

November 7, 2018

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E. Suite 350
St. Paul, MN 55101-2147

RE: **Petition of Consolidated Telephone Company for Designation as an Eligible
Telecommunications Carrier (ETC)**
Docket No: P406/AM-18-645

Dear Mr. Wolf:

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

The petition was filed on October 15, 2018 by:
Thomas G. Burns
Olsen Thielen and Co.
2675 Long Lake Road
St. Paul, MN 55113-1117

On behalf of:

Kristi Westbrock
CEO/General Manager
Consolidated Telephone Company
1102 Madison Street
Brainerd, MN 56401-0972

The Department recommends that the Commission approve CTC's request for Lifeline ETC status in all areas in which CTC has CLEC authority and additionally approve CTC's request for high cost ETC status in the census blocks listed on page 2 of Exhibit 1.

Sincerely,
/s/ JOY GULLIKSON
Rate Analyst

JG/ja
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce

Petition of Consolidated Telephone Company for Designation as an Eligible Telecommunications Carrier (ETC)

Docket No: P406/AM-18-645

I. ISSUE

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

II. PROCEDURAL HISTORY

As an incumbent local service provider, CTC became an ETC eligible to receive universal service support on July 28, 1997, in the exchange service areas in which it is the incumbent.¹ In 2005, under Docket No. P406/NA-04-1212, CTC received CLEC authority in the exchanges of Brainerd, Little Falls, Nisswa, and Staples. Under Docket No. P406/NA-16-290, CTC received CLEC authority in Aitkin, Bennettville, Browerville, Crosby, Deerwood, and Long Prairie. Other exchanges were included in CTC's application for CLEC authority, but they are not included in this current petition for ETC status.

By public notice from the FCC on August 28, 2018, CTC was named as a winning bidder in the CAF II auction, to receive \$934,933.80 and serving 358 locations. The CAF II award is given in monthly installments for 10 years (about \$21.76 per location per month), as long as CTC meets certain build out requirements. The 358 locations are in the census blocks within the Staples, Browerville, Brainerd, Little Falls, Crosby, Deerwood, and Aitkin exchanges. The census blocks are also listed on page 2 of Exhibit 1.

In order to receive the CAF II support, CTC, along with all other recipients, must certify to the FCC and USAC that it has received designation as an ETC eligible for high cost funding no later than February 25, 2019.

¹ Minn. Rules 7812.1400, subp.1.

Additional requirements for CAF II support recipients include:

- Offer commercially at least one voice and one broadband service meeting the relevant service requirements to the required number of locations in the following timeframe:
 - 40% of the required number of locations in a state by the end of third year of support
 - An additional 20% in each subsequent year
 - 100% by the end of the sixth year of support
- The exact deployment schedule is determined by the carriers themselves, not the FCC.
- File with USAC annual reports and build-out milestone certifications, as well as data on the locations where service is available. Failure to meet the terms and conditions of support can result in increased reporting obligations and possible withholding and/or recovery of support.
- Offer at least one broadband and voice service at rates that are reasonably comparable to the rates for similar service in urban areas. The FCC uses its annual Urban Rate Survey to determine the range of rates that are reasonably comparable².

The FCC named fifteen companies as CAF II winners for Minnesota locations. They are:

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

Company	Amount (\$)	Locations	Amount (\$)/Location	Amount (\$) /Location/ 10 years/month
Broadband Corporation	\$428,117	128	3,344.66	27.87
Consolidated Telephone	\$934,933.80	358	2,611.55	21.76
Farmers Mutual	\$348,991.60	163	2,141.05	17.84
Federated Coop	\$1,431,038.80	808	1,771.09	14.76
Garden Valley	\$880,346	95	9,266.80	77.22
Halstad Telephone	\$19,635.20	7	2,805.03	23.38
Interstate Telephone	\$552,329.60	209	2,642.73	22.02
Jaguar	\$510,587.60	672	759.80	6.33
Johnson Telephone	\$81,272.50	47	1,729.20	14.41
LTD Broadband	\$1,104,440.80	840	1,314.81	10.96
Midcontinent	\$27,977,283.80	7410	3,775.61	31.46
Paul Bunyan	\$1,313,542.60	315	4,169.98	34.75
Roseau Electric	2,081,769.70	326	6,385.80	53.22
West Central Telephone	611,934.40	532	1,150.25	9.59
Wikstrom	532,556.80	56	9,509.94	79.25
TOTALS	38,808,780.20	11,966	53,378.30	
<i>AVERAGES</i>	<i>2,587,252.01</i>	<i>798</i>	<i>3,558.55</i>	29.65

III. LEGAL STANDARDS

The Code of Federal Regulations Part 54 governs the federal requirements for common carriers becoming ETCs. Federal Communications Commission (FCC) orders have adjusted some of these regulations over the years. Most of the adjustments have been to reduce reporting requirements. Parts relevant to this petition include:

§ 54.101 (b) requires “an eligible telecommunications carrier must offer voice telephony as set forth in paragraph (a) of this section in order to receive federal universal service support.” Part (a) requires voice grade access to the public switched network or its functional equivalent.

§ 54.201 states in parts (d), (e), and (h): “A common carrier designated as an ETC under this section shall be eligible to receive universal service support in accordance with section 254 of the Act and shall, throughout the service area for which the designation is received:

- (1) Offer the services that are supported by federal universal service support mechanisms under subpart B of this part and section 254(c) of the Act, either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and
- (2) Advertise the availability of such services and the charges therefore using media of general distribution.

(e) For the purposes of this section, the term facilities means any physical components of the telecommunications network that are used in the transmission or routing of the services that are designated for support pursuant to subpart B of this part.

(f) For the purposes of this section, the term “own facilities” includes, but is not limited to, facilities obtained as unbundled network elements pursuant to part 51 of this chapter, provided that such facilities meet the definition of the term “facilities” under this subpart.

(h) A state commission shall not designate a common carrier as an eligible telecommunications carrier for purposes of receiving support only under subpart E [Lifeline] of this part unless the carrier seeking such designation has demonstrated that it is financially and technically capable of providing the supported Lifeline service in compliance with subpart E of this part

§ 54.203 states in part: “If no common carrier will provide the services that are supported by federal universal service support mechanisms under section 254(c) of the Act and subpart B of this part to an unserved community or any portion thereof that requests such service, the Commission, with respect to interstate services, or a state commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or

portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.”

Minnesota Rules 7811.1400 and 7812.1400, subp. 13 state: “The commission may order an LSP³ to provide the services that are supported by a federal universal service support mechanism to an otherwise unserved area only as provided in section 102(a) of the act and consistent with Minnesota Statutes, sections 237.081 and 237.16.”

Minn. Rule 7812.0600 subp. 4 and 7811.0600, subp.4 state Subp. 4. An LSP designated an ETC by the commission must provide local service, including, if necessary, facilities-based service, to all requesting customers within the carrier's service area on a nondiscriminatory basis, regardless of a customer's proximity to the carrier's facilities. An LSP may assess special construction charges approved by the commission if existing facilities are not available to serve the customer.

Also, in Docket P999/M-05-1169, *Order Adopting FCC Requirements for Designating Eligible Telecommunications Carriers, As Modified*, the Commission ordered:

“After the date of this Order, petitioners to the Commission to be designated an eligible telecommunications carrier under 47 U.S.C. 214(e)(2) must

- (1) (A) Commit to provide service throughout its proposed designated service area to all customers making a reasonable request for service. Each applicant shall certify that it (1) provide service on a timely basis to requesting customers within the applicant's service area where the applicant's network already passes the potential customer's premises; and (2) provide service within a reasonable period of time, if the potential customer is with the applicant's licensed service are[a] but outside its existing network coverage, if service can be provided at reasonable cost by (a) modifying or replacing the requesting customer's equipment; (b) deploying a roof-mounted antenna or other equipment; (c) adjusting the nearest cell tower; (d) adjusting network or customer facilities; € reselling services from another carrier's facilitates to provide service; or (f) employing, leasing or constructing an additional cell site, cell extender, repeater, or other similar equipment ...”

³ Local Service Provider

In setting the requirements for this round of auction to receive the CAF II funding, the FCC required:

“Each Connect America Fund support recipient must offer voice as a standalone service, but may separately bundle its broadband offerings with a voice service.”⁴ USF/ICC Transformation Order, 26 FCC Rcd at 17693, para. 80.

Congress, in 47 USC § 214 (e), requires as a precondition to assessing FCC high cost or Lifeline support subsidies, that providers be designated Eligible Telecommunication Carriers by a state commission. Telecommunications carriers are defined by 47 USC § 153 (51) as “any provider of telecommunications services [and a] telecommunications carrier shall be treated as a common carrier . . . only to the extent that it is engaged in telecommunications services.”

The regulatory status of VOIP service is currently in litigation. The Minnesota Commission found that fixed⁵ VOIP services are subject to applicable consumer protections for telecommunications service under Minnesota statutes, as there has been no federal preemption of the Commission’s authority.⁶ Although the FCC has not classified fixed or over-the-top VoIP as being either an information service or a telecommunications service, in a 2-1 split decision, the Eighth Circuit Court of Appeals found that all VoIP service is an information service.⁷ The Minnesota Commission has requested an en banc rehearing of the Eighth Circuit decision. It is the understanding of the Department that the Eighth Circuit’s decision is not effective until they rule on the request for rehearing en banc, or during the pendency of the request if they grant it.

IV. ANALYSIS

CTC plans to offer service to its new ETC customers in a similar manner to its provision of service to customers in its incumbent area. CTC’s petition to the Commission at that time was thorough. Of particular note:

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

⁵ The term “fixed” represents those services at a stationary location, as opposed to “over-the-top” or “bring your own broadband” VoIP services that may be used from any location that the customer has access to the internet. Over-the-top VoIP is also referred to as “nomadic VoIP.”

⁶ See. *In the Matter of the Complaint of the Minnesota Department of Commerce Against the Charter Affiliates Regarding Transfer of Customers*, Order Finding Jurisdiction and Requiring Compliance Filing, Docket No. P6716,5615/C-14-383. July 28, 2015.

⁷ *Opinion*, 2018 WL 4260322 (8th Cir September 7, 2018)

1. CTC's Facilities and Commitment to Serve - CTC states that it will provide broadband and voice telephone over its fiber-optic facilities. In compliance with the Commission's order in Docket P999/M-05-1169, CTC certifies that it will:
 - (a) provide service on a timely basis to requesting customers within the Service Area where CTC'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 CTC's current network facilities, if service can be provided at reasonable cost by constructing network facilities.
2. CTC's Basic Universal Service Offering - CTC agrees to provide voice telephony in the Service Area at rates that are reasonably comparable to the rates for similar service in urban areas. Attachment 2 is a chart that compares the rates of CTC to the incumbent telephone company's rates. The services CTC offers meet the Basic Local Service requirements under Minn. Rule 7812.0600 and under 47 CFR § 54.101(a).
3. CTC's Advertising Plan - CTC states that it currently meets and will meet the advertising requirements by advertising its services through several different channels of general distribution, including newspaper and direct mail. CTC plans to advertise the availability of its Lifeline universal service offering throughout the Service Area through the same advertising channels it currently employs. In addition, the availability of the offering throughout the Service Area will be listed continuously on CTC's web site: <http://www.goctc.com>. The service offering will also be published at least annually in the local newspaper, and will be posted at the CTC office in Brainerd, MN.
4. CTC's Ability to Remain Functional in Emergency Situations. CTC stated that its network can and will remain functional in emergencies. The central office serving CTC's customers is equipped with electrical generators and battery power supply to provide service in the event of a commercial power outage. The interoffice facilities serving the Service Area are on a diverse routed fiber optic ring, which if cut will be automatically rerouted. CTC 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).
5. CTC's Satisfaction of Consumer Protection and Service Quality Standards –CTC is subject to and complies with the Commission's Rules pertaining to service quality and consumer protection. CTC'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
6. Requirement to provide telecommunications services. Congress, in 47 U.S.C. § 214 (e), required as a precondition to accessing FCC high cost or consumer specific “lifeline” support subsidies, that providers be designated “Eligible Telecommunications Carriers” (ETCs) by a State commission.⁸ As explained by the National Association of Regulatory Utility Commissioners (NARUC) and the National Association of State Utility Consumer Advocates (NASUCA) in their September 28, 2108 Amicus Brief to the United States Court of Appeals for the Eighth Circuit, “State commissions across the country have certified numerous ETCs based on their provision of I-VoIP as a telecommunications service. Neither the FCC nor any State Commission can ignore the Congressional restrictions and certify carriers that only provide information services.”⁹ To do otherwise would be defrauding the USF fund. Thus, in order to be granted ETC status, CTC must offer a stand-alone voice telecommunications service. The ETC petitions filed as a result of the CAF II auction, including the petition by CTC, are likely to use IP technology for the voice service offering. As stated earlier, the Minnesota Commission has requested an en banc rehearing of the Eighth Circuit decision and it is the understanding of the Department of Commerce that the Eighth Circuit’s decision is not effective until it rules on the request for rehearing en banc, or during the pendency of the request if they grant it. Thus, at this time, fixed VOIP service is a telecommunications service under Minnesota law, as this Commission has determined, and satisfies the legal requirement.

In summary, CTC has been operating successfully for a number of years as a CLEC and many more years as an incumbent. This history comports with the requirement of 47 CFR § 54.201 (h) that the carrier demonstrate it is financially and technically capable of providing the supported Lifeline service.

⁸ “Telecommunications carriers” are defined as “any provider of telecommunications services [and a] telecommunications carrier shall be treated as a common carrier under this chapter only to the extent that it is engaged in providing telecommunications services.” 47 U.S.C. § 153 (51). (emphasis added). The federal universal service fund program is “under this chapter” in 47 U.S.C. § 254 (51).

⁹ See Motion Seeking Leave to File Brief of Amici Curiae The National Association of Regulatory Utility Commissioners and The National Association of State Consumer Advocates Supporting Defendant-Appellants Petition for Rehearing En Banc, Appeal from the U.S. District Court for the District of Minnesota, No.15-cv-3925, at page 5.

V. COMMISSION OPTIONS

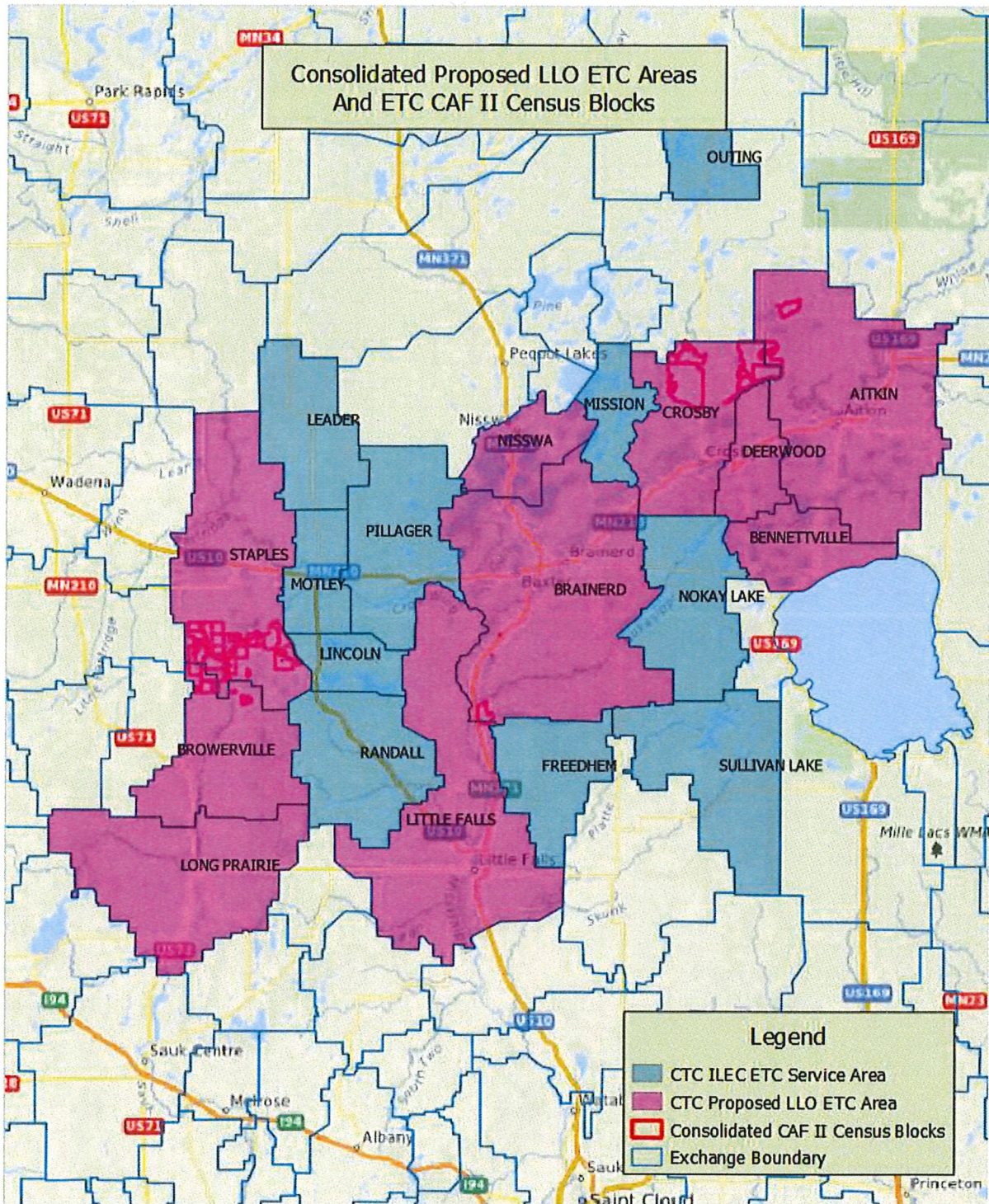
The Commission may choose to:

- A. Approve CTC's request for Lifeline ETC status in the exchanges of Brainerd, Little Falls, Nisswa, Staples, Aitkin, Bennettville, Browerville, Crosby, Deerwood, and Long Prairie. Additionally approve CTC's request for high cost ETC status in the census blocks Listed in Exhibit 1.
- B. Deny CTC's petition for ETC status in the areas in which CTC has CLE authority.
- C. Certify CTC in a different area from which it applied

VI. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission order option A: Approve CTC's request for Lifeline ETC status in the exchanges of Brainerd, Little Falls, Nisswa, Staples, Aitkin, Bennettville, Browerville, Crosby, Deerwood, and Long Prairie. Additionally approve CTC's request for high cost ETC status in the census blocks Listed in Exhibit 1.

/ja



Proposed ETC Service Areas:

Embarq MN: Aitkin, Bennettville, Browerville, Crosby, Deerwood and Long Prairie exchanges;

Qwest Corporation: Brainerd, Little Falls, Nisswa, and Staples exchanges

CTC Existing and Proposed ETC Service Areas

HIGH COST SUPPORT AREAS

Census Block	Exchange	Census Block	Exchange
271537904004094	STAPLES	271537904004055	STAPLES
271537904004045	STAPLES	271537904004031	STAPLES
271537904004018	STAPLES	271537904004038	STAPLES
271537904004024	STAPLES	271537904004025	STAPLES
271537904004057	STAPLES	271537904004129	BROWERVILLE
271537904004078	STAPLES	271537904004062	BROWERVILLE
271537904004035	STAPLES	271537904004058	BROWERVILLE
271537904004020	STAPLES	271537904004055	BROWERVILLE
271537904004041	STAPLES	271537904004161	BROWERVILLE
271537904004043	STAPLES	271537904004061	BROWERVILLE
271537904004046	STAPLES	271537904004064	BROWERVILLE
271537904004068	STAPLES	271537904004160	BROWERVILLE
271537904004022	STAPLES	271537904004158	BROWERVILLE
271537904004010	STAPLES	271537904004039	BROWERVILLE
271537904004107	STAPLES	271537904004162	BROWERVILLE
271537904004042	STAPLES	271537904004060	BROWERVILLE
271537904004014	STAPLES	271537904004043	BROWERVILLE
271537904004061	STAPLES	271537904004053	BROWERVILLE
271537904004012	STAPLES	271537904004156	BROWERVILLE
271537904004015	STAPLES	271537904004152	BROWERVILLE
271537904004039	STAPLES	270359501002228	DEERWOOD
271537904004029	STAPLES	270359514001028	BRAINERD
271537904004003	STAPLES	270359514001017	BRAINERD
271537904004106	STAPLES	270359514001097	BRAINERD
271537904004105	STAPLES	270359501002163	CROSBY
271537904004100	STAPLES	270359501002222	CROSBY
271537904004026	STAPLES	270359501002154	CROSBY
271537904004021	STAPLES	270359501002131	CROSBY
271537904004053	STAPLES	270359501002220	CROSBY
271537904004059	STAPLES	270359501002167	CROSBY
271537904004049	STAPLES	270359501002228	CROSBY
271537904004016	STAPLES	270359501002218	CROSBY
271537904004013	STAPLES	270359501002156	CROSBY
271537904004037	STAPLES	270359514001097	LITTLE FALLS
271537904004032	STAPLES	270359501002115	AITKIN
271537904004027	STAPLES	270359501002131	AITKIN
271537904004058	STAPLES	270359501002218	AITKIN
271537904004075	STAPLES	270359501002201	AITKIN

Location	Embarq MN				Consolidated			
	Business		Residence		Business		Residence	
	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.
Aitkin	\$29.18	\$0.00	\$14.59	\$0.00	\$24.95	\$0.00	\$14.95	\$0.00
Bennettville	\$29.18	\$1.50	\$14.59	\$0.78	\$24.95	\$0.00	\$14.95	\$0.00
Browerville	\$29.18	\$1.50	\$14.59	\$0.78	\$45.35	\$0.00	\$19.95	\$0.00
Crosby	\$29.18	\$1.10	\$14.59	\$0.50	\$28.20	\$0.00	\$14.05	\$0.00
Deerwood	\$29.18	\$1.50	\$14.59	\$0.78	\$24.95	\$0.00	\$14.95	\$0.00
Long Prairie	\$29.18	\$0.00	\$14.59	\$0.00	\$24.95	\$0.00	\$14.95	\$0.00

Location	Qwest				Consolidated			
	Business		Residence		Business		Residence	
	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.	MRC	EAS Add.
Brainerd	\$34.61	\$1.02	\$15.95	\$0.44	\$24.95	\$0.00	\$14.95	\$0.00
Little Falls	\$34.61	\$2.62	\$15.95	\$1.06	\$24.95	\$0.00	\$14.95	\$0.00
Nisswa	\$34.61	\$4.26	\$15.95	\$1.76	\$24.95	\$0.00	\$14.95	\$0.00
Staples	\$34.61	\$1.28	\$15.95	\$0.52	\$24.95	\$0.00	\$14.95	\$0.00

CERTIFICATE OF SERVICE

I Marcella Emeott, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

MINNESOTA DEPARTMENT OF COMMERCE – COMMENTS

Docket No. **P406/AM-18-645**

Dated this **7th** day of **November, 2018**.

/s/Marcella Emeott

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Thomas	Burns	tgburns@otcpas.com	OLSEN THIELEN & CO. LTD	2675 Long Lake Rd Saint Paul, MN 55113	Electronic Service	No	OFF_SL_18-645_M-18-645
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_18-645_M-18-645
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-645_M-18-645
Ian	Dobson	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_18-645_M-18-645
Jason	Topp	jason.topp@centurylink.com	CenturyLink	200 S 5th St Ste 2200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-645_M-18-645
Kristi	Westbrock	Kristi@goctc.com	Consolidated Telephone Company	1102 Madison St PO Box 972 Brainerd, MN 56401-0972	Electronic Service	No	OFF_SL_18-645_M-18-645
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_18-645_M-18-645