

BEFORE THE STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION

In the Matter of a Notice to Rural Digital
Opportunity Fund (RDOF) Grant Winners.

PUC Docket No.
P-999/CI-21-86

COMMENTS OF
COMMUNICATIONS WORKERS OF AMERICA

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I. INTRODUCTION AND SUMMARY

In response to the amended Notice Of Extended Comment Period issued by the Commission on September 23, 2021, In the Matter of a Notice to Rural Digital Opportunity Fund (RDOF) Grant Winners, the Communications Workers of America - District 7 (“CWA”) submits the following initial comments.¹

CWA represents over 1,700 technicians and customer service representatives working for telecommunications providers in Minnesota, including over 700 at CenturyLink, 435 at AT&T Mobility, 325 at AT&T Legacy T, 86 at Frontier Communications, and about 150 at Consolidated Telephone Company, Garden Valley Telephone, and Paul Bunyan Rural Telephone Cooperative, providing telecommunications services to customers in the Twin Cities Metro Area, as well as in rural areas across the state.

CWA applauds the Commission's effort to ensure essential communications services are available to all residents by asserting the oversight of broadband networks for recipients of RDOF subsidies. While the 8th Circuit Court of Appeals' decision in *Charter Advanced Services v. Lange* incorrectly limited the Commission's ability to regulate VoIP², the Commission continues to have the authority to regulate phone, broadband, and VoIP for recipients of public funds through its eligible telecommunications carrier (ETC) designation authority. CWA urges adoption of the Department of Commerce (DOC) and the Office of the Attorney General Residential Utilities Division (OAG) recommended consumer protection standards for recipients of RDOF funds, and further recommends additional standards for the Commission's

¹ See Notice Of Extended Comment Period, In the Matter of a Notice to Rural Digital Opportunity Fund (RDOF) Grant Winners, Docket No. P-999/CI-21-86 (issued Sep. 23, 2021).

² *Charter Advanced Services v. Lange*, No. 17-2290 (8th Cir. 2018)

consideration. CWA's comments respond to several topics and reserve the right to respond to the remaining topics in reply.

II. DISCUSSION

Please address the Commission's present legal authority over ETCs with respect to designation and recertification, with citations.

CWA endorses the DOC and OAG's comprehensive legal analysis in Docket P999/CI-21-863-7 that the Commission has the legal authority to impose consumer protection standards when designating or recertifying ETCs.³ The Federal Communications Act envisions dual federal-state authority and cooperation in regulation of communications services. To that end, the Federal Communications Act and the Federal Communications Commission have tasked the states with authority to designate and monitor ETCs, including imposition of necessary rules to ensure progress towards universal service, so long as such rules are not in conflict with the FCC's federal Universal Service rules.⁴ Specifically, 47 U.S.C. §254(f) asserts that "[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. [...] 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."⁵ The FCC's 2015 Report and Order, In the Matter of Federal-State Joint Board on Universal Service, emphasizes the role played by state commissions as the agency most familiar

³ See Department of Commerce Comments, In the Matter of a Notice of Filing Requirements and Comment Deadlines Rural Digital Opportunity Fund (RDOF) Grant Winners, Docket No: P999/CI-21-863-7, 3-7 (Mar. 26, 2021). See also Department of Commerce Comments, In the Matter of a Notice of Filing Requirements and Comment Deadlines Rural Digital Opportunity Fund (RDOF) Grant Winners, Docket No: P999/CI-21-863-7, 8-13 (Mar. 26, 2021)[hereinafter OAG Mar. 26 Comments].

⁴ See 47 U.S.C. §214 (e)(2) and 47 U.S.C. §254(f).

⁵ See 47 U.S.C. §254(f)

with the areas ETC designation is sought and reaffirms their authority to set their own ETC eligibility requirements.⁶ The FCC in its 2020 RDOF Order also declined to adopt industry parties' request to forbear from enforcing the ETC requirement.⁷

Within that legal authority, separately address the recommended exercise of authority by the Commission.

The COVID-19 pandemic has made clear what CWA members have known for a long time: thousands of families in Minnesota do not have access to affordable, reliable broadband internet connections. We must not only expand broadband access, but also ensure its reliability. Over 140,000 households and businesses in Minnesota stand to get access to high speed broadband with the help of \$408 million in federal RDOF subsidies. The Commission should ensure that these communities will continue to receive a reliable connection for years to come by adopting strong ETC obligations as recommended by the DOC and OAG.

Without such rules, consumers' within the RDOF awarded areas have little protection or recourse when they experience broadband outages or unreliable service. Unfortunately, competition has not ensured affordable and reliable service for all Minnesotans. CWA members know that without strong Commission oversight, many low-income and rural communities get left behind as ISPs cherry-pick where to invest in maintenance and upgrades based on profitability. As the OAG persuasively argues in its March 26 comments, "[r]eceipt of federal Universal Service support is a matter of *privilege, not right*, and the Commission should decline

⁶ See Report and Order In the Matter of Federal-State Joint Board on Universal Service, FCC 05-46, ¶ 61 (Mar. 17, 2005)("[S]tate commissions will continue to maintain the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose.").

⁷ See Report and Order, In the Matter of Rural Digital Opportunity Fund, Federal Communications Commission, 20-5, ¶ 92 (2020), <https://docs.fcc.gov/public/attachments/FCC-20-5A1.pdf> ("We recognize the statutory role that Congress created for state commissions and the FCC with respect to ETC designations, and we do not disturb that framework. Nothing in the record addresses the standards necessary to find forbearance in the public interest, even if some interested parties may prefer not to become ETCs with all of the associated obligations. Therefore, we will continue to require service providers to obtain ETC status to qualify for universal service support."),

ETC designation for any company that does not wish to be bound by the Commission's ETC requirements.”⁸

In this docket, the DOC and OAG have recommended that the Commission adopt consumer protections that would apply to ETCs. Please address: 1) whether any of these protections should be adopted, 2) how any such protections can be adopted outside of a rulemaking proceeding, 3) the scope of where these protections would apply (i.e. only in those census blocks where the ETC is receiving RDOF support or all areas served within the state by that company), and 4) how consumers can be informed as to which providers are subject to these protections and where given that other local, state and federal funding for broadband deployment do not require a voice offering or ETC designation so such protections may not be in effect.

In these comments, CWA responds to item 1 and reserves the right to respond to items 2, 3, and 4 in Reply. CWA encourages adoption of the consumer protection rules recommended by the DOC and the OAG. However, many of the proposed consumer protection rules have been traditionally used to measure the quality of telephone service and additional rules may be needed to measure quality of broadband and VoIP services. CWA proposes consideration of additional reporting metrics that take into consideration broadband performance metrics such as latency, jitter, packet loss, call failure and drop rate, call setup time, and delivered network speeds. These metrics were proposed by the CPUC's Public Advocates Office (Cal Advocates) in their petition to initiate service quality rulemaking for broadband, VoIP, and wireless services.⁹ CWA does not propose adoption of metrics identical to those proposed by Cal Advocates, but recommends that they be considered as part of the Commission's analysis.

Parties, and especially those providers that operate in multiple states, are requested to include in their comments any insight into other states' approaches to the ETC regulatory Framework.

⁸ See OAG Mar. 26 Comments at 22-23.

⁹ See Petition of the Public Advocates Office for rulemaking to amend general order 133-d to establish minimum service quality standards for all essential communications services, Attachment A, CPUC Docket P21-10-003 (Sep. 29, 2021), available at https://www.publicadvocates.cpuc.ca.gov/uploadedFiles/Content/Press_Room/Petition%20of%20the%20Public%20Advocates%20Office%20for%20Rulemaking%20Service%20Quality.pdf.

CWA is aware that the California Public Utilities Commission (CPUC) has frequently used its ETC authority to implement strong consumer protection rules. In 2006, the California Public Utilities Commission adopted a resolution that established comprehensive procedures, guidelines, and reporting requirements for ETCs eligible to receive federal high-cost support, including submission of two-year service quality improvement plans for all carriers.¹⁰ The CPUC has continued to impose stronger rules than required by the FCC as part of its ETC application review. For example, the CPUC imposed additional rules on Cox California Telcom's application for ETC designation that applied to both circuit-switched and packet-switched (VoIP) telephone services.¹¹

Please address the roles of the Minnesota Department of Commerce (DOC), Minnesota Department of Employment and Economic Development (DEED), Minnesota Office of the Attorney General (OAG), and the Minnesota Department of Public Safety (DPS) and the legal basis for the roles described, with respect to ETC designation and regulation.

CWA reserves the right to respond in Reply.

Please also address: 1) why going beyond what the FCC requires when it designates ETCs should be ordered by the Commission, 2) whether adoption of these additional protections is a barrier to broadband deployment, and 3) the penalties that an ETC would face for non-compliance with any protections adopted by the Commission in this proceeding.

CWA reserves the right to respond in Reply.

Are there other issues or concerns related to this inquiry?

The Commission's approach to broadband oversight through ETC designations will only help achieve accountability for a limited universe of providers. While CWA is aware of the

¹⁰ See Adopting Comprehensive Procedures and Guidelines for Eligible Telecommunications Carrier Designation and Requirements for Eligible Telecommunications Carriers, California Public Utilities Commission, Resolution T-17002 (May 25, 2006).

¹¹ See Decision approving settlement regarding request for eligible telecommunications carrier status, Application of Cox California Telcom, LLC (U5684C) for Designation as an Eligible Telecommunications Carrier, CPUC Application 12-09-014 (Filed Sep. 25, 2012).

limitations created by the 8th Circuit Court of Appeals, it believes that bigger solutions are needed. CWA urges the Commission to further exercise its oversight responsibilities through creative solutions.

III. CONCLUSION

CWA applauds the Commission's effort to ensure Minnesotans' access to a reliable long-term voice and broadband services and urges the Commission to fully exercise its ETC authority and adopt the DOC, OAG, and CWA's proposed consumer protection standards.

Respectfully submitted,



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