

Staff Briefing Papers

Meeting Date	May 13, 2021	Agenda Item 1**
Company	Starlink Services LLC (Starlink Services)	
Docket No.	P-999/CI-21-86 P-7047/M-21-26 In the Matter of a Notice to Rural Digital Opportunity Fund (RDOF) Grant Winners and In the Matter of the Application of Starlink Services, LLC for Designation as an Eligible Telecommunications Carrier For Purposes of Receiving Rural Digital Opportunities Fund Support	
Issues	Should the Commission approve Starlink Services' Request for ETC status for high cost support in the Census Blocks listed in the docket?	
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Relevant Documents

Date

Starlink Services Initial Filing-Application for Designation as an ETC for Purposes of Receiving Rural Digital Opportunity Fund Report	January 4, 2021
Starlink Services Amendment to Starlink Services, LLC Application for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Rural Digital Opportunity Fund Report	January 12, 2021
Comments of the Minnesota Department of Commerce	March 26, 2021
Comments of the Office of the Attorney General Residential Utilities Division	March 26, 2021

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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.

 **Relevant Documents**

Date

Reply Comments of Starlink Services

April 5, 2021

Reply Comments of the Office of the Attorney General Residential
Utilities Division

April 12, 2021

Reply Comments of the Minnesota Department of Commerce

April 14, 2021

Comments-Starlink Services

April 20, 2021

Should the Commission approve Starlink Services' Request for ETC status for high cost support in the Census Blocks listed in the docket?

- I. ~~Statement of the record~~ **Note to the reader:** In all five proceedings (Starlink 21-26, LTD Broadband 21-133, Savage Communications 21-53, Nextlink 21-31, and Cable One 21-161), the Background sections are virtually identical between briefing documents. The summary of the Department of Commerce (Department or DOC) and Office of the Attorney General-Residential Utilities Division (OAG) comments are the same in all the dockets. The notable differences in these briefing papers is a summary of Starlink's position regarding the Department and OAG's proposed obligations and regulations and the summary of the OAG's reply.

II. Background **A. FCC Broadband Auction 904 Rural Digital Opportunity Fund I (RDOF I)**

On December 7, 2020, the FCC released a Public Notice announcing the conclusion of Auction 904 of the Rural Digital Opportunity Fund I (RDOF I). Areas that will receive support through this auction are locations in census blocks that do not have access to broadband at speeds of at least 25 Mbps download speed and 3 Mbps upload speed ("25/3"). RDOF I will fund homes and businesses in census blocks that the FCC determines are entirely unserved by fixed voice and broadband at speeds of at least 25/3 Mbps.

Carriers awarded support in this auction must deploy broadband and voice service to the specified number of locations in eligible census blocks groups in which they bid within a six-year period at the speed tier specified in their bid. RDOF I funding will be disbursed over a ten-year period. RDOF funding will be disbursed in equal monthly installments over this period based upon the amount of their winning bid.

B. Minnesota

In Minnesota, 24 companies, either singly, or in consortium with other providers, were winning bidders of a total of \$408,150,745.60, to be distributed over ten years. These funds are in support of 142,852 locations that were previously unserved at 25/3 Mbps or greater. Most of the winning bidders committed to providing one gigabit per second service.

The FCC named a total of 24 companies as RDOF I winners for Minnesota locations.¹ Starlink Services, LLC (Starlink) is a wholly owned subsidiary of Space Exploration Technologies Corp. (SpaceX). Starlink is not yet an operational company. SpaceX intends for Starlink to become a

¹ Aspire Networks, Docket No. 21-32 withdrew its petition to be designated as an ETC on March 17, 2021. Consolidated Communications, Inc. did not file a petition because all the census block in which they were successful bidder are already within their ETC area. Fond du Lac did not file an application with the Commission because it is a Tribal provider and may apply directly to the FCC for its ETC status.

provider of broadband and voice services using its RDOF award. The Company holds no certificate from the Commission. Starlink Services' first filing with the Commission is the current ETC designation petition.

Starlink Services will receive \$8,424,807.60 in assigned support for 10 years in 1,379 Census blocks for 7,529 assigned locations in Minnesota. The census blocks are located in the Brainerd area, the North Shore area, northern Minnesota, the area southwest of Bemidji and Nobles County.

The Commission took up ETC designation for 16 companies who are Minnesota-certificated carrier's and RDOF I winners at its May 6 Agenda Meeting. Starlink Services operates as a provider of Internet and VoIP services. The Company holds no certificate from the Commission. Because this is the first filing before the Commission for Starlink Services, staff offers these briefing papers separately.

C. Federal Criteria for ETC Designation

To qualify for ETC designation under federal law, a carrier must meet the following requirements:²

- (A) Offer telecommunications services, which includes:
 - a. voice grade access to the publicly switched network or its functional equivalent;
 - b. minutes of use for local service at no additional charge;
 - c. toll limitation to qualifying low-income consumers; and
 - d. access to 911 and enhanced 911 emergency services to the extent the local government has implemented these systems in an eligible carrier's service area. Either using its own facilities or a combination of its own facilities and resale of another carrier's services (§54.101 (a)); and
- (B) Advertise the availability of such services and the charges therefor using media of general distribution (§54.201 (d)(2));
- (C) Certify that it will comply with the service requirements applicable to the support it receives (§54.202 (1)(i));
- (D) Submit a five-year improvement plan (§54.202 (1)(ii)).
- (E) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of backup power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes (§54.202 (2));
- (F) Demonstrate that it will satisfy applicable consumer protection and service quality standards (§54.202 (3)).³

² 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201, 202. The FCC has waived requirements D and F for the CAF II and RDOF funding.

³ For recipients of Connect America Fund ("CAF") Phase II support, the FCC waived the requirement that winning bidders seeking an FCC ETC designation file a five-year improvement plan and demonstrate that it will satisfy applicable consumer protection and service quality standards. See Connect America Fund,

D. Recent Commission ETC Decisions

Please see Discussion of Recent Commission ETC Decisions in the May 6, 2021 briefing papers for the general docket 21-86.

Starlink⁴

III. Parties' Comments

Starlink responded to the Commission staff April 5, 2021 questionnaire indicating it will comply with the applicable federal regulations associated with ETC status. Starlink will provide standalone voice telephone service through a third party, which it has not yet designated. Starlink indicated it will provide the telephone service in accordance with the RDOF milestones. For additional detail, please see the summary spreadsheet provided as part of the Commission's briefing documents.

With respect to Starlink's response to the Department and the OAG, Starlink pointed out that the DOC recommends that the Commission grant Starlink's ETC application. However, both the DOC and the OAG urge in their comments that the Commission impose conditions on the approval of the ETC petitions filed by the providers that won funding in the FCC's RDOF program. Starlink characterizes these recommendations as burdensome, unnecessary legacy state telecommunications regulations. As a provider of high-speed satellite broadband internet access and voice over Internet Protocol ("VoIP") services – both of which are legally classified as information services – Starlink argues the Commission lacks jurisdiction to impose such regulations. As such, Starlink requests that its ETC petition be approved without the additional state law regulatory conditions proposed by DOC and OAG.⁵

A. Public Interest

To secure RDOF funding, Starlink asserts that SpaceX went through an exhaustive review process, demonstrating to the FCC that it possessed the necessary qualifications and ability to provide service. As SpaceX's assignee, Starlink is required to commercially offer voice and

et al., WC Docket No. 1090 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (CAF Phase II Auction Order) at ¶¶ 157-68. Similarly, for purposes of the RDOF, the FCC incorporated by reference the analysis of forbearance factors that it considered and found warranted in CAF Phase II. See RDOF Auction Order at ¶ 95 & n. 271 and internal citations. See also Auction 904 Procedures Order at ¶ 136 & n. 308.

⁴ The FCC authorized Starlink to receive \$885 million in RDOF funding to help support deployment of service in 35 states, including \$8,424,807 to provide service to specified Minnesota census tracts. Starlink will use these funds to provide satellite broadband and VOIP service to areas in Minnesota that are presently unserved or underserved with respect to their access to broadband service.

⁵ Starlink's reply comments at p. 1

broadband service consistent with certain milestones and speed and latency requirements. To that end, Starlink must offer service to 40% of the awarded locations by the end of the third full calendar year following funding authorization, and 20% each year thereafter, resulting in 100% deployment to funded locations by the end of the sixth calendar year.⁶

The federal funding available under the RDOF program offers Minnesota a unique opportunity to take a significant step toward bridging the rural-urban digital divide in the availability of high speed internet access that is so critical to the continued economic vitality of rural Minnesota.⁷ The public interest strongly favors granting Starlink's ETC petition.

B. Providers of Broadband and VoIP Services are not Subject to State Law Regulatory Requirements that Apply to Telecommunications Providers

Starlink indicated that the FCC, in a series of proceedings beginning in the 1960's, has held that economic regulation of information services would disserve the public interest because these services lacked the monopoly characteristics that led to such regulation of common carrier services historically. The FCC has found the "market for these services to be competitive and best able to burgeon and flourish in an environment of free give-and-take of the marketplace without the need for and possible burden of rules, regulations and licensing requirements." The Eighth Circuit has long held that "any state regulation of an information service conflicts with the federal policy of nonregulation" and recently reiterated that "telecommunications services are subject to state regulation, while information services are not."⁸

Starlink asserts that it is undisputed that the services to be offered by Starlink ,VoIP and broadband internet access service, are information services. The FCC first classified broadband internet access service as an information service in the 2002 Cable Modem Order.⁹ The Supreme Court upheld this classification in *Brand X*, noting that "the service that Internet access providers offer the public is Internet access, not a transparent ability (from the end user's perspective) to transmit information" that would qualify as a telecommunications service.¹⁰ The FCC most recently addressed the regulatory classification of broadband internet

⁶ The FCC authorized Starlink to receive \$885 million in RDOF funding to help support deployment of service in 35 states, including \$8,424,807 to provide service to specified Minnesota census tracts. Starlink will use these funds to provide satellite broadband and VOIP service to areas in Minnesota that are presently unserved or underserved with respect to their access to broadband service.

⁷ See "A Look at Minnesota's Digital Divide During a Pandemic," Minneapolis Star Tribune, April 15, 2020, available at <https://www.startribune.com/covid-19-isolation-hitsharder-for-300-000-minnesotans-who-don-t-have-internet/568966911/> p. 3 of Starlink's reply comments.

⁸ *Minn. Pub. Utils. Comm'n v. F.C.C.*, 483 F.3d 570, 580 (8th Cir. 2007); *Charter Advanced Servs. (MN), LLC v. Lange*, 903 F.3d 715, 985 (8th Cir. 2018). P.3 of Starlink's reply comments.

⁹ See *Inquiry Concerning High-Speed Access to the Internet Over Cable & Other Facilities*, GN Docket No. 00-185, CS Docket No. 02-52, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798, 4802, para. 7 (2002). P.4 of Starlink's reply comments.

¹⁰ See *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 1000 (2005). p. 4 of

access service in the 2018 Restoring Internet Freedom Order, re-classifying broadband internet access service as an information service because “this light-touch information service framework will promote investment and innovation better than applying costly and restrictive laws of a bygone era to broadband Internet access service.”¹¹

Starlink states that VoIP is also considered an information service that may not be regulated by state commissions and recounted the Charter litigation.

Starlink notes that in subsequent dockets, the Commission has given effect to the jurisdictional distinction recognized in the Charter litigation. For example, in *In the Matter of LTD Broadband LLC’s Petition for Eligible Telecommunications Carrier Designation in Minnesota (“LTD Broadband ETC Petition”)*, MPUC Docket No. P-6995/M-18-653, LTD Broadband sought ETC designation in order to receive funding available under Connect America Fund Phase II. LTD planned to satisfy the requirement that it offer voice services to be an ETC by supplying VoIP to its customers. The DOC argued that the granting of ETC status should be conditioned on LTD’s commitment to provide state-regulated telecommunications service within three years. LTD Broadband ETC Petition, Order Approving Request for ETC Status for High Cost Support in Certain Census Blocks (Feb. 8, 2019). The Commission rejected the Department’s position, concluding that ETC status did not require a carrier to offer a telecommunication service.

The Department sought reconsideration, arguing that LTD Broadband should be required, in connection with its ETC designation, to commit to complying with regulatory requirements applicable to a certificated telecommunications carrier. LTD Broadband ETC Petition, Staff Briefing Papers at 2. The Commission staff recommended that the Commission reject the argument that state telecommunications regulation was necessary to protect the public, finding that the public interest was amply protected by the FCC’s authority relating to the CAF2 funding.¹²

The Commission denied DOC’s reconsideration request, finding that the request did not raise new issues, point to new and relevant evidence, expose errors or ambiguities in the Commission’s order or otherwise persuade the Commission that it should rethink the order. LTD Broadband ETC Petition, Order Denying Reconsideration (March 22, 2019).

Starlink states that the Commission and the staff got it right in the LTD Broadband docket, and the same analysis applies with equal force here. That analysis should lead the Commission to reject the DOC’s similar request here to condition Starlink’s ETC status on its compliance with state telecommunications regulations. As was true in the LTD Broadband docket, the FCC’s regulatory authority is sufficient to protect the public.

Starlink’s reply comments.

¹¹ In the Matter of Restoring Internet Freedom, WC Docket No. 17-08, Declaratory Ruling, 33 FCC Rcd. 311, 212 (2018). P. 4 of Starlink’s reply comments.

¹² Please see Starlink’s reply comments at p. 6

C. Starlink Will Be Subject to Substantial Public Interest Obligations Under Federal and State Law

Starlink claims that while the legacy state telephone regulations the DOC and OAG seek to impose on the RDOF grantees do not, and should not, apply to Starlink as an information services provider, Starlink will be subject to the general state consumer protection laws that apply to all business operating in Minnesota. Moreover, Starlink will be subject to numerous public interest obligations imposed by federal regulations.¹³

The OAG acknowledges in its comments the exhaustive, multi-step process that RDOF grantees like Starlink have gone through during the auction.¹⁴ Both the DOC and OAG describe the extensive public interest requirements that will apply to those providers as part of their receipt of RDOF funding.¹⁵ These include requirements to provide broadband services that meet specific speed and latency requirements; to provide voice, toll limitation, backup power and 911 services; to price services offered in rural areas at the same rates as services offered in urban areas; to comply with the Lifeline, Tribal Linkup and E-rate programs; to conduct tribal engagement; and to advertise the availability of services in media of general distribution.

Starlink states it will comply fully with all applicable state and federal regulations, but the Commission need not and should not add an additional layer of regulation that, as a matter of law, does not apply to it.

Starlink responded to the Commission staff April 5, 2021 questionnaire by stating: Starlink answered the staff questionnaire in a manner indicating it will comply with the applicable federal regulations associated with ETC status. Starlink will provide standalone voice telephone service through a third party, which it has not yet designated. Starlink indicated it will provide the telephone service in accordance with the RDOF milestones. For additional detail, please see the summary spreadsheet provided as part of the Commission's briefing documents.

Department

Staff Note: The Department and OAG comments and recommendations in this docket mirror comments in the dockets heard before the Commission on May 6, 2021. The OAG offers a significant reply to Starlink in this docket.

Overall, the Department states that the Commission may choose to approve all ETC applications or may deny some or all the applications.

¹³ See Rural Digital Opportunity Fund Order, paras 31- 66. Starlink's comments at p. 7

¹⁴ See Comments of the Office of the Attorney General, Docket Nos. P-999/CI-21-86 et al., Mar. 26, 2021, at 3-5.

¹⁵ See id. at 13-19; DOC Comments at 3-5.

1) Consumer Protections. The Department asserts that the Commission has clear authority to adopt state-specific requirements applicable to ETCs. Many of the ETC petitioners have agreed to comply with the consumer protections afforded by the Commission's rules and the Department supports the Commission accepting the representations by these companies that they will comply with Commission rules. For those ETC petitioners that have not broadly agreed to comply with the Commission rules, the Department recommends that the Commission adopt 19 consumer protections from statutes and Commission rules that are applicable to certificated carriers in Minnesota.¹⁶ These 19 items are listed in Attachment 1 of the Department's March 26, 2021 comments (Addendum A of this document). The Department urges opening a new proceeding to determine if any of the protections listed therein should be changed or if any protections should be added.

Specifically, the Department recommends that the Commission state in its order:

- The Commission accepts the representations by those companies that stated in their petitions that they will comply with Commission rules.
- For those ETC petitioners that have not broadly agreed to comply with the Commission rules, the Commission adopts the consumer protections listed in Attachment 1 of the Department's March 26, 2021 comments.
- The Commission directs its Executive Secretary to open a new proceeding investigation to determine if any of the protections listed in Attachment 1 of the Department's March 26, 2021 comments should be changed or if any protections should be added.

2) Stand-alone Voice. The Department notes that all ETCs are required to provide qualifying voice service, including stand-alone voice service, within a reasonable period upon request. The FCC has explicitly stated that over-the-top VoIP is not acceptable to satisfy the voice obligation.

The Department recommends that the Commission state in its order:

- Over-the-top VoIP does not satisfy the FCC requirement to provide voice service.
- All ETCs are required to provide 'stand-alone' voice service to consumers upon request, within a reasonable period. To the extent that an ETC has a certificate of authority to operate in Minnesota, it may satisfy this requirement by reselling the telecommunications service of another provider. If the ETC does not have a certificate of authority to operate in Minnesota, it will need to bring voice service to the customer that is not "over-the-top" VoIP.

¹⁶ The record of this proceeding is unclear regarding which carriers and to what extent each carrier has agreed to the Department of Commerce's proposed consumer protections.

3) Tribal Engagement. The Department recommends that the Commission state in its order:

- ETCs that serve Tribal lands are required to engage the tribes on those areas specified in 47 C.F.R. §54.313, at minimum.
- ETCs needing assistance with Tribal engagement should contact the Tribal Liaisons at the Commission and the Department for help.

4) Lifeline. The Department recommends that the Commission state in its order:

- ETC are to have information about Lifeline on their website no later than the first offering of any ETC service to a consumer.
- ETCs recipients are encouraged to participate in Commission proceedings concerning Lifeline, including the current proceedings, dockets P999/CI-17-509 and P999/CI-20-747.

5) Service Area Expansion. The Department recommends that the Commission state in its order:

- ETCs that will be providing service subject to state jurisdiction, where they are not currently authorized to serve, must submit a petition for either new authority or a service area expansion, unless it is otherwise granted by the Commission in this Order.
- ETCs that will resell service subject to state jurisdiction of another provider to satisfy the requirement to provide stand-alone voice service must have authority from the Commission prior to providing the service.¹⁷

The Department indicated that in the Commission's 2019 proceedings (18-634 et al.) for Connect America Fund (CAF) II ETC designations two of the CAF II Auction 903 petitioners, Broadband Corporation and LTD Broadband, did not seek a certificate of authority as a CLEC in conjunction with their petitions for ETC designation in Minnesota. At the time, the Commission did not establish ETC specific regulations for the protection of consumers beyond what is mandated by the FCC. However, the Department believes that the choice of the Commission not to impose additional regulations at the time the companies petitioned for ETC status does not bar the Commission from doing so subsequently.¹⁸

Department Reply Comments

¹⁷ Please see Minnesota Department of Commerce March 26, 2021 comments at pp. 22-23.

¹⁸ Please see Department comments at p. 8.

The Department argues the Commission has authority over ETC applicants, including Starlink, even if they do not require a certificate of authority from the Commission.

The Department believes that ETC applicants such as Starlink and LTD¹⁹ that do not require a certificate of authority from the Commission, as their voice service is purportedly VoIP provided in a manner similar to Charter, are generally not bound by the Minnesota Rules and Statutes. Some of these companies argue that the Commission cannot impose consumer protections due to the lack of State Authority. The Department claims this is incorrect, however, since the Commission's authority in this matter is established by Congress and is related to receipt of federal funds and therefore is not restricted to telecommunications services. If such a limitation existed, the Commission could not make a determination on any of the ETC petitions before it, since the RDOF funds are for the deployment of broadband, which is an information service, not a telecommunications service. The Commission clearly has the authority to advance universal service for both broadband and voice service in the context of its Congressionally delegated authority and can impose consumer protections to do so.²⁰

The Department recommends approval of the Starlink Services' petition for designation as an ETC in the locations designated for receipt of its RDOF award subject to the conditions established by the Commission for all petitioners in the various proceedings.

Staff Note: It is clear from the record that the OAG has embraced the Department's list of proposed regulations by including them as a subset of the OAG's set of proposed obligations. However, based on the record, Staff can only infer that the Department has embraced the OAG proposed set of obligations. Both recommend approval subject to the proposed obligations and regulations.

Office of the Attorney General

The OAG's March 26, 2021 comments review the full set of FCC laws and regulations associated with Universal Service support and describe the federal-state partnership. The OAG advocates for the Commission to impose additional regulations on RDOF ETCs. The OAG argues that to ensure the RDOF I support received by Minnesota ETCs is used for its intended purpose and the supported services are offered in a way that protects Minnesota consumers, the Commission should adopt the following obligations for RDOF I ETCs:

- Acknowledge and agree to comply with the FCC-mandated general ETC obligations discussed in section V, subsection A p. 14 of the OAG's March 26, 2021 Comments;
- Acknowledge and agree to comply with the FCC-mandated RDOF Phase I-specific ETC obligations discussed in section V, subsection B pp. 14-16 of the OAG's March 26, 2021 Comments;

¹⁹ Also: Sparklight, Next Link, and Savage Communications.

²⁰ Department reply comments at p. 3.

- Acknowledge and agree to comply with the FCC-mandated High Cost Program-specific ETC obligations discussed in section V, subsection C pp. 16-17 of the OAG's March 26, 2021 Comments;
- Acknowledge and agree to comply with the FCC-mandated Lifeline Program-specific ETC obligations for High Cost Program ETCs discussed in section V, subsection D pp.17-19 of the OAG's March 26, 2021 Comments;
- Acknowledge and agree to comply with the Commission obligations for High Cost Program ETCs discussed in section VI pp. 19-20 of the OAG's March 26, 2021 Comments; and
- Agree to comply with the following OAG-proposed ETC obligations (pp. 20-22 of OAG's March 26, 2021 Comments):
 - Develop a consumer service inquiry process under which an ETC would annually explain how they determine whether they offer RDOF support in a particular consumer's area;
 - Comply with the consumer-protection obligations identified by the Department;
 - Provide network (broadband) buildout updates for the first two years of RDOF Phase I support; and
 - Monitor open Commission ETC-related proceedings for additional obligations that may arise after the receipt of an RDOF Phase I ETC designation.

Staff notes the OAG comments do not appear to distinguish enforcement of obligations regarding broadband from those associated with voice telephony. The OAG asks the Commission to enforce the federal regulations associated with receipt of RDOF funding, for both voice and broadband. The OAG asserts that the Commission has a duty to ensure that the RDOF Phase I support received by Minnesota ETCs is used to provide reliable, high-quality voice and broadband services throughout the State. The OAG believes that an ETC must account for how it operates pursuant to its ETC designation and how it spends its RDOF Phase I support. A company that seeks an ETC designation in Minnesota must comply with the RDOF I ETC obligations the Commission adopts to advance federal Universal Service and protect consumers. Additionally, the OAG argues that receipt of RDOF I support is a matter of privilege, not right, and the Commission should decline ETC designation for any company that does not wish to be bound by the Commission's ETC requirements.

Office of the Attorney General Reply Comments

The OAG indicated that a framework exists for the Commission to evaluate the ETC designation and expansion requests of broadband Internet access and interconnected VoIP providers, but that framework does not include the Minnesota Administrative Rules for telecommunications carriers. The proper framework includes federal Universal Service statutes, rules, orders, and RDOF Phase I auction materials. The framework also includes ETC criteria that the Commission has adopted in its prior orders, and recommended ETC criteria from the current proceeding.²¹

²¹ Please see section I.A of the OAG's reply comments at pp.5-11 for further discussion of the Commission's framework for evaluating ETC designations.

The OAG asserts that the caselaw cited by Starlink is inapplicable. The OAG believes the Commission has the authority to impose conditions on all ETCs, including those that provide broadband Internet access and interconnected VoIP services. The OAG claims the FCC could not have been clearer about the Commission's jurisdiction and no party presented evidence in this proceeding to disprove the Commission's authority.²²

The OAG claims that if an ETC is unwilling to abide by the FCC-established federal-state partnership and accept the Commission's authority to monitor and enforce federal Universal Service ETC conduct, there can be no confidence that the ETC is advancing the federal Universal Service goals or using the RDOF Phase I support for its intended purpose. Although there are a few remedies available to the Commission for ETC non-compliance, if there is a sufficient evidentiary basis, the Commission must be prepared to deny and/or revoke ETC designations for companies that will not recognize its authority or that refuse to comply with its ETC requirements. This is true for all ETCs, not just broadband Internet access and interconnected VoIP ETCs.²³

IV. Staff Analysis

Generally, the Commission's role is to designate the ETC and to annually certify that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The FCC has the ongoing authority for virtually all other aspects of regulatory oversight of its high cost programs.

A. Staff Recommendations

As previously stated, the Commission determined in its February 8, 2019 Orders²⁴ that the non-certificated LTD Broadband and Broadband Corp. provided voice telephony consistent with 47 C.F.R. §54.101 (a). The Commission determined these carriers were offering VoIP service consistent with the FCC's 2011 Transformation Order which made clear that additional platforms by which to provide voice telephony service are entitled to universal service support. The key result from these Orders is the Commission approved these carriers' requests based on the federal ETC designation requirements. The record in this proceeding does not support any other result.

²² Please see section I.B of the OAG's reply comments at pp.11-16 for further discussion of the Commission's jurisdiction over broadband Internet access and interconnected VoIP provider ETCs.

²³ Please see section I.C of the OAG's reply comments at pp.16-17 for further discussion of the Commission's ETC revocation authority.

²⁴ Please see Commission's February 8, 2019 Orders in dockets 18-634, 18-653, and 18-665.

The record of this proceeding is void of any showing of deficiencies on the part of existing or future ETCs. As such, the imposition of additional obligations to meet portions of §237, Commission rules, and FCC rules is neither necessary nor appropriate.

Likewise, it is unclear what would be gained by the OAG-proposed additional obligations to develop a consumer inquiry process, provide early network buildout updates and the DOC's consumer protection proposal. The OAG's proposals appear to be at odds with the Commission's limited jurisdiction to certify ETC carriers that meet federal requirements. Much of what the OAG is proposing may encroach into the FCC's exclusive role in administering the FCC's high cost programs. Additionally, the current state of the record has not vetted the OAG's proposals to the extent necessary to identify any unintended consequences.

B. Commission Precedent

Please see Staff discussion of Commission Precedent and prior FCC order in the May 6, 2021 briefing papers for the general docket 21-86.

C. Carriers Required to Provide 911 Service by Statute

As noted above, the FCC rules for ETCs require 911 service consistent with local law. Minn. Stat. § 403.025 requires that every owner and operator of a wire-line or wireless circuit switched or packet-based telecommunications system to offer 911. Section 403.025 of Minnesota Statutes states the following:

403.025 911 EMERGENCY TELECOMMUNICATIONS SYSTEM REQUIRED.

Every owner and operator of a wire-line or wireless circuit switched or packet-based telecommunications system connected to the public switched telephone network shall design and maintain the system to dial the 911 number without charge to the caller.

Further those carriers offering wireless or wire-line switched or packet-based telecommunications service provider are authorized to collect fees for the provision of 911 service from customers. Minn. Stat § 403.11 Subd, 1 provides the following.

403.11 911 SYSTEM COST ACCOUNTING REQUIREMENTS; FEE.

Subdivision 1. Emergency telecommunications service fee; account.

(a) Each customer of a wireless or wire-line switched or packet-based telecommunications service provider connected to the public switched telephone network that furnishes service capable of originating a 911 emergency telephone call is assessed a fee based upon the number of wired or wireless telephone lines, or their equivalent, to cover the costs of ongoing maintenance and related improvements for trunking and central office switching equipment for 911

emergency telecommunications service, to offset administrative and staffing costs of the commissioner related to managing the 911 emergency telecommunications service program, to make distributions provided for in section [403.113](#), and to offset the costs, including administrative and staffing costs, incurred by the State Patrol Division of the Department of Public Safety in handling 911 emergency calls made from wireless phones.

Finally, while wireless service providers service is not regulated by the Commission, the Commission has authority for their designation as an ETC, and Section 403.11 has the following 911 requirement as part of the ETC designation process:

Subdivision 3d Eligible telecommunications carrier; requirement.

No wireless communications provider may provide telecommunications services under a designation of eligible telecommunications carrier, as provided under Minnesota Rules, part [7811.1400](#), until and unless the commissioner of public safety certifies to the chair of the public utilities commission that the wireless telecommunications provider is not in arrears in amounts owed to the 911 emergency telecommunications service account in the special revenue fund.

There is no disagreement in this record that Starlink Services is subject to the state's 911 requirements and no one has filed comments in this docket suggesting that any part of Starlink Services' petition should be held up for any 911 compliance reasons. Just as with other carriers that are ETCs but do not need a certificate of authority with the Commission, Starlink Services can work directly with the Department of Public Safety, and if and when necessary either Starlink Services or Public Safety can communicate with the Commission on 911 issues.

D. Administrative Follow Ups

Staff also believes that given the importance of ensuring all administrative details are tied up, the Commission should delegate authority to the Executive Secretary to issue notices or letters as necessary to communicate with the FCC or other entities regarding Broadband's ETC status. Carriers are required to submit additional information to the FCC by June 7, 2021 in order to secure their funding, including proof of ETC status with the relevant state commission. While the Commission's Order in this docket will likely fulfill that requirement, staff believes out of an abundance of caution it would be helpful to take the additional step of authorizing the Executive Secretary to make any other written communications that may be necessary.

v. Decision Options

Should the Commission approve Starlink Services' Request for ETC status for high cost support in the Census Blocks listed in the docket?

Staff Note: Option number 1 and 2 a. are similar. Option number 2 (a-f) represents the recommendations of the OAG. Option 2. f. ii includes the Department's proposed regulations

and is the same as option 3 (a-e). Option number 3 (a-e) represents the recommendations of the Department.

1. Find the requirements for ETC designation have been met, approve Starlink Services' petition for ETC designation in the census blocks listed in its petition.
2. Approve the Starlink Services's petition subject to the following obligations for RDOF I ETCs as recommended by the OAG:
 - a. Acknowledge and agree to comply with the FCC-mandated general ETC obligations discussed in section V, subsection A p. 14 of the OAG's March 26, 2021 Comments;
 - b. Acknowledge and agree to comply with the FCC-mandated RDOF Phase I-specific ETC obligations discussed in section V, subsection B pp. 14-16 of the OAG's March 26, 2021 Comments;
 - c. Acknowledge and agree to comply with the FCC-mandated High Cost Program-specific ETC obligations discussed in section V, subsection C pp. 16-17 of the OAG's March 26, 2021 Comments;
 - d. Acknowledge and agree to comply with the FCC-mandated Lifeline Program-specific ETC obligations for High Cost Program ETCs discussed in section V, subsection D pp.17-19 of the OAG's March 26, 2021 Comments;
 - e. Acknowledge and agree to comply with the Commission obligations for High Cost Program ETCs discussed in section VI pp. 19-20 of the OAG's March 26, 2021 Comments; and
 - f. Agree to comply with the following OAG-proposed ETC obligations (pp. 20-22 of OAG's March 26, 2021 Comments):
 - i. Develop a consumer service inquiry process;
 - ii. Comply with the consumer-protection obligations identified by the Department;
 - iii. Provide network buildout updates for the first two years of RDOF Phase I support; and
 - iv. Monitor open Commission ETC-related proceedings for additional obligations that may arise after the receipt of an RDOF Phase I ETC designation.
3. Approve the Starlink Services's petition subject to the requirements recommended by the Minnesota Department of Commerce which include:

- a. Consumer Protections as listed in Attachment 1 of the Department's March 26, 2021 Comments.
 - b. Stand-alone Voice as described on page 23 of the Department's March 26, 2021 Comments.
 - c. Tribal Engagement as described on page 23 of the Department's March 26, 2021 Comments.
 - d. Lifeline as described on page 23 of the Department's March 26, 2021 Comments.
 - e. Service Area Expansion as described on page 23 of the Department's March 26, 2021 Comments.
4. Deny the Company's petition.
 5. Delegate authority to the Executive Secretary to issue notices and/or letters to the Federal Communications Commission, or any other entity, if necessary, to facilitate communication of the petitioners' ETC status as designated by this Commission. **(Staff Recommended)**

ADDENDUM A – Department’s Attachment 1 – Additional Consumer Protections

ATTACHMENT 1

POTENTIAL CONSUMER PROTECTION REGULATIONS

- 1) Informational Tariff or Price list.** Keep on file with the Department of Commerce an up to date price list of services that are related to the company’s service offerings as an ETC. [ref. Minn. Stat. 237.07] [ref. Minn. Stat. 237.07]
- 2) Commission and Department Investigation.** Cooperate with Commission/Department investigations and resultant Commission orders on matters associate with either federal or State ETC obligations. [ref. Minn. Stat. 237.081]
- 3) Complete all calls.** Ensure that all intrastate calls will be completed. [ref Minn. Stat. 237.131]
- 4) Provide credit for incorrect Directory Assistance calls.** Provide credit if a customer informs company of incorrect call. [ref. Minn. Stat. 237.155]
- 5) Pending sale or change of control.** Inform the Commission regarding any pending sale or change in control of the company’s operations, in conjunction with apprising the FCC [Minn. Stat. 237.231]
- 6) Annual notice.** Send out, one time per year, plus immediately after becoming a customer, a notice in plain language concerning customer rights and obligations, including: a. How to make a complaint b. The existence of the Commission’s Consumer Affairs Office (CAO) and its phone number. [ref. Min. Stat. 237.66]
- 7) Telephone Assistance Plan.** Collect and remit the TAP fee when customers subscribe to voice service and apply the TAP credit to customers enrolled in Lifeline, if the customer subscribers to voice service either on a stand-alone basis or as part of a bundled service. [ref Minn. Stat. 237.69- 237.72]
- 8) Prohibition against Loading.** Agree not to charge customers for services for which they did not explicitly contract and to credit the customer’s monthly bill upon complaint. [ref Minn. Stat. 237.663]
- 9) Notice Requirements.** Send customers any required notices at least five days (excluding Sundays and legal holidays) in advance of the action being taken. [ref Minn. R. 7810.2300]
- 10) Report Outages.** Promptly informing the regulatory agencies about any development or occurrence which disrupts service or affects the ability of a substantial number of customers to call 9-1-1. [Minn. R. 7810.0600]
- 11) Anti-slamming.** Prevent the unauthorized switching of voice providers. [ref. Minn. Stat. 237.661]

12) Customer billing. Provide regular, correct customer bills, agree to provide credit for service outages. Provide to any customer who requests it, information on prices, charges, and services available. [ref. Minn. R. 7810.1400] 2

13) Complaints. Make personnel available to hear inquiries and complaints, investigate complaints, and respond to the PUC CAO office within 5 days of being forwarded a customer complaint. [ref. Minn. R. 7810.1100]

14) Deposits. Charge for deposits in accordance with Minn. R. 7810.1600 and Minn. Stat. 325E.02 (b)

15) Disconnections. Disconnect customers only in accordance with Minn. R. 7810.1800, 7810.1900, 7810.2000, and 7810.2100.

16) Bill Disputes. Agree not to disconnect over any disputed amount without investigating first, and allowing for the establishment of an escrow account [ref. Minn. R. 7810.2400]

17) Resolve interruptions of service promptly. [ref. Minn. R. 7810.5800]

18) Customer Trouble Reports. Receive customer trouble reports 24 hours per day in accordance with Minn. R. 7810.5900

19) Maintain plant and equipment. Furnish and maintain adequate plant, equipment and facilities to consistently meet required standards of speed, quality, and latency. [ref.7810.4900]

ADDENDUM B (FCC Decision on ETC Certification)

FCC ETC Decision

Below is an excerpt from an FCC order on a group of ETC petitions before it. The FCC received four ETC petitions from New York state carriers. All four carriers provided letters from the New York Public Service Commission declining ETC jurisdiction based on the petitioners offering only broadband and Voice over Internet Protocol (VoIP). As a result, the FCC had the authority to decide the petitions.

In approving these petitions, the FCC determined the following in its April 30, 2019 Order:

11. *Designated Service Area.* Each petitioner describes a designated service area based on all CAF-eligible census blocks covered by its Connect America Phase II award (as listed in Attachment B to this Order).
12. *Offering the Services Supported by the Universal Service Support Mechanisms.* We find that each of the petitioners establishes through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.
13. *Compliance with the Service Requirements Applicable to Connect America Phase II Support Awarded through the New York Program.* We find that each of the petitioners establishes its ability to comply with service requirements applicable to the support that it receives. This determination takes into account that the petitioners must demonstrate, as part of their FCC applications, the technical and financial ability to provide voice and broadband services meeting or exceeding Connect America Phase II standards and comply with all relevant public interest obligations. Moreover, once authorized, the petitioners must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.
14. *Compliance with Service Requirements Applicable to Lifeline Services.* Each petitioner commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.
15. *Offering the Supported Services Using a Carrier's Own Facilities.* Each petitioner certifies that it is a facilities-based provider of broadband and voice services.
16. *Advertising Supported Services.* Each petitioner commits to advertising the availability of the supported services and related charges using media of general distribution. We emphasize that, as part of this commitment, an ETC must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.

17. *Ability to Remain Functional in Emergency Situations.* Each petitioner states that it can remain functional in emergency situations. Each petitioner states that it has sufficient back-up power to ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations. (Please see FCC April 30, 2019 Order paragraphs 11-17, DA19-354)

In its public interest analysis as part of its April 13, 2019 Order, the FCC concluded the following:

19. We conclude that the petitioners' participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. Through participation in the New York Program and completion of the Commission's subsequent application process, the petitioners demonstrate that they can offer voice and broadband service in high-cost areas efficiently and at a price and quality comparable to the service offerings in more competitive areas. Moreover, granting these petitions will serve the interests of low-income consumers by ensuring the availability of new, facilities-based Lifeline services at competitive prices in these areas. Given these commitments and associated representations, granting the ETC designations will help ensure increased consumer choice, affordability, and improved quality of service.
20. Accordingly, based on the information, representations, and certifications in their petitions, we find that the petitioners have met all applicable conditions and prerequisites for ETC designation and that conditionally granting these petitions serves the public interest. (Please see FCC April 30, 2019 Order paragraphs 19-20, DA19-354)

With respect to its ongoing oversight role of ETCs, the FCC provided the following analysis:

21. Under section 254(e) of the Act, each of these petitioners must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Under section 214(e), each of the petitioners must provide supported services throughout their service area. To help ensure compliance with these requirements, the Commission requires these petitioners to file an annual certification that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission conditions future support awarded through the high-cost program on the filing of such certification. In addition, petitioners must file annual reports detailing their ongoing compliance with service standards, must annually report location deployment data, and must certify by specific deadlines deployment to a specific number of locations.

22. We find that reliance on petitioners' commitments to meet these and other regulatory requirements, as well as representations and commitments made in their petitions, is reasonable and consistent with the public interest and the Act. We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that petitioners satisfy their obligation under section 214(e) of the Act to provide supported services throughout their respective designated service areas.
23. The Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support the ETC receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas in which it is designated as an ETC. Petitioners must provide such records and documentation to the Commission and USAC upon request. If a petitioner fails to fulfill the requirements of the Act, the Commission's rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke the petitioner's ETC designation. The Commission also may assess forfeitures for violations of Commission rules and orders. (Please see FCC April 30, 2019 Order paragraphs 21-23, DA19-354)