

June 1, 2022

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce**  
Docket No. E6741,P6995/M-22-221 and P6995/M-21-133

Dear Mr. Seuffert:

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

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.

Commerce intends to file responsive comments after reviewing the comments of other parties.

Sincerely,

/s/ Lisa Gonzalez  
/s/ Joy Gullikson  
/s/ Arielle Tihamiyu  
Telecommunications Analysts

LG/JG/AT/ja  
Attachment

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## I. INTRODUCTION AND CURRENT PETITION

On August 1, 2019, the Federal Communications Commission (FCC) established the \$20.4 billion Rural Digital Opportunity Fund (RDOF), the largest high-cost effort in history at the time. Since then, a world pandemic emphasized what local, state, and federal officials already acknowledged - that broadband access has become essential to all communities for their economies, education, public safety, and more. The pandemic also laid bare the fact that rural communities, where deployment is not prolific, need high-cost funding, such as RDOF, to entice providers. The comments filed by Le Sueur and Pine Counties in this proceeding clearly reflect how critical it is that all sources of high-cost funds are coordinated, are distributed to providers to serve unserved and underserved areas as soon as possible, and providers are held accountable to the standards of the federal program.

On May 6, 2022, The Minnesota Telecom Alliance (MTA) and the Minnesota Rural Electric Association (MREA) jointly filed a petition requesting that the Minnesota Public Utilities Commission (Commission) open a proceeding under Minn. Stat. §216A.05, subd. 5<sup>1</sup> concerning the eligible telecommunications carrier (ETC) designation of LTD Broadband, LLC (LTD). LTD was provisionally awarded the largest level of funding to be received by any entity, in any state, in the FCC's RDOF program. For Minnesota, LTD was selected by the FCC to receive \$311,877,936.40 to bring broadband service to 102,005 locations. The current petition seeks to have the Commission open a proceeding to:

- Receive new information regarding LTD and its status as an eligible telecommunications carrier (ETC), a designation determined by the Commission and a condition winning bidders must meet to receive federal RDOF subsidies to deploy broadband network infrastructure.<sup>2</sup>
- Build a record based on the new information that has come to light since granting ETC status to LTD in 2021 to serve the locations in the RDOF award.<sup>3</sup> Petitioners argue that other states' review of LTD's "long-form" application assisted those states to develop a more complete record on which to deny or designate ETC status. Petitioners note that the Commission did not consider LTD's long-form RDOF application as part of its 2021 review.
- Revoke LTD's expanded ETC status received in 2021 and deny certification for 2023 RDOF funding.<sup>4</sup>

Petitioners argue that LTD and the impact of its large RDOF award are different from prior ETC applicants the Commission has considered. MTA and MREA contend that new and relevant facts show that LTD cannot meet their commitments and that LTD's expanded ETC designation

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<sup>1</sup> *In the Matter of the Petition of LTD Broadband, LLC to Expand its Designation as an Eligible Telecommunications Carrier*, Petition of Minnesota Telecom Alliance and Minnesota Rural Electric Association, (Petition) Docket No(s). P-6995/M-21-133, P-6995/M-22-221, May 6, 2022, Doc. No. 20225-185600-02, p.1.

<sup>2</sup> See 47 U.S.C. §214 (e)(2), §254 (f)

<sup>3</sup> Petition, p.14.

<sup>4</sup> Petition, p. 15.

is not in the public interest.<sup>5</sup> Petitioners argue that the South Dakota Public Utilities Commission (SD PUC) thoroughly examined LTD's capabilities and found that designating LTD an ETC would not be in the public interest.<sup>6</sup> Petitioners focus on the SD PUC decision in which it ruled that LTD does not have the technical, managerial, or financial resources to deploy and operate a Fiber-to-the-Premise (FTTP) network to 7,481 locations in South Dakota. MTA and MREA also highlight that LTD was assigned 102,005 locations in Minnesota, approximately thirteen times the quantity in South Dakota, and state that they will provide evidence from professional engineers and other experts to support the need to revoke LTD's ETC status. On May 11, 2022, the Commission issued a Notice of Comment Period related to the petitioners' requests in Docket Nos. P-558, P-6995/M-22-221 and P-6995/M-21-133.<sup>7</sup> Initial comments are due June 1, 2022, and Reply Comments due June 8, 2022. The Commission asks that commenters address the following question:

- Should the Commission initiate a proceeding to develop a record to determine whether LTD Broadband's expanded ETC designation should be revoked?

The Commission also identified other topics open for comment:

- 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?
- 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?

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<sup>5</sup> Petition, p. 23

<sup>6</sup> Petition pp 19-20.

<sup>7</sup> Minnesota Public Utilities Commission, *Notice of Comment Period*, Dockets P6995/M-21-133 and P558, 6995/M-22-221, Issued May 11, 2022.

## II. BACKGROUND OF EVENTS

### A. THE FEDERAL RDOF PROGRAM EXPLAINED IN BRIEF

The RDOF Program, administered by the FCC, provides up to \$20.4 billion to connect millions of rural homes and small businesses to high-speed broadband networks. The RDOF program builds on the previous Connect America Fund (CAF) Phase II auction.<sup>8</sup> Winning and approved RDOF bidders receive support over 10 years. Phase I of the RDOF program has a budget of \$16 billion and Phase II will have a budget of over \$4.4 billion.<sup>9</sup> In Minnesota, 24 companies, either singly, or in consortium with other providers, were Phase I winning bidders of a cumulative total of \$408,150,745.60 to be distributed over ten years in support of 142,852 locations. LTD was the winning bidder of \$311,877,936.40 to bring high speed broadband service to 102,005 locations.

#### 1. Short-form application approved by FCC to be eligible to bid

RDOF awards were based on census blocks from the list of eligible areas, which are high-cost areas that typically lack a financial case for a company to provide broadband, necessitating support to encourage deployment. To be eligible to bid, companies first obtained FCC short-form approval. The short-form requires applicants to provide “the specific state(s) in which it wishes to bid, choose the performance tier and latency combination(s) on which it wishes to bid in its selected state(s), submit operational and financial information demonstrating that it can meet the public interest obligations associated with the performance tier and latency combination(s) for which it intends to bid, disclose auction-related agreements, and provide information regarding its ownership structure.”<sup>10</sup>

#### 2. Long-form application filed in 2021 contains additional information

Once a company was determined to be a winning bidder, it was required to file its long-form application with the FCC by January 29, 2021. The long-form application requires more detailed information such as technology and system design to serve awarded locations, including a network diagram certified by a professional engineer, project funding, audited financial statements, letters of credit, and ETC designation status.<sup>11</sup> The FCC must approve the long-form application for the bidder to begin receiving funds. The FCC has not released a timeline for its approval of LTD’s long-form application.

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<sup>8</sup> The CAF II Program allocated \$1.488 billion to deploy networks serving more than 700,000 unserved rural homes and businesses across 45 states, See <https://www.fcc.gov/auction/903>.

<sup>9</sup> *In the Matter of Rural Digital Opportunity Fund Connect America Fund*. WC Docket No. 10-126 and 10-90, Report and Order FCC 20-5 (2020) (*RDOF Order*), para. 13.

<sup>10</sup> <https://www.fcc.gov/document/instructions-available-short-form-application-auction-904>

<sup>11</sup> <https://docs.fcc.gov/public/attachments/DA-20-1422A4.pdf>

3. *FCC's minimum requirements of ETCs*

Entities receiving RDOF FCC high-cost funds are required to obtain ETC designation from the relevant state commissions, or from the FCC if a state does not designate ETCs.<sup>12</sup> 47 U. S. C. § 214 (e)(1) and (2) allows states to designate ETCs that are consistent with “the public interest, convenience, and necessity,” as long as the ETCs “offer the services that are supported by Federal universal service support mechanisms and advertise the availability of such services and the charges therefore using media of general distribution.” In addition to these Congressional requirements, federal rules require that ETCs offer voice services, broadband internet access at appropriate speeds, and Lifeline services, subject to additional rules.<sup>13</sup>

4. *Additional requirements states may impose to further universal service goals*

States may impose additional requirements on ETCs to advance universal service, provided they are competitively neutral and are not inconsistent with FCC rules to preserve and advance universal service.<sup>14</sup> States have this authority with respect to RDOF, CAF, CAF II, and any other high-cost funding mechanism in which federal funds require ETC designation.

5. *The Commission must annually recertify RDOF recipients as ETCs*

Once a company receives ETC designation and the FCC approves its long-form application, the winning bidder starts receiving funds. States that desire ETCs to receive support pursuant to the high-cost program must file an annual certification with the Universal Service Administrative Company (USAC) and the Commission stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.<sup>15</sup>

B. *BACKGROUND OF LTD'S ETC STATUS: GRANTED BY THE COMMISSION FOR CAF II AND RDOF*

On October 22, 2018, LTD filed an Application for ETC designation with the Commission.<sup>16</sup> At the time, the FCC determined LTD to be one of many support awardees through the CAF II reverse auction. Like the RDOF reverse auction, the CAF II program required winning bidders to

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<sup>12</sup> <https://www.fcc.gov/auction/904/factsheet>

<sup>13</sup> 47 C.F.R. § 54.101 and 201.

<sup>14</sup> 47 USC §§ 253(a)–(b), 254(b)

<sup>15</sup> 47 C.F.R. § 54.314.

<sup>16</sup> *LTD Broadband, LLC, Application for Eligible Telecommunications Carrier Designation*, Docket No. P-6995/M-18-653, Oct. 22, 2018, Doc. No. 201810-147209-01.

seek ETC designation, typically from state commissions, prior to final approval of CAF II awards.<sup>17</sup>

The Department of Commerce (Commerce) filed comments on LTD's petition for ETC designation on December 12, 2018,<sup>18</sup> recommending that LTD be designated as an ETC, but that the Company meet certain conditions to ensure universal service and the designation to be in the public interest.<sup>19</sup>

On February 8, 2019, the Commission granted ETC status to LTD for purposes of receiving high-cost funding related to the CAF II mechanism.<sup>20</sup> LTD did not seek a certificate of authority (COA) and the Commission did not require LTD to obtain one, since LTD claimed that its voice service would be provided via VoIP in a manner that is not regulated by the Commission. The Commission did not require LTD to demonstrate it is providing a telecommunications service to qualify as an ETC, as Commerce recommended.<sup>21</sup>

On February 19, 2019, Commerce filed a Petition for Reconsideration concerning two companies granted ETC status, but without a certificate of authority – LTD and Broadband Corp. Commerce asked that the Commission reconsider its February 8, 2019 Order and issue an Order that would require LTD and Broadband Corp. to “commit to comply with the consumer protections afforded by specific, identified Minnesota laws and rules, and commit to enforcement authority of the Commission and Department (of Commerce), should that be necessary. These laws and rules could be identified by having the companies for certificates of authority as a condition of the designation, or by requiring a compliance plan to explain how the companies will ensure that their voice service customers will have the appropriate consumer protections.”<sup>22</sup> At its March 21, 2019, meeting, the Commission denied the Petition for Reconsideration.

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<sup>17</sup> LTD sought ETC status to receive \$1,104,440.80 over a 10-year period to deploy a fixed wireless network infrastructure to 840 Minnesota locations considered by the FCC to be unserved.

<sup>18</sup> *Comments of the Minnesota Department of Commerce, Petition of LTD Broadband, LLC for Designation as an Eligible Telecommunications Carrier (ETC)*, Docket No: P6995/M-18-653, Dec. 12, 2018.

<sup>19</sup> In its comments, Commerce recommended that LTD provide a clear explanation of how it would satisfy the requirement to provide telecommunications service, a criterion to obtain high-cost support and why the provision of the telecommunications service does not require a certificate of authority from the Commission. See *Comments of the Minnesota Department of Commerce, Petition of LTD Broadband, LLC for Designation as an Eligible Telecommunications Carrier (ETC)*, Docket No: P6995/M-18-653, Dec. 12, 2018, pp. 7-8.

<sup>20</sup> See *In the Matter of LTD Broadband LLC's Petition for Eligible Telecommunications Carrier Designation in Minnesota*, Docket No. P-6995/M-18-653, *In the Matter of a Notice to Connect America Fund II Grant Winners*, Docket No. P-999/CI-18-634, Order Approving Request for ETC Status for High-Cost Support in Certain Census Blocks, February 8, 2019, Doc. No. 20192-150125-01.

<sup>21</sup> *Comments of the Minnesota Department of Commerce, Petition of LTD Broadband, LLC for Designation as an Eligible Telecommunications Carrier (ETC)*, Docket No: P6995/M-18-653, Dec. 12, 2018, pp. 7-8.

<sup>22</sup> *In the Matter of LTD Broadband, LLC's Petition for Designation as an Eligible Telecommunications Carrier (ETC)*, Docket No: P6995/M-18-653, Request for Consideration, Feb. 19, 2019, pp. 7.

On December 7, 2020, LTD was named a winning bidder in the RDOF competitive reverse auction in 15 states, including Minnesota.<sup>23</sup> In Minnesota, the FCC assigned LTD 102,005 locations for which the Company would be awarded \$311,877,936.40 over a 10-year period. As part of the multi-step approval process, LTD was required to submit a long-form application to the FCC by January 29, 2021.

On February 2, 2021, the Commission issued a Notice of Filing Requirement and Comment Deadlines for RDOF Grant Winners.<sup>24</sup> The Commission did not require grant winners to file their long-form applications as part of the ETC designation process.

On February 17, 2021, LTD filed a petition with the Commission to expand its ETC status<sup>25</sup> to the 102,005 RDOF awarded locations. LTD has never explained how it will meet the FCC's requirement that "the new provider receiving Rural Digital Opportunity Fund support should be prepared to provide voice service throughout its service areas, either through its own facilities or a combination of its own and other ETC's facilities, on the first day of that month," referring to the month after a new ETC is authorized to receive RDOF support.<sup>26</sup> To resell the traditional voice service of a telephone company, LTD would need to obtain a certificate of authority.

On March 22, 2021, MTA and the Iowa Communications Alliance (ICA) filed a petition with the FCC to deny LTD's long-form application.<sup>27</sup> The petitioners requested that the FCC deny LTD's long-form petition in each of their respective states. The FCC has not acted on the petition.

On March 26, 2021, Commerce recommended in comments that LTD's ETC status be expanded based on the record, which did not include the long-form application.<sup>28</sup> Commerce also recommended that the Commission impose conditions on LTD and other ETC applicants that would advance the public interest.

On March 26, 2021, MTA and Paul Bunyan Rural Telephone Cooperative (PBRTC) also filed comments on LTD's ETC Minnesota application.<sup>29</sup> The two entities recommended that the Commission deny LTD's application to expand its ETC status. MTA and PBRTC stated that LTD

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<sup>23</sup> <https://www.fcc.gov/document/auction-904-winning-bidders>.

<sup>24</sup> Doc. No. 20212-170631-01.

<sup>25</sup> See *In the Matter of the Petition of LTD Broadband LLC for Designation as an ETC to Receive Rural Digital Opportunity Fund Support*, Docket No. P6995/M-21-133, Petition, Feb. 17, 2021, Doc. No. 20212-171083-01.

<sup>26</sup> *In the Matter of Rural Digital Opportunity Fund Connect America Fund*. WC Docket No. 10-126 and 10-90, Report and Order FCC 20-5 (2020) (*RDOF Order*), para. 139.

<sup>27</sup> See *In the Matter of LTD Broadband, LLC, Petition to Deny Long Form Applications (FCC Forms 683) for Rural Digital Opportunity Fund ("RDOF") Phase I Auction Support in the States of Minnesota and Iowa*, AU Docket No. 20-34, WC Docket No. 19-126, and WC Docket No. 10-90, Petition to Deny, March 22, 2021, ECFS\_1032227924686, the petition was received by the FCC on March 22, 2021, and posted on March 23, 2021.

<sup>28</sup> See Comments of the Minnesota Department of Commerce on Petition of LTD Broadband LLC for Designation as an ETC to receive rural digital opportunity fund support, Docket No. P6995/M-21-133, March 26, 2021, Doc. No. 20213-172302-09 and Comments of the Minnesota Department of Commerce on the petitions filed by Rural Digital Opportunity Fund Grant Winners, Docket No: P999/CI-21-86, March 26, 2021, Doc. No. 20213-172302-09.

<sup>29</sup> See Comments of Paul Bunyan Rural Telephone Cooperative Regarding LTD Broadband, LLC, Petition for Expansion as an Eligible Telecommunications Carrier, Docket No., P6995/M-21-133, March 26, 2021, Doc. No. 20213-172293-01.



had failed to show that it had the requisite technical, managerial, and financial capability to deploy and operate a FTTP network in rural Minnesota.

On April 12, 2021, Commerce reply comments stated, in part: "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."<sup>30</sup>

On June 3, 2021, the Commission issued an Order approving the expansion of LTD's ETC designation for 102,005 locations in Minnesota.<sup>31</sup> In the Order, the Commission acknowledged concerns about LTD and stated, "However, the record currently before the Commission does not contain evidence sufficient to disprove the certifications in LTD's petition or otherwise support a finding of failure to meet any of the ETC-designation criteria."<sup>32</sup> No party filed a petition for reconsideration of LTD's ETC designation.

The Commission issued a Notice of Comment Period on June 30, 2021, in Docket No. P-999/CI-21-86 to open a proceeding to determine its ongoing jurisdiction over ETC compliance as set forth in sections 214(e)(2) and 254(f) of the Communications Act of 1934 and related rules, federal codes, and FCC auction materials.<sup>33</sup> The Commission has yet to hold a hearing on the issues raised in this Notice.

In a meeting on September 16, 2021, and memorialized by Order on October 21, 2021, the Commission recertified LTD as an ETC eligible to receive high-cost funds for the study areas created under CAF II along with 107 other study areas that had received funding and sought annual recertification.<sup>34</sup> ETCs must request and receive annual certification to continue to receive high-cost support.

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<sup>30</sup> Reply Comments of Department of Commerce, p. 1, Petition for Expansion as an Eligible Telecommunications Carrier, Docket No., P6995/M-21-133, April 14, 2021, Doc. No. 20214-172899-05.

<sup>31</sup> See *In the Matter of the Petition of LTD Broadband LLC to Expand Its Designation as an Eligible Telecommunications Carrier*, Docket No. P-6995/M-21-133 and *In the Matter of a Notice to Rural Digital Opportunity Fund Grant Winners*, Docket No. P-999/CI-21-86, Order Approving Petition for ETC Designation in Certain Census Blocks, June 3, 2021. Doc. No. 20216-174784-01.

<sup>32</sup> *In the Matter of the Petition of LTD Broadband LLC to Expand Its Designation as an Eligible Telecommunications Carrier*, Docket No. P-6995/M-21-133, and *In the Matter of a Notice to Rural Digital Opportunity Fund Grant Winners*, Docket No. P-999/CI-21-86, Order Approving Petition for ETC Designation in Certain Census Blocks, June 3, 2021, Order Approving Petition for ETC Designation in Certain Census Blocks, June 3, 2021, p. 8, Doc. No. 20216-174784-01.

<sup>33</sup> See *In the Matter of a Notice to Rural Digital Opportunity Fund Grant Winners*, Docket No. P-999/CI-21-86, Notice of Comment Period, June 30, 2021, Doc. No. 20216-175632-01.

<sup>34</sup> See *In the Matter of the Annual Certification Related to Eligible Telecommunications Carriers' (ETCs) Use of Federal Universal Service Support Required Pursuant to C.F.R. § 54.313*, Docket No. P-999/PR-21-8, Order Certifying Eligible Telecommunications Carriers' Use of Federal High-Cost Subsidy, October 21, 2021, Doc. No. 202110-179001-01.

### III. COMMERCE COMMENTS

#### A. *SHOULD THE COMMISSION INITIATE A PROCEEDING TO DEVELOP A RECORD TO DETERMINE WHETHER LTD BROADBAND'S EXPANDED ETC DESIGNATION SHOULD BE REVOKED?*

Commerce agrees that the Commission has the authority to reverse or modify any prior decision and to revoke a carrier's ETC status, if there is record evidence that such a decision is in the public interest. Commerce also agrees with the petitioners' assessment that the decisions of the Commission on ETC designations are vitally important to the successful deployment of broadband and phone service throughout Minnesota. Commerce will consider the comments of LTD and other parties before making a recommendation to the Commission on whether to open a proceeding or to recommend a process for such a proceeding but offers some initial comments.

##### 1. *The Commission should consider interdependent roles of FCC and Commission*

The roles of the FCC and the Commission are interdependent, and the Commission should consider how a determination by each will influence the other. The FCC reviews the long-form application which includes financial and network capabilities, and requires the company to certify they will "meet the relevant public interest obligations for each performance tier and latency combination" for the relevant areas. Bearing in mind that the FCC may approve or deny LTD's long-form application at any time, the Commission may wish to consider how a positive or negative FCC determination for LTD would influence any new proceeding<sup>35</sup>, including:

- If any Commission proceeding would then be rendered moot.
- If the Commission would want to continue the proceeding and potentially revoke LTD's ETC status, regardless of an FCC determination on LTD's long-form application.

Commerce requests that petitioners further explain in their Reply Comments the purpose for a state-level review given that the FCC is examining the technical, managerial, and financial capabilities of LTD. Petitioners should also explain how a positive or negative FCC determination for LTD would influence any new proceeding.

##### 2. *If the Commission does decide to open a proceeding, the Commission may wish to apply consistent criteria for all ETCs.*

To obtain ETC status, applicants now provide scant information on their ETC designation petitions and the Commission must grant or deny ETC status based on a series of attestations.

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<sup>35</sup> See Comments of Le Sueur County, May 18, 2022, "We have been working with existing internet service providers in our community who are willing and ready to conduct work, but have been hesitant to do so, as RDOF creates a barrier for them to access state and federal grant dollars. In fact, we had a State Border to Border grant rejected in January 2021 by the Minnesota Department of Employment and Economic Development on the grounds of RDOF and LTD commitments. As a result, we have lost two years of potential construction work." Doc. No. 20225-185880-01.

LTD was not unique in this regard and the criteria applied to all ETCs should be consistent. For example, without review of Starlink’s long form application, the Commission previously granted ETC status to Starlink for its low earth orbit satellite internet access,<sup>36</sup> a new technology with limited testing. Starlink was assigned 7,529 locations in Minnesota.<sup>37</sup> If every Minnesota location is equally important, LTD's award for the most locations for broadband funding should not be the sole consideration that determines which companies should participate in a Commission proceeding closely scrutinizing an ETC applicant.

Also, with any new proceeding, the Commission may wish to review all the criteria used by the SD PUC to reach its decision, not only whether the company has the technical, managerial, and financial capability to construct and operate a fiber network. In this regard, the petitioners restrict the issues to include in a Minnesota proceeding. In the South Dakota proceeding, issues such as service quality and consumer protections were addressed, where LTD agreed to comply with applicable service quality standards and consumer protection rules.<sup>38</sup>

3. *The ETC designation process is a critical step that permits state commissions to help safeguard the use of ratepayer funds and contribute to universal service efforts in their states.*

Commerce concurs with the petitioners that the ETC designation process has always been an important partnership between state and federal agencies to ensure people in unserved and underserved areas are connected. Congress determined that state commissions are the best situated to scrutinize ETC applicants seeking to deploy and serve subscribers in their states.<sup>39</sup> In addition to designating ETCs, which determines whether a winning bidder can move forward and receive high-cost funding, state commissions are tasked with annually recertifying ETCs. Recertification by a commission indicates that an ETC has used federal high-cost funding for the purpose for which it was intended and fulfilled its obligations as an ETC.

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<sup>36</sup> *In the Matter of the Application of Starlink Services, LLC for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Rural Digital Opportunities Fund Support*, Docket No. P-7047/M-21-26, Order Approving Petitions for ETC Designation in Certain Census Blocks and Requiring Additional Filings, May 28, 2021, Doc. NO. 20215-174628-02.

<sup>37</sup> [https://auctiondata.fcc.gov/public/projects/auction904/reports/winning\\_bidders](https://auctiondata.fcc.gov/public/projects/auction904/reports/winning_bidders)

<sup>38</sup> *In the Matter of the Application of LTD Broadband LLC for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Federal Universal Support*, TC21-001, Final Decision and Order Denying Application for Designation as an Eligible Telecommunications Carrier in Certain Census Blocks; Notice of Entry of Order para. 55-56 (Mar. 21, 2022).

<sup>39</sup> See 47 U.S.C. §214(e)(2) Designation of Eligible Telecommunications Carriers, “A State commission shall upon its own motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the State commission. Upon request and consistent with the public interest, convenience, and necessity, the State commission may, in the case of an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated by the State commission, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the State commission shall find that the designation is in the public interest.”

Finally, Commerce notes that in Docket No. P-999/PR-21-86,<sup>40</sup> the Commission is currently considering Minnesota specific requirements for ETCs to receive RDOF awards. If the Commission decides to grant petitioners' request to build a more complete record on LTD's ETC status, findings from such a record may assist the Commission to determine future state specific requirements to ensure a meaningful ETC designation process.

#### **IV. CONCLUSION**

Since there remain many unserved and underserved broadband locations, and different funds for broadband deployment that impact each other, the importance of the Commission's decision cannot be overstated. The Le Sueur County Administrator notes in his comments from May 18, 2022, other companies have expressed an interest in working with the community, but "RDOF creates a barrier for them to access State and Federal grant dollars."<sup>41</sup>

In response to the current proceeding, LTD should share its position and address the troubling allegations filed in the petition.

Commerce will make recommendations to the Commission on whether to hold a proceeding and the nature of any possible proceeding in Reply Comments.

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<sup>40</sup> See *In the Matter of a Notice to Rural Digital Opportunity Fund (RDOF) Grant Winners*, Docket No. P-999/CI-21-86.

<sup>41</sup> See Comments of Le Sueur County, p. 1.

## **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**  
**Comments**

**Docket No. E6741, P6995/M-22-221 and P6995/M-21-133**

Dated this **1<sup>st</sup>** day of **June 2022**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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
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
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
Corey	Hauer	coreyhauer@ltdbroadband.com	LTD Broadband	PO Box 3064  Blooming Prairie, MN 55917	Electronic Service	No	OFF_SL_21-133_Official
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
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
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
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
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
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

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

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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_M-22-221
Brent	Christensen	brentc@mnta.org	Minnesota Telecom Alliance	1000 Westgate Drive, Ste 252  St. Paul, MN 55117	Electronic Service	No	OFF_SL_22-221_M-22-221
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_M-22-221
Stephen E	Coran	scoran@lermansenter.com	Lerman Senter	2001 L St NW Ste 400  Washington, DC 20036	Electronic Service	No	OFF_SL_22-221_M-22-221
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_22-221_M-22-221
Corey	Hauer	coreyhauer@ltdbroadband.com	LTD Broadband	PO Box 3064  Blooming Prairie, MN 55917	Electronic Service	No	OFF_SL_22-221_M-22-221
Brett	Heather Freedson	bfreedson@lermansenter.com	Lerman Senter	2001 L St NW Ste 400  Washington, DC 20036	Electronic Service	No	OFF_SL_22-221_M-22-221
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	150 S. 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_22-221_M-22-221
Dan	Lipschultz	Dan.lipschultz@lawmoss.com	Moss & Barnett	150 South 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_22-221_M-22-221
Katherine	Marshall	katie.marshall@lawmoss.com	Moss & Barnett	150 S 5th St Ste 1200  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_22-221_M-22-221



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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_M-22-221
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_22-221_M-22-221
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_22-221_M-22-221
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_22-221_M-22-221
Gregory	Whiteaker	greg@hermanwhiteaker.com	Herman & Whiteaker, LLC	6720B Rockledge Drive Suite 150 Bethesda, MD 20817	Electronic Service	No	OFF_SL_22-221_M-22-221
Cameron	Winton	winton.cam@dorsey.com	Dorsey & Whitney LLP	50 S 6TH ST STE 1500  Minneapolis, MN 55402	Paper Service	No	OFF_SL_22-221_M-22-221
Patrick	Zomer	Pat.Zomer@lawmoss.com	Moss & Barnett PA	150 S 5th St #1200  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_22-221_M-22-221