
**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
ELIGIBLE TELECOMMUNICATIONS
CARRIER FOR PURPOSES OF
RECEIVING FEDERAL UNIVERSAL
SERVICE SUPPORT

**OBJECTION TO DOCKET
SUSPENSION AND MOTION TO
CLOSE**

Docket No. TC21-001

The South Dakota Telecommunications Association (“SDTA”) through its attorney, requests the SD Public Utility Commission (“Commission”) deny LTD Broadband, LLC’s (“LTD”) request to suspend the above captioned docket. In addition, SDTA requests the Commission close the above captioned docket. The request made by LTD, and the issues raised by the parties are moot as the result of a Federal Communication Commission, Wireline Competition Bureau decision (“FCC”). SDTA supports its position as follows:

PROCEDURAL FACTS

- 1) On January 7, 2021, LTD filed an application with the Commission for designation as an eligible telecommunications carrier (“ETC”). The application specifically asks the SDPUC to “designate LTD Broadband as an eligible telecommunications carrier...to receive federal universal service support...through the Rural Digital Opportunity Fund.” (“RDOF”)
- 2) On March 21, 2022, after a contested case hearing, the Commission issued an Order Denying LTD’s Application for Designation as an Eligible Telecommunications Carrier.

- 3) On April 20, 2022, LTD filed a Petition for Reconsideration or Hearing and then filed an amended Petition on June 2, 2022. SDTA objected. The parties filed briefs and made oral argument to the SDPUC.
- 4) On May 3, 2022 the FCC Enforcement Bureau proposed a \$100,000 fine against LTD for “repeatedly” violating RDOF procedural rules. See Exhibit A.
- 5) On July 22, 2022, the SDPUC issued an Order to: (i) allow the presentation of newly discovered evidence and/or facts and circumstances arising subsequent to the December 1, 2021, hearing, and (ii) permit LTD to amend its ETC Application to withdraw census blocks from its request for ETC designation.
- 6) Also on July 22, 2022, the FCC found LTD defaulted on 768 RDOF census block groups. Based upon the RDOF default formula, the FCC found “that the forfeiture amount of \$2,304,000 against LTD Broadband is appropriate...” Exhibit B, Appendix A, Paragraph 36.
- 7) Finally, on August 10, 2022, the Rural Broadband Task Force, Wireline Competition Bureau and the Office of Economics and Analysis announced that, “based on the totality of the long-form applications, the expansive service areas reflected in their winning bids, and their inadequate responses to the Bureau’s follow-up questions,” LTD is not, “reasonably capable of complying with the Commission’s requirements.” LTD’s long form was denied by the FCC. See Exhibit C, page 5.
- 8) On August 24, 2022, LTD filed correspondence with the Commission requesting this docket be suspended.

THE CAPTIONED DOCKET SHOULD BE CLOSED

- 1) The FCC's August 10, 2022, decision renders the LTD's pending ETC Application and the Commission's July 22, 2022, Order moot. The change in circumstances that occurred subsequent to July 22, 2022, causes for this docket to have no practical purpose.
- 2) "An action is moot if it no longer presents a justiciable controversy because the issues involved have become academic or nonexistent. A case is moot when judgment, if rendered, will have no practical legal effect upon the existing controversy." *Investigation of Hy. Const. Ind. v. Bartholow*, 373 N.W.2d 419, 421 (S.D. 1985), *Maxwell v. State*, 261 N.W.2d 429, 432 (S.D. 1978), citing *State v. Wilson*, 234 N.W.2d 140, 141 (Iowa 1975), *See also Moeller v. Solem*, 363 N.W.2d 412 (S.D. 1985).
- 3) The purpose of LTD's ETC application in South Dakota was to receive RDOF funds. The FCC declared LTD unfit to receive RDOF funds. This docket serves no purpose and should be dismissed.
- 4) If LTD challenges the FCC decision, and if circumstances change for the company, it can open a new docket or request the Commission reopen this docket. It is neither practical or judicial to leave this docket open for an unpredictable number of months or even years.
- 5) In the alternative, if the Commission believes this docket retains legal impact, it should proceed with its July 22, 2022 Order and "allow the presentation of newly discovered evidence and/or facts and circumstances arising subsequent to the December 1, 2021." At that time SDTA will present the FCC decision as evidence and request the Commission once again deny LTD the ETC designation it seeks.

DATED this 2nd day of September 2022.

/s/ Kara Semmler
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I hereby certify that on September 2, 2022, Objection to Docket Suspension and Motion to Close was electronically served upon the following parties:

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DATED this 2nd day of September 2022.

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