

December 20, 2021

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

RE: **Reply 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 reply 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 Department is available to answer any questions the Commission may have.

Sincerely,

/s/ JOY GULLIKSON
Telecom Analyst

/s/ LISA GONZALEZ
Telecom Analyst

JG/LG/ja
Attachment



Before the Minnesota Public Utilities Commission

Reply Comments of the Minnesota Department of Commerce

IN THE MATTER OF A NOTICE TO RURAL DIGITAL OPPORTUNITY FUND GRANT WINNERS

Docket No. P999/CI-21-86

On November 19, 2021, the Department of Commerce (Department, or Commerce, or DOC) filed comments in response to the Minnesota Public Utilities Commission's (PUC or Commission) Notice of Comment Period.¹ Also filing comments were the Office of the Attorney General--Residential Utilities Division (OAG), the Department of Public Safety (DPS), the Communications Workers of America (CWA) and the Minnesota Telecom Alliance (MTA).

The Department's reply comments respond generally to the main issues presented by the MTA in its comments filed November 9, 2021. The Department supports the positions of OAG, CWA, and DPS, although the Department does not otherwise respond to their filed comments, except as noted on the OAG recommendations.

I. THE MTA PROVIDES NO EVIDENCE TO DEMONSTRATE THAT THE RECOMMENDATIONS OF THE DOC AND THE OAG OVERSTEP THE COMMISSION'S AUTHORITY, OR THAT CONSUMER PROTECTIONS HINDER BROADBAND DEPLOYMENT.

The MTA argues "... the Commission has been appropriately exercising their limited authority over ETCs. The recommendations of the Department and OAG exceed Commission authority and should be rejected."² The MTA does not explain how the recommendations of the DOC and OAG exceed the Commission's authority. Indeed, both the Department and the OAG have provided support for each recommendation.³ For each proposed regulation, the Department cited the FCC Rule or Commission Order that supports it. MTA's argument should be rejected as unsupported and as inconsistent with congressional mandates, as well as FCC Rules and Orders, as discussed in the Department November 19, 2021 comments.

The MTA also asserts "if the Commission did attempt to implement the additional 'consumer protections' requested by the DOC and OAG for ETC certification, widespread broadband deployment would be hindered, in violation of the Communications Act of 1934."⁴ Yet, the MTA neither provides

¹ In turn, the Notice of Comment Period was issued in response to two Commission Order dated May 28, 2021: Docket No. P999/CI-21-86 et al., ORDER APPROVING PETITIONS FOR ETC DESIGNATION IN CERTAIN CENSUS BLOCKS AND REQUIRING ADDITIONAL FILINGS, and Docket No. P999/CI-21-86 et al., ORDER APPROVING PETITIONS FOR ETC DESIGNATION IN CERTAIN CENSUS BLOCKS.

² *In the Matter of a Notice to Rural Digital Opportunity Fund (RDOF) Grant Winners*, Docket No. P999/CI-21-86, Comments of Minnesota Telecom Alliance, (MTA Comments), November 9, 2021, p.3.

³ See Department comments in this matter, November 19, 2021, Attachment 3.

⁴ MTA Comments, p.5.

evidence to support its speculative claim, nor provides any examples from past federal Universal Service programs that indicate consumer protection requirements in any state interfered with a provider's decision to apply for Universal Service funding.

Consumer protection permeates federal broadband opportunities, including those made available by entities other than the FCC. For example, the United States Department of Agriculture (USDA) ReConnect Program awards points for affordability, prioritizing socially vulnerable communities, and commitments to network neutrality.⁵

Also, the Infrastructure Investment and Jobs Act (IIJA) established the Broadband, Equity, Access, and Deployment (BEAD) program, to be administered by the National Telecommunications and Information Administration (NTIA), requires recipients to offer at least one low-cost broadband option for eligible households, must implement public awareness programs about benefits of better connectivity, and must file semiannual reports on the effectiveness of the grant funding.⁶ In addition, an entity that receives a subgrant shall provide broadband service "with network outages that do not exceed, on average, 48 hours over any 365-day period."⁷ Further, recipients must offer transparency, including describing in a semi-annual report to NTIA: service locations, anchor institutions, the facilities that have been constructed and installed, peak and off peak actual speeds, maximum advertised speeds, non-promotional prices and fees, data that complies with mapping collection standards, and any other reporting requirements set out by the eligible entity [the state] or the NTIA.⁸

All federal broadband funding programs have methods to ensure accountability and that program funds achieve their desired goals. The FCC broadband funds achieve accountability through a state and federal partnership, with states designating and annually certifying ETCs to receive high-cost funds, based on criteria established by both the FCC and the states.⁹

⁵ <https://www.usda.gov/reconnect/evaluation-criteria>

⁶ See Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429 (2021), div. F, tit. I, para 60102 (h)(4)(B), (h)(4)(B), and (j)(1)(B) (<https://www.govtrack.us/congress/bills/117/hr3684/text>) See also NTIA Office of Internet Connectivity and Growth, <https://www.ntia.doc.gov/office/OICG>.

⁷ *Id.* para 60102 (h)(4)(A)(i)(III).

⁸ *Id.* para 60102 (j)(2)(B)(ii)(I-VIII).

⁹ See Department comments in this matter, November 19, 2021, p. 3-5.

II. THE MTA'S RELIANCE ON CHARTER AND THE FCC ORDER REGARDING DESIGNATING ETCs IN NEW YORK IS MISPLACED AND OF NO CONSEQUENCE WITH RESPECT TO THIS COMMISSION'S AUTHORITY TO SET REQUIREMENTS AFFECTING THE BEHAVIOR OF FEDERALLY SUBSIDIZED ETCs.

The MTA mistakenly asserts that the *Charter Advanced Servs.* decision essentially puts oversight of ETC behavior beyond the Commission and DOC's authority.¹⁰ The *Charter* decision affects state regulation and not the federal-state partnership set up by Congress to oversee federal Universal Service programs. This mistaken assertion was addressed by the OAG in its comments, where the OAG states:

The *Charter Order* does not prevent the Commission from requiring interconnected VoIP and broadband Internet access service providers to comply with ETC obligations that preserve and advance the FCC's federal Universal Service goals and protect the Minnesota consumers who are meant to benefit from federal Universal Service support.¹¹

Indeed, the Commission has been granting ETC status for the expansion of broadband for several years now, without a legal challenge over the Commission's authority to do so, including granting ETC status to MTA members for broadband deployment. Arguments that the Commission lacks the authority to ensure that ETCs operate in a manner consistent with the public interest have been thoroughly addressed in the comments filed by both the Department and the OAG.

Further, the MTA cites the April 30, 2019 FCC Order provided in Staff Briefing papers and asserts that the New York Public Service Commission (NYPSC) attempted to "impose a layer of regulatory requirements in the absence of legal authority to do so."¹² MTA writes that "...the FCC rejected the New York regulator's similar attempts..."¹³. As noted in the Briefing Papers¹⁴ and the FCC Order, the NYPSC chose to decline ETC designation jurisdiction to the FCC in the case of the four petitioners involved in the April 30, 2019 Order based on the petitioners' representation that they offered only broadband and VoIP service.¹⁵ The MTA mischaracterizes the NYPSC decision and draws a false parallel

¹⁰ The MTA relies on *Charter Advanced Servs. (MN), LLC v. Lange*, 259 F. Supp. 3d 980, 991 (D. Minn. 2017) (citing *Vonage Holdings Corp. v. Minn. PUC*, 290 F. Supp. 2d 993, 997 (D. Minn. 2003) (holding that state regulation of an information service is preempted by federal law).

¹¹ Comments of the Office of the Attorney General Residential Utilities Division, Docket P999/CI-21-86 p. 14.

¹² MTA Comments at III., p. 5.

¹³ *Ibid.*

¹⁴ Commission Briefing Papers exhibit C. quoting FCC's April 30, 2019 Order.

¹⁵ See Order 19-354, In the Matter of Petitions for Designation as an Eligible Telecommunications Carrier in the State of New York, Telecommunications Carriers Eligible for Universal Service Support Connect America Fund, WC Docket No. 09-197 and WC Docket No. 10-90, Adopted April 30, 2019, para 10.

to the current recommendations.¹⁶ Unlike the NYPSC, the Minnesota Commission has not chosen to decline jurisdiction of its ETC designation authority.

III. THE DEPARTMENT SUPPORTS THE RECOMMENDATION OF THE OAG TO REQUIRE RDOF ETCs TO PROVIDE UPDATES PRIOR TO YEAR THREE--THE FIRST YEAR THAT LOCATION COMMITMENTS MUST BE MET.

Because the RDOF Order does not require reporting information until three years after funding starts, the OAG recommendation that RDOF ETCs provide a brief broadband deployment update for years one and two is reasonable.¹⁷ The Commission should not be forced to wait as long as three years with no deployment news from providers that have received funding. The Department also supports the OAG's recommendation that the Commission require ETCs that are RDOF recipients to provide a brief customer service summary for year one—explaining how the ETC will determine whether it offers RDOF supported services in a particular consumer's location and how the ETC will convey information to a consumer who asks about the availability of high-speed broadband at their location.

IV. RECOMMENDATION

Attachment A to these reply comments summarizes the positions of the Department and the OAG and combines them in a joint recommendation to adopt the recommendations of the two agencies.

¹⁶ See Commission Briefing Papers exhibit C, quoting FCC's April 30, 2019 Order.

¹⁷ See *In the Matter of Rural Digital Opportunity Fund, Connect America Fund*, WC Docket No. 19-126 and 10-90, Report and Order, FCC 20-5, paras.45 and 99. Referenced in OAG Comments, p.21.

ATTACHMENT A

Joint Recommendations of the Department of Commerce and the Office of the Attorney General—Residential Utilities Division

Department of Commerce Position	Office of Attorney General Position	Joint Recommendation
1. Formally adopt 47 C. F. R. § 54.202.		1. Formally adopt 47 C. F. R. § 54.202.
<p>2. Adopt the following:</p> <p>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.</p> <p>b. 911 Plan Approved by DPS. An ETC shall have its 911 plan approved by DPS as a condition of ETC status.</p> <p>c. Resolve Service Outages Promptly. An ETC shall have a goal to resolve outages -- 95% of outages cleared within 24 hours.</p> <p>d. Prices and Terms Available to Customers</p> <ol style="list-style-type: none"> 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 	<p>2. Adopt the following:</p> <p>a. Provide a brief broadband deployment update for RDOF years 1 and 2. Require MN RDOF Phase I ETCs to provide a no more than one-page broadband deployment update with their first two annual MN recertification filings.</p> <p>b. Provide a brief customer service summary for RDOF Year One. Require RDOF Phase I ETCs to include a no more than one-page summary with their first annual MN ETC recertification filing describing:</p> <ol style="list-style-type: none"> 1. How they will determine whether they offer RDOF Phase I supported services at a particular consumer's location: and 2. How they will convey that information to a consumer who asks about the availability of high-speed broadband at his/her location. 	<p>2. Adopt all of Department #2 and all of OAG #2.</p>

<p>customers prior to customer purchase of supported services.</p> <p><i>e. ETC Shall Provide Information about the Consumer Affairs Office (CAO).</i> 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.</p> <p><i>f. Customers shall not be on hold an excessive amount of time.</i> 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.</p>		
<p>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</p>		<p>3. Adopt Department #3.</p>
<p>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 application of the same standards and criteria to all similarly-situated 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.</p>		<p>4. Adopt Department #4</p>

CERTIFICATE OF SERVICE

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

MINNESOTA DEPARTMENT OF COMMERCE – REPLY COMMENTS

Docket Nos. **P999/CI-21-86**

Dated this **20th** day of **December 2021**.

/s/Linda Chavez

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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
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