

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Dan Lipschultz  
Matthew Schuerger  
Katie J. Sieben  
John A. Tuma

Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of LTD Broadband LLC's  
Petition for Eligible Telecommunications  
Carrier Designation in Minnesota

ISSUE DATE: February 8, 2019

DOCKET NO. P-6995/M-18-653

In the Matter of a Notice to Connect America  
Fund II Grant Winners

DOCKET NO. P-999/CI-18-634

ORDER APPROVING REQUEST FOR  
ETC STATUS FOR HIGH COST  
SUPPORT IN CERTAIN CENSUS  
BLOCKS

**PROCEDURAL HISTORY**

**I. Background**

On August 28, 2018, the Federal Communications Commission (FCC) announced the winning bidders of Auction 903, a Connect America Fund Phase II (CAF II) auction to receive \$1,104,440.80 to invest in broadband infrastructure across rural America. Areas that will receive support through this auction are locations in census blocks in rural areas served by price cap carriers that do not have access to broadband services within designated speeds. The FCC has determined that these areas are rural, sparsely populated, and that historically, there has not been a reasonable basis on which to invest in state-of-the-art broadband infrastructure in the absence of sufficient and predictable universal service support.

CAF II funding, grant funding, loans and other financial tools provide incentives for entities to expand their existing footprints and serve the rural areas identified for support in Auction 903. Carriers awarded support in this auction are required to deploy broadband to the specified number of locations in eligible census blocks, in the census block groups in which they bid, within a six-year period at the speed tier specified in their bid.<sup>1</sup>

LTD Broadband, LLC (LTD), was among the 103 providers listed as provisional winners.<sup>2</sup> One of these requirements is for LTD to be designated an Eligible Telecommunications Carrier (ETC) in the Funded Areas by February 25, 2019.

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<sup>1</sup> The FCC named sixteen companies as CAF II auction winners for Minnesota locations.

<sup>2</sup> The CAF II award is given in monthly installments for 10 years (about \$10.96 per location per month for LTD).

## **II. LTD's Petition**

On October 22, 2018, LTD requested ETC designation from the Commission for the Funded Areas, as authorized by Section 214(e) of the Federal Communications Act of 1934.<sup>3</sup>

On December 12, 2018, the Minnesota Department of Commerce (the Department) filed comments on LTD's petition.

On December 13, 2018, the Minnesota Department of Employment and Economic Development, Office of Broadband Development (OBD) filed reply comments in this matter. OBD recommended that the Commission grant LTD's request for ETC designation to ensure that federal funding to support the build-out of broadband service to unserved, high cost areas flows to this state for the benefit of Minnesotans.

On December 14, 2018 in Docket P-999/CI-18-634, the Department filed a letter serving notice to all carriers seeking ETC status that they should address the telecommunications service provision issues that the Department raised in its December 12, 2018 comments in this docket.

On January 24, 2019, the Commission met to consider the matter.

## **FINDINGS AND CONCLUSIONS**

### **I. Positions of the Parties**

#### **A. LTD**

LTD provides Voice over Internet Protocol (VoIP) service and will continue doing so in the Funded Areas in which it seeks designation as an ETC. LTD states that it satisfies the requirements of Section 214(e)(1) and 254 of the Communications Act of 1934, as amended by the Federal Telecommunications Act of 1996 for designation as an ETC in the Funded Areas, to: (1) offer the services supported by federal universal service support mechanisms, (2) either using its own facilities or a combination of its own facilities and resale of another carrier's service, and to (3) advertise the availability of such services and the charges using media of general distribution.

LTD also asserts that it will satisfy consumer and service quality standards established by federal and state law. Finally, LTD states that it is the largest fixed wireless Internet service provider in Minnesota, providing broadband services to more than 9,000 customers throughout its service territory.

#### **B. The Department**

The Department analyzed LTD's application for ETC status, and found that LTD satisfied each of the criteria required for ETC certification, save one. The Department noted that LTD maintains that it offers information services and that it is not subject to Commission jurisdiction other than for the purpose of obtaining status as an ETC. The Department argued that it is a

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<sup>3</sup> Exhibit A to LTD's petition lists the CAF II LTD Broadband Awarded Census Blocks.

requirement for an ETC to provide *telecommunications* services, however, and not just information services, and that therefore LTD's application cannot be approved without a clear explanation of how it will satisfy this legal requirement.<sup>4</sup>

The Department recommended approval of LTD's request for ETC status for high cost support in the Census Blocks listed in Exhibit 1 to its petition, if LTD meets the following conditions:

- Require LTD to provide a clear explanation of how it will satisfy the requirement of providing a telecommunications service;
- If LTD demonstrates that it will be providing a telecommunications service, it should explain why the provision of telecommunications services does not require a certificate of authority from the Commission; and
- LTD should show that the Department of Public Safety is satisfied with its 911 arrangements to ensure consumer protections exist with emergency 911 calling.

At the Commission meeting, the Department argued the Commission should not grant a petition for ETC status unless the applicant can show it will provide telecommunications service within the next three years, relying on a 10th Circuit decision overturning the FCC's "Transformation Order"<sup>5</sup> and holding that a provider of information services (VoIP) alone is not eligible for Universal Service Funds (USF).<sup>6</sup>

### **C. Office of Broadband Development**

The Office of Broadband Development of the Minnesota Department of Employment and Economic Development (OBD) recommended that the Commission grant the requests for ETC designation to ensure that federal funding to support the build out of broadband service to unserved high cost areas flows to this state for the benefit of Minnesotans. OBD argued that the FCC has been clear since its 2011 "Transformation Order" that a provider using VoIP service is offering a voice telephony service eligible for federal universal service support. The Transformation Order explained that:

Interconnected VoIP services, among other things, allow customers to make real-time voice calls to, and receive calls from, the PSRN, and increasingly appear to be viewed by consumers as substitutes for traditional voice telephone services. Our authority to promote universal service in this context does not depend on whether interconnected VoIP services are telecommunications services or information services under the Communications Act.<sup>7</sup>

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<sup>4</sup> The Federal Communications Act of 1934 distinguishes between information services and telecommunications service. *See, e.g.*, 47 USC 154.

<sup>5</sup> November 18, 2011-161A FCC Order.

<sup>6</sup> The Department relied on an argument it advanced in its January 23, 2019 comments in an associated petition for ETC designation (also heard by the Commission on January 24, 2019). *In re Midcontinent Communications Expansion of Service Area*, Docket No. P-6186/M-18-661.

<sup>7</sup> *See infra* Transformation Order at Paragraph 64; FCC Rule 54.101, as modified at 47 CFR 54.101(a)(1).

## II. Commission Action

47 USC § 214(e) (2) authorizes state commissions to designate a common carrier that meets the requirements of 47 USC § 214(e) (1) as an ETC for a service area designated by the state commission. Thus, the Commission has the authority to designate telecommunications companies as ETCs to receive universal service support.

The Commission agrees with the OBD that Minnesota providers using VoIP service are offering voice telephony services eligible for federal universal service support. The FCC's 2011 Transformation Order and FCC Rules 54.101<sup>8</sup> make clear that the regulatory classification of VoIP as either a telecommunication service or an information service is irrelevant for purposes of this proceeding.

The issue is not, as the Department argued, whether LTD can provide telecommunications service within the next three years. That requirement arises from a case decided in the 10th Circuit, and is clearly not binding on the Commission. The issue to be decided is whether VoIP services provide the functional equivalent of voice telephony services.

The FCC's 2011 Transformation Order made clear that additional communication platforms by which to provide telephony service are also entitled to universal service support. Paragraph 78 of the FCC Transformation Order explains that the purpose of the order was to shift to a *technologically neutral approach* allowing companies to provision voice service *over any platform*, including the public switched telephone network and internet protocol networks.

This modification will benefit both providers (as they may invest in new infrastructure and services) and consumers (who reap the benefits of the new technology and service offerings). Accordingly, to promote technological neutrality while ensuring that our new approach does not result in lower quality offerings, we amend section 54.101 of the Commission rules to specify that the functionalities of eligible voice telephony services *include voice grade access to the public switched network or its functional equivalent*. (Emphasis added).<sup>9</sup>

Further, there is no dispute in this docket that LTD is subject to the state's 911 requirements. LTD can work directly with the Department of Public Safety regarding 911 compliance or issues.

Accordingly, the Commission will approve LTD's request for ETC status for high cost support in the Census Blocks listed in the Company's filing.

Finally, the Commission will delegate authority to the Executive Secretary to issue notices or letters as necessary to communicate with the FCC or other entities regarding LTD's ETC status.

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<sup>8</sup> FCC Rule 54.101, as modified at 47 CFR 54.101 (a) (1) states that "[E]ligible voice telephone services must provide voice grade access to the public switched network or its functional equivalent."

<sup>9</sup> Transformation Order, *supra* at paragraph 78.

## ORDER

1. LTD Broadband LLC's request for ETC status for high cost support in the Census Blocks listed in the company's filing is approved.
2. The Commission delegates authority to the Executive Secretary to issue notices or letters to the Federal Communications Commission or any other entity if necessary to facilitate communication of LTD's ETC status with this Commission.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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