

June 8, 2022

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

**RE: Reply 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 reply 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.

Sincerely,

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

LG/JG/AT/ja  
Attachment

## I. INTRODUCTION

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 or Company). The FCC provisionally awarded LTD \$311,877,936.40 through the Rural Digital Opportunity Fund (RDOF) program to bring broadband service to 102,005 locations in Minnesota. The petition seeks to have the Commission open a proceeding to:

- Receive new information regarding LTD and its expanded ETC status
- Build a record based on the new information that has come to light since granting expanded ETC status to LTD in 2021 to serve the locations in the RDOF award, including review of FCC Form 683, also known as the “long-form.”<sup>2</sup>
- Revoke LTD’s expanded ETC status received in 2021 and deny certification for 2023 RDOF funding.<sup>3</sup>

On May 11, 2022, the Commission issued a Notice of Comment Period related to the joint petition.<sup>4</sup>

## II. SUMMARY OF COMMENTS RESPONDING TO THE COMMISSION’S NOTICE

1. LTD filed comments regarding the opening of an investigative proceeding in response to the petition, arguing that the facts presented by petitioners do not warrant revocation of LTD’s expanded ETC status. LTD also asserted that the Commission does not have the authority to revoke the Company’s ETC status or to evaluate LTD’s long-form application.<sup>5</sup> Moreover, LTD argued that it is exempt from Minn. R. 7811.1400, subp. 15 and Minn. R. 7812.1400, subp. 15, as these administrative rules only apply to local service providers operating under a certificate of authority.<sup>6</sup> LTD opposes the opening of any proceeding, but should a proceeding be opened, it should be expedited and narrow in scope.<sup>7</sup>

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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). P6995/M-21-133, E 6741,P6995/M-22-221, May 6, 2022, Doc. No. 20225-185600-02, p.1.

<sup>2</sup> Petition, p.14.

<sup>3</sup> Petition, p. 15.

<sup>4</sup> Minnesota Public Utilities Commission, Notice of Comment Period, Dockets P6995/M-21-133 and P558 [sic], 6995/M22-221, Issued May 11, 2022.

<sup>5</sup> *LTD Comments*, Document ID No. 20226-186286-02, June 1, 2022, p. 12.

<sup>6</sup> *Id.* p. 9.

<sup>7</sup> *Id.* p. 21.

2. The Minnesota Department of Commerce (Commerce) filed comments stating 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.<sup>8</sup> Commerce noted the interdependency of the FCC and the Commission and encouraged the Commission to consider the effects a determination would have on future proceedings. Commerce withheld recommendations, pending review of comments from other parties.
3. The Office of Attorney General – Residential Utilities Division (OAG-RUD) filed comments emphasizing that oversight of ETCs is integral to the public interest and that an ETC should have the opportunity to analyze and respond to any allegation.<sup>9</sup> The OAG-RUD recommends that the Commission open a proceeding, but did not express a preference for format, to consider the revocation of LTD's expanded ETC designation and their certification for the RDOF funding in 2023.<sup>10</sup> As part of the proceeding, the OAG-RUD recommends that the Commission order LTD to submit its FCC RDOF long form application, and "consider requiring all RDOF ETCs to submit their FCC Form 683 long form applications to the Commission, OAG, and Minnesota Department of Commerce . . . as part of the 2022 ETC certification proceeding."<sup>11</sup>
4. The Office of the Le Sueur County Administrator (Le Sueur County) filed comments stating the RDOF award received by LTD for their County is approximately \$1 million dollars.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup>
5. The Pine County Administrator's Office (Pine County) filed comments expressing concern regarding the feasibility of LTD to provide the necessary infrastructure due lack of understanding of the local typography, and other factors.<sup>15</sup> 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.

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<sup>8</sup> *Commerce Comments*, June 1, 2022, Document ID No. 20226-186296-02, p. 8.

<sup>9</sup> *OAG--RUD Comments*, June 1, 2022. Document ID No. 20226-186303-02, p.3.

<sup>10</sup> *Ibid.*

<sup>11</sup> *Id.* p.4.

<sup>12</sup> *Le Sueur County Public Comment*, May 18, 2022, (filed in docket 21-133 only), Document ID No. 20225-185880-01 p. 1.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Pine County Comments*, May 26, 2022, Document ID No. 20225-186115-01 pp. 1-2.

6. 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.<sup>16</sup>
7. 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.<sup>17</sup> The group supports a Commission proceeding for the revocation of LTD's ETC designation.
8. 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.<sup>18</sup>
9. 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.<sup>19</sup>
10. 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 also urges the Commission to decline to certify LTD for funding.<sup>20</sup>

### **III. THE COMMISSION HAS THE AUTHORITY TO OPEN AN INQUIRY INTO LTD'S ETC DESIGNATION**

Federal law grants broad authority to state commissions concerning the designation of ETCs for the purpose of advancing universal service.<sup>21</sup> In its *2005 ETC Order*, the FCC recognized the authority of state commissions to impose state-specific conditions on ETC eligibility, provided

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<sup>16</sup> *Comments of Balkan Township*, May 26, 2022, (filed in 21-133 only), Document ID No. 20225-186105-01 pp. 1-2.

<sup>17</sup> *ILSR Comments*, June 2, 2022 Document ID No. 20226-186335-01 pp. 2-4.

<sup>18</sup> *Jackson County Comments*, June 3, 2022, Document ID No. 20226-186368-01 p. 1

<sup>19</sup> *MFU Comments*, June 3, 2022, Document ID No. 20226-186367-01 p. 1.

<sup>20</sup> *Minnesota Association of Townships Comments*. June 3, 2022, Document ID No. 20226-186366-01 p. 1.

<sup>21</sup> 47 U.S.C. §214(e)(2).

the conditions do not conflict with the public interest and the goal of expanding universal service:

Section 214(e)(2) of the Act gives states the primary responsibility to designate ETCs and prescribes that all state designation decisions must be consistent with the public interest, convenience, and necessity. We believe that section 214(e)(2) demonstrates Congress's intent that state commissions evaluate local factual situations in ETC cases and exercise discretion in reaching their conclusions regarding the public interest, convenience, and necessity, as long as such determinations are consistent with federal and other state law. States that exercise jurisdiction over ETCs should apply these requirements in a manner that is consistent with section 214(e)(2) of the Act. Furthermore, state commissions, as the entities most familiar with the service area for which ETC designation is sought, are particularly well-equipped to determine their own ETC eligibility requirements.<sup>22</sup>

The OAG-RUD, in its comments, cites extensive authority from both Congress and the FCC that permits, and indeed encourages, states to investigate and take action regarding oversight and continued monitoring of ETC designated entities.<sup>23</sup> Commerce supports and affirms the comments of the OAG-RUD in this regard.

As a matter of Minnesota law, the Commission is empowered to "make such investigations and determinations, hold such hearings, prescribe such rules, and issue such orders with respect to the control and conduct of the businesses coming within its jurisdiction as the legislature itself might make but only as it shall from time to time authorize."<sup>24</sup> The FCC has recognized that state commissions' oversight authority includes the authority to revoke an ETC designation in appropriate circumstances.<sup>25</sup> Only through an investigation can the Commission thoroughly evaluate whether the bar established for revocation has been met.

#### **IV. THE COMMISSION SHOULD NOTE CONCERNS OF SOME COMMENTERS THAT LTD'S RDOF AWARD MAY PREVENT FUTURE STATE FUNDS FROM BEING AWARDED.**

Some of the commenters raised concerns that if LTD receives RDOF funding, other state and federal grants may be excluded. For example, ILSR stated:

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<sup>22</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, FCC 05-46, at ¶ 61 (2005) ("2005 ETC Order").

<sup>23</sup> OAG—RUD Comments, pp. 5-7.

<sup>24</sup> Minn. Stat. § 216A.05, sub 1 (2020).

<sup>25</sup> *2011 Transformation Order*, at ¶1114 and fn. 999.

. . . if LTD receives its funding, it will be harder for other providers to receive support under programs like the Broadband Equity, Access, and Deployment Program (BEAD). BEAD, which is distributed by the National Telecommunications and Information Administration, provides grants of at least \$100 million to states to support broadband deployment projects in underserved areas. Early indications suggest, however, that NTIA will defer to the FCC on areas already served by RDOF, making states loathe to support a different, even if superior, provider when LTD is already receiving federal funds to serve that area.<sup>26</sup>

The Office of Broadband Development, a part of the Department of Employment and Economic Development (DEED) will soon be posting FAQs to this website page: <https://mn.gov/deed/programs-services/broadband/grant-program/>. Commerce understands that the FAQs will address how RDOF awarded areas will be handled in the state broadband grant program.

**V. THE COMMISSION SHOULD INCLUDE LTD’S LONG-FORM APPLICATION IF IT HAS A PROCEEDING**

LTD asserts that the Commission does not have jurisdiction to review “RDOF commitments LTD has made to the FCC” or its long-form application.<sup>27</sup> LTD did not cite federal or state rules, statutes, or orders to support their assertion—and indeed none exist.<sup>28</sup> No federal or state rule, statute, or order, denies state commissions from considering long-form information as part of the important ETC designation process, or from reviewing such material in determining if it should revoke an ETC designation. As acknowledged by the FCC, when states and their commissions designate and monitor ETCs under 47 U.S.C. §214(e)(2), they are allowed to exercise broad authority to make an accurate determination. A meaningful investigation of whether LTD has the capability to fulfill its obligations, if it receives RDOF funding, requires an examination of the long-form application.

**VI. THIS YEAR’S ANNUAL CERTIFICATION DOCKET IS NOT THE APPROPRIATE PROCEEDING TO EXAMINE LTD’S EXPANDED ETC DESIGNATION STATUS**

The petitioners ask the Commission to deny LTD annual certification for 2023 RDOF funding.<sup>29</sup> Annual certification occurs pursuant to 47 C.F.R. § 54.314(a):

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<sup>26</sup> ILSR Comments, p. 6-7.

<sup>27</sup> LTD Comments, p. 12-13

<sup>28</sup> *Ibid.*

<sup>29</sup> Petition pp 8 and 13.

**Certification.** States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator 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.

While there is no question that the Commission should exercise its authority to oversee the ETCs it designates, ensuring robust oversight, this year's annual certification proceeding (for 2023 funding) does not appear to be an appropriate venue at this time. 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.<sup>30</sup> 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.

## **VII. COMMERCE RECOMMENDATIONS**

The Commission has the jurisdiction to take the necessary steps to fulfill its obligation to ensure ratepayer dollars are not subject to waste, fraud, and abuse through FCC high-cost programs for broadband deployment. Central to that obligation is ensuring that an ETC has the managerial, technical, and financial ability to accomplish the requirements of its winning bid.

The collective concerns raised by the petitioners, rural organizations, counties, and townships, that represent potential LTD subscribers provide compelling reasons for the Commission to open an investigation. These commenters recognize that whether LTD can satisfy the requirements of its expanded ETC designation is vital to their constituents. No commenters beyond LTD provided information supporting LTD's ETC designation.

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.

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<sup>30</sup> LTD Comments, p. 19.

## **CERTIFICATE OF SERVICE**

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

**Minnesota Department of Commerce**  
**Reply Comments**

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

Dated this 8<sup>th</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
Ry	Marcattilio-McCracken	ry@ilsr.org	Institute for Local Self-Reliance	2720 East 22nd Street  Minneapolis, Minnesota 55406	Paper 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

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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
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

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_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

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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