

**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 ELGIBLE ) TELECOMMUNICATIONS CARRIER FOR ) PURPOSES OF RECEIVING FEDERAL ) UNIVERSAL SERVICE SUPPORT ) ) ) ) ) )	ORDER DENYING ) RECONSIDERATION; ORDER ) GRANTING REHEARING; ) ORDER GRANTING REQUEST ) TO AMEND AMENDED ) APPLICATION; ORDER TO ) SUBMIT PROPOSED ) PROCEDURAL SCHEDULE ) ) ) ) ) )
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**TC21-001**

On January 7, 2021, the South Dakota Public Utilities Commission (Commission) received an Application for Designation as an Eligible Telecommunications Carrier (ETC) from LTD Broadband LLC (LTD). LTD is requesting designation as an ETC for the purpose of being eligible to receive federal universal service support via the Federal Communications Commission’s (FCC) Lifeline program and through the Rural Digital Opportunity Fund (RDOF) for the provision of broadband internet access and broadband-voice bundled offerings. On October 22, 2021, LTD filed an Amended Application. LTD has preliminarily been awarded RDOF funding by the FCC for certain census blocks in South Dakota, see Exhibit A of the Amended Application. LTD also requested a waiver of ARSD 20:10:32:43.02.

On January 14, 2021, the Commission electronically transmitted notice of the filing and the intervention deadline of January 29, 2021, to interested individuals and entities on the Commission’s PUC Weekly Filing electronic listserv. On February 22, 2021, the Commission issued an Order Granting Intervention to SDTA. On December 1, 2021, the Evidentiary Hearing was held as scheduled. On March 21, 2022, the Commission issued a Final Decision and Order Denying Application for Designation as an Eligible Telecommunications Carrier in Certain Census Blocks (Final Decision) (Commissioner Hanson, dissenting).

On April 20, 2022, LTD filed a Petition for Reconsideration or Rehearing. On May 9, 2022, SDTA filed an Objection to LTD Broadband LLC’s Petition for Reconsideration or Rehearing. On May 10, 2022, Commission staff filed a Response to LTD Broadband LLC’s Petition for Reconsideration or Rehearing. At a May 24, 2022, Commission meeting, the parties addressed how to proceed, and the matter was deferred so the parties could brief LTD’s oral motion to amend its Request for Rehearing in order to amend its Amended Application to withdraw some census blocks which are already receiving service or being built out. On June 2, 2022, LTD filed an Amended Petition for Reconsideration or Rehearing. On June 17, 2022, SDTA filed its Objection to LTD Broadband LLC’s Amended Petition for Reconsideration or Rehearing.

In the Amended Petition for Reconsideration or Rehearing, LTD requested rehearing or reconsideration on the following grounds: (1) that the Commission committed reversible legal error; (2) that the Final Decision included multiple clearly erroneous factual findings; and (3) that additional, new evidence established LTD can deploy its network within a reasonable time. LTD also requested to amend its Amended Application to withdraw some census blocks which are already receiving service or being built out.

The Commission has jurisdiction over this matter pursuant to the following: SDCL Chapters 1-26, 49-1, 49-31, and 15-6. Also applicable is 47 U.S.C. § 214 and 47 U.S.C. § 254(f) and 47 C.F.R. § 54.201. The following South Dakota administrative rules are applicable: ARSD Chapters 20:10:01 and 20:10:32. The Commission may rely upon any or all of these laws or other laws of this state in making its determination.

At its regularly scheduled meeting on July 19, 2022, the Commission considered the Amended Petition for Rehearing and Reconsideration. Having reviewed the written comments of the parties and having thoroughly reviewed all the filings in the docket and the supporting documents, and after hearing oral argument from the parties and the parties' answers and discussion in response to extensive questioning from the Commissioners, the Commission finds that the Final Decision and its Findings of Fact are supported by substantial evidence in the record, that the rulings on issues of statute and rule interpretation are consistent with prior decisions and which have been incorporated in numerous settlement stipulations approved by the Commission, the Commission voted unanimously to deny LTD's Request for Reconsideration due to a lack of sufficient reason for reconsideration.

Next the Commission considered LTD's Request for Rehearing so that it could present new evidence as to the actual costs to deploy a network in a rural area. LTD alleges such evidence was not available prior to the December 2021 evidentiary hearing. Having reviewed the written comments of the parties and having thoroughly reviewed all the filings in the docket and the supporting documents, and after hearing oral argument from the parties and the parties' answers and discussion in response to extensive questioning from the Commissioners, a majority of the Commission, with Commissioner Fiegen dissenting, voted to grant LTD's request for Rehearing limited in scope to newly discovered evidence and/or facts and circumstances arising subsequent to the December 1, 2021, hearing as there appears to be sufficient reason for a rehearing.

The Commission also heard argument on LTD's request to amend its Petition for Rehearing so that it can amend its Amended Application in order to withdraw some census blocks from its request for ETC designation. Having reviewed the written comments of the parties and having thoroughly reviewed all the filings in the docket and the supporting documents, and after hearing oral argument from the parties and the parties' answers and discussion in response to extensive questioning from the Commissioners, a majority of the Commission, with Commissioner Fiegen dissenting, voted pursuant to ARSD 20:10:01:16, to grant LTD's request to amend its Amended Application to withdraw some census blocks from its request for ETC designation.

Finally, a majority of the Commission, with Commissioner Fiegen dissenting, voted to order that the parties propose parameters of a limited hearing based the Amended Application and the new evidence and/or facts and circumstances specified in LTD's motion and that the parties submit that proposal and a proposed procedural schedule for Commission consideration. It is therefore

ORDERED, that the Request for Reconsideration is hereby denied. It is further

ORDERED, that the Request for Rehearing, limited in scope to newly discovered evidence and/or facts and circumstances arising subsequent to the December 1, 2021, hearing is hereby granted. It is further

ORDERED, that LTD's request to amend its Petition for Rehearing so that it can amend its Amended Application in order to withdraw some census blocks from its request for ETC designation is hereby granted. It is further

ORDERED, that the parties propose parameters of a limited hearing based the Amended Application and the new evidence and/or facts and/or circumstances specified in LTD's motion, and that the parties submit that proposal and a proposed procedural schedule for Commission consideration.

Dated at Pierre, South Dakota, this 22nd day of July 2022.

<b>CERTIFICATE OF SERVICE</b>
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically.
By: <u>Karen E. Cremer</u>
Date: <u>07/22/22</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Chris Nelson  
CHRIS NELSON, Commissioner

Kristie Fiegen  
KRISTIE FIEGEN, Commissioner  
(dissenting in part)

Gary Hanson  
GARY HANSON, Commissioner