

Staff Briefing Papers

Meeting Date	November 3, 2022	Agenda Item 2*
Company	Local Exchange Carriers, Eligible Telecommunications Carriers	
Docket No.	P-999/CI-21-86	
	In the Matter of a Notice to Rural Digital Opportunity Fund Grant Winners	
Issue:	Determination of the Commission's ongoing jurisdiction to oversee Eligible Telecommunications Carriers (ETCs) compliance as set forth in sections 214(e)(2) and 254(f) of the Communications Act of 1934, as amended, the FCC's Universal Service rules, codified at 47 C.F.R. section 54, and the applicable FCC auction materials.	
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Relevant Documents

Date

Commission Notice of Comment Period	June 30, 2021
Comments of the Minnesota Telecom Alliance	November 9, 2021
Comments of the Communications Workers of America (CWA)	November 19, 2021
Comments of the Office of the Attorney General Residential Utilities Division (OAG-RUD) with Attachments A-1, A-2, B, and C	November 19, 2021
Comments of the Department of Public Safety Emergency Communications Networks (DPS/ECN) Division	November 19, 2021
Comments of the Minnesota Department of Commerce	November 19, 2021

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.



Relevant Documents

Date

Reply Comments of Comcast Phone of Minnesota Inc.	December 20, 2021
Reply Comments of the Office of the Attorney General Residential Utilities Division (OAG-RUD)	December 20, 2021
Reply Comments of CenturyLink QC	December 20, 2021
Reply Comments of the Minnesota Department of Commerce	December 20, 2021
Reply Comments of the Minnesota Department of Employment And Economic Development (DEED)	December 20, 2021
Brief for Amicus Federal Communications Commission, National Lifeline Association v. Marybel Batjer, No. 21-15969 (9 th ci. August 29, 2022) (Filed in this docket by the Minnesota Department of Commerce)	September 6, 2022

I. Statement of the Issues

Determination of the Commission's ongoing jurisdiction to oversee Eligible Telecommunications Carriers (ETCs) compliance as set forth in sections 214(e)(2) and 254(f) of the Communications Act of 1934, as amended, the Federal Communications Commission's (FCC) Universal Service rules, codified at 47 C.F.R. section 54, and the applicable FCC auction materials.

II. Background

On May 28, 2021, the Commission issued two orders approving ETC designation for multiple carriers in this docket, Docket No. P-999/CI-21-86 et. al. The first order was an Order Approving ETC Designation in Certain Census Blocks. In the second, the Commission issued an Order Approving ETC Designation in Certain Census Blocks and Requiring Additional Filings. As discussed in those orders, the Commission committed to issuing a notice for comments by July 1, 2021, regarding the state's present and recommended authority and role in overseeing ETCs. The Commission also noted that although newly designated ETCs were not due for recertification in 2021, all ETCs and petitioners for ETC designation in Minnesota were invited to participate in this discussion, because any changes adopted could affect all ETCs going forward.

At the time of the Commission meeting, disagreement persisted among the parties regarding the scope of the Commission's authority to regulate ETCs, whether certain proposed obligations may be inconsistent with FCC decisions or may exceed the Commission's authority at the ETC designation stage, and whether certain proposed obligations are redundant, necessary, or advisable in this context.

To advance the discussion, the Commission issued a Notice of Comment Period on June 30, 2021. In the Notice, the Commission defined the issue as:

Determination of the Commission's ongoing jurisdiction to oversee Eligible Telecommunications Carriers (ETCs) compliance as set forth in sections 214(e)(2) and 254(f) of the Communications Act of 1934, as amended, the FCC's Universal Service rules, codified at 47 C.F.R. section 54, and the applicable FCC auction materials.

And identified the following topics open for comment:

- Please address the Commission's present legal authority over ETCs with respect to designation and recertification, with citations.
- Within that legal authority, separately address the recommended exercise of authority by the Commission.
- Please address the roles of the Minnesota Department of Commerce (DOC), Minnesota Department of Employment and Economic Development (DEED), Minnesota Office of

the Attorney General (OAG), and the Minnesota Department of Public Safety (DPS) and the legal basis for the roles described, with respect to ETC designation and regulation.

- In this docket, the DOC and OAG have recommended that the Commission adopt consumer protections that would apply to ETCs.¹ Please address: 1) whether any of these protections should be adopted, 2) how any such protections can be adopted outside of a rulemaking proceeding, 3) the scope of where these protections would apply (i.e. only in those census blocks where the ETC is receiving RDOF support or all areas served within the state by that company), and 4) how consumers can be informed as to which providers are subject to these protections and where given that other local, state and federal funding for broadband deployment do not require a voice offering or ETC designation so such protections may not be in effect.
- Please also address: 1) why going beyond what the FCC requires when it designates ETCs should be ordered by the Commission, 2) whether adoption of these additional protections is a barrier to broadband deployment, and 3) the penalties that an ETC would face for non-compliance with any protections adopted by the Commission in this proceeding.
- 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.
- Are there other issues or concerns related to this inquiry?

Comments were filed by the Minnesota Telecom Alliance (MTA) on November 9, 2021. On November 19, 2021, comments were filed by the Communications Workers of America (CWA), the Office of the Attorney General Residential Utilities Division (OAG), the Department of Public Safety Emergency Communications Networks (DPS/ECN) Division, and the Minnesota Department of Commerce.

On December 20, 2021, reply comments were filed by Comcast Phone of Minnesota Inc., the Office of the Attorney General Residential Utilities Division (OAG), CenturyLink QC, the Minnesota Department of Commerce, and the Minnesota Department of Employment And Economic Development (DEED).

III. Parties' Comments

Party responses to Commission questions posed in the June 30, 2021, notice:

¹ Department of Commerce, Initial Comments (March 26, 2021); Office of Attorney General-Residential Utilities Division, Initial Comments (March 26, 2021); DOC Reply (April 12, 2021); OAG Reply (April 12, 2021); OAG Other-Visual Aid (May 5, 2021), Docket No. P-999/CI-21-86.

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

MTA

The MTA believes the Commission's role is to designate ETCs and to certify on an annual basis that "all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Within its designation and recertification role, the Commission has limited authority and must designate a common carrier as an ETC if the entity meets the requirements of 47 C.F.R. § 54.201(d) (referencing 47 C.F.R. § 54.101). In determining whether to grant an ETC designation, the Commission must analyze whether such a designation is in the public interest. 47 C.F.R. § 54.202(b).

Service providers must meet a variety of requirements to be designated as an ETC by the Commission. Service providers must provide several specific services: (1) voice grade access to the public switched network or its functional equivalent; (2) minutes of use for local service provided at no additional charge to end users; (3) toll limitation to qualifying low-income consumers; and (4) access to 911 and enhanced 911 emergency services to the extent the local government has implemented these systems in an eligible carrier's service area. See 47 C.F.R. §§ 54.201(d)(1) (referencing 47 C.F.R. § 54.101(a)). Additionally, service providers must advertise the availability of these services and applicable charges using media of general distribution. See 47 C.F.R. § 54.201(d)(2). To be eligible for ETC designation, a service provider must also: (1) certify that it will comply with the service requirements applicable to the support it receives; (2) demonstrate its ability to remain functional in emergency situations; (3) demonstrate that it will satisfy applicable consumer-protection and service-quality standards; (4) demonstrate financial and technical ability to provide Lifeline service; (5) provide a description of its Lifeline service offering; and (6) demonstrate that its ETC designation is in the public interest. See 47 C.F.R. § 54.202(a)²

CWA

CWA endorses the DOC and OAG's comprehensive legal analysis in Docket P999/CI21-86 that the Commission has the legal authority to impose consumer protection standards when designating or recertifying ETCs. The Federal Communications Act envisions dual federal-state authority and cooperation in regulation of communications services. To that end, the Federal Communications Act and the FCC have tasked the states with authority to designate and monitor ETCs, including imposition of necessary rules to ensure progress towards universal service, so long as such rules are not in conflict with the FCC's federal Universal Service rules.³ The FCC's 2015 Report and Order, In the Matter of Federal-State Joint Board on Universal

² Please Comments of the Minnesota Telecom Alliance (MTA) at pages 2-3.

³ Specifically, 47 U.S.C. §254(f) asserts that "[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service. [...] A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms."

Service, emphasizes the role played by state commissions as the agency most familiar with the areas ETC designation is sought and reaffirms their authority to set their own ETC eligibility requirements. The FCC in its 2020 Rural Digital Opportunity Fund (RDOF) Order also declined to adopt industry parties' request to forbear from enforcing the ETC requirement.⁴

OAG

The Commission derives its authority to designate federal Universal Service ETCs, including interconnected Voice over Internet Protocol (VoIP) and broadband ETCs, directly from Congress. As the federal law, FCC rules, FCC Notice, and FCC Order identified by the OAG demonstrate, the Commission is responsible for designating federal Universal Service ETCs. These include: 47 U.S.C. § 214(e)(2), 47 C.F.R. § 54.201(b), RDOF Auction Notice (FCC 20-77) (2020), and Fifth Report and Order (FCC 19-111) (2019).

The OAG indicated that the Commission derives its authority to recertify federal Universal Service ETCs, including interconnected VoIP and broadband ETCs, from the FCC's rules and orders. As the language of 47 C.F.R. § 54.314 demonstrates, the Commission is responsible for recertifying federal Universal Service ETCs.

The OAG believes that Congress empowered (47 U.S.C. § 254(f)) the Commission to adopt federal Universal Service ETC obligations, if those obligations do not conflict with the FCC's rules. The FCC does not have exclusive jurisdiction to oversee the conduct of ETCs and the Commission may do more than rubber-stamp ETC designation and recertification requests.⁵

The OAG indicated that the FCC's federal-state partnership orders affirm the Commission's authority to adopt obligations for federal Universal Service ETCs. The federal-state ETC partnership has existed since 1996 and is reaffirmed in recent Connect America Fund (CAF), Lifeline Program, Restoring Internet Freedom, and RDOF orders. The FCC has recognized the importance of the states' role in overseeing ETCs since at least 2005. Language affirming the Commission's authority to oversee and adopt obligations for federal Universal Service ETCs these include: RDOF Auction Notice (FCC 20-77) (2020), Fifth Report and Order (FCC 19-111) (2019), RDOF/CAF NPRM (FCC 19-77) (2019), FCC ETC Reminder (DA 18-714) (2018), 2016 CAF Order (FCC 16-64) (2016), 2011 Transformation Order (FCC 11-161) (2011), and 2005 ETC Order (FCC 05-46) (2005).

The OAG indicated that the FCC has not classified interconnected VoIP as an information service or a telecommunications service. Instead, it regulates interconnected VoIP providers in specific areas, including 911 and ETC designation and oversight. As the FCC explains in its 2011

⁴ Please Comments of the Communications Workers of America (CWA) at pages 3-4.

⁵ The OAG also identified GAO Telecommunications Report (2020) – "States may establish their own ETC requirements as long as they supplement and are not otherwise inconsistent with the FCC's rules to preserve and advance universal service."

Transformation Order, interconnected VoIP providers are subject to federal Universal Service regulation regardless of how those services are classified.⁶

However, the FCC does use a “light-touch” regulatory approach under Title I of the Communications Act of 1934, as amended (the Act) for broadband Internet Access service providers, instead of the utility-style (i.e., Title II) regulatory approach that applies to telecommunications carriers. As the language below reflects, the FCC’s “light-touch” regulatory approach includes state oversight of ETCs and maintains the federal-state partnership.

Additionally, the OAG believes pursuant to the FCC’s Restoring Internet Freedom Order (FCC 17-166) (2018) that the FCC’s Computer Inquiries line of cases do not apply to federal Universal Service. The Restoring Internet Freedom Order, which came after the Computer Inquiries line of cases,⁷ makes clear that the Commission retains the federal Universal Service authority delegated to it by Congress and its ability to oversee the conduct of federal Universal Service ETCs.

Also, the Charter Order narrowly held that fixed interconnected VoIP service is an information service at the state level and that state regulation of the service is preempted. That holding is distinguishable from this proceeding, which involves the explicit delegation of federal authority to a state enforcer.⁸

Finally, Federal Universal Service ETC designation and recertification authority is binary. Either the Commission has ETC jurisdiction, or it doesn’t. The Minnesota ETCs must not be permitted to claim that the Commission has the authority to approve their ETC designations and recertifications on one hand, and then deny the Commission’s authority to oversee their High Cost and Lifeline conduct on the other. As the citations provided by the OAG demonstrates, the FCC is only authorized to designate and recertify federal Universal Service ETCs if a state Commission does not have jurisdiction. These include: 47 U.S.C. § 214(e)(6), T-Mobile ETC Relinquishment Order (DA 21-660) (2021), RDOF Auction Notice (FCC 20-77) (2020), and RDOF Application Instructions (2020).

Please see pages 6-16 of the OAG’s November 19, 2021, comments for OAG’s complete analysis of the Commission’s jurisdiction.

Department

47 U.S.C. § 214 (e)(2) mandates that State commissions have authority to designate ETCs.

⁶ The FCC states in its Restoring Internet Freedom Order (FCC 17-166) (2018) – “We take several actions in this Order to restore Internet freedom. First, we end utility-style regulation of the Internet in favor of the market-based policies necessary to preserve the future of Internet freedom. . . . We determine that this light-touch information service framework will promote investment and innovation better than applying costly and restrictive laws of a bygone era to broadband Internet access service.”

⁷ The FCC Computer Inquiries were a trio of interrelated FCC Inquiries focused on problems posed by the convergence of regulated telephony with unregulated computing services.

⁸ See *Charter Advanced Servs. v. Lange*, 903 F.3d 715, 717 (8th Cir. 2018).

The Department believes that Congress also gave to the states the broad authority to adopt regulations if 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.

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.

Please see the Department's November 19, 2021 comments at pages 2-6 for further argument and citations.

Comcast Reply

Comcast pointed out the Department and OAG argue that the Commission possesses authority to regulate any services offered by ETCs, including broadband internet access service (BIAS). That is incorrect. Although the Commission may regulate the intrastate telecommunications service(s) that formed the basis for the service provider's designation as an ETC, it may not bootstrap such authority to regulate the provider's non-common-carrier interstate services—including a broadband service that is classified as an interstate information service.

Comcast indicated pursuant to Section 214(e)(2) of the Communications Act, a state's authority extends only to the "telecommunications carrier" seeking an ETC designation, and such an entity may be treated as a telecommunications carrier "only to the extent that it is engaging in providing telecommunications services." Therefore, where a carrier obtains an ETC designation based on its voice service offering, as typically has been the case in the RDOF context, the Commission may regulate that service, but it may not regulate a separate broadband service that is classified as an interstate information service.

The Department and OAG encourage the Commission to ignore this fundamental jurisdictional limitation. Contrary to their suggestion that the designation of a service provider as an ETC somehow opens the door to regulation of any service provided by that entity, neither Section 214(e)(2) nor any other provision of the Communications Act or the FCC's rules provides a basis for states to regulate ETCs' service offerings over which they ordinarily lack jurisdiction. As such, the judicially confirmed status of broadband internet access service (BIAS) as an information service precludes the Commission from regulating it, irrespective of whether the provider separately offers telecommunications services and has been designated as an ETC on that basis.

Comcast pointed out that in *Charter Advanced Services (MN), LLC v. Lange*, the Eighth Circuit held that this Commission is precluded from regulating information services. The OAG attempts to distinguish this binding authority, asserting that the Commission may regulate ETCs' BIAS offerings because its authority over ETCs is grounded in federal law. But that misconstrues both the court's analysis and the Communications Act. Section 214 does not authorize the regulation of information services, even those provided by ETCs. And as the Eighth Circuit recognized, "the federal policy" with respect to information services is one of "nonregulation,"

and Section 254(f) further makes clear that any state universal service regulations must be consistent with federal law. Thus, the fact that the Commission would be acting pursuant to Section 214(e)(2) in this context would not justify imposing common carrier duties on information services, because such obligations are substantively at odds with Section 214 itself and with the FCC's policy of nonregulation of information services.

Additionally, BIAS's status as a "jurisdictionally interstate" service subject to plenary federal jurisdiction independently precludes the Commission from asserting jurisdiction over ETCs' broadband offerings. Section 152(a) of the Communications Act bestows on the FCC "comprehensive authority" to "regulate all aspects of interstate communications by wire and radio." It is well-settled "that [BIAS] is jurisdictionally interstate for regulatory purposes." Indeed, even if some incidental Internet-based communications may be intrastate on an end-to-end basis, the Eighth Circuit has made clear that service providers are "not required to develop a mechanism for distinguishing between interstate and intrastate [broadband] communications merely to provide [states] with an intrastate communication they can then regulate." Any effort by the Commission to regulate BIAS in the manner proposed by the Department and OAG would unlawfully intrude upon a field that is subject to exclusive federal jurisdiction.⁹

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

MTA

The MTA believes the Commission has been appropriately exercising their limited authority over ETCs. The recommendations of the Department and OAG exceed Commission authority and should be rejected.¹⁰

CWA

The Commission should ensure that communities continue to receive a reliable connection for years to come by adopting strong ETC obligations as recommended by the Department and OAG. Without such rules, consumers within the RDOF awarded areas have little protection or recourse when they experience broadband outages or unreliable service. Unfortunately, competition has not ensured affordable and reliable service for all Minnesotans. CWA members know that without strong Commission oversight, many low-income and rural communities get left behind as internet service providers (ISPs) cherry-pick where to invest in maintenance and upgrades based on profitability. As the OAG persuasively argues, "[r]eceipt of federal Universal Service support is a matter of privilege, not right, and the Commission should decline ETC designation for any company that does not wish to be bound by the Commission's ETC requirements."¹¹

⁹ Please see Reply Comments of Comcast at pages 2-5.

¹⁰ Please Comments of the Minnesota Telecom Alliance (MTA) at page 3.

¹¹ Please Comments of the Communications Workers of America (CWA) at pages 4-5.

OAG

The OAG recommends that the Commission use its authority to ensure that Minnesota ETCs that receive High-Cost Program support use the support to preserve and advance federal Universal service. This includes using its authority to adopt federal Universal Service ETC obligations that are necessary to address state-specific issues or trends that could result in noncompliance with the federal Universal Service statutes, rules, and/or orders. It also includes using Commission authority to ensure that the Minnesota ETCs use their federal Universal Service support to benefit rural Minnesotans.¹²

Department

The FCC recognizes that states have unique circumstances and states are best situated to address specific requirements for their state. The Commission should adopt specific requirements to provide clarity of its expectations, whether it explicitly adopts the provisions in 47 C.F.R. §54.202. The requirements of 47 C.F.R. §54.202 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))
- Requirement to submit a 5-year plan (§54.202 (a)(1)(ii))
- 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 Department believes the additional requirements it proposes are minimal and insufficient in the Department's opinion to ensure ETCs are operating in the public interest. However, since the Commission 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.

Please see the Department's November 19, 2021, comments at pages 6-9 for further argument and citations.

CenturyLink

The Department claims that the Commission has authority to impose service quality standards on broadband service despite identifying no state law authority to do so. CenturyLink believes that this admission is fatal to the Department's proposals:

¹²

Please see OAG's November 19, 2021 comments at page 17.

[I]t is elementary that the Commission, being a creature of statute, has only those powers given to it by the legislature. *Great Northern Railway Co. v. Public Service Comm’n*, 284 Minn. 217, 220, 169 N.W.2d 732, 735 (1969). The legislature states what the agency is to do and how it is to do it. While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature. “Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency’s powers beyond that which was contemplated by the legislative body.” *Waller v. Powers Department Store*, 343 N.W.2d 655, 657 (Minn. 1984).¹³

CenturyLink pointed out that the only state statute the Department cites is 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.” The idea that this provides the Commission with unfettered authority to impose service quality standards on non-telecommunications services makes no sense.

This analysis applies with force to “information services” such as broadband. The Eighth Circuit held that Charter’s VoIP offerings are an information service under the Act. Therefore, attempts by the state of Minnesota to regulate that service conflicted with the federal policy of nonregulation and were therefore preempted. Any attempt by the Commission to evade this precedent through imposing service quality requirements on broadband services runs contrary to this clear federal law.¹⁴

With respect to consistency with federal law, the regulations proposed by the Department also are inconsistent with federal law. In 2005, the FCC established mandatory requirements for ETC designation proceedings in which the FCC acts pursuant to Section 214(e)(6) of the federal Communications Act. As recommended by the Federal-State Board on Universal Service (Joint Board), the FCC encouraged states that exercise jurisdiction over ETC designations to adopt the FCC requirements when deciding whether a common carrier should be designated as an ETC. Doing so, the FCC noted, would allow for a more predictable ETC designation process and improve the long-term sustainability of the universal service fund.

Among other things, the FCC ETC Requirements Order required applicants seeking ETC designation from the FCC to demonstrate that they will satisfy consumer protection and service quality standards. For wireless ETC applicants, the FCC found that a commitment to comply with the wireless communications trade association’s (CTIA) Consumer Code for Wireless Service would satisfy this requirement. Notably, the CTIA Code was, and continues to be, limited to basic commitments, such as disclosing rates and terms of service to customers;

¹³ CenturyLink cited *Peoples Natural Gas Co. v. Minn. Pub. Util. Comm.*, 369 N.W.2d 530, 534 (Minn. 1985).

¹⁴ Please see pages CenturyLink’s December 21, 2021 reply comments at pages 3-4.

publishing coverage maps; providing contract terms to customers; and providing ready access to customers. The FCC concluded that requiring an ETC applicant to demonstrate that it will comply with these consumer protection requirements would further the universal service principles in Section 254.

CenturyLink indicated the FCC noted that state commissions exercising jurisdiction over ETC designations could follow the FCC's framework or "impose other requirements consistent with federal law to ensure that supported services are offered in a manner that protects consumers." But that authority is not unlimited. For example, the FCC cautioned states against requiring ETCs to submit to the same state laws concerning consumer protection that the incumbent local exchange carrier (LEC) must follow. In considering consumer protection requirements as a prerequisite to ETC designation, states are to consider "the extent to which a particular regulation is necessary to protect consumers in the ETC context, as well as the extent to which it may disadvantage an ETC specifically because it is not the incumbent LEC." The FCC also agreed with the Joint Board that "states should not require regulatory parity for parity's sake." Thus, a state commission should impose requirements on an ETC "only to the extent necessary to further universal service goals."

CenturyLink pointed out that the Department ignores both the spirit and the letter of the FCC's 2005 order. For example, while the FCC requires an ETC applicant to demonstrate its ability to remain functional in emergency situations - to gauge the applicant's preparation and ability to handle such situations - the Department recommends that the Commission require ETC to report 911 service disruptions. And the Department does not even attempt to explain how this regulation would further federal universal service goals. Instead, it notes that this requirement will help fill a perceived gap in the Commission's regulations that requires only CenturyLink to report disruption of service to the Department. The purpose of the ETC process is to ensure that ETC applicants are qualified to provide USF-supported services, not to expand otherwise constrained Commission regulation. Similarly, the Department's proposals that ETCs be required to promptly resolve outages and not put customers on hold for an excessive amount of time smack of prescriptive regulation, rather than a means of assessing the fitness of a prospective ETC.

Finally, CenturyLink believes it is telling that national VoIP providers, such as Charter and Comcast, rarely, if ever, operate under such regulations, yet have very successfully lured phone customers from more heavily regulated incumbent local exchange carriers (ILECs), such as CenturyLink. Through their actions, these former ILEC customers have demonstrated that they do not need to be protected from VoIP providers through the prescriptive and backward-looking regulation sought by Department. For all these reasons, adoption of Department's proposed regulation would violate federal law.¹⁵

Regarding the burdens imposed by the proposed requirements, CenturyLink indicated that the Department claims that its proposed additional requirements are "minimal." CenturyLink has detailed the burdens associated with very similar existing requirements for voice service before

¹⁵ Please see pages CenturyLink's December 21, 2021 reply comments at pages 5-7.

this Commission. Because there is no advance warning of an outage, a provider is required to block off a significant block of technician time in the event a repair is necessary. That evidence relates to voice service and adds millions in operating costs for voice.

This impact multiplies if applied to broadband services. For CenturyLink technicians, currently, approximately 80% of the workload is for broadband services and 20% is for voice, and those percentages will continue to trend upward for broadband and down for voice. If a rule requires performance beyond the performance that would occur based on customer demand, such performance can only be achieved by either having more technicians available than would otherwise be required to perform the tasks or by prioritizing the rule-required tasks above other projects.

Minnesota weather amplifies this effect. Minnesota networks experience some of the highest seasonal variation in network load of any area in the country. Increased rainfall and customer moves peak in late summer. Work volumes at that time of year are approximately 60% higher than in winter. This variation has a compounding effect on service quality metrics because a larger proportion of the statistics are generated at times of the year when the strain on resources is the highest. These factors make the current out of service in 24 hours standard, Minn. R. 7810.5800, onerous. The impact would likely be even more pronounced for broadband services because there would be no chance for a provider to shift technician resources to focus on voice as happens today.

Please see the CenturyLink's December 21, 2021, reply comments at pages 8-10 for further discussion of the complexities associated with maintaining and repairing broadband service.¹⁶

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

MTA

The **Department**, like in all proceedings before the Commission, may intervene in ETC designation proceedings. Unfortunately, the existing regulatory regime contained in Minn. Stat. Ch. 237 which the Department has historically overseen is largely focused on legacy telephone matters which modern Voice over Internet Protocol ("VoIP") and other telecommunication technologies have rendered obsolete and beyond the Commission and Department's authority.¹⁷

¹⁶ Please see pages CenturyLink's December 21, 2021 reply comments at pages 7-10.

¹⁷ See *Charter Advanced Servs. (MN), LLC v. Lange*, 259 F. Supp. 3d 980, 991 (D. Minn. 2017) (citing *Vonage Holdings Corp. v. Minn. PUC*, 290 F. Supp. 2d 993, 997 (D. Minn. 2003) (holding that state regulation of an information service is preempted by federal law); *Minn. PUC v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007) (noting that the FCC concluded that a state tariff requirement for VoIP services "may

The **OAG's** advocacy in this proceeding, acting through the Residential and Small Business Utility Consumer Division, appears to be in direct conflict with its statutory duty in the telecommunications field. See generally Minn. Stat. § 8.33.

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

The **Minnesota Department of Employment and Economic Development (DEED)** does not serve a regulatory function with respect to ETC designation. Minn. Stat. § 116J.39, subd. 4(b) (“In carrying out its duties under this subdivision, the Office of Broadband Development shall have no authority to regulate or compel action on the part of any provider of broadband service.”). Rather, the Office of Broadband Development, located within DEED, administers the border-to-border broadband program, and is generally tasked with encouraging, fostering, developing, and improving broadband within Minnesota, among other duties.¹⁸

The **Minnesota Department of Public Safety (DPS)** also does not serve a regulatory function with respect to ETC designation. Rather, DPS oversees 911 functionality pursuant to Minn. Stat. §§ 403.025–403.15.¹⁹

CWA

CWA reserves the right to respond in Reply.

OAG

The **Attorney General** is the chief legal officer of the State of Minnesota.

The **Department** protects the public interest, advocates for Minnesota consumers before the Commission, and oversees more than 20 regulated industries to support a strong, competitive, and fair marketplace. The Department acts as the investigative arm of the Commission and is charged with enforcing Commission orders.

DEED – Office of Broadband Development (“OBD”) is to “encourage, foster, develop, and improve broadband within the state” in order to create jobs, promote innovation, expand markets, coordinate infrastructure development, improve accessibility for underserved communities and populations, and update broadband deployment data and maps.

actually harm consumers by impeding the development of vigorous competition”)

¹⁸ See generally Minn. Stat. § 116J.39.

¹⁹ Please Comments of the Minnesota Telecom Alliance (MTA) at pages 3-4.

DPS Emergency Communication Networks (ECN) is responsible for the implementation of basic 911 and enhanced 911 services in Minnesota pursuant to the FCC's rules.²⁰

Department

The Department provided a Matrix of Agency Roles in Attachment 2 of its comments. The Department provided a brief description of each state agency's role:

1. The **Department** investigates and makes recommendations to the Commission. The Department enforces the Commission'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, investigates violations of state laws governing unfair, discriminatory, and other unlawful practices in business, commerce, or trade, 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.²¹
4. In this docket, the **DOC** and **OAG** have recommended that the Commission adopt consumer protections that would apply to ETCs.²² Please address: 1) whether any of these protections should be adopted, 2) how any such protections can be adopted outside of a rulemaking proceeding, 3) the scope of where these protections would apply (i.e. only in those census blocks where the ETC is receiving RDOF support or all areas served within the state by that company), and 4) how consumers can be informed as to which providers are subject to these protections and where given that other local, state and federal funding for broadband deployment do not require a voice offering or ETC designation so such protections may not be in effect.

MTA

²⁰ Please see OAG's November 19, 2021, comments at pages 17-19.

²¹ Please see Department's November 19, 2021, comments at pages 9-10.

²² Department of Commerce, Initial Comments (March 26, 2021); Office of Attorney General-Residential Utilities Division, Initial Comments (March 26, 2021); DOC Reply (April 12, 2021); OAG Reply (April 12, 2021); OAG Other-Visual Aid (May 5, 2021), Docket No. P-999/CI-21-86.

The MTA believes it is a misnomer to characterize the additional OAG and Department proposed regulatory requirements as “consumer protections”. An attempt to impose a layer of regulatory requirements in the absence of legal authority to do so, will only divert time, money and attention to further regulatory disputes rather than focusing limited resources on providing consumers needed broadband service expansion. All four carriers provided letters from the New York Public Service Commission declining ETC jurisdiction based on the petitioners offering only broadband and Voice over Internet Protocol (VoIP). The FCC granted ETC status to all based on each carriers’ compliance with various parts of 47 C.F.R. Part 54.²³

The Commission should not adopt any of the requirements recommended by the Department and OAG because these additional requirements are beyond the Commission’s limited authority to certify service providers that meet federal requirements for ETC designation, discussed above. Further, if the Commission did attempt to implement the additional “consumer protections” requested by the Department and OAG for ETC certification, widespread broadband deployment would be hindered, in violation of the Communications Act of 1934.²⁴

The MTA does not support the Department and OAG proposals. Since the Commission lacks authority to impose these requirements, the rulemaking issues, scope of protection, and related issues noted in the request for comment need not be examined further. Suffice it to say that these questions underscore further fatal flaws in any attempt to implement the Department and OAG’s proposals.²⁵

Department Reply

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.

Additionally, 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.

²³ MPUC Staff Briefing Papers, exhibit C., Docket No. P-999/CI-21- 86 et al. (May 6, 2021).

²⁴ See 47 U.S.C. § 254(f) (“ . . . A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms.”)

²⁵ Please Comments of the Minnesota Telecom Alliance (MTA) at pages 5-6.

Please see December 20, 2022, reply comments of the Minnesota Department of Commerce at pages 1-4 for the DOC reply.

CWA

Many of the proposed consumer protection rules have been traditionally used to measure the quality of telephone service and additional rules may be needed to measure quality of broadband and VoIP services. CWA proposes consideration of additional reporting metrics that take into consideration broadband performance metrics such as latency, jitter, packet loss, call failure and drop rate, call setup time, and delivered network speeds. These metrics were proposed by the California Public Utilities Commission (CPUC)'s Public Advocates Office (Cal Advocates) in their petition to initiate service quality rulemaking for broadband, VoIP, and wireless services. CWA does not propose adoption of metrics identical to those proposed by Cal Advocates but recommends that they be considered as part of the Commission's analysis.²⁶

OAG

Although the OAG initially recommended three RDOF Phase I ETC obligations in this docket, one of those obligations is now moot because it was addressed in the Commission's Lifeline Best Practices Order. Each of the remaining OAG-proposed RDOF Phase I ETC obligations and the reasons the OAG recommends it is explained in greater detail in the table on Page 21 of its November 19, 2021, comments.

Additionally, the OAG believes the purpose of a rulemaking is to implement state regulatory policy. This proceeding involves the explicit delegation of federal authority to a state enforcer. States impose ETC conditions to discharge their Congressionally mandated duty to advance federal Universal Service goals and protect the at-risk consumers who receive federal Universal Service benefits, not to impose state regulatory policy.

Also, the OAG's recommended RDOF Phase I ETC obligations would apply to the census block(s) for which a Minnesota ETC receives RDOF Phase I High-Cost support.

Finally, the OAG believes there is no need to inform consumers which Minnesota ETCs would be subject to the OAG's recommended RDOF Phase I ETC obligations or the census block(s) to which the obligations would apply. Assuming the proposed obligations are adopted by the Commission, Commission staff, the OAG, and the Department will monitor RDOF Phase I ETC compliance. If the OAG's recommended obligations are adopted by the Commission, they apply to the RDOF Phase I ETCs independent of any other local, state, and/or federal funding for broadband deployment regardless of what those other funds require.²⁷

CenturyLink's Reply

The OAG sets forth two reasonable requirements for ETC applicants, (1) a deployment update and (2) providing a one-page consumer service summary. While CenturyLink disagrees with aspects to the legal analysis put forth by the OAG, it does not oppose these proposed

²⁶ Please Comments of the Communications Workers of America (CWA) at page 5.

²⁷ Please see OAG's November 19, 2021, comments at pages 19-23.

requirements which seem in line with federal policy and reasonably designed to ensure that federal ETC funds are used for their intended purposes.²⁸

Department

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.

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 they arise. Each proposed regulation is supported by a specific FCC rule and/or a previous Minnesota Commission action. The Department notes that each proposed regulation is being offered in some form in at least one other state.²⁹

Attachment A to this document is provides a spreadsheet summary of the OAG and Department joint recommendations for Commission consideration. Attachment A is identical to Attachment A from both the OAG's and Department's December 20, 2022, reply comments.

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.

Please see the Department's November 19, 2021, comments at pages 11-14 for further argument and citations.

CenturyLink Reply

CenturyLink fully agrees that appropriate reports of 911 outages is crucial but suggests that the Department's proposal could create more problems than it solves. Its proposal is inconsistent with the Commission's rules related to the reporting of outages for voice service (Minn. Rules 7810.5800 and 0600).

²⁸ Please see pages CenturyLink's December 21, 2021 reply comments at page 10.

²⁹ Please see Department's November 19, 2021, comments at pages 10-11.

While the Commission has never specifically defined these requirements, the Department's proposed requirements go far beyond current rules by applying the standard to different technologies and by defining "substantial number of customers" at a number that could be affected by any standard fiber cut. If the Commission seeks to modify these reporting requirements it should modify its existing rules rather than use the ETC certification process.

In the meantime, CenturyLink recommends that current reporting requirements remain consistent with federal requirements. Such a standard should better ensure compliance as multistate providers already have systems in place to meet this standard.³⁰

2. Proposal. 911 Plan Approved by DPS.

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

Please see the Department's November 19, 2021, comments at pages 15-16 for further argument and citations.

CenturyLink Reply

CenturyLink does not oppose this proposal.

3. Proposal. Resolve Service Outages Promptly.

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

Please see the Department's November 19, 2021, comments at page 16 for further argument and citations.

CenturyLink Reply

CenturyLink objects to this requirement in its entirety. The arguments are summarized below:

- Directly contrary to FCC approach which has been to eliminate such requirements as burdensome and unnecessary.
- There is no state law authority to impose on broadband and wireless services.
- The standards are pulled out of the air and lack any evidentiary foundation.
- The Department has failed to identify any state that has imposed such requirements on broadband and wireless services.
- The proposal would exponentially increase cost to maintain a network.

³⁰ Please see pages CenturyLink's December 21, 2021 reply comments at pages 10-11.

- Record-keeping costs could be significant - systems modifications, data gathering, data storage, etc.³¹

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.

Please see the Department's November 19, 2021, comments at pages 17-18 for further argument and citations.

CenturyLink Reply

CenturyLink does not oppose these requirements which appear to dovetail with general consumer services requirements in Minnesota.

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.

Please see the Department's November 19, 2021, comments at pages 18-19 for further argument and citations.

CenturyLink Reply

CenturyLink's concern regarding this proposal is that it suggests the CAO has jurisdiction to broadband and wireless consumer issues. While CenturyLink works with the CAO on such issues, CenturyLink is not aware that it has formal authority over non-telecommunications issues. CenturyLink opposes this proposed requirement.³²

RELIABILITY RELATED PROPOSAL:

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

³¹ Please see pages CenturyLink's December 21, 2021 reply comments at page 12.

³² Please see pages CenturyLink's December 21, 2021 reply comments at page 13.

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.

Please see the Department's November 19, 2021, comments at pages 19-22 for further argument and citations.

CenturyLink Reply

CenturyLink opposes this requirement. Its general arguments and concerns are summarized:

- The Commission does not appear to have state law authority to impose service quality requirements on broadband and wireless services.
- The requirement interferes with federal policy related to information services and regulation of wireless services.
- Such a requirement raises preemption issues by imposing specific regulation on services the FCC has thus far chosen to not regulate or regulate lightly.
- The requirement is vague and subject to a wide variety of interpretations.
- There is no record to support such a requirement.
- The processes and technologies used to respond to consumer issues are evolving and the assumption that this requirement serves customers well is purely speculation.³³

Additionally, the Department believes that a rulemaking is not needed to adopt the six 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. The Commission has added specifics in its orders to clarify what the FCC rules provide. The six proposed regulations are in the same vein and can follow the same path.

Also, the Department clarified that its proposals apply only in ETC service areas for ETCs that do not require a certificate of authority to operate in the state. The topic raised by the Commission 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 Commission 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 Commission, then any requirements ordered by the Commission are limited to those census blocks where the company has been designated as an ETC. If a company serves customers

³³

Please see pages CenturyLink's December 21, 2021, reply comments at page 13.

outside of the census blocks where it receives federal funding by virtue of being an ETC, the protections will 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. The Department believes 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, the Department believes indicating different attitudes in consumer protections.

Finally, the Department believes 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.³⁴

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

MTA

States are authorized "to adopt regulations not inconsistent with the Commission's (FCC) rules to preserve and advance universal service."³⁵ However, the Commission should not adopt any requirements that go beyond what the FCC already requires for ETC designation because such additional requirements would act as a barrier to broadband deployment. Enacting additional regulations for service providers as a condition to obtaining ETC designation would make the process too onerous for many providers and would further delay and complicate an already time-consuming and resource intensive process.³⁶

³⁴ Please see Department's November 19, 2021, comments at pages 21-22.

³⁵ 47 U.S.C. § 254(f).

³⁶ Cf. *Minn. PUC v. FCC*, 483 F.3d 570, 580 (8th Cir. 2007) (noting that the FCC concluded that a state tariff requirement for VoIP services "may actually harm consumers by impeding the development

Many of the would-be ETCs in this proceeding are VoIP providers, and the Commission has on multiple occasions been curtailed in attempts to regulate in this area where authority is lacking.³⁷ Here, the Commission would be exceeding its authority under federal law if it adopted additional criteria for ETC designation of information service providers. Accordingly, the Commission should not adopt any of the regulatory requirements recommended by the Department and OAG.³⁸

CWA

CWA reserves the right to respond in Reply.

OAG

The OAG believes it would be impossible for the FCC to oversee the designation, recertification, and federal Universal Service compliance of every ETC in every state. The FCC knows that “[t]he billions of dollars that the Universal Service Fund disburses each year to support vital communications services comes from American consumers and businesses, and recipients must be held accountable for how they spend that money.” Unfortunately, waste, fraud, and abuse persist in the federal Universal Service programs. As the previously provided language and the language below demonstrates, it is the Commission’s responsibility to ensure that the High Cost and Lifeline support received by the Minnesota ETCs is used to benefit Minnesota consumer.³⁹

Additionally, the OAG supports increased broadband deployment and wants broadband to reach all of Minnesota’s rural areas. However, High-Cost Program support exists for the benefit of rural consumers, not to solidify a company’s market position or increase its ability to compete in the broadband market generally. If the Commission adopts an obligation to ensure that an RDOF Phase I ETC is using its High-Cost Program support only for the provision, maintenance, and upgrading of the facilities and services for which the support is intended, the impact of that condition on broadband development is irrelevant. If an ETC feels the obligations adopted by the Commission are too onerous, it has a simple solution; it can forgo High-Cost Program support.

The OAG indicated the obligations proposed by the OAG in this docket amount to two pages or less of information per year for the next two years. The OAG’s recommended RDOF Phase I ETC

of vigorous competition”) (citations omitted); see also Michael O’Reilly, FCC Commissioner, Removing Unnecessary Barriers and Maximizing Competition in USF Auctions (June 18, 2020), <https://www.fcc.gov/newsevents/blog/2020/06/18/removing-unnecessary-barriers-and-maximizing-competition-usfauctions>.

³⁷ Minn. PUC v. FCC, 483 F.3d 570, 580 (8th Cir. 2007) (“[A]ny state regulation of an information service conflicts with the federal policy of nonregulation.”); see also Charter Advanced Servs. (MN), LLC v. Lange, 259 F. Supp. 3d 980, 991 (D. Minn. 2017) (citing Vonage Holdings Corp. v. Minn. PUC, 290 F. Supp. 2d 993, 997 (D. Minn. 2003) (holding that state regulation of an information service is preempted by federal law)).

³⁸ Please Comments of the Minnesota Telecom Alliance (MTA) at pages 6-7.

³⁹ Please see OAG’s November 19, 2021, comments at pages 23-24.

obligations cannot credibly be characterized as a barrier to broadband deployment in Minnesota.

Moreover, the “barrier to broadband deployment” argument has been rejected by the FCC and the Commission should reject it here. Please see the OAG’s November 19, 2021 comments at pages 25-26.

The OAG indicated an ETC could face a variety of penalties for non-compliance if the Commission adopts the OAG’s recommended RDOF Phase I ETC obligations in this proceeding.

States have the authority to deny, revoke, or rescind an ETC designation. However, ETC designation denial and revocation are not the only options available to the Commission and, for good reason (i.e., encouraging the flow of federal Universal Service support into the state), they may not be the Commission’s first choice. The Commission could also consider non-compliance actions that include requiring compliance filings, directly addressing consumer complaints, conducting its own audits and investigations, notifying the FCC of rule violations, and/or recommending High-Cost Program support reductions. These are specifically identified in: 2011 Transformation Order (FCC 11-161) (2011), Fifth Report and Order (FCC 19-111) (2019), and 2005 ETC Order (FCC 05-46) (2005).⁴⁰

Department

The Department does not believe that its proposed six regulations (identified above) constitute a barrier to broadband deployment.

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 considering 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. If the PUC orders the six clarification proposals listed above, and a provider finds it to be unreasonably burdensome, the Commission should consider such concerns annually, in the recertification process.

The Department pointed out 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. 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.

⁴⁰ Please see OAG’s November 19, 2021, comments at pages 26-28.

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. Such violations can be referred to the OAG for pursuit of civil penalties in district court.

Comcast Reply

Subjecting ETCs' broadband offerings to burdensome, utility-style regulation— particularly of the kind proposed by the Department—would be inconsistent with the light-touch regulatory framework applicable to broadband internet access service (BIAS). Indeed, preserving this regime provides the most effective means of achieving one of the federal universal service programs' primary objectives—promoting access to advanced services.

When the FCC reclassified BIAS as an information service in 2018, it explained that restoring a light-touch regulatory framework “is more likely to encourage broadband investment and innovation,” thereby “furthering [its] goal of making broadband available to all Americans and benefitting the entire Internet ecosystem.” And indeed, investment in this country's broadband networks has remained strong since 2018, resulting in increases in speeds, falling prices, and accelerated deployment—all of which has benefitted consumers. Apart from being unlawful, the Commission's subjecting ETCs' BIAS offerings to common carrier regulation would harm consumers by impeding the investment and innovation responsible for this progress.

Comcast understands the Department and OAG's desire to ensure that broadband deployment benefits consumers; the agencies cannot, however, mischaracterize the Commission's authority over ETCs' broadband services to do so. If the Commission determines that it must monitor the progress of broadband deployment in Minnesota, it could consider achieving its goals by asking RDOF program participants to voluntarily commit to implement the two reporting requirements proposed by the OAG.⁴¹

- 6. 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.**

MTA

The MTA did not directly address this item.

CWA

CWA is aware that the California Public Utilities Commission (CPUC) has frequently used its ETC authority to implement strong consumer protection rules. In 2006, the California Public Utilities Commission adopted a resolution that established comprehensive procedures, guidelines, and reporting requirements for ETCs eligible to receive federal high-cost support, including submission of two-year service quality improvement plans for all carriers. The CPUC has

⁴¹ Please see Reply Comments of Comcast at pages 5-7.

continued to impose stronger rules than required by the FCC as part of its ETC application review. For example, the CPUC imposed additional rules on Cox California Telcom's application for ETC designation that applied to both circuit-switched and packet-switched (VoIP) telephone services.⁴²

OAG

California – requires the submission of an application for a Certificate of Convenience and Necessity.

Hawaii – the Hawaiian Public Utilities Commission has declined to recertify Sandwich Isles Communications as an ETC since 2015, making it ineligible for RDOF High-Cost support.

Oklahoma – holds hearings before Administrative Law Judges on the merits of ETC applications.

Mississippi – requires interconnected VoIP and broadband providers to submit an informational tariff at least 30 days before an ETC offers service within its ETC-designated areas. The tariff must outline the ETC's regulatory contact information, customer service contact, terms and conditions, and Lifeline programs. Changes to the tariff must be filed at least seven days before the changes take effect.

Wisconsin – requires interconnected VoIP providers to register with the Wisconsin Public Service Commission, explain whether the provider relies primarily or exclusively on Lifeline customers, and provide a description, and the status of, any FCC enforcement action involving the provider.⁴³

Department

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. The Department provided a summary of a select group of other states are doing with respect to ETCs:

Illinois

In a recent Order related to ETC designation for purposes of the RDOF Program, the Illinois Commerce Commission (ICC) walked through the provisions of the Telecommunications Act and addressed its authority. In citations provided by the Department, the Department believes that the ICC claimed jurisdiction to establish State specific requirements.

Massachusetts

In its Order Opening Investigation on Federal Lifeline reforms ("13-4 Docket"), the Massachusetts Department of Telecommunications and Cable (DTC) reaffirmed its authority to

⁴² Please Comments of the Communications Workers of America (CWA) at pages 5-6.

⁴³ Please see OAG's November 19, 2021, comments at pages 28-30.

adopt additional requirements for ETCs beyond those established by the FCC. 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 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".

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

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 (PUCO) released an Order updating ETC requirements for designation and recertification. One requirement conditions designation on a commitment to participate in the state telephone assistance program and that the applicant provides 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."

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 53.450.92 The ETC must also “commit to maintaining, in an easily accessible location on the company website, consumer complaint procedures.”

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.”

Washington

In Washington, Washington Administrative Code (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.

WAC 480-120-41251 is titled “Major outages” was identified by the Department on pages 13-14 of the Department’s November 19, 2021, comments and the provided the following link to this specific WAC: <https://app.leg.wa.gov/WAC/default.aspx?cite=480-120-412>

CenturyLink Reply

CenturyLink pointed out the Department argues that these requirements are in line with standards other states have required. To the contrary, the Department’s proposals represent an unprecedented use of ETC certification for the purpose of regulating broadband service. CenturyLink pointed out that a review of the cites provided by the Department shows that universally the service quality requirements it identifies apply to telecommunications services.

For further details please see footnote 4 from CenturyLink’s December 20, 2021, reply comments for additional details regarding the states of Oklahoma and Washington.

7. Are there other issues or concerns related to this inquiry?

MTA

The MTA did not raise any other issues or concerns.

CWA

The Commission’s approach to broadband oversight through ETC designations will only help achieve accountability for a limited universe of providers. While CWA is aware of the limitations created by the 8th Circuit Court of Appeals, it believes that bigger solutions are needed. CWA

urges the Commission to further exercise its oversight responsibilities through creative solutions.⁴⁴

OAG

The OAG pointed out during one of the RDOF Phase I ETC designation agenda meetings, Commissioner Tuma asked whether the Commission should require an RDOF Phase I ETC to submit information to USAC at the time of ETC designation demonstrating that it has a Lifeline plan that meets the criteria set forth in FCC Rule 54.401(d). The OAG reviewed FCC materials pertinent to Commissioner Tuma's question that included the RDOF Order and auction materials, the USAC RDOF webpage, the Lifeline waiver orders, and the Lifeline orders generally. The OAG's review of the FCC's materials revealed inconsistent FCC guidance on the question, as described below:

- The RDOF Order and auction materials contain no specific reference to the rule but the order states that RDOF recipients must comply with all relevant Lifeline rules and cites FCC Rules 54.400 et seq.
- USAC's RDOF Page does not discuss the rule.
- The rule has not been waived; the Lifeline waiver orders do not reference the rule.
- There are two Lifeline orders that specifically reference the rule.
 - The first is a 2000 order that did not require provision of a Lifeline plan at the time of designation.
 - The second is a 2012 order that says a Lifeline plan must be submitted prior to receiving Lifeline reimbursement but contains an amended rule that requires the provision of the Lifeline plan at the time of designation.

Because the FCC's orders, rules, and other materials provided seemingly conflicting guidance, the OAG contacted the FCC on an informal, non-binding basis to obtain an answer to Commissioner Tuma's question. Per the FCC, in practice, the Lifeline plan required by FCC Rule 54.401(d) must be provided to USAC prior to the receipt of Lifeline reimbursement but does not need to be submitted to USAC at the time of ETC designation. USAC confirmed that it administers the Lifeline Program consistent with the FCC's "in-practice" guidance. Thus, the Lifeline plan required by FCC Rule 54.401(d) must be provided to USAC prior to the receipt of Lifeline reimbursement but does not need to be submitted to USAC at the time of ETC designation.⁴⁵

⁴⁴ Please Comments of the Communications Workers of America (CWA) at pages 6-7.

⁴⁵ Please see OAG's November 19, 2021, comments at pages 30-31.

Department of Public Safety Emergency Communication Networks (DPS/ECN)

The comments of DPS/ECN are included as Attachment B to this document.

IV. Staff Analysis

Staff notes that DEED made the following contribution to the record of this proceeding:

Broadband providers receiving federal funding under the FCC RDOF program are required to be ETCs. Other federal broadband funding programs each have their own methods to ensure accountability: the American Rescue Plan Act (either from State and Local Fiscal Recovery Funds or Capital Projects Funding); the U.S. Department of Agriculture's ReConnect and Community Connect programs; the National Telecommunications and Information Administration's Broadband Infrastructure Program and Tribal Connectivity Program; Housing and Urban Development's Community Development Block Grant funding for broadband; CARES Act funding used for broadband and the recently enacted Broadband Equity, Access and Deployment (BEAD) Program.

The state's Border-to Border-Broadband Infrastructure grant program, administered by DEED, also has its own process to ensure accountability. With significant federal funding already or becoming available, including the funding that DEED will be administering to ensure border-to-border broadband access across the state, DEED will use its limited resources to focus on awards and administer funding, as necessary. While the RDOF funding scheduled to be awarded to bring broadband services to locations in Minnesota is important, it is only a small piece of the funding puzzle and those entities with a direct stake in that funding can best respond to the issues raised in the Notice.⁴⁶

What the DEED's comments illustrate is that there is a myriad of broadband development programs beyond the grant programs administered by the FCC requiring ETC designations made by states. Most of the programs cited by DEED do not require state Commission involvement. By adopting any of the suggested requirements on ETCs, the Commission may be usurping its jurisdiction resulting in inconsistent and confusing requirements for both carriers and customers and may lead to unintended consequences overall.

Staff notes the various high-cost broadband development programs (e.g., CAF II and RDOF) are the purview of the FCC. A state commission's role is to evaluate the fitness of grant applicants for the required ETC designation and annually certify that the grant funds are being used appropriately pursuant to FCC rules and federal law. The FCC performs most of the functions for the program. Additionally, the Commission is not the lead agency for broadband in Minnesota. That is the role of DEED.

⁴⁶ Please see the December 20, 2021 reply comments of the Minnesota Department of Employment and Economic Development (DEED) at page 1.

As such, imposing requirements on a subset of FCC grant funded lines would mean that one consumer may have these requirements on their line, while their neighbor may not. Some carriers would be subject to these, and others would not. It would create a confusing and illogical patchwork quilt of requirements.

Finally, the Commission may wish to consider a more collaborative and measured approach would be for the Commission to regularly consult with DEED, a state agency which has far more expertise in administering broadband grant programs. The Commission could learn from DEED and at the right point in time, follow the lead of that agency regarding safeguards or protections. The Commission could appoint a lead commissioner to be the point of contact for this informal dialogue and report back to the Commission as needed. This would be a more iterative process better suited to this type of inquiry and would still allow the Commission to act formally if at some point in time it needed to act to impose requirements consistent with DEED's grant program.

V. Decision Options

Does the Commission have the necessary jurisdiction to impose additional regulatory requirements on eligible telecommunications carriers (ETCs)?

1. Determine that the Commission does not have the necessary jurisdiction to impose additional regulatory requirements on eligible telecommunications carriers (ETCs) (MTA, Comcast, CenturyLink), or
2. Determine that the Commission has the necessary jurisdiction to impose additional regulatory requirements on eligible telecommunications carriers (ETCs) (Department, OAG).

If the Commission determines that it has the necessary jurisdiction to impose additional regulatory requirements on eligible telecommunications carriers (ETC) (*decision option 2*), should the Commission adopt any of the following regulations on ETCs?

3. Impose no additional regulations on ETC designations (MTA, Comcast, CenturyLink), or

[If the Commission does not choose decision option 3, it may choose any or all the items in 4, 5, and 6.]

4. Formally adopt 47 C. F. R. § 54.202. (Department, OAG)
5. Adopt any or all the following (from Attachment A):
 - a. Provide a brief broadband deployment update for RDOF years 1 and 2. (Department, OAG, CenturyLink does not oppose)

- b. Provide a brief customer service summary for RDOF Year One. (Department, OAG, CenturyLink does not oppose)
- 6. Adopt any or all the following (from Attachment A):
 - a. require ETCs to report Disruption of 911 Service promptly to the Department of Public Safety (DPS). (Department, OAG)
 - b. require ETCs to have its 911 plan approved by DPS as a condition of ETC status. (Department, OAG)
 - c. require ETCs to have a goal to resolve outages of 95% outages cleared within 24 hours. (Department, OAG)
 - d. require ETCs to keep an updated price list on the company's website of the service offerings supported as an ETC. (Department, OAG)
 - e. require ETCs to make all contract terms including early termination fees and automatic renewals explicit to customers prior to customer purchase of supported services. (Department, OAG)
 - f. require ETCs to 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. (Department, OAG)
 - g. require ETCs to 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. (Department, OAG)

In the event the Commission declines to apply the Department and OAG's proposed requirements to ETCs at this time, the Commission may choose to:

- 7. send this item to the Office of Administrative Hearing (OAH) for comprehensive record development on all issues including but not limited to the Commission's jurisdictional authority to impose additional regulations on ETCs, or
- 8. Designates a lead commissioner pursuant to Minn. Stat. § 216A.03, subd. 9, with authority to be a point of contact with DEED for informal dialogue and report back to the Commission as needed, or
- 9. put the Department's proposal out for comment and parties may comment on why the proposed regulations would create an unreasonable burden (Department, OAG).

Should the Commission, concurrent with the annual recertification process, 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?

9. do not use the annual certification process as a forum for reviewing regulations applicable to all ETCs (Staff), or
10. invite parties to use the annual certification process as a forum for reviewing regulations applicable to all ETCs (Department, OAG).

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>



Alcohol
and Gambling
Enforcement

Bureau of
Criminal
Apprehension

Driver
and Vehicle
Services

Emergency
Communication
Networks

Homeland
Security and
Emergency
Management

Minnesota
State Patrol

Office of
Communications

Office of
Justice Programs

Office of
Traffic Safety

State Fire
Marshal

Attachment B

Emergency Communication Networks

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www.ecn.state.mn.us

November 15, 2021

Mr. Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E. Suite 340
St. Paul, MN 55101

RE: Docket No. P999/CI 21-86

Dear Mr. Seuffert,

These comments from the Department of Public Safety Emergency Communication Networks (DPS/ECN) division are provided in response to the Minnesota Public Utilities Commission (PUC) Notice of Comment Period, issued June 30, 2021, *In the Matter of a Notice to Rural Digital Opportunity Fund Winners (RDOF Winners)*. The PUC authorized Eligible Telecommunications Carrier (ETC) status for twenty one winning bidders in the FCC 904 Auction for RDOF grants.

DPS/ECN is responsible for the design and maintenance of the state 911 network, as provided in Minnesota State Statute 403. ETCs provide both broadband and voice services. Thus it is the responsibility of several Minnesota agencies to work closely together to ensure all Minnesotans receive a parallel level of service regardless of which provider they use. The fact RDOF dollars are being awarded for 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. In such cases these Minnesotans rely on the ETC to access 911 for public safety assistance.

Given the PUC is the only regulatory agency in Minnesota that can establish regulations and reporting requirements that apply to ETCs, DPS/ECN works closely with the Minnesota PUC in the ETC designation process in order to ensure the same standards and requirements for delivering a 911 call to a Public Safety Answering Point (PSAP) are followed by ETCs as are required to be followed by all other telecommunications and information service providers who offer service in Minnesota.

The PUC supports the certification process that DPS/ECN has established which includes but is not limited to, providing a 911 plan, delivering a valid location and callback number to the PSAP, reporting and addressing network outages promptly, and collecting and remitting 911 fees.

The information below describes in detail the ETC requirements in the State of Minnesota and clarifies the role of DPS/ECN. Additionally, we are providing some feedback as to common issues we currently see from any originating service provider. Further, there are specific issues we see as it relates to the lack of regulatory oversight for VOIP providers as this relates to 911. While ultimately the ETC will be responsible for ensuring that a caller can dial and be routed to 911, they likely will contract out some or all of the transport of that call to a VOIP provider. Putting a requirement on the ETC to ensure proper routing of a 911 call is a significant step forward, if the ETC requires language in its contracts with underlying providers to deliver a valid location and callback number to the PSAP. In the absence of the ETC being able to secure such contract terms a VOIP provider may be unable to satisfy the requirement and would need to seek a waiver from the PUC.

I. What is the role of DPS with respect to ETC designation and regulation?

- a. 47 C.F.R. 54.101 identifies the supported services to be provided by ETCs receiving federal universal support. This includes voice telephony or its functional equivalent, which is used to place a 911 call. DPS works to ensure that all voice service providers, regardless of their designation, have proper requirements in place for routing 911 calls to the appropriate PSAP and that those 911 calls present accurate location information based on the location of the caller to ensure a proper public safety response.
- b. Ensure that VoIP providers transmit both the callback number of the device and the physical location of the device, being used by the caller, to the appropriate PSAP in the form of a civic location (address).
 - The civic location (address) is used not only to determine which PSAP the call should be routed to but also to accurately dispatch the appropriate first responders with respect to the caller's location.
- c. Receive and address notifications of 911 disruptions.

II. Problems with all providers pertaining to 911

- a. Lack of reporting and lack of reporting information that is actionable/harms Minnesotans.
 - i. Lumen is the only OSP who routinely notifies PSAPs of a service disruption. No other OSPs. They do not notify ECN.
 - ii. If a wireline customer has no dial tone, we don't want to broadcast that there is a 911 outage (which is what Lumen does), but rather educate the public to use a different mode (wireless for example) to call for help if there is an emergency.

III. Problems with VoIP providers pertaining to 911.

- a. Broadband providers required to provide voice telephony may provision the VoIP service via contract with a VoIP provider.
 - i. The underlying VoIP provider may not allow visibility into the customer location database, claiming the database is proprietary information:

1. DPS cannot be assured of delivery of 911 calls to the appropriate PSAP (because the address associated with the customer may be a billing address and not a physical location address, or in cases where it might be a physical location address, the format of the address may not be alignment with the PSAP 911 ALI database. This must be very specific with respect to the order of the house number, street name, directional, etc. and abbreviations must be precise, in order for the address to verify within the PSAP computer aided dispatch system)
 - a. Wireline providers already are required to allow both the state and PSAP's access to this database (ALI database) for periodic verification and to be updated.
 - b. PSAP's do not have an ability to update an incorrect 911 address with the VOIP provider. It is currently the customer's responsibility and often a long and drawn out process.
 - i. Many VOIP customer service agents are not aware there is a separate 911 database from the customer billing database.
 - ii. If the VOIP service is being provided third-party they may contract out 911 database support to a different provider than the underlying VOIP service.
2. DPS cannot accurately collect 911 fees that keep the 911 network operational.
 - a. 911 fees are paid on a voluntary basis and the only way to verify that an OSP is paying the correct amount of 911 fees that they collect would be from DPS having an associated list of all the OSP's Minnesota customer TNs.
3. MN PSAPs likely are not able to notify all local subscribers of a 911 disruption as they are not aware of these subscribers.
 - a. 911 centers use reverse 911 technology to push out alerts based upon wireline databases that 911 is disrupted and to use alternate methods of calling for help
 - b. 911 centers (PSAPs) also have the ability to initiate Wireless Emergency Alerts (WEA) to any wireless subscribers who are within an area of a 911 disruption to provide related information.
- b. Disruption notifications may not occur or may lack intelligence on the disruption.
 - i. A short disruption for network maintenance would be treated differently that a disruption that is expected to last for hours.
 - ii. A VoIP provider may not provide a notification, and the PSAPs are then needing to spend time to figure out what is going on and how it should be addressed.
- c. DPS does not have the jurisdiction to enforce compliance of obtaining location information and disruption notifications with VoIP providers.
- d. Example: Rice-Steele Consolidated PSAP
 - i. Starting in July 2021, this consolidated 911 center 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. I was notified by the PSAP manager after she'd spent two months calling the VOIP provider's customer service line (the only number published) and was

told by multiple representatives that the issue was “fixed” even though it wasn’t. The PSAP had a quick way to test because their own phone lines from the call center would route test 911 calls to Northern 911 not the center they were standing in! Luckily the provider had submitted a CLEC plan and while there is no phone number listed there were email addresses. I was able to get a senior level staff person quickly to acknowledge the issue and my assessment that there were some significant issues in their 911 address database. Turns out, this provider had purchased a local VOIP provider in July of 2021 and merged those customers from the old database into the new database without checking that the data had transferred correctly. It took several weeks for this to be completely remediated but the issue did get resolved. This is an example of a good case where the provider understands how 911 calls are routed to the 911 network, their responsibility and worked with the PSAP. Even still, in this case the PSAP was made aware of someone who had called 911 and ended up getting a ride to the ER as they were having a stroke. Had this database been made available to the PSAP or the state prior, we could have easily identified the addressing issues and suggested the corrections before a 911 call was dialed.

IV. The Commission can alleviate the problem for ETC broadband fund recipients.

- a. All broadband providers use VoIP telephony as the means to satisfy the voice requirement in 47 C.F.R. 54.101.
 - i. ETC high cost fund recipients could be ordered to ensure that location information is visible to the State emergency network, and any contracts entered for the provision of voice/911 services must allow for location information to be visible to the State emergency network.
 - ii. ETC high cost fund recipients could be ordered to provide detailed/intelligent notification of any disruption affecting the ability of customers to place a 911 call.
- b. While the PUC may be able to only place conditions on those companies that are receiving federal government funds via their ETC status, without the PUC requiring the above protections, people will die because 911 calls will route to an incorrect PSAP and/or emergency services are sent to an incorrect address.
- c. DPS supports the Department of Commerce provisions that pertain to public safety for ETC high cost fund recipients because the provisions would start to address the issues laid out previously:
 - i. Service disruption notifications
 - ii. DPS to approve 911 plans
 - iii. Restoring outages promptly

DPS/ECN appreciates the opportunity to contribute comments on this important initiative and appreciates the support of the PUC in helping to ensure that all citizens and visitors to Minnesota have equitable 911 service throughout the State of Minnesota, regardless of the type of technology being used to place the request for emergency assistance.

Sincerely,



Dana Wahlberg, Director
Minnesota Department of Public Safety
Emergency Communication Networks Division