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August 10, 2021

*Via U.S. Mail*

Mr. Steve Kahl  
Executive Director  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480  
[ndpsc@nd.gov](mailto:ndpsc@nd.gov)

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

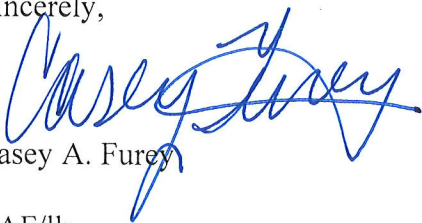
Dear Mr. Kahl:

On behalf of LTD Broadband LLC (“LTD Broadband”), enclosed for filing in the above-referenced matter please find an original and seven hard copies of LTD Broadband’s Application to Protect Information.

Also enclosed but **not** to be filed is a sealed envelope marked **PROTECTED INFORMATION – PRIVATE - Exhibit A** - containing confidential materials relating to the application.

Please feel free to contact me with any questions.

Sincerely,



Casey A. Furey

CAF/lh  
Enc.

cc: Victor Schock (via email)  
Steve Coran (via email)  
Corey Hauer (via email)

14 PU-21-168 Filed 08/10/2021 Pages: 6  
Application for Protection of 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**

**LTD BROADBAND LLC'S APPLICATION TO PROTECT INFORMATION**

Applicant LTD Broadband LLC ("LTD Broadband") submits this application to protect certain trade secret and confidential information, being provided at the request of Commission Staff, from public disclosure. Specifically, LTD Broadband moves the Commission for entry of a trade secret protective order under N. D. Admin. Code § 69-02-09-01 to protect certain documents provided in response to Commission Staff's Requests for Information ("RFI") Nos. 1, 2, and 3 made in electronic correspondence dated July 20, 2021, attached hereto as Exhibit A (the "Confidential Information"). This request satisfies the requirements for an application to protect information set forth in N.D. Admin. Code § 69-02-09-01.

**1. General description of information sought to be protected<sup>1</sup>**

The Confidential Information subject to this Application includes (i) LTD Broadband's financial statements (RFI No. 1); (ii) financial information regarding costs of LTD Broadband's planned services (RFI No. 2); and (iii) information about LTD Broadband's planned services within Rural Digital Opportunity Fund ("RDOF")-awarded census blocks in North Dakota (RFI No. 3).

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<sup>1</sup> See N. D. Admin Code § 69-02-09-01(1).

## **2. Authority on which the protection is based<sup>2</sup>**

This Application is filed in accordance with N.D. Admin. Code § 69-02-09-01. The Commission will protect information that qualifies for the definition of "trade secret" under N.D.C.C. § 47-25.1-0. North Dakota Century Code § 44-14-18.4 additionally provides certain proprietary, commercial, and financial information is confidential and exempt from disclosure under North Dakota's open records law. The Commission may grant an application for protection if it is found to meet the definition of trade secret under N.D.C.C. § 47-25.1-01 or if the information is otherwise determined to qualify for protection. *See* N.D. Admin. Code §§ 69-02-09-01, 69-02-09-03, 69-02-09-04.

## **3. Basis for LTD Broadband's protection request<sup>3</sup>**

The documents in Exhibit A contain "trade secret" information under N.D.C.C. § 47-25.1-01.<sup>4</sup> Additionally, the documents are considered "confidential" because they are of a privileged nature, have not been previously disclosed to the public, and meet the definitions of "commercial information" "financial information," "propriety information," and/or "trade secret" set forth under N.D.C.C. § 44-04-18.4. LTD Broadband's financial information and planned service information could have economic value to potential competitors because it is highly sensitive information for which public disclosure could place LTD Broadband at a competitive disadvantage. The financial and service information requested by Commission Staff is not readily available by public means to competitors or the general public. LTD's financial and service

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<sup>2</sup> *See* N.D. Admin. Code § 69-02-09-01(2).

<sup>3</sup> *See id.* at §§ 69-02-09-01(3), 69-02-09-01(4).

<sup>4</sup> N.D.C.C. § 47-25.1-01. Under North Dakota law "*trade secret*" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: a. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and b. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

information is not disclosed to the public or to persons other than: authorized employees and agents of LTD Broadband who need to know the information to fulfill their responsibilities; third persons bound by agreement to maintain confidentiality of the information; and regulatory bodies such as the Federal Communications Commission (“FCC”) which treats information submitted by RDOF applicants as presumptively confidential,<sup>5</sup> based on its determination that competitors, disappointed bidders, and others should not have an opportunity to review information that the FCC has taken precautions to protect from public disclosure. Moreover, with respect to certain detailed portions of RDOF applications which contain the Confidential Information, the FCC firmly committed to “treat all information submitted...as confidential and... withhold it from routine public inspection.”<sup>6</sup> Therefore, the Commission’s release, or public disclosure of LTD Broadband’s information contained within Exhibit A would be contrary to the restrictions ordered by the FCC with respect RDOF Auction 904 – on which LTD Broadband reasonably relied when it submitted its long-form RDOF application to the FCC. Indeed, such restrictions exist to enable applicants to submit detailed plans about their businesses, network deployments, and financial qualifications without concern of competitive harm.

Any release or public disclosure of the Confidential Information also would materially harm LTD Broadband, as it would expose to LTD Broadband’s competitors sensitive and proprietary “trade secret” market information related to competitive services currently offered (and in the future, to be offered) by LTD Broadband. The documents and information contained in Exhibit A provide detailed technical and financial information about LTD Broadband and its

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<sup>5</sup> *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd 6077, 6167 & 6168 (2020).

<sup>6</sup> *Id.* at 6168 ¶ 303; *see also id.* at 6175 ¶ 312.

deployment plans, which the FCC has determined is confidential and proprietary information that should not be made available to the public. Any release, or public disclosure of such sensitive information would enable LTD Broadband's competitors to better understand its network plans, costs, and efforts to market its services, and would provide competitors a pronounced benefit that would hinder LTD Broadband's ability to compete in the North Dakota market. Conversely, the Commission's release, or public disclosure of the Confidential Information would not in any respect facilitate the Commission's review of LTD's ETC designation application in the above-referenced docket, or aid the Commission in the execution of its duties.

#### **4. Request for waiver of redacted public version of information<sup>7</sup>**

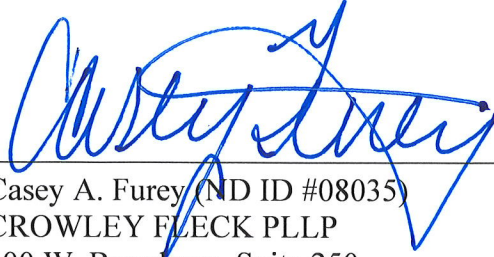
A redacted public version of the information is to accompany an application for protection unless the requirement is waived by the Commission. LTD Broadband respectfully requests the Commission waive the redaction requirement set forth in N.D. Admin. Code § 69-02-09-01(5). For the reasons discussed herein, LTD Broadband submits that it is not possible to file redacted public versions of the Confidential Information.

Accordingly, LTD Broadband requests the Commission grant this Application and the waiver request, allow the requested information to be filed confidentially, and enter an appropriate protective order limiting disclosure of the Confidential Information.

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<sup>7</sup> See N.D. Admin. Code § 69-02-09-01(5).

Dated this 10<sup>th</sup> day of August, 2021.



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