

# SECRETARY'S RECORD, PUBLIC SERVICE COMMISSION

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## BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the	)	Application No. C-5256/NUSF-130
Application of LTD Broadband	)	
LLC, Las Vegas, Nevada,	)	ORDER DENYING APPLICATION FOR
seeking designation as an	)	ELIGIBLE TELECOMMUNICATIONS
Eligible Telecommunications	)	CARRIER STATUS
Carrier in the State of	)	
Nebraska.	)	
	)	Entered: December 14, 2021

BY THE COMMISSION:

On May 3, 2021, an application was filed with the Nebraska Public Service Commission ("Commission") by LTD Broadband LLC of Las Vegas, Nevada ("LTD", "LTD Broadband", or "Applicant"), seeking Eligible Telecommunications Carrier designation in Nebraska. Notice of the application appeared in The Daily Record, Omaha, Nebraska, on May 7, 2021. A petition seeking informal intervention was filed by the Nebraska Rural Broadband Alliance ("NRBA") on June 8, 2021, and was granted by Hearing Officer Order on June 14, 2021.

## E V I D E N C E

A hearing in this matter was held on October 12, 2021. Katherine McNamara appeared on behalf of the Applicant. Andy Pollock appeared on behalf of the NRBA. Sallie Dietrich appeared on behalf of the Communications and Nebraska Universal Service Fund ("NUSF") Department of the Commission. Exhibits numbered 1 - 15 were offered and accepted. Prior to the hearing, the NRBA submitted a prefiled statement pursuant to the Commission rules regarding informal intervention, which was entered into the record as Exhibit 16. After the hearing, the Applicant submitted late-filed Exhibit 17, consisting of the Applicant's customer contract.

The Applicant presented the testimony of Corey Hauer, CEO of LTD Broadband. Mr. Hauer testified that he founded LTD Broadband, and the company was incorporated in Nevada in October of 2010.<sup>1</sup> LTD Broadband is authorized to conduct business in several states, including Nebraska.<sup>2</sup> LTD Broadband holds ETC designation in eight states, with applications for ETC status pending in Nebraska, North Dakota, and South Dakota.<sup>3</sup> Mr. Hauer testified that LTD Broadband is rapidly growing, holding approximately 2,500 broadband towers in

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<sup>1</sup> Transcript at 17.

<sup>2</sup> *Id.* at 18; Ex. 1 at 2, 20.

<sup>3</sup> Transcript at 18.

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six states, and 150 miles of a fiber to the home network.<sup>4</sup> LTD Broadband currently offers fixed wireless internet and voice over internet protocol ("VoIP") services in Nebraska.<sup>5</sup> Mr. Hauer stated that LTD began providing VoIP services in the spring of 2021.<sup>6</sup>

Mr. Hauer stated that LTD uses a hybrid system of fiber and fixed wireless systems, and intends to use fiber to fulfill its Rural Digital Opportunity Fund ("RDOF") obligations.<sup>7</sup> Mr. Hauer testified that LTD provides battery backups to its customers at no cost to the customer, and that it intends to comply with Nebraska reporting obligations for ETCs.<sup>8</sup> Mr. Hauer testified that LTD commits to paying outstanding NUSF and Telecommunications Relay Service ("TRS") remittances.<sup>9</sup> Mr. Hauer did not identify any steps LTD has taken since becoming aware of the obligation to remit to the NUSF and the TRS funds to come into compliance.<sup>10</sup>

Mr. Hauer discussed LTD Broadband's prior forfeiture of funds related to the FCC's Connect America Fund Phase II ("CAF II") Auction.<sup>11</sup> Mr. Hauer testified that LTD was awarded a single census block group in the CAF II auction, and determined it was not economically feasible to pursue the award.<sup>12</sup>

Mr. Hauer discussed the Applicant's filing of an application to the Federal Communications Commission ("FCC") in the in the RDOF Auction 904.<sup>13</sup> Mr. Hauer testified that LTD had received a preliminary award in the RDOF auction that included several areas throughout Nebraska, including large swaths of western Nebraska, the Lincoln to Omaha corridor, and areas of southern Nebraska near the Kansas border.<sup>14</sup> LTD would be awarded under RDOF approximately \$3.3 million per year for ten years, and serve 28,729 unserved locations.<sup>15</sup> The award would require LTD to provide broadband access at minimum speeds of 1 gigabit per second (Gbps) download and 500 megabits per second (Mbps) upload.<sup>16</sup> Mr. Hauer testified that while LTD's application for ETC status states that LTD would use a

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<sup>4</sup> *Id.* at 18-19.

<sup>5</sup> *Id.* at 26.

<sup>6</sup> *Id.* at 27.

<sup>7</sup> *Id.* at 28.

<sup>8</sup> *Id.* at 40-41, 66.

<sup>9</sup> *Id.* at 41-42.

<sup>10</sup> Transcript at 62-64.

<sup>11</sup> Transcript at 42, Ex. 5 at 8.

<sup>12</sup> Transcript at 42-43.

<sup>13</sup> *Id.* at 20; Ex. 1 at 1.

<sup>14</sup> *Id.* at 48.

<sup>15</sup> *Id.* at 48-49.

<sup>16</sup> *Id.* at 49.

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combination of middle-mile fixed wireless and last-mile fiber,<sup>17</sup> since the filing of the application, LTD has determined that "an all fiber build is the correct way to build in Nebraska."<sup>18</sup> However, Mr. Hauer stated that LTD has used a hybrid system of fiber and fixed wireless to provide gigabit service in four other states.<sup>19</sup>

On questioning, Mr. Hauer discussed LTD Broadband's filing of a request to the FCC for a waiver of a deadline set by the FCC for RDOF awardees to obtain ETC status prior to June 7, 2021.<sup>20</sup> Mr. Hauer stated that based upon representations of his previous attorney, he had understood that an application for ETC designation in Nebraska would be approved quickly.<sup>21</sup> Mr. Hauer stated that LTD had relied upon its previous counsel in determining when to file this application.<sup>22</sup>

Following Mr. Hauer's testimony, the NRBA called its witness, Stacey Brigham. Ms. Brigham described the NRBA's prefiled statement,<sup>23</sup> and was offered for cross-examination. Ms. Brigham raised concerns that approving LTD's application would remove carrier of last resort obligations for carriers in territory to be served by LTD.<sup>24</sup> Ms. Brigham also discussed the public interest standard that must be met by applicants for ETC status, and acknowledged that language regarding this standard in her pre-filed statement differs from that found in Commission regulations.<sup>25</sup>

Following Ms. Brigham's testimony, no further witnesses were called, and the hearing was closed. The Applicant and the NRBA each submitted written closing statements on October 15, 2021.

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<sup>17</sup> Ex. 1 at 2; Ex. 5 at 17.

<sup>18</sup> Transcript at 50.

<sup>19</sup> Transcript at 50.

<sup>20</sup> Transcript at 20-26; Ex. 9. The waiver request was subsequently denied by the FCC on October 20, 2021. *In the Matter of The Rural Digital Opportunity Fund Auction (Auction 904)*, AU Docket No. 20-34, WC Docket No. 19-126 (Oct. 20, 2021).

<sup>21</sup> *Id.* at 22-23.

<sup>22</sup> *Id.* at 45-47.

<sup>23</sup> Ex. 16.

<sup>24</sup> Transcript at 130-133.

<sup>25</sup> Transcript at 135-137.

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## FINDINGS AND OPINION

The federal Communications Act of 1934, 47 U.S.C. § 214(e), sets forth the standards and processes for a state commission to grant carriers the designation of a federal eligible telecommunications carrier. 291 Neb. Admin. Code § 5-009 of the Commission Rules contains the requirements for Commission designation of ETCs and NETCs. Additionally, federal regulations at 47 CFR § 54.202 contain eligibility requirements that must be met by any carrier seeking ETC designation.<sup>26</sup>

Upon review of the evidence submitted, the Commission finds that LTD has not demonstrated it can meet each of the requisite requirements. The Commission finds that LTD is not prepared to provide supported services throughout the designated service area, and that granting this application would therefore not be in the public interest.

### I. Provision of Supported Services

291 Neb. Admin. Code § 5-009.02A4 requires that an applicant for ETC status demonstrate that it is capable of providing and will continuously provide the services designated for support, including voice-grade access to the public switched network. Under federal regulations, applicants subject to a high-cost public interest obligation to offer broadband services must also offer broadband internet access services consistent with federal obligations.<sup>27</sup> Based upon the evidence presented, the Commission finds the Applicant has not demonstrated that it is capable of providing and will continuously provide the requisite designated services.

**Ability to Provide Service.** The Commission is concerned with the apparent disconnect between the information initially submitted by the Applicant and the information presented at hearing. In order to provide VoIP service in the intended service area, the Applicant will need to construct a great deal of broadband infrastructure through large areas of rural Nebraska where it does not currently provide service.<sup>28</sup> While the Application submitted reflects a

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<sup>26</sup> See 47 C.F.R. § 54.202. Commission Rules substantially mirror the FCC requirements. See 291 Neb. Admin. Code § 5-009.02.

<sup>27</sup> 47 C.F.R. § 54.101(c).

<sup>28</sup> See Ex. 14 (showing LTD's current service area in Nebraska). On questioning, Mr. Hauer was not willing to state how long LTD would need to construct broadband infrastructure to the rest of its proposed service area. Transcript at 54-57. Mr. Hauer also suggested LTD could contract out its voice

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project which would be built through a combination of fiber and fixed wireless facilities,<sup>29</sup> at hearing, the Applicant stated that it would instead be building exclusively fiber to the home.<sup>30</sup> The Applicant did not provide additional evidence to support this change of plans, and on questioning, was not willing to provide additional information regarding its build of fiber infrastructure.<sup>31</sup>

The Applicant asserted that it could build an entirely fiber-based service within the time constraints set out in RDOF using a combination of RDOF funding and the Applicant's own funds.<sup>32</sup> However, the Applicant's witness also stated at hearing that the majority of the facilities currently held by LTD in Nebraska are fixed wireless towers, exclusively in the eastern portion of the state.<sup>33</sup> The Commission finds that the information presented by Applicant is inconsistent, and does not appear to reflect a realistic understanding of the work required to build broadband infrastructure in Nebraska.

**Construction Status.** The area Applicant seeks to serve with fiber to the home consists of large, non-contiguous swaths of rural Nebraska.<sup>34</sup> Serving this area would be a feat requiring significant investment and planning. The Commission finds the Applicant's inability to provide evidence demonstrating such planning concerning. Although applicants for ETC status may provide voice service through the use of third-party contracts,<sup>35</sup> the use of such contracts would be inconsistent with the Applicant's statements that it will provide service through its own fiber network. The lack of

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obligations, but declined to share specific details of any agreements it may reach for this purpose. Transcript at 71-75.

<sup>29</sup> Ex. 1 at 6 ("LTD Broadband will provide voice-grade access to the PSTN by providing interconnected VoIP service throughout its designated service area."). The Commission also notes that the Application proposed an unusual structure of middle-mile fixed wireless combined with last-mile fiber, leading the Commission to question whether LTD's original proposal could provide service at the speeds described. Ex. 1 at 2.

<sup>30</sup> Transcript at 50.

<sup>31</sup> Transcript at 54-57.

<sup>32</sup> LTD's preliminary RDOF award was in the amount of \$33,228,640, and was intended for LTD to build to 28,729 locations, resulting in an average per-location cost of \$1,157. Based upon the Commission's knowledge and expertise, this proposed cost to build fiber infrastructure would be very low. Even if LTD had been successful in its waiver request to the FCC, the Commission questions whether such a build would be possible.

<sup>33</sup> Transcript at 52-54; Ex. 14.

<sup>34</sup> Ex. 1, Attachment 1 (listing census blocks awarded in RDOF auction). A map showing RDOF awards for Nebraska can be found at <https://broadbandmap.nebraska.gov>.

<sup>35</sup> 291 Neb. Admin. Code § 5-009.02A5b.

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information provided on this subject, in conjunction with other issues set out in this Order, does not portray a carrier who is prepared to operate effectively in Nebraska.

**Ability to Comply with Nebraska Requirements.** The Applicant failed to demonstrate an ability to comply with regulatory requirements for the provision of service in Nebraska. First and foremost, LTD Broadband did not file its ETC application in a timely fashion in order to receive RDOF funds.<sup>36</sup> LTD apparently relied upon statements from former counsel that Nebraska had a thirty-day approval process for ETC applications.<sup>37</sup> Even if LTD had been correct that the Nebraska approval process for ETC applications would only take thirty days, it still did not file its application in time to meet that requirement.<sup>38</sup> The Commission therefore finds the Applicant's statements that it will construct the RDOF infrastructure described at hearing not credible.

It is also disappointing that LTD Broadband did not make an effort to comply with NUSF and TRS remittance requirements prior to this hearing. LTD began providing VoIP service in Nebraska in March of 2021, but did not immediately begin remitting to NUSF and TRS.<sup>39</sup> In a response to a staff data request, LTD stated that "LTD Broadband became aware of Nebraska's NUSF and TRS requirements with this First Set of Data Requests, and will comply with such requirements."<sup>40</sup> However, LTD's witness stated at hearing that he was unaware whether LTD had begun to remit as of the date of the hearing.<sup>41</sup>

Remittance requirements are published in state statutes and regulations, and information regarding the requirements is published on the Commission website. A carrier seeking to conduct business in Nebraska could have, and should have, reviewed the information published on the Commission website prior to offering VoIP service. Although LTD stated in discovery that it would comply with remittance requirements, it did not actually do so prior to hearing. The record therefore does not reflect that LTD is capable of complying with Nebraska regulatory requirements for the provision of service.

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<sup>36</sup> Ex. 1 at 1 (showing timestamp of May 3, 2021); Transcript at 46.

<sup>37</sup> Transcript at 22-23; Ex. 13.

<sup>38</sup> See Ex. 12, Attachment B (NPSC advising LTD that it would not be possible to process the application prior to June 7).

<sup>39</sup> Ex. 7 at 2.

<sup>40</sup> *Id.*

<sup>41</sup> Transcript at 62-63.

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Because the Applicant has failed to demonstrate that it is able to provide the service described, that it is prepared to complete construction necessary to provide these services, and that it is familiar with and able to comply with Nebraska regulatory requirements, the Commission finds that the Applicant has not met the standard set forth in 291 Neb. Admin. Code § 5-009.02A4.

## II. Advertisement of Available Services

An applicant for ETC status must demonstrate that it will advertise the availability of supported services and the charges therefore using media of general distribution.<sup>42</sup> LTD did not meet this requirement. While LTD stated in its Application that it "agrees to comply with all form and content requirements for advertising that are adopted by the FCC or this Commission," the application did not acknowledge the specific requirements of Nebraska regulations, nor did it include a sample draft advertisement.<sup>43</sup> In discovery, Commission staff requested "examples of how Applicant advertises or intends to advertise within Nebraska," and requested information as to what the charges for those services would be. By response, LTD stated that "LTD Broadband will advertise its services by direct mail postcards, and via its website."<sup>44</sup> LTD did not provide any examples of advertising materials in discovery.

At hearing, LTD did provide a sample advertisement.<sup>45</sup> However, this sample advertisement only stated that LTD Broadband provides digital phone and internet services with a Lifeline discount, but did not list the charges for service. The listing of charges for services is a requirement under 291 Neb. Admin. Code §5-009.02A3. Therefore, the Commission finds that the Applicant has not met Nebraska requirements for advertisement of supported services.

## III. Emergency Operations

A carrier seeking high cost support is required to demonstrate its ability to remain functional in emergency situations. This requirement includes a demonstration that the carrier has a reasonable amount of back-up power to ensure functionality without

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<sup>42</sup> 291 Neb. Admin. Code § 5-009.02A3.

<sup>43</sup> Curiously, the Application states that "Provided as **Attachment 4** is a draft sample draft [sic] of the Company's advertising." Ex. 1 at 9 (emphasis in original). However, the only attachments submitted with the Application were Attachments 1 and 2.

<sup>44</sup> Ex. 5 at 19.

<sup>45</sup> Ex. 15.



an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.<sup>46</sup> At hearing, LTD stated that it does provide battery backup "in excess of what's required for our ETC obligation." However, LTD did not address its ability to reroute traffic around damaged facilities or manage traffic spikes. Furthermore, the Commission has continually noted its standing concern regarding a VoIP provider's ability to remain reliable during emergencies. The Commission finds that the Applicant has not adequately demonstrated its ability to meet this regulatory requirement.

#### IV. Public Interest

Before awarding ETC designation, a State commission is required by federal regulations to find that the designation is in the public interest.<sup>47</sup> Applicants for ETC status must demonstrate that such designation is consistent with the public interest, convenience, and necessity.<sup>48</sup> The public interest consideration may include the benefits of increased consumer choice and the unique advantages and disadvantages of the Applicant's service offerings.<sup>49</sup>

The evidence submitted in this matter does not portray LTD Broadband to be a carrier that can fulfill its commitments. The Commission finds that there exists a pattern of LTD Broadband falling short of requirements, including its forfeiture of its CAF II award in Nebraska,<sup>50</sup> its struggles with compliance with RDOF requirements,<sup>51</sup> and its failure to comply with NUSF and TRS remittance requirements in Nebraska.<sup>52</sup> The deficiencies exhibited thus far by the applicant lead the Commission to conclude that the public interest standard has not been, and will not be, met.

Based on the evidence before us, we conclude the Applicant has not demonstrated that its designation as an ETC would be consistent with the public interest, convenience, and necessity. The Applicant has not demonstrated that it meets the standards set forth in 47 U.S.C. § 214(e) and applicable state and federal law for the designation of eligible telecommunications carriers in the proposed census block areas. The Application therefore must be denied.

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<sup>46</sup> 291 Neb. Admin. Code § 5-009.02A7.

<sup>47</sup> 47 U.S. Code § 214(e) (2).

<sup>48</sup> 47 C.F.R. § 54.202(b); 291 Neb. Admin. Code § 5-009.02A1.

<sup>49</sup> 291 Neb. Admin Code § 5-009.02B.

<sup>50</sup> Transcript at 42-43.

<sup>51</sup> Ex. 12.

<sup>52</sup> Transcript at 62-63.



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## O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. C-5256/NUSF-130 should be, and is hereby, denied.

ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 14th day of December, 2021.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Rod Johnson*  
*Crystal Brander*  
*Mary Kiddy*  
*Tim Schram*

*Don Watson*  
Chair

ATTEST:

*Sharice Knutson*  
Deputy Director