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February 19, 2019

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place E, Ste. 350
St. Paul, MN 55101

Re: *In the Matter of LTD Broadband LLC's Petition for Eligible Telecommunications Carrier Designation in Minnesota, Docket No: P-6995/M-18-653*

In the Matter of Broadband Corp.'s Petition for Eligible Telecommunications Carrier Designation in Minnesota, Docket No: P-6994/M-18-665

In the Matter of a Notice to Connect America Fund II Grant Winners, Docket No: CI-18-634

Dear Mr. Wolf:

On behalf of the Minnesota Department of Commerce, please find attached the Minnesota Department of Commerce Request for Reconsideration.

Sincerely,

/s/ **Linda S. Jensen**

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Assistant Attorney General

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Attorney for Minnesota Department of Commerce

Attachment

cc: Service lists

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
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SAINT PAUL, MINNESOTA 55101-2147**

Dan Lipschultz	Commissioner
Matt Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

In the Matter of LTD Broadband LLC's Petition for Eligible Telecommunications Carrier Designation in Minnesota	DOCKET NO. P-6995/M-18-653
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**THE MINNESOTA DEPARTMENT OF COMMERCE
REQUEST FOR RECONSIDERATION**

I. INTRODUCTION

The Department of Commerce (Department) recommends that the Minnesota Public Utilities Commission (Commission) reconsider two of its recent orders, in which the Commission designated LTD Broadband LLC (LTD) and Broadband Corp. (Broadband) “eligible telecommunications carriers” (ETCs).¹ The Commission has generally reconsidered a decision when it finds there are new issues, new and relevant evidence, or errors or ambiguities in the prior order, or when the Commission is otherwise persuaded that it should reconsider the

¹ (1) *In the Matter of LTD Broadband LLC's Petition for Eligible Telecommunications Carrier (ETC) Designation in Minnesota*, Dkt No. P-6995/M-18-653, Order Approving Request for ETC Status for High Cost Support in Certain Census Blocks, Feb. 8, 2019, (the LTD Order) and (2) *In the Matter of Broadband Corp.'s Petition for Eligible Telecommunications Carrier Designation in Minnesota*, Dkt No. P-6994/M-18-665, Order Approving Request for ETC Status for High Cost Support in Certain Census Blocks, Feb. 8, 2019 (the Broadband Order).

decisions set forth in its order.² In this case, reconsideration is appropriate because the Commission appeared to have based its decisions on the numerous ETC designations heard on January 24, 2019 on an understanding that, in general, Minnesota’s consumer protections are available to ETCs’ customers.³ During deliberations, Commissioner Sieben thoughtfully considered the impact of the ETC designations on customers. She stated that she had inquired whether Minnesota statutes still applied and whether “things we don’t want taken away for protection of consumers would still be in place.”⁴ Commissioner Sieben stated that she had been assured that those protections would be in place. Because, in the particular cases of LTD and Broadband, those ordinary consumer protections are unavailable, the Commission may wish to reconsider its decisions in those two dockets.

II. RECONSIDERATION REQUEST

While LTD and Broadband may intend to fully act like the other ETCs that have a certificate of authority from the Commission, there is no obligation that they do so in the absence of the Commission memorializing these commitments through its Orders. The Department recommends that the Commission reconsider its orders to grant ETC status to LTD and Broadband and require that these companies provide the consumer protections afforded to customers whose present voice service providers have certificates of authority, such as:

- Access to low income assistance;
- prompt restoration of service following outages;
- accurate billing;
- access to emergency services;
- proper notices;

² See e.g., *In the Matter of Digital Telecommunications, Inc.’s Complaint Against Qwest Corporation*, Dkt No. P-5681. 421/C-09-302, Order Clarifying Prior Order, and Denying Reconsideration at 4 (Sept. 15, 2015).

³ A petition for reconsideration must set forth the grounds relied upon or errors claimed. Minn. R. 7829.3000, subp. 2 (2017); see also Minn. Stat. § 216B.27, subd. 2 (2018).

⁴ Video transcript of Commission agenda meeting, Jan. 24, 2019, 9:30 AM at approx. 38:42.

- adequate service; and
- a venue to seek assistance from regulatory agencies if needed.

As part of universal service policy, LTD and Broadband are being subsidized with government funds to serve remote “high cost” rural areas. Customers that subscribe to broadband service from one of these providers will also receive their voice telephone service from that provider.⁵ It is in the public interest that the Commission condition the ETC designation on LTD’s and Broadband’s agreement to provide reasonable voice service quality. Service quality should not take a step backward when government funds are used to better the lives of rural Minnesotans. Further, from the standpoint of encouraging the advancement of competition, LTD and Broadband should meet the same quality of service requirements for voice services as other Minnesota companies that receive Connect America Fund II (CAF II) grants.

The Department recommends that the Commission reconsider its ETC designations of LTD and Broadband, and amend its Orders to require the companies to agree to act in the public interest by providing essentially the same consumer protections as they would if they were certificated, as is the case with the other ETC designees.⁶ Specifically, the companies should

⁵ To be designated an ETC, the provider must offer standalone voice service in the areas where the ETC designation is granted. 47 C.F.R. § 54.101.

⁶ The Department is not recommending reconsideration of the Commission’s decision regarding the issue of whether ETC petitioners must provide a telecommunications service. Congress, in 47 U.S.C. § 214 (e), required as a precondition to accessing FCC high cost or consumer specific “lifeline” support subsidies, that providers be designated “Eligible Telecommunications Carriers” (ETCs) *by a State Commission*. “Telecommunications carriers” are defined as “any provider of telecommunications services [and a] telecommunications carrier shall be treated as a common carrier *under this chapter only to the extent that it is engaged in providing telecommunications services.*” 47 U.S.C. § 153 (51). For new infrastructure deployment, voice over internet protocol (VoIP) is the technology used to provide voice services. As the Commission recognized in its deliberations in this matter, the requirement that ETCs must provide telecommunications services, combined with the fact that voice services over new infrastructure will be VoIP, which the 8th Circuit Court of Appeals classified as a Title I Information Service, creates an impossible circumstance for those companies seeking ETC status. Thus, the Department is not seeking reconsideration on this point, since this issue needs to be resolved by Congress, the courts, or the FCC.

commit to comply with Minnesota's ordinary consumer protection requirements, such as Minnesota Rules Chs. 7810, in part (on service quality),⁷ 7813 (call trace service), 7817 (TAP program), 7819 (use of public right of way), 7829 (Commission procedures) and statutes such as Minnesota Statutes §§ 237.69 to 237.71, which concerns the Telephone Assistance Plan (TAP) program, which supports accessibility for low income customers⁸, and Minnesota Statutes §§ 237.50 to 237.56, which concerns the Telecommunications Access Minnesota (TAM) program, which provides accessibility services for Minnesotans with disabilities (collectively the "State Consumer Protections.") This may be achieved by simply allowing the companies to file for certificates of authority as a condition of the designation, or by requiring them to file a compliance plan that details how the companies will ensure their voice service customers have similar consumer protections, as are afforded to other telephone customers.

III. THE PUBLIC INTEREST IS SERVED WHEN THE COMMISSION REQUIRES ETCs THAT ARE NOT COMMISSION-AUTHORIZED CARRIERS TO PROVIDE CONSUMER PROTECTIONS.

Designation of an ETC with conditions that the Commission deems to be needed to protect the "public interest, convenience or necessity," is not a novel practice for the Commission. 47 U.S.C. § 214(e)(2) specifies that State commissions may designate common

⁷ These parts of Minn. R. Ch. 7810 are Records and Reports; Customer Relations; Customer Billing, Deposit and Guarantee Requirements; Disconnection of Service, Service Delay; Directories; Engineering; and Inspections, Tests, Service Requirements.

⁸ Minn. Stat. §§ 237.69 to 237.71 (the TAP program) applies to "local service providers." Minn. R. 7817.0100 states, at subp. 10a, that "Local service provider" means a service provider of local exchange service, and, at subp. 10, that "Local exchange service" is telephone service provided within local exchange service areas in accordance with local service provider tariffs. This could perhaps be read to mean that a commission-approved tariff of a voice service provider may be sufficient to establish the voice provider's participation in the existing TAP program. In the view of the Department, if the Commission does not determine that the TAP program (established by Minn. Stat. §§ 237.69 to 237.71 and Minn. R. Ch. 7817) may apply to companies that offer voice service but do not have a certificate of authority from the Commission, then the Commission should at minimum determine whether LTD and Broadband must provide a substitute low income assistance program, similar to TAP, for the ETC designation to be in the public interest.

carriers as ETCs “consistent with *the public interest, convenience, and necessity*,” and “[b]efore designating an additional ETC for an area served by a rural telephone company, the State commission *shall* find that the designation is in *the public interest*.” Indeed, the Commission has long expressly conditioned ETC designations of entities who lack certificates of authority, such as cellular phone service providers, on the provider’s commitment to meet reasonable public interest requirements imposed by the Commission. For example, when the Commission designated TracFone to be an ETC, the Commission placed numerous public interest conditions upon TracFone, including a requirement that TracFone comply with the Commission’s consumer protections and service quality standards set out in Minnesota Rules Ch. 7810.⁹

With the ETC designations of LTD and Broadband, based on comments made during deliberations, it appears that the Commission misunderstood the facts or law regarding whether basic State Consumer Protections will be available after the designations of these providers as ETCs. Because LTD and Broadband have not sought or received certificates of authority in Minnesota, there is no existing set of state rules applicable to their services that the Commission can enforce. That is, LTD and Broadband at present need offer *none of the* consumer protections of Minnesota statutes or the Commission’s rules, except to the extent compliance with a set of rules is required in this proceeding. To its credit, LTD stated in its petition: “LTD is subject to service quality standards and consumer protection obligations under federal requirements, and to a limited extent, Minnesota state law as a telecommunications carrier subject to Minnesota Public Utilities Commission regulation.”¹⁰ But, LTD is not a telecommunications carrier,

⁹ *In the Matter of a Petition of TracFone Wireless, Inc. for Designation as an Eligible Telecommunications Carrier (ETC) for the Limited Purpose of Offering Lifeline Service to Qualified Households*, Dkt No. P6823/M-09-802, Order Granting One-Year, Conditional ETC Designation & Opening Investigation,” June 9, 2010.

¹⁰ LTD Pet. at 8-9 and fn.19 states that the applicable administrative rules include the following parts of Minn. R. Ch. 7810: Records and Reports; Customer Relations; Customer Billing,

meaning this statement does not result in any consumer protections for voice services. Broadband, in contrast, said it “complies with the FCC’s Rules pertaining to service quality and consumer protection.”¹¹ That is, Broadband has neither agreed to meet Minnesota service quality rules, nor agreed that it is subject to the authority of state regulatory agencies, other than the Commission’s authority to determine Broadband’s designation as an ETC. LTD and Broadband have acknowledged that the Commission has authority over their services for purpose of determining whether their designations as ETCs is in “the public interest, convenience and necessity.”¹² If either LTD or Broadband also intended to state that they will agree to comply with all the appropriate State Consumer Protections there should be an express finding to that effect in the Commission’s order that details the provisions that will apply, and states that the Commission and Department may enforce those State Consumer Protections, as a condition of the Commission finding the designations to be in the public interest. Such a requirement would protect Minnesota customers and treat these two voice providers in a manner that is comparable to other voice service providers, in a technologically agnostic manner.¹³

IV. CONCLUSION

The Department recommends that, to the extent possible, the Commission hold companies receiving government subsidies to the same consumer protection standards for voice services as customers have been receiving from existing rural telephone companies. The

Deposit and Guarantee Requirements; Disconnection of Service, Service Delay; Directories; Engineering; and Inspections, Tests, Service Requirements. While LTD may be intending to comply with some rules in a manner similar to other ETCs that do have a certificate of authority to operate in Minnesota, in light of the Commission’s decision that status as a telecommunications carrier is not an element of its ETC designations, LTD’s commitment is ambiguous and unenforceable.

¹¹ Broadband Pet. at ¶ 6.

¹² 47 U.S.C. § 214 (e) (2).

¹³ Minn. Stat. § 237.011 (4) requires the Commission to encourage fair and reasonable competition for local exchange telephone service in a competitively neutral regulatory manner.

Department recommends that the Commission reconsider its ETC designations of LTD and Broadband, and issue an order that requires the companies to agree they will act in the public interest, as though they were certificated. Specifically, the companies should commit to comply with the consumer protections afforded by specific, identified Minnesota laws and rules, and commit to enforcement authority of the Commission and Department, should that be necessary. These laws and rules could be identified by having the companies file for certificates of authority as a condition of the designation, or by requiring a compliance plan to explain how the companies will ensure that their voice service customers will have the appropriate consumer protections. The Department is happy to work with the companies in preparing such a compliance plan for the Commission's review.

Dated: February 19, 2019

KEITH ELLISON
State of Minnesota
Attorney General

/s/ **Linda S. Jensen**

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ATTORNEY FOR MINNESOTA
DEPARTMENT OF COMMERCE

AFFIDAVIT OF SERVICE

Re: *In the Matter of LTD Broadband LLC's Petition for Eligible Telecommunications Carrier Designation in Minnesota*, Docket No: P-6995/M-18-653

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In the Matter of a Notice to Connect America Fund II Grant Winners,
Docket No: CI-18-634

[illegible]

I, Ann Kirlin, hereby state that on February 19, 2019, I filed by electronic eDockets the attached **Minnesota Department of Commerce Request for Reconsideration**, and eServed or sent by US Mail, as noted, to all parties on the attached service lists.

See attached service lists.

/s/ Ann Kirlin

ANN KIRLIN

Subscribed and sworn to before me
on February 19, 2019.

/s/ C.O. Ransom

Notary Public - Minnesota

My Commission Expires on January 31, 2020

SERVICE LIST

Docket No. P-6995/M-18-653

Electronic Service Member(s)

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SERVICE LIST

Docket No. P-6994/M-18-665

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SERVICE LIST

Docket No. P-999/CI-18-634

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