conditioned, is in the public interest and consistent with the public interest, convenience, and necessity.

The Commission will certify to the FCC and the Universal Service Fund Administrator the County's compliance with the restrictions on its use of universal service funds under 47 C.F.R. § 54.3.3(3)(vi), a threshold requirement for disbursement of funds, subject to the conditions discussed above.

These actions are explained below.

V. Contractual Arrangement Permissible

The Commission concurs with the Department and the County that the contractual arrangement proposed here for the delivery of supported services is reasonable and legally permissible.

The County clearly meets the statutory requirement that it have facilities of its own in place; it owns a new fiber-optic broadband network that it wishes to use to deliver telecommunications services throughout the County and neighboring census blocks. And it will in effect be reselling another carrier's services, since its new broadband network will provide only the transport component of the supported services, with remaining services purchased from and provided by Lake Communications.

The issue, then, is whether the County may contract with Lake Communications to administer

the provision of its telecommunication services, or whether it must itself deliver the services unaided.

The Commission does not read the statute as prohibiting the contractual arrangement described in County filings to date. The explicit “own facilities” statutory requirement is a high bar, which the County meets. There is no similar statutory language requiring ETCs who have met that bar to also exercise direct operational control over the delivery of supported services. It is therefore reasonable for the County to contract with an experienced telecommunications carrier to handle daily telephony operations, while the County remains ultimately responsible—legally and financially—for providing supported services.

Further, this interpretation is consistent with the FCC’s understanding of how ETC requirements should work in the context of projects funded through the Connect America Fund, including the Rural Broadband Experiments program involved here. In its *Technological Transitions* order,¹⁵ the FCC explained that it welcomed and encouraged competitive grant applications from partnerships, consortia, and multi-stakeholder groups, valuing the diverse expertise each participant brought to bear, as long as it was an ETC that was legally and financially responsible for providing the supported services:

121. We also address the role of ETC designation in situations where there is a multi-stakeholder group working together to bring broadband-capable infrastructure to unserved communities. We welcome participation in the Connect America Phase II experiment from a wide variety of entities, including partnerships or consortia of entities that may include service providers, vendors, governmental agencies, and others. . . .

122. For the Connect America Phase II experiment, we conclude that the requirement to be an ETC is met if one entity that is part of the group, partnership or consortia obtains ETC designation from the relevant State or this Commission. Thus, for instance, the entity that is designated as the ETC could be a competitive local exchange carrier that offers the telecommunications services eligible for support pursuant to section 254(c)(1) of the Act in partnership with another entity that constructs and operates the broadband-capable network. *Comparable to the requirements adopted by the Commission for consortia leaders in the Healthcare Connect Fund, we require that the ETC be legally and financially responsible for providing the section 254(c)(1) supported telecommunications service; serve as the point of contact for the Commission, USAC, the relevant State, and Tribal governments, as appropriate; be responsible for submitting required forms and certifications to the Commission, USAC, the relevant State, and Tribal governments, as appropriate; receive funding disbursements; and be responsible for recordkeeping and coordinating any audits for members of the group.*¹⁶

¹⁵ *Technology Transitions, et al.*, GN Docket No. 13-5 et al., Order et al., FCC 14-5, 29 FCC Rcd 1433 (January 31, 2014).

¹⁶ *Id.* at 16769-70, para. 206, emphasis added.

Here, Lake County both seeks ETC designation and claims legal and financial responsibility for providing the supported services. Under these circumstances, the Commission concludes that the County's intention to contract with a third-party vendor for daily operational services does not preclude ETC designation.

VI. Conditions on Designation; Certification of Proper Use of Federal Universal Service Fund Support

The Commission concurs with the parties that it is important to ensure that the contract between the County and Lake Communications provide maximum protection to County subscribers, especially in regard to service quality and consumer protections. It is equally important that the County's rates and terms and conditions of service be readily available, communicated clearly, and advertised effectively throughout the County's designated service area.

The Commission will therefore condition the County's ETC designation on its prompt provision of a compliance filing confirming that it has corrected deficiencies identified by the Department, clarified application statements and tariffs that were insufficiently clear, and otherwise complied with all federal and state ETC requirements. Those requirements are set forth in the ordering paragraphs of this order.

Similarly, the Commission will take the administrative step of certifying the County's compliance with the restrictions on its use of universal service funds under 47 C.F.R. § 54.313 (3) (vi), subject to the conditions discussed above.

VII. Designated Service Area

The Commission concurs with the County and the Department that the designated service area proposed by the County—the census blocks in which it is building its fiber-optic network—is more appropriate than the presumed service area, the exchange areas served by affected local exchange carriers. Under Minn. R. 7812.1400, subp. 3, the Commission is to designate smaller service areas when they are more appropriate and supported by the public interest.

Here, the smaller service area proposed by the County is more appropriate, since it will serve the public interest in promoting, through increased funding, the broadest and earliest possible expansion of broadband facilities throughout the state.

VIII. Public Interest Considerations

The Commission grants ETC designation “upon request and consistent with the public interest, convenience, and necessity.”¹⁷ This application, as conditioned, clearly meets the public interest, convenience, and necessity standard, both because it expands consumer choice and because it advances the longstanding state policy goal of achieving statewide access to high-speed broadband as soon as possible.¹⁸

¹⁷ 47 U.S.C. § 214 (e) (2); 47 C.F.R. § 54.201 (c); Minn. R. 7812.1400, subp. 2.

¹⁸ Minn. Stat. § 237.012.

IX. Compliance Filing Required

For all these reasons, the Commission will grant Lake County's petition for designation as an Eligible Telecommunications Carrier, subject to the conditions set forth below.

ORDER

1. The Commission finds that Lake County's proposal to offer the supported services through a contract with Lake Communications is reasonable. The Commission conditions its approval of this proposal on Lake County's submission, within 30 days of execution, of its contract with Lake Communications or another voice-telephony and related services vendor. That contract must include the following provisions and commitments:
 - a. Lake County is the entity legally and financially responsible for providing the section 254(c)(1) supported telecommunications service;
 - b. Lake County serves as the point of contact for this Commission, the FCC, the Universal Service Administrator, and Tribal governments, as appropriate;
 - c. Lake County is responsible for submitting required forms and certifications to this Commission, the FCC, the Universal Service Administrator, Tribal governments, as appropriate;
 - d. Lake County will receive funding disbursements and be responsible for recordkeeping and coordinating any audits for members of the group.

2. The contract between Lake County and Lake Communications or between Lake County and any other vendor used to administer supported services must clearly show the responsibilities of Lake County and the voice telephony and related services vendor in terms of:
 - a. Actual provision of services
 - b. Setting of rates
 - c. Advertising the products
 - d. Billing and name of company on bill
 - e. Resolution of customer complaints
 - f. Operations and Repair of telephony-related equipment
 - g. Compliance with telephony-related service quality, legal, technical, reporting and related standards and commitments
 - h. Resolutions in the event of Lake Communications cannot fulfill its role as the provider of telephony and related services.

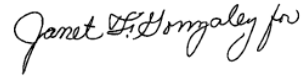
2. The Commission finds that the County's proposed service area conforms to federal and state rules and approves that service area, which is made up of census blocks within the Minnesota exchanges of Duluth and Silver Bay, where Qwest Corporation d/b/a CenturyLink (CenturyLink) is the incumbent local exchange carrier; and Aurora, Babbitt, Brimson, Ely, Embarrass, Hoyt Lakes, Isabella, Palo, and Two Harbors, where Citizens Telecommunications Company of Minnesota, LLC ("Citizens") is the

incumbent local exchange carrier. Unserved areas are also included in the Service Area.

3. Within 30 days of the date of this order, Lake County shall submit a more detailed map of its service area showing the following:
 - a. the boundaries of the County,
 - b. Lake County's broadband footprint,
 - c. each affected CenturyLink and Citizens exchange where Lake County seeks ETC designation within the entire exchange, if applicable,
 - d. the boundaries of included census tracts for each affected CenturyLink and Citizens exchange not included as service area on an exchange-wide basis,
 - e. the County's unassigned area included in the proposed service area, and
 - f. the County's unassigned area excluded in the proposed service area, if applicable.
4. The Commission finds that Lake County meets the other ETC requirements, provided that Lake County, as part of a compliance filing, demonstrate compliance with the following:
 - a. Submit a formal advertising plan, listing the specific media and means of advertising the availability of voice telephony and Lifeline, and a proposed schedule and frequency of such advertising, listing the specific media and means of advertising the availability of voice telephony and Lifeline, and a proposed schedule and frequency of such advertising;
 - b. Post voice telephony and Lifeline terms and conditions on its website and the website of any telephony vendor;
 - c. File a certification, signed by a County official, that it will comply with the service requirements applicable to the support that it receives as required by 47 CFR § 54.202 (a)(2);
 - d. Document that it has revised its website to reflect the rates actually charged and update the vendor's website or any related link that relates to its rates;
 - e. File tariffs or other documentation that reflect its service offerings or the service offerings of Lake Communications and demonstrate that the services offered conform to the assurances or representations made in the petition as identified in footnote 84 of the Department's comments;
 - f. Commit to notify the Department and the Commission if it is unable to serve a Lifeline-qualified customer within its service area within 10 days of making the determination;
 - g. Show that it has met all the conditions required for ETC designation, including a contract between Lake County and Lake Communications that demonstrates compliance with the FCC test for ETC designation.
5. The Commission approves Lake County's petition for ETC designation in Minnesota for the limited purpose of qualifying for receipt of federal Connect America Funds as part of the FCC's Rural Broadband Experiments, subject to the conditions set forth above.
6. The Commission grants Lake County's request for certification to the FCC and the Universal Service Administrator that it will use its federal support for the intended purpose pursuant to 47 CFR 54.313 (3)(vi), subject to the conditions placed on the County's ETC designation.

7. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Daniel P. Wolf
Executive Secretary



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