

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

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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

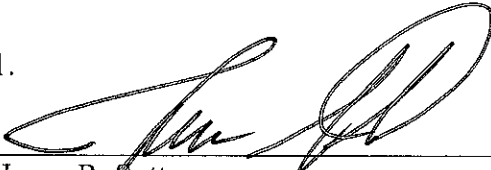
TC21-001

**STIPULATION FOR  
PROTECTIVE ORDER FOR  
CONFIDENTIALITY**

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It is hereby stipulated between the Applicant, LTD Broadband LLC, by and through its attorneys, and Intervenor SDTA, by and through its attorneys, that the Public Utilities Commission of the State of South Dakota should enter the attached Protective Order for Confidentiality. The Parties agree that the attached Protective Order is needed to protect the trade secrets and confidential and proprietary business information of the Parties that may be exchanged in discovery or offered as evidence in this docket. In order to protect their trade secrets and confidential and proprietary business information, the Parties jointly request that the Public Utilities Commission of the State of South Dakota enter the attached Protective Order for Confidentiality.

Dated this 12 day of August, 2021.

  
\_\_\_\_\_  
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Dated this 12 day of August, 2021.



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Kara Semmler  
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SDTA  
320 E. Capitol Ave.  
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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 12<sup>th</sup> day of August, 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  
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Pierre, SD 57501  
patty.vangerpen@state.sd.us

Ms. Amanda Reiss  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
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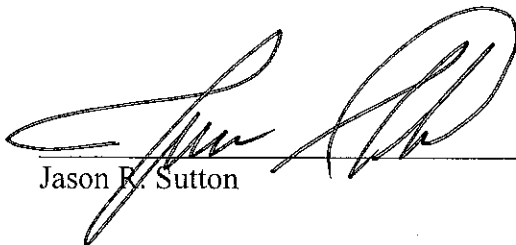
Ms. Brittany Mehlhaff  
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\_\_\_\_\_  
Jason R. Sutton

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**PROTECTIVE ORDER FOR  
CONFIDENTIALITY**

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Upon stipulation and joint motion of all the parties for entry of a Protective Order for Confidentiality pursuant to SDCL 15-6-26(c) and ARSD 20:10:01:01.02, and for good cause appearing,

IT IS HEREBY ORDERED as follows:

1. Relevant Facts and Parties. Since this docket will involve the production and use of confidential and sensitive information, the parties herein wish to limit the use and disclosure of such confidential and sensitive information to this litigation. In order to facilitate and expedite discovery, and in the interest of bringing this action to a just, speedy, and efficient conclusion while protecting the confidentiality and sensitivity of information obtained from the parties, the parties whose attorneys have executed this Protective Order ("Order") have stipulated and agreed to the entry of this Order. (As used herein, "party(ies)" includes the LTD Broadband, LLC (the "Applicant") and SDTA.)

2. Scope of Order.

a. This Order shall govern the use and disclosure of all information produced by or on behalf of any party, or by any third party who so chooses, in the above-referenced docket, including in any deposition, interrogatory, request for admission, document production, or any other disclosure or discovery proceeding (informal or formal) in this docket. Information produced in discovery, including initial disclosures, shall only be used for the purpose of preparing for and conducting this docket (including any appeals, retrials, or interlocutory, collateral, or ancillary proceedings in aid of this action), and for no other commercial, competitive, or other purposes, and only as provided in this Order.

b. No party or person receiving information pursuant to this Order shall disclose it to any other except in conformance with this Order or a subsequent order. Any party or person receiving information pursuant to this Order shall consent to any

Commission or court necessary to exclude such information from consideration in another legal proceeding.

c. The restrictions on use of information governed by this Order apply only to a party's use of such information received from an adverse party or a third-party. Nothing in this Order is intended to limit a party's right to use information that it produces in this action or possessed prior to the inception of this action.

d. This Order is without prejudice to the rights of any party to apply to the Public Utilities Commission for the State of South Dakota ("the Commission") for relief from any of its provisions or to seek or agree to less, different, or additional protection for any particular documents or testimony, and is without prejudice to the Parties' attorney-client, attorney work product, business strategy, and other privileges and protections.

e. Issues concerning the use of information governed by this Order at trial or in hearings are reserved for the Commission's later decision.

3. Designation of Information on Documentation and Exhibits.

a. **Confidential Information.** The designation "**Confidential Information**" shall be limited to information that is private, non-public information, a trade secret or other confidential research, development or commercial information, and is generally treated as confidential or proprietary by the designating party. "Confidential Information" may include non-public financial records for any party, non-public operations information for any Party, or information obtained from third parties pursuant to a non-disclosure agreement (however, the entry of this Order shall not obligate a party to produce such information without the third party's express consent).

b. **Attorneys' Eyes Only - Confidential Information.** The designation "**Attorneys' Eyes Only - Confidential**" shall be limited to information that is highly sensitive commercial or competitive information, including information relating to (i) financial business data or analysis; (ii) operational trade secrets or proprietary information relating to the Applicant's network, including future expansions to its network; (iii) Applicant's build out plan to develop its network after the receipt of the RDOF funds; (iv) Applicant's technical plans for its network; and (v) any information relating to Applicant's RDOF application filed with the FCC or bid for RDOF funds. The Parties agree that no documents produced by Applicant to SDTA prior to August 10, 2021, will be considered "Attorneys' Eyes Only-Confidential."

4. Designation of Information by Parties.

a. Any party (or third-party who so chooses) may designate as "Confidential" or "Attorneys' Eyes Only - Confidential" any documents or other materials that the designating party and its counsel reasonably believe contain or reflect Confidential Information or Attorneys' Eyes Only - Confidential Information. The designation of documents or other materials shall be made by written notice in the materials designated

(such as on the first page of a discovery response or of a document). The designation of portions of testimony shall be made on the record and/or promptly after receipt of a transcript thereof by the designating party. Arrangements shall be made with the court reporter transcribing or recording the testimony to separately bind and record the designated portions, and to mark the cover and each page of each transcript volume and any videotapes as "Confidential/Subject to Protective Order" or "Attorneys' Eyes Only – Confidential/Subject to Protective Order" as appropriate. The non-designating party may challenge any designation of confidentiality in accordance with paragraph 11 below.

b. Within 10 days, as determined by SDCL 15-6-6(a), of receipt of notice entry of this Order, any party may serve a notice of designation of "Confidential" or "Attorneys' Eyes Only – Confidential" material with respect to any materials produced or filed prior to the entry of this Order.

5. Failure to Designate. A party's failure to designate Confidential Information as indicated in paragraph 4 above shall not affect or limit the provisions and protections of this Protective Order with respect to such material. A party that has not properly marked confidential information shall provide substitute, correctly marked copies of such material as soon as possible upon learning of its failure. Any party that receives Confidential Information that is not properly marked from another party shall destroy it, or shall return it to the producing party, upon receipt of correctly marked copies. Upon receiving written notice that the producing party provided information that should have been, but was not, marked with a "Confidential" or "Attorneys' Eyes Only – Confidential" designation, the receiving party shall treat such information as though it had been properly designated pending receipt of correctly marked copies.

6. Use and Access

a. Use and Access of Confidential Information. Except upon the Commission's further order or by counsel of record's express written consent, any Confidential Information furnished in the above-referenced docket by the Applicant or SDTA shall be used by the receiving party solely for purposes of prosecuting or defending this action and shall *not* be disclosed (whether by communicating, showing, giving, discussing, or otherwise making available) except to the persons listed below and only *after* each has executed the Nondisclosure Agreement described in paragraph 7:

(i) the attorneys of record for the parties in this proceeding and their respective law firm's attorneys, paralegals, law clerks, clerical staff, and document services staff regularly working with those attorneys to the extent necessary to participate in the above-referenced docket (however, non-lawyer employees of the law firms of record in this case need not execute the Nondisclosure Agreement);

(ii) officers, directors, or employees of the parties to the extent necessary to participate in the above-referenced docket;

(iii) experts or consultants retained or employed by any party for the purposes of this action;

(iv) any court reporter or typist recording or transcribing testimony in this action;

(v) other persons who may be specifically designated by consent of all attorneys of record or pursuant to an order of the Commission; and

(vi) witnesses called to testify at depositions whom the propounding party has good faith reason to believe are likely to have personal knowledge concerning the matter described in the Confidential Information being presented. In the event such person declines to sign the Nondisclosure Agreement, the Commission may order the person bound by the Commission's order to maintain confidentiality consistent with the terms of this Order, after notice to the producing party and the person declining to be bound has an opportunity to be heard. Witnesses declining to be bound shall be advised that the Commission may order such person to pay successful movant fees and costs associated with the motion. The deposition of witnesses refusing to sign the Nondisclosure Agreement shall be deferred a reasonable time to allow the objecting parties the opportunity to obtain judicial relief as described above.

b. Use and Access of Attorneys' Eyes Only - Confidential Information.

Except upon the Commission's further order or by counsel of record's express written consent, any Attorneys' Eyes Only - Confidential Information furnished in this action by any of the parties shall be used by the receiving party solely for purposes of prosecuting or defending this action and shall *not* be disclosed (whether by communicating, showing, giving, discussing, or otherwise making available) except to the persons listed below and only *after* each has executed the Nondisclosure Agreement described in paragraph 7 below:

(i) the attorneys of record for the parties in this proceeding and their respective law firm's attorneys, paralegals, law clerks, clerical staff, and document services staff regularly working with those attorneys to the extent necessary to defend or prosecute this action (however, non-lawyer employees of the law firms of record in this case need not execute the Nondisclosure Agreement);

(ii) experts or consultants retained or employed by any party for the purposes of this action;

(iii) any court reporter or typist recording or transcribing testimony in this action;

(iv) other persons who may be specifically designated by consent of all attorneys of record or pursuant to an order of the Commission;

(v) witnesses called to testify at depositions whom the propounding party has good faith reason to believe are likely to have personal knowledge concerning the matter described in the Attorneys' Eyes Only – Confidential Information being presented. In the event such person declines to sign the Nondisclosure Agreement, the Commission may order the person bound by the Commission's order to maintain confidentiality consistent with the terms of this Order, after notice to the producing party and the person declining to be bound has an opportunity to be heard. Witnesses declining to be bound shall be advised that the Commission may order such person to pay a successful movant fees and costs associated with the motion. The deposition of witnesses refusing to sign the Nondisclosure Agreement shall be deferred a reasonable time to allow the objecting parties the opportunity to obtain judicial relief as described above.

Thus, except upon the Commission's further order or by counsel of record's express written consent, any Attorneys' Eyes Only - Confidential Information furnished under this Order shall *not* be disclosed to any party or its officers, directors, or employees.

c. Counsel's Responsibility. It is the responsibility of the disclosing party's counsel to ensure that any person receiving Confidential or Attorneys' Eyes Only - Confidential Information is advised of the requirements and limitations imposed by this Order.

d. Log. Each party's counsel shall maintain an up-to-date log identifying all persons who receive Attorneys' Eyes Only – Confidential Information from that party's counsel.

7. Nondisclosure Agreement. All persons referred to in paragraphs 6.a and 6.b. above to whom confidential information governed by this Order is made available shall agree in writing to the following Nondisclosure Agreement (in the form as attached as Exhibit B) (except for the non-lawyer employees of the law firms of record working on this case):

*I, \_\_\_\_\_, acknowledge that I will be receiving Confidential (or Attorneys' Eyes Only-Confidential) Information ("Protected Material"). I understand that such Protected Material is being provided to me pursuant to the terms and restrictions of the Protective Order for Confidentiality dated \_\_\_\_\_, 2021 in the above-captioned action. I understand that the Protected Material I receive, and any copies, notes, and other documents containing Protected Material, shall not be disclosed to others except in accordance with the Protective Order, and shall be used only for purposes of this action.*

*I acknowledge that I have been given a copy of, and have read, the Protective Order and I agree to be bound by its terms. I consent to the jurisdiction of the*



*Commission or any Federal or State Court in South Dakota for purposes of enforcing the Protective Order.*

*I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.*

Dated: \_\_\_\_\_, 2021.

Signature: \_\_\_\_\_

Printed Name/Title: \_\_\_\_\_

9. Exclusion of Unauthorized Persons. At depositions where information governed by this Order will be disclosed, all persons (other than those entitled to receive such information pursuant to this Order) shall be excluded from attending the deposition whenever Confidential or Attorneys' Eyes Only – Confidential Information is being so disclosed, unless the parties otherwise agree or the Commission otherwise orders.

10. Inadvertent Production.

a. Any party's inadvertent production pursuant to discovery (or other disclosure of any document or communication) protected by any privilege, the work product doctrine, business strategy immunity, statutory confidentiality, or contractual confidentiality will not operate as a waiver of the producing party's right to assert a defense to production of that document or communication, or any other document or communication, and any such material shall be returned promptly to the party producing it on written request identifying the specific document(s).

b. Parties possessing such inadvertently produced confidential information who receive a request for its return shall, within three (3) days, as determined by SDCL 15-6-6(a), of receiving the request, notify the requesting party via facsimile or e-mail whether the subject material will be returned. The party asserting that such inadvertently produced information is protected shall move for an order compelling its return within ten (10) days, as determined by SDCL 15-6-6(a), of receiving written notice that the receiving party will not return the requested material.

11. Challenging Confidential or Confidential-Attorneys' Eyes Only Designation.

a. If a party opposes the designation of any particular material designated as "Confidential" or "Attorneys' Eyes Only - Confidential," the parties shall attempt to resolve the dispute by meeting and conferring by telephone or in person. The party designating particular material as "Confidential" or "Attorneys' Eyes Only – Confidential" has the burden of justifying the designation. A receiving party's failure to object at the time it receives such material shall not constitute a waiver of the right to object at any time afterward.

b. If the parties are unable to resolve the dispute by agreement, the parties shall request the Commission's assistance in resolving the dispute pursuant to applicable

administrative rules. All materials designated "Confidential" or "Attorneys' Eyes Only-Confidential" shall be treated as prescribed in this Order during the meet and confer process and while any motion regarding the designation of such materials is pending.

c. For avoidance of doubt, any information contained in, or derived from the Applicant's application to the FCC for receipt of RDOF funds shall be deemed "Attorneys' Eyes Only – Confidential," which designation shall not be subject to opposition pursuant to the section.

12. Service and Filing Procedures.

a. All Confidential or Attorneys' Eyes Only - Confidential Information served on the opposing party shall be designated as "Confidential" or "Attorneys' Eyes Only – Confidential" in accordance with paragraph 4.

b. All Confidential or Attorneys' Eyes Only - Confidential Information filed with the Commission - including any materials that contain, embody, discuss, or disclose such Information - shall be filed along with a request for confidential treatment pursuant to ARSD 20:10:01:41, *et seq.* The Parties consent to the confidential treatment designation by the Commission of all Protected Information filed in the docket.

13. Safeguarding Confidential Information. The recipient of any Confidential Information or Attorneys' Eyes Only - Confidential Information provided pursuant to this Order shall maintain such information in a secure and safe area and shall exercise due and proper care with respect to its storage, custody and use.

14. Final Disposition. Within sixty (60) days, as determined by SDCL 15-6-6(a), after the final termination of this action, including any appeals, all Confidential Information and Attorneys' Eyes Only – Confidential Information provided under the terms of this Order, all copies thereof, and any notes reflecting that Information, which are not in SDTA or Applicant's custody, shall be returned to the party or third-party providing that Information or be destroyed. Written certification that all such Information has been returned or destroyed shall be provided to the producing party within the same 60-day period.

15. Modification of Order. Nothing in this Order shall preclude any party from applying to the Commission for an appropriate modification of this Order; however, before making such an application, the parties involved shall make a good faith effort to resolve the matter by meeting and conferring. Further, the parties can agree, without Commission approval, on the exclusion of particular information, documents, answers, or responses from the scope of this Order. The parties reserve all rights to apply to the Commission for an Order (i) modifying this Order; (ii) seeking further protection against discovery or other use of Confidential Information or Attorneys' Eyes Only – Confidential Information or documents, transcripts, or other materials reflecting such Information; or (iii) seeking further production, discovery, disclosure or use of claimed Confidential or Attorneys' Eyes Only – Confidential Information and/or documents, transcripts, or other materials reflecting such Information.

16. Advice of Counsel. Nothing in this Order shall bar any attorney herein in the course or rendering advice to his client with respect to this litigation from conveying to any party client his evaluation in a general way of Confidential or Attorneys' Eyes Only – Confidential Information produced or exchanged herein; provided, however, that in rendering such advice and otherwise communicating with his client, the attorney shall not disclose the specific contents of any Confidential or Attorneys' Eyes Only – Confidential Information produced by another party or by a third-party, which disclosure would be contrary to the terms of the Protective Order.

17. Notice. Any notice that a party is required to provide under this Order shall be sent to the first listed attorney from each law firm appearing of record in this action.

18. Continuing Jurisdiction. This Order shall remain in full force and effect after the termination of this litigation. In addition, the Commission shall retain jurisdiction over the parties, their attorneys, and all other persons to whom Confidential or Attorneys' Eyes Only – Confidential Information has been disclosed for the purposes of enforcing the terms of this Order and/or redressing any violations thereof until ninety (90) days, as determined by SDCL 15-6-6(a), after the final disposition of this action, including any appeals.

19. Enforcement. Other than an action under paragraph 11 challenging a designation of confidentiality, if any party resorts to legal action before the Commission or before any court of law in order to enforce rights under this Order, the prevailing party in such action shall be entitled to an award of all reasonable costs or disbursements incurred, including attorneys' fees. The parties agree that the Commission along with any federal or state court in South Dakota has jurisdiction to enforce the parties' agreements and representations set forth herein and to redress any violation(s) thereof by any party occurring after such party has executed the Stipulation attached hereto, regardless of when the Commission enters this Order. The Parties further agree that any use or disclosure of Protected Information by any Party in violation of this Order would cause irreparable harm, and the parties consent to entry of an injunction, without the posting of a bond, that prohibits use or disclosure of Protected Information in violation of the terms of this Order.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2021

PUBLIC UTILITIES COMMISSION OF THE  
STATE OF SOUTH DAKOTA

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