

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

APPLICATION OF LTD BROADBAND, LLC)
FOR DESIGNATION AS AN ELIGIBLE)
TELECOMMUNICATIONS CARRIER FOR) CAUSE NO. 41052 ETC 96
THE PURPOSE OF PROVIDING SERVICES)
SUPPORTED BY THE FCC'S RURAL) APPROVED:
DIGITAL OPPORTUNITY FUND.)

LTD BROADBAND'S OBJECTIONS TO INRBA'S PROPOSED ORDER

LTD Broadband, LLC (LTD) respectfully submits the following objections and comments regarding the proposed order filed by the Indiana Exchange Carrier Association d/b/a Indiana Rural Broadband Association (INRBA). The Indiana Utility Regulatory Commission (Commission) should disregard INRBA's proposed order because it does not cite alleged facts to the record of this Cause and it relies on a flawed understanding of the Federal Communication Commission's (FCC) rules and guidance. In addition, LTD will respond to the INRBA's specific proposed discussion and findings section, which should be disregarded because they exceed the scope of the Commission's regulatory review in this case and rely on unsubstantiated hearsay and innuendo.

1. INRBA's proposed order does not comply with GAO 2020-05. In an effort to improve procedural efficiencies, the Commission adopted General Administrative Order (GAO) 2020-05 on December 30, 2020. The GAO includes the following guidelines for the submission of proposed orders.

Proposed orders shall:

- 1) Provide facts used to support the findings and cite those facts, including the exhibit name/designation and page number;
- 2) Limit the recitation of facts to those that are the substantive evidence upon which the findings that support the ultimate conclusion(s) are based;

- 3) Not include any new evidence or arguments not supported by the evidence in the record; and
- 4) Not include settlement agreements entered into after the record is closed.

GAO 2020-05, App. A, § II(E).

INRBA's proposed order contains no citation to the evidentiary record in this Cause. As such it is unduly burdensome for LTD, the Indiana Office of Utility Consumer Counselor (OUCC) and the Commission to verify the accuracy of the proposed order's recitation of facts. Therefore, LTD requests that the Commission reject INRBA's proposed order and adopt the proposed order that LTD submitted, which includes citations to the evidentiary record.

2. INRBA's proposed order relies on a flawed understanding of the FCC's rules and Indiana regulatory law. INRBA's proposed order twists and misconstrues the FCC's orders and notices that set the rules for the Rural Digital Opportunity Fund (RDOF) (Auction 904) program. One of INRBA's primary contentions in its testimony, during the hearing and again in its proposed order, is that LTD violated the FCC's RDOF rules by failing to file its petition for designation as an eligible telecommunications carrier (ETC) in Indiana within 30 days of the FCC's announcement of the winning bidders. (*See, e.g.*, INRBA Proposed Order, pp. 3-4). INRBA states "The FCC has established a good-faith filing deadline of 30 days following the December 7, 2020 Auction 904 winning bidders announcement, which required an ETC application to be filed by not 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." (*Id.*, p. 4 (footnote omitted)). INRBA cites Auction 904 Notice, 35 FCC Rcd. 6077 as the authority for this statement. (*Id.*).

The only deadline created by the FCC in its Auction 904 Notice is the deadline for a winning bidder to "obtain a high-cost ETC designation for the areas covered by its winning bids within 180 days after being announced as the winning bidder." *Auction 904 Notice*, 35 FCC Rcd. 6077, [2020 WL 3166244](#), at *40, (Jun. 11, 2020) (citing 47 CFR §§ 54.803(b), 54.804(b)(5) and *RDOF Order*, 35 FCC Rcd. 686, 723, 727, paras. 81, 92, [2020 WL 756001](#) (Jan. 30, 2020)). In the accompanying footnote, the FCC confirmed that if a winning bidder is unable to obtain ETC designation within the 180-day deadline, "it would be appropriate to waive the 180-day timeframe if the bidder is able to demonstrate that it has engaged in good faith efforts to obtain an ETC designation, but the proceeding is not yet complete" *Auction 904 Notice*, 2020 WL 3166244, at *39, n. 307. The FCC further stated that it would "presume good faith if the long-form applicant files its ETC application with the state commission or the [FCC] as applicable within 30 days of the release of the Auction 904 closing public notice." *Id.* In other words, in the event that a winning bidder has not obtained an ETC designation by June 7, 2021, the FCC may waive the requirement if the winning bidder can demonstrate good faith efforts to obtain the ETC designation. Notably, the FCC has never declined to waive this deadline. For the CAF auction, the FCC did not withhold support even where an ETC designation was awarded after the FCC's deadline. While the FCC will presume good faith efforts if the winning bidder filed its petition for ETC designation by January 6, 2021, that is not the only way in which a winning bidder can establish good faith efforts.

The FCC's notice certainly does not create a "good-faith filing deadline" as alleged by INRBA in its proposed order. Therefore, the Commission should disregard INRBA's arguments and proposed order language regarding an alleged failure of LTD to comply with and FCC "good-faith filing deadline" that does not exist.

3. Responses to INRBA's proposed Discussion and Findings sections. Under [Ind. Code § 8-1-2.6-13\(c\)\(4\)](#), the Commission has authority to fulfill its obligations concerning universal service and access to telecommunications service and equipment, including the designation of eligible telecommunications carriers under [47 U.S.C. 214](#) (§ 214). Under § 214(e)(2), if a common carrier will, throughout the service area for which ETC designation is received, offer the services supported by Federal universal service support mechanisms using either its own facilities, or a combination of its own facilities and resale of another carrier's services and will advertise the availability of and charges for such services using media of general distribution, then the Commission "shall" designate the common carrier as an ETC.

In order to fulfill its obligations, the Commission adopted GAO 2019-5, which includes ETC Filing and Relinquishment Guidelines. Appendix A to GAO 2019-5 lays out the factors that the Commission considers in granting a request for ETC designation. LTD's proposed order addresses each of these factors in a manner consistent with the Commission's final orders in similar ETC cases related to common carriers that have been awarded Federal universal support funding through FCC auctions, and the Commission should adopt LTD's proposed discussion and findings.

A. LTD has the ability to offer supported services and to serve the entire designated service area. INRBA alleges that LTD has failed to demonstrate that it is capable of providing the required RDOF supported services within its requested ETC service area. Specifically, INRBA questions whether LTD is capable of deploying a fiber-based network, whether INRBA intends to offer gigabit speed broadband service, and whether LTD has the financial ability to construct and operate the network to provide supported services. Notably, neither Indiana nor Federal law require or authorize the Commission to determine an ETC applicant's financial ability to construct a network to provide supported services.

Mr. Hauer testified that LTD currently offers supported services in other states using a combination of network facilities and technologies with last-mile voice and broadband service provided using fiber and fixed wireless microwave platforms and that LTD will deploy a similar network to provide supported voice services and meet broadband requirements in Indiana. (Hauer Direct, p. 10). LTD plans to meet or exceed RDOF milestone requirements by completing construction of 20% of locations by the end of 2023, 40% by the end of 2024, 60% by the end of 2025, 80% by the end of 2026, and 100% by 2027. (Hauer Rebuttal, p. 5). Mr. Hauer testified that LTD has installed fiber both with its own workforce and contractors. (*Id.*, p. 7). He stated that LTD has employees in 23 states, has engaged outside engineering and construction companies, and is positioning resources to begin construction. (*Id.*, p. 10). In addition, LTD is preparing to hire and train over 500 construction staff, including many local workers in Indiana. (*Id.*).

Regarding whether LTD will offer gigabit speed broadband service, LTD committed in its response to the Commission's April 14, 2021 Docket Entry to provide 1000/500 Mbps low-latency service in all RDOF awarded areas. (*Id.* p. 13 and LTD's Responses to the Presiding Officers'

April 14, 2021 Docket Entry Questions, p. 1). During cross-examination, Mr. Hauer also confirmed that LTD would provide 1000/500 Mbps service with 2 TB of capacity. Mr. Hauer provided additional details about LTD's plans in confidential testimony during the hearing.

Regarding whether LTD has the financial ability to construct and operate the network, Mr. Hauer testified that LTD will install fiber with its own construction teams using modern equipment at likely one-half to one-third the cost of the dated infrastructure deployed by rural local exchange carriers. (Hauer Rebuttal, p. 6). In addition, and notwithstanding the Commission's jurisdictional limits, LTD provided confidential financial information to the Commission for review.

INRBA's speculation and unsupported allegations that LTD will not be able to construct a network in Indiana capable of providing the required supported service for the RDOF award are also irrelevant because the Commission's inquiry for ETC designees does not include a consideration of the applicant's ability to construct a network to provide the supported services. That is a determination for the FCC. As Mr. Hauer testified, by awarding RDOF funding to winning bidders, the FCC has made a preliminary determination that the winning bidders have the legal, financial, and technical ability to construct the projects for which RDOF funding was awarded. (*Id.*, pp. 8-9). The FCC is further scrutinizing RDOF winning bidders, including LTD, through its review of the long-form application. Therefore, the Commission should find that LTD has demonstrated it meets the criteria to provide the supported services in the designated service area for which it seeks ETC designation.

B. LTD properly identified its proposed ETC service area. INRBA alleges that LTD has failed to properly identify its proposed ETC service area by making a semantics argument regarding the number of census blocks/census block groups awarded to LTD in the RDOF auction. LTD attached a *Verified Application of LTD Broadband LLC for Designation as an Eligible Telecommunications Carrier* (Petition), LTD attached a list of the awarded census blocks and a map of Indiana identifying the location of the census blocks. (Petition, Attach. 2). Mr. Hauer testified that LTD is the auction winner for nearly \$55 million over ten years to serve 31,330 locations in 756 census blocks. (Hauer Direct, p. 4). In rebuttal, Mr. Hauer clarified that LTD intends to serve as an ETC only in the service area defined by the approved census blocks. (Hauer Rebuttal, p. 4). In addition, LTD provided clarifying evidence in response to the Commission's April 14, 2021 Docket Entry, including a spreadsheet listing the applicable census blocks in a single column. Despite INRBA's assertion to the contrary, LTD provided sufficient evidence to properly identify its proposed ETC service area and there should be no lack of clarity at this time. Therefore, the Commission should find that LTD properly identified its proposed ETC service area.

C. LTD properly identified partners and affiliates. INRBA alleges that LTD failed to clearly identify its partners and affiliates. GAO 2020-5 requires LTD to "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. (p. 1, par. 2). Mr. Hauer testified that LTD has sufficient experience, resources, and relationships to provide service in Indiana and will not rely on partners to provide service to customers once its network is constructed. (Hauer Rebuttal, p. 11). In response to a related clarifying question in the Commission's April 14, 2021 Docket Entry, LTD stated: "LTD has no affiliates and will not partner with any unaffiliated entities

in offering or providing supported services in Indiana. LTD will contract with appropriate engineering, construction, and fiber companies to construct the network necessary to satisfy its Indiana RDOF obligations.” (p. 13).

Mr. Hauer testified that LTD currently provides 911/E911 emergency services through an arrangement with Inteliquent and committed to provide access to 911/E911 emergency services throughout its service territory in Indiana. (Hauer Direct, p. 8). Mr. Hauer provided additional confidential details of a potential partnership for VoIP services in Indiana during the evidentiary hearing. He also testified that if any potential partners are not properly certificated to operate in Indiana to provide the anticipated services, then he would find a properly certificated partner. Mr. Hauer’s testimony fulfills the requirements of GAO 2020-5, which does not require LTD to engage with partners, only to “identify” those with which it has contracted. He stated LTD’s intention not to use affiliated or unaffiliated partners to provide supported services in Indiana, and he identified the single potential partner for 911/E911 and VoIP services.

D. LTD demonstrated how it would advertise its supported services and the charges for such services. INRBA alleges that LTD failed to provide any example of its advertising materials for supported services. Mr. Hauer testified that LTD will advertise the availability of supported services throughout its designated service areas using direct mail and would comply with all form and content requirements for advertising adopted by the FCC or the Commission for ETCs. (Hauer Direct, p. 10). LTD will also conduct direct advertising to Lifeline-eligible customers in its awarded locations, which will comply with content requirements of FCC Rule § 54.405(c) and will include the required language in all print, broadcast, and web-posted marketing materials. (*Id.*, pp. 10-11).

LTD attached a working sample draft of its advertising to its Petition as Attachment 4. During the evidentiary hearing, Mr. Hauer acknowledged and corrected an error in the draft advertising that indicated the Lifeline discount applied to broadband Internet service. Therefore, the Commission should find that LTD sufficiently demonstrated how it plans to advertise its supported services and the charges for such services.

E. The Commission should waive the requirement of a five-year plan. Although INRBA acknowledges that the Commission has previously accepted summary overviews of project plans in lieu of a five-year plan, INRBA alleges that LTD has failed to provide adequate information meeting this summary overview requirement. INRBA then goes on to argue that the Commission should require LTD to provide a level of detail that far exceeds a summary overview of its plans.

Mr. Hauer testified in his direct and rebuttal testimony and during the evidentiary hearing providing an overview and projected timeline of LTD’s planned network as discussed in Section A above. Mr. Hauer also provided detailed testimony regarding LTD’s plans to secure the network against the possibility of emergency outages (*See*, LTD’s Proposed Order, pp. 6-7). Mr. Hauer testified that LTD plans to begin construction within three months of the FCC authorizing the support funding and has an aggressive timeline to meet or exceed RDOF milestones. (Hauer Rebuttal, p. 5). In addition, LTD will be subject to FCC reporting requirements for RDOF participants over the ten-year support term.

The Commission has previously found such information to sufficiently support a waiver of the five-year plan requirement. *E.g.*, *Jasper County REMC*, Cause No. 41052 ETC 89, slip op., pp. 7-8 (IURC May 12, 2021) (The Commission has “accepted a summary overview regarding how petitioners would meet auction milestones, information regarding the tier and latency of committed broadband service, and a general overview of the technology to be used to meet auction milestones.”) The evidence provided by LTD combined with its FCC reporting requirements meets this standard enforced by the Commission. Therefore, the Commission should waive the five-year plan requirement in this case.

F. Functionality in Emergencies. INRBA alleges that LTD failed to demonstrate the ability of its Indiana network to remain functional in emergency situations. Mr. Hauer provided detailed evidence on this issue on pages 13-14 of his direct testimony. Mr. Hauer testified that LTD employs a distributed data center model with duplication and load sharing as well as uninterrupted power supply (UPS) and generator backups. (Hauer Direct, p. 13). He detailed the technology designed to ensure uninterrupted uptime for customers (*Id.*). And he testified that each customer would receive a UPS to provide 24 hours of backup power in the event of a power outage. (*Id.*, pp. 13-14). Therefore, the Commission should find that LTD has provide sufficient evidence to demonstrate its ability to remain functional in emergency situations.

G. LTD demonstrated that it will satisfy applicable consumer protection and service quality standards. INRBA alleges that LTD has failed to demonstrate that it is capable of providing adequate service quality assurances to customers. In support, INRBA noted two isolated examples from LTD’s operations in Minnesota: an alleged “F” rating from a Minnesota Better Business Bureau (MN BBB), and a notification from the Minnesota Department of Commerce that LTD has not published Lifeline rates on its website.

Mr. Hauer testified that in Indiana LTD will 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 all state and federal privacy standards and network performance disclosure requirements. (Hauer Direct, p. 12). During the evidentiary hearing, Mr. Hauer clarified that the Minnesota Department of Commerce notification was received prior to the end of the three-year deadline for LTD to meet its initial 40 percent buildout obligation pursuant to the CAF II auction rules, and therefore, LTD was not out of compliance. Mr. Hauer testified on redirect that LTD would comply with all Lifeline publication rules in Indiana. With respect to the MN BBB rating, Mr. Hauer testified that LTD’s primary BBB rating is based on its Nevada headquarters location, and that he had never seen the MN BBB rating or had any opportunity to respond to such rating or the associated complaints.

GAO 2020-5 allows the Commission to consider commitments to consumer protection and service quality as a demonstration that petitioner will satisfy such standards. Mr. Hauer made such commitments both in his direct testimony and during the evidentiary hearing. In addition, as discussed in LTD’s Proposed Order, the FCC requires all ETCs to certify compliance with 47 C.F.R. § 54.202(a)(3) by demonstrating that they meet applicable service quality standards and consumer protection rules. Therefore, the Commission should find that LTD has sufficiently demonstrated that it will satisfy applicable consumer protection and service quality standards.

H. LTD’s designation as an ETC to allow it to receive RDOF funding and provide supported services in Indiana is in the public interest. INRBA argues that while the Commission recognizes that the provision of rural broadband to unserved or underserved areas is generally beneficial to consumers, LTD “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.” (INRBA Proposed Order, p. 18) (emphasis original). INRBA’s argument is a request for this Commission to second-guess the FCC’s determination with respect to LTD’s qualifications under FCC rules. The decision of which common carrier should receive RDOF support will be made by the FCC according to the rules established for Auction 904.

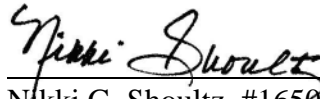
INRBA’s arguments and testimony regarding LTD’s commitment to fulfilling the terms of the RDOF program and to provide the required supported services in Indiana amount to little more than speculation and hearsay. Mr. Hauer responded to each of INRBA’s allegations and provided sufficient evidence by which the Commission may find that designation of LTD as an ETC in Indiana is in the public interest. Therefore, the Commission should find that LTD’s designation as an ETC and the attendant benefits to Indiana’s unserved and underserved rural communities who will receive quality, affordable telecommunications and broadband services are in the public interest.

- I. LTD has applied for a CTA from the Commission.** INRBA argues that the Commission should deny LTD’s ETC designation because LTD did not file its CTA application until March 15, 2021. Aside from being completely irrelevant to this Cause, INRBA’s argument has no merit. As INRBA admits, the Commission allows, but does not require, a common carrier that has been awarded funds to provide supported services through an FCC auction to file concurrent applications for an ETC and a CTA, which LTD did. The Commission is well aware of LTD’s CTA case, which has the same presiding officers, and the Commission is capable of issuing its ETC and CTA orders either simultaneously or in the correct order. Therefore, the Commission should disregard the CTA arguments in INRBA’s proposed order.

For all the foregoing reasons, the Commission should disregard INRBA’s proposed order and adopt the proposed order submitted by LTD in this Cause. LTD’s proposed order complies with the form of order issued by the Commission in similar ETC cases and sets forth a proper summary of the evidence, with citations to the evidentiary record, and discussion and findings of the Commission supported with sufficient evidence. Consistent with its statutory obligations, the FCC is conducting a thorough review of LTD’s long-form application to determine its financial and technical qualifications to provide supported services in many rural areas in Indiana. LTD

provided substantial evidence to the Commission demonstrating it satisfies all of the applicable criteria for designation by this Commission as an ETC. LTD stands ready, willing, and able to construct a network capable of providing such services, to provide state-of-the-art telecommunications and broadband services, and to comply with all FCC, Commission, federal and state regulations and requirements. Therefore, the Commission should approve LTD's Petition and designate LTD as an ETC in its proposed service area.

Respectfully submitted,



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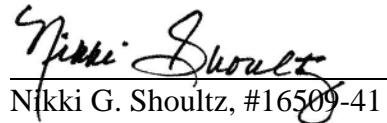
Counsel for LTD Broadband, LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *LTD Broadband, LLC's Objections to INRBA's Proposed Order* has been served upon the following counsel of record electronically this 14th day of May, 2021:

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