

Staff Briefing Papers

Meeting Date	September 17, 2020	Agenda Item *5
Company	Local Exchange Carriers, Eligible Telecommunications Carriers	
Docket No.	P999/PR-20-8	
	In the Matter of Annual Certification Related to Eligible Telecommunications Carrier's (ETCs) Use of the Federal Universal Service Support Required Pursuant to C.F.R. 54.313	
Issues	<ol style="list-style-type: none"> 1. Are the locations listed by companies receiving funds that rely on specific location deployment sufficiently accurate? 2. Should the Commission certify the Companies whose SACs are registered in a state other than Minnesota, but who have customers within Minnesota? 3. Does the Commission have sufficient documentation through the filed FCC form 481 to be assured that the high cost funds received by each ETCs have been, and will be, used for their intended purpose, pursuant to 47 C.F.R. § 54.314? 	
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Relevant Documents

Date

Annual Report/Compliance Filings Related to ETC (FCC Form 481)	June 22, 2020 through July 30, 2020
Comments of the Minnesota Department of Commerce	August 31, 2020
Errata Notice Minnesota Department of Commerce	August 31, 2020
Comments of the Office of the Attorney General (OAG-RUD)	September 1, 2020
Reply Comments of Frontier Communications of Minnesota	September 8, 2020

✓ Relevant Documents

Date

I. Statement of the Issues

1. Are the locations listed by companies receiving funds that rely on specific location deployment sufficiently accurate?
2. Should the Commission certify the Companies whose SACs are registered in a state other than Minnesota, but who have customers within Minnesota?
3. Does the Commission have sufficient documentation through the filed FCC form 481 to be assured that the high cost funds received by each ETCs have been, and will be, used for their intended purpose, pursuant to 47 C.F.R. § 54.314?

II. Background

Under the Federal Telecommunications Act of 1996, telecommunications carriers must be designated “eligible telecommunication carriers” (ETCs) to qualify for subsidies from the federal Universal Service Fund for serving high-cost areas or low-income consumers. State regulatory commissions have primary responsibility for designating ETCs, although the Federal Communications Commission (FCC) acts on designation requests from carriers who are not subject to state commission jurisdiction.

State commissions must annually certify to the FCC that all high-cost support provided to state-designated ETCs was used in the preceding calendar year, and will be used in the coming year, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Each year, the Minnesota Public Utilities Commission (Commission) must certify that Eligible Telecommunications Carriers (ETCs) receiving High Cost Funds are using the funds received in the previous year (2019), and will use the funds in the coming year (2021), only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Since 2001 States have filed annual certification of Federal Communications Commission (FCC) Fm. 481 compliance filings by Eligible Telecommunication Carriers (ETCs) regarding high-cost program support from the Universal Service Fund (USF). All companies filing FCC Form. 481 under 47 C.F.R. 54.313 are normally certified via the Universal Service Administrative Company (USAC) electronic certification roster and by being sent hardcopy to the FCC by USPS as per federal practice. The Commission does this under authority delegated in 47 C.F.R. 54.314. Wireless companies filing FCC Form. 481 under 47 C.F.R. 54.422 do so for the Commission’s information only. Those wireless companies are appropriately not listed on the USAC verification system and not certified by the Commission to the FCC.

In 2019, the Universal Service Administrative Company (USAC) distributed **\$250,157,654** to Minnesota ETCs to mitigate high costs in the provision of voice and broadband services. Under several of the high cost schemes, companies must build out to a number of locations in given

census blocks. Each year, through the required filing of FCC Form 481, companies receiving high cost funds report certain information, including an affidavit that the company meets certain FCC requirements. The Minnesota Commission requires each company seeking certification to include a separate affidavit from a company officer confirming that funds are used appropriately.

III. Parties' Comments

1. Are the locations listed by companies receiving funds that rely on specific location deployment sufficiently accurate?

DOC: The accuracy of served locations by reporting companies was a concern raised in the 2019 recertification proceeding, and concerns raised then continue with the current recertification proceeding. In addition to the question over the accuracy of reporting, both Frontier and CenturyLink have notified USAC that they are in danger of falling short of their 2019 location commitments. If companies fall short of their location commitments, they may be required to return funds. If funds must be returned to USAC, they were clearly not being used in the manner intended. To the extent that an ETC fails to serve the required number of locations, or inaccurate location information results in funds being returned to USAC, it is consumers, and in particular rural consumers, who suffer the consequences.

The accuracy of reporting location information by the Frontier companies was recently before this Commission as a part of this 20-8 docket, in response to a Frontier customer complaint regarding his home address being misrepresented on the USAC Broadband map. Along with other recommendations, the Department requested that the Commission order:

- . . . Frontier to review its HUBB data for those locations it has identified as served with CAF II funds, eliminating all invalid locations, and providing for one location per pair of latitude/longitude points for all but multi-tenant locations. Frontier should then file the correction to the HUBB.
- Require Frontier to provide a listing of all eliminated locations and an accurate reporting of the locations, that are actually served, within 60 days.

The Commission did not adopt the Department's recommendations but chose to have its Executive Secretary send a letter to USAC requesting that USAC audit Frontier's use of CAF II locations.

Although the Department hopes that some progress will be made in the communications occurring between the Executive Secretary and USAC, the Department continues to believe Frontier should be required to correct its HUBB data base to remove repeat USPS addresses and create unique postal or directional addresses for each Latitude and Longitude reported.

The Department has not sufficiently analyzed the location data of carriers, other than Frontier, to make a recommendation on improving the accuracy of location information.

OAG: In January 2020, the Commission issued a Request for Review and Comment Period concerning potential irregularities in the use of Frontier’s High Cost Program support. The OAG and the Department filed comments, and Frontier filed reply comments in the docket. At an agenda meeting in June 2020, the Commission voted unanimously to take no official action at the time and instead directed the Executive Secretary to contact USAC. To date, the OAG has not heard anything from USAC regarding Frontier’s use of its 2019 High Cost Program funding.

Given the Commission’s recent inquiry to USAC regarding Frontier’s use of its 2019 High Cost Program funding and the short timeframe for ETC recertification, the OAG recommends ETC recertification for Frontier unless or until the Commission receives information to the contrary from USAC.

Frontier: Frontier agrees with the Department recommendation that the Commission recertify Frontier as an ETC (along with other listed Minnesota ETCs). Frontier disagrees with the Department recommendation that the Commission order Frontier to correct addresses in the High Cost Universal Broadband (“HUBB”) data base.

The Department Comments do not raise an issue with respect to Frontier’s use of CAF II funding or other issues.

Frontier agrees with the OAG who “recommends ETC recertification for Frontier” in the absence of any information to the contrary from USAC concerning use of CAF II funding. Frontier has not received any communication from USAC in relation to any possible review or audit following the Commission’s July 15, 2020 letter to USAC.

Frontier also agrees with the OAG Comments that no follow-up is needed with respect to Frontier’s 2019 deployment milestone for Minnesota.

The OAG Comments raise no other issues with respect to Frontier.

Supplemental Information Provided by Frontier

Frontier’s July 1, 2020 Request for Eligible Telecommunication Carrier (“ETC”) Certification indicated Frontier’s intent to provide further information (in addition to the information contained in Attachment E to Frontier’s Request).

Questions were raised relating to the accuracy of location information and addresses provided by Frontier to the Universal Service Administrative Company (“USAC”) HUBB Portal for Minnesota. Frontier explained its positions in regard to HUBB addresses in its Reply Comments, and the Commission did not accept a Department recommendation to require correction of addresses at its meeting on June 11, 2020. The Commission was correct in making this decision.

The Department Comments recognize that Commission decision but continue that recommendation. The Commission should not accept that recommendation for the reasons

that led the Commission's June 11, 2020 decision, which are confirmed by the following supplemental information.

Since the June 11, 2020 meeting, Frontier has continued its efforts to increase the accuracy of address information, as discussed in Frontier's April 27, 2020 Reply Comments. Specifically, Frontier determined that it would be useful to conduct a review of the information available regarding the location information and addresses provided by Frontier to the HUBB Portal in order to be in a position to implement a solution as soon as it became available to the industry. To accomplish this objective, in July 2020, Frontier retained Pitney Bowes Software Inc (PBSI), dba Precisely ("Precisely"). Precisely provides accuracy and consistency in data for 12,000 customers in more than 100 countries, including 90 percent of the Fortune 100, and these and other businesses rely on Precisely's data integration, data quality, location intelligence, and data enrichment products.

While Frontier continues to object to the Department recommendation that the Commission issue an order pertaining to HUBB data, Frontier intends to continue its review and refinement of data, and to update its location data, including, if needed, updates to the USAC HUBB, as the engagement with Precisely continues.

2. Have the companies serving Tribal Lands provided enough evidence of proactive engagement, as required by 47 C. F. R. § 54.313 (5)?

DOC: ETCs are required to demonstrate that they have engaged with Tribal governments, that at a minimum includes: (i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions; (ii) Feasibility and sustainability planning; (iii) Marketing services in a culturally sensitive manner; (iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and (v) Compliance with Tribal business and licensing requirements.

In its report in Docket 19-8, the Department stated that it intends to work with each of the companies that serve Tribal lands to attempt to create a better method of Tribal engagement than currently exists. The Commission then formalized in its Order that the companies serving Tribal lands need to fully cooperate with both the Department and the Commission as well as with the Tribes to comply with Section 54.313(a)(9), using FCC Form 481 to ensure acceptable Tribal engagement occurs in the future.

In January of 2020, the Commission Tribal Liaison and the Department Tribal Liaison worked with the Minnesota Telecom Alliance (MNTA) to invite Minnesota telephone companies to a meeting to discuss Tribal engagement in telecommunications. At the meeting, in Sebeka, Minnesota, the Department Tribal Liaison explained the requirements of the FCC, provided some background information and discussed the need for the companies to find the right person to communicate with within the Tribal leadership, and offered assistance in setting up meetings. Following that initial meeting, the Department Tribal Liaison, working with MNTA, created a contact list for each company with the name, telephone number, and email address for the best contact person in each tribe. The intent was for each of the companies serving

tribal lands to meet with the tribes, with assistance provided by the Tribal Liaisons, if necessary. Unfortunately, in March of this year, the COVID-19 Pandemic began, and planned visits needed to be curtailed.

On May 8, 2020, the Department sent a letter to the ETCs serving Tribal areas, asking for an update on company efforts to engage Tribal entities, as envisioned by the FCC, per the instructions concerning the 481 filing. The Department had responses from some, but not all companies. It appears that while the telephone companies were willing to properly fulfill their tribal engagement obligations, some, but not much progress was made in having meaningful meetings, due to the pandemic.

The responses filed in this year's FCC Form 481 filings showed no improvement in Tribal engagement over the previous year, although the reporting period was for a time prior to the Department and Commission's Tribal Liaison efforts. The Department recommends that the Commission order continuing cooperation with the Commission and Department, to assist with creating meaningful engagement.

OAG: Last year, the Commission directed companies serving Tribal lands to fully cooperate with the Department, the Tribes, and the Commission. While the OAG has reviewed the submissions of those companies that serve Tribal lands and has formed some preliminary thoughts about Tribal engagement, it recognizes that the onset of the COVID-19 pandemic in March 2020 likely frustrated attempts at increased Tribal engagement. Accordingly, the OAG concludes that the Commission should delay strict adherence to its Tribal engagement requirement until the start of calendar year 2021.

3. Are high cost fund recipients appropriately offering and advertising Lifeline services in their locations pursuant to 47 C. F. R. § 54.405?

DOC: Pursuant to 47 C. F. R. § 54.405, All ETCs must make Lifeline service available to qualifying low income consumers and must publicize the availability of Lifeline service in a manner reasonably designed to reach those likely to qualify for the service. The 481 form, line 1210, requires either a document describing the terms and conditions of voice telephony Lifeline service, or a link to a public website that describes those terms and conditions. A well set up website, while not the only way to publicize the availability of Lifeline, is clearly an effective way to reach many potential customers. However, if a reasonable consumer cannot find the appropriate web page, the offering is of little value and the carrier is not complying with ETC requirements.

In Minnesota 8,524 non-tribal households receive Lifeline service from ETCs that also receive high cost funds; 6750 of those households apply Lifeline to voice. An additional 95 households residing in Tribal land receive Lifeline service from ETCs that also receive high cost funds; 75 of those households apply Lifeline to voice.

The Department looked at the websites of every ETC to determine if it is properly advertising Lifeline. The majority of the company web pages are not easy to access, even if they contain the

appropriate information. Consideration should be given on whether customers should be able to reach the web page describing Lifeline within 2 clicks, or some other number the Commission deems reasonable, from the main page. If fewer clicks are required, the path is more likely to be apparent to a reasonable person.

Three of the companies not previously receiving high cost funds currently offer no Lifeline service: Jaguar, LTD Broadband, and Roseau Electric. LTD Broadband and Roseau electric have not yet built out their networks, and have until 2023 or 2022, respectively, to make their first milestone. Jaguar did not respond to the Department's information request.

The Department would like to recognize Garden Valley Telephone Company as an excellent example of how to offer Lifeline service. The website, www.gvtel.com has seven slides on its main page that rotate. The first slide concerns COVID-19 Assistance Plans and Updates, the second is for Assistance Plans, where it outlines Minnesota's Telephone Assistance Plan, the Federal Lifeline program, and Garden Valley's internet assistance offers.

OAG: Unless voluntarily submitted as part of a company's annual FCC Form 481, the OAG has no insight into the type(s) of Lifeline advertising a company conducts each year and cannot determine whether such advertising is reasonably designed to reach the eligible households within an ETC's service area.

Accordingly, and on a triennial basis beginning with the calendar year 2021 FCC Form 481 filing, the OAG recommends that the Commission require the companies to submit sample Lifeline advertising materials. Those companies that already voluntarily provide this information as part of an applicable FCC Form 481 filing should be permitted to reference the filing to satisfy this requirement.

4. Should the Commission certify the Companies whose SACs are registered in a state other than Minnesota, but who have customers within Minnesota?

DOC: Some SACs serve Minnesota customers, but are registered to be certified in other states. The following SACs serve Minnesota customers, but are registered in other states and will be certified in those states. The SACs include: Alliance Comm Coop - Hills Tel Coop (South Dakota), Alliance Comm Coop - Splitrock (South Dakota), CenturyTel of Chester (Iowa), CenturyTel of NW Wisc (Wisconsin), Loretel Systems (North Dakota), Polar Comm Mutual Aid Corp (North Dakota), Polar Telecomm (North Dakota). The Department has confirmed with the Commission Staff in North Dakota, Iowa, and South Dakota, that the above listed companies will be certified by the Commissions in those states. In the past, the Minnesota Commission has certified these companies and no harm has come from it. Because the Department has confirmed the intent of the state Commissions to certify these companies, the Department recommends recertification of these companies.

OAG: Last year, the Department confirmed that the companies that serve primarily in other states were being certified by the public utility commissions in the states in which they serve. In addition, the Department reached out to USAC and was told that there is no need for this

Commission to certify companies that operate primarily in other states. The OAG confirmed with the Department that the Department engaged in the same process for the current year. Accordingly, the OAG defers to the Department to make a recommendation for this item.

5. Does the Commission have sufficient documentation through the filed FCC form 481 to be assured that the high cost funds received by each ETCs have been, and will be, used for their intended purpose, pursuant to 47 C.F.R. § 54.314?

DOC: With fewer than 60 days available for it to analyze 107 SACs, the Department has limited means to investigate and provide the Commission with assurance that high cost funds have been, and will be, used for their intended purpose. Therefore, the Department focused its efforts on encouraging companies to reach out effectively to Tribal leaders, examining the locations of Frontier, and reviewing the level of Lifeline offerings and the manner of those offerings. The Department has found no reason to deny recertification for any ETC, but as discussed in these comments there are some areas of concern that merit regulatory oversight.

The requirement that ETCs must offer a stand-alone voice product is one that the Department and Commission have covered thoroughly in ETC certifications. In its review of Roseau Electric Company's Lifeline offering, the Department discovered that the price list shows a requirement to subscribe to internet service in order to receive voice service. As the services are not yet ready for offering, the erroneous requirement was corrected without customers being negatively affected.

OAG: All of the companies in Attachment A of the OAG's comments provided the required certification. However at least one company failed to file the Commission-required affidavit or certified only a subset of the required items. The OAG indicated that it will reach out to the company/companies that did not comply with this requirement to remind them of their filing obligation. If a company fails to comply with this Commission-mandated affidavit requirement again next year, the OAG will provide a recommendation(s) to address the non-compliance.

Last year, the Commission issued an order requiring companies to file their FCC Forms 481 with the state. At least one company failed to file a copy of its FCC Form 481 with the state. The OAG indicated that it will reach out to any company/companies that did not comply with this requirement to remind them of their filing obligation. If a company fails to comply with this Commission mandated requirement again next year, the OAG will provide a recommendation(s) to address the non-compliance.

Because these are still relatively new requirements, the Commission should remind companies of the obligation to file a copy of the affidavit and FCC Form 481 with the Commission.

Additional Items Highlighted by the OAG-RUD

Results of Network Performance Testing

As of last year, the FCC Wireline Competition and Wireless Telecommunications Bureaus, and the Office of Engineering Technology had not yet released the format for network performance testing. Although the performance measures have now been released, the FCC established January 1, 2020 as earliest pre-testing start date and July 2020 as the earliest testing start date. Accordingly, the OAG recommends postponing Commission review of this item until the calendar year 2021 ETC recertification process. The OAG will closely monitor network performance testing in calendar year 2021 and report its findings to the Commission as part of the next round of ETC recertifications. There is no Commission follow-up required for this item.

Offering of Stand-Alone Voice Service

Companies that receive CAF and ACAM funding are required to offer stand-alone voice service. For at least one company, the OAG was unable to locate a stand-alone voice service offering on the company's web page. The OAG will reach out to any company/companies for which it was unable to locate a stand-alone voice service offering to ensure that such an offering exists. The OAG will also provide the Department with the identity of the company/companies so that the Department can work with them to ensure their websites offer clear information about stand-alone voice service. If the OAG determines that a company is not offering the required stand-alone voice service, it will submit a filing in this, or another, Commission docket to provide recommendations about how to address the non-compliance. There is no Commission follow-up required for this item.

Build-Out Milestones

Two companies filed letters in January 2020 notifying the Commission that they may not have met their 2019 deployment milestones in Minnesota. While the OAG plans to reach out to both of these companies to confirm that they complied with their federal every-three-month reporting obligations, a review of the FCC's EDOCs and ECFS systems does not indicate any reporting non-compliance issues for either company. There is no Commission follow-up required for this item.¹

IV. Staff Analysis

Decisions Required to be Made in this Docket before October 1

In order for Minnesota High Cost Program ETCs to be eligible for support, the Commission must file an annual certification with the FCC and USAC by October 1 of each year certifying that High

¹ Staff appreciates the OAG-RUD's participation and contributions to the record of this proceeding.

Cost Program funds were used in the previous year, and will be used in the coming year, only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. This is the single most important issue in this docket. It is imperative that the Commission makes this determination above all else. If the Commission submits its certification after October 1 of the applicable calendar year, the Minnesota High Cost Program ETCs may incur funding reductions.

The Commission must certify a carrier's proper use of the high cost funding. All other issues, such as Lifeline outreach and tribal consultation can be examined on their own timelines and after all relevant parties have had a chance to weigh in a less compressed schedule. If the Commission believes that these other issues are well developed and ripe for consideration, it may make that determination.

In so far as this annual review is a ministerial duty delegated to the Commission by the FCC, Staff concurs that each of the companies requesting certification appear to have met the filing requirements. Please see Attachment A of the OAG's comments and Attachment 1 of the DOC's comments for the list of ETCs requiring Commission certification.

Decisions that can and Should be Referred to other Venues

While Staff is supportive of information on lifeline outreach (websites and advertising materials) and Tribal engagement, the problem with filing these recommendations in the 20-8 docket is that the docket does not cover all Lifeline ETCs. Specifically, the scope of this docket is the use of high cost funding certification, not Lifeline. So, a number of the Lifeline, wireless-only ETCs would not be subject to any of these requirements. The OAG itself noted this in its comments when it pointed out that most of the filings do not include this information.

There are a number of wireless, Lifeline-only ETCs that would not be subject to the 20-8 docket. If the DOC's advertising recommendation were adopted, not all Lifeline providers would be required to comply. As such, the Commission would run the risk of a piecemeal approach to applying the regulations governing ETCs. In addition, because this is noticed as the high cost ETC review, it is always on a short timeframe and stakeholders that would often participate in Lifeline dockets would not have been monitoring this docket. It would be more appropriate to the parties file comments on issues relevant to all Lifeline providing ETCs in another docket.

Finally, with respect to the DOC's recommendation that the Commission order Frontier to correct the multiple USPS addresses in its HUBB data base, Staff believes that the Commission should refrain from taking such action until USAC has completed its audit process in that matter. As was stated by the OAG, it is not unusual to not receive information regarding an on-going audit because USAC keeps the fact of any program audit and the results of that audit confidential until the FCC deems the audit final. This too is an issue that does not need to be decided in this docket and can be taken up at another time.

V. Decision Options

1. **Are the locations listed by companies receiving funds that rely on specific location deployment sufficiently accurate?**
 - A. Make no determine regarding locations.
 - B. Require all companies to cooperate with the Department's review of location information.
 - C. Order Frontier to correct the multiple USPS addresses in its HUBB data base.
2. **Have the companies serving Tribal Lands provided enough evidence of proactive engagement, as required by 47 C. F. R. § 54.313 (5)?**
 - A. Order continued cooperation with the Commission and Department in encouraging meaningful engagement.
 - B. Make no order regarding Tribal engagement
3. **Are high cost fund recipients appropriately offering and advertising Lifeline services in their locations pursuant to 47 C. F. R. § 54.405?**
 - A. Refer this issue and related Lifeline advertising and outreach issues to another relevant docket that covers all Lifeline providers in the state.
 - B. Order that ETCs subject to this docket must offer Lifeline services for both voice and broadband in their ETC areas and should seek to provide information concerning Lifeline services on its public website that can be reached within two clicks.
 - C. Make no order regarding Lifeline offerings
4. **Should the Commission certify the Companies whose SACs are registered in a state other than Minnesota, but who have customers within Minnesota?**
 - A. Certify the ETC who operate and have their SACs registered in other states but have some operations in Minnesota.
 - B. Make no order regarding such filings
5. **Does the Commission have sufficient documentation through the filed FCC form 481 to be assured that the high cost funds received by each ETCs have been, and will be, used for their intended purpose, pursuant to 47 C.F.R. § 54.314?**



- A. Recertify the ETC listed on Attachment I of the Department Commerce's August 31, 2020 comments, and Attachment A of the OAG's September 1, 2020 comments.
- B. Refuse to recertify some or all of the ETCs

VI. Staff Recommendations

Staff recommends that the Commission adopt: 1A, 2A, 3A, 4A, and 5A.