

April 9, 2021

VIA EMAIL (patty.vangerpen@state.sd.us)

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Re: *Docket No. TC21-0001, Request of LTD Broadband, LLC for Confidential Treatment of Information*

Dear Ms. Van Gerpen:

In response to Staff's First Data Request in the above-referenced docket, please find attached, as Exhibit A, the *confidential* responses of LTD Broadband, LLC ("LTD Broadband") to Items 1-4, 1-7 (all subsections), and 1-11. Pursuant to S.D. Admin. R. 20:10:1:41, LTD Broadband respectfully requests that Commission provide confidential treatment of all documents and information contained in Exhibit A. In support of this request, LTD Broadband submits as follows:

(1) ***Description of Confidential Information.*** The confidential information subject to this request includes (i) information about the location and capability of LTD Broadband's fiber deployments in South Dakota (response to Item 1-4); (ii) information about LTD's Broadband's planned services within RDOF-awarded census blocks in South Dakota (response to Item 1-7); and (iii) a copy of LTD Broadband's long-form RDOF application, filed with the FCC on January 29, 2021 (response to Item 1-11).¹ The documents and information contained in Exhibit A shall hereinafter be referred to as the "Confidential Information".

(2) ***Length of Time for Which Confidentiality is Requested.*** Confidentiality is requested from the date hereof, for a time period up to thirty (30) days after the date of an FCC order that declares information submitted by RDOF applicants to be non-confidential ("Confidentiality Period"). Upon LTD Broadband's written request, delivered at any time prior to the conclusion of the Confidentiality Period, the Commission may be requested to return to LTD Broadband all copies of Confidential Information in the possession of the Commission and/or its Staff at the time of the request, and any notes and extracts thereof, which shall

¹ LTD Broadband's responses to Items 1-4 and 1-7, as submitted to Commission Staff on February 11, 2021, inadvertently were not marked as "confidential," in the manner required by the Commission's rules. To any avoid confusion or unintended public disclosure, LTD Broadband hereby re-submits its responses, subject to this request for confidential treatment.



include, without exception, copies of Confidential Information stored on any computer or electronic device. If no such request is made by LTD Broadband, it is hereby requested that the Commission destroy (rather than return) all copies of Confidential Information in the possession of the Commission and/or its Staff at the conclusion of the Confidentiality Period, and any analyses, compilations, studies, or other documents, records, or data prepared by the Commission or its Staff, to the extent that such materials contain, reflect, or are derived from any Confidential Information.

(3) **Contact Information for LTD Broadband LLC.** All communications related to this request may be directed to:

Mr. Corey Hauer, CEO
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P.O. Box 3064
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(4) **Authority Pursuant to Which Confidentiality is Requested.** Confidentiality is requested pursuant to S.D. Admin. R. 20:10:1:41. The information contained in Exhibit A is deemed “confidential” pursuant to Pursuant to S.D. Admin. R. 20:10:1:39 (4) and (5), and disclosure of the same would result in material harm to the competitive position of LTD Broadband.

(5) **Basis for LTD Broadband’s Confidentiality Request.** The documents and information contained in Exhibit A meet the definition of “confidential information” under S.D. Admin. R. 20:10:1:39 because (i)

such documents and information are protected under federal law;² and (ii) such documents and information contain “trade secrets” (as defined in S.D. Codified Laws § 37-29-1) and competitively sensitive commercial information.³

The FCC treats information submitted by RDOF applicants as presumptively confidential,⁴ based on its determination that competitors, disappointed bidders, and others should not have an opportunity to review information that the FCC has taken precautions to protect from public disclosure. While the FCC indicated that it would make certain initial submissions by RDOF applicants publicly available,⁵ no such disclosures have been made at this time. Moreover, with respect to certain detailed portions of long-form RDOF applications, the FCC firmly committed to “treat all information submitted...as confidential and...withhold it from routine public inspection.”⁶ Therefore, the Commission’s release, or public disclosure of LTD Broadband’s long-form RDOF application, the information contained therein, or any other related information contained in Exhibit A would be contrary to the restrictions ordered by the FCC with respect RDOF Auction 904 – on which LTD Broadband reasonably relied when it submitted its long-form RDOF application to the FCC. Indeed, such restrictions exist to enable applicants to submit detailed plans about their businesses, network deployments, and financial qualifications without concern of competitive harm, and in turn permits FCC staff to collect all of the information that it requires to conduct an in-depth review of RDOF applications.

Any release or public disclosure of the Confidential Information also would materially harm LTD Broadband, as it would expose to LTD Broadband’s competitors sensitive and proprietary “trade secret” market information related to competitive services currently offered (and in the future, to be offered) by LTD Broadband. The documents and information contained in Exhibit A provide detailed technical and financial information about LTD Broadband and its deployment plans, which the FCC has determined is confidential and proprietary information that should not be made available to the public. Any release, or public disclosure of such sensitive information would enable LTD Broadband’s competitors to fully understand its network plans, costs, and efforts to market its services, and would provide competitors a pronounced benefit that would hinder LTD Broadband’s ability to compete in the South Dakota market. Conversely, the Commission’s release, or public disclosure of the Confidential Information would not in any respect facilitate the Commission’s review of LTD’s application in the above-referenced docket, or aid the Commission in the execution of its duties.

² S.D. Admin. R. 20:10:1:39(5).

³ S.D. Admin. R. 20:10:1:39(4). Under South Dakota state law, “trade secret” includes information, including a formula, pattern, compilation, program, device, method, technique, or process that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

⁴ *Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020; Notice and Filing Requirements and Other Procedures for Auction 904*, Public Notice, 35 FCC Rcd 6077, 6167 & 6168 (2020).

⁵ *Id.* at 6167 ¶ 302.

⁶ *Id.* at 6168 ¶ 303; *see also id.* at 6175 ¶ 312.

Please do not hesitate to contact me if you have any questions, or require further information.

Respectfully submitted,

/s/ Brett Heather Freedson

Brett Heather Freedson
Counsel to LTD Broadband, LLC

cc: Brittany Mehlhaff (brittany.mehlhaff@state.sd.us)
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EXHIBIT A