



Advocating for South Dakota's Rural Broadband Providers

November 17, 2021

SD Public Utilities Commission  
Patricia Van Gerpen, Executive Director

**VIA ELECTRONIC FILING ONLY**

RE: TC21-001 SDTA Response - Use of Confidential Information

Dear Ms. Van Gerpen,

With this correspondence SDTA responds to LTD Broadband's Opposition to use of Confidential Information. SDTA has not violated the Protective Order for Confidentiality entered by the Commission as LTD alleges. SDTA demonstrated its compliance by "*over-redacting*" its filed documents out of an abundance of caution. SDTA asserts it redacted more than was necessary as some of the redacted information was later publicly disclosed by Mr. Hauer in his rebuttal testimony.

SDTA's Motion regarding use of confidential information was simply intended to recognize that:

- (i) The stipulation specifically states that, "issues concerning the use of the information governed by this Order at trial or in hearings are reserved for the commission's later decision," Paragraph 2(e).
- (ii) As a public body, the Commission is legally bound to hold open meetings pursuant to SDCL Chapter 1-25.
- (iii) It is inefficient to move into a closed-door hearing if it is unnecessary to do so.

Neither SDTA's legal position nor assessment of fact in this case is impacted by whether the information is presented in closed session or in an open meeting. As a "pre-trial" matter, SDTA merely suggests that the "use of the information" governed by the confidential order should be discussed. It is inefficient to constantly move in and out of closed session during a contested case hearing and as much testimony as possible should be public.

At the very least, information disclosed by Mr. Hauer in his rebuttal should be considered public. As a result of Mr. Hauer's public disclosure, SDTA believes it is appropriate to release the following portions of Mr. Thompson's filed testimony:

- Page 6 line 17-18: Reference to network diagrams in the long form should be public.
- Page 8 line 16 – 17 and throughout the document: LTD's assumed penetration rate should be public.
- Page 9 line 4-7: Reference to items not incorporated into LTD's cost of construction should be public.
- Page 9 line 12 – 13: Conclusion regarding profitability should be public.
- Page 10 line 9 – 13: Everything other than the dollar figure on line 10 should be public.
- Page 10 line 15 – 23: All testimony should be public.
- Page 11 line 1 – 3: All testimony should be public.
- Page 11 line 7 – 17: Everything other than the dollar figure on lines 12 and 14 should be public.
- Page 12 line 12 – 13: All testimony should be public.

SDTA believes public treatment is appropriate regarding the following portions of Mr. Thompson's filed report:

- Page 4 and 5: References to network diagrams should be public.
- Page 6, 7: Technical analysis should be public.
- Page 7, 8, 9: Only the dollar figure should be confidential, all other information should be public.
- Page 10, 11: The entire page should be released from confidential treatment.
- Page 12: Only LTD's construction cost estimate should be redacted.
- Page 13: The entire page should be released from confidential treatment.
- Page 14, 15: Only the dollar figures should be redacted.

SDTA appreciates the Commission must balance its obligation to hold public proceedings and its need to protect confidential data. SDTA has no desire to change how confidential documents have been marked or handled to date. Rather, procedurally, it is appropriate for the Commission to determine how it will manage use of the information governed by the Confidentiality Order at the scheduled December hearing.

Sincerely,



Kara Semmler

cc. Service List.