

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Dan Lipschultz  
Matthew Schuerger  
Katie J. Sieben  
John A. Tuma

Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of Broadband Corp.'s Petition  
for Eligible Telecommunications Carrier  
Designation in Minnesota

ISSUE DATE: February 8, 2019

DOCKET NO. P-6994/M-18-665

In the Matter of a Notice to Connect America  
Fund II Grant Winners

DOCKET NO. P-999/CI-18-634

ORDER APPROVING REQUEST FOR  
ETC STATUS FOR HIGH COST  
SUPPORT IN CERTAIN CENSUS  
BLOCKS

**PROCEDURAL HISTORY**

**I. Background**

On August 28, 2018, the Federal Communications Commission (FCC) announced the winning bidders of Auction 903, a Connect America Fund Phase II (CAF II) auction to receive \$1,104,440.80 to invest in broadband infrastructure across rural America. Areas that will receive support through this auction are locations in census blocks in rural areas served by price cap carriers that do not have access to broadband services within designated speeds. The FCC has determined that these areas are rural, sparsely populated, and that historically, there has not been a reasonable basis on which to invest in state-of-the-art broadband infrastructure in the absence of sufficient and predictable universal service support.

CAF II funding, grant funding, loans and other financial tools provide incentives for entities to expand their existing footprints and serve the rural areas identified for support in Auction 903. Carriers awarded support in this auction are required to deploy broadband to the specified number of locations in eligible census blocks, in the Census Block groups in which they bid, within a six-year period at the speed tier specified in their bid.<sup>1</sup>

Broadband Corp. (Broadband), was among the 103 providers listed as provisional winners in the CAF II auction. Broadband will receive a CAF II award of \$428,117 over a ten-year period to build a network capable of delivering both the data and the voice services that meet or exceed the public obligations of 100 megabits and low latency tiers to the 128 location in the Funded Areas upon completion of certain post-auction requirements. One of these requirements is for Broadband to be designated an Eligible Telecommunications Carrier (ETC) in the Funded Areas by February 25, 2019.

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<sup>1</sup> The FCC named sixteen companies as CAF II auction winners for Minnesota locations.

## **II. Broadband's Petition**

On October 30, 2018, Broadband requested ETC designation from the Commission for the Funded Areas in the census block groups named in an attachment to its petition, as authorized by Section 214(e) of the Federal Communications Act of 1934.<sup>2</sup>

On December 11, 2018, the Minnesota Department of Commerce (the Department) filed comments on Broadband's petition.

On December 13, 2018, the Minnesota Department of Employment and Economic Development, (OBD) filed reply comments in this matter. OBD recommended that the Commission grant Broadband's request for ETC designation to ensure that federal funding to support the build-out of broadband service to unserved, high cost areas flows to this state for the benefit of Minnesotans.

On December 14, 2018, in Docket P-999/CI-18-634, the Department filed a letter serving notice to all carriers seeking ETC status that they should address the telecommunications service provision issues which the Department raised.

On January 24, 2019, the Commission met to consider the matter.

## **FINDINGS AND CONCLUSIONS**

### **I. Positions of the Parties**

#### **A. Broadband**

Broadband provides Voice over Internet Protocol (VoIP) service and will continue doing so in the 128 locations in the Funded Areas in the Census Blocks listed in its petition in which it seeks designation as an ETC. Broadband states that it satisfies the requirements of Section 214(e)(1) and 254 of the Communications Act of 1934, as amended by the Federal Telecommunications Act of 1996 for designation as an ETC in the Funded Areas, to: (1) offer the services supported by federal universal service support mechanisms, (2) either using its own facilities or a combination of its own facilities and resale of another carrier's service, and to (3) advertise the availability of such services and the charges using media of general distribution. One of the requirements is for Broadband to be designated an ETC in the Funded Areas by February 25, 2019.

Broadband states that as a condition of receiving support, it will offer voice service as a standalone service throughout their designated service area, including:

- Voice grade access to the public switched network or its functional equivalent.
- Access to emergency services provided by local governments or other public safety organizations, such as 911 and enhanced 911.

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<sup>2</sup> Exhibit A to Broadband's petition lists the CAF II Awarded census blocks. These Funded Areas will be given a Study Area Code upon final FCC authorization for CAF II funding.

Broadband also asserts that it will satisfy consumer and service quality standards established by federal and state law.

## **B. The Department**

The Department analyzed Broadband's application for ETC status, and noted that Broadband maintains that it offers information services and that it is not subject to Commission jurisdiction other than for the purpose of obtaining status as an ETC. The Department argued that it is a requirement for an ETC to provide *telecommunications* services, however, and not just information services, and that therefore Broadband's application cannot be approved without a clear explanation of how it will satisfy the legal requirements.<sup>3</sup>

The Department recommended approval of Broadband's request for ETC status for high cost support in the Census Blocks listed in Broadband's petition, if the company meets the following conditions:

- Broadband should provide a clear explanation of how it will satisfy the requirement of providing a telecommunications service;
- If Broadband demonstrates that it will be providing a telecommunications service, it should explain why the provision of the telecommunications service does not require a certificate of authority from the Commission;
- Broadband should show that the Department of Public Safety is satisfied with its 911 arrangements to ensure consumer protections exist with emergency 911 calling;
- Broadband should show that it will have a standalone voice offering and its customer agreement should reflect the availability of a standalone voice offering; and
- Broadband should confirm that it will offer Lifeline service and has an advertising plan for it.

At the Commission meeting, the Department argued the Commission should not grant a petition for ETC status unless the applicant can show it will provide telecommunications service within the next three years, relying on a 10th Circuit decision overturning the FCC's "Transformation Order"<sup>4</sup> and holding that a provider of information services (VoIP) alone is not eligible for Universal Service Funds (USF).<sup>5</sup>

## **C. Office of Broadband Development**

The Office of Broadband Development of the Minnesota Department of Employment and Economic Development (OBD) recommended that the Commission grant the requests for ETC designation to ensure that federal funding to support the build-out of broadband service to unserved high cost areas flows to this state for the benefit of Minnesotans. OBD argued that the FCC has been clear since its 2011 "Transformation Order" that a provider using VoIP service is

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<sup>3</sup> The Federal Communications Act of 1934 distinguishes between information services and telecommunications service. *See, e.g.*, 47 USC 154.

<sup>4</sup> November 18, 2011-161A FCC Order.

<sup>5</sup> The Department relied on an argument it advanced in its January 23, 2019 comments in an associated petition for ETC designation (also heard by the Commission on January 24, 2019). *In re Midcontinent Communications Expansion of Service Area*, Docket No. P-6186/M-18-661.

offering a voice telephony service eligible for federal universal service support. The Transformation Order explained that:

Interconnected VoIP services, among other things, allow customers to make real-time voice calls to, and receive calls from, the PSRN, and increasingly appear to be viewed by consumers as substitutes for traditional voice telephone services. Our authority to promote universal service in this context does not depend on whether interconnected VoIP services are telecommunications services or information services under the Communications Act.<sup>6</sup>

## **II. Commission Action**

47 USC § 214(e)(2) authorizes state commissions to designate a common carrier that meets the requirements of 47 USC § 214(e)(1) as an ETC for a service area designated by the state commission. Thus, the Commission has the authority to designate telecommunications companies as ETCs to receive universal service support.

The Commission agrees with the OBD, that Minnesota providers using VoIP service are offering voice telephony services eligible for federal universal service support. The FCC's 2011 Transformation Order and FCC Rules 54.101<sup>7</sup> make clear that the regulatory classification of VoIP as either a telecommunication service or an information service is irrelevant for purposes of this proceeding.

The issue is not, as the Department argued, whether Broadband can provide telecommunications service within the next three years. That requirement arises from a case decided in the 10th Circuit, and is clearly not binding on the Commission. The issue to be decided is whether VoIP services provide the functional equivalent of voice telephony services.

The FCC's 2011 Transformation Order made clear that additional communication platforms by which to provide telephony service are also entitled to universal service support. Paragraph 78 of the FCC Transformation Order explains that the purpose of the order was to shift to a *technologically neutral approach* allowing companies to provision voice service *over any platform*, including the public switched telephone network and internet protocol networks.

This modification will benefit both providers (as they may invest in new infrastructure and services) and consumers (who reap the benefits of the new technology and service offerings). Accordingly, to promote technological neutrality while ensuring that our new approach does not result in lower quality offerings, we amend section 54.101 of the Commission rules to specify that the functionalities of eligible voice telephony services *include voice*

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<sup>6</sup> See *infra* Transformation Order at Paragraph 64; FCC Rule 54.101, as modified at 47 CFR 54.101(a)(1).

<sup>7</sup> FCC Rule 54.101, as modified at 47 CFR 54.101 (a) (1) states that "[E]ligible voice telephone services must provide voice grade access to the public switched network or its functional equivalent."

*grade access to the public switched network or its functional equivalent.* (Emphasis added).<sup>8</sup>

Further, there is no dispute in this docket that Broadband is subject to the state's 911 requirements. Broadband can work directly with the Department of Public Safety regarding 911 compliance or issues. .

Accordingly, the Commission will approve Broadband's request for ETC status for high cost support in the Census Blocks listed in the Company's filing.

Finally, the Commission will delegate authority to the Executive Secretary to issue notices or letters as necessary to communicate with the FCC or other entities regarding Broadband's ETC status.

### ORDER

1. Broadband's request for ETC status for high cost support in the Census Blocks listed in the company's filing is approved.
2. The Commission delegates authority to the Executive Secretary to issue notices or letter to the Federal Communications Commission or any other entity if necessary to facilitate communication of Broadband's ETC status with this Commission.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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<sup>8</sup> Transformation Order, *supra* at paragraph 78.