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August 10, 2021

Via Electronic Mail

Mr. Victor Schock
Public Utilities Analyst
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
vschock@nd.gov
ndpsc@nd.gov

**In re: LTD Broadband LLC
Designated Eligible Carrier Application
Case No. PU-21-168
Our File No. 061406-000001**

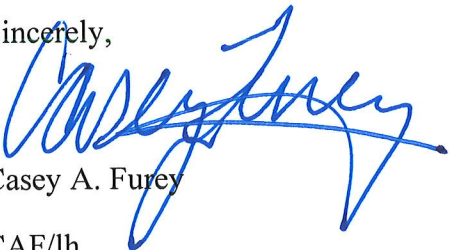
Dear Mr. Schock:

On behalf of LTD Broadband LLC ("LTD Broadband"), enclosed for filing in the above-referenced matter please find the Reply Comments of LTD Broadband LLC.

In response to your July 20, 2021 request for additional information regarding the location of LTD Broadband's awarded RDOF service areas (Request for Information No. 4), also enclosed please find the Designated RDOF Service Area List and corresponding shapefiles for LTD Broadband's awarded service areas.

Please feel free to contact me with any questions or if you would like to discuss.

Sincerely,



Casey A. Furey

CAF/lh
Enc.

cc: Steve Coran (via email); Corey Hauer (via email)

13 PU-21-168 Filed 08/10/2021 Pages: 9
Response to staff request of additional information
LTD Broadband LLC
Casey Furey, Crowley Fleck, PLLP

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

LTD Broadband LLC
Designated Eligible Carrier
Application

Case No. PU-21-168

REPLY COMMENTS OF LTD BROADBAND LLC

LTD Broadband LLC (“LTD” or “LTD Broadband”), by counsel, hereby replies to the comments of the Broadband Association of North Dakota (“BAND”) filed with the Commission on July 19, 2021 as Docket No. 11 in Case No. PU-21-168 (“Comments”). In its Comments, BAND raises certain “concerns” about LTD Broadband’s application to be designated as an eligible telecommunications carrier (“ETC”) for certain census blocks in North Dakota (“Application”).¹ BAND then contrives questions it believes are relevant to oppose the Application.² BAND confuses the issues before the Commission and incorrectly states the criteria to be considered in reviewing LTD’s Application.

The Comments lodge speculative and hypothetical claims that do not outweigh the benefits of deploying broadband services to unserved areas within North Dakota. As described below, approval of the Application is warranted. The Application demonstrates that LTD Broadband meets the state and federal statutory and regulatory requirements for ETC designation. There is no basis for the Commission to dismiss or deny LTD’s Application. Commission approval of the Application is a predicate to the Federal Communications Commission’s (“FCC”) authorization of support for deployment of voice and Gigabit broadband service to 831 unserved locations in North Dakota. Notably, these are locations that BAND’s members elected to not serve. The Commission should approve the Application at the earliest possible time.

¹ BAND Comments at 2.

² See *id.* at 5.

Background

On December 7, 2020, the FCC announced LTD Broadband as the auction winner of the Rural Digital Opportunity Fund (“RDOF”) Phase I reverse auction for census blocks in 15 states, including North Dakota. In North Dakota, LTD Broadband won \$8,574,318 in support over ten years to deploy voice and 1 Gbps/500 Mbps broadband service to 831 unserved locations in rural areas of North Dakota.

On May 7, 2021, LTD Broadband filed the captioned Application seeking ETC designation in the census blocks where LTD Broadband is the auction winner. Designation of LTD Broadband as an ETC in North Dakota is a prerequisite to LTD obtaining RDOF support – without ETC designation, LTD Broadband will be unable to deploy supported voice and broadband service to the rural locations in North Dakota that are currently unserved. In addition to prosecuting its Application, LTD Broadband also has filed and is working with the FCC to complete its RDOF long-form application.

Discussion

I. DESIGNATING LTD BROADBAND AS AN ETC WILL SERVE THE PUBLIC INTEREST

Pursuant to Section 214(e)(2) of the Communications Act of 1934, as amended, to obtain ETC designation, an applicant must: (a) be a common carrier; (b) offer certain services prescribed by the FCC; (c) advertise the availability of the services; and (d) request an appropriate designated service area.³ As demonstrated in the Application, LTD Broadband meets each of these requirements for the requested RDOF service areas. Additionally, through the RDOF Phase I process, the FCC is undertaking a thorough review of LTD Broadband’s long-form application to determine whether it is reasonably capable of meeting its proposed performance requirements and

³ See 47 U.S.C. 214(e).

is otherwise qualified to receive RDOF support. The Commission is called on to determine if it is in the public interest to designate LTD Broadband as an ETC in the RDOF Phase I areas as requested. The Commission's criteria for making public interest determinations in ETC designation cases is well established. Relying on N.D. Admin. Code § 69-09-05-12, the Commission considers the benefit of increased consumer choice and the unique advantages and disadvantages of the applicant's service offering.⁴

In finding that ETC designations are in the public interest, the Commission has held "[i]t is significant that subscribers in these RDOF Phase I areas will have access to high speed broadband."⁵ The purpose of RDOF is to provide voice and broadband connectivity to areas that are currently underserved or unserved. It should not be ignored that the FCC identified areas for support because they are not currently receiving service. RDOF funding is authorized following an open competitive bidding process whereby service providers were required to demonstrate they could provide service to eligible unserved areas. Clearly such designation is in the public interest.

Once ETC status is obtained, the carrier must continue to comply with the requirements of Section 214(e) of the Communications Act of 1934, as amended, to maintain eligibility to receive support.⁶ ETC designation is not a guarantee of continued universal service support and is incentive for carriers to provide the required services and comply with state and federal laws and rules.⁷

⁴ See e.g. *In re Cable One VoIP LLC*, Order, Case No. PU-21-123, Docket No. 13; *In re Red River Rural Telephone Association*, Order, Case No. PU-21-088, Docket No. 12; *In re Polar Telecom, Inc.*, Order, Case No. PU-21-051, Docket No. 9; *In re BEK Communications*, Order Case No. PU-20-458, Docket No. 11.

⁵ *Id.*

⁶ See *In re GCC License Corp.*, 623 N.W.2d 474, 481 (2001).

⁷ *Id.* at 481.

II. HYPOTHETICAL AND SPECULATIVE CLAIMS ARE NOT A PROPER BASIS FOR DENIAL AND THE COMMENTS PRESENT NO ISSUES OF CONCERN TO THE COMMISSION

BAND presents a number of questions about LTD Broadband, none of which is relevant to the Commission's consideration of the Application. In fact, many of BAND's questions are specifically covered by the FCC and are being considered by its staff in thoroughly vetting LTD Broadband's RDOF long-form application. As a general proposition, the FCC requires applicants to submit "information used to determine whether the applicant has the legal, technical, and financial qualifications to participate in a Commission auction for universal service support."⁸ For applicants like LTD Broadband that are audited in the ordinary course of business, to participate in the RDOF auction it was required to submit "financial statements from the prior fiscal year, including balance sheets, net income, and cash flow, along with an opinion letter from an independent certified public accountant and the accompanying notes."⁹ The FCC reviews this information to "determine based on the totality of information available whether it is reasonable to expect that the applicant is financially capable of fulfilling its Rural Digital Opportunity Fund obligations."¹⁰ In its long-form application, LTD Broadband must:

[D]escribe how the required construction will be funded in each state. The description should include the estimated project costs for all facilities that are required to complete the project, including the costs of upgrading, replacing, or otherwise modifying existing facilities to expand coverage or meet performance requirements. The estimated costs must be broken down to indicate the costs associated with each proposed service area at the state level and must specify how Rural Digital Opportunity Fund support and other funds, if applicable, will be used to complete the project. The description must include financial projections demonstrating that the long-form applicant can cover the necessary debt service payments over the life of any loans.¹¹

⁸ *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020*, Public Notice, 35 FCC Rcd 6077, 6088 (WTB 2020) ("*Auction Procedures Public Notice*"). See also 47 C.F.R. § 54.804.

⁹ *Id.* at 6095. See also 47 C.F.R. § 54.804(a)(7)(i).

¹⁰ *Auction Procedures Public Notice* at 6097-98.

¹¹ *Id.* at 6174-75.

As is clear, the FCC will undertake a thorough review of LTD Broadband’s financial capabilities and also determine whether it has the additional resources to meet its deployment obligations. Furthermore, the FCC has established certain buildout and deployment milestones as a condition for receiving RDOF support. Any “concerns” that BAND might have will be addressed by the FCC. BAND’s first two questions thus are irrelevant to the Commission’s consideration and outside the scope of its review.

Also irrelevant is whether the promised services are “sustainable beyond the RDOF funding period.”¹² Contrary to BAND’s unsupported statement, there is no requirement that “LTD must demonstrate that it has a business model that will support the locations beyond the RDOF funding window.”¹³ The RDOF funding period is ten years,¹³ and there are no federal obligations beyond that term. BAND fails to appreciate LTD Broadband’s obligations and attempts to impose requirements that do not exist.

BAND next asks whether LTD Broadband will effectively become the carrier of last resort in its supported areas.¹⁴ Merely raising questions does not form the basis for denial of the Application. In any event, LTD Broadband well understands 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 [e.g., the first day of the month after it is authorized to receive RDOF support].”¹⁵ This clear statement should allay BAND’s concerns.

BAND next asks whether designating LTD Broadband as an ETC will impede future grant opportunities, and asks the Commission to “carefully weigh LTD’s ability to deliver on its

¹² BAND Comments at 2.

¹³ *Id.* at 3.

¹⁴ *See id.*

¹⁵ *Rural Digital Opportunity Fund*, 35 FCC Rcd 686, 745 (2020).

commitment given the limited ability of other carriers to provide funded services in these locations during the 10-year RDOF funding period.”¹⁶ There are at least three problems with both the question and BAND’s suggested response to its own question. First, future funding programs may be available to potential competitors or may be available only to RDOF recipients seeking to augment support with state funds. Irrespective of what funding opportunities may be available within the next ten years, the Commission should not deny the Application because some other opportunity, currently unknown, may present itself. Second, it is beyond the Commission’s purview to substitute its judgment for the FCC’s. Third, it is possible, if not probable, that “other carriers” elected to not deploy service to these rural locations because they are large, publicly traded price cap carriers uninterested in serving sparsely populated rural areas or did not receive appropriate support or deployment incentives. That is not the case with LTD Broadband and the RDOF support it expects to receive in North Dakota.

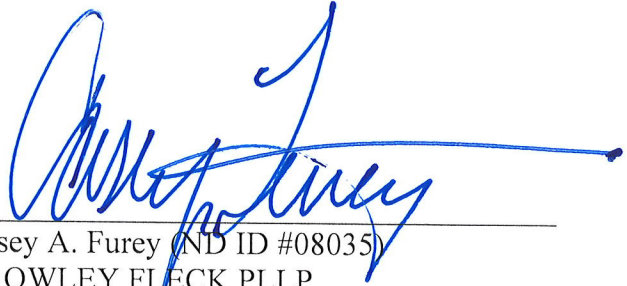
BAND’s final concern is whether the award of RDOF support to LTD Broadband is the Commission’s “best opportunity” to provide voice and Gigabit broadband service to 831 locations in North Dakota.¹⁷ Of course, that is not the question before the Commission – it is not charged with determining what is the “best opportunity,” but must only decide whether LTD Broadband meets the Commission’s requirements to be an ETC. The Commission cannot and should not substitute a new unclear and arbitrary standard in considering the Application, undoubtedly a standard the Commission has never applied in considering ETC applications. Rather, it should adhere to the statutory mandates of the Communications Act and North Dakota law.

¹⁶ BAND Comments at 4.

¹⁷ *Id.*

In sum, BAND's reliance on speculation, innuendo and surmise fail to cast doubt on LTD Broadband's qualifications. For the reasons set forth in LTD's Application and stated herein, the Commission should promptly approve the Application and designate LTD Broadband as an ETC for the designated census blocks in North Dakota.

Dated this 10th day of August, 2021.



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Attorneys for LTD Broadband LLC

LTD Broadband LLC
Designated RDOF Service Area

Census Block Group ID	County
380170403003	Cass
380170404002	Cass
380170404001	Cass
380170402002	Cass
380170403002	Cass
380170404003	Cass
380170102012	Cass
380170403001	Cass
380170102031	Cass
380170103051	Cass
380079631001	Billings
380899640002	Stark
380899640001	Stark
380379659001	Grant
380979701002	Traill
380979702002	Traill
380859408002	Sioux