

November 19, 2021

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place E. Suite 350  
St. Paul, MN 55101-2147

RE: **Comments of the Minnesota Department of Commerce in response to PUC Notice of Comment Period, issued June 30, 2021, In the Matter of a Notice to Rural Digital Opportunity Fund Grant Winners,**  
Docket No: P999/CI-21-86

Dear Mr. Seuffert:

Attached are the comments of the Minnesota Department of Commerce (Department) in response to  
  
PUC Notice of Comment Period, issued June 30, 2021, In the Matter of a Notice to Rural  
Digital Opportunity Fund Grant Winners

The attached comments respond to the questions posed by the Commission in its Notice.

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ JOY GULLIKSON  
Rate Analyst

/s/ LISA GONZALEZ  
Rate Analyst

JG/LG/ar  
Attachment

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## Comments of the Minnesota Department of Commerce

Docket No: P999/CI-21-86

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## Before the Minnesota Public Utilities Commission

### Comments of the Minnesota Department of Commerce

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Docket No: P999/CI-21-86

#### I. INTRODUCTION

These Comments from the Department of Commerce (Department) are provided in response to the Minnesota Public Utilities Commission (PUC or Commission) Notice of Comment Period, issued June 30, 2021, *In the Matter of a Notice to Rural Digital Opportunity Fund Grant Winners (RDOF Winners)*.<sup>1</sup> The PUC authorized Eligible Telecommunications Carrier (ETC) status for 21 winning bidders in the FCC 904 Auction for RDOF grants to receive more than \$400 million over 10 years. These ETCs must offer a minimum of 25/3<sup>2</sup> Mbps broadband service and voice service in designated areas that were previously unserved at those speeds. The objective of RDOF dollars in subsidizing broadband and voice service to unserved Minnesotans underscores that universal service has still not been attained for many Minnesotans, and in unserved areas residents may not have other options besides the offering by the RDOF recipient. Minnesota ETCs receive significant high cost support from the FCC's Universal Service Fund. From 2003 through 2021 to date, Minnesota providers have been granted high-cost subsidies of more than \$2.7 billion.<sup>3</sup> In 2020 alone, the FCC disbursed more than \$248 million in high-cost assistance to Minnesota telecommunications companies that the PUC has designated as ETCs.<sup>4</sup>

The PUC's role is critical in designating ETCs and in annually certifying that high-cost federal funds are used for their intended purpose. Congress granted this designation responsibility to the states and the Federal Communications Commission (FCC) has repeatedly acknowledged and supported the states' authority to designate and annually certify ETCs. A state's authority to designate ETCs includes authority to set additional regulations for the advancement of Universal Service, as allowed by Congress and acknowledged in FCC Orders.

The Minnesota Commission has previously established state-specific regulations affecting ETCs to protect consumers of those companies receiving federal Universal Service support funding. Examples of regulations this Commission has established concern Lifeline offerings, the filing of informational tariffs, and the requirement to provide additional information concerning Tribal engagement, among others. The Minnesota legislature has also recognized the PUC's role in overseeing ETCs, providing clarity that the PUC is to apply the same standards and criteria to all ETCs.<sup>5</sup>

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<sup>1</sup> In these Comments, "Commission" refers to the Minnesota Public Utilities Commission and "FCC" refers to the Federal Communications Commission. Exceptions to the naming convention occur in some quotes and are noted.

<sup>2</sup> 25 Megabits per second download speed/3 Megabits per second upload speed.

<sup>3</sup> <https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi>

<sup>4</sup> <https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi>. These funds were dispersed prior to RDOF awards and are primarily for broadband deployment in return for a set number of locations served.

<sup>5</sup> See Minn. Stat. § 237.435, Annual Universal Service Funding Certification.

With both broadband and voice services provided by ETCs, several Minnesota agencies play key roles to ensure Minnesotans receive the services they pay for, that deployment of all funds supporting broadband are coordinated, and that companies are providing reliable service to customers. To ensure FCC awarded funds are being used as intended, the PUC holds ultimate authority over the ETCs' ongoing funding. The Department of Public Safety (DPS), the Office of the Attorney General (OAG), the Department of Economic Development (DEED), the Department of Commerce, and of course the communication companies themselves, all play significant roles in the encouragement of broadband deployment and ensuring reliable service.

To advance universal service, earlier in this proceeding the Department and the OAG each offered some requirements that were intended to ensure ETCs receiving federal funds were serving customers in a manner consistent with the public interest. The Department has modified its recommendations to focus on six requirements that clarify existing FCC requirements that are very broad or have some ambiguity, and address critical problems experienced by consumers. The existing FCC minimum requirements should be familiar to any RDOF recipient or applicant, with the proposed requirements simply building necessary specificity onto those requirements that the FCC would not have been in the position to know or create. Other state PUCs have established similar state specific requirements. As the Massachusetts ETC designating authority, the Department of Telecommunications and Cable, stated: "...under the universal service program, states are free to implement rules, consistent with those of the FCC, to "preserve and advance universal service," as well as to provide "additional definitions and standards to preserve and advance universal service within that State."<sup>6</sup>

Acknowledging the need to balance advancing universal service without imposing undue burden, the Commission should consider establishing a process where requirements are updated as needed, to either address problems that arise, or to remove any state-imposed conditions on ETCs if they are determined to be a burden with no offsetting value to Minnesotans.

The Department's comments respond to each of the topics open for comment in the order they were listed in the Commission's Notice.

## **II. PLEASE ADDRESS THE COMMISSION'S PRESENT LEGAL AUTHORITY OVER ETCs WITH RESPECT TO DESIGNATION AND RECERTIFICATION, WITH CITATIONS.**

### **A. CONGRESS MANDATES THE ROLE OF STATE COMMISSIONS TO DESIGNATE ETCs AND AUTHORIZES STATES TO IMPOSE ADDITIONAL REQUIREMENTS.**

Congress, through the Telecommunications Act (Act), mandates that State commissions have authority to designate ETCs. 47 U.S.C. § 214 (e)(2), states:

Designation of eligible telecommunications carriers: A State commission shall upon its own motion or upon request designate a common carrier

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<sup>6</sup> *Order Opening Investigation*, D.T.C. 13-4, *Investigation by the Department on its Own Motion into the Implementation in Massachusetts of the Federal Communications Commission's Order Reforming the Lifeline Program*, April 13-4 (rel. April 1, 2013), citing 47 U.S.C. § 254(f), 47 C.F.R. § 54.416(c) and the *Lifeline Reform Order*, p. 4.

that meets the requirements of paragraph (1)<sup>7</sup> as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.

Congress also gave to the states the broad authority to adopt regulations, as long as those regulations are consistent with the FCC's rules. 47 U.S.C. § 254 (f) states:

A state may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service.

*B. FCC RULES AND ORDERS, INCLUDING THOSE DIRECTLY RELATED TO RDOF, REFER TO THE PARTNERSHIP BETWEEN THE STATES AND THE FCC AND ANTICIPATE THAT STATE COMMISSIONS WILL ADOPT STATE-SPECIFIC REGULATIONS CONCERNING ETCs. STATE PUCs ARE NOT A RUBBER STAMP.*

Minnesota ETCs receive significant high cost support from the FCC's Universal Service Fund. From 2003 through 2021 to date, Minnesota providers have been granted high-cost subsidies of more than \$2.7 billion.<sup>8</sup> In 2020 alone, the FCC disbursed more than \$248 million in high-cost assistance to Minnesota telecommunications companies that the PUC has designated as ETCs.<sup>9</sup> Under the RDOF program, the FCC awarded over \$400 million to be distributed over 10 years to the 21 ETCs designated by the PUC.

To ensure these very significant government funds are used as intended, the FCC referred to the PUC as a partner to the FCC in the oversight of high-cost funds, by designating the ETCs and to annually certify that the ETCs are using the funds as intended. When the FCC was establishing universal service goals and programs, it noted:

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<sup>7</sup> 47 U.S.C. § 214 (e)(2) (1): A common carrier designated as an eligible telecommunications carrier under paragraph (2), (3), or (6) shall be eligible to receive universal service support in accordance with section 254 of this title and shall, throughout the service area for which the designation is received—(A) offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title, 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 (B) advertise the availability of such services and the charges therefor using media of general distribution

<sup>8</sup> <https://opendata.usac.org/High-Cost/High-Cost-Funding-Disbursement-Search/cegz-dzzi>. These funds were dispersed prior to RDOF awards and are primarily for broadband deployment in return for a set number of locations served.

<sup>9</sup> Ibid.

A uniform national framework for accountability, including unified reporting and certification procedures, is critical to ensure appropriate use of high-cost support and to allow the Commission to determine whether it is achieving its goals efficiently and effectively. Therefore, we now establish a national framework for oversight that will be **implemented as a partnership between the Commission and the states**, U.S. Territories, and Tribal governments, where appropriate.<sup>10</sup> [emphasis added]

The FCC further stated:

“We decline to mandate that state commissions adopt our requirements for ETC designations. Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity.”<sup>11</sup>

This intention of the FCC not to disturb the federal-state partnership follows the declaration of the FCC that:

“...state commissions, as the entities most familiar with the service area for which ETC designation is sought, **are particularly well-equipped to determine their own ETC eligibility requirements. State commissions will continue to maintain the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose** (emphasis added).”<sup>12</sup>

The FCC provides for state commissions to tailor regulations to the particular needs of that state.<sup>13</sup> Congress established state commission authority to adopt additional regulations, which remains undisturbed by the FCC. In its *RDOF Order* the FCC noted:

“We recognize the statutory role that Congress created for state commissions and the FCC<sup>14</sup> with respect to ETC designations, and we do not disturb that framework.”<sup>15</sup>

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<sup>10</sup> *In the Matter of Connect America Fund, et al.* Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (ICC/Transformation Order) (2011) para. 573.

<sup>11</sup> *Id.* *In the Matter of Federal-State Joint Board on Universal Service*. FCC 05-46, released March 17, 2005. Para 1..

<sup>12</sup> *Ibid.* para 61.

<sup>13</sup> *Id.*

<sup>14</sup> See 47 U.S.C. 214 (e)(2) and 47 U.S.C. § 254 (f).

<sup>15</sup> *In the Matter of Rural Digital Opportunity Fund*, FCC 20-5 (2020) para. 92. Also, FCC Public Notice released October 14, 2021 in WC Docket Nos. 19-126 and 10-90, p.8

The ability for states to establish their own requirements consistent with the goal of universal service was also recognized by the FCC in its *2011 ICC/Transformation Order*, where the FCC noted:

The statute<sup>16</sup> permits states to adopt additional regulations to preserve and advance universal service so long as they also adopt state mechanisms to support those additional substantive requirements.<sup>17</sup> Consistent with this federal framework, state commissions may require the submission of additional information that they believe is necessary to ensure that ETCs are using support consistent with the statute and our implementing regulations, so long as those additional reporting requirements do not create burdens that thwart achievement of the universal service reforms set forth in this Order.<sup>18</sup>

C. *THE PUC IS THE ONLY REGULATORY AGENCY IN MINNESOTA THAT CAN ESTABLISH REGULATIONS AND REPORTING REQUIREMENTS THAT APPLY TO ETCs*

Annual ETC certification is conducted pursuant to 47 C.F.R. §§ 54.313 and 54.314, where ETCs are required to report annually and state commissions affirm “that all federal high-cost support provided to such carriers within that state 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. High-cost support shall only be provided to the extent that the state has filed the requisite certification pursuant to this section.”<sup>19</sup> The certification is to be provided by “the appropriate regulatory authority for the state.”<sup>20</sup>

The ETC designation and annual certification responsibilities clearly rests with the PUC. However, the May 28, 2021 PUC Order in this docket states:

“At the time of the Commission meeting, disagreement persisted among the parties regarding the scope of the Commission’s authority to regulate ETCs...”<sup>21</sup>

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<sup>16</sup> Referring to 47 U.S.C. 214 (e) and 254 (f).

<sup>17</sup> *Id.*

<sup>18</sup> *In the Matter of Connect America Fund, et al.* Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (*ICC/Transformation Order*) (2011) para. 574.

<sup>19</sup> 47 C.F.R. §§ 54.314 (a)

<sup>20</sup> *Id.* sub. (c)(1).

<sup>21</sup> *Order Approving Petitions for ETC Designation in Certain Census Blocks and Requiring Additional Filings* Docket P999/CI-21-86, et. al. p.9, May 28, 2021. The PUC issued two orders in this docket on May 28, 2021. The quote cited is from the order that primarily approves the non-ILEC designations.



The PUC Order further states:

“other Minnesota agencies that have not participated in these dockets have a role in universal service, including the Department of Employment and Economic Development, which regulates broadband.”<sup>22</sup>

While DEED is the central broadband planning body for the State of Minnesota,<sup>23</sup> per Minnesota statute, DEED has “no authority to regulate or compel action on the part of any provider of broadband service.”<sup>24</sup> Only the PUC, as a regulatory decision maker, can perform the responsibilities of designating ETCs and annually certify that ETCs used federal funds in the preceding calendar year, and will use federal funds in the coming year, only for the provision, maintenance, and upgrading of facilities and service for which the support is intended. In carrying out this responsibility, the PUC is to comply with Minn. Stat. §237.435, which states:

In determining whether to provide the annual certification of any eligible telecommunications carrier for continued receipt of federal universal service funding, the commission shall apply the same standards and criteria to all eligible telecommunications carriers.

In summary, the PUC is the sole regulatory agency in Minnesota with the authority and discretion to establish requirements, that apply to ETCs receiving FCC funding, to advance universal service.

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

**III. WITHIN THAT AUTHORITY, SEPARATELY ADDRESS THE RECOMMENDED EXERCISE OF AUTHORITY BY THE COMMISSION.**

**A. THE PUC HAS PREVIOUSLY EXERCISED ITS AUTHORITY TO SET ADDITIONAL REQUIREMENTS ON ETCs, ABOVE AND BEYOND FCC MINIMUM REQUIREMENTS.**

In past rulings, the PUC has exercised its authority to establish additional requirements that are above and beyond FCC minimum requirements that are applicable to all ETCs, including ETCs that do not have a certificate of authority from the PUC to operate as a telecommunications carrier in Minnesota. In establishing requirements applicable to ETCs, the PUC has complied with the requirement in Minn. Stat. § 237.435 to apply the same standards and criteria to all ETCs. In determining applicable standards and criteria, the PUC has recognized that unique circumstances exist with Lifeline-only ETCs, which are wireless carriers, and those ETCs that receive high-cost universal service support. Mobile wireless companies are not generally regulated by the PUC under Minnesota Chapter 237, but when designating mobile wireless companies as ETCs for Lifeline only, the PUC has required:

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<sup>22</sup> Id.

<sup>23</sup> Minn. Stat. § 116J.39 subd.4(a)(1)

<sup>24</sup> Minn. Stat. § 116J.39 subd.4(b)

- 911 certification.<sup>25</sup>
- an informational tariff.<sup>26</sup>
- collect and remit 911 and TAM fees.<sup>27</sup>
- commit to follow the CTIA's Consumer Code.<sup>28</sup>
- offer rates, terms, and conditions that match the best rates, terms, and conditions offered in any other jurisdiction.<sup>29</sup>
- provide customers with detailed information in writing at the time of enrollment, of repair and replacement policies for phones and accessories (batteries, chargers) and purchase options.<sup>30</sup>
- provide cell phone instruction manuals to Lifeline customers.<sup>31</sup>
- distribute customer notice provided by CAO no later than one month after enrollment.<sup>32</sup>

For high-cost ETCs, the PUC has recently issued a requirement that "to the maximum extent possible ETCs shall follow best practices in the provision of Lifeline services."<sup>33</sup> The requirements outlined in the 'best practices' Order adds significant detail to clarify the FCC requirement to "advertise the availability of such services." As the PUC recognized, in the absence of clarifying its expectations, there would be less effort to make Lifeline service available to consumers, by some carriers. The PUC's Order clarifying the rules concerning Lifeline offerings serves the goal of advancing universal service.

*B. THE FCC RULES FOR ETCs TEND TO BE BROAD IN NATURE AND DO NOT ESTABLISH STATE SPECIFIC REQUIREMENTS. THE MNPUC MAY CHOOSE TO ADOPT AND CLARIFY THE REQUIREMENTS OF 47 C.F.R. §54.202.*

There has been some confusion in this proceeding on the federal requirements that must be applied by the states on ETC designation and in the annual certification process. For example, the November 5, 2021 comments filed by the Minnesota Telecom Alliance (MTA) in this proceeding, references FCC Rules 47 C.F.R. §54.202 twice, stating that the PUC must analyze whether an ETC designation is in the public interest. Also, in this 21-86 Docket (and the associated company specific dockets), the PUC Staff sent a request to each RDOF applicant not seeking a certificate of authority, asking whether the company would certify "... the applicant's commitment to meeting the service and performance quality requirements applicable to its support type. See 47 C.F.R. §54.202(a)(1)."<sup>34</sup> Each ETC consented to staff's request on this one provision. However, the PUC has not explicitly adopted FCC Rules 47 C.F.R. §54.202 for Minnesota ETC designations.

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<sup>25</sup> See, Order Granting Petition for ETC Designation with Conditions, Docket No. P6978/M-17-213, November 15, 2017, p.4.

<sup>26</sup> Id. P.6.

<sup>27</sup> Id. P.6. Note: the collection and remittance is pursuant to §§403.11 and 237.52, but not contained in FCC rules.

<sup>28</sup> Id. P. 6.

<sup>29</sup> Id. P.6.

<sup>30</sup> Id. P.6

<sup>31</sup> Id. P.6.

<sup>32</sup> See, Notice of Language and Distribution of Customer Notice, Docket P999/CI-17-509, August 9, 2021.

<sup>33</sup> *Order Establishing Best Practices and Requiring Filings*. Docket No. P999/CI-20-747. July 20, 2021.

<sup>34</sup> *Notice of Request for Additional Information* Issued April 5, 2021. P999/CI-21-86. Document No. 20214-172583-01.

47 C.F.R. §54.202 contains a set of additional regulations adopted by the FCC to be applied when the FCC is the entity designating the ETC.<sup>35</sup> The FCC designates ETCs when states do not have authority to do so, generally for Tribal entities and ETC applicants serving in states that have declined jurisdiction over ETC designations.<sup>36</sup> The requirements in 47 C.F.R. §54.202 are optional for states that designate and annually certify ETCs, but the FCC encouraged states, as partners, to adopt the requirements in 47 C.F.R. §54.202.<sup>37</sup> Wisconsin<sup>38</sup> and Missouri<sup>39</sup> are example of states that have explicitly adopted 47 C.F.R. §54.202 to address needs in their own states.

If the PUC chose to explicitly adopt the provisions in 47 C.F.R. § 54.202, some of these provisions are meaningless without more specificity of what is required of the ETC. For example, when the PUC Staff asked RDOF applicants to: “Please certify the applicant’s commitment to meeting the service and performance quality requirements applicable to its support type. See 47 C.F.R. §54.202(a)(1),”<sup>40</sup> what was the understanding of each ETC applicant when stating their agreement? What is meant by “service and performance quality requirements applicable to its support type”? In the absence of more clarity, any commitment by an ETC lacks meaning. Similarly, when the MTA states that ETC designations must be in the public interest pursuant to 47 C.F.R. § 54.202(b), what is meant by the public interest? If the “public interest” includes clearing outages in a timely manner, or answering calls to customer service without the customer waiting on hold for hours, then the generalities of 47 C.F.R. § 54.202 are inadequate to ensure ETCs operate in the public interest.

As discussed above, the FCC recognizes that states have unique circumstances and states are best situated to address specific requirements for their state. The PUC should adopt specific requirements to provide clarity of its expectations, whether or not it explicitly adopts the provisions in 47 C.F.R. §54.202. The requirements of 47 C.F.R. §54.202<sup>41</sup> are general in nature and include:

- Certify that it will comply with the service requirements applicable to the support that it receives (§54.202 (a)(1)(i))

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<sup>35</sup> 47 C.F.R. § 54.202 is titled: “Additional requirements for Commission designation of eligible telecommunications carriers”, (where Commission means FCC).

<sup>36</sup> Delaware and New York are 2 states that do not assert jurisdiction in designating ETCs.

<sup>37</sup> “Specifically, consistent with the recommendations of the Federal-State Joint Board on Universal Service (Joint Board), we adopt additional mandatory requirements for ETC designation proceedings in which the Commission acts pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act). In addition, as recommended by the Joint Board, we encourage states that exercise jurisdiction over ETC designations pursuant to section 214(e)(2) of the Act, to adopt these requirements when deciding whether a common carrier should be designated as an ETC.” para. 1 and “In addition, we further strengthen the Commission’s reporting requirements for ETCs in order to ensure that high-cost universal service support continues to be used for its intended purposes.... These annual reporting requirements are required for all ETCs designated by the Commission. We encourage states to require these reports to be filed by all ETCs over which they possess jurisdiction.” para. 4. In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, FCC Report and Order 05-46, para. 1, rel. March 17, 2005.

<sup>38</sup> PSC 160.13 (<https://docs.legis.wisconsin.gov/document/administrativecode/PSC%20160.13>)

<sup>39</sup> 20 CSR 4240-31.016 (2)(B) (<https://www.sos.mo.gov/CMSImages/AdRules/csr/current/20csr/20c4240-31.pdf>)

<sup>40</sup> *Notice of Request for Additional Information* Issued April 5, 2021. P999/CI-21-86. Document No. 20214-172583-01.

<sup>41</sup> See Attachment 1.

- Requirement to submit a 5 year plan (§54.202 (a)(1)(ii))<sup>42</sup>
- Demonstration of ability to remain functional in emergency situations (§54.202 (a)(2))
- Demonstrate that it will satisfy applicable consumer protection and service quality standards (§54.202 (a)(3))
- Demonstration of technical and financial capability (for Lifeline only applicants) (§54.202 (a)(4))
- Description of terms and conditions of voice telephony service (for Lifeline only applicants) (§54.202 (a)(5))
- Determination that the designation is in the public interest (§54.202 (b))
- Proof that Tribal governments have received a copy of its petition (§54.202 (c)).

The additional requirements proposed by the Department, and discussed in Section IV of these comments, are minimal and insufficient in the Department's opinion to ensure ETCs are operating in the public interest. However, since the PUC has reflected some apprehension with adopting any requirements, the Department has kept its recommendations to a minimum, but asks the Commission to have an annual process to adjust its regulations to preserve and advance universal service, and not create burdens that thwart achievement of universal service.

**IV. PLEASE ADDRESS THE ROLES OF THE MN 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.**

The Department's legislative charge with respect to telecommunications covers enforcement of the provisions in Minnesota Chapters 216A, 216B, and 237, as well as PUC orders.<sup>43</sup> The statute also allows for intervention as a party in all proceedings before the PUC<sup>44</sup> and charges the Department with the prevention of waste or unnecessary spending of public money.<sup>45</sup>

The Department developed a Matrix of Agency Roles, in Attachment 2, with the Minnesota Department of Economic Development (DEED), the Minnesota Office of the Attorney General (OAG), and the Minnesota Department of Public Safety (DPS). This Matrix is responsive to the questions raised by the Commission in its June 30, 2021 Notice regarding roles of each agency.

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<sup>42</sup> The FCC issued a forbearance of this requirement to submit a 5-year plan. See RDOF Report and Order, FCC 20-5, fn 271. February 7, 2020.

<sup>43</sup> The commissioner of commerce is responsible for the enforcement of chapters 216A, 216B and 237 and the orders of the commission issued pursuant to those chapters. Minn. Stat. 216A.07, sub 2.

<sup>44</sup> Minn. Stat. § 216A.07, sub 3.

<sup>45</sup> Minn. Stat. § 216A.07, sub 6 (1).

In brief:

1. The Department investigates and makes recommendations to the Commission. The Department enforces the PUC's orders and provisions of Minnesota Chapter 237 (as well as 216A and 216B).
2. DEED is the central broadband planning body for the State of Minnesota, and has several functions that interact with the Department, including consultation with the Department on federal level activities and their impact on broadband deployment. DEED, however, per Minn. Stat. § 116J .39, subd. 4(b), is not a regulatory agency and does not have authority to regulate or compel action on the part of any provider of broadband service.
3. DPS is the 911 network oversight agency, as provided in Minnesota Chapter 403.
4. The OAG enforces state consumer protection laws,<sup>46</sup> investigates violations of state laws governing unfair, discriminatory, and other unlawful practices in business, commerce, or trade,<sup>47</sup> and advocates for Minnesota residential and small business consumers in telecommunications and utilities matters. The OAG is executive branch office and unlike the Department, DPS and DEED, the OAG does not report to the Governor.

**V. IN THIS DOCKET, THE DOC AND OAG HAVE RECOMMENDED THAT THE COMMISSION ADOPT CONSUMER PROTECTIONS THAT WOULD APPLY TO ETCs. PLEASE ADDRESS: A) WHETHER ANY OF THESE PROTECTIONS SHOULD BE ADOPTED B) HOW ANY SUCH PROTECTIONS CAN BE ADOPTED OUTSIDE OF A RULEMAKING PROCEEDING C) 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 D) 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.**

**A. THIS COMMISSION SHOULD ADOPT SIX SPECIFIC TERMS THAT WILL ENHANCE AND CLARIFY FCC REQUIREMENTS**

Earlier in this proceeding, the Department advocated for 19 consumer protections to apply to ETCs. The intent of the proposed protections was to offer a minimal level of safeguards to consumers that are receiving services funded by public dollars. The list was based upon the current statute and rules that apply to telephone companies and most RDOF applicants said, in response to a Department query, they would voluntarily comply with them.

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<sup>46</sup> Minn. Stat. § 8.31.

<sup>47</sup> Minn. Stat § 8.32.

The Department now offers a narrowed list of six protections/clarifications of FCC requirements pertaining to addressing issues related to public safety, transparency, and reliability. The Department's proposals seek to provide clarity to broad FCC provisions, provide an avenue for customers to reach out for help from the state, and provide an avenue for the Commission to deal with problems if and when they arise. Each proposed regulation is supported by a specific FCC rule and/or a previous Minnesota PUC action. Attachment 3 to these Comments summarizes the proposals in a spreadsheet for quick review. Columns E and F in Attachment 3 provide the basis for each of the below clarifications. The Department notes that each proposed regulation is being offered in some form in at least one other state.

#### PUBLIC SAFETY RELATED REGULATIONS:

##### **1. Proposal. Disruption of 911 Service Reported.**

An ETC shall report promptly to the Department of Public Safety (DPS), the PUC, and Commerce, any specific occurrence or development which disrupts the service of 50 or more of its customers or which may impair the utility's ability to furnish service to a substantial number of customers. Notifications need to explain the area affected, number of customers affected, and expected length of outage. Immediately upon restoration of service, the notice shall report the duration of the outage and the root cause of the outage.

##### Problem addressed.

The Department has been engaged with DPS on numerous occasions to discuss 911 concerns, including the lack of intelligent notifications of service disruptions that some companies provide to the public safety answering points (PSAPs) and to DPS.

At this point, no telecommunications company besides CenturyLink reports disruptions of service to Commerce. The Department understands from DPS that notifications of service disruptions are problematic with some providers, but the Department does not have lists of which voice service providers give appropriate notifications and which do not. Further, even if PSAPs are notified about outages, DPS is often not informed. The information provided to PSAPs is often vague and misleading concerning the services that are affected. The lack of intelligent notifications, which include information such as the area affected, the number of customers affected, the estimated time before service will be restored, makes it impossible to know how the public safety community should best react to the disruption. This lack of intelligent notifications interferes with appropriate public alerts and leaves vulnerable citizens in dangerous situations.

Outages that impact 911 service can happen with any service provider and for numerous reasons. For example, in 2018 a misconfiguration by an employee of West Safety Services, a third-party vendor for CenturyLink, caused at least 693 calls to 911 to fail, affecting 81 Public Safety Answering Points (PSAPs). The outage was corrected after 65 minutes, but no alarms were triggered. The joint report of the Department and DPS, which was accepted by this Commission, found:

1. There exist flaws in the 911 system that prevent alarms and notifications to the vendor (or CenturyLink) of activity that does or might cause failures in the systems.

2. Notifications to PSAPs and to DPS are not timely and create difficulties in keeping the public and the responsible agencies informed.<sup>48</sup>

Outages happen with virtually all companies, often for reasons that are outside of the company's control. But, when they do happen, no matter what the cause, notifications are needed to the public safety community so that proper actions may be taken. This includes outages on broadband networks that carry voice communications. Residents need to be made aware of outages and whether they need to take other measures than calling 911, such as contacting an administrative telephone number, using a cell phone, or driving someone to the hospital, if possible.

To provide some perspective on how often outages can occur, in 2020, CenturyLink, the State's main 911 aggregator, reported 14 different outages to the Department. The Department uses the reports to determine whether further investigation is warranted, and whether any regulatory action needs to come before the PUC, as happened in the 2018 incident discussed above. There may also be the need for situational awareness, as larger events may be occurring, with any individual service provider only being aware of their immediate situation. For example, a disruption being experienced by one company may be due to events affecting many other carriers, and in turn, customers. The PSAPs and the DPS are on the front lines for the problems that can occur with these service disruptions and need intelligent notifications to determine what immediate actions must be taken.

There are many new providers in the system who do not report outages. This cripples the ability of DPS to monitor and respond to outages, to ensure the safety of the public. Timely reporting to the DPS is urgent and ETCs must be aware that they have a public interest obligation to report outages that affect users' abilities to contact 911. It is important that PSAPs have the information to decide the appropriate action needed, which may be to do nothing if service is to be restored promptly, or to inform the public outages so appropriate action can be taken by consumers if they need to reach a PSAP (this may mean only using cell phones, or only texting, or dialing an administrative number for the duration of the outage).

While Federal Rule 47 C.F.R. §4.9, Outage Reporting Requirements requires all providers to notify the FCC when network outages occur, the requirement is triggered when more than 900,000 minutes of service are affected, and the service is expected to be down for 30 minutes or more. This high reporting threshold does not assist local and state governments in emergency notifications to the public.

#### Example of requirements in other states

Oklahoma's Administrative Code subchapter 23 is dedicated to the designation process and compliance for ETCs operating in the state. OAC 165:55-23-54<sup>49</sup> states:

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<sup>48</sup> *Joint Report of the Minnesota Department of Public Safety and the Minnesota Department of Commerce Concerning the 9-1-1 Outage August 1, 2018*. Docket P421, P6049/CI-18-542, February 15, 2019, P. 4.

<sup>49</sup> OK 165.55-23-54 Notice of Service Interruptions.

(a) The Commission shall be notified, through the Director of the Public Utility Division and the Commission's Public Information Officer, of all interruptions in Supported Services, which cause a customer to not have access to Supported Services within the designated service area for more than twelve (12) hours; or any interruption which, in the judgment of the ETC, may cause a high degree of public interest or concern.

(b) The Commission notification process required in subsection (a) of this Section, may be accomplished by facsimile, and email twenty-four (24) hours a day, seven (7) days a week; or by phone, during the business hours of 8:00 a.m. through 4:30 p.m., Monday through Friday, and should consist of the following:

- (1) An initial contact to advise of the outage; the cause of such outage; the area affected; and, the estimated time for repair;
- (2) Intermediate contact to provide status reports, as deemed necessary by the telecommunications service provider, or as may be requested by the Commission Staff; and,
- (3) Concluding information detailing the results and completion of the restoration of service.

In Washington, WAC 480-123-030 is titled "Contents of petition for eligible telecommunications carriers." It includes:

- (1) Petitions for designation as an ETC must contain:
- (h) Information that demonstrates that it will comply with the applicable consumer protection and service quality standards of chapter 480-120 WAC.<sup>50</sup>

WAC 480-120-412<sup>51</sup> is titled "Major outages" and states:

- (1) All companies must make reasonable provisions to minimize the effects of major outages, including those caused by force majeure, and inform and train pertinent employees to prevent or minimize interruption or impairment of service.
- (2) **Notice to commission and public safety answering point (PSAP).** When a company receives notice of or detects a major outage, it must notify the commission and any PSAP serving the affected area as soon as possible.

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<sup>50</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=480-120>

<sup>51</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=480-120-412>



- (3) **Notice to county and state emergency agencies and coordination of efforts.** When a major outage affects any emergency response facility, a company must notify immediately the county E911 coordinator and the state emergency management authorities, and provide periodic updates on the status of the outage. The company must coordinate service restoration with the state emergency management authorities if it requests it, and, if requested to do so by the commission, report daily to it the progress of restoration efforts until the company achieves full network recovery.
- (4) **Major outages repair priorities.**
- (a) Outages affecting PSAPs and emergency response agencies must receive attention first and be repaired as soon as possible.
  - (b) Companies must restore other services within twelve hours unless conditions beyond a company's reasonable ability to control prevent service restoration within twelve hours.
  - (c) Companies must restore outages to their facilities affecting intercompany trunk and toll trunk service within four hours after the problem is reported unless conditions beyond a company's reasonable ability to control prevent service restoration within four hours. If the problem is not corrected within four hours, the company must keep all other affected companies advised of the status of restoration efforts on a twice-daily basis.
- (5) **Information to public.** Unless heightened security concerns exist, during major outage recovery efforts all companies must implement procedures to disseminate information to the public, public officials, and news media. All companies must provide a statement about the major outage that includes the time, the cause, the general location and approximate number of affected access lines, and the anticipated duration.
- (6) **Notice of intentional outage.** When a company intends to interrupt service to such an extent that it will cause a major outage, it must make a reasonable effort to notify all customers who will have their telephone service affected and the state emergency management authorities not less than seven days in advance if circumstances permit or as soon as it plans to interrupt service if circumstances do not permit seven days' advance notice. A notice is not required for planned service interruptions that have a duration of less than five minutes and occur between the hours of 12:00 a.m. and 5:00 a.m.
- (7) **Records.** All companies must keep a record of each major outage and a statement about the interruption that includes the time, the cause, the location and number of affected access lines, and the duration.

## **2. Proposal. 911 Plan Approved by DPS.**

An ETC shall have its 911 plan approved by DPS as a condition of ETC status.

### **Problem addressed.**

DPS informs the Department that some Voice over Internet Protocol (VoIP) providers have not undertaken the necessary steps to ensure the 911 system works properly. DPS needs to ensure that companies have properly integrated with the 911 network, have appropriate route diversity, can handle traffic spikes in emergency situations, and provide access to the customer location information to ensure 911 calls are routed to the proper public safety answering point (PSAP) and that emergency vehicles are sent to the correct address.

DPS reports that ensuring correct routing to PSAPs is especially problematic:

Starting in July 2021, this consolidated 911 center (Rice-Steele Consolidated PSAP) received upwards of 20 calls that came into their center as a transfer from “Northern 911” which is the default center 911 calls are routed to that have inaccurate location details. This facility is in Canada and will often transfer this call to a random MN PSAP, a 10-digit administrative line for the PSAP or in a few cases to the PSAP manager’s voice mail line.<sup>52</sup>

VoIP providers do not obtain a certificate of authority from the PUC, a process that ensures the provider has a 911 plan approved by DPS. 911 plan approval by DPS helps to ensure that a customer dialing 911 at the time of an emergency are properly connected to the correct PSAP and the customer’s location information is known.

In addition to the immediate public safety aspects with filing a 911 plan, not having access to customer location information also means that DPS does not always know how many users are connected via the provider to ensure 911 fee are accurate. The fees collected by service providers from customers are the primary means for DPS to pay for the Emergency Services Network.

Clearly not all VoIP providers are ETCs and adopting the requirement that ETCs have a 911 plan does not wholly resolve the problems DPS is encountering with VoIP providers. However, as discussed above, States do have the ability to establish requirements on ETCs receiving government funds for services that the PUC does not otherwise regulate, such as wireless services and broadband, as long as the requirements do not thwart universal service. Requiring providers receiving federal funds to get approval from the DPS for their 911 plans is an appropriate step to ensure the safety of more Minnesotans.

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<sup>52</sup> From advanced copy of *Letter to MPUC from DPS*, Docket No. P999/CI-21-86, November 19, 2021.

### Example of requirements in other States

Summaries of applicable E911 laws and regulations by state can be found at the following web address: <https://www.intrado.com/en/life-safety/e911-regulations#>. The arrangements within each state are complex and unique to the state and may or may not involve the state PUC. For this reason, the Department is not advocating for the MN PUC to order specific terms and conditions that are to be in ETC 911 plans, but rather, seeks to require ETCs receiving federal funding to cooperate with DPS in establishing the 911 arrangements, terms, etc. that DPS finds necessary to ensure public safety.

### **3. Proposal. *Resolve Service Outages Promptly.***

An ETC shall have a goal to resolve outages of 95% outages cleared within 24 hours.

#### Problem addressed.

Excessive outages directly impact the safety of the most vulnerable Minnesotans who rely on the service to be able to call 911. It also prevents customers from getting the service for which they are paying. Customers should not be without service for days on end. Establishing a goal for clearing outages is an aspirational goal that can guide ETC decisions on staffing and makes it clear to providers that the Commission may investigate continuous outages that affect federally subsidized services.

Both CenturyLink (Docket 20-432) and Frontier (Docket 18-122) have been the subject of complaints and proceedings before the PUC that included Minn. Rule 7810.5800, which sets a goal to clear 95% of outages within 24 hours. Outages can occur throughout a company's network, for multiple reasons, and the cause may be outside of the company's control. However, having the staff resources to restore outages promptly should be a basic expectation for services supported by high-cost funds, and a stated goal for clearing outages provides guidance to ETC decisions on staff resources.

#### Experience in Other States

In Oklahoma an ETC is to clear 85% of all trouble reports within 24 hours.<sup>53</sup>

In Washington, as discussed above, outages affecting PSAPs and emergency response agencies must receive attention first and be repaired as soon as possible. Companies must restore other services within twelve hours unless conditions beyond a company's reasonable ability to control prevent service restoration within twelve hours.<sup>54</sup>

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<sup>53</sup> OAC 165.55-23-52.

<sup>54</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=480-120-412>

TRANSPARENCY RELATED PROPOSALS:

**4. Proposal. *Prices and Terms Available to Customers***

1. An ETC shall keep an updated price list on the company's website of the service offerings supported as an ETC.
2. ETCs shall make all contract terms including early termination fees and automatic renewals explicit to customers prior to customer purchase of supported services.

**Problem addressed.**

The information companies choose to provide to consumers is not always adequate to inform customers of the availability of federally supported services and programs. The PUC recognized this when it authorized \$50,000 for its Consumer Affairs Office (CAO) to conduct an outreach program to inform customers of the availability of the Telephone Assistance Plan.<sup>55</sup> For government funded services, it is reasonable for customers to be aware of what supported services are available at their location, and any significant terms of service, such as consequences for cancelling service before the end of a contract term. The PUC recognized the need to have some level of public disclosure for supported services when it required Lifeline-only wireless ETCs file an informational tariff.<sup>56</sup> Disclosure of those services provided by an ETC via government funding, by providing the offerings on its website, is a basic way that service offerings can be made clear. These supported services included Lifeline offerings to help bring service to low-income customers. Rates and charges, including early termination fees have not always been clear and the customer deserves an appropriate reference.

The need for transparency on the availability of supported service is significant because it is not always in the economic interest of an ETC to provide service in hard to serve, high-cost areas. An ETC is not required to provide service to a location to be able to count the location as “served” in meeting the required milestones to satisfy its obligations.<sup>57</sup> Instead, an ETC can count a location as served if it can provide service to the location within 10 days upon request.<sup>58</sup> Requiring ETCs to identify supported services, along with any significant terms associated with subscribing to that service, on its website, is a minimal way to increase customer awareness of the availability of supported services. It certainly is far less aggressive than the outreach campaign that the Commission found appropriate to increase customer awareness of the TAP program.

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<sup>55</sup> *In the Matter of Telephone Assistance Plan Review*, Order Accepting TAP Fund Review and Approving Outreach Expenditure, Docket No P999/CI-18-112, August 6, 2019, p2.

<sup>56</sup> See, for example, Order Granting Petition for ETC Designation with Conditions, Docket No. P6978/M-17-213, November 15, 2017, p.6.

<sup>57</sup> *In the Matter of Rural Digital Opportunity Fund Connect America Fund* Report and Order, FCC 20-5, Released February 7, 2020 (RDOF Order), para. 45. ETC to offer service to 40% of locations by end of third full calendar year following fund authorization, and 20% each year thereafter.

<sup>58</sup> *RDOF Order*, par. 54

The Department notes that this Commission has not only made efforts to ensure customers are aware of the TAP program, but it has also sought to ensure that Lifeline services are clearly visible on company websites. In the annual certification of high cost ETCs, the Department has discovered that many companies did not have accurate Lifeline information on their websites.<sup>59</sup> In a docket concerning wireless Lifeline-only ETCs, and a second docket concerning high cost ETCs,<sup>60</sup> the PUC established requirements associated with Lifeline. With the high cost ETCs, such as the RDOF award winners, the PUC established best practices to be used with Lifeline, including disclosure of Lifeline information on the ETCs website.<sup>61</sup> While all companies corrected their websites when discrepancies were pointed out to them, it required the intervention of the Department and the Office of Attorney General to ensure that customers could see accurate information. Given this experience, in the absence of a requirement that an ETC shall keep an updated price list on the company's website of the service offerings supported as an ETC, including significant terms associated with the service such as early termination fees, accurate information may not be easily accessible to customers.

Customers deserve accurate information for the services that the companies are required to provide to receive the Universal Service Subsidies.

#### Experience in Other States

Oklahoma requires ETCs to submit tariffs or post informational terms, conditions, and rates on the company's website and provide that to the Oklahoma Commission.<sup>62</sup>

Massachusetts companies, including high-cost ETCs, must file tariffs with the DTC before offering interstate services.<sup>63</sup>

#### **5. Proposal. ETC Shall Provide Information about the Consumer Affairs Office (CAO).**

Upon enrolling a customer, the ETC shall make the customer aware of how to file a complaint with the CAO and provide the CAO contact information. ETCs shall cooperate with CAO to resolve customer issues.

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<sup>59</sup> *In the Matter of the Annual Certification Related to Eligible Telecommunications Carriers' (ETCs) Use of Federal Universal Service Support Required Pursuant to C.F.R. 54.313 Order Certifying Eligible Telecommunications Carriers' Use of Federal High-Cost Subsidy*, Docket No. P999/PR-20-8, November 25, 2020, p. 4.

<sup>60</sup> *In the Matter of a Commission Investigation into the Appropriate Notice and Outreach Requirements for Eligible Telecommunications Carriers under 47 U.S.C. § 214(e)*, Docket No. P-999/CI-17-509 and P999/CI-17-509 and *In the Matter of a Commission Inquiry into the Advertising, Outreach, and Offering of Lifeline by High-Cost ETCs*, Docket No. P999/CI-20-747 (Docket 20-747).

<sup>61</sup> Order, Docket 20-747 July 20, 2021, p. 8.

<sup>62</sup> OAC 165:55-23-15.

<sup>63</sup> General Laws Chapter 159, Section 19 and 207 C.M.R. 12.00

Problem addressed.

The CAO helps resolve disputes between customers and the service providers that are subject to the PUC's jurisdiction. As the PUC has responsibility to ensure broadband awards are used for their intended purposes for customers of federally funded supported services, customers should be informed that they can avail themselves of the CAO.

Requiring ETCs to inform customers of the CAO, as the Department is proposing, is consistent with the PUC decision in Docket 17-509, when it ordered mobile wireless Lifeline-only ETCs to distribute an initial notice to each new Lifeline customer that included the ETC's name and customer-service contact information, an explanation of a Lifeline subscriber's rights and responsibilities and contact information for the Commission's Consumer Affairs Office.<sup>64</sup> Like the wireless providers, broadband services providers are not otherwise regulated by the PUC except in the context of having ETC status.

Experience in Other States:

The State Corporation Commission of Kansas adopted requirements for designation of ETCs,<sup>65</sup> including the requirement that ETCs must include the contact information for the Office of Public Affairs and Consumer Protection in their advertisements to make sure that customers know where to turn with questions and complaints. The Order adopting ETC requirements also states that bill inserts are insufficient, which ETCs had argued as satisfactory, as inserts would only reach those who are already customers and omit others who may have complaints.<sup>66</sup>

In Oklahoma, the Commission ensures that ETCs are responsive to the CAO to resolve subscriber issues. When the Oklahoma Commission reaches out to the ETC upon receipt of a complaint, the ETC has one business day to respond to the Commission when the issue is disconnection, suspension, or termination of Supported Services. If the Commission contacts an ETC about an inquiry or complaint related to some other matter, an ETC has three business days to respond to the Commission.<sup>67</sup>

**RELIABILITY RELATED PROPOSAL:**

**6. Proposal. *Customers shall not be on hold an excessive amount of time.***

ETCs shall have the goal of enabling customers to speak to a live operator in a reasonable amount of time of placing a call to customer service.

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<sup>64</sup> *Commission Investigation into the Appropriate Notice and Outreach Requirements for Eligible Telecommunications Carriers under 47 USC § 214(e)*, Order Establishing Customer Notice Requirement, November 20, 2020, p.7.

<sup>65</sup> See Order Adopting Requirements for Designation of ETCs, In the Matter of a General Investigation Addressing Requirements for Designation of Eligible Telecommunications Carriers, Docket 06-GIMT-446-GIT, October 2, 2006.

<sup>66</sup> Id at 7-8.

<sup>67</sup> OAC 165:55-23-23

### Problem addressed

Access to a customer service representative is a necessary first step for customer to get an issue resolved. Reporting a service outage, resolving a billing concern, or changing or cancelling service all begin with a call to customer service. Customers who experience excessive hold times may hang-up due to frustration, and then try to call again later. If a customer cannot get through to a customer service representative, the customer cannot get their issue resolved unless they seek intervention from a government office, such as the CAO, as discussed above.

In the CWA complaint against CenturyLink (docket 20-432), in the Frontier complaint (docket 18-122), and in the recent customer concerns brought to the Department on an LTD Broadband outage, a common refrain was how long customers had to wait on hold before speaking with a customer service. Customers experienced frequent transfers without an opportunity to speak, and reports of multiple hours on hold was not uncommon. One typical example, as relayed by a customer:

I have had very negative billing experiences that took 1 1/2 years to resolve. I was on the phone for hours either on hold or getting transferred from one person to the next and then I would be disconnected and have to start the process over. . . . Another time when I started to tell the customer service agent my problem and they pulled up my account and saw all of the notes regarding my previous calls they hung up on me. . . Supervisors never called me back when the agent said the supervisor would have to deal with it and they weren't available.<sup>68</sup>

### Experience in Other States

In Washington, as discussed above, WAC 480-123-030 titled "Contents of petition for eligible telecommunications carriers" states that petitions for designation as an ETC must contain "information that demonstrates that it will comply with the applicable consumer protection and service quality standards of chapter 480-120 WAC."<sup>69</sup> For consumers who call for assistance, time limits for both automated and manual answering systems, with hold times are not to exceed 60 seconds.<sup>70</sup>

- (2) Companies that use an automated answering system must comply with the following requirements:
  - (a) Each month, the average time until the automated system answers a call must not exceed thirty seconds; and
  - (b) The automated system must provide a caller with an option to speak to a live representative within the first sixty seconds of the recorded message, or it must transfer the caller to a live representative within the first sixty seconds.

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<sup>68</sup> Public Comments of the Minnesota Department of Commerce, Docket No. P421/C-20-432, p. 10.

<sup>69</sup> <https://app.leg.wa.gov/WAC/default.aspx?cite=480-120>

<sup>70</sup> WAC 480-120-133 Response time for calls to business office or repair center during regular business hours.

(c) Each month, the average time until a live representative answers a call must not exceed sixty seconds from the time a caller selects the appropriate option to speak to a live representative.

(3) Companies that do not use an automated answering system must answer at least ninety-nine percent of call attempts, each month, within thirty seconds.

*B. RULEMAKING IS NOT NEEDED TO ADOPT THE PROTECTIONS/CLARIFICATIONS PROPOSED.*

This Commission has previously clarified FCC provisions to be applied to all ETCs consistently since the first wireless carrier applied to be an ETC. Most recently, this Commission ordered each ETC serving Tribal areas to file a detailed plan of how it will meaningfully and appropriately engage with all Tribes it serves.<sup>71</sup> As discussed in Section II of these comments, this Commission has added specifics in its orders to clarify what the FCC rules provide. The 6 proposed regulations are in the same vein and can follow the same path.

*C. PROTECTIONS APPLY ONLY IN ETC SERVICE AREAS FOR ETCs WITHOUT CERTIFICATES OF AUTHORITY.*

The topic raised by the PUC is whether any protections would apply only in census blocks where the ETC is receiving RDOF support, or all areas served within the state by that company. The PUC can only issue orders within the scope of its authority. If a company is designated as an ETC but is not providing a telecommunications service requiring it to have a certificate of authority from the PUC, then any requirements ordered by the PUC are limited to those census blocks where the company has been designated as an ETC. If a company serves customers outside of the census blocks where it receives federal funding by virtue of being an ETC, the protections would not apply. ETCs may choose to employ one set of policies for the areas it serves, including those areas where it does not receive federal funding, but are not required to do so. While this may create a certain patchwork where some customers receive some minor protections and others do not, this isn't a race to the bottom. The ETCs are receiving a significant amount of public funding and the locations supported by the funds should receive adequate service.

The proposals recommended in this Docket create a list of basic consumer protections that most providers, ETC and non-ETC, already follow as a matter of good business practice. Nevertheless, there are those providers that do not offer these basic consumer protections to their subscribers. When the Department requested that ETC applicants agree to adhere to basic consumer protections, most agreed, but some declined, indicating different attitudes in consumer protections.

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<sup>71</sup> *In the Matter of the Annual Certification Related to Eligible Telecommunications Carriers' (ETCs) Use of Federal Universal Service Support Required Pursuant to C.F.R. § 54.313*. Order Certifying Eligible Telecommunications Carrier' Use of Federal High-Cost Subsidy, Docket Number P999/PR-21-8, October 21, 2021, p5.



- D. IT IS NOT IMPERATIVE THAT CONSUMERS BE INFORMED WHICH PROVIDERS AND CENSUS BLOCKS ARE SUBJECT TO THESE CONSUMER PROTECTIONS.*

Consumers will not be aware of whether consumer protections apply. But this is not unlike customers in a funded census block being eligible for Lifeline service, but neighboring customers in the next census block are not. Customers that are experiencing a problem, or wish to subscribe to Lifeline, will contact their service provider and will either receive the assistance they expect, or not. Customers that are provided services with protections should be given the information necessary to seek the assistance of the Commission's Consumer Affairs Office to seek recourse when they feel they are not being treated fairly.

- VI. PLEASE ALSO ADDRESS A) WHY GOING BEYOND WHAT THE FCC REQUIRES WHEN IT DESIGNATES ETCs SHOULD BE ORDERED BY THE COMMISSION B) WHETHER ADOPTION OF THESE ADDITIONAL PROTECTIONS IS A BARRIER TO BROADBAND DEPLOYMENT, AND C) THE PENALTIES THAT AN ETC WOULD FACE FOR NON-COMPLIANCE WITH ANY PROTECTIONS ADOPTED BY THE COMMISSION IN THIS PROCEEDING.**

- A. THE PUC SHOULD PROVIDE CLARITY TO FCC REQUIREMENTS TO ADDRESS SPECIFIC ISSUES THAT EXIST IN MINNESOTA AND TO PROTECT CONSUMERS FROM BAD ACTORS.*

This Commission has already established regulations and protections for ETCs, as explained in the response to Question II, above. The Department recommends that the Commission continue with its established practice of adopting/clarifying consumer protections to the extent the protections are in the public interest and do not thwart universal service. While the Department believes the public interest requires more than what it is seeking here, in the absence of some provisions to protect consumers, companies will simply do what they deem to be in their self-interest.

- B. APPROPRIATE CONSUMER PROTECTIONS ARE NOT A BARRIER TO BROADBAND DEPLOYMENT*

The six clarifications proposed by the Department are:

1. Disruption of 911 service reported when 50 or more customers affected
2. 911 Plan approved by DPS
3. Resolve service outages promptly, with a goal of 95% in 24 hours
4. Prices and significant terms of service available to customers on company website
5. ETC shall provide information about CAO
6. ETC shall have a goal of customers not being on hold an excessive amount of time

These proposed clarifications do not constitute a barrier to broadband deployment:

- 1) Providing intelligent notifications when service is disrupted is a matter of public safety. Public safety should not be sacrificed with broadband deployment and being accountable for outage is keeping with providing service, rather than a barrier to deployment. If there are 50 customers affected by a service disruption, the disruption seems significant. If there is good cause for the PUC to establish a different threshold, the PUC can adopt a different threshold either now, or in an annual review of ETC requirements.
- 2) Working with DPS to have satisfactory 911 arrangements is also a matter of public safety. Public safety should not be sacrificed with broadband deployment and working cooperatively with the state's public safety agency cannot be deemed to be a barrier to deployment.
- 3) Resolving service outages promptly is providing service as expected when built with government funds and is providing service that the customer has paid for. How can extended outages even be considered a trade-off with a barrier to deployment? Clearing 95% of outages in 24 hours is a goal, but if the company consistently fails to meet that goal, then it is reasonable to question whether the company is employing adequate resources to provide reliable service.
- 4) Prices and terms available to customers on their websites. Transparency of the services offered and their terms, for publicly funded broadband, is not a barrier to deployment. It is an easier way for potential and existing subscribers to understand what to expect from a potential provider. All providers maintain an online presence; this requirement is not onerous as it does not influence, positively or negatively, a company's ability to deploy broadband networks.
- 5) Providing information to the CAO is only for the purpose of assisting customers with problems the customers may experience. It would be great if customers had no need to contact CAO, but unfortunately, they do. Informing customers how they may seek assistance on problems cannot be considered a barrier to deployment.
- 6) Customers with problems should have the ability to speak with a customer service representative without waiting on hold for an excessive period of time. Customers have complained of being on hold for hours with some companies, which is clearly unreasonable. Reasonable customer service assists, rather than burdens, the prospect of broadband deployment. Positive customer service interactions drive subscribership and financial success for the companies that offer it, which in turn allows those companies to expand deployment. While the Department does not offer an objective measure of what constitutes a reasonable wait time, the Commission may choose to do so now, or in an annual review of ETC requirements.

The Department examined many states in addition to Minnesota and found no suggestions that any consumer protections or other requirements placed on ETCs have had a detrimental effect to broadband deployment. However, if a company can demonstrate that a state specific requirement is not in the public interest and poses a barrier to deployment, the Department supports the Commission giving consideration to the merits of that argument. ETCs will have the opportunity to respond to the Department's comments and if any of the six clarifications would cause them to not wish to deploy network or is otherwise a barrier, the Department encourages the provider to step forward to explain its position. In the event that the PUC orders the six clarifications and a provider finds it to be unreasonably burdensome, the PUC should give consideration to such concerns annually, in the recertification process.

**C. THE MINNESOTA COMMISSION CAN DENY RECERTIFICATION OR PETITION THE FCC TO AUDIT AND/OR TO REDUCE FUNDING.**

This Commission authorizes and can rescind the ETC authority of any carrier over which it has jurisdiction. This is clearly a blunt weapon and not one that should be used lightly. There can also be additional monitoring for any ETC not fully complying with the PUC's requirements. For example, in a November 5, 2021 Order, the Iowa Utilities Board (IUB) recently denied a request by LTD Broadband LLC to amend its ETC designation.<sup>72</sup> The IUB decision discusses LTD's failure to comply with the registration requirement, having past due assessments, and not filing an annual report for two years.<sup>73</sup> The IUB required LTD to be registered as a telecommunications service provider, pursuant to § 476.95A, prior to offering service in Iowa.<sup>74</sup> The IUB found that denial of the amendment sought by LTD "does not disturb LTD's current designation; however, the record developed may suggest a need for additional compliance monitoring of LTD's existing designation."<sup>75</sup>

The Commission can also let the FCC know if an ETC is not complying with state requirements. The FCC, through the Universal Service Administrative Company (USAC), has in the past conducted audits and has also reduced funding of companies not complying with state and federal requirements.<sup>76</sup>

In addition, Minnesota Commission orders have the force and effect of law. If an ETC does not comply with a Commission Order, it is violating the law.<sup>77</sup> Such violations can be referred to the Attorney General's Office for pursuit of civil penalties in district court.

**VII. 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.**

The Department has researched other states and found states with specific requirements that apply to ETCs. Many states base their authority to establish state specific requirements on Congress's decision, memorialized in 47 U.S.C. §214(e)(2), to rely on state commissions to designate and recertify ETCs.<sup>78</sup>

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<sup>72</sup> [idcplg \(iowa.gov\)](https://www.idcplg.org/iowa.gov)

<sup>73</sup> Id. at p. 5.

<sup>74</sup> Id. at p. 15.

<sup>75</sup> Id. at p. 16.

<sup>76</sup> See, for example the FCC explaining how Hawaii Public Utilities Commission discovered that the number of Tribal consumers Blue Jay was claiming in Hawaii appeared to exceed the number of households on Hawaiian Home Lands and the FCC entered into a Consent Decree with the Commission's Enforcement Bureau, requiring the repayment of \$1.7 million. *In the Matter of Bridging the Digital Divide for Low-Income Consumers, et. al.* Fifth Report and Order, FCC 19-111, November 14, 2019 para. 8.

<sup>77</sup> Minn. Stat. § 216A.07, subd. 2.

<sup>78</sup> 47 U.S.C. 54.214(e)(2) states in part, "A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission."

### Illinois

For example, in a recent Order related to ETC designation for purposes of the RDOF Program,<sup>79</sup> the Illinois Commerce Commission (ICC) walked through the provisions of the Telecommunications Act and addressed its authority. The ICC noted that:

“Section 214(e) of the Federal Act concerns the provision of universal service. Subsection (e)(2) addresses ETC designations by state public utility commissions of common carriers who meet the requirements of subsection (e)(1).”<sup>80</sup>

The ICC further noted that subsection (b) states that,

"A state commission **shall upon its own motion or upon request** designate a common carrier that meets the requirements of paragraph (d) of this section as an eligible telecommunications carrier for a service area designated by the state commission.”<sup>81</sup> [emphasis added]

And:

“Section 54.202 of the FCC Rules sets forth additional eligibility criteria that, while they **do not directly apply to state designations of ETCs, certainly may be adopted by the Commission.**”<sup>82</sup> [emphasis added]

Based on those three statements, the ICC claimed jurisdiction to establish state specific requirements.

### Massachusetts

In its Order Opening Investigation<sup>83</sup> (“13-4 Docket”) to examine the implementation of the reforms from two FCC Orders,<sup>84</sup> the Massachusetts Department of Telecommunications and Cable (DTC) reaffirmed its authority to adopt additional requirements for ETCs beyond those established by the FCC:

The *Lifeline Reform Order*<sup>85</sup> also affirms the Department’s authority to impose additional compliance standards, adopt additional eligibility

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<sup>79</sup> Order, Application to Amend and Expand Designation as an Eligible Telecommunications Carrier in the State of Illinois to Receive Rural Digital Opportunity Fund (Auction 904) Support for Voice and Broadband Services and to Receive Federal Lifeline Support, Docket No. 21-0232, Illinois Commerce Commission, May 27, 2021.

<sup>80</sup> Ibid at p. 2.

<sup>81</sup> Ibid at p. 4.

<sup>82</sup> Ibid at p. 5.

<sup>83</sup> *Order Opening Investigation*, D.T.C. 13-4, *Investigation by the Department on its Own Motion into the Implementation in Massachusetts of the Federal Communications Commission’s Order Reforming the Lifeline Program*, April 13-4 (rel. April 1, 2013), citing 47 U.S.C. § 254(f), 47 C.F.R. § 54.416(c) and the *Lifeline Reform Order*, p. 4.

<sup>84</sup> See *In the Matter of Lifeline & Link Up Reform & Modernization, et al.*, WC Docket No. 11-42, et al., *Rep. & Order & Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012) (“*Lifeline Reform Order*”).

<sup>85</sup> *Rep. & Order & Further Notice of Proposed Rulemaking*, FCC 12-11 (rel. Feb. 6, 2012).

criteria, and supplement re-certification requirements. **Indeed, under the universal service program, states are free to implement rules, consistent with those of the FCC, to “preserve and advance universal service,” as well as to provide “additional definitions and standards to preserve and advance universal service within that State.”** [emphasis added]

The DTC requested comments and held a public hearing and procedural conference on the proceeding. No entities questioned the DTC’s authority to implement rules or provide additional definitions or standards within the state. As a result of the 13-4 Docket, the DTC released a list of requirements for Massachusetts ETCs that are still applied today.

### California

The California Public Utilities Commission (CPUC) expressed their jurisdiction in response to the FCC Report and Order<sup>86</sup> that encouraged states to embrace additional ETC requirements to protect the integrity of high-cost universal service support. On May 25, 2006, the CPUC released *Resolution T-17002, Adopting Comprehensive Procedures and Guidelines for Eligible Telecommunications Carrier Designation and Requirements for Eligible Telecommunications Carriers* (“T-17002”). The CPUC also referred to 47 U.S.C. §214(e)(2) to support state jurisdiction, noting that state commission have “the primary responsibility for designating ETCs”<sup>87</sup> and that T-17002 served to fulfill their role in designating and overseeing ETCs:

The CPUC has asserted jurisdiction over ETC designations in California. CPUC finds that **additional mandatory requirements for ETC designation and ETC eligibility reasonable as it provides a means to monitor and ensure that any funds given to California ETCs are used to achieve the goals of universal service.**<sup>88</sup> [emphasis added]

T-17002 established ETC designation eligibility requirements and reporting requirements for ETCs to receive high-cost support. The CPUC developed requirements they deemed consistent with the FCC plan to implement the universal support system Congress created with the 1996 Telecommunications Act.

The CPUC recently confirmed that ETCs must comply with General Order (GO) 168, along with other applicable state and federal consumer protection rules.<sup>89</sup> GO 168 addresses issues such as service initiation and termination, billing, complaints, and emergency 911 service.

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<sup>86</sup> FCC 05-46, In the Matter of Federal-State Joint Board on Universal Service (CC Docket No. 96-45)

<sup>87</sup> See T-17002, p. 2, fn. 2.

<sup>88</sup> Ibid, p. 2.

<sup>89</sup> Ibid, Findings and Conclusions, 3. g., p. 13.

### Oklahoma

When reviewing applications for ETC designation status, Oklahoma's Corporation Commission (OCC) relies on 47 U.S.C. § 214 (e)(2) and 47 C.F.R. § 54.201 for authority. The OCC also relies on its State Constitution, Arts. IX § 18 and 19, which states:

“The Commission shall have the power and authority and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this State....”

The OCC adopted additional State requirements encapsulated in OAC 165:55-23-2 for ETC Designation. OAC 165:55-23-9 concerning billing disputes, requires that if an investigation by the ETC into a dispute is not resolved, the ETC must inform the subscriber that they can take their complaint to the OCC Consumer Services Division (CSD). The ETC must provide the CSD hours of operation, telephone number, and mailing address to the subscriber.

### Oregon

In 2015, the Public Utilities Commission of Oregon (UPOC) released an Order updating ETC requirements for designation and recertification.<sup>90</sup> One requirement conditions designation on a commitment to participate in the state telephone assistance program and that the applicant provide copies of policies and procedures related to training along with internal quality control measures for actual applications. Another requirement is a “Commitment to comply with Oregon's 9-1-1 emergency reporting system tax requirements, currently ORS 403.200 to ORS 403.230.”<sup>91</sup>

### Alaska

ETCs must adhere to consumer protections and service quality standards found in its State Administrative code at 3 AAC 53.400 - .499, 3 AAC 53.450.<sup>92</sup> The ETC must also “commit to maintaining, in an easily accessible location on the company website, consumer complaint procedures.”<sup>93</sup>

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<sup>90</sup> See In the Matter of Public Utility Commission of Oregon, Staff Investigation into Eligible Telecommunications Carriers' Requirements, Docket UM 1648, Order entered Dec. 1, 2015.

<sup>91</sup> Ibid, Attachment A, 9.3.

<sup>92</sup> 3 AAC 53.410 (13). Designation of eligible telecommunications carriers. The consumer protection and service quality standards are set out at 3 AAC 53.450

<sup>93</sup> 3 AAC 53.450(c) Consumer protection and service quality

### Georgia

Rule 515-12-1-.35. *Eligible Telecommunications Carriers* states that (2)“An Eligible Telecommunications Carrier shall satisfactorily resolve within a reasonable time period any and all complaints filed against it with the Commission's Consumer Affairs Unit.” Section (3) of the same rule states that “An Eligible Telecommunications Carrier shall advertise the availability of Lifeline service on its internet website.”<sup>94</sup>

### Washington

WAC 480-123-030 on the contents of petition for eligible telecommunications carriers was provided in detail in section IV above.

## **VIII. CONCLUSION**

In order to fulfill its statutory responsibilities to designate and then annually certify that high-cost ETCs will in the coming year, or have in the past year, used millions of dollars of high-cost funds for the provision of voice and broadband services as intended, the PUC must be able to determine what it needs to fulfill its responsibility. It is unequivocal that the PUC has authority to establish conditions on the designation and annual certification of ETC status. Indeed, this Commission has already applied additional requirements on ETCs, such as filing informational tariffs, and best practices for the provision of Lifeline services. The Commission has a duty to ensure that customers of these subsidized companies are treated fairly, while ensuring that it does not set regulations that do thwart the provision of Universal Service. Nothing in the Department’s proposed regulations will dampen the progress of broadband facilities and will only serve to advance universal service and assist the most vulnerable Minnesotans.

### **Recommended Action**

1. Formally adopt 47 C. F. R. § 54.202. There is some perception that the PUC has adopted this rule, but the Department cannot find evidence that it has explicitly done so. Even with the adoption, the rules lack specific terms necessary for ETCs to clearly understand the PUC’s expectations on some of the provisions.
2. Add the following basic clarifications and terms as outlined in Section IV of these Comments and listed in Attachment 3:
  - a. *Disruption of 911 Service Reported.*** An ETC shall report promptly to the Department of Public Safety (DPS), the PUC, and Commerce, any specific occurrence or development which disrupts the service of 50 or more of its customers or which may impair the utility's ability to furnish service to a substantial number of customers. Notifications need to explain the area affected, number of customers affected, and expected length of outage. Immediately upon restoration of service, the notice shall report the duration of the outage and the root cause of the outage.

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<sup>94</sup> Ga. Comp. R. & Regs. r. 515-12-1-.35 Eligible Telecommunications Carriers

- b. 911 Plan Approved by DPS.** An ETC shall have its 911 plan approved by DPS as a condition of ETC status.
  - c. Resolve Service Outages Promptly.** An ETC shall have a goal to resolve outages of 95% outages cleared within 24 hours.
  - d. Prices and Terms Available to Customers**
    - 1. An ETC shall keep an updated price list on the company's website of the service offerings supported as an ETC.
    - 2. ETCs shall make all contract terms including early termination fees and automatic renewals explicit to customers prior to customer purchase of supported services.
  - e. ETC Shall Provide Information about the Consumer Affairs Office (CAO).** Upon enrolling a customer, the ETC shall make the customer aware of how to file a complaint with the CAO and provide the CAO contact information. ETCs shall cooperate with CAO to resolve customer issues.
  - f. Customers shall not be on hold an excessive amount of time.** ETCs shall have the goal of enabling customers to speak to a live operator in a reasonable amount of time of placing a call to customer service.
- 3. Should the Commission decline to apply the proposed requirements to ETCs at this time, the Commission may choose to put the Department's proposal out for comment and parties may comment on why the proposed regulations would create an unreasonable burden. The Commission would then be able to weigh the perceived burdens against the public interest.
  - 4. Concurrent with the annual recertification process, the Commission may wish to review the regulations applicable to all ETCs, in conformance with Minn. Stat. 237.435, that requires the same standards and criteria to all ETCs. This process would seek to establish terms and conditions if the Commission finds some ETCs not operating in the public interest, or to remove requirements that are unreasonably burdensome or no longer useful.

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ETC and Recertification FCC Rules  
Attachment 1

Department of Commerce  
Attachment 1  
Docket P999/CI-21-86  
page 1 of 2

	ETC Requirements	Explanation	Language
	<b>FCC Requirements when the State PUC certifies the ETC</b>	Congress granted States the authority to designate ETCs. 47 U.S.C § 214(e)(2) and establish reasonable regulations 7 U.S.C § 254(f).	
1	47 CFR § 54.101(a)	Must provide voice grade access to the public switched network	Voice telephony services shall be supported by Federal universal service support mechanisms. Eligible voice telephony services must provide voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation services to qualifying low-income consumers as provided in subpart E of this part.
2	47 CFR § 54.101 (a)	Minutes of use for local service must be provided at no additional charge	same as Line 1
3	47 CFR § 54.101(a) 47 CFR § 54.313(a)(1)	Access to 911 and annual certification that the ETC is able function in emergency situations	same as Line 1, plus: Any recipient of high-cost support shall provide the following: (1) Certification that the carrier is able to function in emergency situations as set forth in § 54.202(a)(2);
4	47 CFR § 54.101(a)	Toll limitation services to qualifying low income customers	same as Line 1
5	47 CFR § 54.201 (d)(1)	Offer service supported by universal service	A common carrier designated as an eligible telecommunications carrier under this section . . . 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
6	47 CFR § 54.201 (d)(2)	Advertise the availability of supported services and the charges using media of general distribution	A common carrier designated as an eligible telecommunications carrier under this section . . . shall throughout the service area for which the designation is received: (2) Advertise the availability of such services and the charges therefore using media of general distribution.
7	47 CFR § 54.313(a)(1)	Certification that the carrier is able to function in emergency situations	(1) Certification that the carrier is able to function in emergency situations as set forth in § 54.202(a)(2)
8	47 CFR § 54.313(a)(2)	Voice rate no more than 2 Standard deviations above national average urban rate	A certification that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, . . .
9	47 CFR § 54.313(a)(3)	Broadband rate is no more than FCC benchmark rate	A certification that the pricing of a service that meets the Commission's broadband public interest obligations is no more than the applicable benchmark to be announced annually in a public notice issued by the Wireline Competition Bureau, or is no more than the non-promotional price charged for a comparable fixed wireline service in urban areas in the states or U.S. Territories where the eligible telecommunications carrier receives support;
10	47 CFR § 54.313(a)(5)	Tribal engagement if the ETC serves Tribal lands	To the extent the recipient serves Tribal lands, documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included: (i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions; (ii) Feasibility and sustainability planning; (iii) Marketing services in a culturally sensitive manner; (iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (v) Compliance with Tribal business and licensing requirements.
11	47 CFR § 54.313(a)(6)	Report the results of network performance tests pursuant to the methodology and format determined by the WCB, WTB and OET.	The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology

ETC and Recertification FCC Rules  
Attachment 1

	ETC Requirements	Explanation	Language
12	47 CFR § 54.405	ETC must make available and advertise Lifeline	Make available Lifeline service, as defined in § 54.401, to qualifying low-income consumers. (b) Publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service. (c) Indicate on all materials describing the service, using easily understood language, that it is a Lifeline service, that Lifeline is a government assistance program, the service is non-transferable, only eligible consumers may enroll in the program, and the program is limited to one discount per household. For the purposes of this section, the term "materials describing the service" includes all print, audio, video, and web materials used to describe or enroll in the Lifeline service offering, including application and certification forms. (d) Disclose the name of the eligible telecommunications carrier on all materials describing the service.
	<b>FCC Certification of Carriers</b>	When a State does not have jurisdiction to designate an ETC, the FCC does the designation pursuant to 47 CFR § 214(e)(6). The MPUC has adopted the section 54.202 requirements.	
13	47 CFR § 54.202 (a)(2)	Remain functional in emergency situations.	Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.
14	47 CFR § 54.202 (a)(3)	ETC must demonstrate it will satisfy all applicable consumer protection and service quality standards.	Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.
15	47 CFR 54.202 (a) (4) - (6)	An ETC seeking designation in areas eligible for Lifeline-only support (Lifeline-only designation) must submit information describing the terms and conditions of any voice telephony plans offered to Lifeline subscribers.	For common carriers seeking designation as an eligible telecommunications carrier for purposes of receiving support only under subpart E of this part, demonstrate that it is financially and technically capable of providing the Lifeline service in compliance with subpart E of this part.
16	47 CFR 54.202 (b)	Public interest standard	Public interest standard. Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

## Matrix of Agency Roles with respect to ETC Designation and Regulation of Entities Receiving FCC High Cost Funds

Activity	Responsible Entity and Role	Citation (Statute, PUC Order, etc)
Advocate public interest at PUC	Commerce	Minn. Stat. 216A. 07, subd. 3
Enforce Minnesota Statutes, PUC Rules and PUC Orders	Commerce	Minn. Stat. 216A.07, subd. 2
Advocate for residential users and small businesses before the PUC	OAG	Minn. Stat. 8.33, subd. 2, 3
Annual ETC recertification	<p>PUC –“the appropriate regulatory authority for the State” is to annually certify ETCs are using funds for their intended purpose.</p> <p>Commerce – responsible for enforcing orders of the PUC, investigating matters before the PUC and intervening in PUC proceedings.</p> <p>OAG—investigate and file comments from perspective of residential and small business customers</p> <p>DEED- Review any proposed actions that impact DEED’s duties related to broadband, including serving in the role as the central broadband planning body for the state of Minnesota. DEED has no authority to regulate or compel action of any provider of broadband service.</p>	<p>Minn. Stat. 216A.05 and 237.435, 47 CFR § 54.314 and 47 U.S.C. § 254(f).</p> <p>Minn. Stat. 216A.07, subd. 2,3,4</p> <p>Minn. Stat. 8.33, subd. 3</p> <p>Minn. Stat. 116J.39, subd. 4</p>

RDOF Recipient ETC Certification	<p>PUC – The State Commission is to designate ETCs that meet the requirements to be an ETC</p> <p>Commerce — responsible for enforcing orders of the PUC, investigating matters before the PUC and intervening in PUC proceedings.</p> <p>OAG-- investigate and file comments from perspective of residential and small business customers.</p> <p>DEED - Review any proposed actions that impact DEED’s duties related to broadband, including serving in the role as the central broadband planning body for the state of Minnesota. DEED has no authority to regulate or compel action of any provider of broadband service.</p>	<p>Minn. Stat. 216A.05 and 237.435, 47 U.S.C. § 214(e)(2) and 254(f).</p> <p>Minn. Stat. 216A.07, subd. 2,3,4</p> <p>Minn. Stat 8.33, subd. 3</p> <p>Minn. Stat. 116J.39, subd. 4</p>
Ensure all providers capable of originating a 911 call have adequate 911 plans	<p>DPS – All providers</p> <p>PUC – Only providers subject to PUC jurisdiction</p> <p>Commerce – Only providers subject to PUC jurisdiction</p>	<p>Minn. Stat. 403</p> <p>Minn. R. 7811/7812.0550</p> <p>Minn. Stat. 216A.07, subd. 2,3,4</p>
Effective 911 network, including day to day operations, outage notifications with intelligence, Automatic Number Identification (ANI) and Automatic Location Information (ALI)	<p>DPS</p> <p>Metro 911 Board</p> <p>Public Safety Answering Points (PSAPs)</p>	<p>Minn. Stat. 403</p>

	Proposed Regulation	Problem	Basis of Requirement	Language of Basis	Examples of Similar Requirement in other States
<b>Public Safety</b>					
1	<b>Disruption of 911 Service Reported.</b> An ETC shall report promptly to the Department of Public Safety (DPS), the PUC, and Commerce, any specific occurrence or development which disrupts the service of 50 or more of its customers or which may impair the utility's ability to furnish service to a substantial number of customers. Notifications need to explain the area affected, number of customers affected, and expected length of outage. Immediately upon restoration of service, the notice shall report the duration of the outage and the root cause of the outage.	Synopsis: This lack of intelligent notifications interferes with appropriate public alerts and leaves vulnerable citizens in dangerous situations.	47 CFR § 54.101	Eligible voice telephony services must provide . . . access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911 . . . .	<b>WAC 480-123-030 Contents of petition for eligible telecommunications carriers.</b> <b>WAC 480-120-412 Major outages</b>
2	<b>911 Plan Approved by DPS.</b> An ETC shall have a 911 plan approved by DPS as a condition of ETC status.	Synopsis: Companies have not always properly integrated with the 911 network, do not always have appropriate route diversity, cannot handle traffic spikes in emergency situations, and may not provide access to the customer location information to ensure 911 calls are routed to the proper public safety answering point (PSAP) and that emergency vehicles are sent to the correct address.	47 CFR § 54.101	Eligible voice telephony services must provide . . . access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911 . . . .	<a href="https://www.intrado.com/en/life-safety/e911-regulations#">https://www.intrado.com/en/life-safety/e911-regulations#</a>
3	<b>Resolve Service Outages Promptly.</b> An ETC shall have a goal to resolve 95% of outages within 24 hours.	Excessive outages directly impact public safety and prevent customers from getting the service for which they are paying. Customers should not be without service for days on end. Establishing a goal for clearing outages is an aspirational goal that can guide ETC decisions on staffing and makes it clear to providers that the Commission may investigate continuous outages that affect federally subsidized services.	47 CFR § 54.202 (a)(3)	[an ETC will] satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis	<b>OK</b> OAC 165:55-23-52 <b>WA</b> <a href="https://app.leg.wa.gov/WAC/default.aspx?cite=480-120-412">https://app.leg.wa.gov/WAC/default.aspx?cite=480-120-412</a>
<b>Transparency</b>					
4	<b>Prices and Terms Available to Customers</b> 1. An ETC shall keep an updated price list on the company's website of the service offerings supported as an ETC. 2. ETCs shall make all contract terms including early termination fees and automatic renewals explicit to customers prior to customer purchase of supported services.	Customers need to know their options. Offerings are not always clear. Lifeline offerings need to be accurate and easily accessible to potential customers. Rates and charges, including early termination fees, are often not clear.	47 CFR § 54.201 (d)(2); MPUC Order in 17-509 and 20-747 FCC Order in WC 09-197 and WC 10-90	Advertise the availability of supported services and the charges using media of general distribution Best practices for Lifeline service	<b>OAC</b> 165:55-23-15  <b>MA</b> (General Laws Chapter 159, Section 19 and 207 C.M.R. 12.00, and subject to Chapter 159, Section 19F:

5	<b>ETC Shall Provide Information about CAO.</b> Upon enrolling a customer, the ETC shall make the customer aware of how to file a complaint with the CAO and provide the CAO contact information. ETCs shall cooperate with CAO to resolve customer issues.	Customers need to know about their options to avail themselves of the Consumer Affairs Office.	Notice of Language and Distribution of Customer Notice, MPUC Docket 17-509, Order of 8-9-2021.	<b>Wireless carrier</b> must distribute customer notice provided by CAO no later than one month after enrollment.	<p><b>GA</b> Ga. Comp. R. &amp; Regs. r. 515-12-1-.35 Eligible Telecommunications Carriers</p> <p><b>KS Corporation Commission</b> Docket 06-GIMT-446-GIT, October 2, 2006</p> <p><b>OK</b> OAC 165:55-23-23. Response to customer complaint inquiries</p>
<b>Reliability</b>					
6	<b>Customers shall not be on hold an excessive amount of time.</b> ETCs shall have the goal of enabling customers to speak to a live operator in a reasonable amount of time of placing a call to customer service.	Access to a customer service representative is a necessary first step for customer to get an issue resolved. Reporting a service outage, resolving a billing concern, or changing or cancelling service all begin with a call to customer service. Customers who experience excessive hold times may hang-up due to frustration, and then try to call again later. If a customer cannot get through to a customer service representative, the customer cannot get their issue resolved, unless they seek intervention from a government office, such as the CAO, as discussed above.	47 CFR § 54.202 (a)(3)	[an ETC will] satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis	<b>WA WAC 480-120-133</b> Response time for calls to business office or repair center during regular business hours.

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, 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. P999/CI-21-86**

**Dated this 19<sup>th</sup> day of November 2021**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Mary	Buley	mbuley@otcpas.com	Olsen Thielen Co, LTD	2675 Long Lake Rd  Roseville, MN 55113	Electronic Service	No	OFF_SL_21-86_Official
James B.	Canaan	jim.canaan@itctel.com	Interstate Telecommunications Cooperative, Inc.	P.O. Box 920 312 Fourth Street Clear Lake, SD 57226	Electronic Service	No	OFF_SL_21-86_Official
Patrick	Caron	Patrick.Caron@cableone.biz	Cable One, Inc.	210 E Earll Dr  Phoenix, AZ 85012	Electronic Service	No	OFF_SL_21-86_Official
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_21-86_Official
Brent	Christensen	brentc@mnta.org	Minnesota Telecom Alliance	1000 Westgate Drive, Ste 252  St. Paul, MN 55117	Electronic Service	No	OFF_SL_21-86_Official
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-86_Official
Stephen E	Coran	scoran@lermanscenter.com	LermanSenter	2001 L St NW Ste 400  Washington, DC 20036	Electronic Service	No	OFF_SL_21-86_Official
Joshua	Guyan	jguyan@kelleydrye.com	Kelley Drye & Warren LLP	3050 K St NW Ste 400  Washington, DC 20007	Electronic Service	No	OFF_SL_21-86_Official
Kara	Hartman	kara.hartman@aspirenetworks.com	Aspire Networks 2, LLC	PO Box 349  Buford, GA 30515	Electronic Service	No	OFF_SL_21-86_Official
Corey	Hauer	coreyhauer@ltdbroadband.com	LTD Broadband	PO Box 3064  Blooming Prairie, MN 55917	Electronic Service	No	OFF_SL_21-86_Official



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Brett	Heather Freedson	bfreedson@lermansenter.com	Lerman Senter	2001 L St NW Ste 400 Washington, DC 20036	Electronic Service	No	OFF_SL_21-86_Official
Chris	Laughlin	claughlin@kelleydrye.com	Kelley Drye & Warren LLP	3050 K Street, NW Suite 400 Washington, DC 20007	Electronic Service	No	OFF_SL_21-86_Official
Phillip R.	Marchesiello	pmarchesiello@wbklaw.com	Wilkinson Barker Knauer, LLP	1800 M Street NW Suite 800N Washington, D.C. 20036	Electronic Service	No	OFF_SL_21-86_Official
R. Edward	Price	Ted.Price@spacex.com	Space Exploration Technologies Corp.	1155 F Street NW Ste 475 Washington, DC 20004	Electronic Service	No	OFF_SL_21-86_Official
Eric	Pyland	epyland@team.nxlink.com	AMG Technology Investment Group, LLC	d/b/a NextLink Internet 95 Parker Oaks Lane Hudson Oaks, TX 76087	Electronic Service	No	OFF_SL_21-86_Official
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-86_Official
Jennifer	Richter	jrichter@akingump.com	Akin Gump Strauss Hauer & Feld LLP	2001 K St. NW Washington, DC 20006	Electronic Service	No	OFF_SL_21-86_Official
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-86_Official
Kristopher	Twomey	kris@lokt.net	Law Office of Kristopher E. Twomey, P.C.	1725 I St NW Ste 300 Washington, DC 20006	Electronic Service	No	OFF_SL_21-86_Official
Cameron	Winton	winton.cam@dorsey.com	Dorsey & Whitney LLP	50 S 6TH ST STE 1500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-86_Official