

Staff Briefing Papers

Meeting Date	March 21, 2019	Agenda Item *1
Companies	LTD Broadband, LLC; Broadband Corp.	
Docket No.	P6995/M-18-653; P6994/M-18-665; and P999/CI-18-634	
	In the Matter of LTD Broadband LLC's Petition for Eligible Telecommunications Carrier (ETC) Designation in Minnesota; In the Matter of a Notice to Connect America Fund II (CAF II) Grant Winners	
	In the Matter of Broadband Corp's Petition for Eligible Telecommunications Carrier (ETC) Designation in Minnesota; In the Matter of a Notice to Connect America Fund II (CAF II) Grant Winners	
Issue	Should the Commission Reconsider Its February 8, 2019 Orders in These Matters?	
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Relevant Documents

Date

Initial Filing-Eligible Telecommunications Carrier (ETC) Designation
LTD Broadband, LLC

October 22, 2018

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Relevant Documents

Date

Initial Filing-Eligible Telecommunications Carrier (ETC) Designation Broadband Corp.	October 30, 2018
ORDER APPROVING REQUEST FOR ETC STATUS FOR HIGH COST SUPPORT IN CERTAIN CENSUS BLOCKS DOCKET NO. P-6995/M-18-653 DOCKET NO. P-999/CI-18-634	February 8,2019
ORDER APPROVING REQUEST FOR ETC STATUS FOR HIGH COST SUPPORT IN CERTAIN CENSUS BLOCKS DOCKET NO. P-6994/M-18-665 DOCKET NO. P-999/CI-18-634	February 8,2019
Minnesota Department of Commerce Request for Reconsideration	February 19, 2019
LTD Broadband Response to Request for Reconsideration	February 28,2019
Broadband Corporation's Response to the Response for Reconsideration	February 28,2019

I. Statement of the Issue

1. Should the Commission Reconsider Its February 8, 2019 Orders in These Matters?

II. Background

On February 8, 2019, the Commission issued similar Orders Approving Request for ETC Status for High Cost Support in Certain Census Blocks in dockets P-6995/M-18-653 and P-6994/M-18-665 granting ETC status to LTD Broadband and Broadband Corp. respectively.

On February 19, 2019, the Minnesota Department of Commerce (DOC) filed a request for reconsiderations of the Commission's February 8, 2019 Orders. In its request, the DOC recommends that the Commission issue an order that requires the companies to agree they will act in the public interest, as though they were certificated.

On February 28, 2019, LTD Broadband and Broadband Corporation filed responses to the DOC's request.

III. Parties' Comments

DOC: 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 DOC 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.

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. 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 DOC 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 DOC, 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.

LTD: LTD will offer standalone voice service as required under the CAF2 auction rules. But LTD faces staunch competition from companies like Magic Jack that offer reliable voice service for \$39 per year (\$3.25/mo) including unmetered long distance service and emergency calling. Until now, LTD has chosen not to offer competitive voice service under our own brand because we believe this space is hyper-competitive with many excellent options. The DOC alleges that customers in the ETC areas will also receive their dialtone services from LTD as if there are not any options – like a (round hole) legacy carrier. This is certain not to be the case, as hundreds of current LTD customers already receive VoIP service from one of the many competitive options available.

The DOCs allegation that absent an additional order from the Commission, LTD will not be required to provide access to low income assistance is false. CAF2 program requirements for LTD to accept Lifeline payments in the awarded census blocks are clear.

LTD is required by CAF2 rules to restore service quickly following outages and has submitted detailed engineering documents to the FCC outlining how LTD will recover from network interruptions.

The allegation that without an additional order from the Commission, LTD will fail to accurately bill their customers nor remedy any potential issues is false. Accuracy in billing will be quite simple as LTD does not use revenue enhancing add-ons fees like EAS or federally allowed access recovery fees. Our VoIP service will be \$24.95, plus sales tax and 911 fees. LTD will not allow carrier billing (cramming) or collect calls. The painting of LTD (square peg) with the brush of legacy carriers (round hole) is inappropriate.

The allegation that without an additional order from the Commission, LTD will fail to provide access to emergency services is false. CAF2 rules clearly require access to emergency services and LTD has made provisions with an underlying VoIP carrier to appropriately handle that traffic. LTD has also filed a 911 plan with DPS and the Metro 911 board.

The allegation that without an additional order from the Commission, LTD will fail to adequately service our customers is false. CAF2 rules have clearly outlined service quality standards and mandatory testing to verify our network quality and reliability to the FCC.

The allegation that without an additional order from the Commission, LTD customers will be unable to seek assistance from regulatory agencies is false. LTD has a clear record of responding to any complaint lodged with the FCC and will continue to do so. Additionally, LTD will respond to any complaint relayed from the DOC or the Commission with the same responsiveness.

The FCC has a “big hammer” in the form of the standby letter of credit (SLOC) that can be drawn by the FCC in the event LTD fails to meet our obligations under the CAF2 program rules. This means that the FCC can take back every disbursed dollar of subsidy funding if they find LTD to not be in compliance of the program requirements. In fact, LTD will not have access to any of

the subsidy money until 95% of our assigned locations are built out as banks require 100% cash security to perfect the SLOC.

The aforementioned “big hammer” is still firmly in the hands of the FCC without LTD obtaining CLEC certificate authority. If the DOC or Commission find that LTD is failing to meet our obligations consistent with CAF2 rules – they act as a second “line of defense” beyond the FCC’s consumer complaint process. Both the DOC and Commission can notify the FCC of any alleged violation. LTD has the right to cure any alleged violation, but unless it is able to cure a violation, the entire subsidy amount is at risk.

The argument that sprinkling the holy water of “CLEC authority” on VoIP service is required, is nothing more than the DOC chafing over the Charter ruling. The DOC’s position that LTD can’t provide ETC eligible service using VoIP is nonsensical and (insomuch as we are aware) unique amongst state regulatory authorities. The Eighth Circuit labeling VoIP as an information service rather than a telecommunications service has no bearing on the service itself, but rather the regulatory regime under which it falls.

The public interest is served by LTD being able to offer standalone VoIP service as an ETC. The DOC goes to great lengths to make it appear as if LTD (square peg) must be a regulated telecommunications carrier within the legacy regulatory framework of semi-monopoly rural telephone carriers (round hole). The additional cost of regulatory compliance including tariff filings add no additional consumer protections. LTD is already bound by CAF2 rules that govern what is a permissible rate for our standalone VoIP offering.

The DOC references TracPhone as an example the Commission must follow. LTD disagrees, as unlike TracPhone whose ETC eligible offerings would be solely governed by Minnesota pricing and service requirements, the FCC’s CAF2 program rules govern LTD’s rates and service requirements.

LTD recommends the Commission take no additional action with regard to the granting of ETC status. The DOC has failed to show how additional regulatory hoops are in the public interest. The regulatory regime set forth by the FCC is more than sufficient to guarantee compliance by any CAF2 participant regardless of regulatory status label assigned to LTD in State of Minnesota. Additionally, the Commission and DOC’s complaint divisions will have a ready and responsive ear from LTD if we fail in our obligations to our customers.

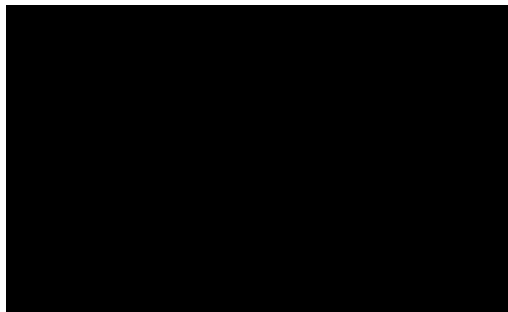
Most of the 140+ years of telecommunications services being provided in Minnesota have been dominated by regulated monopolies that have often behaved badly towards consumers. Regardless of the regulatory actions of the Commission, the largest driver of pro-consumer behavior on the part of service providers is something new to this history – true facilities-based competition. As a beneficiary of thousands of customers switching from legacy price-cap carriers, LTD is firmly invested in making our network and customer service experience as fast and reliable as possible.

Broadband Corporation: Broadband Corp believes that the points raised by the Department of Commerce in section - II. are addressed by the FCC and / or the CAF2 program. Thus, leaving

no new ground for the PUC's review in regards to the decision on granting ETC status to LTD Broadband and Broadband Corp. In conclusion, the PUC should deny the request for reconsideration.

IV. Staff Analysis

The DOC filed its request for reconsideration as a desperate act in response the 8th Circuit Court's Charter decision. As such, the DOC filed the request based on a selective interpretation of one Commission's statement at the relevant Commission meeting. Below is the link to the actual segment from the January 24th meeting and the actual audio and video of that segment: http://minnesotapuc.granicus.com/MediaPlayer.php?clip_id=896



An actual transcript of the relevant deliberation regarding this matter is provided below:

Commissioner Sieben: *Mr. Chair, I would just like to note, and um ask you, since we can't, since we have to deliberate in public, I would have asked you this in private, but I asked our staff, if granting ETC status for these telecommunication companies impacts any service they provide to customers. So in other words, Minnesota Statute, according to the staff, still applies under ETC status and things that we don't want taken away um, for protection of consumers will still be in place. They confirmed that that was the case, and so that was persuasive to me in terms of granting their status and allowing these companies to um, access this federal funding. Which, as Commissioner Tuma said, we don't want to get in to the way of, this is a good thing, and we should be happy that this money is coming to Minnesota.*

Commissioner Lipschultz: *And that's right, Commission Sieben, granting ETC status gives these folks access to money that will allow them expand broadband in the state of Minnesota. It doesn't affect their legal obligations under Minnesota law, those are affected by the 8th Circuit's decision that classifies uniformly interconnected VoIP providers as information service providers, that's unfortunate, that's independent of the decision that we make today and I think in the next docket um, Midco, provided that argument and made that point so. Is*

there any further discussion? No further discussion, all those in favor of the motion say aye. Aye. Opposed same sign. Motion carries 4-0.

As the record reflects in full context, Commissioner Sieben was asking whether the granting in this case LTD Broadband and subsequently Broadband Corp. ETC status would *remove* consumer protection applicable to customers. As Commissioner Lipschultz stated, the granting of ETC status does not affect the companies' legal obligations under Minnesota law. That was affected by the 8th Circuit's decision.

The question was not whether safeguards would be in place, but whether or not a company's legal obligations would change as a result of the Commission granting ETC status. Again, the answer to that is no. In this case, the DOC appears to be attempting to create another tier of carriers by essentially coercing two carriers to agree to all of the legal obligations of a telecommunications carrier without providing a basis for such action. In effect, the DOC is trying to leverage the granting of ETC status for regulations that the Court says do not apply.

Conditions on ETC Authority

First, it is worth observing that the Department's comments in these two ETC dockets did not actually include any recommendations that the Commission only grant ETC status subject to either certification or some list of consumer protections. The first time the Commission has been confronted with this argument is in reconsideration, and it is difficult to piece together exactly what protections the Department is asking for. At page 3 the Department requests that the Commission "amend its Orders to require the companies....[to provide] essentially the same consumer protections as they would if they were certificated...." At page 4, the Department suggests this could be accomplished by requiring the companies to apply for a certificate of authority, or perhaps a "compliance plan." Such a compliance plan, even if appropriate, should have been developed in initial comments in the record of the docket, not referenced briefly in a petition for reconsideration.

The Department's reference to a 2009 TracFone ETC decision is also misplaced. The Commission has granted ETC petitions since then without such conditions, because the Commission's practice on ETCs has changed. The Commission currently has two generic dockets open—one related to conditions on ETCs's provision of Lifeline service, and one related to financial summaries required to perform annual certifications—that, when completed, will apply equally to all ETCs under those conditions. Handling general conditions on ETCs in generic dockets is a more equitable and efficient approach than meting out individual conditions in ETC certification orders, since the needs of the state, consumers, and industry may change, which generic dockets can accommodate.¹

¹ Imagine instead if conditions on ETCs in Minnesota were only placed in each carrier's certification order. Conditions would become out of date and likely inconsistent among carriers. The Commission might be tasked with regularly reopening ETC approval orders to remove or refresh obsolete language.

Parties participating in Commission dockets reconcile themselves with the effects of the 8th Circuit's decision. They cannot on a going forward basis continue to manufacture unclear regulations for a dynamic industry. At some point, their actions will prove frivolous.

As was pointed out in LTD Broadband's (LTD) response, the FCC's Part 54 Universal Service rules provide a wide array of consumer protections. Consumers are protected inherently in these rules as part of the provision of universal service:

C.F.R. §54.309 Connect America Fund Phase II Public Interest Obligations

C.F.R. §54.313 Annual Reporting Requirements for High Cost Recipients

C.F.R. §54.315 Application process for Connect America Fund Phase II support distributed through competitive bidding

C.F.R. §54.320 Compliance and record keeping for the high cost program

Finally, LTD's response to the DOC's request for reconsideration provided a point by point rebuttal of the DOC's arguments. LTD responds by pointing out that the Universal Service rules, the nature of the program, or state law apply in protecting consumers.² The Commission's original granting of ETC status changes nothing regarding the relationship between the companies and their customers. As such, the DOC's request for reconsideration should be denied.

Commission Rules on Handling of Reconsideration Petitions

The Commission's rules, at Minn. Rule 7829.3000, allow for petitions to reconsider and for answers to those petitions. However, they do not allow for replies beyond the answers:

7829.3000, subp 5: Replies. Replies are not permitted unless specifically authorized by the Commission.

In this case, the Department filed a petition for reconsideration of the Commission's order as allowed by Minn. Rule 7829.3000 subpart 1 and 2, and the carriers answered the reconsideration as allowed by Minn. Rule 7829.3000 subpart 4. However, the Department then filed a reply, which is not allowed under subpart 5 since the Commission did not authorize it.

For that reason, staff has not included the Department's March 8, 2019 reply here. However, staff has read it and notes it does not raise new arguments; the Department still continues to insist that the two carriers be subject to additional requirements as a condition of ETC approval.

² The DOC may not have been aware that both LTD and Broadband have filed their 911 plans with the Minnesota Department of Public Safety and the Metropolitan 911 Board.



V. Decision Options

1. Should the Commission Reconsider Its February 8, 2019 Orders in These Matters?
 - A. Deny reconsideration.
 - B. Grant reconsideration.

2. Should the Commission Impose Additional Regulatory Requirements as a condition of Granting LTD Broadband and Broadband Corp. ETC Status as Requested by the DOC?
 - A. Do not impose additional regulatory requirements upon LTD and Broadband to as a condition of granting ETC status as though they were certificated carriers.
 - B. Impose additional regulatory requirements upon LTD and Broadband to as a condition of granting ETC status as though they were certificated carriers.

VI. Staff Recommendation

Staff recommends that the Commission adopt alternatives 1A. In the event the Commission grants reconsideration, Staff recommends that the Commission adopt 2A.