

**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

**APPLICANT'S OPENING POST-
HEARING BRIEF**

Applicant LTD Broadband LLC's ("LTD") application for designation as an eligible telecommunications carrier ("ETC") came before the Public Utilities Commission of the State of South Dakota ("the Commission") for evidentiary hearing on December 1, 2021. The Commission should grant LTD's application because LTD satisfies all the requirements for ETC status in South Dakota.

FACTUAL BACKGROUND

LTD is a privately held broadband voice and Internet access service provider with its primary place of business in Clarks Grove, Minnesota. (Ex. L-2, at Applicant 000002, Lines 16-18). LTD's CEO, Corey Hauer ("Hauer"), started the company in 2010, and, since then, LTD has specialized in providing broadband service to unserved or underserved rural broadband customers. (Ex. L-2, at Applicant 000002, Line 7; Ex. L-2, at Applicant 000002, Lines 10-12). From 2011 through today, LTD has grown from a single water tower site in Rose Creek, Minnesota in 2011 to a network of over 2,500 tower sites covering over 50,000 square miles. (Ex. L-2, at Applicant 000002, Lines 19-20). LTD is one of the fastest growing broadband companies in the United States. Currently LTD offers service in Iowa, Kansas, Minnesota, Nebraska, South Dakota, Tennessee and Wisconsin, and serves approximately 17,500 customers within those states. (Ex. L-2, at Applicant 000002, Lines 20-22). At the time of the evidentiary

hearing, LTD was serving 18,000 customer locations. (Transcript from Evidentiary Hearing on December 1, 2021 (“Hearing Transcript”) at pp.109-10).

LTD previously participated in the Connect America Fund Phase II (“CAF Phase II”) program conducted by the Federal Communications Commission (“FCC”). (Ex. L-2, at Applicant 00003, Line 15 through Applicant 000004, Line 2). As part of the CAF Phase II program, LTD was authorized by the FCC to receive support to deploy voice and broadband services in unserved rural areas of Illinois, Iowa and Minnesota. LTD has been highly successful in deploying its network ahead of the schedule required by the CAF Phase II program rules. Specifically, LTD completed its fifth-year obligation of 80% buildout in both Iowa and Minnesota by the end of year one. (Ex. L-2, at Applicant 00003, Line 15 through Applicant 000004, Line 2; Applicant 00004, Lines 15-23). That is four years ahead of the CAF Phase II milestone requirement, which is to complete 80% of the buildout obligation by the end of year five. LTD also expects to finish 100% of its CAF Phase II obligation for Illinois later this year – also four years ahead of schedule. (Applicant 00004, Lines 15-23).

LTD also participated in the Rural Digital Opportunity Fund Phase I (“RDOF”) reverse auction. Like CAF Phase II, RDOF is a federal funding program implemented by the FCC to provide funding for deployment of voice and broadband networks to rural areas deemed by the FCC to be unserved. (Ex. L-2, at Applicant 00006, Lines 6-9). As part of the RDOF process, prior to the reverse auction for support, LTD submitted a short form application. (Ex. L-2, at Applicant 00006, Line 18 through Applicant 00007, Line 16). The FCC reviewed the short form application submissions to make sure that applicants for RDOF support, including LTD, met basic eligibility requirements and would not likely default if the applicant was authorized for support. (*Id.*). Then, a reverse auction occurred in which auction participants continuously

reduced the amount of their bids at each round to provide stated levels of broadband service to specific census block groups. (*Id.*).

Following the reverse auction, LTD was the provisional RDOF auction winner of 366,000 locations throughout nine different states. (Hearing Transcript at pp.22-23). In South Dakota, LTD was the provisional RDOF auction winner of over \$13 million dollars in funding to provide broadband service to 103 census block groups for 7,481 locations. (Hearing Transcript at pp.22, 110). A location generally means a residential dwelling unit. (Hearing Transcript at p.22). The FCC determined prior to the reverse auction that consumers in these locations are not able to receive eligible broadband service. (Ex. L-2, at Applicant 000006, Lines 10-14). While some consumers in these census blocks may be receiving broadband service from other providers pursuant to state funding. (Hearing Transcript at pp.116-17), there are also some areas that may never receive service without the RDOF-supported deployment. If LTD receives RDOF funding, then LTD must deploy a network able to provide voice and broadband service at speeds of 1 Gbps download and 500 Mbps upload. Under RDOF (like CAF Phase II), LTD must satisfy deployment milestones beginning in the third year of its support term. (Hearing Transcript at pp.24-26). LTD will have to deploy its network to 95% of all locations within six years of funding. (*Id.*).

As the provisional auction winner, LTD was required to submit an RDOF long form for post-auction review by the FCC. The RDOF long form provides extensive detail about LTD's operational, financial, and technical capabilities. (Ex. L-2, at Applicant 000006, Line 18, through Applicant 000009, Line 9). FCC staff carefully scrutinize this information to confirm that LTD is reasonably capable of meeting the RDOF deployment milestones. (*Id.*). Ultimately, RDOF support will be awarded by the FCC only if that is determined to be the case.

Under the applicable RDOF rules, LTD must receive ETC status in any state where it seeks to receive RDOF funding to build a network. (Hearing Transcript at pp.33-34). LTD thus filed an application for ETC status in this docket on January 7, 2021. LTD amended its application on October 22, 2021. (Ex. L-3). The South Dakota Telecommunications Association (“SDTA”) intervened on January 27, 2021.

LTD has responded to numerous data requests by both PUC Staff and SDTA. In total, LTD responded to three sets of data requests containing 26 individual requests for PUC Staff. LTD also responded to five separate sets of written discovery from SDTA containing 64 individual requests.

Both LTD and SDTA submitted prefiled testimony to the Commission. LTD submitted opening and rebuttal testimonies of Hauer. SDTA submitted prefiled testimony of Larry Thompson, Jr. (“Thompson”), who filed both opening and rebuttal testimonies.

An evidentiary hearing occurred before the Commission on December 1, 2021. Both Hauer and Thompson testified live at the evidentiary hearing. LTD submitted 18 exhibits: L-1 through L-18. SDTA submitted nine exhibits: SDTA Exhibits 1 through 9.

At the evidentiary hearing, Hauer confirmed that his prefiled testimony remained true and accurate. Hauer also confirmed that the responses to the written discovery were accurate. As testified by Hauer at the hearing, pages 12 through 20 of Hauer’s prefiled testimony states how LTD and its application meet all the requirements for ETC status in South Dakota. (Hearing Transcript at p.29).

Hauer also detailed LTD’s plans for deploying its network. As explained by Hauer, LTD plans to provide fiber-to-the-home service. (Ex. L-2, at Applicant 000003, Lines 6-9). LTD is already deploying fiber networks in Tennessee. (Hearing Transcript at p.219). LTD is confident

in its ability to scale and successfully deploy its network. In fact, in Tennessee, LTD is deploying fiber at significantly less cost than LTD estimated in its RDOF long form. (Hearing Transcript at p.219). Moreover, outside financing investors also have similar confidence as LTD has secured the financing it needs to proceed with deploying its network once the RDOF funding is released. (Hearing Transcript at pp.80-82, 96-98).

In its opening statement at the evidentiary hearing, SDTA's counsel explained SDTA's position—that LTD cannot show that granting ETC status is in the public interest because LTD does not have the ability to provide its planned broadband services throughout the RDOF service area. (Hearing Transcript at pp.13-15). Notably, SDTA did not argue and did not present evidence indicating that LTD failed to satisfy any other administrative rule. Indeed, SDTA's only witness—Thompson—limited his testimony to LTD's purported ability to provide its services because it lacks adequate technical, managerial, and financial ability to provide the proposed services. (Hearing Transcript at p.184; SDTA Ex. 1, at p.5, Lines 1-8).

Hauer's testimony detailed the extensive analysis performed by the FCC in evaluating an applicant's RDOF long form before it authorizes support. (Hearing Transcript at pp.23-24; Ex. L-2, at Applicant 000006, Lines 6 through Applicant 000009, Line 9). SDTA's own expert, Thompson, conceded that the FCC will review LTD's engineering plans and its financial qualifications before authorizing RDOF support. (Hearing Transcript at p.194). Thompson agreed the FCC is competent to review LTD's long form application and to determine whether LTD would be reasonably capable of meeting its performance obligations. (*Id.*).

Ultimately, the evidence establishes that if LTD does not receive ETC status, then it will not receive RDOF funding. (Hearing Transcript at pp.33-34). Without RDOF funding, LTD will not deploy its network in South Dakota. Some of the census blocks where LTD is a

provisional winner will not receive broadband services anytime soon without LTD and its RDOF support. Thus, if this Commission denies LTD's ETC status, some consumers in South Dakota will not receive broadband service. This is not consistent with the public interest. Instead, as conceded by Thompson, the public interest is served by getting Gigabit broadband services to those unserved customers:

Q. Mr. Thompson, do you agree that it would serve the public interest for unserved customers in South Dakota who do not currently receive broadband service to receive that service?

A. I do.

(Hearing Transcript at p.198). Only by granting LTD's application for ETC status can this Commission assure consumers in unserved areas of the state that they will receive Gigabit broadband service. The Commission thus should grant LTD's application.

ARGUMENT

I. Under the Telecommunications Act of 1996, this Commission's Inquiry is Limited, and LTD Satisfies All of the Requirements for ETC Status Under the Telecommunications Act of 1996.

Congress, through the Telecommunications Act of 1996, defined the limited requirements LTD must satisfy to obtain ETC status. *See* 47 U.S.C. § 214(e)(2); *see also In re GCC License Corp.*, 2001 SD 32, ¶ 9, 623 N.W.2d 474, 479. The Telecommunications Act of 1996 expressly limits the scope of a state commission's authority when reviewing a request for ETC designation: "A State commission *shall* upon its motion or upon request designate a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for the service area designated by the State commission. . . ." 47 U.S.C. § 214(e)(2) (emphasis added). Under the plain language of the statute, this Commission must grant LTD's application for ETC status if LTD satisfies the requirements of section 214(e)(1).

Section 214(e)(1) prescribes three requirements for ETC status. First, the applicant must be a common carrier. Second, the applicant must “offer the services that are supported by Federal universal service support mechanisms under section 254(c) of this title” 47 U.S.C. § 214(e)(1)(A). Third, the applicant must advertise the availability of these services and their corresponding service. 47 U.S.C. § 214(e)(1)(B).

Here, the evidence proves that all three of the requirements under section 214(e) for LTD to receive ETC designation are satisfied. First, LTD must be a common carrier for the designated service area. Hauer’s prefiled testimony establishes this requirement because “LTD will provide voice service as interconnected VoIP service in South Dakota. As to customers and locations in which LTD is awarded RDOF support, LTD will provide its voice services on a common carrier basis.” (Exhibit L-2, at Applicant 000013, Lines 4-9). This testimony was never disputed by SDTA or PUC Staff, and the un rebutted testimony confirms LTD will be a common carrier in its designated service area.

Second, LTD must “offer services supported by the Federal universal service support mechanism” 47 U.S.C. § 214(e)(1)(A). Once again, the prefiled direct testimony of Corey Hauer confirms LTD’s satisfaction of this requirement. This requirement is specifically addressed in Exhibit L-2, at Applicant 000013, Line 11 through Applicant 000015, Line 9. Once again, neither SDTA nor PUC Staff contested this testimony. Thus, this requirement is satisfied.

The last requirement of the Telecommunications Act of 1996 for ETC status is LTD must advertise the ability of its services. Again, Hauer’s prefiled testimony proved LTD satisfies this requirement. Hauer detailed LTD’s anticipated advertising plans in his prefiled testimony. (Ex. L-2, at Applicant 000015, Lines 10-15). LTD also responded to PUC Staff’s data requests

detailing its anticipated advertising plan. (Ex. L-8, at Request 3-1). This statutory requirement therefore is satisfied.

In sum, each of the requirements for ETC designation under section 214(e) of the Telecommunications Act of 1996 is satisfied. In turn, this Commission “shall” designate LTD as an ETC. 47 U.S.C. § 214(e)(2). “Shall” is a mandatory term, and thus, this Commission must grant ETC status to LTD once LTD satisfies each of the three requirements of section 214(e)(1). *See Reck v. S.D. Bd of Pardons & Paroles*, 2019 SD 42, ¶ 12, 932 N.W.2d 135 (“As a result of statutory construction, we have determined that when shall is the operative verb in a statute, it is given obligatory or mandatory meaning.” (internal quotation omitted)). The Commission’s analysis should end here.

II. LTD Satisfies All the Commission’s Administrative Rules for ETC Designation.

Although the Commission’s inquiry should be limited to whether LTD meets the specific requirements of section 214(e)(1), LTD is still entitled to ETC designation even if the Commission concludes that its administrative rules impose additional criteria. Once again, Hauer’s testimony addresses each of the administrative rules and confirms how LTD complies with those administrative rules. LTD will address each of the administrative rules below:

A. ARSD 20:10:32:43

ARSD 20:10:32:43 requires LTD to file a petition with the Commission containing six specific types of information. LTD filed an application in this matter. It also filed an amended application. (Ex. L-3). As stated by Hauer in his prefiled testimony, the amended application, as supplemented by LTD’s responses to written discovery served by Staff and SDTA, contains all of the information required by ARSD 20:10:32:43. (Ex. L-2, at Applicant 000015, Lines 16-19).

Neither SDTA nor PUC Staff disputed this testimony, and thus, LTD satisfies the requirements for ARSD 20:10:32:43.

B. ARSD 20:10:43.01

ARSD 20:10:43.01 requires that LTD “shall commit to providing service throughout its proposed designated service area to all customers making a reasonable request for service.” The regulation also requires LTD to certify that it will:

- (1) Provide service on a timely basis to requesting customers within the applicant's proposed designated service area where the applicant's network already passes the potential customer's premises; and
- (2) If the potential customer is within the applicant's proposed designated service area but outside its existing network coverage, provide service within a reasonable period of time, if the service does not impose excessive or unreasonable cost, by:
 - (a) Modifying or replacing the requesting customer's equipment;
 - (b) Extending facilities, such as constructing or extending an access line, deploying a roof-mounted antenna, or installing other equipment;
 - (c) Adjusting the nearest cell tower;
 - (d) Adjusting network or customer facilities;
 - (e) Reselling services from another carrier's facilities to provide service; or
 - (f) Employing, leasing, or constructing additional network facilities such as an access line, a cell site, cell extender, repeater, or other similar equipment.

ARSD 20:10:43.01.

LTD certified that, once it deploys its supported network, it will provide service to potential customers requesting service within 10 days of their request. (Ex. L-2, at Applicant 000015, Line 20 through Applicant 000016, Line 10). As explained in response to PUC Staff's Data Request 2-6, LTD will deploy its network in a manner such that a drop may be installed to provide service to a new customer within 10 days of that customer's request. (Ex. L-6, at Request 2-6). With this certification, LTD meets the requirements of ARSD 20:10:43.01.

C. ARSD 20:10:43.02

ARSD 20:10:43.02 requires LTD to submit a two-year plan providing certain details about LTD's planned network. LTD has not submitted a plan, but instead is requesting a waiver of this two-year requirement. As explained by Hauer at the evidentiary hearing, LTD is requesting a waiver of this two-year plan requirement because the RDOF process has a different timeline for deployment. Under the RDOF rules, LTD must meet certain deployment milestones within three years, four years, five years, and six years. (Hearing Transcript at pp.24-25, 41). Nevertheless, LTD did commit to provide a two-year plan if required by the Commission as a condition to ETC designation. (Hearing Transcript at pp.41-42).¹

This Commission should grant the requested waiver for requirement of a two-year plan. LTD also is required to, and will, submit annual reports to the FCC and to this Commission. (Ex. L-2, at Applicant 000020, Lines 15-20). The Commission has issued orders waiving the two-year plan requirement for numerous other carriers seeking ETC status as part of their RDOF funding.² *See also* ARSD 20:10:32:54. LTD is similarly situated with these other carriers, and there is no basis to deny LTD the requested waiver. Indeed, requiring LTD to file a two-year plan while waiving the requirement for other RDOF provisional award winners would be discriminatory and violative of the Telecommunications Act of 1996. *See* 47 U.S.C. § 253(b); *see also In re GCC License Corp.*, at ¶ 22 & n.11, 623 N.W.2d at 482-483 & n.11 (refusing to

¹ LTD did provide both PUC Staff and SDTA LTD's RDOF materials, describing its six-year deployment plan.

² *See, e.g.*, Order Granting Expanded Eligible Telecommunications Carrier Designation in Certain Census Blocks; Order Granting Waiver, *In the Matter of Alliance Communications Cooperative, Inc. d/b/a Alliance Communications Application for Expanded Designation as an Eligible Telecommunications Carrier*, TC 201-010 (May 29, 2021); Order Granting Expanded Eligible Telecommunications Carrier Designation in Certain Census Blocks; Order Granting Waiver, *In the Matter of Eligible Telecommunications Cooperative, Inc. Application for Expanded Designation as An Eligible Telecommunications Carrier*, TC 21-011 (May 19, 2021); Order Granting Expanded Eligible Telecommunications Carrier Designation in Certain Census Blocks, Order Granting Waiver; *In the Matter of Application by Valley Telecommunications Cooperative, Association, Inc. For Expanded Designation as an Eligible Telecommunications Carrier in the State of South Dakota*, TC 21-003 (May 7, 2021); Order Granting Eligible Telecommunications Carrier Designation in Certain Census Blocks, Order Granting Waiver, *In the Matter*

reach the issue about whether the Commission has authority to impose additional requirements beyond those required by the Telecommunications Act of 1996 when determining ETC status but nevertheless stating that “any such requirements must be completely neutral and consistent with the [Telecommunications] Act’s aim of promoting competition”). As a result, the Commission should grant LTD’s request for a waiver of the requirement to submit a two-year plan.

D. ARSD 20:10:32:43.03

Under ARSD 20:10:43.03, LTD must prove it can remain functional in emergency situations. The evidence confirms that LTD’s network will satisfy this requirement.

From a technical standpoint, as explained in Hauer’s prefiled testimony, LTD will comply with the FCC’s requirements for back-up power. (Ex. L-2, at Applicant 000017, Lines 9-16). LTD’s back-up power plan is described LTD’s RDOF application filed with the FCC. (*Id.*). LTD plans to “size its battery arrays at customer premises and at network distribution points to comply with the requirements of FCC’s RDOF rules.” (Ex. L-2, at Applicant 000017, Lines 12-14). LTD will be able to have reasonable back-up power to ensure functionality of its network without an external power source. (Ex. L-2, at Applicant 000017, Lines 10-12).

Separate from RDOF, the FCC also has regulations setting emergency back-up requirements. 47 C.F.R. § 9.20. LTD will use backup batteries, generators, and towable solar arrays to provide emergency power as needed, in accordance with those requirements.

In addition to back-up power, LTD’s network will be designed to provide other protections. Hauer’s prefiled testimony further confirms LTD will maintain a functional network during an emergency by: “(a) being able to re-route traffic around damaged facilities, and (b) managing traffic spikes resulting from emergency situations.” (Ex. L-2, at Applicant 000017,

Lines 17-18). As part of deploying its broadband network in five states, LTD has successfully defined “backup systems to facilitate providing services in emergency situations including the use of diverse/alternate routing, electronics redundancy, redundant data centers, geographically separated operations, and environmental controls for data and switching centers to remain functional in an emergency situation.” (Ex. L-2, at Applicant 000018, Lines 1-4).

Thus, LTD has proven it will deploy a network that will remain functional in the event of emergency. In turn, ARSD 20:10:32:43.03 is satisfied.

E. ARSD 20:10:32:43.04

ARSD 20:10:32:43.04 states: “An applicant requesting designation as an eligible telecommunications carrier shall demonstrate that it will satisfy applicable consumer protection and service quality standards.” The FCC sets these performance standards. (Ex. L-2, at Applicant 000018, Lines 5-9). LTD certifies that its network will comply with the applicable FCC requirements. (Ex. L-2, at Applicant 000018, Lines 7-9). Neither SDTA nor PUC Staff have disputed that LTD’s application satisfies this administrative rule, and the Commission should conclude ARSD 20:10:32:43.04 is satisfied.

F. ARSD 20:10:32:43.05

ARSD 20:10:32:43.05 requires LTD “to demonstrate it offers a local usage plan comparable to the one offered by the incumbent local exchange carrier in the service areas for which the applicant seeks designation.” Hauer’s prefiled testimony confirms LTD’s plans to provide calling plans similar to those offered by incumbent local exchange carriers in the designated census blocks, including plans providing high-speed Internet access service and unlimited voice calling in the United States for a fixed monthly price. (L-2, at Applicant 000018, Lines 13-15). LTD has not finalized its specific plan offerings because it intends to

engage in market research to determine what mix of services customers prefer. (Ex. L-2, at Applicant 000018, Lines 16-18). SDTA and PUC Staff are not disputing LTD's compliance with this administrative rule, and the Commission should find LTD has satisfied ARSD 20:10:32:43.05.

G. ARSD 20:10:32:43.06

ARSD 20:10:32:43.06 requires LTD to certify that it will be able to provide "equal access to long distance carriers if no other eligible telecommunications carrier is providing equal access within the service area." This rule does not apply because LTD's service plans will provide unlimited voice calls in the United States for a fixed monthly price. (Ex. L-2, at Applicant 000019, Lines 9-15). As a result, consumers on LTD's plan will not need access to a separate long-distance carrier.

H. ARSD 20:10:32:43.07

ARSD 20:10:32:43.07 states: "Prior to designating an eligible telecommunications carrier, the commission shall determine such designation is in the public interest." The Commission's administrative rule defines what the Commission considers when evaluating public interest:

The commission shall consider the benefits of increased consumer choice, the impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the applicant's service offering, commitments made regarding the quality of the telephone service provided by the applicant, and the applicant's ability to provide the supported services throughout the designated service area within a reasonable time frame.

The evidence presented confirms designating LTD as an ETC serves the public interest.

Starting with "increased consumer choice," LTD will provide broadband services to areas that are not currently serving customers with sufficient broadband service as determined by the FCC. LTD is required under RDOF to deploy a network able to offer voice and 1 Gbps/500

Mbps broadband service to every location in the RDOF-supported areas. If the Commission does not designate LTD as an ETC, LTD will not be authorized to receive RDOF support for any South Dakota census blocks. No one knows what future funding may be available to provide broadband services to these unserved areas. Without LTD building its network, there are consumers in South Dakota that will have no real choice for broadband service – or in some cases, no broadband service at all. LTD’s designation as an ETC thus increases availability and consumer choice.

A second consideration for the Commission is the impact of designating multiple companies as ETCs in a designated service area for the universal service fund. Here, there are areas where LTD would be the only ETC. (Hearing Transcript at pp.206-07). There are other census blocks where LTD was the provisional RDOF winner but where there is already another ETC designee. (*Id.*). Furthermore, where there is another ETC designee, some of those carriers will likely be providing broadband services.

Admittedly, the RDOF areas provisionally awarded to LTD may have difficulty supporting two broadband providers. LTD wants to provide broadband service to unserved consumers; its business model does not focus on being a competing provider. (Hearing Transcript at pp.125-26). However, the regulation does not prohibit multiple ETCs or support denial of an ETC application, even if granting a company ETC status makes that company unprofitable. Instead, the applicable consideration under the regulation is the effect of multiple ETC designations on the **universal service fund**. ARSD 20:10:32:43.07. Here, there was no evidence presented that designating LTD as an ETC, even in those census blocks where LTD as a competitor may have a relatively lower take rate, would harm the universal service fund.

The third public interest consideration under ARSD 20:10:32:43.07 is LTD's "commitments made regarding the quality of the telephone service" it will provide. LTD's network will provide a high-quality broadband network along with VoIP calling service. It will be deployed through fiber-to-the-home with a minimum speed of 1 Gbps download speed and 500 Mbps upload speed. (Hearing Transcript at p.24; Ex. L-2, at Applicant 000003, Lines 6-9). This requirement is fully satisfied.

The last public interest factor is "the applicant's ability to provide the supported services throughout the designated service area within a reasonable time frame." Here, the FCC through its thorough consideration of LTD's RDOF long form, is engaged in a comprehensive analysis of LTD's technical, financial, and managerial capabilities. (Ex. L-2, Applicant 000006, Line 18 through Applicant 000009, Line 9). Under the RDOF program rules, once authorized LTD will have an enforceable obligation to deploy its network to the awarded locations within six years. (Hearing Transcript at pp.24-25). Before authorizing monthly RDOF support, the FCC and its legal and engineering staff demand and review extensive technical, operational, and financial information of the applicant. (L-2, at Applicant 000007). This information is fully vetted by the FCC. The FCC will not authorize support to winning bidders until confirming the applicant is reasonably capable of meeting its RDOF obligations. (Ex. L-2, Applicant 000007).

Here, SDTA essentially asks this Commission to ignore the FCC and perform its own inquiry into LTD's technical, financial, and managerial capabilities.³ Then, LTD's expert speculates that LTD will eventually fail as a going concern. The sustainability of LTD's business is not a proper consideration, however, before this Commission. Nothing in ARSD

³ Even to the extent that it may be within the Commission's authority to consider the technical, financial, and managerial capabilities of service providers within the state, these qualifications are considered in connection with an application for a Certificate of Authority to provide service. Significantly, however, SDTA has entered into a

20:10:32:43.07 requires the Commission to determine that LTD will **continue** in the future to provide services, or whether LTD will fail as some point. Instead, the regulation only asks whether will be able to provide the service within a reasonable time. ARSD 20:10:32:43.07. In other words, the regulation inquires about timeliness of LTD's ability to successfully deploy a functional and operational network; but not LTD's ability to operate a profitable business. Further, the RDOF program has a 10-year funding term, with ongoing reporting and enforcement to determine compliance with federal rules and obligations.

The evidence in this case establishes the network will be deployed if the RDOF funds are authorized. As noted, the FCC is carefully scrutinizing LTD's plans and capabilities before it can authorize support. Moreover, LTD has outside investors ready to provide the additional funding needed to deploy the network. Even SDTA's own expert conceded that these outside investors engage in detailed underwriting. (Hearing Transcript at pp.195-96). He also conceded that the investors "would not lend or give their money to the company unless they thought it was sustainable." (*Id.* at p.196). The fact that LTD has already procured financing for its RDOF network confirms that it will have the funds and capabilities needed to successfully deploy its network.

As Hauer explained, granting LTD ETC status will serve the public interest because LTD will invest in facilities and equipment in the designated service areas. (Ex. L-2, at Applicant 000019, Line 16, through Applicant 000020, Line 7). LTD's use of the RDOF funding and investment will enable voice and Gigabit, fiber-to-the-home broadband services to unserved, high-cost areas in South Dakota. (Ex. L-2, at Applicant 000019, Line 16, through Applicant 000020, Line 7). Without ETC designation and RDOF funding, some consumers in South

stipulation in Docket No. TC21-014 indicating that any prior concerns about LTD's ability to provide service have been satisfied. (Ex. L-18).

Dakota will not receive broadband access. And, as conceded by SDTA's Thompson, the public interest is served by providing broadband access to these unserved consumers. (Hearing Transcript at p.198). Because the only way to assure these consumers can obtain broadband service is to grant LTD's application, the public interest supports granting the application.

CONCLUSION

Based upon the foregoing, LTD respectfully request that the Commission grant its application and designate LTD as an eligible telecommunications carrier.⁴

Dated this 11th day of January, 2022



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⁴ LTD plans to provide proposed findings of fact and conclusions of law to the Commission but is going to do so in conjunction with its reply brief so that all issues and legal arguments are encompassed in that proposed document.

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 11th day of January, 2022, a true and correct copy of the foregoing and this Certificate of Service were served via email to the following addresses listed:

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