

April 12, 2021

Via E-filing

Will Seuffert, Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E., Suite 350
St. Paul, MN 55101-2147

**Re: Notice to Rural Digital Opportunity Fund (RDOF) Grant Winners
Docket Number: P999/CI-21-86**

**Petition of LTD Broadband LLC to Expand its Designation as an Eligible
Telecommunications Carrier
Docket Number: P6995/M-21-133**

Dear Mr. Seuffert:

Enclosed are the Reply Comments of LTD Broadband LLC in the above-referenced matters. Please contact me if there are any questions concerning this matter.

Respectfully submitted,

/s/ Stephen E. Coran

Stephen E. Coran

Counsel to LTD Broadband LLC

cc: Service List



**STATE OF MINNESOTA
BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John Tuma	Commissioner

**In the Matter of a Notice to Rural Digital Opportunity Fund (RDOF) Grant Winners
Docket Number: CI-21-86**

**In the Matter of the Petition of LTD Broadband LLC to Expand its Designation as an
Eligible Telecommunications Carrier
Docket Number: 21-133**

REPLY COMMENTS OF LTD BROADBAND LLC

LTD Broadband LLC (“LTD”), by its counsel and pursuant to the Notice of Extended Comment Period issued March 2, 2021 with respect to Docket Number CI-21-86, hereby submits Reply Comments in response to the initial Comments filed in the above-captioned proceedings.

Introduction

LTD is an existing Eligible Telecommunications Carrier in the State of Minnesota. In connection with the Connect America Fund (“CAF”) Phase II program established and implemented by the Federal Communications Commission (“FCC”), on February 8, 2019, the Minnesota Public Utilities Commission (“Commission”) designated LTD as an ETC for 288 census blocks in the state.¹

On February 17, 2021, LTD filed its petition (“Petition”) for expansion of its ETC designation to include 950 additional census blocks (102,005 locations that LTD won in the FCC’s reverse auction for Rural Digital Opportunity Fund (“RDOF”) Phase I support. Upon authorization of support, LTD will receive is \$311,877,936.40 in RDOF support over 10 years,

¹ Docket Number P-6995/M-18-653.

beginning upon authorization of support. The FCC’s authorization of support is conditioned upon LTD obtaining ETC designation for the RDOF census blocks it won at the RDOF auction.

On March 26, 2021, four parties filed Comments with respect to the Petition. The Minnesota Department of Commerce (“DOC”) “recommends approval of the carrier’s petition for designation as an ETC in locations designated for the receipt of its RDOF award.”² DOC did not recommend any conditions other than those established by the Commission for all petitioners.³ Similarly, the Minnesota Office of the Attorney General (“OAG”) recommended designation of LTD as an ETC.⁴ It suggested that the Commission adopt certain obligations on ETC petitioners, and did not ask that additional conditions be placed on LTD.⁵ LTD appreciates the record support of each of these state governmental bodies.

Two commenters ask the Commission to deny the Petition. The Minnesota Telecom Alliance (“MTA”), a trade association of incumbent telecommunications carriers, expresses its concerns about LTD’s consumer protections and Lifeline advertising, and argues that grant of the Petition would not be consistent with the public interest.⁶ Paul Bunyan Rural Telephone Cooperative (“PBRTC”), a competing bidder for RDOF support in Minnesota, relies on speculation and innuendo in alleging that “LTD is exceedingly likely to default on” its federal RDOF obligations.⁷ Neither MTA nor PBRTC present concerns sufficient for the Commission to deny the Petition. Instead, the Commission should follow the recommendations of DOC and OAG and grant the Petition so that LTD may begin to deploy its Gigabit broadband and voice network to more than 100,000 unserved locations across the state.

² DOC Comments at 17.

³ *See id.*

⁴ OAG Comments at 1.

⁵ *See id.* at 22.

⁶ MTA Comments at 2-3.

⁷ PBRTC Comments at 8.

Discussion

I. LTD HAS DEMONSTRATED THAT IT WILL SATISFY CONSUMER PROTECTION AND SERVICE QUALITY STANDARDS

LTD's Petition for expansion of its ETC designation includes certifications and statements confirming that it will comply with consumer protection and service quality standards. Specifically, the Petition states that "[u]pon designation as an ETC to additional areas, LTD Broadband will satisfy all consumer protection and service quality standards as provided in 47 C.F.R § 54.202(a)(3), as well as all applicable state specific consumer protection and service quality standards."⁸ This statement is substantially similar to statements made by other ETC applicants in the current RDOF docket.⁹ Moreover, neither DOC nor OAG recommended any special treatment of LTD, instead suggesting that the Commission consider adopting consumer protections applicable to all ETCs.¹⁰

As noted by DOC, "[m]any of the ETC petitioners have agreed to comply with the consumer protections afforded by the Commission's rules and the Department supports the Commission accepting the representations by these companies that they will comply with Commission rules."¹¹ For those like LTD that represented its compliance with consumer protection standards, DOC recommended that the Commission "accept[] the representations by

⁸ Petition at Attachment 2, p. 9.

⁹ See, e.g., Interstate Telecommunications Cooperative, Inc. Application for Eligible Telecommunications Carrier Designation, P515/AM-21-180, at 9-10; Notice of Midcontinent Communications Expansion of Service Area, P6186/SA-21-124, at 17; Application of AMG Technology Investment Group, LLC D/B/A NextLink Internet for Designation as an Eligible Telecommunications Carrier, P7049/M-21-31, at 13; Petition of Red River Rural Telephone Association DBA Red River Communications for Expanded Designation as an Eligible Telecommunications Carrier, P558/M-21-132, at 8; Application of Starlink Services, LLC for Designation as an Eligible Telecommunications Carrier for Purposes of Receiving Rural Digital Opportunities Fund Support; Request for Expedited Consideration, P7047/M-21-26, at 13-14.

¹⁰ See DOC Comments at 22-23; OAG Comments at 22. DOC proposes consumer protections for those applicants that, unlike, LTD, "have not broadly agreed to comply with the Commission rules." DOC Comments at 22.

¹¹ *Id.*

those companies that stated in their petitions that they will comply with Commission rules.”¹²

LTD has done at least as much as other applicants, and more than some, in representing its compliance with consumer protections. Nothing further is required.

MTA and PBRTC contend that LTD has a poor track record in handling customer complaints and that this should result in denial of its Petition.¹³ They cite a single source – the Better Business Bureau – for the proposition that LTD has a low customer rating.¹⁴ They apparently believe that the mere existence of 14 customer complaints, without any elaboration as to the substance of the complaints, is somehow excessive. But MTA and PBRTC fail to compare LTD’s customer service reputation with other broadband providers or to explain that a small sample of nine customer reviews is somehow significant enough to raise questions that should result in denial of LTD’s Petition, notwithstanding the recommendations of two state agencies charged with consumer protection. Notably, and illustrating their reliance on selective data, MTA and PBRTC also ignore other sources of customer reviews such as Google, where LTD has a 4.44-star rating based on 81 customer reviews.¹⁵

II. LTD HAS DEMONSTRATED THAT IT WILL COMPLY WITH LIFELINE PROGRAM REQUIREMENTS

In its Petition, LTD stated that:

LTD Lifeline terms and conditions address customer eligibility provisions and the availability of subsidies under the Lifeline program and the Minnesota Telephone

¹² *Id.* at 23. Notably, neither MTA nor PBRTC have requested denial of ETC petitions submitted by other RDOF auction winners.

¹³ MTA Comments at 3; PBRTC Comments at 9-10.

¹⁴ MTA Comments at 3; PBRTC Comments at 9-10. Whether LTD’s web site includes the open internet statement required by FCC rules is outside the scope of the Commission’s jurisdiction. *See* PBRTC Comments at 10.

¹⁵ *See* <https://broadbandnow.com/LTD-Broadband> (last visited April 8, 2021). A sample of customer reviews: “We have had excellent service;” “I would recommend this service to those outside the conventional internet providers;” “Overall, it’s been the best Internet service for rural areas that we’ve ever had;” “I recommend LTD Broadband to anyone! I love the hometown feeling of a local company. For the price and the product that you get, it’s an amazing deal.”

Assistance Plan. LTD is committed to providing the supported services throughout the Service Area to all customers who make a request for such services if service can be provided at reasonable cost by constructing network facilities. LTD's voice telephony plans include local, intrastate interexchange, and interstate long distance all inclusive.¹⁶

Side-stepping this clear statement about LTD's commitment to providing Lifeline service if its Petition is approved, PBRTC attempts to introduce irrelevant information concerning LTD's status as a CAF recipient that has not yet deployed voice in Minnesota – and is under no legal obligation to have done so at this time. The CAF rules impose buildout milestones for LTD's broadband deployment, but impose no requirements for LTD to offer voice service by a certain time. Therefore, it is not surprising that PBRTC “has been unable to locate any information regarding LTD's Lifeline offering, terms or conditions, or any information regarding TAP on LTD's Website or any readily available public information.”¹⁷ To the contrary, it is perfectly logical for a company that is not required to provide voice service at this time to not have Lifeline pricing available.

With respect to Lifeline advertising, LTD stated that:

LTD Broadband will advertise the availability of the Supported Services throughout its designated service areas using media of general distribution in a manner that is designed to reach those likely to qualify for such services. LTD Broadband agrees to comply with all form and content requirements, if any, promulgated by the FCC and this Commission in the future and required of all designated ETCs, including by disclosing the Applicant's name, that the service is a Lifeline service, that it is a government assistance program, that the service is non-transferable, and that it is available only to eligible consumers and limited to one discount per economic household.¹⁸

MTA and PBRTC do not quarrel with this description, but rather cite to certain aspects of LTD's participation in the CAF program as relevant.¹⁹ As noted above, LTD is under no

¹⁶ Petition at Attachment 2, p. 7.

¹⁷ PBRTC Comments at 11.

¹⁸ Petition at Attachment 2, pp. 7-8.

¹⁹ See MTA Comments at 4-5; PBRTC Comments at 11-12.

obligation to offer Lifeline at this time pursuant to its CAF award, and thus is under no obligation to advertise a service it is not yet providing or is obligated to provide at this time. Whether LTD responded to DOC's request for information about a service it did not yet provide does not, in and of itself, warrant denial of the Petition. LTD's history with respect to that program cannot be used to undermine its representation in its Petition for RDOF.

III. THE COMMISSION LACKS AUTHORITY TO DETERMINE WHETHER GRANT OF LTD'S PETITION WOULD BE IN THE PUBLIC INTEREST

Both MTA and PBRTC argue that grant of LTD's Petition would not be in the public interest because LTD does not possess the technological ability to offer Gigabit services or the financial ability to build its proposed network.²⁰ Tellingly, neither point to any provision of state law that confers authority on this Commission to assess an applicant's technological or financial capabilities. Section 214(e)(2) of the Communications Act of 1934, as amended ("Communications Act"), states that a state commission "shall" designate a common carrier as an ETC eligible to receive support if the applicant offers supported services (either using its own facilities or a combination of its own facilities and resale of another carrier's services) and advertises the availability of such services and charges using media of general distribution.²¹ In addition to use of the mandatory term "shall," Section 214(e) places an important limitation on the scope of a state commission's authority: "Before designating an additional eligible telecommunications carrier *for an area served by a rural telephone company*, the State commission shall find that the designation is in the public interest."²²

²⁰ See MTA Comments at 5-9; PBRTC Comments at 12.

²¹ 47 U.S.C. § 214(e)(2), referencing 47 U.S.C. § 214(e)(1)(A)-(B).

²² 47 U.S.C. § 214(e)(2) (emphasis added). To the extent it is alleged, the FCC has determined that "eligible areas would include census blocks served by both price cap carriers and rate-of-return carriers *to the extent that the census block is in the price cap carrier's territory. That is, only the price cap portion of the census block is eligible.*" Wireline Competition Bureau and Office of Economics and Analytics

In *Tex. Office of Pub. Util. Counsel v. FCC*, the Court interpreted Section 214(e)(2) as follows:

[w]ith limited exceptions for rural areas, *a state commission has no discretion when assessing a carrier's eligibility for federal support*. If a carrier satisfies the terms of § 214(e)(1), a state commission must designate it as eligible. Thus, the FCC ruled that a state commission may not impose additional eligibility requirements on a carrier seeking universal service support in non-rural service areas. The agency does permit the states to impose service quality obligations on local carriers if those obligations are unrelated to a carrier's eligibility to receive federal universal service support.²³

Accordingly, the Commission cannot consider LTD's technological or financial ability – that important task is exclusively within the FCC's jurisdiction. Before authorizing support to any RDOF applicant, FCC staff will thoroughly review the applicant's long-form application to determine whether it is “reasonably capable” of meeting its proposed performance obligations.²⁴

In any event, much of what MTA and PBRTC argue can be dismissed as irrelevant and uninformed. The broadband speeds LTD currently makes available to customers has nothing to do with its commitment to offer Gigabit speeds over fiber under its RDOF commitment.²⁵ LTD has no current legal requirement to offer Gigabit speeds; rather, it offers service tiers that are suitable to meet consumer demand in the communities it serves. That it does not currently offer Gigabit service does not mean that it is not “reasonably capable” of doing so as its RDOF authorization will require. Further, there is nothing in the FCC's rules or auction procedures that require LTD to have offered Gigabit speeds to be eligible to apply for and obtain RDOF

Release Updated List and Map of Eligible Areas for the Rural Digital Opportunity Fund Phase I Auction, Public Notice, AU Docket No. 20-34 et al., DA 20-665 (WCB/OEA June 25, 2020) (emphasis added).

²³ *Tex. Office of Pub. Util. Counsel v. FCC*, 183 F.3d 393, 417 (5th Cir. 1999) (emphasis added).

²⁴ Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirement and Other Procedures for Auction 904, Public Notice, 35 FCC Rcd. 6077, 6099, ¶ 64 (2020) (“RDOF Auction Procedures Public Notice”) (“‘Reasonably capable’ refers to the Commission staff's reasonable expectation that the applicant can meet those obligations.”).

²⁵ See MTA Comments at 6 (“there is no evidence that LTD currently provides service anywhere close to [1 Gbps/500 Mbps].”).

support to provide Gigabit fiber service. Unlike Gigabit fixed wireless, where Commission staff considered eligibility on a case-by-case basis,²⁶ the auction procedures do not require any applicant to have deployed fiber to be eligible to bid for the Gigabit fiber tier. MTA's examination of LTD's current service plans has no bearing on the Commission's consideration of the technical aspects of LTD's ETC Petition, even if it had jurisdiction to do so.

MTA and PBRTC point to LTD's default in two states following the CAF Phase II auction,²⁷ and PBRTC cites LTD's unsuccessful request for waiver of Rural Broadband Experiment ("RBE") program procedures.²⁸ As MTA and PBRTC indicate, LTD won only a single census block group in each of Nebraska and Nevada and determined that it would not be economically prudent to accept support in those two states for such small areas given the costs of compliance. Like other CAF applicants that defaulted, LTD reasonably determined that defaulting prior to receiving support was preferred over accepting support and facing challenges disproportionate to the buildout obligations. That LTD was unsuccessful *seven years ago* in obtaining a waiver of certain RBE financial requirements has no adverse impact on its qualifications here.

Also irrelevant is speculation that, as a small company, LTD may not be equipped to handle the obligations attendant to RDOF support authorization.²⁹ Whether "PBRTC has seen no indication that LTD is attempting to hire and increase staff in anticipation of actually meeting its RDOF obligations"³⁰ assumes that LTD would have revealed its employment practices to PBRTC or that a backward-looking analysis of its size is somehow relevant to its future plans to

²⁶ RDOF Auction Procedures Public Notice at 6113, ¶ 100.

²⁷ See MTA Comments at 6; PBRTC Comments at 6-7.

²⁸ See PBRTC Comments at 6-7.

²⁹ See MTA Comments at 7; PBRTC Comments at 5-6.

³⁰ See PBRTC Comments at 6.

deploy Gigabit tier service. Did PBRTC ever bother to ask LTD about its capabilities or plans? Of course not – it instead decided to remain uninformed and rely on innuendo so it could more easily cast aspersions on LTD.

Conceding it lacks access to confidential financial information,³¹ MTA nevertheless contends that “LTD appears to face a substantial financial hurdle to build its Minnesota RDOF broadband network.”³² It then offers its version of construction cost estimates, claiming without citing any source that they are “reasonable”³³ and speculating that is “unlikely” that LTD will be able to sell a non-controlling interest because its support level is “so low that most potential minority investors will not be able to expect sufficient returns to make the investment attractive.”³⁴ One cannot avoid noticing the circumspection in these words, especially given that MTA admittedly states that “[t]here is no evidence that LTD has the financial ability to build its proposed network,”³⁵ “[t]here is no evidence that LTD has liquid assets anywhere near the size of the amount needed,”³⁶ and that “MTA has not had access to LTD’s financial and technical statements.”³⁷ Notably, the Commission does not have this information either, nor does it require this information to consider LTD’s Petition in performing its duties consistent with the Communications Act.

The Commission should ignore the speculative and uninformed claims of MTA and PBRTC and instead follow the recommendations of DOC and OAG and grant the Petition. The

³¹ See MTA Comments at 8.

³² *Id.* at 7.

³³ *Id.*

³⁴ *Id.* at 8. MTA presents no information that they have contacted “potential minority investors” to determine that “most” would not find the investment attractive. In the absence of any evidence, statements such as this can be given no credibility whatsoever.

³⁵ *Id.* at 7.

³⁶ *Id.* at 8.

³⁷ *Id.*

Petition contains appropriate certifications and statements, and LTD understands that it will be subject to state law as a consequence of being an ETC in Minnesota following the FCC's careful scrutiny of its long-form application.³⁸

IV. THERE IS NO BASIS TO REVOKE LTD'S EXISTING ETC DESIGNATION

MTA's final plea is for the Commission to "evaluate revoking LTD's existing ETC designation."³⁹ The above discussion shows that there is not a shrivel of evidence to support such action.

That said, MTA's suggestion reveals its true motive – to eliminate LTD as a voice and broadband provider in the state of Minnesota that, with significant federal subsidies, could present a competitive threat to rural local exchange carriers that were unsuccessful in the RDOF auction or chose not to participate. Rather than elevate their sour grapes to anything more than anti-competitive behavior, the Commission should consider the positive impact that LTD's investment of more than \$300 million in federal support and its own capital will bring to more than 100,000 rural locations in Minnesota.

³⁸ LTD expects the FCC to "closely scrutinize" its long-form application and is engaging with FCC staff that is reviewing its technical and financial qualifications. *See* MTA Comments at 9-10.

³⁹ MTA Comments at 10.

Conclusion

LTD appreciates the supporting Comments from DOC and OAG recommending grant of its Petition to expand its ETC designation to include 102,005 additional locations in Minnesota. The Petition meets the Commission's requirements. Efforts by incumbent carriers to stand in the way of the benefits of LTD's RDOF support by seeking to impose conditions on LTD or to expand the Commission's authority beyond that permitted by federal statute are built on speculation, innuendo, and surmise, and should be given no credibility.

Respectfully submitted,

LTD BROADBAND LLC

April 12, 2021

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**STATE OF MINNESOTA
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of April, 2021, I served the attached filing electronically on the attached service lists via the Minnesota Public Utilities Commission's eFiling System.

/s/ Stephen E. Coran

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