



Public Service Commission State of North Dakota

COMMISSIONERS

Brian Kroshus
Julie Fedorchak
Randy Christmann

600 East Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480
Web: www.psc.nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

September 23, 2021

Public Service Commission
Attention: Steve Kahl
600 East Boulevard Avenue, Dept 408
Bismarck, ND 58505-0480

In re: LTD Broadband LLC
Designated Eligible Carrier
Application
Case No. PU-21-168

Dear Mr. Kahl,

On May 7, 2021 LTD Broadband LLC (LTD) filed an application for designation as an eligible telecommunications carrier (ETC) for the purpose of receiving Federal Communications Commission (FCC) Rural Digital Opportunity Fund (RDOF) Phase I funding in FCC specified census blocks in North Dakota. The FCC requires that LTD be designated as an ETC by June 7, 2021. LTD proposes to provide these services using a combination of its own facilities and the facilities of other carriers.

Advocacy staff (Staff) conducted a review of LTD to ascertain if it meets the requirements of North Dakota Century Code (NDCC) section 49-21, North Dakota Administrative Code (NDAC) section 69-09-05, Federal Communications Act of 1934 and as amended by Federal Telecommunications Act of 1996 (47 USC).

NDAC section 69-09-05-12 requires that a telecommunications company desiring designation as an ETC to make application to the Commission for such designation.

NDCC section 49-21-01 (3) specifies an ETC means: a telecommunications company designated under section 214(e) of 47 USC as eligible to receive universal service support in accordance with section 254 of 47 USC.

47 USC section 214 requires that commission designation as an ETC must be in the public interest.

Staff investigation involved reviewing LTD's application, responses to data requests, review of the relevant North Dakota rules and laws, review of FCC regulations, and a review of the status and requirements of the FCC's RDOF funding process.

The investigation found the following facts:

1. LTD is a Nevada Limited Liability Company.
2. LTD currently services about 16,000 customers in 6 states.
3. LTD received RDOF awards in 15 states totaling 528,088 customers and \$1,320,920,718. A 3300% increase in customers.

As a result of this investigation, Staff does not believe it is in the public interest of North Dakota to grant ETC status to LTD. It is not technically or financially feasible for LTD to buildout the necessary infrastructure in the time required by the FCC for RDOF. This would result in the North Dakota locations being ineligible for other funding until such time as the resulting corrective action and/or legal proceedings with the FCC have been completed. This would leave these North Dakota customers without other reasonable options for many years in the future. This is obviously not in the public interest.

Based on this and the details contained within the filing, Staff recommends denial of LTD's request to be designated as an ETC for the purpose of receiving RDOF Phase I funding, and respectfully requests that the attached letter be sent to the FCC on behalf of the North Dakota Public Service Commission Public Utilities Division Director.

Respectfully,

A handwritten signature in blue ink, appearing to read 'V. Schock', with a long horizontal flourish extending to the right.

Victor Schock
NDPSC Advocacy Staff

Enclosure: Proposed letter from PUD Director to FCC

cc: Casey Furey cfurey@crowleyfleck.com (via email)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

_____)	
In the Matter of)	AU Docket No. 20-34
)	
LTD BROADBAND, LLC)	WC Docket No. 10-90
)	
)	WC Docket No. 19-126
Petition of for Waiver of Section 54.804(b)(5))	
Lifeline Broadband Provider Eligible)	
Telecommunications Carrier)	
_____)	

**RESPONSE OF THE NORTH DAKOTA PUBLIC SERVICE COMMISSION TO THE
PETITION OF LTD BROADBAND, LLC FOR WAIVER OF SECTION 54.804(B)(5) OF
THE COMMISSION'S RULES**

LTD Broadband, LLC ("LTD") has requested that the Federal Communications Commission ("FCC" or "Commission") grant it a limited waiver of 47 C.F.R. § 54.804(b)(5) in order to provide LTD additional time to demonstrate its designation as an Eligible Telecommunications Carrier ("ETC") in conjunction with LTD's participation in the FCC's Auction 904 as an auction winner for Rural Digital Opportunity Fund ("RDOF") Phase I support.

The Public Utility Division ("PUD") of the North Dakota Public Service Commission ("NSPSC") would provide this response in the interest of ensuring the record with regard to the ETC designation process in North Dakota for LTD, as well as others, is clear. These comments are those of PUD, which has the responsibility to review all ETC applications and make recommendations to the NDPSC, and do not reflect any position, comment or response by the NDPSC itself. Further, PUD takes no position as to the question of good

cause for the requested waiver. Again, the purpose of this response is to ensure the FCC has accurate information with regard to the RDOF based ETC designation process in North Dakota.

I. ETC Designation Orders in North Dakota Issued on or Before June 7, 2021

Deadline

PUD would disagree with LTD's suggestion that they advised LTD of a 30-day approval process for ETC applications in North Dakota. No staff member or NSPSC representative recalls speaking to LTD prior to receiving their ETC application on May 7, 2021. In fact, our normal period of time for a notice of opportunity to be issued in advance of its expiration is 45 days, which in and of itself makes LTD's claim impossible. North Dakota received nine (9) applications seeking ETC designation filed by winning bidders in the RDOF auction for census blocks in North Dakota. Of those, eight (8) were filed on or before March 30, 2021, with all eight (8) of those applications receiving ETC designation orders on or before May 27, 2021. Accordingly, 100% of the applications timely filed (i.e., prior to March 30, 2021) with the NDPSC were reviewed by PUD and orders granting ETC designation issued on or before May 27, 2021, well in advance of the FCC's June 7, 2021 deadline.

II. Intervention Activity Associated with RDOF ETC Designation Applications

Of the nine (9) applications for ETC designation, none drew interventions. However, comments were filed by Rural Local Exchange Carriers ("RLECs") in LTD's application because the application requested ETC designation within exchanges located within the study areas of various RLECs for which RDOF support was not granted.

Further, NDPSC Advocacy Staff filed a letter to the NDPSC recommending denial of LTD's application on the basis that it is not in the public interest in North Dakota.

III. PUD and NDPSC Assistance and Accommodation for RDOF Based ETC Applications

PUD wants to note the effort and assistance that PUD and the NDPSC Commissioners have held out to the RDOF ETC applicants in an effort to streamline the process and to help them meet the FCC's June 7, 2021 deadline. This includes such actions as:

- Use of a streamlined hearing process to expedite the hearing on the merits.
- Consistent use of notice of opportunity for hearing timeframes and issues to be considered.
- PUD has devoted significant resources to the RDOF ETC designation process in general and has been ready, willing and able to discuss questions raised by applicants and to collaborate on finding solutions. Nonetheless, ultimately the applicants are responsible for meeting the requirements of the rules and providing all required information necessary to support their application(s).

CONCLUSION

Once again, PUD is making no recommendation as to the reasonableness of LTD's request for waiver. The purpose of this response is to ensure there is an understanding that PUD and the NDPSC have been, and will continue to be, active and supportive with regard to processing all RDOF related ETC designation applications. Any suggestion or intimation that PUD or the NDPSC have been reticent or the source of

extraordinary delay in processing any such ETC designation applications would be inaccurate.

Respectfully submitted,

Patrick Fahn
pfahn@nd.gov
(701) 328-4077
Director, Public Utilities Division
North Dakota Public Service Commission
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480

Date: September 27, 2021