


Staff Briefing Papers

Meeting Date	May 13, 2021	Agenda Item 2**	
Company	LTD Broadband LLC (LTD)		
Docket No.	P-999/CI-21-86 P-6995/M-21-133		
	In the Matter of a Notice to Rural Digital Opportunity Fund (RDOF) Grant Winners and In the Matter of a Petition of LTD Broadband LLC to Expand its Designation as an Eligible Telecommunications Carrier (ETC)		
Issues	Should the Commission approve LTD Broadband’s Request for ETC status for high cost support in the Census Blocks listed in the docket?		
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 Relevant Documents	Date
LTD Broadband Initial Filing	February 17, 2021
Comments of the Minnesota Department of Commerce	March 26, 2021
Comments of the Office of the Attorney General Residential Utilities Division	March 26, 2021
Comments of the Minnesota Telecom Alliance	March 26, 2021
Comments of Paul Bunyan Rural Telephone Cooperative	March 26, 2021
Reply Comments of LTD Broadband LLC	April 12, 2021

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 **Relevant Documents**

Date

Reply Comments of the Office of the Attorney General Residential Utilities Division	April 12, 2021
Reply Comments of the Minnesota Department of Commerce	April 14, 2021
Comments -Response LTD Broadband LLC	April 19, 2021

I. Statement of the Issues

Should the Commission approve LTD Broadband's Request for ETC status for high cost support in the Census Blocks listed in the docket?

Note to reader: In all five proceedings (Starlink 21-26, LTD Broadband 21-133, Savage Communications 21-53, Nextlink 21-31, and Cable One 21-161), the Background sections are virtually identical between briefing documents. The Summary of the Department and OAG comments are the same in all of the dockets. The notable differences are in Starlink 21-26 where there is a summary of Starlink's position regarding the Department and OAG's proposed obligations and regulations and the summary of the OAG's reply.

The second substantial difference is in LTD Broadband 21-133. There is a substantial summary of the comments of the Minnesota Telecom Alliance, Paul Bunyan Rural Telephone Company (PBRTC) and the reply comments of the OAG and LTD Broadband provided regarding LTD's fitness. Additionally, there is a Staff discussion section regarding LTD Broadband's fitness for Expanded ETC Designation beginning at page 20 and ending at page 22 of this document.

II. Background

A. FCC Broadband Auction 904 Rural Digital Opportunity Fund I (RDOF I)

On December 7, 2020, the FCC released a Public Notice announcing the conclusion of Auction 904 of the Rural Digital Opportunity Fund I (RDOF I). Areas that will receive support through this auction are locations in census blocks that do not have access to broadband at speeds of at least 25 Mbps downstream speed and 3 Mbps upstream speed ("25/3"). RDOF I will fund homes and businesses in census blocks that the FCC determines are entirely unserved by fixed voice and broadband at speeds of at least 25/3 Mbps.

Carriers awarded support in this auction must deploy broadband and voice service to the specified number of locations in eligible census blocks groups in which they bid within a six-year period at the speed tier specified in their bid. RDOF I funding will be disbursed over a ten-year period. RDOF funding will be disbursed in equal monthly installments over this period based upon the amount of their winning bid.

B. Minnesota

In Minnesota, 24 companies, either singly, or in consortium with other providers, were winning bidders a total of \$408,150,745.60, to be distributed over ten years. These funds are in support of 142,852 locations that were previously unserved at 25/3 Mbps or greater. Most of the winning bidders committed to providing one gigabit per second service.

The FCC named a total of 24 companies as RDOF I winners for Minnesota locations.¹

The petitions on the agenda for May 6, 2021 were from existing ILECs, CLECs or previously designated ETCs seeking authority in new geographic areas. The remaining petitions for ETC certification for RDOF recipients that are not certificated in Minnesota are on the agenda for May 13, 2021.

LTD Broadband LLC (LTD) currently operates as a provider of broadband services and does not hold a certificate of authority from the Commission. LTD Broadband LLC became an ETC eligible to receive universal service support on February 8, 2019 in Docket No. P-6995/M-18-653 for census block groups that the FCC awarded Connect American Fund II grants.

LTD Broadband will receive \$311,877,936.40 in assigned support for 10 years in 18,110 Census blocks for 102,005 assigned locations in Minnesota. The census blocks are in St. Louis, Carlton, Le Sueur, Morrison, Goodhue, Todd, Kandiyohi, Dakota, Isanti, Martin, Stearns, Steele, Carver, Wright, Waseca, Mower, Nicollet, Rice, Dodge, Traverse, Watonwan, Scott, Houston, Cottonwood, Olmsted, Washington, Clay, McLeod, Becker, Brown, Wabasha, Marshall, Wilkin, Winona, Big Stone, Faribault, Polk, and Lincoln Counties.

The Commission took up ETC designation for 16 companies who were already Minnesota-certificated carriers and RDOF I winners at its May 6 Agenda Meeting. LTD Broadband operates as a provider of Internet and VoIP services. The company holds no certificate from the Commission. Because LTD's petition for expanded ETC certification was contested by the Minnesota Telecom Alliance (MTA) and Paul Bunyan Rural Telephone Company (PBRTC), staff offers these briefing papers separately.

C. Federal Criteria for ETC Designation

To qualify for ETC designation under federal law, a carrier must meet the following requirements:²

- (A) Offer telecommunications services, which includes:
 - a. voice grade access to the publicly switched network or its functional equivalent;
 - b. minutes of use for local service at no additional charge;
 - c. toll limitation to qualifying low-income consumers; and
 - d. access to 911 and enhanced 911 emergency services to the extent the local government has implemented these systems in an eligible carrier's service area.

¹ Aspire Networks, Docket No. 21-32 withdrew its petition to be designated as an ETC on March 17, 2021. Consolidated Communications, Inc. did not file a petition because all the census block in which they were successful bidder are already within their ETC area. Fond du Lac did not file an application with the Commission because it is a Tribal provider and may apply directly to the FCC for its ETC status.

² 47 U.S.C. § 214(e)(1); 47 C.F.R. § 54.201, 202. The FCC has waived requirements D and F for the CAF II and RDOF funding.

- Either using its own facilities or a combination of its own facilities and resale of another carrier's services (§54.101 (a)); and
- (B) Advertise the availability of such services and the charges therefor using media of general distribution (§54.201 (d)(2));
 - (C) Certify that it will comply with the service requirements applicable to the support it receives (§54.202 (1)(i));
 - (D) Submit a five-year improvement plan (§54.202 (1)(ii)).
 - (E) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of backup power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes (§54.202 (2));
 - (F) Demonstrate that it will satisfy applicable consumer protection and service quality standards (§54.202 (3)).³

D. Recent Commission ETC Decisions

Please see Discussion of Recent Commission ETC Decisions in the May 6, 2021 briefing papers for the general docket 21-86.

III. Parties' Comments

Paul Bunyan (PBRTC)

A. Consumer Protection

PBRTC argues that LTD's petition fails to demonstrate that LTD will protect consumers and meet service quality standards. In the Petition, LTD asserts that it will "satisfy all consumer protection and service quality standards as provided in 47 C.F.R. § 54.202(a)(3)." That section of the FCC's rules, however, contains no consumer protection or service-quality standards (other than a reference to commercial mobile wireless standards). As the Minnesota Department of Commerce ("DOC") previously warned, as a non-certificated, information service provider, LTD apparently is not subject to any Minnesota consumer protection provisions intended to protect

³ For recipients of Connect America Fund ("CAF") Phase II support, the FCC waived the requirement that winning bidders seeking an FCC ETC designation file a five-year improvement plan and demonstrate that it will satisfy applicable consumer protection and service quality standards. See Connect America Fund, et al., WC Docket No. 1090 et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016) (CAF Phase II Auction Order) at ¶¶ 157-68. Similarly, for purposes of the RDOF, the FCC incorporated by reference the analysis of forbearance factors that it considered and found warranted in CAF Phase II. See RDOF Auction Order at ¶ 95 & n. 271 and internal citations. See also Auction 904 Procedures Order at ¶ 136 & n. 308.

consumers of communications services.⁴ LTD's statements in the Petition regarding consumer protection are hollow and unenforceable.

PBRTC claims The DOC's concerns are materializing with LTD's track record. The Better Business Bureau ("BBB") gives LTD's Minnesota operations a failing "F" rating, and indicates that LTD is "not BBB accredited." The reasons for LTD's "F" rating are: (1) Failure to respond to 1 complaint filed against business; (2) 14 complaints filed against business; and (3) Length of time business has been operating. BBB customer ratings give LTD a 1.11-star rating on a 5-star scale. The BBB has received fourteen (14) customer complaints against LTD during the last three years, and nine (9) customer complaints against it during the last twelve months. In considering LTD's expansion request, the Commission also should take notice of its own records regarding consumer complaints against LTD.

PBRTC asserts LTD's Website does not contain even the most basic required consumer information such as the FCC-mandated Internet Transparency Statement regarding LTD's "network management practices, performance characteristics, and commercial terms of its broadband internet access services." With such lack of information and apparent non-compliance, there is no indication that LTD will protect consumers or meet service level commitments.

As such, PBRTC urges the Commission to deny expansion of LTD's ETC designation. If the Commission determines otherwise, however, then the Commission should at a minimum, condition any expansion of LTD's ETC designation on LTD's commitment to specific and enforceable consumer protection and service-level standards.⁵

B. Lifeline

With respect to Lifeline, PBRTC asserts that LTD also fails to demonstrate that it will comply with applicable Lifeline requirements for the provision of telecommunications services to low-income consumers. Notably, the Petition fails to demonstrate that LTD has the financial and technical ability to provide Lifeline service and provides no description of LTD's Lifeline service offering. The Petition summarily states: "LTD Lifeline terms and conditions address customer eligibility provisions and the availability of subsidies under the Lifeline program and the Minnesota Telephone Assistance Plan (TAP)." PBRTC, however, 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. It appears that LTD has no Lifeline offering.⁶

PBRTC argues LTD did not even trouble itself to respond to the Commission's Notice in this docket, and apparently has taken no action to comply, evidencing an apparent disregard for the Lifeline and low-income program requirements. PBRTC urges the Commission not to further

⁴ Please see PBRTC comments at p. 9.

⁵ Please see PBRTC comments at pp. 9-10.

⁶ Please see PBRTC comments at p. 11.

expand LTD's designation to the detriment of low-income consumers, and to re-evaluate LTD's eligibility for its existing ETC designation.⁷

C. Public Interest

PBRTC indicates that LTD fails to demonstrate both that it will satisfy the obligations of an ETC in Minnesota and that expansion of LTD's designation is in the public interest. It is highly questionable that LTD has the capability to provide the supported services at the speeds and latency required within the time required. This likely will result in years of delay in the deployment of broadband services to these areas and misuse of funds that could have gone to another provider. Even if LTD does provide some services, LTD fails to demonstrate that it will comply with consumer protection requirements or offer service to low-income consumers consistent with the Lifeline program requirements.

PBRTC argues there is no credible basis for determining that LTD possesses the technical, financial, managerial, operational skills, capabilities, and resources to deliver the gigabit fiber services in Minnesota, much less in the fourteen (14) other states, ten (10) of which LTD currently has no current operations or facilities. LTD faces a herculean task of deploying fiber to 528,088 locations in 92,092 eligible census blocks in the fifteen (15) states in a compressed time period in order to satisfy its RDOF performance requirements, on top of its CAF II performance obligations. LTD is a very small provider with limited resources. As recently as February 25, 2019, LTD sought a waiver and extension of time to submit basic financial information to the FCC in connection with Auction 903 (CAF II).⁸

PBRTC states that if LTD cannot timely hire an accountant to prepare financial statements (when LTD knew for over two years that it would be required to produce such statements), how can the Commission hope that LTD will timely deploy fiber in rural Minnesota and provide critical services such as providing service to low-income consumers. PBRTC has seen no indication that LTD is attempting to hire and increase staff in anticipation of actually meeting its RDOF obligations.

PBRTC claims that LTD's history with federal USF programs is one of defaults, missed deadlines, and compliance issues. For example, the CAF II auction assigned LTD support for 108 census block groups (CBGs) in Nebraska and Nevada. In February 2019, however, LTD notified the FCC that LTD did not intend to pursue certain winning bids in Nebraska and Nevada, defaulting on \$71,254 of the CAF II support. In response, the FCC issued the LTD CAF II Notice with a monetary penalty and found that LTD had "hindered the disbursement of funds that could have otherwise been productively used to increase broadband access to unserved or underserved areas."⁹

⁷ Please see PBRTC comments at pp. 11-12.

⁸ See Connect America Fund et al. Order DA 19-763 (rel. Aug. 9, 2019) at ¶ 6 ("LTD CAF II Waiver Order"). Please see Paul Bunyan comments at p. 5.

⁹ See LTD Broadband LLC Applicant for Phase II Connect America Fund, Notice of Apparent Liability for Forfeiture, DA 19-950, 34 FCC Rcd. 9973, 9975 ¶ 7 (2019) ("LTD CAF II NAL"). Please see PBRTC

Similarly, in 2014, LTD was a provisional winner of Rural Broadband Experiment (“RBE”) support for \$20,000,000 in Iowa and Minnesota. LTD requested a thirty-day extension of time to file its letter of credit commitment letter for the RBE funding, noting that it needed the additional time because two banks thus far would not issue it the requisite letter of credit. The FCC denied LTD’s request for an extension of time, and LTD apparently did not receive the RBE support. As noted above, LTD also failed to timely submit audited financial statements with its CAF II long-form application and sought a waiver and extension of time. LTD has shown time and time again that it is unreliable, unaccountable, and financially questionable.

PBRTC continues that LTD has been accepting CAF II support, and certifying that it has used the support to provide the supported services, but it is not clear that LTD offers any voice services at all at this time, much less Lifeline service. There is no information regarding LTD’s voice plans on its Website, and yet in the Petition, LTD states, “LTD’s voice telephony plans include local, intrastate interexchange, and interstate long distance all inclusive.” Prior to expanding LTD’s ETC designation, the Commission should carefully investigate LTD’s candor and progress toward, and compliance with its CAF II deployment and service obligations in Minnesota thus far. The Commission also may want to evaluate whether LTD continues to qualify as an ETC in the CAF II-supported areas.

In addition, based on PBRTC’s extensive experience in deploying fiber in rural northern Minnesota, the RDOF support that LTD will receive is a small fraction of the money that will be required to deploy a fiber network in LTD’s RDOF support area. LTD claims that it “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.” The FCC, however, requires “support recipients to offer the required voice and broadband service to all eligible homes and small businesses within the awarded areas...” This is the entire point of awarding support in a reverse auction at the census block level, the recipient must serve all locations. Bidders should have calculated the cost of providing service to all locations within the bid area, not just those to which service could be provided “at a reasonable cost.”

Moreover, LTD has sought ETC designation for its winning CBGs and if designated as an ETC in those areas, must offer the services throughout the entirety of the designated CBG service area. Not all census blocks within the winning CBGs are eligible for RDOF support. The RDOF support may only be used to provide service in the eligible census blocks within the CBGs. PBRTC suggests that LTD has vastly underestimated the cost of deploying the network and satisfying LTD’s RDOF performance obligations, and that LTD is exceeding likely to default on such obligations. LTD will no doubt respond that it is the FCC’s job (not the Commission’s) to review LTD’s qualifications for RDOF support and to determine whether or not LTD possesses the technical and financial ability to satisfy LTD’s performance obligations. It is true that the FCC is reviewing LTD’s long-form application for this purpose. But the Commission should not abdicate its authority and responsibility to ensure that LTD has demonstrated that it qualifies as an ETC in the RDOF areas and that expanding LTD’s ETC designation is in the public interest.

This is especially critical with respect to consumer protection and the support of communications services to low-income consumers, areas clearly within the Commission's authority and expertise.¹⁰

Minnesota Telecom Alliance (MTA)

A. Consumer Protections

The MTA believes the Commission should deny LTD's request because of concerns about LTD's consumer protections. Under applicable law, an ETC applicant must "[d]emonstrate that it will satisfy applicable consumer protection and service quality standards." 47 C.F.R. §54.202 (a)(3). One relevant factor in that inquiry, as described by the Commission staff, is "appropriate handling of customer complaints and billing disputes."

MTA claims LTD has provided nothing beyond the statement that it will comply. Its actual track record in handling customer complaints suggests that it does not act consistently with protecting consumers.

B. Lifeline

MTA notes that in 2020, the Commission requested information about the Lifeline advertising practices of Minnesota ETCs. Sixty-four companies provided responses. Only seven companies failed to provide a response. LTD was one of those seven that failed to provide a response. See In the Matter of a Commission Inquiry into the Advertising, Outreach, and Offering of Lifeline by High Cost ETCs, Corrected Comments of the Minnesota Department of Commerce, Jan. 14, 2021, Docket No. P999/CI-20-747, p. 4.

Of the companies that failed to respond to Commission's request for information, only three companies also failed to have any information on their websites regarding Lifeline. LTD was one of those companies. Based on LTD's historical failure to publicize Lifeline—and its failure even to respond to a Commission request for information on this very topic—the Commission should look skeptically at LTD's promises and, based on the information available, deny LTD's request.¹¹

C. Public Interest

The MTA believes that granting LTD's request would not be in the public interest, so the Commission should deny it. There is no evidence that LTD has the technological ability to offer the service it has promised. To win the RDOF auction, LTD proposed a level of service that the

¹⁰ Please see PBRTC at comments pp. 7-8.

¹¹ Please see MTA's comments at pp. 4-5.

RDOF process referred to as “Gigabit” service—that is, (1 Gbps downstream/500 Mbps upstream). In contrast, though, there is no evidence that LTD currently provides service anywhere close to that level.¹²

Additionally, the MTA believes that there is no evidence that LTD has the financial ability to build its proposed network. Given LTD’s minimal current broadband facilities and the scattered and non-contiguous nature of many of the CBGs that it “won,” it is reasonable to estimate that it will cost LTD about \$5,000 to \$8,000 per location to build the various RDOF broadband networks. This means a likely construction cost from \$510 million to \$816 million for LTD to build the Minnesota RDOF network, and from \$2.6 billion to \$4.2 billion to build all fifteen state RDOF networks.¹³

Finally, given the pervasive nature of LTD’s lack of performance, MTA’s concern extends to all census blocks, both those for which LTD is already designated as an ETC and those for which it now seeks additional designation. Accordingly, the Commission may wish to evaluate revoking LTD’s existing ETC designation in the census blocks where LTD holds that designation already.¹⁴

Office of the Attorney General

Please see the briefing documents in 21-53, 21-26, 21-161, or 21-31 for a summary of the OAG’s initial comments.

Staff Note: The Department and OAG comments and recommendations in this docket mirror comments in the dockets heard before the Commission on May 6, 2021. The summary of the OAG’s initial comments and DOC initial and reply comments are virtually identical to the summaries provided for the other dockets. The OAG offered substantial reply comments in this docket in response to MTA and PBRTC regarding LTD’s fitness.

Office of the Attorney General Reply Comments

The OAG indicated that it is agnostic about which companies the FCC selects to receive RDOF Phase I support as long as they pass the FCC’s detailed evaluation process and comply with the FCC’s, and the Commission’s, ETC obligations. In this case, however, claims that LTD cannot fulfill its RDOF Phase I requirements are speculative and based on incomplete information. The FCC has more technical and financial data about LTD than the OAG does, and the FCC is still reviewing LTD’s RDOF Phase I long-form application. OAG claims that a denial of LTD’s ETC

¹² Please see MTA’s comments at pp. 5-7.

¹³ Please see MTA’s comments at pp. 7-9.

¹⁴ Please MTA’s comments at p. 10.

expansion request at this time would prematurely delay the flow of broadband deployment dollars to Minnesota.

A. Consumer Protection

The OAG responds to PBRTC's claim that "LTD is neither a common carrier nor a certified carrier in Minnesota and therefore lacks the basic qualification to be an ETC for federal USF support." The OAG notes while it is true that the sections of the Act that discuss ETCs and the designation of ETCs specifically reference common carriers, the FCC has extended federal Universal Service support to broadband Internet access and interconnected VoIP ETCs through its orders, and program- and auction-specific materials. As such, LTD does not need to be a common carrier or a Minnesota certificated carrier to receive an RDOF Phase I ETC designation.

Both the MTA and the PBRTC object to LTD's RDOF Phase I ETC expansion petition on the grounds that "LTD has provided nothing beyond the statement that it will comply" with the applicable consumer protection and service quality standards, and the company's Better Business Bureau rating. Neither of these grounds is sufficient to deny LTD's ETC expansion request according to the OAG.

In its statement of compliance, LTD committed to "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." The OAG notes LTD's statement is consistent with the commitment provided by most of the other Minnesota non-certificated companies and is more of a commitment than some.

The OAG agrees that all ETC applicants must demonstrate that they will satisfy applicable consumer protection and service quality standards. The Commission should not deny LTD's ETC designation, however, when the company voluntarily commits to higher consumer-protection standards than its broadband Internet access and interconnected VoIP counterparts. Such a denial would inappropriately single out LTD and would result in the inconsistent application of ETC standards among the companies seeking a designation.

This does not mean that the Commission should permit Minnesota non-certificated companies to "pick and choose" their consumer protection and service quality standards. Minnesota non-certificated companies like LTD must comply with the basic consumer protection and service quality standards established by the Commission for all ETCs in its RDOF Phase I ETC order or must forgo their federal Universal Service RDOF Phase I ETC designations and support.¹⁵

With respect to the MTA and PBRTC's Better Business Bureau ("BBB") rating argument, the OAG indicated while informative, this is not sufficient grounds for an ETC expansion denial. To start, "BBB ratings represent the BBB's opinion of how the business is likely to interact with its customers" using "information BBB is able to obtain about the business, including complaints received from the public." In addition, the BBB itself acknowledges that its "ratings are not a

¹⁵ Please see OAG reply comments at pp. 18-19.

guarantee of a business’s reliability or performance” and “recommends that consumers consider a business’s BBB rating in addition to all other available information about the business.” This is a far cry from the FCC’s in-depth short-form application, competitive bidding auction, and long-form application evaluation process to determine the legal, technical, and financial qualifications of potential RDOF Phase I support recipients.

The OAG asserts that this does not mean that the Commission should ignore LTD’s BBB rating or disregard concern about the compliance of LTD and other Minnesota non-certificated companies with the Commission’s consumer protection and service quality standards, particularly those companies that opposed Commission oversight. The solution, however, is for the Commission to require Minnesota non-certificated companies like LTD to comply with the basic consumer protection and service quality standards the Commission establishes for all ETCs in its RDOF Phase I ETC order or forgo their federal Universal Service RDOF Phase I ETC designations and support.¹⁶

B. Lifeline

The OAG notes that the MTA and PBRTC also recommend that the Commission deny LTD’s ETC designation request because of concerns about LTD’s Lifeline Program advertising. To support the recommendation, they point to LTD’s failure to respond to the Commission’s request for advertising practices information in the advertising, outreach, and offering of Lifeline by High Cost ETCs docket (Docket No. P-999/CI-20-747), and LTD’s failure to provide information on its website regarding Lifeline. Yet, MTA and PBRTC do not seek ETC denial or revocation for the six other companies that failed to respond to the Commission’s Lifeline Program advertising request, and at least two other companies that failed to provide Lifeline Program information on their websites. The failure to provide Lifeline Program information on ETC websites was addressed in the Commission’s most recent ETC recertification docket.

The Commission should not deny LTD’s ETC expansion request on Lifeline Program advertising grounds. Such a denial would inappropriately single out LTD and would result in the inconsistent application of ETC standards among the companies seeking an ETC designation.

This does not mean that the Commission should not be concerned about the Lifeline Program compliance of LTD and other Minnesota non-certificated companies. Minnesota noncertificated companies like LTD must comply with the Lifeline Program rules applicable to High Cost ETCs or must forgo their federal Universal Service RDOF Phase I ETC designations and support.¹⁷

C. Public Interest

The OAG indicated that the MTA and the PBRTC rely on the service information provided on LTD’s website and the fact that LTD defaulted in two of its five CAF Phase II states to support

¹⁶ Please see OAG reply comments at pp. 19-20.

¹⁷ Please see OAG reply comments at pp. 20-21.

their assertion that LTD does not have the technological ability to meet its RDOF Phase I requirements. Regarding the service information on LTD's website, the MTA argues that, to win the RDOF auction, LTD proposed a Gigabit level of service that the company does not currently offer to customers. However, the FCC has already addressed the situation where a service provider bid in the RDOF auction based on a specific plan to meet the relevant performance obligations using broadband deployment speeds it does not currently offer to its customers. Specifically, the FCC's auction procedures notice explained that bids for non-deployed broadband speeds will be reviewed on a case-by-case basis.¹⁸ The notice went on to explain that the choice not to offer broadband to consumers at certain speeds would not prevent bidding at a particular service tier.¹⁹

Thus, failure to provide evidence of offering a Gigabit service on its website is not sufficient to deny LTD's ETC expansion request, according to the OAG. Regarding the default information, both the MTA and the PBRTC assert that LTD's default on its CAF Phase II support in Nebraska and Nevada means that the company will not live up to its promises in Minnesota. Setting aside the fact that LTD did not default in Minnesota, the FCC explicitly addressed default in its RDOF Phase I auction procedures. Specifically, the FCC barred only those CAF Phase II auction recipients that "defaulted on their entire CAF Phase II auction award" from participating in the RDOF auction and seeking RDOF Phase I support. Thus, LTD's CAF Phase II default in Nebraska and Nevada is not sufficient to deny LTD's Minnesota ETC expansion request.

With respect to financial ability concerns raised by MTA and PBRTC, the OAG indicated that The MTA and the PBRTC make a series of arguments about why LTD does not have the financial ability to build its proposed network. However, MTA admits that it does not have access to LTD's RDOF Phase I financial and technical information because the FCC treats such information as proprietary and confidential.

OAG notes that the FCC has in place a rigorous financial review process that includes evaluating detailed financial information that is not available to third parties, and a letter of credit requirement to cover, at a minimum, the first year of support that an RDOF Phase I recipient will receive.²⁰

The OAG asserts that without access to the detailed information the FCC possesses, any argument to deny LTD's ETC expansion request for financial reasons is high-speculative, based on incomplete information, and should be rejected by the Commission.

¹⁸ Auction Notice, para. 97 and please see OAG reply comments at p. 21.

¹⁹ Auction Notice, para. 120 and please see OAG reply comments at p. 22.

²⁰ Auction Notice, para. 61 and please see OAG's reply comments at p. 23.

Additionally, the MTA has already asked the FCC to thoroughly vet LTD's RDOF application. The MTA's comments discuss communications from members of Congress and the Board of Directors of the National Association of Regulatory Utility Commissioners asking the FCC to thoroughly vet LTD's RDOF application and invites the Commission to "evaluat[e] LTD's claims closely." Missing from MTA's comments is a reference to its own petition asking the FCC to deny LTD's long-form application for Minnesota. That petition, although directed to the FCC, contains arguments that are largely, if not fully, identical to the ones already addressed in these comments. Thus, while the Commission should accept MTA's invitation to "evaluat[e] LTD's claims closely," such an examination demonstrates the need for ETC conditions, not a denial of LTD's ETC expansion request.²¹

Finally, the OAG indicated that the Commission has the authority to revoke LTD's existing ETC designation. Here, the MTA seeks revocation of the ETC designation the Commission granted to LTD in the Commission's February 8, 2019 Order for CAF Phase II support awards (Docket No. P-6995/M18-653). Because MTA's revocation request is for the ETC designation the Commission granted when LTD was awarded CAF Phase II support, the revocation request is based on MTA's RDOF Phase I concerns, and for all the reasons the OAG discussed, the Commission should decline to revoke LTD's existing ETC designation at this time. As the OAG's Initial Comments explained, ETC status should not be revoked except in the most egregious circumstances and the Commission should first explore other alternatives to remedy concerns about an ETC's performance.²²

LTD

LTD responded to the Commission staff April 5, 2021 questionnaire indicating it will comply with the applicable federal regulations associated with ETC status. LTD will provide standalone voice telephone service over its own facilities. LTD indicated it will provide voice service at rates equal or less than the FCC's reasonable comparability benchmark for fixed voice service. For additional detail, please see the summary spreadsheet provided as part of the Commission's briefing documents.

With respect to LTD's response to MTA and PBRTC, LTD argues that 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.

²¹ Please see OAG's reply comments at p.23.

²² Please see OAG's reply comments at p.24.

A. Consumer Protection

LTD's petition states that "upon 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." This statement is substantially like statements made by other ETC applicants in the current RDOF docket. Moreover, neither DOC nor OAG recommended any special treatment of LTD, instead suggesting that the Commission consider adopting consumer protections applicable to all ETCs.

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. They cite a single source – the Better Business Bureau – for the proposition that LTD has a low customer rating. LTD takes issue 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.²³

B. Lifeline

LTD believes that it makes a clear statement regarding its commitment to providing Lifeline service if its Petition is approved. LTD claims that 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." 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.

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. As noted above, LTD is under no 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,

²³ Please see LTD's comments at pp. 3-4.

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.²⁴

C. Public Interest

Both MTA and PBRTC argue that granting 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. LTD counters that neither organization points 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. 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."

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.²⁵

LTD asserts that 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.

LTD claims that 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. LTD has no current legal requirement to offer Gigabit speeds; rather, it offers service tiers that are

²⁴ Please see LTD's comments at pp. 4-6.

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

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 support to provide Gigabit fiber service. Unlike Gigabit fixed wireless, where Commission staff considered eligibility on a case-by-case basis, 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.

LTD asks the Commission to ignore the speculative and uninformed claims of MTA and PBRTC and instead follow the recommendations of DOC and OAG and grant the Petition. The Petition contains appropriate certifications and statements, and LTD understands that it will be subject to state law because of being an ETC in Minnesota following the FCC’s careful scrutiny of its long-form application.²⁶

Finally, LTD believes that the 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. LTD suggests 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.

Department

Staff Note: It is clear from the record that the OAG has embraced the Department’s list of proposed regulations by including them as a subset of the OAG’s set of proposed obligations. However, based on the record, Staff can only infer that the Department has embraced the OAG proposed set of obligations. Both recommend approval subject to the proposed obligations and regulations. The summary of the Department comments below is the same as what is provided in other briefing papers for other ETC designation request before the Commission on May 6th and other dockets the Commission has before it on May 13th.

Overall, the Department states that the Commission may choose to approve all ETC applications or may deny some or all the applications.

1) Consumer Protections. The Department asserts that the Commission has clear authority to adopt state-specific requirements applicable to ETCs. Many of the ETC petitioners

²⁶ Please see LTD’s comments at pp. 6-10.

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. For those ETC petitioners that have not broadly agreed to comply with the Commission rules, the Department recommends that the Commission adopt 19 consumer protections from statutes and Commission rules that are applicable to certificated carriers in Minnesota.²⁷ These 19 items are listed in Attachment 1 of the Department's March 26, 2021 comments (Addendum A of this document). The Department urges opening a new proceeding to determine if any of the protections listed therein should be changed or if any protections should be added.

Specifically, the Department recommends that the Commission state in its order:

- The Commission accepts the representations by those companies that stated in their petitions that they will comply with Commission rules.
- For those ETC petitioners that have not broadly agreed to comply with the Commission rules, the Commission adopts the consumer protections listed in Attachment 1 of the Department's March 26, 2021 comments.
- The Commission directs its Executive Secretary to open a new proceeding investigation to determine if any of the protections listed in Attachment 1 of the Department's March 26, 2021 comments should be changed or if any protections should be added.

2) Stand-alone Voice. The Department notes that all ETCs are required to provide qualifying voice service, including stand-alone voice service, within a reasonable period upon request. The FCC has explicitly stated that over-the-top VoIP is not acceptable to satisfy the voice obligation.

The Department recommends that the Commission state in its order:

- Over-the-top VoIP does not satisfy the FCC requirement to provide voice service.
- All ETCs are required to provide 'stand-alone' voice service to consumers upon request, within a reasonable period. To the extent that an ETC has a certificate of authority to operate in Minnesota, it may satisfy this requirement by reselling the telecommunications service of another provider. If the ETC does not have a certificate of authority to operate in Minnesota, it will need to bring voice service to the customer that is not "over-the-top" VoIP.

3) Tribal Engagement. The Department recommends that the Commission state in its order:

²⁷ The record of this proceeding is unclear regarding which carriers and to what extent each carrier has agreed to the Department of Commerce's proposed consumer protections.

- ETCs that serve Tribal lands are required to engage the tribes on those areas specified in 47 C.F.R. §54.313, at minimum.
- ETCs needing assistance with Tribal engagement should contact the Tribal Liaisons at the Commission and the Department for help.

4) Lifeline. The Department recommends that the Commission state in its order:

- ETC are to have information about Lifeline on their website no later than the first offering of any ETC service to a consumer.
- ETCs recipients are encouraged to participate in Commission proceedings concerning Lifeline, including the current proceedings, dockets P999/CI-17-509 and P999/CI-20-747.

5) Service Area Expansion. The Department recommends that the Commission state in its order:

- ETCs that will be providing service subject to state jurisdiction, where they are not currently authorized to serve, must submit a petition for either new authority or a service area expansion, unless it is otherwise granted by the Commission in this Order.
- ETCs that will resell service subject to state jurisdiction of another provider to satisfy the requirement to provide stand-alone voice service must have authority from the Commission prior to providing the service.²⁸

The Department indicated that in the Commission's 2019 proceedings (18-634 et al.) for Connect America Fund (CAF) II ETC designations two of the CAF II Auction 903 petitioners, Broadband Corporation and LTD Broadband, did not seek a certificate of authority as a CLEC in conjunction with their petitions for ETC designation in Minnesota. At the time, the Commission did not establish ETC specific regulations for the protection of consumers beyond what is mandated by the FCC. However, the Department believes that the choice of the Commission not to impose additional regulations at the time the companies petitioned for ETC status does not bar the Commission from doing so subsequently.²⁹

²⁸ Please see Minnesota Department of Commerce March 26, 2021 comments at pp. 22-23.

²⁹ Please see Department comments at p. 8.

Department Reply Comments

The Department believes that ETC applicants such as Starlink Services and LTD Broadband³⁰ that do not require a certificate of authority from the Commission, as their voice service is purportedly VoIP provided in a manner like Charter, are generally not bound by the Minnesota Rules and Statutes. Some of these companies argue that the Commission cannot impose consumer protections due to the lack of State Authority. The Department claims this is incorrect, however, since the Commission's authority in this matter is established by Congress and is related to receipt of federal funds and therefore is not restricted to telecommunications services. If such a limitation existed, the Commission could not make a determination on any of the ETC petitions before it, since the RDOF funds are for the deployment of broadband, which is an information service, not a telecommunications service. The Commission clearly has the authority to advance universal service for both broadband and voice service in the context of its Congressionally delegated authority and can impose consumer protections to do so.

The Department recommends approval of LTD's petition for designation as an ETC in locations designated for the receipt of its RDOF award. In addition, LTD should be subject to the conditions established by the Commission for all petitioners in the various proceedings.

IV. Staff Analysis

Generally, the Commission's role is to designate the ETC and to annually certify that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The FCC has the authority for ongoing authority for virtually all other aspects of regulatory oversight of its high cost programs.

A. Staff Recommendations

As previously stated, the Commission determined in its February 8, 2019 Orders³¹ that the non-certificated LTD Broadband and Broadband Corp. provided voice telephony consistent with 47 C.F.R. §54.101 (a). The Commission determined these carriers were offering VoIP service consistent with the FCC's 2011 Transformation Order which made clear that additional platforms by which to provide voice telephony service are entitled to universal service support. The key result from these Orders is the Commission approved these carriers' requests based on the federal ETC designation requirements. The record in this proceeding does not support any other result.

³⁰ Also: Sparklight, Next Link, and Savage Communications.

³¹ Please see Commission's February 8, 2019 Orders in dockets 18-634, 18-653, and 18-665.

The record of this proceeding is void of any showing of deficiencies on the part of existing or future ETCs. As such, the imposition of additional obligations to meet portions of §237, Commission rules, and FCC rules is neither necessary nor appropriate.

Likewise, it is unclear what would be gained by the OAG-proposed additional obligations to develop a consumer inquiry process, provide network buildout updates and monitor ETC proceedings. The OAG's proposals appear to be at odds with the Commission's limited jurisdiction to certify ETC carriers that meet federal requirements. Much of what the OAG is proposing may encroach into the FCC's exclusive role in administering the FCC's high cost programs. Additionally, the current state of the record has not vetted the OAG's proposals to the extent necessary to identify any unintended consequences.

B. Commission Precedent

Please see Staff discussion of Commission Precedent and prior FCC order in the May 6, 2021 briefing papers for the general docket 21-86.

Like the dockets before the Commission on May 6th, nothing in the industry, federal regulation, or circumstances with respect to Savage's ETC designation has changed appreciably to make the Commission's analysis different than the February 2019 Orders.

C. LTD's Fitness for Expanded ETC Designation

Opposition to LTD's expanded ETC designation is based on information in the areas of consumer protections, Lifeline, and public interest.

a. Consumer Protections

With respect to consumer protection, both the OAG and LTD cite that LTD is committed to 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.³² This language is consistent with the language provided by virtually all the other applicants including PBRTC and other MTA member companies.

With respect to LTD's poor track record in handling customer complaints, MTA and PBRTC argued that this should result in denial of LTD's petition.³³ As was pointed out by the OAG, while LTD's Better Business Bureau (BBB) rating is informative, it is not sufficient grounds to deny LTD's ETC petition. The BBB acknowledges that its "ratings are not a guarantee of a

³² Please see reply comments of the OAG at pp. 18-19 and LTD's reply comments at p.3.

³³ Please see reply comments of the MTA at pp. 3-4 and PBRTC at 9-10.

business’s reliability or performance” and “recommends that consumers consider a business’s BBB rating in addition to all other available information about the business.”³⁴

Additionally, LTD pointed out that the BBB rating was based on 14 customer complaints, all of which lack detail. Also, there is no comparison of LTD to the customer service reputation of other broadband providers or explanation of how a small number of customer reviews is significant enough to raise questions regarding the fitness for ETC designation.³⁵ Staff agrees with the OAG and LTD that the state’s inquiry pales in comparison to the rigor of the FCC’s in-depth short-form application, competitive bidding auction, and long-form application evaluation process to determine the legal, technical, and financial qualifications of potential RDOF Phase I support recipients.

b. Lifeline

In the case of Lifeline advertising, Staff believes the OAG put it best by saying that advertising concerns extend to several other companies in addition to LTD. LTD did not respond to the Commission’s request for advertising practices information in the advertising, outreach, and offering of Lifeline by High Cost ETCs in Docket No. P-999/CI-20-747, or provide information on its website regarding Lifeline. However, there are no requests seeking ETC denial or revocation for the other six carriers that did not respond to the Commission’s Lifeline Program advertising request, or the two other carriers that did not provide Lifeline Program information on their website.

Staff agrees with the OAG’s conclusion. The Commission should not deny LTD’s ETC expansion request based on Lifeline Program advertising. Such a denial would inappropriately single out LTD and would result in the inconsistent application of ETC standards among the companies seeking an ETC designation.³⁶ Any future non-compliance issues should be addressed in a future ETC recertification docket.

c. Public Interest

With respect to public interest concerns with LTD, MTA posited that to win the RDOF auction that LTD proposed a Gigabit level of service that it currently does not offer.³⁷ As the OAG points out, the FCC has already addressed the situation where a service provider bid in the RDOF auction based on a specific plan to meet the relevant performance obligations using broadband deployment speeds it does not currently offer to its customers. The FCC explained in its auction notice that bids for non-deployed broadband speeds will be reviewed on a case-by-case basis.³⁸

³⁴ Please see reply comments of the OAG at pp.19-20.

³⁵ Also note that LTD has a 4.44-star on Google based on 81 customer reviews please see LTD’s reply comments at p. 4.

³⁶ Please see reply comments of the OAG at pp. 20-21.

³⁷ Please see reply comments of the MTA at pp. 6-7.

³⁸ Please see reply comments of the OAG at pp. 21-22.

As such, LTD's lack of evidence of offering Gigabit service on its website is not relevant in the Commission's consideration LTD's ETC expansion request.

Additionally, MTA and PBRTC raise concerns about LTD's financial ability to build its proposed network.³⁹ Such concerns seem somewhat speculative. The financial and technical information is treated by the FCC as proprietary and confidential. As the OAG pointed out, the FCC has a rigorous financial review process that includes evaluating detailed financial information that is not available to third parties, and a letter of credit requirement to cover at a minimum the first year of support that an RDOF I receives.

Staff agrees with the OAG that without access to the detailed information the FCC possesses, any argument to deny LTD's ETC expansion request for financial reasons is completely speculative, based on incomplete information, and should not be considered by the Commission.⁴⁰

Finally, with respect to the MTA's suggestion that the Commission consider revoking LTD's existing ETC designation, the OAG pointed out that MTA's revocation request is for the ETC designation the Commission granted when LTD was awarded CAF II support. The MTA's revocation request is based on the MTA's RDOF I concerns. As such, Staff recommends that the Commission should not consider any requests to revoke LTD's existing ETC designation.

D. Carriers Required to Provide 911 Service by Statute

As noted above, the federal criteria for ETC designation require providing 911 service in accordance with local law. Minn. Stat. § 403.025 requires that every owner and operator of a wire-line or wireless circuit switched or packet-based telecommunications system to offer 911. Section 403.025 of Minnesota Statutes states the following:

403.025 911 EMERGENCY TELECOMMUNICATIONS SYSTEM REQUIRED.

Every owner and operator of a wire-line or wireless circuit switched or packet-based telecommunications system connected to the public switched telephone network shall design and maintain the system to dial the 911 number without charge to the caller.

Further those carriers offering wireless or wire-line switched or packet-based telecommunications service provider are authorized to collect fees for the provision of 911 service from customers. Minn. Stat § 403.11 Subd, 1 provides the following.

403.11 911 SYSTEM COST ACCOUNTING REQUIREMENTS; FEE.

³⁹ Please see reply comments of the MTA at pp. 7-9 and PBRTC at pp. 5-9.

⁴⁰ Please see reply comments of the OAG at pp. 22-23.

Subdivision 1. Emergency telecommunications service fee; account.

(a) Each customer of a wireless or wire-line switched or packet-based telecommunications service provider connected to the public switched telephone network that furnishes service capable of originating a 911 emergency telephone call is assessed a fee based upon the number of wired or wireless telephone lines, or their equivalent, to cover the costs of ongoing maintenance and related improvements for trunking and central office switching equipment for 911 emergency telecommunications service, to offset administrative and staffing costs of the commissioner related to managing the 911 emergency telecommunications service program, to make distributions provided for in section [403.113](#), and to offset the costs, including administrative and staffing costs, incurred by the State Patrol Division of the Department of Public Safety in handling 911 emergency calls made from wireless phones.

Finally, while wireless service providers service is not regulated by the Commission, the Commission has authority for their designation as an ETC, and Section 403.11 has the following 911 requirement as part of the ETC designation process:

Subdivision 3d Eligible telecommunications carrier; requirement.

No wireless communications provider may provide telecommunications services under a designation of eligible telecommunications carrier, as provided under Minnesota Rules, part [7811.1400](#), until and unless the commissioner of public safety certifies to the chair of the public utilities commission that the wireless telecommunications provider is not in arrears in amounts owed to the 911 emergency telecommunications service account in the special revenue fund.

There is no disagreement in this record that LTD is subject to the state's 911 requirements and no one has filed comments in this docket suggesting that any part of LTD's petition should be held up for any 911 compliance reasons. Just as with other carriers that are ETCs but do not need a certificate of authority with the Commission, LTD Broadband can work directly with the Department of Public Safety, and if and when necessary either LTD Broadband or Public Safety can communicate with the Commission on 911 issues.

E. Administrative Follow Ups

Staff also believes that given the importance of ensuring all administrative details are tied up, the Commission should delegate authority to the Executive Secretary to issue notices or letters as necessary to communicate with the FCC or other entities regarding Broadband's ETC status. Carriers are required to submit additional information to the FCC by June 7, 2021 in order to secure their funding, including proof of ETC status with the relevant state commission. While the Commission's Order in this docket will likely fulfill that requirement, staff believes out of an abundance of caution it would be helpful to take the additional step of authorizing the Executive Secretary to make any other written communications that may be necessary.

V. Decision Options

Should the Commission approve LTD Broadband's Request for ETC status for high cost support in the Census Blocks listed in the docket?

Staff Note: Option number 1 and 2 a. are similar. Option number 2 (a-f) represents the recommendations of the OAG. Option 2. f. ii includes the Department's proposed regulations and is the same as option 3 (a-e). Option number 3 (a-e) represents the recommendations of the Department.

1. Find the requirements for ETC designation have been met, approve LTD's petition for ETC designation in the census blocks listed in its petition.
2. Approve the LTD Broadband's petition subject to the following obligations for RDOF I ETCs as recommended by the OAG:
 - a. Acknowledge and agree to comply with the FCC-mandated general ETC obligations discussed in section V, subsection A p. 14 of the OAG's March 26, 2021 Comments;
 - b. Acknowledge and agree to comply with the FCC-mandated RDOF Phase I-specific ETC obligations discussed in section V, subsection B pp. 14-16 of the OAG's March 26, 2021 Comments;
 - c. Acknowledge and agree to comply with the FCC-mandated High Cost Program-specific ETC obligations discussed in section V, subsection C pp. 16-17 of the OAG's March 26, 2021 Comments;
 - d. Acknowledge and agree to comply with the FCC-mandated Lifeline Program-specific ETC obligations for High Cost Program ETCs discussed in section V, subsection D pp.17-19 of the OAG's March 26, 2021 Comments;
 - e. Acknowledge and agree to comply with the Commission obligations for High Cost Program ETCs discussed in section VI pp. 19-20 of the OAG's March 26, 2021 Comments; and
 - f. Agree to comply with the following OAG-proposed ETC obligations (pp. 20-22 of OAG's March 26, 2021 Comments):
 - i. Develop a consumer service inquiry process;



- ii. Comply with the consumer-protection obligations identified by the Department;
 - iii. Provide network buildout updates for the first two years of RDOF Phase I support; and
 - iv. Monitor open Commission ETC-related proceedings for additional obligations that may arise after the receipt of an RDOF Phase I ETC designation.
3. Approve the LTD Broadband's petition subject to the requirements recommended by the Minnesota Department of Commerce which include:
 - a. Consumer Protections as listed in Attachment 1 of the Department's March 26, 2021 Comments.
 - b. Stand-alone Voice as described on page 23 of the Department's March 26, 2021 Comments.
 - c. Tribal Engagement as described on page 23 of the Department's March 26, 2021 Comments.
 - d. Lifeline as described on page 23 of the Department's March 26, 2021 Comments.
 - e. Service Area Expansion as described on page 23 of the Department's March 26, 2021 Comments.
4. Deny the Company's petition.
5. Delegate authority to the Executive Secretary to issue notices and/or letters to the Federal Communications Commission, or any other entity, if necessary, to facilitate communication of the petitioners' ETC status as designated by this Commission. **(Staff Recommended)**

ADDENDUM A – Department’s Attachment 1 – Additional Consumer Protections

ATTACHMENT 1

POTENTIAL CONSUMER PROTECTION REGULATIONS

- 1) Informational Tariff or Price list. Keep on file with the Department of Commerce an up to date price list of services that are related to the company’s service offerings as an ETC. [ref. Minn. Stat. 237.07] [ref. Minn. Stat. 237.07]
- 2) Commission and Department Investigation. Cooperate with Commission/Department investigations and resultant Commission orders on matters associate with either federal or State ETC obligations. [ref. Minn. Stat. 237.081]
- 3) Complete all calls. Ensure that all intrastate calls will be completed. [ref Minn. Stat. 237.131]
- 4) Provide credit for incorrect Directory Assistance calls. Provide credit if a customer informs company of incorrect call. [ref. Minn. Stat. 237.155]
- 5) Pending sale or change of control. Inform the Commission regarding any pending sale or change in control of the company’s operations, in conjunction with apprising the FCC [Minn. Stat. 237.231]
- 6) Annual notice. Send out, one time per year, plus immediately after becoming a customer, a notice in plain language concerning customer rights and obligations, including: a. How to make a complaint b. The existence of the Commission’s Consumer Affairs Office (CAO) and its phone number. [ref. Min. Stat. 237.66]
- 7) Telephone Assistance Plan. Collect and remit the TAP fee when customers subscribe to voice service and apply the TAP credit to customers enrolled in Lifeline, if the customer subscribers to voice service either on a stand-alone basis or as part of a bundled service. [ref Minn. Stat. 237.69- 237.72]
- 8) Prohibition against Loading. Agree not to charge customers for services for which they did not explicitly contract and to credit the customer’s monthly bill upon complaint. [ref Minn. Stat. 237.663]
- 9) Notice Requirements. Send customers any required notices at least five days (excluding Sundays and legal holidays) in advance of the action being taken. [ref Minn. R. 7810.2300]
- 10) Report Outages. Promptly informing the regulatory agencies about any development or occurrence which disrupts service or affects the ability of a substantial number of customers to call 9-1-1. [Minn. R. 7810.0600]
- 11) Anti-slamming. Prevent the unauthorized switching of voice providers. [ref. Minn. Stat. 237.661]

- 12) Customer billing. Provide regular, correct customer bills, agree to provide credit for service outages. Provide to any customer who requests it, information on prices, charges, and services available. [ref. Minn. R. 7810.1400] 2
- 13) Complaints. Make personnel available to hear inquiries and complaints, investigate complaints, and respond to the PUC CAO office within 5 days of being forwarded a customer complaint. [ref. Minn. R. 7810.1100]
- 14) Deposits. Charge for deposits in accordance with Minn. R. 7810.1600 and Minn. Stat. 325E.02 (b)
- 15) Disconnections. Disconnect customers only in accordance with Minn. R. 7810.1800, 7810.1900, 7810.2000, and 7810.2100.
- 16) Bill Disputes. Agree not to disconnect over any disputed amount without investigating first, and allowing for the establishment of an escrow account [ref. Minn. R. 7810.2400]
- 17) Resolve interruptions of service promptly. [ref. Minn. R. 7810.5800]
- 18) Customer Trouble Reports. Receive customer trouble reports 24 hours per day in accordance with Minn. R. 7810.5900
- 19) Maintain plant and equipment. Furnish and maintain adequate plant, equipment and facilities to consistently meet required standards of speed, quality, and latency. [ref.7810.4900]

ADDENDUM B (FCC Decision on ETC Certification)

FCC ETC Decision

Below is an excerpt from an FCC order on a group of ETC petitions before it. The FCC received four ETC petitions from New York state carriers. All four carriers provided letters from the New York Public Service Commission declining ETC jurisdiction based on the petitioners offering only broadband and Voice over Internet Protocol (VoIP). As a result, the FCC had the authority to decide the petitions.

In approving these petitions, the FCC determined the following in its April 30, 2019 Order:

11. *Designated Service Area.* Each petitioner describes a designated service area based on all CAF-eligible census blocks covered by its Connect America Phase II award (as listed in Attachment B to this Order).
12. *Offering the Services Supported by the Universal Service Support Mechanisms.* We find that each of the petitioners establishes through the required certifications and related filings that it will offer the services supported by the federal universal service support mechanisms.
13. *Compliance with the Service Requirements Applicable to Connect America Phase II Support Awarded through the New York Program.* We find that each of the petitioners establishes its ability to comply with service requirements applicable to the support that it receives. This determination takes into account that the petitioners must demonstrate, as part of their FCC applications, the technical and financial ability to provide voice and broadband services meeting or exceeding Connect America Phase II standards and comply with all relevant public interest obligations. Moreover, once authorized, the petitioners must satisfy certain reporting obligations to ensure that the support received is being used efficiently and appropriately and that service requirements are being met.
14. *Compliance with Service Requirements Applicable to Lifeline Services.* Each petitioner commits to offering Lifeline discounts to qualifying low-income consumers, consistent with the Commission's rules, in all high-cost areas where it is authorized to receive support.
15. *Offering the Supported Services Using a Carrier's Own Facilities.* Each petitioner certifies that it is a facilities-based provider of broadband and voice services.
16. *Advertising Supported Services.* Each petitioner commits to advertising the availability of the supported services and related charges using media of general distribution. We emphasize that, as part of this commitment, an ETC must advertise the availability of its services and charges in a manner reasonably designed to reach Lifeline-eligible consumers.

17. *Ability to Remain Functional in Emergency Situations.* Each petitioner states that it can remain functional in emergency situations. Each petitioner states that it has sufficient back-up power to ensure functionality in the designated service area without an external power source, can re-route traffic around damaged facilities, and can manage traffic spikes resulting from emergency situations. (Please see FCC April 30, 2019 Order paragraphs 11-17, DA19-354)

In its public interest analysis as part of its April 13, 2019 Order, the FCC concluded the following:

19. We conclude that the petitioners' participation in universal service programs would be in the public interest and would provide numerous benefits to consumers. Through participation in the New York Program and completion of the Commission's subsequent application process, the petitioners demonstrate that they can offer voice and broadband service in high-cost areas efficiently and at a price and quality comparable to the service offerings in more competitive areas. Moreover, granting these petitions will serve the interests of low-income consumers by ensuring the availability of new, facilities-based Lifeline services at competitive prices in these areas. Given these commitments and associated representations, granting the ETC designations will help ensure increased consumer choice, affordability, and improved quality of service.
20. Accordingly, based on the information, representations, and certifications in their petitions, we find that the petitioners have met all applicable conditions and prerequisites for ETC designation and that conditionally granting these petitions serves the public interest. (Please see FCC April 30, 2019 Order paragraphs 19-20, DA19-354)

With respect to its ongoing oversight role of ETCs, the FCC provided the following analysis:

21. Under section 254(e) of the Act, each of these petitioners must use universal service support "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." Under section 214(e), each of the petitioners must provide supported services throughout their service area. To help ensure compliance with these requirements, the Commission requires these petitioners to file an annual certification that all federal high-cost support received was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The Commission conditions future support awarded through the high-cost program on the filing of such certification. In addition, petitioners must file annual reports detailing their ongoing compliance with service standards, must annually report location

deployment data, and must certify by specific deadlines deployment to a specific number of locations.

22. We find that reliance on petitioners' commitments to meet these and other regulatory requirements, as well as representations and commitments made in their petitions, is reasonable and consistent with the public interest and the Act. We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring that petitioners satisfy their obligation under section 214(e) of the Act to provide supported services throughout their respective designated service areas.
23. The Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support the ETC receives is being used "only for the provision, maintenance, and upgrading of facilities and services" in the areas in which it is designated as an ETC. Petitioners must provide such records and documentation to the Commission and USAC upon request. If a petitioner fails to fulfill the requirements of the Act, the Commission's rules, and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke the petitioner's ETC designation. The Commission also may assess forfeitures for violations of Commission rules and orders. (Please see FCC April 30, 2019 Order paragraphs 21-23, DA19-354)