

**STATE OF MINNESOTA  
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John Tuma	Commissioner

**In the Matter of a Notice to Rural Digital Opportunity Fund (RDOF) Grant Winners**  
**PUC Docket Number: P-999/CI-21-86**

**COMMENTS OF MINNESOTA TELECOM ALLIANCE**

**INTRODUCTION**

The Minnesota Telecom Alliance (“MTA”) is a trade association comprised of more than 70 telecommunications companies across Minnesota. MTA members range from family-owned companies and local cooperatives to companies with multi-state operations. MTA’s members provide voice, video, and high-speed internet services to Minnesotans in every area of the state.

On June 30, 2021, the Minnesota Public Utilities Commission (“Commission”) issued a notice of comment period in the above-captioned docket, soliciting input on “the Commission’s ongoing jurisdiction to oversee Eligible Telecommunications Carriers (“ETCs”) compliance as set forth in sections 214(e)(2) and 254(f) of the Communications Act of 1934, as amended, the FCC’s Universal Service rules, codified at 47 C.F.R. section 54, and the applicable FCC auction materials.” The Commission’s notice seeks comments on several different topics, and MTA submits the following comments in response.<sup>1</sup>

---

<sup>1</sup> As legacy local exchange carriers (LECs), several MTA member companies have filed comments in this docket indicating their support for the Commission to attempt to extend their jurisdiction to regulate ETC’s with requirements similar to those that have been met by LECs for decades. However, this support is qualified by urging the Commission to NOT extend the scope of these regulations beyond what is currently required of LECs. For legacy LECs, this position is superficially attractive as it might appear to somewhat “level the playing field” with competitive broadband providers who are not regulated by the MPUC such as VOIP providers. Unfortunately, it is MTA’s belief that that the MPUC’s limited ETC role is too slender of a reed upon which to try to rectify this long standing competitive imbalance.

**I. The Commission's Legal Authority over ETCs is Limited to Designations and Recertifications.**

The Commission's role is to designate ETCs and to certify on an annual basis 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." MPUC Staff Briefing Papers, at 11, Docket No. P-999/CI-21-86 et al. (May 6, 2021); *see also* 47 U.S.C. § 214(e)(2) (providing state commission authority to issue ETC designations). Within its designation and recertification role, the Commission has limited authority and must designate a common carrier as an ETC if the entity meets the requirements of 47 C.F.R. § 54.201(d) (referencing 47 C.F.R. § 54.101). *See* 47 C.F.R. § 54.201(b). In determining whether to grant an ETC designation, the Commission must analyze whether such a designation is in the public interest. 47 C.F.R. § 54.202(b).

Service providers must meet a variety of requirements to be designated as an ETC by the Commission. In particular, service providers must provide a number of specific services: (1) voice grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) toll limitation to qualifying low-income consumers; and (4) 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. *See* 47 C.F.R. §§ 54.201(d)(1) (referencing 47 C.F.R. § 54.101(a)). Additionally, service providers must advertise the availability of these services and applicable charges using media of general distribution. *See* 47 C.F.R. § 54.201(d)(2). To be eligible for ETC designation, a service provider

---

At its core, the threshold issue is: Does the Commission's limited ETC role create an opportunity to somehow create a regulatory foothold that can sweep VOIP and other competitive broadband providers back into a state regulated environment? MTA concludes that it does not. And further, the efforts of the OAG and DOC to do so, merely divert increasingly rare resources of time, effort and expense in yet another failed attempt to turn back the regulatory clock. (cite to Vonage, etc.)

must also: (1) certify that it will comply with the service requirements applicable to the support it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy applicable consumer-protection and service-quality standards; (4) demonstrate financial and technical ability to provide Lifeline service; (5) provide a description of its Lifeline service offering; and (6) demonstrate that its ETC designation is in the public interest. *See* 47 C.F.R. § 54.202(a)

The MTA believes the Commission has been appropriately exercising their limited authority over ETCs. The recommendations of the Department and OAG exceed Commission authority and should be rejected.

## **II. The Roles of the Department of Commerce, Department of Employment and Economic Development, Office of the Attorney General, and Department of Public Safety with Respect to ETC Designation and Regulation.**

The Minnesota Department of Commerce (“DOC”), like in all proceedings before the Commission, may intervene in ETC designation proceedings. Unfortunately, the existing regulatory regime contained in Minn. Stat. Ch. 237 which the DOC has historically overseen is largely focused on legacy telephone matters which modern Voice over Internet Protocol (“VoIP”) and other telecommunication technologies have rendered obsolete and beyond the Commission and DOC’s authority. *See Charter Advanced Servs. (MN), LLC v. Lange*, 259 F. Supp. 3d 980, 991 (D. Minn. 2017) (citing *Vonage Holdings Corp. v. Minn. PUC*, 290 F. Supp. 2d 993, 997 (D. Minn. 2003) (holding that state regulation of an information service is preempted by federal law); *Minn. PUC v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007) (noting that the FCC concluded that a state tariff requirement for VoIP services “may actually harm consumers by impeding the development of vigorous competition”) (citations omitted).

The Office of the Attorney General’s (“OAG”) advocacy in this proceeding, acting through the Residential and Small Business Utility Consumer Division, appears to be in direct conflict with its statutory duty in the telecommunications field. *See generally* Minn. Stat. § 8.33. Specifically:

“When participating in telecommunication matters that affect deployment of the infrastructure, the attorney general may apply the goals of:

- (1) achieving economically efficient investment in:
  - (i) higher speed telecommunication services; and
  - (ii) greater capacity for voice, video, and data transmission; and
- (2) just and reasonable rates.” Minn. Stat. § 8.33, subd. 2.

This statutory directive does not contain any authority for the OAG to pursue additional regulatory requirements under the guise of “consumer protection.” Instead, ironically, the OAG is seeking to require telecommunication companies seeking ETC status to comply with time-consuming and costly requirements, beyond the authority of the Commission to implement. If successful, this advocacy would directly detract from an ETC’s ability to meaningfully deploy resources that actually meet the goals the OAG is directed to pursue by statute.

The Minnesota Department of Employment and Economic Development (“DEED”) does not serve a regulatory function with respect to ETC designation. Minn. Stat. § 116J.39, subd. 4(b) (“In carrying out its duties under this subdivision, the Office of Broadband Development shall have no authority to regulate or compel action on the part of any provider of broadband service.”). Rather, the Office of Broadband Development, located within DEED, administers the border-to-border broadband program, and is generally tasked with encouraging, fostering, developing, and improving broadband within Minnesota, among other duties. *See generally* Minn. Stat. § 116J.39.

The Minnesota Department of Public Safety (“DPS”) also does not serve a regulatory function with respect to ETC designation. Rather, DPS oversees 911 functionality pursuant to Minn. Stat. §§ 403.025–403.15.

### **III. The Additional Regulatory Requirements Recommended by DOC and OAG That Would Apply to ETCs Should Not Be Adopted by the Commission.**

The MTA believes it is a misnomer to characterize the additional OAG and DOC proposed regulatory requirements as “consumer protections”. An attempt to impose a layer of regulatory requirements in the absence of legal authority to do so, will only divert time, money and attention to further regulatory disputes rather than focusing limited resources on providing consumers needed broadband service expansion. Just as the FCC rejected New York regulator’s similar attempts, the MPUC should similarly reject the DOC and OAG’s proposals and find: “We conclude that the petitioners’ participation in universal service programs would be in the public interest and would provide numerous benefits to consumers...” (See Commission Briefing Papers exhibit C. quoting FCC’s April 13, 2019 Order.)

The Commission should not adopt any of the requirements recommended by the DOC and OAG because these additional requirements are beyond the Commission’s limited authority to certify service providers that meet federal requirements for ETC designation, discussed above. Further, if the Commission did attempt to implement the additional “consumer protections” requested by the DOC and OAG for ETC certification, widespread broadband deployment would be hindered, in violation of the Communications Act of 1934. *See* 47 U.S.C. § 254(f) (“. . . A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.”) (emphasis added).

The MTA does not support the DOC and OAG proposals. Since the Commission lacks authority to impose these requirements, the rulemaking issues, scope of protection, and related issues noted in the request for comment need not be examined further. Suffice it to say that these

questions underscore further fatal flaws in any attempt to implement the DOC and OAG's proposals.

#### **IV. The Commission Should Not Go Beyond What the FCC Requires for ETC Designation.**

States are authorized “to adopt regulations not inconsistent with the Commission’s rules to preserve and advance universal service.” 47 U.S.C. § 254(f). However, the Commission should not adopt any requirements that go beyond what the FCC already requires for ETC designation because such additional requirements would act as a barrier to broadband deployment. Enacting additional regulations for service providers as a condition to obtaining ETC designation would make the process too onerous for many providers, and would further delay and complicate an already time-consuming and resource intensive process. *Cf. Minn. PUC v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007) (noting that the FCC concluded that a state tariff requirement for VoIP services “may actually harm consumers by impeding the development of vigorous competition”) (citations omitted); *see also* Michael O’Reilly, FCC Commissioner, Removing Unnecessary Barriers and Maximizing Competition in USF Auctions (June 18, 2020), <https://www.fcc.gov/news-events/blog/2020/06/18/removing-unnecessary-barriers-and-maximizing-competition-usf-auctions>.

Many of the would-be ETCs in this proceeding are VoIP providers, and the Commission has on multiple occasions been curtailed in attempts to regulate in this area where authority is lacking. *Minn. PUC v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007) (“[A]ny state regulation of an information service conflicts with the federal policy of nonregulation.”); *see also Charter Advanced Servs. (MN), LLC v. Lange*, 259 F. Supp. 3d 980, 991 (D. Minn. 2017) (citing *Vonage Holdings Corp. v. Minn. PUC*, 290 F. Supp. 2d 993, 997 (D. Minn. 2003) (holding that state regulation of an information service is preempted by federal law)). Here, the Commission would

be exceeding its authority under federal law if it adopted additional criteria for ETC designation of information service providers. Accordingly, the Commission should not adopt any of the regulatory requirements recommended by the DOC and OAG.

Dated: November 5, 2021

Respectfully submitted

MINNESOTA TELECOM ALLIANCE

A handwritten signature in black ink, appearing to read "Brent J. Christensen", with a long horizontal flourish extending to the right.

---

Brent J. Christensen  
President/CEO  
Minnesota Telecom Alliance  
1000 Westgate Drive, Suite 252  
St. Paul, MN 55114  
651-291-7311