

## Jason R. Sutton

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**From:** karasemmler@sdtaonline.com  
**Sent:** Wednesday, August 11, 2021 3:01 PM  
**To:** Jason R. Sutton; 'Reiss, Amanda'; 'Brett Heather Freedson'  
**Cc:** Tricia A. Johnson  
**Subject:** RE: LTD Broadband--TC 21-01

I think/hope the information LTD produces will fill in all the holes I perceive exist. However, I don't really know what to expect. Therefore, I can't agree to limit the scope of discovery to questions pertaining to the produced documents only.

I will not agree to limit my ability to ask questions that result from the new information.

SDTA's experts agreed to make themselves available to review and generate questions quickly. However, beyond that, I will not agree to limit my opportunity to fully understand how LTD intends to provide services.

I see you sent the confidentiality agreement. I will review it.

Kara

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**From:** Jason R. Sutton <jrsutton@boycelaw.com>  
**Sent:** Tuesday, August 10, 2021 4:09 PM  
**To:** karasemmler@sdtaonline.com; 'Reiss, Amanda' <Amanda.Reiss@state.sd.us>; 'Brett Heather Freedson' <BFreedson@lermansenter.com>  
**Cc:** Tricia A. Johnson <tajohnson@boycelaw.com>  
**Subject:** RE: LTD Broadband--TC 21-01

Kara:

Our intentions are to produce to SDTA the portions of the RDOF application that we gave to Staff by Friday. This will be subject to an "attorneys' eyes only" protective order like we discussed. Based on that, we would propose that consistent with the emails below, all discovery be served by August 27, with SDTA's discovery limited in scope to examining the information provided on Friday. Let me know. I will confirm the remaining dates with you hopefully tomorrow or the next day. I also will send the draft protective order in the next day or two.

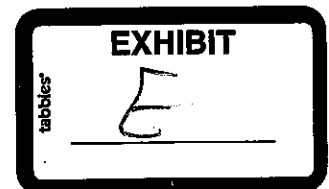
Jason

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**From:** [karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com) <[karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com)>  
**Sent:** Monday, August 9, 2021 4:23 PM  
**To:** Jason R. Sutton <[jrsutton@boycelaw.com](mailto:jrsutton@boycelaw.com)>; 'Reiss, Amanda' <[Amanda.Reiss@state.sd.us](mailto:Amanda.Reiss@state.sd.us)>; 'Brett Heather Freedson' <[BFreedson@lermansenter.com](mailto:BFreedson@lermansenter.com)>  
**Cc:** Tricia A. Johnson <[tajohnson@boycelaw.com](mailto:tajohnson@boycelaw.com)>  
**Subject:** RE: LTD Broadband--TC 21-01

Thank you, Jason.

I request 2 weeks to review "the plan" before the close of discovery.  
I request a full 30 days from receipt of LTD's answers to any follow up discovery to prepare testimony.



So, assuming I get "the plan" on Friday. I can agree as follows:

- 1) Aug 27 for completion of discovery (*meaning that all discovery requests would be served on or before that date*).
- 2) 2 weeks for LTD to reply - LTD response deadline: Sept 10
- 3) October 11 simultaneous, initial prefiled testimony
- 4) October 26 for prefiled rebuttal
- 5) Nov 3 for motions deadline

Kara

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**From:** Jason R. Sutton <[jrsutton@boycelaw.com](mailto:jrsutton@boycelaw.com)>  
**Sent:** Monday, August 9, 2021 3:31 PM  
**To:** [karasemmler@sdaonline.com](mailto:karasemmler@sdaonline.com); 'Reiss, Amanda' <[Amanda.Reiss@state.sd.us](mailto:Amanda.Reiss@state.sd.us)>; 'Brett Heather Freedson' <[BFreedson@lrmansenter.com](mailto:BFreedson@lrmansenter.com)>  
**Cc:** Tricia A. Johnson <[tajohnson@boycelaw.com](mailto:tajohnson@boycelaw.com)>  
**Subject:** RE: LTD Broadband--TC 21-01

All:

Thanks for the call today. As generally discussed, we understand that SDTA really wants to evaluate LTD's plan for the Project, and SDTA would be willing to agree to an "Attorneys' Eyes Only" protective order to do so. We will let you know our position on that issue hopefully yet this week.

We also generally discussed discovery and the schedule. We understand that the schedule would be materially impacted by if we cannot reach an agreement on discovery issues and a motion to compel is required. But, if we can avoid the motion to compel, then we talked about the tentative dates:

1. Aug 27 for completion of discovery (*meaning that all discovery requests would be served on or before that date*). LTD Broadband will respond to such requests within two weeks of the date of service, if not sooner. We know this is affected by the date we produce the plan, if we do so.
2. October 1 for simultaneous, initial prefiled testimony *BHF*
3. October 15 for prefiled rebuttal
4. October 22 for motions deadline

What do you all think of these dates. As I mentioned on the phone, we would want to make sure we are in a position to meet shortly after the close of discovery to see if we can agree to another path to avoid a formal evidentiary hearing. At the same time, I want to get these dates set up.

Thanks.

Jason

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**From:** [karasemmler@sdaonline.com](mailto:karasemmler@sdaonline.com) <[karasemmler@sdaonline.com](mailto:karasemmler@sdaonline.com)>  
**Sent:** Friday, August 6, 2021 4:33 PM  
**To:** Jason R. Sutton <[jrsutton@boycelaw.com](mailto:jrsutton@boycelaw.com)>; 'Reiss, Amanda' <[Amanda.Reiss@state.sd.us](mailto:Amanda.Reiss@state.sd.us)>; 'Brett Heather Freedson' <[BFreedson@lrmansenter.com](mailto:BFreedson@lrmansenter.com)>  
**Cc:** Tricia A. Johnson <[tajohnson@boycelaw.com](mailto:tajohnson@boycelaw.com)>  
**Subject:** RE: LTD Broadband--TC 21-01

How about this for an "agenda" on Monday:

- 1) July 29 SDTA Discovery letter to LTD.
  - a. Is resolution possible?
  - b. If not, agree on motion hearing dates.
- 2) Pre-filed testimony procedure and dates
  - a. Simultaneous or staggered. (I propose simultaneous)
- 3) Commission availability for hearing – Amanda are you able to provide some dates for discussion? I don't think it is possible to get through this procedure before Thanksgiving. But, I do think we can get it done by Christmas.

What do you all think?

Kara

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**From:** Jason R. Sutton <[jrsutton@boycelaw.com](mailto:jrsutton@boycelaw.com)>  
**Sent:** Friday, August 6, 2021 3:00 PM  
**To:** [karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com); 'Reiss, Amanda' <[Amanda.Reiss@state.sd.us](mailto:Amanda.Reiss@state.sd.us)>; 'Brett Heather Freedson' <[BFreedson@lermansenter.com](mailto:BFreedson@lermansenter.com)>  
**Cc:** Tricia A. Johnson <[tajohnson@boycelaw.com](mailto:tajohnson@boycelaw.com)>  
**Subject:** RE: LTD Broadband--TC 21-01

Kara:

Thank you. This email was helpful. A couple follow-up questions/comments:

1. Like SDTA, LTD is very interested in knowing Staff's position, including whether we have provided sufficient information for Staff's comfort with the application, and whether Staff intends to provide a recommendation to the commission.
2. Your discussion below is helpful. So we are prepared for Monday, do you intend to walk through your bullets in the mail below or the items in your July 29, 2021 letter?

Thanks, and have a great weekend.

Jason

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**From:** [karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com) <[karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com)>  
**Sent:** Friday, August 6, 2021 10:30 AM  
**To:** Jason R. Sutton <[jrsutton@boycelaw.com](mailto:jrsutton@boycelaw.com)>; 'Reiss, Amanda' <[Amanda.Reiss@state.sd.us](mailto:Amanda.Reiss@state.sd.us)>; 'Brett Heather Freedson' <[BFreedson@lermansenter.com](mailto:BFreedson@lermansenter.com)>  
**Subject:** RE: LTD Broadband--TC 21-01

All,

In the spirit of "judicial efficiency" and in an effort to be transparent....want you to be aware of SDTA's position. My intention, with this email, is to narrow the issues to facilitate a productive conversation on Monday. I appreciate LTD's need to move this docket forward and Staff's indication regarding its desired timeframe.

I am doing a "take-back" on my knee-jerk reaction that more time is needed for discovery and/or depositions. The requests I made in the July 29 letter are sufficient (along with answers to Request 4).

While I reserve the opportunity to amend my position, SDTA's issues currently include:

- I do not believe LTD has adequately shown that services can be provided within a reasonable time: ARSD 20:10:32:43.01, 20:10:32:43.07. (This is assuming there is no update regarding forest service permits/easements, environmental or cultural studies, or an understanding of where fiber and where wireless technology will be used.)
- Due to the applicant's uncertainty regarding construction needs and/or plans, a two-year plan should be provided. ARSD 20:10:32:43.02. SDTA will not agree to a waiver of the 2-year plan. Due to the various "unknowns" (as disclosed in discovery) that will impact a construction schedule, the plan should be evaluated for reasonableness.
- LTD has not shown it will comply with consumer protection and quality standards ARSD 20:10:32:43.04 (standards in ARSD 20:10:33)
  - It has not shown that its plant will reliably provide service in a way that continuity and quality of service can be assured.
  - It has not shown that it has a plan to assure adequate personnel will be available.
  - It has not shown how it can remain operational in emergencies---tower placement and tree interference is an issue.
- It is not in the public interest to designate LTD as an ETC.
- Depending upon the tower and fiber plan (if received either from LTD voluntarily or through PUC Order), I may take a position that – the plan is not adequate to provide reliable service.

I request the opportunity to provide written testimony. I will need 45 days from the receipt of the discovery I have requested. The outstanding discovery is relevant and will impact written testimony.

I think we should schedule a hearing to get the written testimony on the record and allow for cross examination, if any, and Commissioner questions.

And then we brief it.

For discussion if we have a discovery dispute:

1. Completion of discovery—August 27, 2021
2. Motions Hearing (motion to compel or other...)
  - a. Motions filed Aug 16
  - b. Reply filed Aug 20
  - c. Heard by Commission on Aug 27
3. Assuming I win 😊....could you get the info to me by Sept 3?
4. Any interest in stipulating to the contested issues to limit the applicants need to submit prefiled testimony to support the entire application?
5. Simultaneous prefiled on Oct 22
6. Simultaneous replies on Nov 12
7. Hearing thereafter when it works for the Commissioners and witnesses.
8. Briefing....

For discussion if we do not have a discovery dispute, it moves the dates up a bit.

1. Completion of discovery—August 27, 2021 (meaning....I can get what I have requested by Aug 27).
2. Any interest in stipulating to the contested issues to limit the applicants need to submit prefiled testimony to support the entire application?

3. Simultaneous prefiled on Oct 11
4. Simultaneous replies on Nov 1
5. Hearing thereafter when it works for the Commissioners and witnesses.
6. Briefing....

The outstanding discovery may narrow the issues and further simplify the proceeding.

Or maybe we can eliminate issues if we get creative and find "conditions" that the applicant could agree to that would help SDTA feel better about ETC certification?

Amanda, I am interested in Staff's position. Staff has access to confidential information that I do not have. Please let me know if, based upon that information, you think my current position is off base.

And, if that is the case, I am interested in working with LTD to find a way I too can review that information while respecting the company's need to keep it confidential.

Have a great weekend. I look forward to our discussion on Monday.

Kara



South Dakota Telecommunications Association  
Kara Semmler, Executive Director  
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PO BOX 57  
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**From:** Jason R. Sutton <[jrsutton@boycelaw.com](mailto:jrsutton@boycelaw.com)>  
**Sent:** Thursday, August 5, 2021 1:39 PM  
**To:** Reiss, Amanda <[Amanda.Reiss@state.sd.us](mailto:Amanda.Reiss@state.sd.us)>; [karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com)  
**Cc:** 'Brett Heather Freedson' <[BFreedson@lrmansenter.com](mailto:BFreedson@lrmansenter.com)>  
**Subject:** RE: LTD Broadband--TC 21-01

All:

How about we plan to schedule the call for 11:00 Central on Monday. We can discuss the schedule then (along with the discovery issues). We will not file our motion until after the call.

Thanks

Jason

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**From:** Reiss, Amanda <[Amanda.Reiss@state.sd.us](mailto:Amanda.Reiss@state.sd.us)>  
**Sent:** Thursday, August 5, 2021 11:06 AM  
**To:** [karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com); Jason R. Sutton <[jrsutton@boycelaw.com](mailto:jrsutton@boycelaw.com)>  
**Cc:** 'Brett Heather Freedson' <[BFreedson@lrmansenter.com](mailto:BFreedson@lrmansenter.com)>  
**Subject:** RE: LTD Broadband--TC 21-01

Staff is available at the suggested times and agrees that we should put together a procedural schedule. We would prefer to get this matter finalized before Thanksgiving.

**From:** [karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com) <[karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com)>

**Sent:** Wednesday, August 4, 2021 7:29 PM

**To:** 'Jason R. Sutton' <[jrsutton@boycelaw.com](mailto:jrsutton@boycelaw.com)>; Reiss, Amanda <[Amanda.Reiss@state.sd.us](mailto:Amanda.Reiss@state.sd.us)>

**Cc:** 'Brett Heather Freedson' <[BFreedson@lrmansenter.com](mailto:BFreedson@lrmansenter.com)>

**Subject:** RE: [EXT] LTD Broadband--TC 21-01

Jason,

Thank you for the conversation today.

I remain available any of the times you suggest.

I appreciate LTD's need to get a procedural schedule in place.

I would like to add in a window of time to take depositions. Problem is, I don't know who has the answers I am seeking. Therefore, I need to assure I have enough time left in discovery to identify who that person is and then schedule the deposition. I propose depositions be done via video.

The need to understand who has the answers is my only desire for additional discovery time. However, When I build that into the schedule, it really pushes the dates out. In addition, I need to assume LTD will not agree to provide any of the discovery I requested. Therefore, I will file a Motion to Compel...thus adding time to the procedural schedule.

For discussion purposes:

1. Final opportunity to request discovery—August 15, 2021. Again, I need to ask your client who has the info I need.
2. Motion to Compel hearing: Sometime in September.
3. Completion of depositions – November 19 , 2021. This can maybe be shortened if we can agree to video depositions.
4. Filing of prefiled testimony—December 31
5. Motions Deadline—January ?
6. Hearing \_\_\_\_\_ 2022

I am not sure an evidentiary hearing (or depositions for that matter) is necessary if I can just get the information I think I need. At some point, the facts are what they are, and we simply disagree as a matter of law whether LTD met all statutory requirements. I think we will know more after discussing discovery. We will know whether a Motion to Compel is necessary.

Given the unlikely ability to agree on dates this week, prior to our discovery discussion, you may need to file the motion. I think we can agree on dates....I just don't think it can happen this week. Can you wait to file the Motion?

Kara



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**From:** Jason R. Sutton <[jrsutton@boycelaw.com](mailto:jrsutton@boycelaw.com)>  
**Sent:** Wednesday, August 4, 2021 4:59 PM  
**To:** [karasemmler@sdtaonline.com](mailto:karasemmler@sdtaonline.com); [amanda.reiss@state.sd.us](mailto:amanda.reiss@state.sd.us)  
**Cc:** Brett Heather Freedson <[BFreedson@lermansenter.com](mailto:BFreedson@lermansenter.com)>; Tricia A. Johnson <[tajohnson@boycelaw.com](mailto:tajohnson@boycelaw.com)>  
**Subject:** LTD Broadband--TC 21-01

Kara and Amanda:

Thank you both for talking with me today and agreeing to get a procedural order in place. We suggest the deadlines below. Let me know your thoughts. I assume the hearing date would be based upon the Commission's availability.

1. Completion of discovery—August 27, 2021
2. Filing of prefiled testimony—September 3
3. Motions Deadline—September 10
4. Hearing \_\_\_\_\_

As I mentioned to Kara, we want to get agreed upon dates this week. If we cannot, I will likely file a motion asking for a prehearing conference to set a procedural order. In that motion though, I would note that we are working to agree upon dates. We just need to keep things moving.

Also, I know Kara asked about times for a call about the discovery, including concerns about potential deficiencies in our offers. She proposed several times. Brett and I are available the following times:

- Monday, August 9, between 11:00 and 12:00 Central
- Wednesday, August 11, any time.
- Thursday, August 12, 1:00 Central or later

Let me know if any of the times work for you. Kara, these were all in the slots you proposed but I know Amanda wants to be on the call.

Thanks

Jason R. Sutton  
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**Boyce**  
LAW FIRM LLP

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