

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

In the Matter of the Application of LTD
Broadband LLC for Designation as an Eligible
Telecommunications Carrier for Purposes of
Receiving Federal Universal Service Support

TC21-001

**AFFIDAVIT OF JASON R. SUTTON
DATED SEPTEMBER 7, 2021**

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

Jason R. Sutton, being first duly sworn on oath, deposes and states as follows:

1. I am one of the attorneys of record in the above-captioned matter representing Applicant, LTD Broadband LLC (“LTD”). I make this affidavit based upon personal information and knowledge.

2. Attached as Exhibit A is a true and accurate copy of Responses of LTD Broadband LLC to Discovery Requests of South Dakota Telecommunications Association (“SDTA”) (First Set) which were served on April 9, 2021.

3. Attached as Exhibit B is a true and accurate copy of a letter from Kara Semmler to LTD’s counsel dated April 13, 2021.

4. I attended a call with LTD co-counsel Brett Heather Freedson, attorney Kara Semmler on behalf of SDTA, and attorney Amanda Reiss for Commission Staff on April 23, 2021. During that call, there were discussions about the discovery deficiencies described in the April 13, 2021 letter, which is Exhibit B. There also were discussions about potential resolution of the above-captioned matter, as well as the companion certificate of authority docket in TC21-014.

5. During that April 23 call, it was stated by LTD that it did not want to provide financial information to SDTA, which is an association that includes LTD's competitors. As I recall, Kara Semmler acknowledged that concern, although she did not agree. It was instead agreed that the parties would focus their efforts on trying to negotiate a stipulation.

6. The parties, through counsel, continued to attempt to negotiate a stipulation to resolve both this matter and the certificate of authority docket. Ultimately, it became clear that an agreement could not be reached between LTD and SDTA regarding this matter. On May 5, 2021, SDTA sent an e-mail to counsel for LTD indicating that an agreement was not going to be reached in the ETC docket and indicating what information SDTA was trying to learn through Discovery Requests 1-10 through 1-13. A redacted copy of this e-mail is attached as Exhibit C. The settlement negotiations regarding the stipulation for this docket have been redacted from Exhibit C.

7. Attached as Exhibit D is a true and accurate copy of SDTA's second set of discovery requests served on LTD.

8. From May until August, there was no material discussion regarding the discovery in the ETC docket. Although I was on sabbatical in June and July, my partner, Paul Tschetter, as well as co-counsel, Brett Heather Freedson, were actively involved in handling this case during my absence.

9. On August 4, 2021, on behalf of LTD, I contacted both Kara Semmler of SDTA and Amanda Reiss of Commission Staff regarding obtaining a procedural order. I had a call with SDTA's counsel on August 4, 2021. As part of that call, we discussed whether an evidentiary hearing was needed. I again informed SDTA's counsel we did not want to produce financial information to our client's competitors, many of which are members of SDTA. SDTA's counsel confirmed with me that SDTA did not have any interest in reviewing LTD's financials.

10. On August 6, 2021, an additional telephone conference occurred regarding the procedural hearing and discovery issues. On behalf of LTD, I attended this telephone call along with co-counsel Brett Heather Freedson. SDTA was represented by Kara Semmler. Commission Staff also attended the call. During the call, we discussed scheduling and the issues for a potential hearing. We also discussed that the discovery disputes may affect the scheduling. During that call, SDTA confirmed that its primary concern was LTD's technical plan and not LTD's financial information. Based on that representation, LTD agreed to provide the technical portions of LTD's RDOF application previously filed with the FCC to SDTA with an "attorneys' eyes only" designation. That information was, in fact, provided to SDTA on August 13, 2021.

11. Following the August 6, 2021 call, the parties exchanged e-mails regarding potential schedules for a procedural order. Enclosed as Exhibit E is a true and accurate copy of those e-mails.

12. Along with providing the technical portions of the RDOF application to SDTA on August 13, 2021, LTD also agreed to SDTA's proposed procedural schedule with one caveat. LTD requested that a status call be held among the parties following the completion of discovery to discuss possible methods for limiting the issues or streamlining the hearing. Under SDTA's proposed schedule, to which LTD agreed, all discovery would be completed by August 27, 2021. SDTA produced the technical information on August 13, 2021, in an effort to avoid a motion to compel and so the parties would agree on a procedural schedule, including a firm discovery deadline of August 27, 2021.

13. LTD sent an e-mail to SDTA's counsel agreeing to their procedural schedule on August 13, 2021. A true and accurate copy of that e-mail is attached as Exhibit F. In response, SDTA's counsel told me on a telephone call that she needed to confirm that the schedule would

work with her engaged expert. As LTD had indicated it would do so to keep this matter moving, it filed a Motion for Prehearing Conference.

14. On August 18, 2021, SDTA's counsel sent a letter changing SDTA's position and now indicating that it did in fact want to review LTD's financial information. A true and accurate copy of that letter is attached as Exhibit G.

15. I wrote a responsive letter to SDTA's counsel on August 20, 2021. A true and accurate copy of that letter is attached as Exhibit H.

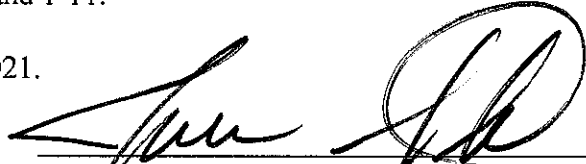
16. In response to my August 20, 2021 letter, SDTA's counsel sent an e-mail confirming that she had previously stated she did not want to receive LTD's financial information. Attached as Exhibit I is a true and accurate copy of that e-mail exchange.

17. On August 27, 2021, SDTA filed its Motion to Compel. In reviewing the brief, it seemed that there was some confusion between SDTA and LTD regarding what information had been provided to SDTA, in response to SDTA's Request 1-1, and what information had been provided to Staff, in response to Staff's Request 1-11. LTD believed that it had provided all of the RDOF application materials previously produced to Staff, to SDTA – with the exception of a letter from LTD's lender that confirmed the lender's commitment to issue a letter of credit in accordance with the FCC's RDOF requirements. This document was omitted from the production, based on the limited scope of SDTA's request for a *technical* plan. However, after further investigation, it was realized that there was one document containing financial information from the RDOF application was inadvertently not previously produced to Staff. That document was provided to both Commission Staff and SDTA on August 30, 2021. A true and accurate copy of that document is attached as Exhibit J. LTD is requesting confidential designation of this Exhibit J.

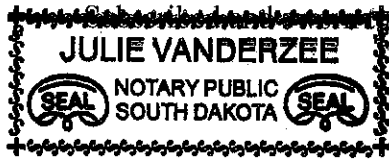
18. On September 3, 2021, LTD formally supplemented its response to SDTA's Request 1-1.

19. On September 3, 2021, SDTA filed a letter withdrawing its motion to compel responses to SDTA's Requests 1-1, 1-10, and 1-11.

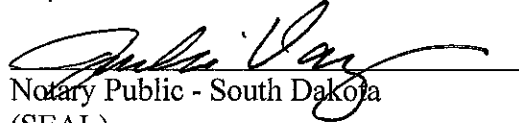
Dated this 7th day of September, 2021.



Jason R. Sutton



before me this 7th day of September, 2021.



Notary Public - South Dakota
(SEAL)

My commission expires: 2-8-24

CERTIFICATE OF SERVICE

I, Jason R. Sutton, do hereby certify that I am a member of Boyce Law Firm, LLP, attorneys for LTD Broadband, LLC and that on the 7th day of September, 2021, a true and correct copy of the foregoing and this Certificate of Service were served via email to the following addresses listed:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Ms. Amanda Reiss
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
amanda.reiss@state.sd.us

Ms. Brittany Mehlhaff
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
brittany.mehlhaff@state.sd.us

Ms. Brett Heather Freedson - Representing
LTD Broadband LLC
Attorney
Lerman Senter PLLC
2001 L Street N.W., Suite 400
Washington DC 20036
bfreedson@lermansenter.com

Mr. Stephen E. Coran - Representing LTD
Broadband LLC
Attorney
Lerman Senter PLLC
2001 L Street N.W., Suite 400
Washington DC 20036
scoran@lermansenter.com

Mr. Corey Hauer
CEO
LTD Broadband LLC
PO Box 3064
Blooming Prairie, MN 55917
coreyhauer@ltdbroadband.com

Ms. Kara Semmler
Executive Director and General Counsel
SDTA
320 E. Capitol Ave.
PO Box 57
Pierre, SD 57501-0057
KaraSemmler@sdtasonline.com



Jason R. Sutton
Paul W. Tschetter
BOYCE LAW FIRM, LLP
P.O. Box 5015
Sioux Falls, SD 57117-5015
(605) 336-2424
jrsutton@boycelaw.com
pwtschetter@boycelaw.com

Stephen E. Coran
Brett Heather Freedson
LERMAN SENTER PLLC
2001 L Street NW
Washington, D.C. 20036
(202) 429-8970
scoran@lermansenter.com
bfreedson@lermansenter.com