



2200 IDS Center, 80 South 8th Street
Minneapolis, MN 55402
Tel: 612.977.8400 | Fax: 612.977.8650
taftlaw.com

Affirmative Action, Equal Opportunity Employer

Andrew M. Carlson
612.977.8242
ACarlson@taftlaw.com

October 13, 2022

ELECTRONIC FILING

The Honorable James E. LaFave
Administrative Law Judge
Office of Administrative Hearings
PO Box 64620
St. Paul, MN 55164-0620

**Re: In the Matter of the Petition of LTD Broadband LLC to Expand its Designation as an Eligible Telecommunications Carrier; In the Matter of a Petition to Initiate a Proceeding to Revoke the Expanded Eligible Telecommunications Carrier Designation of LTD Broadband LLC and Deny LTD's Funding Certification for 2023
OAH Docket No. 60-2500-38516; MPUC Docket Nos. P-6995/M-21-133; P-558, P-6995/M-22-221**

Dear Judge LaFave:

I write to provide a brief update on activity in other states that you should know about as you continue to consider how to proceed in this matter. As you know, LTD's position is that all litigation activity before you should be stayed until the conclusion of LTD's appeal of the FCC's denial of its RDOF long-form application. Two recent orders support LTD's request.

As was referred to in passing at one or both of the previous conferences in this matter, LTD has been engaged in proceedings before other state public utility commissions concerning its eligibility as an eligible telecommunications carrier ("ETC") in those states for purposes of receiving RDOF funding. Indeed, the main basis for the MTA's May 22, 2022 Petition was activity before the South Dakota Public Utilities Commission ("SD PUC"). See Petition at 2, 4, 6, 15-21.

Recent developments in two of those state commission proceedings support LTD's request for a stay in this matter. First, on September 26, 2022, the Clerk of the Nebraska Supreme Court and Court of Appeals stayed an appellate proceeding in which LTD was challenging the denial, by the Nebraska Public Service Commission, of LTD's ETC status

The Honorable James LaFave
October 13, 2022
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in that state (the “Nebraska Stay Order”). A copy of the Nebraska Stay Order is attached. It provides that the Nebraska appellate proceeding is stayed pending resolution of LTD’s appeal of the FCC staff’s decision, and it requires LTD’s counsel to provide an update if the FCC appeal is not complete by January 21, 2023. The spirit of the Nebraska Stay Order is consistent with LTD’s request in this proceeding—it recognizes that having dual proceedings go forward at the same time would be unnecessarily duplicative and expensive.

Then, on October 12, 2022, the SD PUC issued an order closing LTD’s ETC docket there (“SD Order”). A copy is attached. In March 2022, the SD PUC denied LTD’s request for ETC designation for purposes of RDOF funding. LTD filed a Petition for Reconsideration or Rehearing. As described in the SD Order, that request was still pending as of August 10, 2022 when the FCC staff denied LTD’s long-form application. In light of the FCC staff decision, LTD requested that the South Dakota docket be suspended, and the South Dakota Telecommunications Association (“SDTA”) requested that the docket be closed. Yesterday, in the SD Order, the SD PUC granted the SDTA’s motion, closing the docket. But LTD still has an opportunity to file a motion to re-open the proceeding as new developments occur, for example if LTD wins its appeal of the FCC staff’s decision. *See, e.g., In re Brookings Muni. Util. d/b/a Swiftel Comms. for Designation as an Eligible Telecommunications Carrier*, Order Reopening Docket, Docket No. TC04-213, 2007 WL 8674044 (So. Dak. Pub. Utils. Comm’n, Sept. 18, 2007) (reopening docket to adjust compliance filing dates). Notably, one of the SD PUC Commissioners specifically stated at the Commission meeting that such a motion could be filed, indicating that the effect of the SD Order was to simply stop the proceedings until and unless LTD’s appeal of the FCC’s decision is successful. So the SD Order is consistent with LTD’s request to you.

Thank you for your attention to this additional information. If you have any questions or concerns, please do not hesitate to let me know.

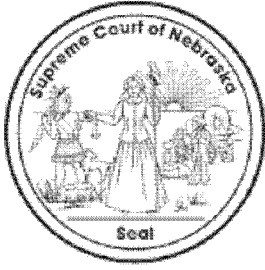
Sincerely,

Taft Stettinius & Hollister LLP

/s/ Andrew M. Carlson

Andrew M. Carlson

AMC:rlh
Enclosures
cc: oah.efiling.support@state.mn.us



CLERK OF THE NEBRASKA SUPREME COURT
AND NEBRASKA COURT OF APPEALS

2413 State Capitol, P.O. Box 98910

Lincoln, Nebraska 68509-8910

(402) 471-3731

FAX (402) 471-3480

September 26, 2022

Katherine Ann McNamara
kmcnamara@fraserstryker.com

IN CASE OF: S-22-000018, In the Matter of LTD Broadband LLC Application C-5256/NUSF-130

The following filing: Joint Motion to Stay Proceedings
Filed on 09/16/22
Filed by appellee Public Service Commission

Has been reviewed by the court and the following order entered:

By order of the Court, proceedings are stayed on the joint motion of the parties pending resolution of the proceeding before the Federal Communications Commission (FCC). Counsel for Appellant is directed to report to the Court regarding the completion of the FCC proceeding and, if the proceeding is not complete by January 31, 2023, to provide an update to the Court regarding the status of the proceeding at that time.

Respectfully,

Clerk of the Supreme Court
and Court of Appeals

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE APPLICATION OF)	ORDER DENYING REQUEST TO
LTD BROADBAND LLC FOR DESIGNATION)	SUSPEND THE DOCKET;
AS AN ELGIBLE TELECOMMUNICATIONS)	ORDER GRANTING MOTION TO
CARRIER FOR PURPOSES OF RECEIVING)	CLOSE THE DOCKET
FEDERAL UNIVERSAL SERVICE SUPPORT)	
)	TC21-001

On January 7, 2021, the South Dakota Public Utilities Commission (Commission) received an Application for Designation as an Eligible Telecommunications Carrier (ETC) from LTD Broadband LLC (LTD). LTD is requesting designation as an ETC for the purpose of being eligible to receive federal universal service support via the Federal Communications Commission's (FCC) Lifeline program and through the Rural Digital Opportunity Fund (RDOF) for the provision of broadband internet access and broadband-voice bundled offerings. On October 22, 2021, LTD filed an Amended Application. LTD has preliminarily been awarded RDOF funding by the FCC for certain census blocks in South Dakota, see Exhibit A of the Amended Application. LTD also requested a waiver of ARSD 20:10:32:43.02.

On January 14, 2021, the Commission electronically transmitted notice of the filing and the intervention deadline of January 29, 2021, to interested individuals and entities on the Commission's PUC Weekly Filing electronic listserv. On February 22, 2021, the Commission issued an Order Granting Intervention to SDTA. On December 1, 2021, the Evidentiary Hearing was held as scheduled. On March 21, 2022, the Commission issued a Final Decision and Order Denying Application for Designation as an Eligible Telecommunications Carrier in Certain Census Blocks (Final Decision) (Commissioner Hanson, dissenting).

On April 20, 2022, LTD filed a Petition for Reconsideration or Rehearing. On May 9, 2022, SDTA filed an Objection to LTD Broadband LLC's Petition for Reconsideration or Rehearing. On May 10, 2022, Commission staff filed a Response to LTD Broadband LLC's Petition for Reconsideration or Rehearing. At a May 24, 2022, Commission meeting, the parties addressed how to proceed, and the matter was deferred so the parties could brief LTD's oral motion to amend its Request for Rehearing in order to amend its Amended Application to withdraw some census blocks which are already receiving service or being built out. On June 2, 2022, LTD filed an Amended Petition for Reconsideration or Rehearing. On June 17, 2022, SDTA filed its Objection to LTD Broadband LLC's Amended Petition for Reconsideration or Rehearing. On July 22, 2022, the Commission issued an Order Denying Reconsideration; Order Granting Rehearing; Order Granting Request to Amend Amended Application; Order to Submit Proposed Procedural Schedule. On August 24, 2022, LTD filed a letter regarding an FCC update and request to suspend docket. On September 6, 2022, SDTA filed an Objection to Docket Suspension and Motion to Close. On October 4, 2022, LTD filed its Opposition to SDTA's Motion to Close.

The Commission has jurisdiction over this matter pursuant to the following: SDCL Chapters 1-26, 49-1, 49-31, and 15-6. Also applicable is 47 U.S.C. § 214 and 47 U.S.C. § 254(f) and 47 C.F.R. § 54.201. The following South Dakota administrative rules are applicable: ARSD Chapters 20:10:01 and 20:10:32. The Commission may rely upon any or all of these laws or other laws of this state in making its determination.

At its regularly scheduled meeting on October 11, 2022, the Commission considered LTD's request to suspend the docket and SDTA's Motion to Close the docket. Having reviewed the written comments of the parties and having thoroughly reviewed all the filings in the docket and the supporting documents, and after hearing oral argument from the parties and the parties' answers and discussion in response to questions from the Commissioners, the Commission voted unanimously to grant SDTA's Motion to Close the docket. It is therefore

ORDERED, that LTD's request to suspend the docket is hereby denied. It is further

ORDERED, that SDTA's Motion to Close the docket is hereby granted. It is further

ORDERED, that the docket is closed.

Dated at Pierre, South Dakota, this 12th day of October 2022.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u>Adam DeHueck</u>
Date: <u>10/12/22</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner

Gary Hanson

GARY HANSON, Commissioner

CERTIFICATE OF SERVICE

IN THE MATTER OF THE PETITION OF LTD
BROADBAND, LLC TO EXPAND ITS DESIGNATION
AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

MPUC DOCKET No. 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

MPUC DOCKET No. P-558, P-6995/M-22-221

Roshelle L. Herstein certifies that on the 8th day of June, 2022, she filed a true and correct copy of LTD Broadband LLC's **LETTER TO ALJ** by posting the same on www.edockets.state.mn.us. Said document is also served via U.S. Mail or email as designated on the Official Service List on file with the Minnesota Public Utilities Commission in the above-referenced docket.

/s/ Roshelle L. Herstein

Roshelle L. Herstein

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kristin	Berkland	kristin.berkland@ag.state.mn.us	Office of the Attorney General-RUD	445 Minnesota Street Bremer Tower, Suite 1400 St. Paul, MN 55101	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Andrew	Carlson	acarlson@taftlaw.com	Taft Stettinius & Hollister LLP	Suite 2200 IDS Center 80 South 8th Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-133_Official CC Service List
Stephen E	Coran	scoran@lermansenter.com	Lerman Senter	2001 L St NW Ste 400 Washington, DC 20036	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Richard	Dornfeld	Richard.Dornfeld@ag.state.mn.us	Office of the Attorney General-DOC	Minnesota Attorney General's Office 445 Minnesota Street, Suite 1800 Saint Paul, Minnesota 55101	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Corey	Hauer	coreyhauer@ltdbroadband.com	LTD Broadband	PO Box 3064 Blooming Prairie, MN 55917	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Brett	Heather Freedson	bfreedson@lermansenter.com	Lerman Senter	2001 L St NW Ste 400 Washington, DC 20036	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Katherine	Hinderlie	katherine.hinderlie@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota St Suite 1400 St. Paul, MN 55101-2134	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	150 S. 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-133_Official CC Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
James	LaFave	james.lafave@state.mn.us	Office of Administrative Hearings	600 N Robert Street St. Paul, MN 55164-0620	Electronic Service	Yes	OFF_SL_21-133_Official CC Service List
Dan	Lipschultz	Dan.lipschultz@lawmoss.com	Moss & Barnett	150 South 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Peter E.	Madsen	pmadsen@taftlaw.com	Taft Stettinius & Hollister LLP	2200 IDS Center 80 South 8th Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Ry	Marcattilio McCracken	ry@ilsr.org	Institute for Local Self-Reliance	2720 East 22nd Street Minneapolis, MN 55406	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Katherine	Marshall	katie.marshall@lawmoss.com	Moss & Barnett	150 S 5th St Ste 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Joseph	Meyer	joseph.meyer@ag.state.mn.us	Office of the Attorney General-RUD	Bremer Tower, Suite 1400 445 Minnesota Street St Paul, MN 55101-2131	Electronic Service	No	OFF_SL_21-133_Official CC Service List
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_21-133_Official CC Service List
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-133_Official CC Service List
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	7400 Lyndale Ave S Ste 190 Richfield, MN 55423	Electronic Service	Yes	OFF_SL_21-133_Official CC Service List
Kristopher	Twomey	kris@lokt.net	Law Office of Kristopher E. Twomey, P.C.	1725 I St NW Ste 300 Washington, DC 20006	Electronic Service	No	OFF_SL_21-133_Official CC Service List

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Gregory	Whiteaker	greg@hermanwhiteaker.com	Herman & Whiteaker, LLC	6720B Rockledge Drive Suite 150 Bethesda, MD 20817	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Cameron	Winton	winton.cam@dorsey.com	Dorsey & Whitney LLP	50 S 6TH ST STE 1500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-133_Official CC Service List
Patrick	Zomer	Pat.Zomer@lawmoss.com	Moss & Barnett PA	150 S 5th St #1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_21-133_Official CC Service List

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Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_22-221_Official CC Service List
Brent	Christensen	brentc@mnta.org	Minnesota Telecom Alliance	1000 Westgate Drive, Ste 252 St. Paul, MN 55117	Electronic Service	No	OFF_SL_22-221_Official CC Service List
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_22-221_Official CC Service List
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Darrick	Moe	darrick@mrea.org	Minnesota Rural Electric Association	11640 73rd Ave N Maple Grove, MN 55369	Electronic Service	No	OFF_SL_22-221_Official CC Service List
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