

**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 BRIEF OPPOSING
SDTA'S MOTION TO COMPEL
DISCOVERY**

Applicant LTD Broadband LLC ("LTD") filed an application ("Application") with the Public Utilities Commission for the State of South Dakota ("the Commission") for designation as an eligible telecommunications carrier ("ETC"). The South Dakota Telecommunications Association ("SDTA") intervened in this docket. Distorting the scope of legal issues decided by the Commission on the Application, SDTA moves to compel LTD to produce proprietary and irrelevant financial information. The Commission should deny this motion, which is interposed by SDTA as part of its continued strategy to delay the resolution of this docket.

FACTUAL BACKGROUND

LTD was the winning bidder in the FCC's RDOF auction to provide voice and broadband services to unserved locations in several states, including an award to serve 7,481 locations in South Dakota. Consistent with the requirements of the RDOF award, LTD had to file for designation as an ETC in South Dakota. LTD submitted its Application for ETC status on January 7, 2021.

SDTA petitioned to intervene in the Application docket on January 27, 2021. The Commission granted SDTA intervenor status on February 22, 2021. SDTA moves to compel LTD to respond to the following discovery requests: Request 1-12, and 1-13.¹

A. SDTA Served, and LTD Served Responses and Objections, the Discovery Requests at Issue in this Motion over 4 Months Ago.

On March 9, 2021, SDTA served its first set of discovery requests on LTD, which contained 15 separate requests. LTD responded to those first discovery requests on April 9, 2021. In responding to the written discovery, LTD originally objected to requests 1-1, 1-10, 1-11, 1-12, and 1-13. (Affidavit of Jason R. Sutton dated September 7, 2021, (“Sutton Aff.”) at Ex. A). LTD has since produced documents responsive to Requests 1-1, 1-10, and 1-11. LTD continues to object to SDTA’s discovery requests 1-12 and 1-13.

In requests 1-12 and 1-13, SDTA seeks information regarding LTD’s estimated cost to maintain its network. LTD objected to these requests as irrelevant and beyond the scope of inquiry on the ETC application:

Request 12: What is the expected cost to maintain the network, in South Dakota, that will according to LTD’s RDOF bid?

Response: *LTD Broadband objects to SDTA’s Request 10 because the information requested by SDTA is not relevant to the Commission’s review of LTD Broadband’s Application, pursuant to 47 U.S.C. § 214(e) and SD Codified Law 49-31-78. The Communications Act provides that a state commission shall designate an entity as an ETC for a requested service area if, with respect to that service area, the entity (i) is a common carrier; (ii) offers the services that are supported by Federal universal service support mechanisms under 47 U.S.C. § 254; and (iii) advertise the availability of such services. While the Commission may be permitted to impose further requirements where the public interest so demands, no such requirement exists under the Commission’s rules. The cost of LTD Broadband’s network maintenance in South Dakota does not bear on LTD Broadband’s status as a common carrier, and is not needed to identify the*

¹ Originally, SDTA’s motion to compel also sought to compel LTD to respond to Requests 1-1, 1-10, and 1-11. After LTD provided an additional document on August 30, 2021, SDTA amended its motion and withdrew its request to compel compliance with Requests 1-1, 1-10, and 1-11. (SDTA’s Amended Motion to Compel Discovery dated September 3, 2021).

services LTD will provide in South Dakota, or the manner in which those services will be advertised.

Request 13: What is the expected cost per location to maintain the network, in South Dakota, that will perform according to LTD's RDOF bid?

Response: *LTD Broadband objects to SDTA's Request 10 because the information requested by SDTA is not relevant to the Commission's review of LTD Broadband's Application, pursuant to 47 U.S.C. § 214(e) and SD Codified Law 49-31-78. The Communications Act provides that a state commission shall designate an entity as an ETC for a requested service area if, with respect to that service area, the entity (i) is a common carrier; (ii) offers the services that are supported by Federal universal service support mechanisms under 47 U.S.C. § 254; and (iii) advertise the availability of such services. While the Commission may be permitted to impose further requirements where the public interest so demands, no such requirement exists under the Commission's rules. The cost of LTD Broadband's network maintenance in South Dakota does not bear on LTD Broadband's status as a common carrier, and is not needed to identify the services LTD will provide in South Dakota, or the manner in which those services will be advertised.*

(Sutton Aff. at Ex. A). As SDTA has acknowledged, LTD has fully responded to SDTA's other discovery requests in SDTA's initial discovery requests.

B. The Parties Meet and Confer to Discuss LTD's Responses

After receiving LTD's responses to the first set of discovery requests, SDTA sent a letter to LTD dated April 13, 2021. (Sutton Aff. at Ex. B). SDTA stated that it believed LTD needed to respond to Request 1-1 and 1-10 to 1-13. Following that letter, on April 23, 2021, SDTA, LTD, and Commission Staff had a call to discuss the discovery issues.² SDTA and LTD agreed at that meeting to defer any further discussion of the discovery issues to see if some of SDTA's concerns could be handled. During that call, LTD told SDTA that it had concerns about producing financial information to SDTA, whose members are LTD's competitors.

² During that call, there were discussion of other matters unrelated to this motion, such as exploration of potential resolution of SDTA's concerns.

Following the April 23, 2021 call, LTD and SDTA tried work on a stipulation to resolve both this docket and LTD's application for a certificate of authority in Docket TC 01-014.³ By May 5, 2021, it was clear that LTD and SDTA would not reach an agreement in this ETC docket. On May 5, 2021, SDTA also provided an email indicating that it was trying to learn through the Requests 1-10 through 1-13 what investigation LTD undertook in preparing its deployment and service plan. (Sutton Aff. at Ex. C). SDTA also sought this information in its second set of discovery, to which LTD has fully responded. SDTA did not raise any further concerns about LTD's discovery responses until July 29, 2021. (Sutton Aff. at Ex. D).

On August 4, 2021, LTD approached SDTA and Commission Staff about getting a procedural order in place. (Sutton Aff. at ¶ 9). During a call on August 4, 2021, the undersigned spoke with SDTA's counsel about discovery and whether an evidentiary hearing was necessary. As part of that discussion, the undersigned informed SDTA's counsel that LTD does would not share its financial information with its competitors, including SDTA. (Sutton Aff. at ¶ 9). SDTA's counsel indicated that she understood, and that is why she is not asking to see the financial information. (Sutton Aff. at ¶ 9).

A follow-up call regarding scheduling and discovery occurred on August 6, 2021, which was attended by attorneys for LTD, SDTA, and Commission Staff. During that call, SDTA reiterated that its primary concern was the technical plan rather than the financial information described in Requests 1-10 to 1-13. (Sutton Aff. at ¶ 10). Based upon that representation, LTD agreed to provide the technical portion of LTD's RDOF application filed with the FCC, subject to an "Attorneys' Eyes Only" designation. LTD promptly provided that information on August 13, 2021 as a compromise, and based entirely upon SDTA's agreement not to seek financial information.

³ SDTA and LTD have signed a stipulation regarding the COA application docket.

As part of the discussions during the week of August 6, LTD and SDTA exchanged potential deadlines for a procedural order. (Sutton Aff. at Ex. E). Although LTD believed that the deadlines requested by SDTA were later than necessary, LTD agreed to SDTA's proposed schedule with the caveat that after all discovery responses were served, the parties would have a call to discuss potentially streamlining the issues for hearing. (Sutton Aff. at ¶¶ 11-12). However, in response, and after receiving LTD's technical information, SDTA indicated it could not agree to the schedule because it needed to discuss the matter with its expert. (Sutton Aff. at ¶ 13). LTD thus filed a motion for prehearing conference on August 13, 2021.

After receiving LTD's confidential technical information, SDTA abruptly changed its position. It suddenly demanded to receive the financial information it previously said it did not need. (Sutton Aff. at Ex. G). The undersigned wrote a letter to SDTA on August 20, 2021, indicating that LTD found SDTA's change in position to be in bad faith and inconsistent with the assurances made that SDTA did not want to see financial information. (Sutton Aff. at Ex. H). Counsel for SDTA responded the same day with an email acknowledging her prior statements that she did not need the financial information, but claiming it was her mistake and not bad faith. (Sutton Aff. at ¶ 16).

Importantly, LTD provided the technical information regarding its plan in an effort to avoid a discovery dispute and based upon SDTA's agreement to a procedural schedule that does not require a motion to compel. Then, after getting the technical information, SDTA refused the procedural schedule it previously agreed to, and SDTA proceeded to file a motion to compel discovery of information it previously stated it did not need. This has delayed the procedural schedule and prejudiced LTD.

On August 27, 2021, SDTA filed its motion to compel. In its brief, SDTA argued that LTD had not fully responded to Request 1-1 requiring production of *all* information given to Commission Staff, including confidential information.⁴ In reviewing that motion, counsel for LTD communicated with SDTA on August 30, 2021, to indicate that it had given SDTA all of the RDOF application information given to Staff, including the confidential information. It was then discovered that through inadvertent oversight, counsel missed one document in the RDOF long form application when producing it to Commission Staff. That document, which contains financial information about the construction costs for the network, was provided to both Commission Staff and LTD the same day. (Sutton Aff. at Ex. J).

On September 3, 2021, LTD provided a supplemental response to Request 1-1 confirming the entire RDOF application was provided to SDTA. The same day, SDTA sent a letter to the Commission indicating LTD had complied with requests 1-1, 1-10, and 1-11. (SDTA's Amended Motion to Compel date September 3, 2021). SDTA thus withdrew its motion to compel responses to those requests, leaving only Discovery Requests 1-12 and 1-13 remaining subject to its motion to compel. (*Id.*). These requests seek information related to LTD's network maintenance costs.

C. LTD Has Responded to Extensive Discovery Request from SDTA and Staff.

In addition to the first of 15 discovery requests served in March of 2021, SDTA served its second set of written discovery on LTD on April 14, 2021. The second set of discovery contained nine separate requests, of which several contained numerous subparts. LTD responded

⁴ Notably, when the Parties discussed production of certain RDOF materials on August 9, 2021, SDTA's counsel indicated that she only requested access to the technical portions of LTD's RDOF application or "technical plan" for LTD's network in South Dakota. SDTA's motion to compel a response to Request 1-1 was much broader, and while still unclear, appears to include a request for financial information provided to the FCC. LTD has now provided to SDTA and Staff the *only* financial information submitted to the FCC in connection with its RDOF long form application: a letter documenting its lender's commitment to provide a letter of credit, and the Construction Funding Detail provided to Staff and SDTA on August 30, 2021.

to these requests on May 13, 2021. SDTA served its third set of written discovery on LTD on June 2, 2021, which LTD responded to on June 30, 2021. The third set of written discovery contained 15 additional discovery requests from SDTA. On July 29, 2021, SDTA sent its fourth set of written discovery that contained four requests. LTD responded to that written discovery on August 6, 2021. LTD served its fifth set of written discovery on August 27, 2021, containing 20 additional discovery requests.

LTD also has responded to discovery requests from Staff: (1) Staff's First Set containing 11 data requests; (2) Staff's second set containing 8 data requests; and (3) Staff's Third Set, containing 6 data requests. At this time, LTD does not expect any additional data requests from Staff.

LEGAL STANDARD

SDTA filed its motion to compel pursuant to ARSD 20:10:01:22.01, which states in relevant part: "The commission at its discretion, either upon its motion or for good cause shown by a party to a proceed, may issue an order to compel discovery." LTD agrees that the standards governing discovery in South Dakota Circuit Courts apply to this motion to compel.

Generally, pretrial discovery has a broad scope. *Ferguson v. Thaemert*, 2020 SD 69, ¶ 12, 952 N.W.2d 277, 281. Although relevance has a broad definition for discovery purposes, the information sought still must be relevant to the issues in the case. *Id.*; see also SDCL 15-6-26(b)(1) ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter in the pending action . . ."). The Commission has broad authority to determine the extent of discovery. See *State v. Bucholz*, 1999 SD 110, ¶ 27, 598 N.W.2d 899, 905. The discovery requests must be reasonably calculated to lead to the discovery of admissible evidence. See *Kaarup v. St. Paul Fire & Marine Ins. Co.*, 436 N.W.2d 17, 20 (S.D. 1989).

ARGUMENT

SDTA moves to compel LTD to respond to Discovery Requests 1-12, and 1-13. SDTA's motion should be denied for two separate reasons: (1) the information sought through Requests 1-12 and 1-13 is irrelevant; and (2) SDTA agreed that it was not seeking the financial information from LTD that it now seeks to compel be produced.

1. The Commission Should Deny SDTA's Motion Because Any Additional Requested Financial Information About Network Maintenance Costs is Not Relevant to Any Issue before the Commission.

Requests 1-12 and 1-13 seek financial information about the future costs to maintain LTD's RDOF-supported network in South Dakota. This information is not relevant to any issue before the Commission and beyond the scope of discovery.

The Telecommunications Act of 1996 expressly stated the limited 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 47 U.S.C. § 214(e)(1).

Section 214(e)(1) states 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, LTD satisfies each of these

requirements as stated in its Application. Pertinent to this specific motion, none of Section 214(e)'s three requirements relate in any way to LTD's financial status or planning.

SDTA concedes that it originally told LTD that there was no need to review LTD's financial information but instead would focus on LTD's engineering plans. SDTA now claims it should be able to review LTD's financial plans because SDTA's expert indicates a purported "disconnect between what LTD proposes to build, maintain and operate and the support LTD will receive from the RDOF auction." (SDTA's Brief at p.6).

As an initial matter, SDTA provides no evidence from its expert explaining or describing this purported disconnect. Instead, this is just a vague statement by SDTA's counsel who is trying to justify SDTA's sudden and admitted reversal of its position on the scope of discovery **after** LTD compromised and produced its RDOF application to SDTA, including its engineering information as well as the portion of its RDOF application summarizing LTD's construction funding.

Furthermore, the purported statement by SDTA's expert is premised on an incorrect assumption—the only source of funds to build LTD's network in South Dakota is RDOF funds. As shown in the financial information filed with the RDOF application, additional capital will be raised through private funding. (Sutton Aff. at Ex. J).⁵

Moreover, SDTA apparently assumes that LTD is required to provide maintenance costs to the FCC as part of the long-form application. That is not true. The application procedures require RDOF applicants to

include the estimated project costs for all facilities that are required to complete the project, including the costs of upgrading, replacing, or otherwise modifying existing facilities to expand coverage or meet performance requirements. The

⁵ SDTA did not have this document when it filed its motion because it was discovered in conversations with SDTA and Commission Staff that this document was accidentally missed when the RDOF application was produced to Commission Staff and SDTA. (Sutton Aff. at ¶ 17).

estimated costs must be broken down to indicate the costs associated with each proposed service area at the state level and must specify how Rural Digital Opportunity Fund support and other funds, if applicable, will be used to complete the project. The description must include financial projections demonstrating that the long-form applicant can cover the necessary debt service payments over the life of any loans.⁶

In addition, the application form asks LTD to: “Describe how the applicant will maintain the performance and quality of the service for the duration of the 10-year support term.” LTD has provided all of the financial information from its long-form application to both SDTA and Commission Staff. Because the FCC does not require LTD to calculate future maintenance costs as part of the RDOF application, it would be unduly burdensome for SDTA to require LTD to create documents performing that analysis, particularly considering the irrelevant nature of the future maintenance costs.

SDTA argues that maintenance costs are relevant because to the Commission’s “public interest” inquiry under ARSD 20:10:32:43:07, which states:

Prior to designating an eligible telecommunications carrier, the commission shall determine that such designation is in the 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. In addition, the commission shall consider whether the designation of the applicant will have detrimental effects on the provisioning of universal service by the incumbent local exchange carrier. If an applicant seeks designation below the study area level of a rural telephone company, the commission shall also conduct a creamskimming analysis that compares the population density of each wire center in which the applicant seeks designation against that of the wire centers in the study area in which the applicant does not seek designation. In its creamskimming analysis, the commission shall consider other factors, such as disaggregation of support pursuant to 47 C.F.R. § 54.315 (January 1, 2006) by the incumbent local exchange carrier.

⁶ Public Notice, *Rural Digital Opportunity Phase I Auction Scheduled for October 29, 2020*, 35 FCC Rcd 6077, 6174-75 (2020).

ARSD 20:10:43:07. SDTA argues that the broad “public interest” requires the Commission to evaluate LTD’s “financial plan.” (SDTA’s Brief at p.6). According to SDTA, without a proper financial plan, LTD “may fail.” SDTA then speculates that failure by LTD would not be in the public interest because if LTD fails, others might not use available funding to provide services to the 103 census blocks provisionally awarded to LTD in the RDOF application.

SDTA’s argument ignores that the second sentence of ARSD 20:10:43:07 defines the factors considered when evaluating the public interest.⁷ Specifically, the second sentence of ARSD 20:10:43:07 describes the specific areas of inquiry directing the Commission’s public interest analysis as “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.”⁸

In this case, SDTA seeks information about future maintenance costs. None of these “public interest” considerations articulated in the second sentence of ARSD 20:10:43:07 require

⁷ SDTA does not agree that the Commission should evaluate anything other than the three requirements of 47 U.S.C. § 214(e) when determining SDTA’s ETC application. Even assuming for argument’s sake only that the Commission’s rules authorize it to consider additional factors when evaluating “public interest,” inquiries into future maintenance cost are outside the scope of ARSD 20:10:43:07.

⁸ The Commission applied these specific factors when evaluating the public interest while granting applications for ETC status in other dockets. 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 of the Application by Venture Vision, Inc. as an Eligible Telecommunications Carrier in the State of South Dakota*, TC 21-009 (April 19, 2021); Order Granting Eligible Telecommunications Designation, Order Granting Certification; *In the Matter of the Application of Midcontinent Communications for Eligible Telecommunications Carrier Designation with Certain Additional Qwest Service Areas*, TC 10-099 (Feb. 23, 2011).

evaluation of the future sustainability of an applicant's financial status for this purpose. At most, ARSD 20:10:43:07 inquires whether LTD can build its network in a reasonable time frame. LTD has committed to build the network, and it will be obligated to do so consistent with the six-year buildout period required by the FCC's RDOF rules. LTD has produced to SDTA its estimated cost to build the supported network. To the extent SDTA's discovery is broader than construction costs, such as inquiries into future estimated maintenance costs, this information is not relevant to the ETC application, and the discovery is irrelevant. SDTA has received everything that it should receive, and then some.

3. SDTA Waived Any Ability to Receive Additional Financial Information By Telling LTD That It Did Not Intend to Review Financial Information, and It Just Wanted to See LTD's Technical Plans Contained in the RDOF Application.

On March 9, SDTA served its first set of written discovery, which included Request 1-1 and 1-10 to 1-13. On April 9, LTD responded to that written discovery. Since then, SDTA has sent four additional sets of written discovery. LTD has responded fully to each of these additional requests (with the exception of SDTA's Fifth Discovery Requests, to which responses are not due until September 27, 2021), and SDTA has not moved to compel regarding those other requests.

On April 13, 2021, LTD sent a letter raising concerns about LTD's refusal to produce the financial information requested in Requests 1-10 to 1-13. This letter prompted multiple "meet and confer" discussions between LTD and SDTA. Commission Staff also participated in these calls. During calls in April and May of 2021, LTD indicated that it was not inclined to provide financial information to SDTA, whose members are direct competitors of LTD. SDTA, through its attorney, indicated that it understood. SDTA never proceeded with a motion to compel at that time.

As this docket was stagnating over the summer, and because LTD had responded to extensive written discovery, LTD started communicating with SDTA and Commission Staff about a procedural schedule in early August of 2021. As part of the discussions for the procedural schedule, SDTA reraised concerns about LTD's discovery responses. Critically, SDTA's counsel expressly told LTD's counsel that SDTA was not interested in seeing the financial information. Instead, SDTA wanted to see the technical plans for LTD's network to make sure that LTD could build what it claimed it could build.

In an effort to compromise, and based upon SDTA's representation that it only wanted engineering information and not financial data, LTD agreed to provide its RDOF application to SDTA under an "Attorney's Eyes Only" designation. This information was provided to SDTA on August 13, 2021. Then, in an incredible "bait and switch," SDTA now claims its expert needs the financial information SDTA expressly stated it did not want to see. Indeed, SDTA concedes that it told LTD that it was not seeking financial information.

When SDTA, through its counsel, repeatedly stated that it did not want the financial information, SDTA waived any right to seek discovery on that information. "Waiver is a volitional relinquishment, by act or word, of a known, existing right conferred in law or contract." *Harms v. Northland Ford Dealers*, 1999 S.D. 43, ¶ 17, 602 N.W.2d 58, 62. Here, SDTA sent the discovery in March of 2021. It has known for five months that LTD objects to producing financial information. LTD did not proceed at any time with a timely motion to compel this financial information. Undoubtedly, SDTA knew it could proceed with a motion to compel. Instead, SDTA, through its counsel, expressly said it did not want to review the financial information. Indeed, SDTA concedes that it made these statements to LTD. In doing

so, SDTA waived its right to proceed with a motion to compel response to Requests 1-12 through 1-13.

Furthermore, SDTA should be estopped from seeking that discovery now. The South Dakota Supreme Court has stated the following test for when an estoppel occurs:

To create an estoppel, there must have been some act or conduct upon the part of the party to be estopped, which has in some manner misled the party in whose favor the estoppel is sought and has caused such party to part with something of value or do some other act relying upon the conduct of the party to be estopped, thus creating a condition that would make it inequitable to allow the guilty party to claim what would otherwise be his legal rights.

Wilcox v. Vermeulen, 2010 S.D. 29, ¶ 9, 781 N.W.2d 464, 468. “Estoppel will be applied against a party “who by their words or conduct take positions inconsistent with their rights, unfairly misleading others into detrimental reliance.” *A-G-E Corp. v. State*, 2006 S.D. 66, ¶ 32, 719 N.W.2d 780, 789 (internal quotation omitted).

Here, SDTA should be estopped from seeking the financial information requested in Requests 1-12 and 1-13. During the “meet and confer” calls and while discussing scheduling, SDTA assured LTD that it did not want to see financial information. Instead, it only wanted to see LTD’s engineering plans. Based upon this representation, and in the interest of compromise, LTD produced confidential and proprietary engineering information to SDTA. LTD vehemently believed that SDTA was not entitled to this information, and the engineering information exceeds the scope of the Commission’s ETC inquiry under 47 U.S.C. § 214(e). Yet, LTD was willing to produce engineering information to resolve the discovery dispute. In doing so, LTD gave up valuable, proprietary information to SDTA without a determination as to whether SDTA was entitled to that information when LTD produced the RDOF application to SDTA. Then, after getting the engineering information, LTD changed its position and demanded production of the financial information. And even after providing SDTA with highly confidential and

proprietary financial information, it retains its desire to review LTD's network maintenance costs.

Once LTD produced that engineering information, there is no effective way to "unring the bell" that occurred when LTD produced the documents in reliance on statements made by SDTA. It would be patently unfair to LTD to allow SDTA to change its position after receiving the engineering information and the construction funding detail LTD provided to Commission Staff and SDTA on August 30. In turn, SDTA is estopped from seeking the financial information, and the Commission should deny the motion to compel responses to Requests 1-10 through 1-13.

SDTA's abrupt change in position also has prejudiced LTD because it contributes to continued delay in the ETC docket. LTD agreed to produce the entire RDOF long-form application to SDTA in an effort to avoid a motion to compel that could delay action on the Application. LTD produced this document based upon SDTA's agreement to a procedural schedule avoiding a discovery dispute. This would include a firm deadline for the completion of discovery. After receiving the engineering information, SDTA changed its position and filed a motion to compel anyway. This created weeks of additional delay. SDTA also has refused to agree to a procedural schedule. Delay is particularly prejudicial to LTD in this case where the FCC has imposed deadlines for obtaining ETC designation as part of the RDOF process. Although LTD has an application pending before the FCC to extend the deadline for receiving an ETC designation in South Dakota, any further delay in the proceedings jeopardizes LTD's award of RDOF funds.

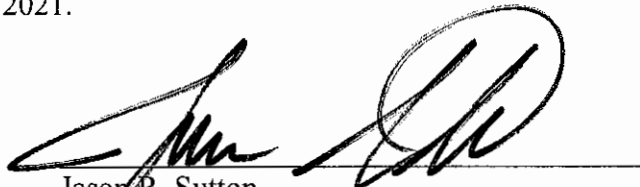
In short, SDTA expressly represented to LTD that it did not want to receive financial information. LTD relied on that representation in when it produced to SDTA the technical

portions of its RDOF applications that the FCC has deemed are confidential. The Commission should not allow SDTA to receive the technical information based upon that representation and then change its position.

CONCLUSION

SDTA's motion to compel should be denied in its entirety for the reasons stated above.

Dated this 7th day of September, 2021.



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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:

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