

# Memorandum

To: Commissioners Christmann, Haugen-Hoffart, and Fedorchak,

From: John M. Schuh, Legal Counsel

Date: October 3, 2023

Re: PU-21-168, LTD Broadband LLC's Application for ETC Designation

On May 7, 2021, LTD Broadband LLC (hereinafter "LTD") submitted an Application for Designation as an Eligible Telecommunications Carrier (ETC) pursuant to section 214(e)(2) of the Communications Act of 1934. LTD's application sought designation as an ETC to avail itself of support from the Federal Universal Service Fund (USF), including support through the Federal Communications Commission's (FCC) high-cost USF program. The primary purpose of this designation was to enable LTD to access funding through the Rural Digital Opportunity Fund (RDOF) Auction for the deployment of broadband and voice communications services in unserved areas of North Dakota.

Following LTD's application submission, the Public Service Commission (PSC) received comments from Broadband Association of North Dakota (BAND), which raised concerns regarding the suitability of the requested areas for broadband service deployment. BAND contended that these areas lacked adequate support levels from the FCC, rendering them economically challenging to serve. BAND further asserted that LTD did not possess the requisite network infrastructure capable of delivering the committed service levels and had failed to demonstrate its capability to do so.

Advocacy Staff conducted a thorough review of LTD's application. Based on their assessment, Advocacy Staff concluded that it would not be in the public interest for North Dakota to grant ETC status to LTD. They determined that LTD lacked the technical and financial feasibility to construct the necessary infrastructure within the time frame stipulated by the FCC for the RDOF program. Consequently, Advocacy Staff recommended the denial of LTD's application.

The FCC had mandated that successful RDOF funding recipients must obtain ETC designation from each state they secured RDOF bids in by June 7, 2021. LTD failed to meet this crucial deadline. Subsequently, on October 20, 2021, the FCC denied LTD's request for a waiver of the deadline to provide documentation of ETC designation. In response, on November 19, 2021, LTD filed a petition for reconsideration with the FCC. Acknowledging that a denial of the FCC's petition for reconsideration could potentially render the proceeding moot, the PSC issued a Notice of Continuance. However, LTD did not submit any additional documentation or filings to the PSC during this period.

Upon reviewing the FCC's available filings pertaining to this matter, it was revealed that on August 10, 2022, the FCC concluded its review of LTD's application to deploy gigabit fiber in eleven states. The FCC determined that, based on a comprehensive evaluation of the long-form applications, the expansive service areas covered by the winning bids, and the inadequacy of LTD's responses, LTD was not reasonably capable of complying with the FCC's requirements. Consequently, the FCC denied LTD's long-form applications and declared LTD to be in default on all winning bids that had not already been announced as defaulted. The FCC also dismissed as moot LTD's petition for reconsideration of the Bureau's denial of LTD's request for additional time to obtain an ETC designation in North Dakota.

In light of the FCC's determinations and the procedural developments outlined above, the Advisory Staff recommends an order to deny the application and close the case.

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