

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE PUBLIC UTILITIES COMMISSION

In the Matter of the Petition of LTD
Broadband LLC to Expand Its Designation as
an Eligible Telecommunications Carrier

THIRD PREHEARING ORDER

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

This matter came before Administrative Law Judge James E. LaFave for a prehearing conference on September 20, 2022. LTD requests that this matter be stayed pending LTD's appeal of the Federal Communications Commission's (FCC) denial of its Rural Digital Opportunity Fund (RDOF) long-form application. Minnesota Telecom Alliance (MTA) and Minnesota Rural Electric Association (MREA) (together, Petitioners), the Minnesota Department of Commerce and the Office of the Attorney General-Residential Utilities Division argue that this matter should proceed to hearing. The parties filed letters in support of their respective positions and the record on the parties' requests closed on October 18, 2022, the date the last letter was filed.

Andrew M. Carlson and Peter E. Madsen, Taft Stettinius & Hollister LLP, and Stephen E. Coran, Lerman Senter, PLLC, appeared on behalf of LTD Broadband LLC (LTD).

Richard J. Johnson, Dan Lipschultz (of counsel), and Katherine J. Marshall, Moss & Barnett, A Professional Association, appeared on behalf of the Petitioners.

Richard E.B. Dornfeld Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Commerce).

Kristin Berkland and Joseph Meyer, Assistant Attorneys General, appeared on behalf of the Office of the Attorney General-Residential Utilities Division (OAG).

Marc Fournier and Sally Anne McShane appeared on behalf of the staff of the Minnesota Public Utilities Commission.

Based upon the submissions of counsel and the hearing record,

IT IS HEREBY ORDERED THAT:

1. These proceedings are **STAYED** pending a ruling by FCC on LTD's appeal of the denial of its long-form application.
2. LTD shall serve and file a status report every 120 days beginning on February 1, 2023.
3. A prehearing conference will be held by telephone on **March 6, 2023, at 2:30 p.m.** to review the status of the case. At that time, please call **1-877-304-9269** and when prompted enter passcode **406954#**.

Dated: January 18, 2023


JAMES E. LAFAVE
Administrative Law Judge

MEMORANDUM

On May 6, 2022, Petitioners requested that the Minnesota Public Utilities Commission (Commission) initiate a proceeding to revoke the expanded eligible telecommunications carrier (ETC) designation of LTD and deny LTD's funding certification for 2023.¹ On July 14, 2022, the Commission met to consider Petitioners' request.²

At that meeting, the Commission decided to refer the matter to the Office of Administrative Hearings for a contested case hearing to determine whether there is cause to revoke LTD's ETC designation.³ The Commission also directed that the hearing be "conducted expeditiously."⁴ After the Commission's decision and vote, but before their Order was issued, the Federal Communications Commission (FCC) announced, on August 10, 2022, that it had denied LTD's long-form application and that LTD was "in default on all winning bids not already announced as defaulted."⁵

On August 16, 2022, the Commission issued the Notice of and Order for Hearing.⁶ It noted the FCC decision in a footnote, but the Commission did not meet to discuss the implications and ramifications of the FCC's denial of LTD's long-form application.⁷ LTD appealed the FCC's decision on September 8, 2022.⁸

¹ Notice of and Order for Hearing at 1 (Aug. 16, 2022).

² *Id.*

³ *Id.* at 7.

⁴ *Id.*

⁵ *Id.* at 2, n 4. (Citations omitted).

⁶ Notice of and Order for Hearing.

⁷ *Id.*

The FCC decision is viewed by the parties as a “material change” in this proceeding.⁹ LTD, Commerce, and the OAG all agree that if the FCC does not reverse its position on the long-form application, this matter is moot.¹⁰ Petitioners “vigorously” disagree but were “not in a position to state why” they disagree.¹¹ The parties also agree that the “time sensitivity” of this proceeding has “lessened.”¹²

LTD argues it is a waste of everyone’s time and resources to proceed with this contested case hearing given the FCC has denied LTD’s long-form application. It notes that until the FCC reversed its decision on the long-form application this matter is moot. LTD implied that if the FCC reverses itself and approves LTD’s long-form application, the FCC will have satisfied itself that LTD was able to meet its technical, managerial, and financial obligations to fulfill obligations under the RDOLF program. LTD maintains this is the same inquiry the Commission seeks in through this contested case referral. LTD goes on to argue that even if the FCC reversed its position, there would still be time, at least “six to eight weeks,”¹³ for the parties in this proceeding to determine next steps before any possible funding would flow to LTD as part of the RDOF program.¹⁴

The Petitioners, Commerce, and the OAG disagree. They argue that the FCC’s analysis regarding LTD and its ability to meet its obligations on the RDOF program, while related, are separate from the Commission’s decision regarding whether LTD is the right ETC for the State of Minnesota.¹⁵ They note the Commission, Commerce, and the OAG have an ongoing regulatory relationship with LTD and that these relationships justify proceeding with this contested case.¹⁶

But, Commission staff noted that ultimately, the real question is whether you have unserved or underserved areas and that “whether LTD is an ETC or not becomes irrelevant.”¹⁷ Commission staff also observed there was no rush to resolve this issue.¹⁸

“Judicial economy” refers to “efficiency in the operation of the courts and the judicial system; *esp.*, the efficient management of litigation so as to minimize the duplication of effort and to avoid wasting the judiciary’s time and resources.”¹⁹ Here, we are faced with the prospect of a time-consuming, expensive contested case hearing in a matter that may well be moot. Unless and until the FCC reverses its position on LTD’s long-form application, there is no issue to decide. Staying this proceeding makes sense.

⁸ Prehearing Transcript at 6 (Sept. 20, 2022).

⁹ Prehearing Transcript at 5-6 (Aug. 24, 2022).

¹⁰ *Id.* at 11, 15, 16, 18.

¹¹ *Id.* at 19.

¹² *Id.* at 5-8.

¹³ Letter from Andrew M. Carlson to The Honorable James LaFave (Oct. 18, 2022) (on file with the Minn. Office of Admin. Hearings).

¹⁴ *Id.*

¹⁵ See Prehearing Transcript at 13, 36 (Sept. 20, 2022).; Prehearing Transcript at 29-30 (Aug. 24, 2022).

¹⁶ See Prehearing Transcript at 38 (Sept. 20, 2022).

¹⁷ *Id.* at 27.

¹⁸ *Id.* at 29.

¹⁹ *Harbaugh v. Commissioner of Revenue*, 830 N.W.2d 881, 887 (Minn. 2013) (Strass, J. dissenting) (citing *Black’s Law Dictionary* 923 (9th ed. 2009)).

Moreover, the Commission has not had the opportunity to formally consider the effects and ramifications of the FCC decision.

In addition, if the FCC does change course, it will be based on an analysis that will be similar to what the Commission will face — is LTD capable of fulfilling its technical, managerial, and financial obligations to fulfill obligations under the RDOLF program? While the Commission's interests are somewhat different from the FCC's, the determination of the FCC, an independent federal agency that has a fiduciary interest in seeing the RDOF funds are properly dispersed, is relevant to issues to be addressed in this proceeding. In addition, there will be a window, at least six weeks, for the parties in this proceeding to reconvene to decide next steps if the FCC does reverse course.

If a party is dissatisfied or feels harmed by this ruling, they may seek certification to the Commission.²⁰ This would allow the Commission to fully discuss the issue and provide guidance on how it would like to proceed.

J. E. L.

²⁰ See Minn. R. 1400.7600 (2021).

January 18, 2023

See Attached Service List

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 60-2500-38516
MPUC P-6995/M-21-133
MPUC P-588, P-6995/M-22-221**

To All Persons on the Attached Service List:

Enclosed and served upon you is the Administrative Law Judge's **THIRD PREHEARING ORDER** in the above-entitled matter.

If you have any questions, please contact me at (651) 361-7845, samantha.cosgriff@state.mn.us, or via facsimile at (651) 539-0310.

Sincerely,


SAMANTHA COSGRIFF
Legal Assistant

Enclosure

cc: Docket Coordinator

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

<p>In the Matter of the Petition of LTD Broadband LLC to Expand Its Designation as an Eligible Telecommunications Carrier</p> <p>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</p>	<p>OAH Docket No.: 60-2500-38516 MPUC P-6995/M-21-133 MPUC P-588, P-6995/ M-22-221</p>
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On January 18, 2023, a true and correct copy of the **THIRD PREHEARING ORDER** was served by eService, and United States mail, (in the manner indicated below) to the following individuals:

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