

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF LTD BROADBAND LLC FOR)
DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER FOR THE) Docket No. 41052 ETC-96
PURPOSE OF PROVIDING SERVICES SUPPORTED)
BY THE FCC'S RURAL DIGITAL OPPORTUNITY)
FUND)

SUBMISSION OF PROPOSED ORDER

Pursuant to 170 IAC 1-1.1-23(b), Indiana Exchange Carrier Association, Inc. d/b/a
Indiana Rural Broadband Association hereby submits its proposed order in the aforementioned
Cause. An editable version will be emailed to the administrative law judge assigned to the
proceeding and all parties of record.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Submission of Proposed Order has been electronically served upon the following this 7th day of May, 2021:

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ORDER OF THE COMMISSION

Presiding Officers:

James Huston, Commissioner

Loraine Seyfried, Administrative Law Judge

On March 18, 2021, LTD Broadband LLC (“Petitioner” or “LTD”) filed its Verified Application of LTD Broadband LLC for Designation as an Eligible Telecommunications Carrier (the “Verified Petition”) with the Indiana Utility Regulatory Commission (the “Commission”). Petitioner seeks to become designated as an eligible telecommunications carrier (“ETC”) within certain areas in Indiana, pursuant to Section 214(e)(2) of the Federal Communications Act of 1934, as amended (the “Act”), in order to receive federal Rural Digital Opportunity Fund (“RDOF”) support to offer high-speed broadband and voice services to unserved rural areas of the state.

On March 19, 2021, Petitioner filed the direct testimony of Corey Hauer, chief operating officer of Petitioner. On March 30, 2021, the Indiana Exchange Carrier Association, Inc. d/b/a Indiana Rural Broadband Association (“INRBA”) filed its Petition to Intervene in this Cause and filed the direct testimony of John E. Greene Jr. on March 31, 2021. Also on March 31, 2021, Petitioner filed an Objection to INRBA’s Petition to Intervene, and on April 5, 2021, Petitioner filed a Motion to Strike Testimony of John E. Greene. INRBA filed its Response to Petitioner’s Objection to INRBA’s Petition to Intervene and Motion to Strike on April 5, 2021. On April 8, 2021, the Presiding Officers issued a Docket Entry granting INRBA’s Petition to Intervene because INRBA “sufficiently demonstrated it has a substantial interest in the subject matter of this proceeding” and that “INBRA’s participation will not unduly broaden the issues, nor will it result in unreasonable delay.” The April 8, 2021 Docket Entry also modified the procedural schedule to deem INRBA’s testimony filed as of the date of the docket entry because “INRBA’s Petition to Intervene was filed within a reasonable time of LTD initiating this Cause and the extremely expedited procedural schedule that was established due to the timing of LTD’s filing.”

The Indiana Office of Utility Consumer Counselor (“OUCC”) filed its Notice of Intent Not to File Testimony in this Cause on March 31, 2021. Petitioner filed the rebuttal testimony of Mr. Hauer on April 16, 2021 in response to Mr. Greene’s direct testimony. On April 14, 2021, the Presiding Officers issued a Docket Entry requesting that Petitioner provide additional information, and Petitioner responded in a filing on April 20, 2021.

On April 28, 2021, INRBA filed a Motion to Compel Discovery and Motion to Continue Evidentiary Hearing, requesting the Commission to compel Petitioner to provide complete responses to seven specific discovery requests. On April 29, 2021, the Presiding Officers issued a Docket Entry granting the Motion to Compel as to one discovery request and denying the motion as to the other six requests.

The Commission set this matter for an Evidentiary Hearing to be held on May 3, 2021, at 9:30 a.m. in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. A Docket Entry was issued on April 28, 2021, advising that, in accordance with Indiana Gov. Eric Holcomb's executive orders related to the COVID-19 pandemic, the hearing would be conducted via video conference. Petitioner, the OUCC and INRBA, by counsel, participated in the hearing via video conference. Prior to the May 3 evidentiary hearing, INRBA filed a Request for Administrative Notice requesting the Commission to take administrative notice of certain facts, each of which were supported by an exhibit. The parties addressed INRBA's Request for Administrative Notice during the May 3 evidentiary hearing. Petitioner objected to the request, and the Presiding Officers sustained the objection and denied INRBA's request for administrative notice of each requested fact. INRBA also moved during the May 3 hearing to continue the hearing to allow for INRBA to pursue discovery responses from Petitioner to which Petitioner had provided only objections on April 30, 2021. Petitioner objected to the request, and the Presiding Officers sustained the objection and denied INRBA's motion to continue the hearing. During the evidentiary hearing, the testimony and exhibits of Petitioner and INRBA were admitted into the record without objection. INRBA's cross examination exhibits were offered into evidence but were objected to by Petitioner. The Commission sustained this objection, and Petitioner's cross examination exhibits were not admitted into the record. Cross examination was performed during the hearing on Petitioner's witness Mr. Hauer.

Based upon the applicable law and the evidence presented, the Commission finds:

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given and published by the Commission as required by law. Pursuant to the Act, 47 USC § 151 *et seq.*, and 47 CFR §§ 54.201 and 54.203, the Commission is authorized to designate ETCs, thereby enabling those so designated to apply for federal universal service support under 47 USC § 254, and in accordance with the Commission's Orders in Cause Nos. 40785, 41052 and 42067. The Commission also has limited jurisdiction over certain matters related to communications service providers ("CSPs") pursuant to Ind. Code § 8-1-2.6-13, including the designation of CSPs as ETCs and their associated ETC service areas. Therefore, the Commission has jurisdiction over Petitioner with respect to the subject matter of this Cause.

2. Petitioner's Characteristics. LTD is a limited liability company formed in the state of Nevada with a principal place of business at 69 Teahouse Street, Las Vegas, NV 89138. LTD provides fixed wireless internet service to 16,000 customers in Iowa, Kansas, Minnesota, Nebraska, South Dakota and Wisconsin. It does not currently serve any customers in Indiana.

LTD is currently designated as an ETC in Illinois, Iowa and Minnesota and is seeking ETC designation in 11 other states, in addition to Indiana, where it has provisionally been awarded RDOF support. LTD has filed an Application for a Certificate of Territorial Authority ("CTA")

with the Commission in Cause No. 45519 to become authorized to provide interconnected voice over internet protocol (“VoIP”) service, dedicated transport telecommunications services, facilities-based telecommunications services, internet access service and broadband service. The Commission has not approved LTD’s CTA application, and LTD does not have authority to provide communications services in Indiana.

3. INRBA’s Characteristics. INRBA is a nonprofit corporation formed in the state of Indiana. Its membership is comprised of 33 local and small commercial telecom/broadband companies that serve rural Indiana, including the following: Bloomingdale Home Telephone Company; Inc.; Citizens Telephone Corporation; Clay County Rural Telephone Coop, Inc. d/b/a Endeavor Communications; Craigville Telephone Company, Inc.; Daviess-Martin Rural Telephone Corp. d/b/a RTC Communications; Enhanced Telecommunications Corporation; Geetingsville Telephone Company; Hancock Rural Telephone Corporation; Ligonier Telephone Co., Inc.; Monon Telephone Company, Inc.; Mulberry Co-op Telephone Co., Inc.; New Lisbon Telephone Co., Inc.; New Paris Telephone, Inc.; Northwestern Indiana Telephone Company; Perry-Spencer Rural Telephone Coop; Pulaski-White Rural Telephone Cooperative, Inc. d/b/a LightStream; Rochester Telephone Company; SEI Communications, Inc.; Smithville Communications; Swayzee Communications Corp.; Sweetser Telephone Company; TDS Telecom Companies (Camden Telephone Company, Inc., Communications Corporation of Indiana, Communications Corporation of Southern Indiana, Home Telephone Company, Inc., Home Telephone Company of Pittsboro, Inc., Merchants & Farmers Telephone Co., S&W Telephone Co., Inc., Tipton Telephone Company, Inc., Tri-County Telephone Company, Inc., and West Point Telephone Company, Inc.); Washington County Rural Telephone Coop.; and Yeoman Telephone Company, Inc. The purpose of INRBA is to advocate for its member companies on state and federal telecom issues.

All of the members of INRBA hold CTAs and are authorized to provide communications services in Indiana. They also have been designated by the Commission as ETCs, some having also been provisionally awarded RDOF support. INRBA’s members serve predominantly rural areas in Indiana and have a strong interest in ensuring that federal high-cost support, such as RDOF funding, goes to recipients that will deliver networks, infrastructure and service to rural Indiana as promised in their high-cost support commitments.

4. Rural Digital Opportunity Fund Phase I. The FCC established the RDOF to provide \$20.4 billion in support through a reverse auction (“Auction 904”) designed to bring broadband service to areas that lack access to both fixed voice and 25/3 Mbps broadband services.¹ On December 7, 2020, the FCC announced the winning bidders of Auction 904, one of which was LTD, which was provisionally awarded a total of \$54,456,917.90 in RDOF Phase I funding in Indiana over 10 years.² In order to be authorized by the FCC to receive this RDOF support, LTD must be designated by the Commission as an ETC for all of the eligible census in which it was

¹ *In the Matter of Rural Digital Opportunity Fund et al., Notice of Proposed Rulemaking*, 34 FCC Rcd 6778 (August 1, 2019) (“*Rural Digital Opportunity Fund NOPR*”).

² *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders Announced; FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34; WC Docket No. 19-126; WC Docket No. 10-90 (December 7, 2020) (“*Winning Bidders Announcement*”).

provisionally awarded RDOF support by no later than June 7, 2021.³ The FCC has established a good-faith filing deadline of 30 days following the December 7, 2020 Auction 904 winning bidders announcement,⁴ which required an ETC application to be filed by no later than January 6, 2021 to be considered filed in good faith in the event that the applicant is not able to obtain an ETC designation order by the June 7, 2021 deadline. However, LTD did not file its Verified Petition until March 18, 2021. LTD now seeks ETC designation in the census blocks in Indiana in which has provisionally been awarded RDOF support.

5. Petitioner's Direct Testimony. Mr. Hauer, chief operating officer of Petitioner, testified that Petitioner was seeking ETC designation in Petitioner's proposed Indiana service area for purposes of receiving support from the federal Universal Service Fund ("USF"), specifically the support provisionally awarded to it through Auction 904 to deploy broadband and voice communications in the awarded census blocks in Indiana. Mr. Hauer requested that the Commission grant the requested ETC designation by June 7, 2021 in order to comply with FCC requirements for RDOF awardees. Mr. Hauer further testified that, because federal high-cost ETCs are also required to participate in the federal low-income (Lifeline) program and offer qualifying Lifeline plans to eligible consumers, Petitioner was also seeking designation as an ETC to receiving funding from the federal Lifeline USF program.

Mr. Hauer described Petitioner's current customer base, which has primarily served rural areas and small towns in Iowa, Kansas, Minnesota, Nebraska, South Dakota and Wisconsin via a fixed wireless broadband network. He stated that Petitioner was beginning to leverage 5G millimeter wave technologies (a wireless solution) in some larger communities to offer a competitive choice to consumers receiving broadband service via cable or fiber connections. Despite its history of providing broadband service via fixed wireless networks, Mr. Hauer stated that Petitioner intends to deploy a fiber-to-the-home ("FTTH") network in the last mile of its broadband network in the RDOF-supported areas in Indiana, using gigabit passive optical network ("GPON") and XGPON technology to offer broadband at speeds up to 10Gbps. He stated that middle-mile connections in these areas may utilize multi-gigabit fixed wireless in certain instances. Mr. Hauer testified that Petitioner does not currently provide any services in Indiana and that its CTA application is pending before the Commission.

Mr. Hauer testified that, as a result of its participation in Auction 904, Petitioner was provisionally awarded \$132,092,071.86 in RDOF support over 10 years to serve a total of 528,088 locations in 15 states. He stated that, in Indiana, Petitioner was awarded \$5,445,691.79 over 10 years to serve 31,330 locations in 756 census blocks. He testified that Petitioner is requesting an ETC service area consisting of the 756 census blocks in Indiana in which Petitioner was awarded RDOF support, as identified in its Verified Petition.

³ *Auction 904 Notice*, 35 FCC Rcd 6077. The FCC indicated that if a long-form applicant is unable to obtain the necessary ETC designations within the 180-day timeframe, it would be appropriate to waive the 180-day timeframe if the long-form applicant is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete. The FCC will presume that a long-form applicant acted in good faith if it files its ETC application with the state commission within 30 days of the release of the Auction 904 closing public notice.

⁴ *Id.*

In his direct testimony, Mr. Hauer testified that Petitioner had the financial and technical capacity to provide the Lifeline-supported services and that it had provided ETC telecommunications and internet service for one year in three states. He further stated that Petitioner's management team has sufficient administrative and technical expertise to effectively manage its operations. Mr. Hauer also referenced certain attachments to Petitioner's CTA application that he stated contain management personnel and financial information.

Mr. Hauer testified that Petitioner met federal statutory and administrative requirements to be designated as an ETC. He stated that Petitioner holds common carrier wireless licenses from the FCC and will provide service on a common-carrier basis using a combination of its own facilities and network assets leased from third parties. He further stated that Petitioner would advertise the availability of its RDOF-supported services using media of general distribution calculated to reach eligible consumers. Mr. Hauer described Petitioner's planned voice service to be offered in Indiana, stating that it would provide voice-grade access to the public switched telephone network ("PTSN") via interconnected VoIP service throughout its designated ETC service area in compliance with the FCC's universal service rules and orders and that, currently, Petitioner provides service offerings for residential, business and government customers, including broadband and VoIP, available at several price levels and speeds. Specifically, Mr. Hauer testified that Petitioner currently delivers retail broadband plans with speeds up to 50Mbps and expects to build networks using RDOF funding to enable it to provide service plans with download speeds up to 100Mbps. However, Mr. Hauer also referenced in his direct testimony a summary of Petitioner's current service offerings, which was provided as part of the Verified Petition. That summary stated that Petitioner *currently* provides retail broadband plans with speeds ranging from 6/1Mbps to 100/20Mbps and that Petitioner's VoIP service is available on a standalone basis or bundled with broadband starting at \$20 per month. The referenced attachment to the Verified Petition also states that Petitioner has not finalized its service plans for its proposed ETC service area in Indiana but that it plans to offer service plans with speeds equal to or greater than its RDOF commitments up to 1000/1000Mbps. Mr. Hauer further testified that, in its RDOF-supported areas, Petitioner would offer standalone VoIP service for \$24.95 per month, 100Mbps broadband service for \$100 per month and 1000Mbps broadband service for \$150 per month.

Mr. Hauer testified that Petitioner will include unlimited local calling in its rate plans and will commit to complying with any minimum local usage requirements adopted in the future by the FCC or the Commission. He further stated that Petitioner complies with FCC 911/E911 service provided in connection with its VoIP service. He provided that, at the time of service installation, Petitioner would confirm with each subscriber the correct physical address or registered location for the service and notify each subscriber about the need and how to promptly update the registered location and that certain circumstances may interfere with emergency calls made using the VoIP service. Mr. Hauer stated that Petitioner currently provides its VoIP customers with access to 911/E911 services through an arrangement with Inteliquent, a certified telecommunications carrier in Indiana. Mr. Hauer further testified that Petitioner's voice service offerings do not distinguish between local and long-distance calls; therefore, Petitioner is not required to offer toll-limitation service.

Mr. Hauer testified that Petitioner would provide RDOF-supported services in Indiana using an FTTH network. He stated that Petitioner currently uses fiber and fixed wireless

microwave platforms to provide its last-mile voice and broadband services and uses point-to-point licensed wireless connections, owned fiber, leased dark fiber and ethernet for its transport backbone. He stated that Petitioner would deploy similar network arrangements to provide the RDOF-supported services in Indiana.

In his direct testimony, Mr. Hauer stated that Petitioner would advertise the availability of its supported services using direct mail and would advertise specifically toward Lifeline-eligible customers in the RDOF-supported census blocks, including in all Lifeline-related materials issued by Petitioner, such as print, broadcast and web-posted marketing materials, as well as materials used for customer enrollment and recertification. Mr. Hauer stated that Petitioner does not maintain any administrative or customer service offices in Indiana and that Indiana customers will be able to reach petitioner via a toll-free number, by dialing 611 from their home phone, or by mail or email. Mr. Hauer further testified that Petitioner has not been the subject of any serious consumer complaints or investigations and that it complies with all federal and state consumer protection requirements applicable to its operations. He stated that, upon designation as an ETC in Indiana, Petitioner would comply with applicable consumer protection and service quality standards, as set forth by the FCC, the Commission and the state of Indiana, including compliance with privacy standards, Customer Proprietary Network Information (“CPNI”) rules and network performance disclosure requirements.

Mr. Hauer testified that Petitioner’s network is designed to remain operational in emergency situations, utilizing state-of-the-art industry standard equipment and software. He stated that Petitioner’s connections and transport resources are designed with redundancy to provide immediately available back-ups in the event of power cuts or other events and that Petitioner employs a distributed data center model with duplication and load-sharing as well as uninterrupted power supply (“UPS”) and generator backups. He stated that Petitioner’s subscribers are provided with a UPS to provide backup power for up to 24 hours in the event of outages.

Mr. Hauer stated that Petitioner did not have a precise date for commencement of Lifeline service in Indiana, but that construction of its network was planned to begin within three months of the FCC issuing its “ready to fund” notice for Petitioner’s RDOF award. Mr. Hauer described Petitioner’s plans to verify customers’ continued eligibility for the Lifeline discount and to de-enroll Lifeline customers who do not use service for 60 days.

Finally, Mr. Hauer stated that designation of Petitioner as an ETC is within the public interest because it will facilitate the goal of deploying voice and high-speed broadband networks in unserved and underserved rural, high-cost areas and provide connectivity to consumers, businesses and community anchor institutions. He further stated that designation of Petitioner as an ETC would not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs.

6. INRBA’s Direct Testimony. Intervenor INRBA submitted as its direct testimony the testimony and exhibits of John E. Greene Jr., an INRBA board member and past chairman and chief executive officer of one of INRBA’s members, New Lisbon Telephone Company, Inc. (“NLTC”), and NLTC subsidiary New Lisbon Broadband and Communications, LLC. Mr. Greene testified that INRBA, on behalf of its members, opposes Petitioner’s designation as an ETC in

Indiana because INRBA believe that LTD does not meet statutory and administrative requirements necessary for ETC designation and is not capable of providing the quality of service for which it has been provisionally awarded RDOF support. Mr. Greene stated that INRBA's members serve predominantly rural areas in Indiana, where USF funding has been an important source of support. He further stated that INRBA's members have a strong interest in ensuring high-cost support goes to recipients who will deliver the networks, infrastructure and service to rural Hoosiers that they have promised.

In his testimony, Mr. Greene provided the correct amount of RDOF funding and number of census blocks provisionally awarded to Petitioner, which were incorrectly stated in Mr. Hauer's direct testimony. Specifically, Mr. Greene provided that Petitioner was awarded a total of \$54,456,917.90 in RDOF support over 10 years for 5,458 census blocks in Indiana. He described how Petitioner failed to indicate in its Verified Petition or direct testimony whether it was seeking ETC designation at the census-block level (for the 5,458 census blocks it was awarded in Indiana) or at the census block-group level (for the entirety of the 756 census block groups listed in its Verified Petition). He further pointed out that Petitioner had not identified to the Commission the specific census blocks for which it was awarded RDOF support and, if Petitioner was seeking ETC designation on a census block-group level, it had not indicated that it would provide all required services, such as Lifeline, in the portions of those census block groups that would not receive RDOF support.

Mr. Greene testified that Petitioner must deploy facilities and offer gigabit, low-latency broadband service to all of its awarded Indiana census blocks within six years of receiving FCC approval for the RDOF funding. He pointed out that Petitioner had failed in its Verified Petition or direct testimony to indicate that it would comply with the required RDOF buildout timeline, stating only that it would provide Lifeline service "as soon as possible" and that the precise date for commencement of services was uncertain.

Mr. Greene opined that Petitioner submitted bids in Auction 904 for many Indiana census blocks that were not economically feasible for it to serve. He stated that Auction 904 was predicated on a reserve price set for what would generally be required to build an FTTH network and that, while it may be possible to build such a network for less than this reserve price if existing infrastructure were nearby, it would be impossible to build a network from scratch for significantly less than this amount. Mr. Greene stated that, despite this, Petitioner had committed to build out a network to provide gigabit broadband service with support that is less than 30 percent of estimated cost to build the network. Mr. Greene further testified that some INRBA members were able to accept RDOF funding at levels substantially less than 30 percent of the estimated cost to build because they are local companies with significant local resources and/or operate on a nonprofit basis. Mr. Greene stated that he could not determine why an out-of-state entity with no ties to or history of service in Indiana, such as Petitioner, would pursue a bidding strategy in Auction 904 that did not yield a return of its investment. He stated that Petitioner has no history of service in Indiana, owns no infrastructure in Indiana, employs no staff in Indiana, and was not registered to do business in Indiana until March 2021. Further, he stated that Petitioner does not currently offer residential broadband service that even approaches the RDOF gigabit service tier to which it has committed.

Mr. Greene testified that, even though Petitioner's advertised top tier broadband service is 35/7Mbps, it has been provisionally awarded more than \$1.3 billion in RDOF support in Auction 904 to provide gigabit tier broadband service in 15 states. Although Petitioner's website mentions higher speeds available, it does not provide pricing or location information. Petitioner's statements in its direct testimony and Verified Petition regarding available broadband speeds are not supported by the information on its website.

Mr. Greene stated that he had reviewed information from the Better Business Bureau ("BBB") relating to Petitioner's operations in Minnesota and that the BBB had given Petitioner's Minnesota operations a failing "F" rating and indicated that Petitioner was "not BBB accredited." Mr. Greene further explained that the BBB's "F" rating was based on: (1) Petitioner's failure to respond to one complaint filed against it; (2) 14 complaints filed against it; and (3) length of time it had been operating. The BBB gave Petitioner a 1.1-star customer service rating on a 5-star scale on the basis of an average of nine customer reviews. Mr. Greene stated that the BBB had received 14 complaints against Petitioner in the last three years and nine complaints in the last 12 months. Mr. Greene further explained that Petitioner had not provided any evidence in its Verified Petition or direct testimony to demonstrate that it has the technical capability to deliver gigabit-tier broadband service or the managerial capability to provide prompt and thorough customer service.

Mr. Greene further explained that Petitioner had not provided any evidence that it has the human capital to engineer, construct and operate a FTTH network to serve all of its Indiana awarded RDOF census blocks. Specifically, Mr. Greene pointed to the key management "biographies" provided with Petitioner's CTA application, which (other than for Mr. Hauer) in actuality contained one sentence about each staff member. Mr. Greene further surmised, based upon publicly available information, that Petitioner's corporate office address was a residential home in a suburban neighborhood of Las Vegas, NV. He additionally testified that, as recently as February 25, 2019, Petitioner requested, and was granted, a waiver of the Connect America Fund ("CAF") Phase II auction deadline for filing audited financial statements on the grounds that it was a small business with a limited number of employees and administrative resources, that it was not audited in the ordinary course of business, and that its efforts to retain and engage accountants within the required timeframe were unsuccessful.

Mr. Greene testified that, in order to provide the level of service to which Petitioner had committed in Auction 904, it would need to deploy substantial infrastructure quickly, which would be difficult for a company such as Petitioner that is not well-versed in deploying fiber optic networks. Mr. Greene stated that Petitioner had failed to address questions such as who would provide engineering and construction services for the network, from where would materials be sourced, who would provide the necessary middle-mile connections, who would oversee the build and handle customer connections and ongoing maintenance, and from whom Petitioner would lease fiber if using leased fiber for its buildout. Mr. Greene stated that fiber construction companies working in Indiana already have a backlog from work with existing fiber providers and that skilled labor is not readily available due to the number of other companies ramping up fiber builds.

Mr. Greene stated that Petitioner failed to provide a project plan for its fiber buildout or evidence of a feasibility study regarding the provision of service in Indiana. He stated that if an entity were permitted to propose gigabit service, bid support levels down to unreasonably low

levels to force out bona fide gigabit service providers, and avoid the consequences of its bid strategy by providing sub-standard service or switching to a lower speed or different technology, it would deprive rural Hoosiers of the high-speed broadband service they otherwise could have had. Mr. Greene testified that he does not believe that Petitioner can meet its obligations to deploy facilities and provide gigabit service to all of its awarded census blocks in Indiana within the FCC's required timeframe. Finally, Mr. Greene testified that Petitioner had previously defaulted on its federal high-cost support obligations by failing to obtain ETC designation in Nevada and Nebraska. He testified that the Commission should deny Petitioner's request for designation as an ETC based on the foregoing evidence discussed in his direct testimony.

7. Petitioner's Rebuttal Testimony. In Petitioner's rebuttal testimony, Mr. Hauer stated that, traditionally, rural local exchange carriers ("RLECs") have relied on USF support as a key subsidy for their business operations and have little experience with business models where such subsidies do not exist. He surmised that INRBA's motivation in intervening in this Cause is competitive and similar to the positions of other RLECs objecting to Petitioner's RDOF awards in other states.

In the rebuttal testimony, Mr. Hauer also clarified that Petitioner's Indiana RDOF award was \$5,445,691.79 *annually* over a period of 10 years. He stated, as in Petitioner's direct testimony, that Petitioner was awarded RDOF support in 756 census blocks in Indiana and that Petitioner was requesting ETC designation in those census blocks in Indiana where it was awarded RDOF support, which Mr. Hauer stated were identified in the Verified Petition. However, as explained below, the 756 areas identified in the Verified Petition were actually census block *groups*, in which Petitioner's awarded census blocks are located but in which may also be located other areas that do not comprise Petitioner's awarded census blocks. Mr. Hauer stated that Petitioner was seeking ETC designation on the census-block level but still did not identify the 5,458 census blocks for which it was awarded RDOF support.

Mr. Hauer also testified that Petitioner had confirmed that the date for commencement of its Lifeline service was uncertain but that it planned on commencing construction of its Indiana network within three months of the FCC issuing its "ready to fund" notice for Petitioner's RDOF award. Mr. Hauer stated that Petitioner had developed an aggressive construction timeline and planned to meet or exceed RDOF auction milestones by completing construction of 20 percent of locations by the end of Year 2 (estimated 2023), 40 percent of locations by the end of Year 3 (estimated 2024), 60 percent of locations by the end of Year 4 (estimated 2025), 80 percent of the locations by the end of Year 5 (estimated 2026) and 100 percent of locations by the end of Year 6 (estimated 2027). Mr. Hauer further testified that Petitioner's Lifeline customers would prepay for phone service and that none of the plans offered by Petitioner would be free or appear to be free to the end-user customer.

Mr. Hauer surmised that Mr. Greene could not know Petitioner's economic considerations when Mr. Greene had no access to Petitioner's financial data, engineering plans or business model. Mr. Hauer testified that Petitioner's awarded census blocks were economically sustainable and that Petitioner would install fiber with its own construction teams using modern equipment at likely one-half to one-third of the cost of the infrastructure deployed by RLECs. He stated that Petitioner had the technical, managerial and financial ability to fulfill its ETC and RDOF

obligations. Mr. Hauer further testified that Petitioner does not currently offer residential gigabit broadband service because its consumers have not demanded it. He further stated that Petitioner has installed fiber both with its own workforce and contracted workforce.

Mr. Hauer stated that Petitioner's website does not list a broadband plan offering 300/300Mbps speeds because such plan is not yet available across Petitioner's 50,000-square-mile footprint but rather is available in certain local communities, where it is advertised. He stated that, as with many internet service providers, Petitioner offers different plans in different areas, including plans up to 300/300Mbps. Mr. Hauer stated that the BBB reviews cited in Mr. Greene's testimony were not significant enough to raise questions that should result in the denial of Petitioner's ETC designation in Indiana and that Petitioner has a 4.44-star rating based on 81 customer reviews on Google. He further testified that if actual, verified customer service concerns arise on Indiana, the Commission has the authority to investigate them but that it should not deny Petitioner's ETC designation based upon speculation that Petitioner will not render satisfactory service.

In Petitioner's rebuttal testimony, Mr. Hauer stated that the FCC has already determined that Petitioner meets the legal, technical and financial qualifications to participate in Auction 904 and meet the service requirements associated with the performance tier and latency combination on which it bid. Mr. Hauer surmised that Mr. Greene, in his assertions that Petitioner did not have the technical, managerial or financial ability to fulfill its RDOF and ETC obligations, was attempting to impart the RLEC business model on Petitioner as an entrepreneurial company. Mr. Hauer stated that Petitioner had employees in 23 states and had engaged with outside engineering and construction companies to position resources to begin construction. He also stated that Petitioner was preparing to hire and train more than 500 construction staff, including local workers in Indiana, and that it was recruiting seasoned outside plant professionals. He further stated that Petitioner had scaled its staff to meet its CAF II performance obligations and would do the same with respect to RDOF. He testified that for Petitioner to be fully staffed at this time would be a waste of resources.

Mr. Hauer testified that Petitioner has audited financial statements dating back nine years and that the waiver request cited by Mr. Greene in his testimony was for a short delay to accommodate the time required by Petitioner's auditing firm to complete the audited financial statements for the relevant time period. He stated that Petitioner's business processes are established to generate annual audited financials to meet the requirements for the next eight years as part of CAF Phase II, over the 10-year horizon to comply with RDOF requirements, and beyond. He stated that Petitioner has nearly completed its CAF Phase II buildout and is on track to provision service on time and potentially ahead of schedule. He testified that Petitioner had completed its fifth-year obligation of 80 percent buildout in both Iowa and Minnesota by the end of Year 1 and that it would finish 100 percent of its CAF Phase II obligation for Illinois later this year, four years ahead of schedule.

Mr. Hauer further testified that Petitioner has years of experience growing its workforce and network at a rapid pace. Petitioner has no affiliates and will partner with appropriate engineering, construction and fiber companies to construct the network necessary to satisfy its RDOF obligations in Indiana. He stated that Petitioner had sufficient experience, resources and

relationships to provision service and would not rely on partners to provide service to customers once its network is constructed. Mr. Hauer stated that the broadband speeds Petitioner currently makes available to customers are not related to its RDOF commitment to offer gigabit speeds and that Petitioner has no current legal requirement to offer gigabit speeds. He stated that nothing in the FCC's rules or auction procedures requires Petitioner to have offered gigabit speeds to be eligible to apply for and obtain RDOF support to provide gigabit fiber service. Additionally, Mr. Hauer confirmed that Petitioner would provide 1000/500Mbps low-latency broadband service in all areas where it had been awarded RDOF funding.

In response to Mr. Greene's testimony regarding Petitioner's default following the CAF Phase II auction, Mr. Hauer stated that Petitioner decided not to accept an award for one single, small census block in each of Nebraska and Nevada where it decided that the compliance costs would be largely disproportionate to the small area to be served. Rather than accepting the award and defaulting later, Petitioner chose to pay the FCC a total of \$3,563 rather than spend the compliance and construction costs to serve these areas. Mr. Hauer provided a table listing CAF II defaulting bidders, including some who had decided not to pursue unviable census blocks. Finally, Mr. Hauer testified that Petitioner's CAF II default did not suggest that it would default on its RDOF obligations in Indiana. He stated that the USF auction procedures can create anomalies where bidders win areas that were geographically attractive clusters during the auction but that are ultimately separated by other bidders. He stated that Petitioner has no intention of defaulting on its RDOF obligations in Indiana and had already performed its cost-benefit analysis regarding the same.

8. Petitioner's Response to Commission's Docket Entry. On April 14, 2021, the Commission issued a Docket Entry in this Cause seeking additional information. Petitioner filed its response to this Docket Entry on April 20, 2021. In its response, Petitioner stated that, despite contradictory statements in its direct testimony, it would provide 1000/500Mbps low-latency service in all areas where it had been awarded RDOF funding. Petitioner also stated that, despite contradictory statements in its Verified Petition and direct testimony, its Indiana ETC service area is defined by census blocks and that it intends to serve as an ETC only in the smaller area defined by its awarded RDOF census blocks, not the entirety of the census block groups listed in its Verified Petition.

In its response to the Commission's Docket Entry, Petitioner also provided additional information about its Lifeline plans, including that its Lifeline customers would prepay for phone service 20 days in advance of the start of the next service cycle and that service would be provided if the bill was paid by the due date. Petitioner also stated that it would not offer Lifeline voice or broadband services to eligible Lifeline customers that appear to be free to the end-user customer because the Lifeline subsidy covers the entire monthly recurring cost. Finally, Petitioner provided that it has no affiliates and will not partner with any unaffiliated entities in offering or providing supported services in Indiana. Petitioner stated that it would contract with appropriate engineering, construction and fiber companies to construct the network necessary to satisfy its Indiana RDOF obligations.

9. Cross Examination of Petitioner's Witness. Upon cross examination, Petitioner's witness Mr. Hauer confirmed that Petitioner did not have a CTA to provide

communications services in Indiana. [REDACTED]

[REDACTED] Mr. Hauer further testified during cross examination that Petitioner does not currently advertise its Lifeline services on its website. He stated that Petitioner would offer a voice Lifeline plan only, but not a broadband Lifeline plan, which is contrary to the assertions made in Petitioner's Verified Petition. He confirmed that Petitioner had received notice from the Minnesota Department of Commerce noting that Petitioner had failed to advertise its Lifeline offerings as required pursuant to its ETC designation in that state. Mr. Hauer further confirmed during cross examination that Petitioner had not submitted to the Commission a five-year plan or a summary overview of the same. Finally, Mr. Hauer confirmed that Petitioner had defaulted on its obligations under the CAF II auction in two states.

10. Discussion and Findings. Pursuant to 47 USC § 214(e)(1), a common carrier designated as an ETC shall be eligible to receive universal service support in accordance with 47 USC § 254 and shall, throughout the service area for which the designation is received, offer the services that are supported by USF support mechanisms under 47 USC § 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier's services, and shall advertise the availability of such services and the charges therefor using media of general distribution. In 47 CFR § 54.101, the FCC identifies ETC services that are eligible for universal service support, including voice telephony and broadband internet services. Pursuant to 47 CFR §§ 54.101(d) and 54.405, to be designated as an ETC and receive universal service support, carriers must offer Lifeline service.

Pursuant to 47 USC § 214(e)(2), the Commission is to designate a common carrier that meets the foregoing requirements as an ETC within a designated service area. The Commission is authorized under Ind. Code § 8-1-2.6-13(c)(4) to designate ETCs under 47 USC § 214. The FCC has encouraged state public utility commissions, when designating ETCs, to require all ETC applicants over which they have jurisdiction to meet the same conditions and conduct the same public interest analysis as the FCC does when it considers the designation of ETCs that are not under the jurisdiction of a state commission.⁵ Consistent with its adoption of these permissive federal guidelines for state ETC designations, the FCC also granted state commissions the flexibility to impose additional eligibility requirements in state ETC proceedings, if they so choose.⁶ Pursuant to this authority, the Commission has issued GAO 2019-5, by which the Commission has set forth the application requirements for requesting ETC designation, which are consistent with the FCC's requirements for designating ETCs found in 47 CFR § 54.201.

Petitioner seeks designation as an ETC in order to receive federal USF support to implement high-speed broadband and voice services for unserved rural Indiana residents. However, based on the evidence in the record and the discussion below, we find that Petitioner fails to satisfy the requirements in GAO 2019-5, which are consistent with the FCC's requirements in 47 CFR § 54.201(d) and 47 CFR § 54.202(a) and (b). Because Petitioner's failure to meet several requirements of GAO 2019-5, as set forth below, is dispositive of Petitioner's requested relief in this Cause, the Commission will discuss and issue findings only on these specific requirements.

⁵ *In the Matter of Fed.-State Joint Bd. on Universal Serv.*, 20 FCC Rcd. 6371, 6388 (2005).

⁶ *Id.*

Specifically, the Commission finds that Petitioner has failed to satisfy the following requirements necessary to be designated as an ETC:

A. Ability to Offer Supported Services and Serve Entire Designated Service Area. Pursuant to 47 USC § 214(e)(1) and 47 CFR § 54.201(d)(1), a common carrier designated as an ETC shall be eligible to receive universal service support and shall, throughout the service area for which the designation is received, offer the services that are supported by federal universal service support mechanisms. Additionally, pursuant to sections 4 and 5 of GAO 2019-5, ETC petitioners in Indiana must demonstrate that they are common carriers as defined in the Act, that they will serve their entire designated ETC service area pursuant to 47 USC § 214(e)(1), and that they will offer following supported services: (1) voice telephony; (2) broadband in accordance with all applicable high-cost program requirements; and (3) Lifeline to qualifying subscribers. Notably Mr. Hauer did not reference the GAO requirements in his direct or rebuttal testimony or provide information on how Petitioner would meet these requirements.

Petitioner LTD has failed to demonstrate that it is capable of providing the required RDOF-supported services within its requested ETC service area. Petitioner offered unsupported statements that it intends to offer gigabit service via an FTTH network in Indiana. However, Petitioner did not provide evidence to demonstrate how it will accomplish this project. As evidenced by the direct and rebuttal testimony of Mr. Hauer, Petitioner does not currently provide any services in Indiana and does not have any business relationships, leasing arrangements, partnerships or infrastructure in Indiana. In fact, Petitioner has not been authorized by this Commission to provide any communications services in Indiana. The record demonstrates that Petitioner has historically used fixed wireless technology to provide broadband service in other states; however, it has no history or experience engineering, constructing or operating an FTTH network or providing high-speed broadband via a FTTH network, as it has committed to doing in the RDOF auction.

Further, Petitioner's evidence is contradictory in many areas regarding the current and planned broadband speeds that it will offer. It has committed in Auction 904 to provide retail broadband service with speeds of at least 1000/500Mbps. However, Mr. Hauer's direct testimony states that Petitioner currently delivers retail broadband plans with speeds up to 50Mbps and expects to build networks using RDOF funding to enable it to provide service plans with download speeds up to 100Mbps. By contrast, Mr. Hauer also referenced in his direct testimony a summary of Petitioner's current service offerings, which stated that Petitioner currently provides retail broadband plans with speeds ranging from 6/1Mbps to 100/20Mbps. The record also indicates that Petitioner has not yet finalized its service plans for its proposed ETC service area in Indiana. This contradictory evidence has failed to demonstrate that Petitioner will offer the level of broadband service to which it has committed in Auction 904.

Petitioner's evidence also raises questions as to whether Petitioner will be able to build the network and infrastructure required to serve its entire proposed ETC service area. Petitioner provided extremely minimal information about its key personnel and has provided contradictory information regarding whether it intends to partner with other entities in the construction of its network and provision of services. For example, Mr. Hauer stated in his testimony that Petitioner contracts with Inteliquent to provide 911 access services to Petitioner's customers via VoIP.

However, he also stated in both his rebuttal testimony and in Petitioner's responses to the Commission's Docket Entry that Petitioner would not rely on partners to provide service to customers once its network is constructed. [REDACTED]

[REDACTED] Due to its conflicting evidence, Petitioner has not demonstrated how it will provide VoIP service to its Indiana customers and, if it plans to do so by partnering with Inteliquent, it has not provided any supporting evidence demonstrating that Inteliquent is authorized to provide communications services in Indiana.

Likewise, Petitioner has not demonstrated how it will build the required network infrastructure in Indiana. Petitioner provided conflicting testimony regarding the amount of RDOF support it would receive over 10 years. Regardless, Mr. Greene's testimony raised serious questions about whether Petitioner had secured sufficient federal funding to build a network from scratch and create a viable business plan that would allow Petitioner to provide the required services throughout its proposed ETC service area. Petitioner also has introduced conflicting evidence as to how it will accomplish its planned buildout. In his testimony, Mr. Hauer states that Petitioner will install fiber with its own construction teams and will hire and train more than 500 construction staff, including local workers in Indiana. However, Mr. Hauer's testimony also states that Petitioner will partner with appropriate engineering, construction and fiber companies to construct the necessary network. These contradictory statements fail to demonstrate that Petitioner has sufficiently planned the buildout of its network and will be able to timely execute the buildout.

The record reflects Petitioner has a history of defaulting on CAF II obligations. Petitioner argues its default demonstrates its "sound business decisions." We disagree. While not dispositive, the Commission finds that prior default is one factor that cuts against a Petitioner's ability to actually offer the supported services throughout its requested service territory.

Finally, Petitioner has failed to introduce into the record any financial, engineering or business plans or cost-benefit analyses that would demonstrate that Petitioner will be capable of providing the required services within its entire proposed ETC service area. Coupled with the facts that Petitioner also is unable to provide an estimated date for commencement of service and has previously defaulted on its CAF II obligations, the Commission finds that Petitioner has failed to demonstrate that it has the ability to offer the supported services within its entire requested ETC service area and, thus, has failed to satisfy these requirements of 47 USC § 214(e)(1), 47 CFR § 54.201(d), and GAO 2019-5.

B. Identification of Proposed ETC Service Area. Pursuant to GAO 2019-5, ETC petitioners in Indiana must clearly indicate their proposed ETC service area by providing a legible map and listing applicable geographic units that Petitioner proposes to serve. A petitioner's "service area" is defined as the geographic area established by the Commission for the purpose of determining universal service obligations and support mechanisms.⁷ Petitioners must further provide a list of incumbent local exchange carrier ("ILEC") rate centers it proposes to serve and indicate if each rate center is served in its entirety or partially. LTD has failed to satisfy both of these requirements.

⁷ 47 USC § 214(e)(5).

Petitioner has provided contradictory evidence regarding its proposed ETC service area. In his testimony on behalf of INRBA, Mr. Greene pointed out that Petitioner failed to indicate in its Verified Petition or direct testimony whether it was seeking ETC designation at the census-block level (for the 5,458 census blocks it was awarded in Indiana) or at the census block-group level (for the entirety of the 756 census block groups listed in its Verified Petition). He further pointed out that Petitioner had not identified to the Commission the specific census blocks for which it was awarded RDOF support. Mr. Hauer attempted to address this critical omission in his rebuttal testimony by stating that Petitioner was awarded RDOF support for 765 census blocks in Indiana and that Petitioner was requesting ETC designation in those census blocks, which Petitioner identified in the Verified Petition. However, the Commission finds that this testimony is false. Pursuant to the FCC's long-form applicant spreadsheet,⁸ Petitioner was awarded RDOF support for 5,458 census block groups in Indiana which, presumably, are located within, but may not comprise the entirety of, the 765 census block groups identified by Petitioner in its Verified Petition. Finally, in contradiction to the Verified Petition and Mr. Hauer's testimony, Petitioner's response to the Commission's April 14, 2021 Docket Entry indicated that Petitioner intended its proposed ETC service area to be only its RDOF awarded census blocks, not the entirety of the census block groups it had previously identified and referenced in both its Verified Petition and rebuttal testimony.

Further, Petitioner has not provided a list of ILEC rate centers it proposes to serve, nor indicated whether each is served in its entirety or partially, as required under Section 6(b) of GAO 2019-5. This, in addition to the contradictory evidence provided by Petitioner regarding the scope of its proposed ETC service area, demonstrates that Petitioner has failed to clearly indicate its proposed ETC service area and, thus has failed to satisfy this requirement of GAO 2019-5.

C. Identification of Partners of Affiliates. Pursuant to Section 2 of GAO 2019-5, an ETC petitioner must clearly identify any other companies or entities (either affiliated or unaffiliated) with which it is partnering, or intends to partner, in offering or providing supported services in Indiana. As discussed in subsection A, *supra*, Petitioner has provided contradictory information regarding whether it intends to partner with other entities in its provision of services. Mr. Hauer stated in his testimony that Petitioner contracts with Inteliquent to provide 911 access services to Petitioner's customers via VoIP. However, he also stated in both his rebuttal testimony and in Petitioner's responses to the Commission's Docket Entry that Petitioner would not rely on partners to provide service to customers once its network is constructed.

[REDACTED] We find that Petitioner has failed to clearly indicate whether it will partner with any entities in providing the supported services and, if so, the identify of those entities and whether they are authorized to provide communications services in Indiana. Thus, the Commission finds that Petitioner has failed to satisfy this requirement of GAO 2019-5.

D. Disclosure of Charges for Services. Under 47 CFR § 54.201(d)(2) an ETC must advertise the availability of supported services and charges for such services using media of general distribution. Pursuant to Section 7 of GAO 2019-5, an ETC petitioner must show how the USF-supported services and charges for such services will be promoted and how the terms will be

⁸ Auction 904: Long-Form Applicants, accessed at <https://www.fcc.gov/auction/904/round-results> (last accessed May 7, 2021).

disclosed to customers. Petitioner states that it will advertise the supported services throughout its designated service area using direct mail. However, Petitioner failed to provide any example or sample of such advertising materials. We find that these vague and unsupported statements of intent do not satisfy the requirement of GAO 2019-5.

E. Provision of Five-Year Plan or Summary Overview. Pursuant to Section 10 of GAO 2019-5, an ETC petitioner must submit a five-year plan that describes *with specificity* proposed improvements or upgrades to the Petitioner's network throughout its proposed ETC service area, including an estimate of the area and population that will be served as a result of the improvements. The Commission has previously held that, despite the FCC's waiver of the five-year plan requirement for FCC-designated ETCs in the CAF II auction, the Commission has not waived the five-year plan requirement in its entirety. Rather, the Commission will accept, in lieu of a separate five-year plan, a summary overview regarding *how* petitioners would meet the auction milestones, information regarding the tier and latency of broadband service to which petitioners committed in the auction, and a general overview of the technology planned to meet the auction milestones.⁹

Petitioner has failed to provide adequate information meeting this summary overview requirement. Mr. Hauer broadly stated in his rebuttal testimony that Petitioner would meet the RDOF-required buildout milestones and recited the requirements of those particular milestones. However, Mr. Hauer gave no indication as to *how* Petitioner would meet said milestones and, in fact, indicated that a service commencement date was uncertain. As explained further in subsection A, *supra*, Petitioner has not clearly indicated what resources it has in place to build its planned Indiana network and has provided contradictory evidence on whether it will use its own employees to build the required infrastructure or will contract with other entities to do so. Further, Mr. Greene raised critical concerns in his testimony regarding Petitioner's ability to timely and cost-efficiently build its Indiana network, particularly given the relatively small portion of costs that would be covered by RDOF support and the fact that there is a significant backlog of work for fiber contractors and shortage of required resources. Additionally, Petitioner has failed to provide any financial, engineering or business plans related to its buildout.

Petitioner also has provided extremely limited information regarding the technology it plans to use to provide its RDOF-supported services. Petitioner has indicated generally that it will build an FTTH network, and Mr. Hauer stated in his direct testimony that Petitioner currently uses fiber and fixed wireless microwave platforms to provide its last-mile voice and broadband services and point-to-point licensed wireless connections, owned fiber, leased dark fiber and ethernet for its transport backbone. He stated that Petitioner would deploy similar network arrangements to provide the RDOF-supported services in Indiana. However, Mr. Hauer has not described the proposed improvements to its system with any specificity and has not indicated what technology will be used apart from the broad categories of fiber, fixed wireless and point-to-point licensed

⁹ See *In re: Petition of Perry-Spencer Communications, Inc.*, Cause No. 41052 ETC 32 S1 (IURC Feb. 20, 2019); *In re: Petition of Mercury Wireless Indiana, LLC*, Cause No. 41052 ETC 77 (IURC Feb. 20, 2019); *In re: Petition of W.A.T.C.H. TV Company*, Cause No. 41052 ETC 78 (IURC Feb. 20, 2019); *In re: Petition of Marshall County Fiber, LLC*, Cause No. 41052 ETC 79 (IURC Feb. 20, 2019); *In re: Petition of Wisper ISP Inc.*, Cause No. 41052 ETC 80 (IURC Feb. 20, 2019); *In re: Petition of Orange County Rural Electric Membership Corporation*, Cause No. 41052 ETC 81 (IURC Feb. 20, 2019).

wireless connections. Similarly, he has not provided any information regarding whether this infrastructure will be owned or leased by Petitioner or whether it will be otherwise obtained through partnerships with other entities. Because Petitioner has failed to provide adequate information regarding how it will meet RDOF milestones and the technology it plans to use to provide its RDOF-supported services, the Commission finds that Petitioner fails to satisfy this requirement of GAO 2019-5.

F. Functionality in Emergencies. Pursuant to Section 11 of GAO 2019-5 and consistent with 47 CFR § 54.202(a)(2), an ETC petitioner must demonstrate its ability to remain functional in emergency situations. Although Petitioner provided evidence regarding its strategy for outage response for its current wireless network, we find this evidence is not sufficient to demonstrate how Petitioner will ensure its network in Indiana will remain functional in an emergency. In particular, Petitioner has failed to demonstrate that it has the human capital to maintain its network in the event of an emergency. Mr. Hauer indicated in his testimony that Petitioner has employees in 23 states; however, there is no evidence showing that any of Petitioner's current or future employees will be based in Indiana, and Petitioner has not provided any information regarding the background of these employees or their knowledge and capability to maintain Petitioner's planned network during an emergency. Petitioner further has not indicated whether any of the employees that it plans to hire will be trained or have the capability to maintain its network, nor has it provided information about where its employees work and whether they are generally available to handle emergency situations with respect to Petitioner's network and supported services. Finally, Mr. Hauer indicated in his testimony that Petitioner does not have any office locations in Indiana and has not otherwise indicated whether Petitioner plans to have any office locations in Indiana that would be available to deal with an emergency situation. Based on the foregoing, the Commission finds that Petitioner has failed to demonstrate the ability of its Indiana FTTH network to remain functional in emergency situations.

G. Consumer Protection and Service Quality. Pursuant Section 12 of GAO 2019-5, which is consistent with 47 CFR § 54.202(a)(3), an ETC petitioner must demonstrate that it will satisfy all applicable consumer protection and service quality standards. Petitioner's evidence leaves doubt as to whether Petitioner would be capable of providing adequate service quality assurances to its customers. As discussed in subsection F, *supra*, Petitioner has not provided sufficient information regarding its employees and office locations to demonstrate that it would be capable of satisfying service quality standards. Additionally, the record includes evidence that Petitioner has some poor consumer ratings and has received a failing "F" grade from the BBB and that it has already received notice from the Minnesota Department of Commerce that it was not properly advertising its Lifeline service as required by its ETC designation in that state. This evidence raises serious concerns about whether Petitioner would be able to provide adequate communications services, as well as customer service, to its subscribers. Finally, as discussed previously herein, Petitioner has not adequately described whether and how it will provide the level of voice and broadband services to which it has committed in Auction 904. Based on the foregoing, the Commission finds that Petitioner fails to satisfy this requirement of GAO 2019-5, which is consistent with the FCC's ETC designation requirement in 47 CFR § 54.202(a)(3).

H. Public Interest Analysis. Pursuant to Section 14 of GAO 2019-5 and consistent with 47 CFR § 54.202(b), an ETC petitioner must explain how its proposed

communications service offerings will benefit consumers and impact the USF. Petitioner must also identify any unique advantages or disadvantages of its service offerings to customers. While the Commission recognizes that the provision of rural broadband to unserved or underserved areas is generally beneficial to consumers, Petitioner has failed to identify any other unique advantages of its proposed service offerings outside of the advantages that would be achieved by the offering of these services by *any* provider. Further, Mr. Greene testified that, if an entity were permitted to propose gigabit service, bid support levels down to unreasonably low levels to force out bona fide gigabit service providers, and avoid the consequences of its bid strategy by providing sub-standard service or switching to a lower speed or different technology, it would deprive rural Hoosiers of the high-speed broadband service they otherwise could have had. For all of the reasons discussed previously herein, the Commission remains unconvinced that Petitioner is capable of providing the RDOF-supported services to which it has committed in Auction 904. It is in the interest of the public not to delay their access to high-speed broadband service by granting ETC designation to an entity that ultimately is not capable of proving the required services. The Commission thus finds that designating Petitioner as an ETC would not serve the public interest.

I. CTA Requirement. Appendix B to GAO 2019-5 provides guidance to streamline ETC designations for entities participating in an FCC reverse auction, such as Auction 904. Section 1 of Appendix B states that all ETCs must have a CTA for their entire proposed ETC service area and for the specific type of communications services proposed to be supported by USF. The Commission normally requires ETC petitioners to have obtained a CTA prior to petitioning for ETC designation; however, in the interest of time for reverse auction participants, such participant must file a CTA application as soon as possible or, at the latest, on the filing date of its ETC petition. The record reflects that Petitioner was provisionally awarded RDOF support on December 7, 2020 but did not file its CTA application until March 15, 2021, more than three months after its award date and more than two months after the FCC's good-faith deadline for filing ETC petitions. As such, Petitioner's CTA application remains outstanding, and it had not received a CTA or become authorized to provide communications service in Indiana prior to the closure of the record in this Cause. It is not clear from the evidence that Petitioner will be able to obtain a CTA in Indiana; therefore, the Commission cannot find that Petitioner meets the requirement in GAO 2019-5 that Petitioner have a CTA to provide the supported services within its proposed ETC service area.

J. Filing of Complete Petition. Section 4 of Appendix B to GAO 2019-5 requires ETC petitioners to file complete petitions with any supporting testimony and exhibits constituting its case-in-chief. It further provides that information submitted to the FCC for Auction 904 may be applicable to the ETC petition and may be used as exhibits to support the petition. Mr. Hauer referred several times in his testimony to information submitted to the FCC for Auction 904, including a cost-benefit analysis, financials, engineering and network plans, and estimated construction costs; however, that the record is devoid of any supporting information in this proceeding. Petitioner failed to provide such information submitted to the FCC, even when requested to do so during discovery. The Commission finds that, in omitting critical information that was evidently provided to the FCC and that may have supported Petitioner's case-in-chief, Petitioner has failed to file a complete ETC petition and, therefore, has failed to satisfy this requirement of GAO 2019-5.

Based on the evidence presented and discussed above, we find that Petitioner has failed to meet the ETC eligibility requirements and the public interest will not be served by Petitioner serving the requested ETC service area.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION THAT:

1. LTD Broadband LLC's Verified Petition requesting designation as an ETC in the requested service area for participation in the Rural Digital Opportunity Fund Phase I program and to receive Lifeline support is denied.

2. Petitioner's request for authority to apply to receive federal USF support pursuant to 47 USC § 254 is denied.

3. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER AND ZIEGNER CONCUR:

APPROVED:

**I hereby certify that the above is a true
and correct copy of the Order as approved.**

**Dana Kosco
Secretary of the Commission**