

Service Date: November 9, 2017

**DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA**

IN THE MATTER OF the Investigation into) REGULATORY DIVISION
Improving Transparency, Fostering Accountability,)
and Maintaining Quality Services for High Cost) DOCKET NO. N2017.10.82
Support and Lifeline Services in Montana.)

NOTICE OF INVESTIGATION AND OPPORTUNITY FOR COMMENTS

On October 17, 2017, the Montana Public Service Commission (“Commission”) voted to initiate an investigation into various issues to improve High Cost Support and Lifeline Services in Montana (“ETC Programs”). ETC Programs are operated by the Federal Communications Commission, with the goal of enhancing access to quality telecommunications services, regardless of income or geography.

High Cost Services provide financial support to companies to offset telecommunication infrastructure investments in rural, insular, and high-cost areas so that customers are charged rates for services that are reasonably comparable to those in urban areas. Meanwhile, Lifeline Services provides low-income households with a subsidy that can be credited towards the customer’s monthly bill for services provided by a qualifying ETC.

Companies are certified as eligible to receive federal funding by state agencies, such as the Commission, based on various guidelines. The Commission has concerns that the guidelines and conditions currently in place to certify companies to receive federal funding are not as effective as possible. This concern is reinforced by the fact that ETC Program funding in Montana is significant, totaling over \$100 million this year alone. Accordingly, the Commission is requesting initial comments from interested parties on the issues below.

1. What opportunities exist for the Commission to more appropriately oversee ETC Services in Montana, as allowed by 45 U.S.C. § 254(f)? The Commission invites comments on the following issues related to ETC Services:

- Should additional procedures be required for the annual re-certification of existing ETCs or certification of new ETCs, in addition to those that already exist in Mont. Admin. R. 38.5.3201-3230?
- Do the minimum additional requirements in Mont. Admin. R. 38.5.3209 ensure ETC Program funding is appropriately spent?

- Should the Commission request certain existing ETCs to certify or demonstrate the manner in which customers in a designated service area have access to service? Mont. Admin. R. 38.5.3216(1).
- The Commission's rules provide that a public interest standard will apply to ETC proceedings, citing to a wide number of factors that should be considered. Mont. Admin. R. 38.5.3210. Are all of these factors appropriate to consider? Should any be eliminated or clarified? Should any be added?
- Should evidentiary hearings be required to justify recertification of ETCs whose total revenue is comprised substantially from ETC Program funds? If so, what threshold percentage should trigger the hearing?
- Applications for new ETCs have traditionally not attracted robust intervention, and the submissions are rarely challenged. Previously, when the Commission has had concerns about an applicant, it has appointed its Staff as a party. *In the Matter of Budget Mobile's Application for Limited Designation as a Non-Rural Wireless Eligible Telecommunications Carrier*, Docket D2012.10.110. Should the Commission appoint its own staff as a party from the outset of every proceeding for a new ETC?
- The Commission has previously required disclosure of certain financial information, such as executive compensation, which was recently reversed by the Montana Supreme Court. *S. Mont. Tel. Co. v. Mont. PSC*, 2017 MT 123, 387 Mont. 415, 395 P.3d 473. Should the Commission adopt a rule to require disclosure of similar information, including executive compensation, as a requirement for ETCs? Should the Commission limit the rule only to public utilities who are also ETCs?
- Are there any other administrative regulations in Mont. Admin. R. 38.5.3201-3230 that should be eliminated or modified because they are antiquated?

2. What opportunities exist for reforms to Montana law to improve ETC Services in Montana, as allowed by 45 U.S.C. § 254(f)? The Commission is interested in statutory reforms that might be proposed to the Energy and Telecommunications Interim Committee or during the 2019 Montana Legislative Session. The Commission seeks comment on the following issues:

- Should the Commission be permitted to waive its duty to certify ETC utilities, as found in Mont. Code Ann. § 69-3-840, and instead allow the FCC to assume jurisdiction for certification?
- Should Montana repeal its Universal Service Fund statutes found in Mont. Code Ann. §§ 69-3-841 through -845, that establish authority to create a complementary Montana Universal Service Fund, but which has not been funded nor created since the statutes were enacted in 1997? In the alternative,

should the statute be amended to modernize the language authorizing the state USF and, if so, how?

3. What opportunities exist for reforming Federal policy, either by statute or regulation, to improve ETC Services in Montana? The Commission seeks comment on the following issues:

- Do ETC Program subsidies, by reducing incentives to innovate and economize, actually inhibit effective buildout of rural, insular, or high-cost areas, in contrast to the stated ETC principles in 47 U.S.C. § 254(b)?
- What objective evidence exists that subsidies, as opposed to paying the true marginal cost of services, are actually necessary for consumers to subscribe in high cost areas? On average, what would the additional customer cost amount to?
- Later this month, the FCC is scheduled to vote to issue notices which would seek comment on ending a national designation program for certain ETCs, requiring facilities-based service as a prerequisite to the receipt of Lifeline, propose a budget cap for the Lifeline program, and collaborating with States on verification of Lifeline eligibility, among other things. Should the Commission submit comments to the FCC regarding these proposals for reform? *Fourth Report and Order on Reconsideration, Memorandum Opinion and Order, Notice of Proposed Rulemaking, and Notice of Inquiry*, Consolidated Docket Nos. 17-287, 11-12, 09-147 (FCC Oct. 26, 2017).
- Are there market-based alternatives, or technologies other than fiber-based broadband, that more effectively accomplish the goals of ETC Programs as stated in 47 U.S.C. § 254(b)?
- Should ETC Program funds be expended based on a priority of higher cost areas over lower cost areas?

Please provide comments to the Commission by **January 20, 2017**. To provide comments, interested parties should: electronically submit their comments on the Commission's website at <http://psc.mt.gov> ("Account Login/Registration" under "Electronic Documents" tab); and, (2) physically deliver or mail the original comments to the Commission at 1701 Prospect Avenue, Helena, Montana 59601. The Commission will not post electronically filed comments to its website until it receives the physical copy.

Questions regarding this notice should be directed to Zachary Rogala at 406-444-6187. Questions regarding the electronic filing process should be addressed to Shauna Simpson at 406-444-6180

DONE AND DATED this 9th day of November, 2017, by delegation to Commission staff.

BY THE MONTANA PUBLIC SERVICE COMMISSION

BRAD JOHNSON, Chairman
TRAVIS KAVULLA, Vice Chairman
ROGER KOOPMAN, Commissioner
BOB LAKE, Commissioner
TONY O'DONNELL, Commissioner