# Staff Briefing Papers

**Meeting Date**  
July 14, 2022  
**Agenda Item**  
3**

**Company**  
LTD Broadband, Minnesota Rural Electric Association, and Minnesota Telecom Alliance

**Docket No.**  
P-558, P-6995/M-22-221; P-6995/M-21-133

**In the Matter of a Petition to Initiate a Proceeding to Revoke the Expanded Eligible Telecommunications Carrier (“ETC”) Designation of LTD Broadband, LLC (“LTD”) and Deny LTD’s Funding Certification for 2023**

**Issues**

1. Should the Commission initiate a proceeding to consider revoking LTD Broadband LLC’s expanded ETC designation, which was granted in the Commission’s June 3, 2021, Order Approving Petition for ETC Designation in Certain Census Blocks, and address LTD’s certification for Rural Digital Opportunity Fund (RDOF) funding in 2023?

2. If the Commission initiates a proceeding, what type of proceeding should be used to build a record to fully analyze the issue (i.e., Contested case conducted by the Office of Administrative Hearings (OAH) or designation of a lead Commissioner, or some other procedure)?

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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

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I. Statement of the Issues

1. Should the Commission initiate a proceeding to consider revoking LTD Broadband LLC’s expanded ETC designation, which was granted in the Commission’s June 3, 2021, Order Approving Petition for ETC Designation in Certain Census Blocks, and address LTD’s certification for Rural Digital Opportunity Fund (RDOF) funding in 2023?

2. If the Commission initiates a proceeding, what type of proceeding should be used to build a record to fully analyze the issue (i.e., Contested case conducted by the Office of Administrative Hearings (OAH) or designation of a lead Commissioner, or some other procedure)?

II. Background

On June 3, 2021, the Commission issued an Order that expanded LTD Broadband’s (LTD) Eligible Telecommunications Carrier (“ETC”) designation to include approximately 102,000 additional locations in Minnesota (“LTD Expansion Order”). LTD sought that designation to qualify for $311 million in support under the Federal Communications Commission (“FCC”) Rural Digital Opportunity Fund (“RDOF”) to build and operate a fiber-to-the-premise (“FTTP”) broadband network in Minnesota.

On May 6, 2022, the Minnesota Telecom Alliance (MTA) and Minnesota Rural Electric Association (MREA) jointly submitted a petition under Minn. Stat. § 216A.05 subd. 5 to initiate a proceeding to revoke the expanded eligible telecommunications carrier (ETC) designation of LTD and deny LTD’s certification for 2023. The petitioners believe that newly available facts show that LTD cannot meet the extensive commitments it made to qualify for RDOF funding for approximately 102,000 locations in Minnesota.

On May 11, 2022, the Commission issued a Notice of Comment Period in response to the MTA and MREA filing. The Notice requested that the parties address the following questions:

- Should the Commission initiate a proceeding to consider revoking LTD Broadband LLC expanded ETC designation, which was granted in the Commission’s June 3, 2021, Order Approving Petition for ETC Designation in Certain Census Blocks, and address LTD’s certification for Rural Digital Opportunity Fund (RDOF) funding in 2023?

- If the Commission initiates a proceeding:
  - Should the proceeding be conducted as an expedited proceeding under Minn. Stat. §237.61?
- Should the matter be referred to the Office of Administrative Hearing (OAH) for a contested case proceeding pursuant to Minn. Rule 7829.1000? or

- Some other procedure?

  • If the Commission uses an expedited proceeding, should the Commission designate a lead Commissioner or a sub-committee of Commissioners under Minn. Stat. §216A.03 subd. 8 or 9? And should this proceeding include a cross-examination of parties?

  • Should the Commission adopt one of the schedules proposed by the petitioners? Or a schedule proposed by one of the other parties? Or delegate scheduling to the designated lead commissioner, subcommittee of commissioners, or administrative law judge (ALJ)?

  • Should the Commission order LTD to submit its FCC RDOF long form application to the Commission?

  • Are there other issues or concerns related to this matter?

Comments were filed on May 18, 2022, by LeSueur County and on May 26, 2022, by Pine County and Balkan Township.

Comments were filed on June 1, 2022, by the Office of the Attorney General-Residential Utilities Division (“OAG-RUD”), the Minnesota Department of Commerce (“Department”), and LTD Broadband.

Comments were filed by the Institute for Self-Reliance on June 2, 2022, and on June 3, 2022 by Jackson County, Minnesota Farmers Union, and Minnesota Association of Townships.

On June 8, 2022, reply comments were filed by OAG-RUD, the Department, the MTA/MREA (the Petitioners), Chippewa County, and LTD Broadband

III. Parties’ Comments

1. Should the Commission initiate a proceeding to consider revoking LTD Broadband LLC’s expanded ETC designation, which was granted in the Commission’s June 3, 2021, Order Approving Petition for ETC Designation in Certain Census Blocks?

MTA/MREA

MTA/MREA (Petitioners) recommend that the Commission initiate a proceeding to develop a record regarding LTD’s expanded ETC designation and annual certification for 2023 RDOF
funding, including substantial new facts which were unavailable and unknown at the time of the LTD June 3, 2021, Expansion Order.

The Petitioners indicated that the South Dakota (SD) PUC found that LTD does not have the technical, managerial, or financial resources to deploy and operate a FTTP network encompassing 7,481 locations in South Dakota. Many of the facts and findings underlying the South Dakota PUC’s decision to deny LTD’s ETC petition would apply with greater force in Minnesota. Those findings included the following:

1. Absence of experience: The SD PUC found that LTD’s lack of similar business experience was a source of serious concern. The SD PUC noted that “LTD did not provide sufficient evidence of similar business experience showing its ability to deploy its network and provide the supported services within a reasonable time frame throughout the designated service area.”

2. Absence of a viable plan: The SD PUC also found that LTD did not provide sufficient evidence to demonstrate that it either “has the ability or has a viable plan to acquire the ability to manage the massive infrastructure and internal management growth it must undertake” to serve its designation area and “comply with applicable regulation.”

3. Absence of technical capabilities: As to technical capabilities, the SD PUC noted, “LTD’s technical ability can be evaluated by examining how it plans to serve the designated ETC service area.”

4. Absence of knowledge of permitting and other requirements: LTD also showed a lack of knowledge as to permits and other requirements needed to use land that would be required to provide FTTP to South Dakota locations.

5. Overall absence of technical capabilities: The SD PUC’s overall finding regarding LTD’s technical capabilities was that “LTD did not demonstrate it has the technical ability to build a fiber to the home network.”

6. Absence of financial capability: As to financial capabilities, the SD PUC found that LTD did not demonstrate that it had the necessary financial resources to provide FTTP to the 7,481 locations in South Dakota.

7. Inaccuracy of construction estimates: Overall, the SD PUC found that “LTD did not provide sufficient evidence to demonstrate its construction cost methodology is accurate.”

8. Misapplication of federal funding and lack of service: The SD PUC recognized that these defects could lead to misapplication of federal funding and a lack of service to South Dakota residents. As the SD PUC found, “LTD did not submit sufficient evidence regarding the public interest standard to prove it has the ability to deploy its network and provide the supported services within a reasonable time frame throughout the designated service area in South Dakota.”
9. Effects on public interest: Ultimately, the SD PUC concluded that LTD failed to demonstrate that the ETC designation it sought would be in the public interest. The SD PUC determined that “LTD lacks the ability to provide the supported services throughout the designated service area within a reasonable time frame.”

In addition, the Petitioners indicated evidence directly related to Minnesota will be presented demonstrating that LTD cannot meet the commitments of its Minnesota RDOF bid overall or in 2023. This evidence will include the managerial, technical, and financial factors addressed by the SD PUC in relation to Minnesota, including the additional challenges LTD faces based on the massively larger scale of its commitments in Minnesota.

Specifically, Petitioners stated evidence will be provided that LTD’s obligations in Minnesota (and nationwide) would: (1) require LTD to successfully complete massive projects, far beyond anything it has done before; (2) accomplish massive growth of its overall business; (3) accomplish these very difficult tasks using a technology with which it has little, if any, experience; and (4) obtain levels of financial investment that will likely not be available.

LTD
LTD believes the Petition does little more than reargue issues that were already considered by the Commission, the Petition is best thought of as a petition for rehearing of the LTD Expansion Order. Indeed, there does not appear to be any other procedural category within the Commission’s rules within which the Petition more cleanly fits. The Petition was filed about eleven months after the Commission issued the LTD Expansion Order—this is far beyond the 20-day period provided for under Minn. R 7829.0300. The Commission can and should reject the Petition on the basis that it is an untimely petition for rehearing.

LTD believes there is a wide gulf between the allegations and legal analysis presented in the Petition and the circumstances in which there might be a basis for revocation of an ETC designation. Petitioners’ request should be rejected because it is legally unsound. In so doing, the Commission should make clear that there is a high bar for revocation—this will prevent Petitioners from renewing and repeating their empty arguments on an ongoing basis.

Petitioners cite to Minn. R. 7811.1400, subp. 15 and Minn. R. 7812.1400, subp. 15 as providing express authority to revoke LTD’s expanded ETC designation. These rules are not applicable to LTD—they apply only to local service providers operating under a certificate of authority granted by the Commission.
It would severely disrupt the federal-state partnership if the Commission were to insert itself into the FCC’s role and second-guess the FCC’s determinations of RDOF eligibility. The Commission’s authority over non-certificated ETCs such as LTD is delegated from the federal level pursuant to federal statutes, regulations, FCC Orders, and the like. There is nothing in any of those federal authorities that permits this Commission to substitute its judgment for that of the FCC in determining whether LTD has the capability to properly use RDOF funding to expand access to broadband in Minnesota. It would be especially disruptive, and inappropriate, for the Commission to do so now—while the FCC is in an advanced stage of reviewing LTD’s long-form applications.\(^6\)

**Department**

Commerce recommends that the Commission open a proceeding to determine whether there is cause to revoke the ETC designation of LTD.\(^7\) Only through an investigation can the Commission thoroughly evaluate whether the bar established for revocation has been met.

**OAG**

The OAG recommends the Commission should grant the request for proceeding, whether on an expedited or non-expedited schedule.

Oversight of ETCs to ensure that they use their federal Universal Service support solely for the provision, maintenance, and upgrading of eligible facilities and can meet their public interest obligations is a continual process. Allegations that an ETC may not be able to fulfill its federal Universal Service obligations because of a deficiency in its technical, managerial, or financial circumstances merits serious scrutiny, and it is important that interested parties—including the ETC itself—have an opportunity to analyze and respond to those allegations.\(^8\)

2. **If the Commission initiates a proceeding:**

   - Should the proceeding be conducted as an expedited proceeding under Minn. Stat. §237.61?
   
   - Should the matter be referred to the Office of Administrative Hearing (OAH) for a contested case proceeding pursuant to Minn. Rule 7829.1000? or
   
   - Some other procedure?

**MTA/MREA**

Petitioners recommend an expedited proceeding under Minn. Stat. § 237.61 for record development to support the Commission’s decision. An expedited proceeding would be

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\(^6\) Please see the June 1, 2022, comments of LTD Broadband at page 1.

\(^7\) Please see the June 8, 2022, Minnesota Department of Commerce reply comments at page 7.

\(^8\) Please see the June 1, 2022, Office of the Attorney General’s comments at page 3.
preferable to a contested case since it would be less costly to all concerned and result in a faster resolution of this important matter.

While Minn. Stat. § 237.61 requires verified pleadings and oath or affirmation, it leaves room for the Commission to determine precisely how the proceeding will be conducted. The Commission, therefore, has discretion to determine requirements related to participation, discovery and testimony, including whether to include an evidentiary hearing with opportunity for parties to cross-examine witnesses. If the Commission chooses to do so, it can appoint a subcommittee or lead commissioner under Minn. Stat. § 216A.03, subd. 8 or 9 to manage the proceeding and ensure adequate record development. The lead commissioner’s or subcommittee’s role could include setting schedules and supervising discovery, including the resolution of any possible disputes, as it has done in prior cases. That lead commissioner (or subcommittee of multiple commissioners) can also preside at any evidentiary hearings that involve cross examination by parties. In addition, the Commission can require all witnesses to be present for what would normally be oral argument and require witnesses to answer questions under oath from all commissioners.9

**LTD**

LTD’s position is as follows: (1) The Petition should be dismissed or no action should be taken at all in response to the Petition; (2) if any action is to be taken in response to the Petition, the Petition should be put on the shelf until the Commission acts in Docket 21-86 to establish the scope of its jurisdiction over non-certificated RDOF ETCs; (3) if the Commission declines that approach and decides a proceeding should be opened, LTD suggests that an expedited contested case proceeding before the Office of Administrative Hearings (“OAH”) is preferable to other options, because it would allow the proper development of the record.10

**Department**

Commerce recommends that the Commission open a proceeding to determine whether there is cause to revoke the ETC designation of LTD. Commerce recommends the matter be referred to the Office of Administrative Hearings (OAH) with the request that proceedings provide for discovery, the cross-examination of expert witnesses, and be conducted expeditiously. The Commission should be explicit that LTD’s long-form application is to be submitted for examination in this process. The precise timing for each step in the process can be resolved by the OAH, the parties, and the Commission’s staff.11

**OAG**

The OAG is not opposed to an expedited proceeding under Minn. Stat. § 237.61 but notes that the Commission could also initiate an informal or expedited proceeding under Minn. R 7829.1200 and 7829.1900. Any of these procedural paths should be sufficient for purposes of examining whether LTD’s ETC status should be revoked. If the Commission prefers a contested proceeding

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9 Please see the Petition of the MTA/MREA at pages 24-26.
10 Please see the June 8, 2022, reply comments of LTD Broadband at pages 3-4.
11 Please see the June 8, 2022, Minnesota Department of Commerce reply comments at page 7.
case proceeding under Minn. R 7829.1000, the OAG is not opposed to a contested case proceeding.\textsuperscript{12}

3. If the Commission uses an expedited proceeding, should the Commission designate a lead Commissioner or a sub-committee of Commissioners under Minn. Stat. § 216A.03 subd. 8 or 9? And should this proceeding include a cross-examination of parties?

\textbf{MTA/MREA}

The Commission has discretion to determine requirements related to participation, discovery and testimony, including whether to include an evidentiary hearing with opportunity for parties to cross-examine witnesses. If the Commission chooses to do so, it can appoint a subcommittee or lead commissioner under Minn. Stat. § 216A.03, subd. 8 or 9 to manage the proceeding and ensure adequate record development. The lead commissioner’s or subcommittee’s role could include setting schedules and supervising discovery, including the resolution of any possible disputes, as it has done in prior cases. That lead commissioner (or subcommittee of multiple commissioners) can also preside at any evidentiary hearings that involve cross examination by parties. In addition, the Commission can require all witnesses to be present for what would normally be oral argument and require witnesses to answer questions under oath from all commissioners.\textsuperscript{13}

\textbf{LTD}

Did not directly address this question.

\textbf{Deptment}

Did not directly address this issue.

\textbf{OAG}

The OAG is not opposed to the designation of a lead Commissioner or sub-committee of Commissioners to facilitate the proceeding, if the Commission feels it would be beneficial. Similarly, the OAG is not opposed to the cross-examination of parties if the Commission would find it helpful.\textsuperscript{14}

4. Should the Commission adopt one of the schedules proposed by the petitioners? Or a schedule proposed by one of the other parties? Or delegate scheduling to the designated lead commissioner, subcommittee of commissioners, or administrative law judge (ALJ)?

\textbf{MTA/MREA}

\textsuperscript{12} Please see the June 1, 2022, Office of the Attorney General’s comments at page 3.

\textsuperscript{13} Please see the Petition of the MTA/MREA at pages 25-26.

\textsuperscript{14} Please see the June 1, 2022, Office of the Attorney General’s comments at page 4.
On pages 26 through 28 of the Petition, the Petitioners provided two schedules. One which includes cross-examination by the parties, and a second which does not include party cross-examination. The first which includes party cross-examination is as follows:

<table>
<thead>
<tr>
<th>Action</th>
<th>Date</th>
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<tbody>
<tr>
<td>Commission meeting to initiate proceeding, set procedures/ schedule,</td>
<td>June 16</td>
</tr>
<tr>
<td>adopt Protective Order and appoint committee or lead commissioner</td>
<td></td>
</tr>
<tr>
<td>Commission Order initiating proceeding, setting schedule, and issuing</td>
<td>July 7</td>
</tr>
<tr>
<td>Protective Order</td>
<td></td>
</tr>
<tr>
<td>LTD files long form and any supplements (subject to Protective Order)</td>
<td>Beginning July 8</td>
</tr>
<tr>
<td>Information requests (IRs) (replies due within 8 business days of receipt)</td>
<td>July 15</td>
</tr>
<tr>
<td>Prefiled initial testimony (simultaneous from all parties)</td>
<td>August 15</td>
</tr>
<tr>
<td>Prefiled reply testimony (simultaneous from all parties)</td>
<td>September 7</td>
</tr>
<tr>
<td>Evidentiary hearings with cross-examination and presiding Lead</td>
<td>September 19-20</td>
</tr>
<tr>
<td>Commissioner</td>
<td></td>
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<tr>
<td>Initial briefs</td>
<td>October 7</td>
</tr>
<tr>
<td>Reply briefs and findings</td>
<td>October 21</td>
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<tr>
<td>Commission Oral Argument</td>
<td>November 30</td>
</tr>
<tr>
<td>Commission Deliberation</td>
<td>December 2</td>
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<tr>
<td>Commission Final Order</td>
<td>December 30</td>
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<td>Reply briefs and findings</td>
<td>October 18</td>
</tr>
<tr>
<td>Commission Oral Argument (witnesses present for questions from</td>
<td>November 15-16</td>
</tr>
<tr>
<td>Commissioners</td>
<td></td>
</tr>
<tr>
<td>Commission Deliberation</td>
<td>November 22</td>
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<tr>
<td>Commission Final Order</td>
<td>December 22</td>
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LTD
If a proceeding is opened, it should proceed far faster than the schedule proposed by Petitioners. That schedule appears to be designed intentionally to drag on into December 2022, in a manner that would likely be exploited to cast into doubt state certifications of support due October 1, and perhaps delay the FCC’s authorization of RDOF support to LTD. LTD proposes instead that if a proceeding is opened, it should go forward on a highly expedited basis, with (a) no discovery; and (b) pre-filed initial testimony/statements of fact due in mid-July and responsive testimony/briefs due in early August, such that the Commission’s decision can be issued in September.\(^\text{15}\)

Department
The precise timing for each step in the process can be resolved by the OAH, the parties, and the Commission’s staff.\(^\text{16}\)

OAG
The schedules proposed by the petitioners is acceptable to the OAG, as is a proposed schedule from the Commission or an ALJ.\(^\text{17}\)

5. Should the Commission order LTD to submit its FCC RDOF long form application to the Commission?

MTA/MREA
The Petitioners recommend that the Commission require LTD to provide its long form application to the Commission, Department of Commerce, Attorney General’s Office, and Petitioners subject to a Protective Order.\(^\text{18}\)

LTD
The FCC is currently thoroughly reviewing LTD’s long form application; in the dual-layered federal-state universal service system, only the FCC has jurisdiction to act on that application.\(^\text{19}\)

Department
The Commission should be explicit that LTD’s long-form application is to be submitted for examination in this process.\(^\text{20}\)

\(^{15}\) Please see the June 1, 2022, comments of LTD Broadband at page 21.
\(^{16}\) Please see the June 8, 2022, Minnesota Department of Commerce reply comments at page 7.
\(^{17}\) Please see the June 1, 2022, Office of the Attorney General’s comments at page 4.
\(^{18}\) Please see the Petition of the MTA/MREA at page 26.
\(^{19}\) Please see the June 1, 2022, comments of LTD Broadband at page 7.
\(^{20}\) Please see the June 8, 2022, Minnesota Department of Commerce reply comments at page 7.
OAG
Yes, the Commission should require LTD to submit the long-form application portion of its FCC Form 683 to the Commission.\footnote{Please see the June 1, 2022, Office of the Attorney General’s comments at page 4.}

6. Should the Commission address LTD’s certification for Rural Digital Opportunity Fund (RDOF) funding in 2023?

MTA/MREA
A certification is a “a document attesting the truth of a fact or statement.” This means that the Commission can certify LTD for receipt of RDOF funding only if the Commission is willing to attest as truth that LTD will use all the $31 million it may receive in 2023 only for the “provision, maintenance, and upgrading” of FTTP “facilities and services” in Minnesota. The Commission’s obligation to provide a certification necessarily carries with it the obligation to conduct sufficient due diligence, investigation, and findings of fact to support such an attestation. There is insufficient information in LTD’s track record, experience, or even planning to support such an attestation by the Commission.\footnote{Please see the Petition of the MTA/MREA at pages 12-13.}

LTD
The Commission has already established robust requirements and procedures for gathering the information to make its 2022 certifications regarding use of support. Each year, the Department undertakes a rigorous review of each ETC’s adherence to the applicable requirements. There is no basis for the Commission to do anything in Petitioners’ requested docket that would create or consider additional ETC certification requirements for LTD.

For its RDOF locations, LTD has not received high-cost support in 2021, so it is not required to file Form 481 this year. The draft Instructions for Form 481 state clearly that “[e]ligible telecommunications carriers (ETCs) that receive federal high-cost universal service support (high-cost support) are required to provide the data identified in 47 C.F.R. § 54.313.” Accordingly, it would seem appropriate for the Department and OAG to advise the Commission as to whether the State should submit the annual certification with respect to LTD’s RDOF locations. If the State is required to submit the annual certification with respect to LTD’s RDOF locations, then the State should make the certification based on the information that LTD (and every other Minnesota ETC) will provide as set forth in Docket 22-8. The opening of a new docket (much less an evidentiary hearing), as Petitioners propose, is not required for that process.

Petitioners seem to suggest that unlike every other ETC in the State, certification of LTD’s use of federal universal service support should be based on LTD’s “track record, experience and planning.” But analysis of such issues is not contemplated by Section 54.314(a), and the Commission should not consider those issues as part of the annual certification process. In fact, this novel standard is so ill-defined that it could be construed to require the State to examine
the track record and experience of Petitioners’ members’ nondeployment in the areas where LTD successfully bid for RDOF support and conclude that it cannot make the annual certification with respect to those ETCs. There is no basis for Petitioners’ efforts to create a new standard for the Commission’s certification of use of support.\textsuperscript{23}

**Department**

The petitioners ask the Commission to deny LTD annual certification for 2023 RDOF funding. This year’s annual certification proceeding (for 2023 funding) does not appear to be an appropriate venue currently. LTD has not received funds associated with its winning RDOF bid and is not required to file Form 481 this year to be certified for its RDOF funds. Because LTD does not file a certification for its RDOF areas in 2022, it would be impractical for the Commission to consider cancelling funding through this year’s annual certification process Docket 22-8.\textsuperscript{24}

**OAG**

Many comments, including the OAG’s, reference LTD’s 2023 ETC certification or recertification. In the interest of a clear record, the OAG notes that the next ETC certification proceeding would typically occur in the fall of 2022 and would be used to determine the eligibility of ETCs for 2023 federal Universal Service High-Cost Program (“High Cost”) support. LTD is correct that an ETC is not obligated to file an FCC Form 481 until it receives High-Cost support. As such, unless the FCC approves LTD’s RDOF long-form application authorizes disbursement of RDOF support to the Company, and LTD receives RDOF support prior to the modified 2022 FCC Form 481 filing deadline, LTD will not be required to file an FCC Form 481 in 2022 and will not come before the Commission as part of the 2022 annual ETC certification for RDOF purposes.\textsuperscript{25}

**Comments of Counties, Townships, and Minnesota Farmers Union**

The Department provided a summary of the comments submitted by the several counties, townships, and the Minnesota Farmers Union. Please see the Department’s reply comments at pages 2-4. Staff is providing that summary below:

**Le Sueur County** filed comments stating the RDOF award received by LTD for their County is approximately $1 million dollars. Le Sueur County states that it was unaware of any current work performed by LTD, and it has been unsuccessful in securing a meeting with LTD. Le Sueur County requests that the Commission open an expedited inquiry to build a record to determine if LTD’s ETC designation should be revoked and order LTD to submit its long-form application for review.\textsuperscript{26}

\textsuperscript{23} Please see the June 1, 2022, comments of LTD Broadband at pages 19-20.

\textsuperscript{24} Please see the June 8, 2022, Minnesota Department of Commerce reply comments at pages 6-7.

\textsuperscript{25} Please see the June 8, 2022, Office of the Attorney General’s reply comments at page 2-3.

\textsuperscript{26} Le Sueur County Public Comment, May 18, 2022, at pages 1-2.
Pine County filed comments expressing concern regarding the feasibility of LTD to provide the necessary infrastructure due lack of understanding of the local topography, and other factors. Pine County also stated that it has concerns about lack of access to state or federal funding for the RDOF areas. Pine County did not explicitly support or oppose a Commission proceeding, but instead offered other solutions.\(^{27}\)

Balkan Township filed comments stating that it had worked with another provider prior to RDOF, and that LTD’s winning RDOF bid interrupted its previous plans for local broadband with the other provider. The township supports an expedited Commission proceeding to consider the revocation of LTD’s expanded ETC designation and that LTD should be ordered to submit its long-form application for review.\(^{28}\)

The Institute for Local Self-Reliance (ILSR) filed comments, joined by the Minnesota Chapter of the American Association of Retired Persons (AARP MN) and the League of Rural Voters (LRV), stating that LTD is unlikely to deliver in Minnesota, outlining LTD’s problematic track record in other states and concurring with the facts of the petition. The group supports a Commission proceeding for the revocation of LTD’s ETC designation.\(^{29}\)

Jackson County filed comments stating that they are unaware of current work performed by LTD and expressed concerns regarding the extended timeline for fulfillment of RDOF obligations. Jackson County supports an expedited Commission proceeding to consider the revocation of LTD’s ETC designation and that LTD should be ordered to submit its long-form application.\(^{30}\)

The Minnesota Farmers Union (MFU) filed comments expressing concerns regarding LTD’s ability to fulfill its RDOF obligations and the impact this would have on Minnesota’s family farmers, ranchers, and rural communities. MFU supports a Commission proceeding for the revocation of LTD’s expanded ETC designation.\(^{31}\)

The Minnesota Association of Townships (MAT) filed comments stating the importance of robust broadband availability for rural communities and townships and that there are serious concerns regarding LTD’s ability to provide these services. MAT supports a Commission proceeding to consider revoking LTD’s ETC designation and urges the Commission to decline to certify LTD for funding.\(^{32}\)

Chippewa County filed comments expressing concern regarding the 10-year time frame to complete the broadband project. The County is concerned the 10-year LTD project will

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\(^{27}\) Pine County Comments, May 26, 2022, pages 1-2.

\(^{28}\) Comments of Balkan Township, May 26, 2022, (filed in 21-133 only) at pages 1-2.

\(^{29}\) ILSR Comments, June 2, 2022 at pages 2-4.

\(^{30}\) Jackson County Comments, June 3, 2022, at page 1.

\(^{31}\) MFU Comments, June 3, 2022, at page 1.

\(^{32}\) Minnesota Association of Townships Comments June 3, 2022, at page 1.
eliminate all current and future opportunities for the County to seek other federal or state funding for broadband. The County believes that this will disadvantage schools, businesses, and residents. Also, the County has been unsuccessful in securing a meeting with LTD to collaborate and request updates on network construction progress. County requests that the Commission open an expedited inquiry to build a record to determine if LTD’s ETC designation should be revoked and order LTD to submit its long-form application for review.  

**IV. Staff Analysis**

There are several things the Commission may wish to consider in determining how this matter should proceed. First, the OAG made several key points in comments and reply comments. The OAG pointed out there is the possibility of the FCC denying LTD’s long-form application. If this were to occur during the pendency of this proceeding, this proceeding would be rendered moot. Even if the record in this proceeding suggests the Commission not revoke LTD’s RDOF ETC designation, LTD will not be eligible to receive RDOF funds. This suggests that this proceeding might be premature.

Additionally, in the event the Commission determines that LTD’s RDOF ETC designation should be revoked, this RDOF Phase I support ($311 million) will not automatically be redistributed to Minnesota RDOF ETCs. As the FCC has done in the past, the funds will likely be rolled into a new RDOF Phase I auction or into the RDOF Phase II auction. As such, the Commission should proceed with caution regarding this matter.

Finally, LTD raises the question of Commission jurisdiction over carriers in circumstances such as LTD Broadband (non-certificated voice over internet protocol (“VOIP”) providers). The Petitioners brought this action pursuant to 47 U.S.C. § 214(e)(2), 47 U.S.C. § 254(f). Additionally, the Petitioners rely on Minn. R. 7811.1400, subp. 15 and 7812.1400, subp. 15 explicitly provide for revocation of ETC designations, reading in part:

Subp. 15. Revocation. The commission shall revoke a local service provider’s ETC designation upon finding that the LSP does not qualify as an ETC under part 7811.0100 [7812.0100], subpart 15. (emphasis added).

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33 Chippewa County Public Comment, June 8, 2022 at page 1.
34 Please see the June 8, 2022, Office of the Attorney General’s reply comments at page 4.
35 Please see the June 1, 2022, Office of the Attorney General’s comments at page 7.
36 This issue was raised by LTD in the Company’s June 1, 2022, comments at pages 9-10. The Petitioners argue that federal law and FCC regulations do not restrict state commission ETC authority to certificated carriers. Also, Minnesota Rules 7811.1400 and 7812.1400 also specifically authorize the Commission to revoke ETC designations for noncompliance with ETC requirements. If the Commission rules apply solely to certificated carriers, then the Commission did not have authority to designate LTD as an ETC in the first place (MTA/MREA June 8, 2022 reply comments at page 6).
Further, Minn. R. 7811.0100, subp. 34 and 7812.0100, subp. 34 define a local service provider (LSP) as follows:

Subp. 34. Local service provider or LSP. "Local service provider" or "LSP" means a telephone company or telecommunications carrier providing local service in Minnesota pursuant to a certificate of authority granted by the commission. Local service provider includes both local exchange carriers and competitive local exchange carriers (emphasis added).

LTD argued that these rules are not applicable to carriers such as LTD. These rules apply only to providers operating under a certificate of authority. LTD also argued that the Commission’s June 3, 2021, LTD Expansion Order acknowledged that its oversight of LTD arises from delegated authority under federal law rather than state law.

Staff believes that overall clarity regarding the Commission’s authority is required for the Commission’s consideration of this matter. In the event the Commission initiates a proceeding to consider revoking LTD’s RDOF ETC designation, the threshold question which needs to be answered as part of any proceeding is: does the Commission have the authority to designate, certify, or revoke eligible telecommunications carriers (ETCs) which do not possess a certificate of authority and provide basic local exchange service via VOIP? Or should the Commission decline jurisdiction for these carriers and allow the FCC to make these ETC determinations going forward?

As mentioned by several commenters, the Commission has an open proceeding on related questions specific to jurisdiction over ETCs (Docket 21-86). Due to scheduling conflicts, this docket is awaiting reschedule. However, this docket goes to the heart of the Commission’s jurisdiction over the carriers identified above. What the Commission determines in this docket may or may not render docket 21-86 moot.

Commenters also discuss the Commission’s annual ETC certification process (Docket 22-8). Staff notes Docket 22-8 is temporarily on hold pending federal Office of Management and Budget review of the FCC Form 481. Once that form is finalized, Docket 22-8 will resume. Historically, the Commission has needed to update certification status by October 1 of each year. Staff cautions this relatively tight turnaround which requires 22-8 be streamlined.

V. Decision Options

Should the Commission initiate a proceeding to consider revoking LTD Broadband LLC expanded ETC designation, which was granted in the Commission’s June 3, 2021, Order Approving Petition for ETC Designation in Certain Census Blocks?

1. Open a proceeding to determine whether there is cause to revoke the ETC designation of LTD (Petitioners, Department, and OAG), or

2. Decline to open a proceeding (LTD).
[If the Commission selects decision option 1, also select a type of procedure in decision options 3-5 and a schedule in decision options 8-10.]

What type of procedure should be used?

3. Refer the matter to the Office of Administrative Hearings (OAH) with the request that proceedings provide for discovery, the cross-examination of expert witnesses, and be conducted expeditiously (LTD and Department), or

4. Initiate an expedited proceeding pursuant to Minn. Stat. § 237.61 for record development (Petitioners), or

[If the Commission selects decision option 4, also select a type of expedited proceeding in decision options 5–6.]

What type of expedited proceedings should be used, and should it include party cross-examination?

5. Designate a sub-committee of Commissioners under Minn. Stat. §216A.03, subd. 8 (Petitioners), [if selected, also select a sub-option],

   a. with party cross-examination, or
   b. without party cross-examination.

Or

6. Designate a lead Commissioner under Minn. Stat. § 216A.03, subd. 9 (Petitioners) [if selected, also select a sub-option]

   a. with party cross-examination, or
   b. without party cross-examination.

What schedule should be used?

7. Delegate scheduling to the administrative law judge (ALJ), designated lead commissioner, or subcommittee of commissioners (Department), or

8. adopt one of the schedules proposed by the petitioners (Petitioners), or

9. adopt the schedule proposed by LTD (LTD).
Should the Commission order LTD to submit its FCC RDOF long form application to the Commission?

10. Require LTD to provide its long form application to the Commission, Department of Commerce, Attorney General’s Office and Petitioners subject to the terms of an approved Protective Order (Petitioners, Department, and OAG), or

11. Do not require LTD to provide its long form application to the Commission (LTD).

Should the Commission address LTD’s certification for Rural Digital Opportunity Fund (RDOF) funding in 2023?

12. Do not address LTD’s certification for Rural Digital Opportunity Fund (RDOF) funding in 2023 (LTD, Department, and OAG), or

13. Decline to certify LTD for 2023 funding (Petitioners).