

April 12, 2021

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

RE: Reply Comments of the Minnesota Department of Commerce on the petitions filed by Rural Digital Opportunity Fund Grant Winners, Docket No: P999/CI-21-86

Dear Mr. Seuffert:

Attached are the reply comments of the Minnesota Department of Commerce (Department) in the following matter:

In the Matter of a Notice of Filing Requirements and Comment Deadlines Rural Digital Opportunity Fund (RDOF) Grant Winners

The attached reply comments relate to issues common to all petitioners, for the Commission to consider under Docket No. P999/CI-21-86, as well as the specific petitions filed by Rural Digital Opportunity Fund (RDOF) grant winners in the following dockets:

<u>Petitioning Company</u>	<u>Docket No.</u>
Arrowhead Electric Cooperative	P6888/M-21-52
Cable One VoIP	P7055/M-21-161
CenturyLink, Inc.	P5096/M-21-158
Consolidated Telephone Co dba CTC.....	P406/AM-21-62
Farmers Mutual Telephone Company	P522/AM-21-77
Federated Telephone Cooperative	P523/AM-21-81
Garden Valley Telephone Coop	P409/AM-21-84
Gardenville Cooperative Telephone Assn.....	P527/M-21-73
Halstad Telephone Company	P530/M-21-83
Interstate Telecommunications.....	P515/AM-21-180
LTD Broadband LLC	P6995/M-21-133
Midcontinent Communications	P6186/SA-21-124
Next Link Internet	P7049/M-21-31
Paul Bunyan Rural Telephone Coop	P423/AM-21-56
Red River Rural Telephone Assn dba Red River Comm	P558/M-21-132

Will Seuffert
April 12, 2021
Page 2

Roseau Electric Cooperative, Inc.	P6996/M-21-67
Savage Communications.....	P7051/M-21-53
Starlink Services, LLC.....	P7047/M-21-26
Wikstrom Telephone Company	P432/M-21-57
Winnebago Cooperative Telecom	P571/AM-21-92
Windstream Comm.....	P6518/M-21-248

Sincerely,

/s/ JOY GULLIKSON
Rate Analyst

/s/ DIANE DIETZ
Rate Analyst

JG/DD/ja
Attachment



Before the Minnesota Public Utilities Commission

Reply Comments of the Minnesota Department of Commerce

Docket No. P999/CI-21-86

I. BACKGROUND

On February 2, 2021, the Minnesota Public Utilities Commission issued its Notice of Filing Requirement and Comment Deadlines for Rural Digital Opportunity Fund (RDOF) Grant Winners.

On March 26, 2021, the Office of the Attorney General Residential Utilities Division (OAG), the Minnesota Telecom Alliance (MTA), Paul Bunyan Rural Telephone Cooperative (PBRTC), and the Department of Commerce (Department) filed comments.

The Department files these reply comments to respond to the comments of the OAG, MTA and PBRTC, addressing the issues of consumer protection, Commission authority, and the federal state partnership overseeing federal funds. In addition, the Department notes that Savage Communications (Docket No. P7051/M-21-53) and Red River Telephone (Docket No. P558/M-21-132) have revised their petitions to remove previously inaccurate references to “over the top” voice service. The Department also notes that Windstream Communications filed its petition for ETC status on April 6, 2021, in Docket No. P6518/M-21-248. The Department will file comments separately in the Windstream docket as expeditiously as possible. The Windstream petition brings the total number of ETC petitions before the Commission in this matter to 21.

II. FINANCIAL AND TECHNICAL ABILITY OF ETC APPLICANTS

The MTA and PBRTC took exception to the petition filed by LTD Broadband, LLC (LTD), docket no. P6995/M-21-133. Both MTA and PBRTC suggested that LTD does not have the financial or technical abilities to serve the census blocks won in the recent Auction 904. While these allegations are concerning, as part of the partnership between the State and the FCC, the FCC vets the technical and financial portion of the Auction 904 applicants through its short and long form applications. As the Commission did not require the RDOF grant winners to submit their long form applications which contain financial and technical information, it becomes more challenging for the Commission to have sufficient information to give consideration to the requests of the MTA and PBRTC on financial or technical abilities.

III. STATE CONSUMER PROTECTIONS

The MTA comments point out that LTD does not advertise its Lifeline service as a reason to deny certification. The MTA quotes the Department's comments in Docket P999/CI-20-747 about LTD's lack of Lifeline information on its web site.¹ MTA is correct that LTD has no website information about Lifeline, and the requirement for a website presence is an issue before the Commission in this Docket and in Docket 20-747. The Department shares MTA's concern regarding Lifeline. The Department is recommending in this proceeding that the Commission require ETCs to have information about Lifeline on their web site no later than the first offering of any ETC service to a consumer. The Department is also recommending that the Commission encourage ETC recipients to participate in Commission proceedings concerning Lifeline, where the Commission will be establishing regulations concerning the offering of this Universal Service.

PBRTC recommends that the Commission should ". . . at a minimum, condition any expansion of LTD's ETC designation on LTD's commitment to specific and enforceable consumer protection and service-level standards."² The Department fully supports this recommendation for all ETC applicants, and reiterates its recommendation that the Commission apply the consumer protections listed in Attachment 1 to its original comments. The authority for the Commission to set requirements around the offering of Lifeline, as it is doing in Docket 20-747, is an example of the Commission appropriately using its authority to set regulations concerning the conduct of ETCs, including those that do not require a Commission grant of operating authority.

IV. COMMISSION AUTHORITY TO REQUIRE CONSUMER PROTECTIONS

The Commission has the authority through the U.S. Congress under 47 U.S.C. 214 (e) and 47 U.S.C. 254 (f) to establish regulations to advance universal service, including consumer protections. The Department will not repeat the discussion from its comments concerning the Commission's authority,³ but notes that it is similar to the discussion in the comments of the OAG filed in this matter. This authority of the Commission works in a partnership with the FCC, in providing the necessary oversight of the hundreds of millions of dollars of public funding being distributed by the federal government.

ETC applicants such as Starlink and LTD⁴ that do not require a certificate of authority from the Commission, as their voice service is purportedly VoIP provided in a manner similar to Charter,⁵ are generally not bound by the Minnesota Rules and Statutes. Some of these companies argue that the

¹ *Comments of Minnesota Telecom Alliance*. Docket Number CI-21-86 and 21-133. March 26, 2021. P.5.

² *Comments of Paul Bunyan Rural Telephone Cooperative Regarding LTD Broadband LLC Petition for Expansion as an Eligible Telecommunications Carrier*. Docket P6995/M-21-133, March 26, 2021, (PBRTC Comments) P. 10.

³ See Department of Commerce comments, pages 3-7. See also Comments of the Office of the Attorney General pages 8-13.

⁴ Also: Sparklight, Next Link, and Savage Communications.

⁵ See generally *Charter Advanced Services (MN), LLC et al. v. Nancy Lange, et al.*, 903 F.3d 715 (8th Cir. 2018) ("Charter Order").

Commission cannot impose consumer protections due to the lack of State Authority.⁶ This is incorrect, however, since the Commission's authority in this matter is established by Congress, and is related to receipt of federal funds and therefore is not restricted to telecommunications services. If such a limitation existed, the Commission could not make a determination on any of the ETC petitions before it, since the RDOF funds are for the deployment of broadband, which is an information service, not a telecommunications service. The Commission clearly has the authority to advance universal service for both broadband and voice service in the context of its Congressionally delegated authority, and can impose consumer protections to do so.

The comments of MTA and PBRTC, while supportive of consumer protections for customers of RDOF providers, do not reflect accurately the basis for the Commission's authority in this matter. The MTA incorrectly suggests that 7811.1400 and 7812.1400 set out the criteria for all ETC applicants, and also that Minn. Stat. 237.74 applies.⁷ This is incorrect since the rules and statutes only apply to companies that receive a certificate of authority from the Commission to operate in Minnesota, and only for the services that are regulated by the Commission. While the suggested consumer protections advocated by the Department are similar to various Commission rules, they are a subset of the rules that apply to companies with a certificate of authority. The Commission must rely on its congressional authority, not State authority, to establish these protections.

MTA also points to the consumer protection requirements of 47 C.F.R. 54.202⁸ as applicable. However, this section of the Federal Rules applies only to those ETC applicants appearing before the FCC to receive certification. While this Commission may choose to adopt such requirements, the rule as it stands does not apply to ETCs seeking certification before this Commission.

V. SAVAGE COMMUNICATIONS (DOCKET NO. P7051/M-21-53) AND RED RIVER TELEPHONE (DOCKET NO. P558/M-21-132)

In its initial comments, the Department noted that both Savage Communications and Red River Telephone applied the term "voice over the top" to describe its voice service offering. Savage Communications corrected its application prior to the Department filing its initial comments, and now Red River has also amended its filing to reflect that its voice service offering is "not over-the-top" interconnected VoIP service⁹. The Department therefore amends its recommendation to include Red River in its list of companies that the Commission should approve, along with the five recommendations applicable to all carriers.

⁶ See, for example, Starlight's Reply Comments, Docket No. 21-26, filed April 5, 2021, in which Starlight says VoIP and Broadband are classified as 'information services' and that the Commission lacks authority to impose regulations.

⁷ *MTA Comments* p.2.

⁸ *Id.* P3,p.5.

⁹ Letter, filed in Docket P558/M-21-132 April 7, 2021.

VI. SUMMARY OF DEPARTMENT RECOMMENDATIONS

The Department recommends that the Commission affirm that it has authority under 47 U.S.C. 214 (e) and 47 U.S.C. 254 (f) to establish regulations to advance universal service, including consumer protections. The Department continues to support its recommendations 1-5 as shown on pages 22-23 in its original comments.

/ja

CERTIFICATE OF SERVICE

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

**Minnesota Department of Commerce
Reply Comments**

Docket No. P999/CI-21-86

Dated this 12th day of April 2021

/s/Sharon Ferguson

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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-86_Official
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