

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: September 24, 2015 *Agenda Item # 3

Company: **Southwest Minnesota Broadband Services**

Docket No. **P6845/M-15-691**

In the matter of a Petition of Southwest Minnesota Broadband Services for Designation as an Eligible Telecommunications Carrier.

Issue: Should the Commission approve Southwest Minnesota Broadband Service's Petition for ETC designation in Minnesota for the limited purpose of providing local services under the federal Lifeline program?

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Relevant Documents

Southwest Minnesota Broadband Services Petition for ETC Designation July 20, 2015

Department Comments August 10, 2015

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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I. STATEMENT OF THE ISSEUES

Should the Commission approve Southwest Minnesota Broadband Service's Petition for ETC designation in Minnesota for the limited purpose of providing local services under the federal Lifeline program?

II. BACKGROUND

On July 20, 2015, Southwest Minnesota Broadband Services (SMBS) filed a petition with the Minnesota Public Utilities Commission (Commission) seeking designation as an Eligible Telecommunications Carrier (ETC) in Minnesota for the limited purpose of providing Lifeline service to qualifying customers within its designated service area.

Southwest Minnesota Broadband Service (SMBS) is a CLEC operating in exchanges in the Windom, Jackson, Lakefield, Okabena, Brewster, Heron Lake and Round Lake areas (see SMBS's petition at Attachment 2, page 1 and Exhibit 1.)

III. GOVERNING LAW

Applicable Law

Pages 1 through 5 of the Department Comments contain a list of applicable laws. The listing includes federal statutory provisions on:

- Qualifications of a company to be designated an ETC (47 USC §§ 214 (e)(1) (2) and (6), 254 (c), 153 (51) and 47 CFR §§54.201(b) and (d), 54.202 and the corresponding FCC rules);
- Delegation of authority to state commissions to designate an ETC (47 USC § 214 (e), 153 (51), and 254 (c), and 47 CFR §54.201);
- Obligations of an ETC (47 USC §§ 201 (d), 214 (e)(1), 54.405 (a) and (b));
- Supported services that must be provided by an ETC (47 USC § 254 (c), 47 CFR § 54.101 (a));
- Additional requirements for ETC designations (47 CFR § 54.202 (a));
- The public interest standard for ETC designation (47 USC §214(e)(2)).

In sum, federal laws direct that an ETC provide the following core requirements:

- Be a common carrier

- Offer the services supported by federal universal service support mechanisms (voice telephony, Lifeline)
- Offer services using its own facilities or a combination of its own facilities and resale of another carrier's services
- Advertise the availability of supported services and the charges thereof using media of general distribution
- Solely can receive universal service support
- Provide service throughout a designated service area
- The state commissions have primary responsibility for ETC designation, upon ETCs meeting ETC criteria and upon finding that ETC designation is in the public interest.

Additional requirements include:

- Demonstration of ways to ensure service can be provided within a reasonable amount of time,
- Submission of a five-year service improvement plan,
- Demonstration of ability to remain functional in emergency situations
- Demonstration of satisfying applicable consumer protection and service quality standards,
- Offering a local usage plan comparable to the one offered by the incumbent LEC
- Certification that the carrier acknowledges that the FCC may require it to provide equal access to long distance carrier if no other ETC provides equal access within the service area.

In addition, 47 CFR § 54.314 requires states to file a certification with the FCC and the universal service administrator a certification that all high-cost support provided to ETCs are used for the purposes of providing, maintaining, and upgrading of facilities for which the support is intended. Subpart 6 of said provision requires the submission of said certification within 60 days of the carrier's designation as an ETC.

At the state level, Minnesota Rules 7812.1400 provide for Commission designation of ILECs and CLECs as ETCs, including requirements to find that the designation is in the public interest and to determine the applicable service area. The Commission may, however, waive the local exchange carrier requirement and is not precluded from designating an applicant other than a CLEC or ILEC as an ETC. Minn. Rule 7829.3200 allows the Commission to waive enforcement of a rule if such would impose an excessive burden upon the applicant or others affected by the rule; granting the variance would not adversely affect the public interest, and would not conflict with standards imposed by law.

Also, after the FCC adopted certain guidelines for ETC designation in 2005, later codified in 47 USC § 54.202 (a), the Commission adopted those additional FCC Requirements for Designating ETCs.¹

IV. PETITION COMPLIANCE

The following section discusses whether SMBS meets ETC requirements of law.

A. Does SMBS meet the common carrier requirement for ETC designation?

As a CLEC, SMBS is a common carrier as defined in 47 U.S.C. §153(11). In its Comments at page 5 the Department observed:

The Commission granted SMBS a certificate of authority to provide facilities based and resold local telecommunications service in Minnesota exchanges of Windom, Jackson, Lakefield, Okabena, Brewster, Heron Lake and Round Lake in Docket No. P6845/NA-10-637, on July 20, 2010. As a competitive local exchange carrier (CLEC), SMBS is a common carrier as defined in 47 U.S.C. §153(11).

Staff agrees with the Department that SMBS meets the common carrier requirement for purposes of ETC designation.

B. Does SMBS offer the supported services required for ETC designation?

SMBS already provides voice telephony enumerated in Minn. Rules Part 7812.0600 and 47 CFR § 54.101 (a). This includes: 1) voice grade access to the public switched network, 2) minutes of use for local service at no additional charge to end users, 3) access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, and 4) toll limitation for qualifying low income consumers. SMBS provides its proposed services, conditions and rates in Attachment 2, pages 2 to 4. The Department notes that SMBS will offer timely, affordable voice telephony using its own facilities throughout its designated service area and highlights service details. (See Department Comments, p. 7) The Department notes:

SMBS commits to “provide broadband and voice telephone over its fiber-optic facilities ...to all customers making a reasonable request for service.” SMBS states “it presently has fiber to the home in [its requested] service area and plans to place fiber to the home going, offering a technically superior network...”

¹ ORDER ADOPTING FCC REQUIREMENTS FOR DESIGNATING ELIGIBLE TELECOMMUNICATIONS CARRIERS, AS MODIFIED dated October 31, 2005, Docket No. P999/M-05-1169.

SMBS certifies that it will: (a) provide service on a timely basis to requesting customers within the Service Area where SMBS's network already passes the potential customer's premises; and b) provide service within a reasonable period of time, if the potential customer is within the Service Area but not passed by SMBS's current network facilities, if service can be provided at reasonable cost by constructing network facilities."

SMBS's residential local monthly rate of \$14.98 compares favorably with those of the incumbent local exchange carriers in whose territories it operates and can be considered affordable.

SMBS will provide Lifeline and TAP services as provided in its Petition Exhibit 2, on pages 2, 9 and 10.

Staff agrees with the Department that, for purposes of this ETC petition, SMBS offers the supported services required.

C. Does the proposed service area conform to federal and state rules?

As presented by SMBS in its petition at Attachment 2, page 1: the service area for which SMBS requests designation as an ETC for the limited purposes of providing local services under the Lifeline program in the following Minnesota Exchanges: Windom and Jackson where CenturyLink QC is the ILEC; Lakefield and Okabena where Frontier Communications of Minnesota is the ILEC; and Brewster, Heron Lake and Round Lake where CenturyTel of Minnesota is the ILEC ... A map of the Proposed Service Area is attached to the petition as Exhibit 1.

The DOC observes at page 6 of its Comments:

In the case of a non-rural carrier, such as Qwest, the Commission may designate a competitive ETC service area smaller than the incumbent's service area if it finds it is in the public interest to do so. No redefinition of the service area is necessary. Designation of a competitive ETC service area smaller than the entire service area of a rural carrier (such as Frontier or CenturyTel) requires redefinition and the concurrence of the FCC.

Frontier's service area was redefined at the exchange level in Docket No. P405/CI-00-79. To the Department's knowledge CenturyTel's service area has not been redefined.

On April 15, 2013, however, the FCC granted blanket forbearance, for Lifeline-only ETCs, of the requirement that a competitive ETC's service area conform to that of the rural telephone company in whose territory the ETC applicant intends to offer service. State commissions may designate Lifeline-only ETCs in rural areas without redefining the service area of the underlying rural incumbent carrier. ... Thus, no redefinition is required.

The Department recommends that the Commission define the SMBS service area as the Petitioner requested (i.e., the exchanges of Windom, Jackson, Lakefield, Okabena, Brewster, Heron Lake, and Round Lake). (Department Comments, p. 7)

Staff agrees with the Department's recommendation that the Commission define the SMBS service area, for purposes of ETC designation, to be that for which SMBS has requested such designation.

D. Does SMBS meet the other conditions to satisfy other ETC requirements?

Service Quality and Consumer Protection

As a CLEC, SMBS is subject to the service quality and consumer protection rules contained in Minn. Rules Part 7810, the requirements of 7812.2210, and the terms of its local exchange tariff with respect to the voice service it provides. SMBS certifies in Attachment 2, page 3 and in Tariff pages attached to its Petition that:

SMBS's tariff has specific provisions outlining the following terms addressing consumer protection issues:

- Deposit and guarantee requirements
- Customer Billing
- Appropriate handling of customer complaints and billing disputes
- Disconnection and notice requirements

The specific provisions in SMBS's tariff, as well as the Commission's service quality rules by which SMBS is bound, will apply throughout the Service Area and assure a high level of service quality and consumer protection.

The Department believes that SMBS's tariff and the Commission rules provide adequate assurance of an acceptable level of service quality and consumer protection. (See DOC Comments, page 8.)

Staff agrees with the Department that SMBS meets the service quality requirements for ETC certification.

Emergency Readiness

47 C.F.R. §54.202 (a)(2) requires that an applicant for ETC status "Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power

source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.” (See Department Comments, p.3)

SMBS states at Attachment 2, page 3, that SMBS’s network will remain functional in emergency situations, notably:

Commercial power outage: The central office serving SMBS’s customers is equipped with generators and battery supply to provide service in the event of a commercial power outage.

Network failure: The interoffice facilities serving the Service Area are on a diverse routed fiber optic ring, which if cut will be automatically rerouted.

SMBS states also that it “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).” (See Petition, Attachment 2, page 2).

The Department did not raise any concerns regarding SMBS’s emergency readiness and concluded in its Comments at page 11 that SMBS had made a credible showing of its capability to provide Lifeline services.

Staff agrees with the Department’s conclusion that SMBS meets the emergency readiness requirements for ETC certification.

SMBS’s Advertising Plan

SMBS notes in its petition in Attachment 2, page 3 that:

SMBS currently advertises its services through several different channels of general distribution, including newspaper, and direct mail. SMBS will advertise the availability of its universal service offering throughout the Service Area through these same advertising channels.

SMBS also states that the offering will be listed continuously on SMBS’s website, and the availability of the offering will be published at least annually in the local newspaper, and will be posted at SMBS’s offices in Lakefield, MN.

The Department recommends:

The Department recommends that the Commission incorporate a condition in its order requiring, as it has for other ETC applicants, that SMBS provide a formal advertising plan, listing the specific media and means through which it intends to advertise the availability of voice telephony and Lifeline and a proposed schedule or anticipated frequency of such advertising within 30 days of the Commission order approving SMBS’s petition. (See Department Comments, p.9)

Consistent with previous recommendations for advertising plans for ETC applicants, the Department also recommends in its Comments at page 10 that SMBS be required to:

- Notify the Commission and the Department , in writing, immediately upon any change to its voice telephone offering terms, conditions, or rates; and
- Notify the Commission and the Department if it is unable to serve a Lifeline qualified customer within its service area within ten days of making the determination.

SMBS has not objected to the Department's recommendations.

Staff supports the Department's recommendation that the Commission condition the grant of ETC status on SMBS providing 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. Staff also supports the Department's recommended notifications concerning changes to its terms, conditions or rates and if SMBS determines it is unable to serve a qualified Lifeline customer.

Five (5) Year Service Improvement Plan

SMBS has requested a waiver of the requirement that it submit a five-year service improvement plan as set forth in 47 CFR § 54.202 (a)(1)(ii);. (See Petition, Attachment 2, p. 5.) In its October 11, 2005 Order in Docket No. P999/M-05-1169 the Commission adopted by reference these FCC rules.

The Department asserts that the Petitioner's waiver request is not applicable under present FCC guidance, or that in the alternative, that the waiver should be granted since the 5-year service improvement report was established for purposes not applicable. The Department Comments at page 8 state:

In the CAF-ICC Order, the FCC eliminated the identical support rule that provided for competitive ETCs to receive per line high cost support to the extent that the incumbent in whose area the competitive ETC serves receives high cost support. SMBS thus will not be eligible for the receipt of legacy high cost funding.

47 CFR §54.202 (a)(1)(ii) specifically exempts applicants who seek ETC designation only for the purpose of providing Lifeline service from the five-year service improvement plan requirement, stating that a common carrier seeking designation as an eligible telecommunications carrier in order to provide supported services only under subpart E of this part does not need to submit such a five-year plan.

Staff agrees with the Department's recommendation in this proceeding that the 5-year plan provision was not applicable and that no waiver is needed.

E. Is granting the ETC designation in the public interest?

In its petition, SMBS asserts its designation as an ETC is in the public interest because consumers will have increased choice in service providers, will receive quality service that is affordable and will be of superior quality to that presently available. (See Petition, Attachment 2, p. 4.)

The Department also notes in its Comments at page 10:

The Commission has found, in its consideration of past ETC applications, that, in general, the designation of qualified competitive ETCs is in the public interest and comports with Minnesota's telecommunications goals of supporting universal service, maintaining just and reasonable rates, promoting customer choice, encouraging fair and reasonable competition telephone service in a competitively neutral manner, and maintaining or improving quality of service.

Staff agrees with the Department that, with recommended conditions, granting SMBS designation as an ETC would be in the public interest, noting that the Commission has generally found that it is in the public interest to designate additional ETCs. In addition, the Commission considers the unique advantages and disadvantages of the applicant's service offering. In this case, SMBS has also shown the benefits of bringing in funds to improve broadband availability and speed.

V. COMMISSION OPTIONS AND STAFF RECOMMENDATIONS

A. Should the Commission find that SMBS meets the common carrier requirement for ETC designation?

1. Yes.
2. No.
3. Other action determined by the Commission.

Staff Recommendation: Staff recommends Option 1.

B. Should the Commission find that SMBS offers the supported services required for ETC designation?

1. Yes.
2. No.
3. Other action determined by the Commission

Staff Recommendation: Staff recommends Option 1.

C. Does the proposed service area conform to federal and state rules?

1. Yes.
2. No.
3. Other action determined by the Commission.

Staff Recommendation: Staff recommends Option 1.

D. Does SMBS petition as filed meet the other conditions to satisfy other ETC requirements?

1. Yes.
2. No. SMBS has made a credible, but incomplete, showing of its capability and intent to provide and advertise an affordable, quality Lifeline offering, throughout its proposed service area, and that its designation for the provision of Lifeline service is in the public interest subject to conditions.

Condition ETC designation upon the following:

- a) Within 30 days of the Commission's Order conditionally approving SMBS's petition, SMBS must submit a formal advertising and outreach plan listing the specific local and community newspapers and commercial broadcast stations in Minnesota through which it intends to advertise the availability of voice telephony, including Lifeline service, and a proposed schedule or anticipated frequency of such advertising;
 - b) Require SMBS to notify the Commission and the Department, in writing, immediately upon any change to its voice telephony offering terms, conditions, or rates; and
 - c) Require SMBS to notify the Department and the Commission if it is unable to serve a Lifeline qualified customer within its service area within ten days of making the determination.
3. Other action determined by the Commission

Staff Recommendation: Staff recommends Option 2.

E. Is granting the ETC designation in the public interest?

1. Yes, subject to any conditions established by the Commission.
2. No.
3. Other action determined by the Commission.

Staff Recommendation: Staff recommends Option 1.