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March 26, 2021

VIA E-FILING

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

**Re: In the Matter of a Notice to Rural Digital Opportunity Fund (RDOF)
Grant Winners
Docket No. CI-21-86**

**In the Matter of the Petition of LTD Broadband LLC to Expand its
Designation as an Eligible Telecommunications Carrier
Docket No. 21-133**

Dear Mr. Seuffert:

Enclosed are the Comments of Minnesota Telecom Alliance regarding the above-referenced matters.

Sincerely,

/s/ R. Cameron Winton

R. Cameron Winton

On behalf of the Minnesota Telecom Alliance

Enclosure

cc: Service List

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

Katie Sieben	Chair
Valerie Means	Commissioner
Matthew Schuenger	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

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COMMENTS OF MINNESOTA TELECOM ALLIANCE

INTRODUCTION

The Minnesota Telecom Alliance (“MTA”) is a trade association comprised of more than 70 telecommunications companies across Minnesota. MTA members range from family-owned companies and local cooperatives with storefronts on Main Street Minnesota to companies with multi-state operations. MTA’s members provide voice, video, and high-speed internet to Minnesotans in every area of the state.

LTD Broadband LLC (“LTD”) seeks to expand its existing ETC designation to additional census blocks in order to obtain Rural Digital Opportunity Fund (“RDOF”) Phase I Auction support for 18,110 Census Blocks (102,005 locations) in the State of Minnesota. LTD has failed to provide evidence that it can fulfill the applicable requirements, so the Commission should deny LTD’s petition.

Most MTA members have constructed and are operating fiber-to-the-home and other predominately fiber-based networks, along with fixed wireless solutions, that provide high-speed, low latency broadband services throughout their existing rural service areas. Many of these MTA members—either bidding themselves or as members of consortia—participated in the RDOF Phase I Auction. They are ready, willing, and able to provide low latency, high-speed broadband services to locations in many of the Minnesota areas for which LTD was the lowest bidder. The Commission should ensure that any bidder—particularly one that has submitted consistently low bids across a wide range of states—can fulfill its commitments before the Commission enables that bidder to receive significant public funds.

A. Applicable criteria for evaluating LTD’s request for ETC designation

The Commission evaluates ETC designation requests under the criteria set forth in Minnesota Administrative Rules 7811.1400 (“Small Local Providers”), Minn. Admin. R. 7812.1400 (“Large Local Providers”), and 47 C.F.R. Part 54. Those federal and state rules set forth a variety of criteria for evaluation.¹

In these comments, MTA submits information in regard to three of those factors: consumer protection, advertising of Lifeline, and public interest. In summary, LTD has not provided information to support its claim that it can provide required consumer protections, that it will fulfill its obligations to advertise Lifeline, and that expansion of ETC would be in

¹ As Commission staff wrote, “The Commission has routinely applied the following evaluation in its assessment of the adequacy of ETC petitions[:]” common carrier requirements for ETC designation, supported services required for ETC designation, service quality and consumer protection, emergency readiness, advertising, and public interest. *See* Staff Briefing Papers, In the Matter of Petitions for Eligible Telecommunications Carrier (ETC) Designation in Minnesota, P999/CI-18-634 et al., January 24, 2019, page 8 (internal citation omitted).

the public interest.

To the contrary, the limited information that is available raises questions about whether LTD can fulfill those requirements. MTA urges the Commission to hold LTD to its burden of proof to establish that it can fulfill the applicable criteria, and based on the information in the record, deny the request. *See, e.g.,* Minn. Stat. 237.74, subd. 4(d) (“Regulation of Telecommunications Carrier”) (“In any complaint proceeding authorized under this section, telecommunications carriers shall bear the burden of proof consistent with the allocation of the burden of proof to telephone companies in sections 237.01 to 237.73.”)

B. 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 “[a]ppropriate handling of customer complaints and billing disputes[.]” *See* Staff Briefing Papers, In the Matter of Petitions for Eligible Telecommunications Carrier (ETC) Designation in Minnesota, P999/CI-18-634 et al., January 24, 2019, page 9 (internal citation omitted).

In support of its application, LTD has provided nothing beyond the statement that it will comply. *See*, LTD application at p. 9. Its actual track record in handling customer complaints suggests that it does not act consistently with protecting consumers. For example, *the Better Business Bureau (“BBB”) gives LTD’s Minnesota operations a failing “F” rating.*² BBB states that the reasons for its “F” rating are: (1) Failure to respond to 1

² <https://www.bbb.org/us/mn/albert-lea/profile/internet-service/ltd-broadband-0704-1000030372>, visited March 22, 2021.

complaint(s) filed against business; (2) 14 complaint(s) filed against business; and (3) Length of time business has been operating.³ BBB gives LTD a 1.1-star customer rating on a 5-star scale on the basis of an average of nine (9) customer reviews. Finally, BBB notes that it 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.⁴ Given these significant shortcomings regarding consumer protections, the Commission should deny LTD's request.

C. The Commission should deny LTD's request because of concerns about LTD's advertising of Lifeline.

Under applicable law, an applicant for ETC designation must commit to make Lifeline service available and publicize it. 47 C.F.R. §54.405. In its pending ETC application, LTD states that it will fulfill those requirements. Based on LTD's past actions, though, the Commission should not simply accept LTD's promises at face value, but rather demand actual facts and action.

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, footnote 10.

³ <https://www.bbb.org/us/mn/albert-lea/profile/internet-service/ltd-broadband-0704-1000030372/overview-of-bbb-ratings>, visited March 22, 2021.

⁴ <https://www.bbb.org/us/mn/albert-lea/profile/internet-service/ltd-broadband-0704-1000030372/complaints>, visited March 22, 2021.

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. As the Department of Commerce wrote,

Broadband, Inc., Jaguar, and LTD Broadband, all winners of the 903 auctions of 2017, have no information on their websites concerning Lifeline services. Each of these companies, as recipients of federal funds has an obligation to provide information on Lifeline services. In addition to being awarded over \$1 million in the 903 auction, LTD Broadband was the largest recipient of Rural Digital Opportunity Fund (RDOF) funds in the recent Auction 904. For Minnesota alone, LTD Broadband received over \$300 million to serve more than 100,000 locations. The Department urges the Commission to take note of the large number of customers that will be in LTD Broadband’s service area and require that LTD Broadband ensure that low income residents are aware of the opportunity to receive a discount on their service through information on the company’s website, at minimum.

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. 9. 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.

D. Granting LTD’s request would not be in the public interest, so the Commission should deny it.

The applicable federal regulation, 47 C.F.R. §54.202 (b), requires that an ETC designation be in the public interest—but there is no evidence that granting LTD’s request would advance the public interest of expanding internet service. To the contrary, given the

apparent shortcomings in LTD’s technical and financial abilities, granting LTD’s request would likely *delay* actual deployment of broadband to Minnesotans who need it, thereby harming the public interest.

1. There is no evidence that LTD has the technological ability to offer the service it has promised.

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 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. To the contrary, LTD states on its website that it offers the following four service and pricing plans for fixed wireless service, each far below the RDOF Gigabit performance tier: (1) 6 Mbps downstream/1 Mbps upstream; (2) 10 Mbps downstream/2 Mbps upstream; (3) 25 Mbps downstream/3 Mbps upstream; and (4) 35 Mbps downstream/7 Mbps upstream. LTD claims that speeds of up to 10 Gbps are “available,” but does not indicate the areas or extent to which they are provided or what technology it uses to provide them.⁵

LTD has a track record of not living up to its promises. In the CAF Phase II Auction, LTD won limited amounts of support in five states (Minnesota, Iowa, Illinois, Nebraska and Nevada), ***but defaulted in two of them*** (Nebraska and Nevada). *Connect America Fund Phase II Auction*, WC Docket No. 10-90 and AU Docket No. 17-182, 34 FCC Rcd 7060 (released August 9, 2019). ***The FCC’s Enforcement Bureau fined LTD*** \$3,563 for defaulting on “winning” CAF Phase II Auction bids that it had placed for one Census Block Group in Nebraska and one Census Block Group in Nevada. *See LTD Broadband, LLC*, Notice of

⁵ www.ltdbroadband.com/plans (visited March 22, 2021).

Apparent Liability for Forfeiture, File No. EB-1HD-19-00029977, DA 19-950, released October 11, 2019. LTD had been unable to obtain designation as an Eligible Telecommunications Carrier in either Nebraska or Nevada.

2. There is no evidence that LTD has the financial ability to build its proposed network.

There is no evidence that LTD has the financial ability to build its proposed network. LTD appears to face a substantial financial hurdle to build its Minnesota RDOF broadband network, as well as its other fourteen state RDOF broadband networks. Given LTD's minimal current broadband facilities and the scattered and non-contiguous nature of many of the Census Block Groups 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.

Available information indicates that LTD is a very small company owned by a single individual. In February, 2019, LTD's request for a waiver of the CAF Phase II Auction deadline for filing audited financial statements was granted on the grounds that LTD was a small business with a limited number of employees and administrative resources, that *it was not audited in the ordinary course of business*, and that its efforts to retain and engage accountants within the required time frame were unsuccessful. *Connect America Fund Phase II Auction*, WC Docket No. 10-90 and AU Docket No. 17-182, 34 FCC Rcd 7060 (released August 9, 2019). Since that time, there is no indication that LTD has grown from a company too small to have audited financial statements or even to rapidly retain a qualified accounting firm to conduct such an audit, to become an entity that is now able to engineer, construct and

operate fiber-to-the-home or other predominately fiber optic networks to serve over half of a million locations in scattered areas of fifteen states.

There is no evidence that LTD has liquid assets anywhere near the size of the amount needed to fund the estimated network construction costs. Similarly, there is no evidence that LTD has sufficient plant and other assets that would be acceptable as collateral for debt financing. And similarly, another hypothetical approach—selling up to a 49.9 percent non-controlling interest in LTD to new equity investors—is unlikely because LTD pushed the RDOF support revenue stream so low that most potential minority investors will not be able to expect sufficient returns to make the investment attractive. For the same reason, it is unlikely that LTD would be able to secure the investors necessary to fulfill its obligation under RDOF rules to secure a \$130 million line of credit for the benefit of the FCC should LTD be unable to complete its RDOF obligations. Furthermore, any sale of a majority stake would constitute a change in control, requiring notice by LTD. MTA notes that this dim financial evaluation is limited to the cost of constructing the proposed RDOF networks, and does not even include an analysis of the funds LTD would need to operate the networks for the start-up period before cash flow becomes positive.

To date, MTA has not had access to LTD's financial and technical statements because they are considered proprietary and confidential in the FCC process. MTA may request leave to supplement its comments if the Federal Communication Commission's response to a pending petition by the Ensuring RDOF Integrity Coalition ("ERIC") establishes a mechanism for review of such financial and technical materials.

In summary, there is no indication that LTD has the technical or financial resources to meet its service obligations with respect to the 18,110 census blocks (102,005 locations) that

it has “won” in the State of Minnesota. MTA’s concern is heightened by the fact that LTD has simultaneously taken on massive obligations across the country, having submitted the low bid in the RDOF Phase I auction for a total of 92,092 census blocks, representing 528,088 locations across fifteen (15) states.

If the Commission grants LTD’s request, but LTD then fails to meet its obligations to build out and serve broadband customers in Minnesota, over 100,000 rural Minnesota locations will be deprived of urgently needed high-speed broadband access for years. Interested parties would spend years litigating the degree and consequences of LTD’s non-compliance, while the state and federal government tried to develop mechanisms to encourage qualified alternative broadband service providers to serve these areas instead of LTD. Accordingly, granting LTD’s request would harm the public interest—and accordingly, the Commission should deny that request.

E. Members of the U.S. Congress and regulatory commissioners are emphasizing the need to vet RDOF applications thoroughly.

On January 19, 2021, one hundred sixty members of Congress sent a bipartisan, bicameral letter to then-Chairman Ajit Pai urging the Commission to thoroughly vet the winning bidders in the RDOF I auction to ensure that they can deliver the broadband services they have promised. In relevant part, the letter stated:

As responsible stewards of USF funds, we ask that the FCC redouble its efforts to review the long-form applications that will now be submitted. We urge the FCC to validate that each provider in fact has the technical, financial, managerial, operational skills, capabilities, and resources to deliver the services that they have pledged for every American they plan to serve regardless of the technology they use. We also strongly encourage the FCC to make as public as possible the status of its review and consider opportunities for public input on the applications. Such

transparency and accountability will be essential to ensure the success of this program and to minimize any opportunities for fraud or abuse.⁶

Signatories to the letter included Senator Amy Klobuchar, Senator Tina Smith, and Representative Angie Craig.

Similarly, on February 11, 2021, the Board of Directors of the National Association of Regulatory Commissioners passed a resolution at its 2021 Winter Policy Summit that urged “the FCC to closely scrutinize the long-form applications of RDOF support winners to ensure that each provider does in fact have the technical, financial, managerial, operational skills, capabilities and resources to deliver the services they have pledged for every American they plan to serve regardless of the technology they use.”

MTA urges the Commission to follow the recommendation of this wide cross section of Members of Congress and regulatory commissioners by evaluating LTD’s claims closely.

F. The Commission may wish to consider revoking LTD’s existing ETC designation.

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. See, Minn. Admin. R. 7811.1400, subp. 15 (“Revocation”).

CONCLUSION

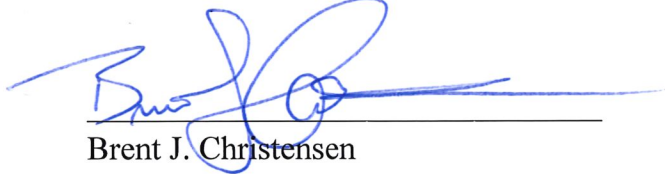
For the foregoing reasons, the Minnesota Telecom Alliance encourages the

⁶ Letter available at <https://www.grassley.senate.gov/imo/media/doc/Bicameral%20Letter%20on%20RDOF.pdf>

Commission to deny LTD's request for expansion of its ETC designation.

Dated this 26th day of March, 2021.

MINNESOTA TELECOM ALLIANCE



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

Katie Sieben	Chair
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an Eligible Telecommunications Carrier**

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CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of March, 2021, I served the attached filing electronically on the attached service lists via the Minnesota Public Utilities Commission's eFiling System.

/s/ R. Cameron Winton
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On behalf of the Minnesota Telecom Alliance

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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-86_Official
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Linda	Chavez	linda.chavez@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 55101-2198	Electronic Service	No	OFF_SL_21-133_M-21-133
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_21-133_M-21-133
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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_21-133_M-21-133
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